



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

ENF 28

Ministerial Opinions on Danger to the
Public and to the Security of Canada

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Updates to chapter

Listing by date:

Date: 2005-11-07

The chapter has been updated to reflect respective responsibilities of Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA).

Section 4: Clarification added to indicate that "the Minister" refers to the Minister of Citizenship and Immigration (C&I).

Section 4.1: Removed list of delegated authority.

Added a reference to the chapter IL 3 - Designation of Officers and Delegation of Authority for information on delegated authority to form an opinion pursuant to A101(2)(b) and A115(2)(a) that a person is a danger to the public in Canada, and pursuant to A115(2)(b) that a person is a danger to the security of Canada, or should not be allowed to remain in Canada on the basis of the nature and severity of acts committed.

Added instruction to indicate that all requests for danger opinion pursuant to A115(2)(b), as well as complete documentation, must be sent to the Manager, National Security Coordination Section, Canada Border Services Agency, Jean Edmonds Tower North, 300 Slater Street, 6th floor, Ottawa ON K1A 0L8

Section 4.2: Corrections to indicate the responsible Divisions within the National Security Division (NSD) of the CBSA for Organized Crime Division, Modern War Crimes Division and Security Review Division.

Section 7.2: Addition to indicate that officers should consult with the National Security Division (NSD), the CBSA for guidance, before initiating a request for danger opinion pursuant to A115(2)(b).

Section 7.10: Added instruction with respect to requests for danger opinions pursuant to A101(2)(b) and A115(2)(a), to send the completed IMM 5367B, including all documentation and submissions to the Director, Case Review Division, Case Management Branch, NHQ; and with respect to request for danger opinion pursuant to A115(2)(b), to send the completed IMM5367B, including all documentation and submissions to the Manager, National Security Coordination Section, Canada Border Services Agency, NHQ.

Section 7.11: Added information to indicate that the documents should be returned to the Director, Case Review Division, Case Management Branch, NHQ, under "After Disclosure", which provides information on the type documents that should be returned to NHQ. This relates to documents and submissions with respect to requests for danger opinion pursuant to A101(2)(b), A115(2)(a), as well as A115(2)(b).

Section 7.16: Correction to indicate that an EII is entered in FOSS rather than an NCB, regarding the decision of the Minister's delegate concerning a request for a danger opinion or a request for reconsideration.

Appendix A: Removed references inviting the client to provide submissions addressing the extent to which his life or freedoms are threatened by removal from Canada. This relates to the letter to client with respect to A101(2)(b).

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1. What this chapter is about

The purpose of this chapter is to define the policies and procedures with respect to ministerial danger opinion reports.

This chapter aims to provide functional guidance and direction to officers, managers and others at Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) who are involved in the decision-making process and the issuance of danger opinions.

2. Program objectives

The program objectives for the issuance of danger opinions with respect to permanent residents and foreign nationals are to:

- protect the health and safety of Canadians and maintain the security of Canadian society; and
- promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons who are criminals or security risks.

The program objectives for the issuance of danger opinions with respect to refugees are to:

- protect the health and safety of Canadians and to maintain the security of Canadian society, and
- promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

The *Immigration and Refugee Protection Act* is to be construed and applied in a manner that:

- furthers the domestic and international interests of Canada, and
- complies with international human rights instruments to which Canada is a signatory.

3. The Act and Regulations

Reference should be made to IRPA and to the Regulations for the full and complete wording of the texts.

Provision	Act and Regulations
A permanent resident or a foreign national is inadmissible on security grounds for	A34(1)
• engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada,	A34(1)(a)
• engaging in or instigating the subversion by force of any government,	A34(1)(b)
• engaging in terrorism,	A34(1)(c)

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<ul style="list-style-type: none"> being a danger to the security of Canada, 	A34(1)(d)
<ul style="list-style-type: none"> engaging in acts of violence that would or might endanger the lives or safety of persons in Canada, or 	A34(1)(e)
<ul style="list-style-type: none"> being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c). 	A34(1)(f)
A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	A35(1)
<ul style="list-style-type: none"> committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>, 	A35(1)(a)
<ul style="list-style-type: none"> being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the <i>Crimes Against Humanity and War Crimes Act</i>, or 	A35(1)(b)
<ul style="list-style-type: none"> being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association. 	A35(1)(c)
A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	A36(1)
<ul style="list-style-type: none"> having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed, 	A36(1)(a)
<ul style="list-style-type: none"> having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or 	A36(1)(b)
<ul style="list-style-type: none"> committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. 	A36(1)(c)
A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	A37(1)
<ul style="list-style-type: none"> being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern, or 	A37(1)(a)
<ul style="list-style-type: none"> engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering. 	A37(1)(b)
The officer shall suspend consideration of the eligibility of the person's (refugee) claim if	A100(2)

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<ul style="list-style-type: none"> a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of serious criminality. 	A100(2)(a)
A claim is ineligible to be referred to the Refugee Protection Division (RPD) if the claimant has been determined to be inadmissible on grounds of serious criminality.	A101(1)(f)
A claim is not ineligible by reason of serious criminality under paragraph A101(1)(f) unless: <ul style="list-style-type: none"> in the case of inadmissibility by reason of a conviction <i>in</i> Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed, or 	A101(2) A101(2)(a)
<ul style="list-style-type: none"> in the case of inadmissibility by reason of a conviction <i>outside</i> Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years. 	A101(2)(b)
Proceedings of the Refugee Protection Division and of the Refugee Appeal Division (RAD) are suspended on notice by an officer that	A103(1)
<ul style="list-style-type: none"> the matter has been referred to the Immigration Division to determine whether the claimant is inadmissible on grounds of serious criminality. 	A103(1)(a)
Refugee protection may not result from an application for protection if the person (b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction <i>in</i> Canada punished by a term of imprisonment of at least two years or with respect to a conviction <i>outside</i> Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	A112(3)(b)
In the case of an applicant described in A112(3), consideration shall be on the basis of the factors set out in A97 and (i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada.	A113(d)(i)
A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, or at risk of torture or cruel and unusual treatment or punishment.	A115(1)
A115(1) does not apply in the case of a person <ul style="list-style-type: none"> who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or 	A115(2)(a)
<ul style="list-style-type: none"> who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada. 	A115(2)(b)

3.1. Forms

The forms required are shown in the following table:

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Form title	Form number
A44(1) Highlights – Port of Entry Cases	IMM 5051B
A44(1) and A55 Highlights – Inland Cases	IMM 5084B
Danger to the Public – Ministerial Opinion Report	IMM 5367B

4. Instruments and delegations

Pursuant to A6(1) and A6(2), the Minister of Citizenship and Immigration (C&I) has designated persons or class of persons as officers to carry out any purpose of any provision, legislative or regulatory, and has specified the powers and duties of the officers so designated. These delegations may be found in chapter IL 3, Designation of Officers and Delegation of Authority.

4.1. Authorities

IRPA authorizes the Minister of C&I to form an opinion that a person is a danger to the public in Canada or to the security of Canada, or should not be allowed to remain in Canada on the basis of the nature and severity of acts committed.

Refer to chapter IL 3, Designation of Officers and Delegation of Authority, for information on delegated authority to form an opinion pursuant to A101(2)(b) and A115(2)(a) that a person is a danger to the public in Canada, and pursuant to A115(2)(b) that a person is a danger to the security of Canada, or a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed.

All requests for danger opinions pursuant to A101(2)(b) and A115(2)(a), as well as complete documentation, must be sent to:

Director
Case Review Division
Case Management Branch
Jean Edmonds Tower North
300 Slater Street, 9th floor
Ottawa ON K1A 1L1

All requests for danger opinions pursuant to A115(2)(b), as well as complete documentation, must be sent to:

Manager
National Security Coordination Section
Canada Border Services Agency
Jean Edmonds Tower North
300 Slater Street, 6th floor
Ottawa ON K1A 0L8

4.2. Guidance

The Legislative and Regulatory Policy Division (SCP), Admissibility Branch, CIC NHQ may be contacted at the following e-mail address for guidance on **policy** issues regarding opinions on danger to the public in Canada: NHQ-Legislative-Policy @cic.gc.ca

The Case Review Division (BCM), Case Management Branch, CIC/CBSA NHQ may be contacted at the following e-mail address for guidance on **specific cases** regarding danger opinions: Nat-Case-Review@cic.gc.ca

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The Organized Crime Division, National Security Division (NSD), CBSA, NHQ may be contacted at the following e-mail address for guidance when seeking a danger to the public opinion concerning persons who are or who have been involved in **organized crime**: Nat-Organized-Crime@cic.gc.ca

The Modern War Crimes Division, National Security Division (NSD) , CBSA, NHQ may be contacted at the following e-mail address for guidance when seeking a danger to the public opinion concerning persons who are or who have been involved in **war crimes**: Nat-WarCrimes@cic.gc.ca

The Security Review Division, National Security Division (NSD), CBSA, NHQ may be contacted at the following e-mail address for guidance when seeking a danger to the public opinion concerning persons who are or who have been involved in **terrorism or espionage**: Nat-Security-Review@cic.gc.ca

5. Departmental policy

5.1. Danger opinion provisions

IRPA allows for a danger opinion to be issued in the following two situations only.

a) Claimant eligibility

A claim is not ineligible to be referred to the RPD by reason of serious criminality, unless the Minister of C&I is of the opinion that the person is a danger to the public in Canada, and there has been a finding of inadmissibility by the Immigration Division for a conviction *outside* Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years [A101(2)(b)].

b) Exception to non-refoulement (removal)

A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution, torture, or cruel and unusual treatment or punishment, except for a person who is inadmissible on grounds of

- serious criminality and who constitutes, in the opinion of the Minister [of C&I], a danger to the public in Canada [A115(2)(a)],
- security, violating human or international rights or organized criminality if, in the opinion of the Minister [of C&I], the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada [A115(2)(b)].

5.2. Removal of Convention refugee or protected persons (A115)

The principle of non-refoulement (removal) does not apply in the case of the following:

- a person who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister [of C&I], a danger to the public in Canada; or
- a person who is inadmissible on grounds of security, violating human or international rights, or organized criminality if, in the opinion of the Minister [of C&I], the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

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A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada and returned to their country of alleged persecution, except under the following circumstances:

- the Minister [of C&I] has issued an opinion that the person concerned is a danger to Canada [A115(2)(a)], or on the basis of the nature and severity of the acts committed or of danger to the security of Canada [A115(2)(b)], and
- a member of the Immigration Division has determined that the person concerned is described under A34, A35, A36(1) or A37.

Under the principle of non-refoulement, a protected person, or a person who is recognized as a Convention refugee by another country to which the person may be returned, shall not be removed from Canada to a country where they would be:

- at risk of persecution for the following reasons:
 - ◆ race;
 - ◆ religion;
 - ◆ nationality;
 - ◆ membership in a particular social group;
 - ◆ political opinion;
- at risk of torture or cruel and unusual treatment or punishment.

5.3. Convention refugee ineligibility (A101)

A101(2) stipulates::

101.(2) A claim is not ineligible by reason of serious criminality under paragraph [101](1)(f) unless:

(a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or

(b) in the case of inadmissibility by reason of a conviction outside Canada, the Minister [of C&I] is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least ten years.

6. Definitions

Act of Parliament	Legislative act or statutory law: A bill that has been created or arrived at through the will of the electorate and their elected officials and that has been enacted by federal legislature into law.
Claimant	In Canada, a person who makes a claim for refugee protection to an officer, and who is not subject to a removal order.

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Convention refugee	A person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside of their country of nationality or, not having a country of nationality, is outside the country of their former habitual residence.
IAD	Immigration Appeal Division
ID	Immigration Division
IRB	Immigration and Refugee Board
Protected person	A person on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected.
RAD	Refugee Appeal Division
Recidivism	A tendency to relapse into a habit of criminal activity or behaviour.
RPD	Refugee Protection Division

7. Procedure: Issuing ministerial opinions

7.1. Identification by officer of danger opinion cases

Officers are responsible for identifying persons who should be recommended for a Minister's opinion on danger to the public of Canada, on danger to the security of Canada, or on the basis of the nature and severity of acts committed.

Officers may act on this responsibility when making an A44 report on

- claimants or persons who are likely to make a claim for refugee protection, and
- protected persons who are the subject of a removal order that will become enforceable in the near future.

7.2. When to request the Minister's opinion

Before admissibility hearing

As soon as an officer is aware of the facts or after a person has been referred to the Immigration Division for an admissibility hearing on an A44 report for serious criminality *outside* Canada, the officer should immediately consider seeking a danger opinion. The Minister's opinion that a person is a danger to the public under A101(2)(b) should be obtained prior to an admissibility hearing. However, a case may be submitted to the Minister's delegate up to the date of the IRB decision on the claim.

An officer should seek suspension of consideration of a claim under A103(1)(a) when a case has been referred to the Immigration Division to determine whether a claimant is inadmissible on grounds of serious criminality.

After removal order [A115(2)(a)]

The officer should initiate a request for the Minister's opinion approximately six months prior to the date of the person's anticipated date of release

- when a protected person or a person who is recognized as a Convention refugee has been convicted of an offence in Canada, incarcerated and is inadmissible on grounds of serious criminality, and
- when that person constitutes, in the opinion of the Minister [of C&I], a danger to the public in Canada.

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After removal order [A115(2)(b)]

The officer should initiate a request for the Minister's opinion

- when a protected person or a person who is recognized as a Convention refugee is inadmissible on grounds of security, violating human or international rights or organized criminality, and
- when the person concerned is a person who, in the opinion of the Minister [of C&I], should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, or of danger to the security of Canada.

Officers should consult with the National Security Division (NSD), the CBSA for guidance, before initiating a request for a danger opinion pursuant to A115(2)(b).

7.3. Determinant factors

In determining whether to seek the Minister's opinion on danger to the public, danger to the security of Canada or on the basis of the nature and severity of acts committed, the officer must examine the seriousness and nature of the offence to ensure that they support the officer's decision that the person represents an unacceptable risk to the public and is likely to commit offences in the future.

The officer must not only consider the conviction and sentence, but also

- include an analysis of the person's past and current offences and activities in the recommendation, and
- indicate that, if the person is considered to be a danger to the public, a request for the Minister's opinion should be initiated.

Note: All available and the most up-to-date documentation relevant to the case must be included with the request for a danger opinion.

7.4. Criminal factors

The following factors must be considered when preparing a danger opinion submission:

- criminal history and established patterns of violent criminal behaviour that suggest present and future danger to the public, and evidence to support the person's pattern of behaviour;
- offences involving violence, weapons, drug trafficking and sexual offences;
- any actions by the person that caused or might reasonably be expected to have caused death, serious physical or psychological harm, and/or significant property damage;
- evidence to substantiate the link between the criminal conviction, the likelihood that the person will re-offend and a pattern of increasingly serious criminal activity;
- police or medical information indicating that the person continues to pose a danger to the public;
- whether the circumstances of the offence provide insight into the level of risk the person may present to the public;

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- linkage between the conviction and the likelihood that the person will relapse into criminal activity (further to the Federal Court ruling that it is perverse to find that a person poses a danger to the public without evidence of the likelihood that the person will commit further criminal offences);
- multiple convictions usually form the basis for a danger opinion;
- a single conviction may rarely sustain a danger finding, and must clearly demonstrate that the person poses a present or future risk of danger to the public, as evidenced by the nature and circumstances of the offence. The jurisprudence indicates that it is possible to base a danger opinion on a single serious conviction when sufficient evidence exists; and
- the Minister's opinion may be pursued concurrently with an appeal on a criminal conviction but should not form the basis to pursue a danger opinion.

7.5. Documentation

All documentation must be releasable to the person concerned and to the person's counsel. When possible, certified copies should be made by the issuing authority of the original document.

Criminal documentation which must be provided with the danger opinion submission include:

- an A44 report highlights (IMM 5051B or IMM 5084B), which documents the person's criminal and personal history (employment, family, community involvement, associations, etc.) in Canada;
- police occurrence or observance reports linking the person to criminal activity and/or known associates, if releasable;
- pre-sentence reports or the judge's sentencing remarks, which should determine that the level of risk is consistent with the officer's recommendation;
- Probation and Parole Services and Correctional Services Canada documentation addressing rehabilitation issues;
- Correctional Services Canada reports that include information about the crime;
- the RCMP Summary of Police Information (C-480) must be obtained by forwarding the person's fingerprints to the RCMP. After an RCMP Summary of Police Information is obtained, conviction certificates for each conviction are not required;
- for an A115(2)(a) case, the person's Personal Information Form (PIF) and/or the RPD reasons, whenever available, should be included;
- police occurrence reports, which are often voluminous and do not necessarily reflect what was established in court;
- the elements of proof with regard to outstanding charges can only be used as secondary evidence to warrant a danger opinion; and
- charges that have been withdrawn or stayed and absolute or conditional discharges are not to be included and must be blocked out unless they indicate a pattern of negative behaviour, namely, conditional discharge for trafficking followed by a conviction for trafficking. Officers will make a note to file, and legibly sign and date the documents.

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Supplemental documentation required:

- all evidence, whether it be positive or negative;
- evidence which demonstrates the person's lifestyle and values;
- evidence of rehabilitation, which must be considered before seeking a Minister's opinion; and
- information concerning the person's behaviour during immigration proceedings.

Documentation which should not be included:

- statements which are speculative in nature;
- information which cannot be sourced;
- information which was not disclosed to the person by CIC;
- media accounts concerning the person and the offences committed—since the accuracy of these accounts may be questionable; and
- information relating to charges under the *Youth Criminal Justice Act* that have been withdrawn or stayed. Absolute or conditional discharges must be blocked out (refer to section 7.8 below).

7.6. Procedural fairness

The decision-making process for a Minister's opinion must adhere to the principles of procedural fairness. The person concerned must be fully informed of the case and be given a reasonable opportunity to respond to any information the decision-maker will use to arrive at a decision.

Note: A copy of all documentation that will be put before the decision-maker must be provided to the person concerned.

7.7. Humanitarian and compassionate considerations

- Any humanitarian and compassionate considerations known to CIC, or any submitted by the person concerned and/or counsel, must be considered by the decision-maker in A115 cases;
- Further information on humanitarian and compassionate considerations is available in IP 5.

7.8. *Youth Criminal Justice Act (YCJA)*

Any material references to a person's record under the YCJA, such as correctional report and sentencing remarks, cannot be put before the decision-maker when forming a danger opinion.

The officer preparing the danger opinion submission shall

- make a note to file,
- legibly sign and date the form to indicate that this information was blocked out in order to remove any references to material that is non-releasable, and
- notate the letter attached to the package to indicate that the information blocked out cannot be provided to the decision-maker.

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In the case of a judicial review, the officer may explain in an affidavit why sections were blocked out in order to confirm that the material was not put before the decision-maker.

The person concerned must be provided with a copy of the package that is presented to the Minister's delegate, including the sections that have been blocked out.

Note: If officers consider any evidence pertaining to a record under the **YCJA** to be relevant, they should follow the appropriate procedures for including this information.

7.9. Notification letter: Intent to seek Minister's opinion

Notification letter

As soon as an officer decides to seek a Minister's opinion, the person concerned must be notified by letter. The notification letter must be accurate, make reference to the appropriate section(s) of the Act and should:

- explain the effect of the Minister's opinion on the person's ineligibility to claim refugee protection or be protected from removal from Canada,
- advise the person concerned of the opportunity to make representations or submit any other evidence regarding danger or humanitarian and compassionate considerations, including written statements from others,
- confirm that the deadline for the submission is 15 calendar days from the day that the notice is received by the person. The 15 days do not include the day on which the letter was issued, but does include the fifteenth day, unless it falls on a holiday or weekend, in which case the deadline would be the next working day,
- list and have attached copies of all the material that the officer intends to forward for consideration by the Minister's delegate in making the decision,
- not include evidence in the danger opinion package that will prejudice a source unless the source has authorized disclosure for this purpose. If disclosure has not been authorized, the information cannot be forwarded to the decision-maker,
- be signed by the manager, and
- be dated when served or sent to the person concerned.

See samples of notification letters:

Appendix A - Letter advising the client that the CBSA or CIC will seek the Minister's opinion on danger to the public [A101(2)(b)]

Appendix B - Letter advising the client that the CBSA will seek the Minister's opinion on danger to the public [A115(2)(a)]

Appendix C - Letter advising the client that the CBSA will seek the Minister's opinion on danger to the security of Canada [A115(2)(b)]

Appendix D - Letter advising the client that the CBSA will seek the Minister's opinion on the basis of inadmissibility on grounds of violating human or international rights and on the basis of the nature and severity of acts committed [A115(2)(b)]

Appendix E - Letter advising the client that the CBSA will seek the Minister's opinion that the person should not be allowed to remain in Canada on grounds of organized criminality and on the basis of the nature and severity of acts committed [A115(2)(b)]

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Service of notification letter

The notification letter must be served and an acknowledgment of service obtained from the person concerned or the sponsor. Service can be either in person or by any mail service that provides acknowledgment of receipt (for instance, double registered mail). A copy of the letter should be sent to the person's counsel, if known.

If the person concerned is incarcerated, arrangements must be made for a CIC officer or an officer at the institution to serve the notification letter in person and to obtain an acknowledgment of receipt.

When the person concerned does not understand either English or French and requires the services of an interpreter at an admissibility hearing, a translation of the notification letter must be provided either orally or in writing.

If the person refuses to sign the acknowledgment of receipt, a note to that effect will be added to the CIC copy of the notification letter, signed and dated by the serving officer, to establish service.

Note: When service is by mail, but the post office is unable to confirm receipt by the person concerned, the request for a danger opinion cannot proceed. A warrant for the person's arrest for an admissibility hearing should be obtained, and the process of obtaining a danger opinion can be reinstated when the person is arrested.

7.10. Danger opinion package

The manager shall review all danger opinion submissions to determine whether a recommendation should be forwarded to the Minister's delegate and how to proceed.

The officer and manager shall not summarize or comment on the danger opinion submission when completing the Danger to the Public – Ministerial Opinion Report (IMM 5367B).

If the manager concurs and, if no extension has been granted at the expiration of the period for receiving submissions, the officer shall take the following steps:

- complete the IMM 5367B, and include
 - ◆ notice to the person concerned and counsel, if known,
 - ◆ acknowledgement of service to the client,
 - ◆ all documentation provided to the person concerned, and
 - ◆ submissions by the person concerned and/or counsel, if any;
- have the manager review and sign the report; and
- for danger opinions pursuant to A101(2)(b) and A115(2)(a), send the completed IMM 5367B, including all documentation and submissions, to the Director, Case Review Division, Case Management Branch, NHQ.
- for danger opinion pursuant to A115(2)(b), send the completed IMM 5367B including all documentation and submissions, to the Manager, National Security Coordination Section, Canada Border Services Agency, NHQ.

Note: A copy of the danger opinion package should be kept in the responsible originating office file. This package should not include any documentation that has not been disclosed to the client.

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7.11. Disclosure

The Ministerial Opinion Report (MOR) and the Request for Minister's Opinion (RMO) must be disclosed to the person concerned in the same form in which they were presented to the Minister [of C&I] or Minister's delegate. The client must have a reasonable opportunity to respond to the MOR and RMO.

As soon as the RMO has been completed at National Headquarters, the RMO, the MOR and any attachments to these documents that have not been submitted to the client will be returned to the originating office.

The originating office will deliver these documents to the client, either by hand or by the same method as the original notice was delivered. The client shall acknowledge receipt of the package by signing the accompanying notice.

Note: When the client refuses to acknowledge receipt of the package, the officer should indicate on the notice that the client refused to sign.

The notice will indicate that the client has 15 days to

- make final submissions on the two reports—limited to points raised in those reports,
- submit any new evidence relevant to danger or risk, and
- submit any evidence that was not reasonably available at the time of the client's initial submissions.

Note: The notice will indicate that the submissions and additional evidence are to be sent to the originating office, which will then forward the entire package to NHQ.

After disclosure

The local responsible office should return the following documents to the Director, Case Review Division, Case Management Branch, NHQ:

- a copy of the disclosure notice sent to the client;
- any additional evidence being introduced by the local responsible office; and
- any submissions received from the client/counsel.

This relates to documents and submissions with respect to requests for danger opinion pursuant to A101(2)(b), A115(2)(a), as well as A115(2)(b).

7.12. Urgent consideration

The officer must clearly indicate the reasons for urgency on the danger package. NHQ will try to ensure that the request is processed as quickly as possible.

The officer must provide the following:

- justification for the request;
- the date of release from incarceration;
- where and by whom the applicant is being detained; and

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- the date on which the person was released by a member of the Immigration Division, if applicable.

7.13. Extension requests for submissions

Should the person or counsel retained by the person request an extension of the 15-day period, the office will

- consider the reasons for the request and decide whether to grant the extension,
- if an extension is allowed, grant it for a short period only,
- acknowledge requests in writing and include them in the danger package,
- include all written evidence and correspondence in the package,
- include copies of all correspondence in the file, and
- advise the client/counsel that, even though a late submission cannot be refused, there is no guarantee that the submission will be considered, as it may reach the decision-maker after a decision has already been made.

All submissions must be accepted by the local responsible office and referred to the Case Management Branch, notwithstanding that the submission was received after the prescribed period of 15 days.

7.14. After issuance of danger opinion

After the Minister's delegate issues an opinion on whether the person is a danger to the public in Canada or a danger to the security of Canada, a copy of the decision will be faxed by Case Review Division, Case Management Branch, NHQ to the originating office.

The originating office will then *immediately* advise the person of the decision in writing.

A101(2)(b) case

At an admissibility hearing, a removal order will be issued if the person is found described, and the officer will make an eligibility decision.

The officer shall provide all information needed to support a recommendation for detention.

A115(2) case

The manager of the originating office shall be responsible for notifying the person concerned *immediately*, in writing, of the decision.

Removals will require coordination with the local Central Removals Unit.

7.15. Reconsideration of danger opinion

Note: Requests for reconsideration will not stay the processing of a case, including removal.

If the person concerned and/or counsel disagrees with the decision but does not submit any other evidence to support their case, the subject of the decision and/or counsel should be advised in writing that the opinion has already been issued and continues to be in effect.

Requests for reconsideration of a danger opinion should be handled by the local office unless the request meets either of the following criteria.

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New evidence

Where a request is made to consider facts or evidence that were not available at the time of the original decision (e.g., a new correctional report/psychological report), the documentation must be forwarded to the Minister's delegate for review.

Principle of natural justice

Where the person and/or counsel alleges that the decision violated a principle of natural justice, the case should be sent to the Minister's delegate for reconsideration. The person may allege that they did not receive the proper notification to make submissions or that the decision was based on information that they did not receive as well.

Requests for reconsideration should normally be sent to the originating office. Should they be received at NHQ, they will be returned to the originating office to obtain the local office's input.

7.16. EII - Lookout

The Case Review Division, Case Management Branch, NHQ will enter an EII in FOSS regarding the decision of the Minister's delegate concerning a request for a danger opinion or a request for reconsideration.

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Appendix A Letter advising the client that the CBSA or CIC will seek the Minister's opinion on danger to the public [A101(2)(b)]

Re: Notice of intent to seek the opinion of the Minister pursuant to paragraph 101(2)(b) of the *Immigration and Refugee Protection Act* that you are a danger to the public in Canada

Dear Sir/Madam:

You are hereby advised that the Canada Border Services Agency (CBSA) (or Citizenship and Immigration Canada (CIC)) possesses evidence suggesting that you are a person who is a danger to the public in Canada. The CBSA/CIC intends to request an opinion, pursuant to paragraph 101(2)(b) of the *Immigration and Refugee Protection Act*, from the Minister of Citizenship and Immigration Canada, which, if given, will have serious consequences for you.

If the Minister is of the opinion that you are a danger to the public and if you have made or intend to make a refugee claim, your claim will *not* be referred to the Refugee Protection Division of the Immigration and Refugee Board for determination.

In order for the Minister to consider whether it can be reasonably concluded that you constitute a danger to the public in Canada, an assessment will be made of the threat that you pose to the public in Canada.

The following is a list of the materials that will be given to the Minister for consideration, copies of which are included with this letter:

- *List all documentary evidence pertinent to the danger issue that will be forwarded to Case Management Branch, NHQ.*

Before an opinion is formed by the Minister, you may make written representations or arguments that you deem necessary and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a danger to the public,— that are to be considered by the Minister must be received by the CBSA/CIC at the address noted above on or before the expiration of 15 days from the date you receive this letter. All material must be submitted in either of Canada's official languages.

You will be informed in writing of the decision of the Minister.

Yours truly,

Name of Manager, Canada Border Services Agency (CBSA)
(or Manager, Canada Immigration Centre (CIC))

Encl:

Receipt Acknowledged

Date

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Appendix B Letter advising the client that the CBSA will seek the Minister's opinion on danger to the public [A115(2)(a)]

Re: Notice of intention to seek the opinion of the Minister pursuant to paragraph 115(2)(a) of the *Immigration and Refugee Protection Act* that you are a danger to the public in Canada

Dear Sir/Madam:

You are hereby advised that the Canada Border Services Agency (CBSA) possesses evidence suggesting you are a person in Canada who is a danger to the public. The CBSA intends to request an opinion, pursuant to paragraph 115(2)(a) of the *Immigration and Refugee Protection Act*, from the Minister of Citizenship and Immigration, which, if given, will have serious consequences for you.

If the Minister is of the opinion that you are a danger to the public in Canada, you may be removed from Canada to the country from which you have been determined to be a Convention refugee.

In order for the Minister to consider whether it can be reasonably concluded that you constitute a danger to the public in Canada, an assessment will be made of the threat that you pose to the public in Canada. In addition, an assessment will be made of the possibility of risk that could be precipitated by your return to

- the country from which you came to Canada,
- your country of permanent residence,
- the country of your nationality, or
- your country of birth.

The following is a list of the materials that will be given to the Minister for consideration, copies of which are included with this letter:

- *List all documentary evidence pertinent to the danger issue that will be forwarded to Case Management Branch, NHQ.*

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres. This information includes the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material, such as the *United States Department of State Country Reports on Human Rights Practices*, the *Lawyers' Committee for Human Rights Critique*, *Amnesty International Reports*, the *Reporters Without Borders Report*, *World Europa* and the *Human Rights Watch World Report*.

Before an opinion is formed by the Minister, you may make written representations or arguments that you deem necessary, and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a danger to the public, and the extent to which your life or freedoms are threatened by removal from Canada, and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from the date you receive this letter. All material must be submitted in either of Canada's official languages.

You will be informed in writing of the decision of the Minister.

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Yours truly,

Name of Manager, Canada Border Services Agency (CBSA)

Encl:

Receipt Acknowledged

Date

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Appendix C Letter advising the client that the CBSA will seek the Minister's opinion on danger to the security of Canada [A115(2)(b)]

Re: Notice of intention to seek the opinion of the Minister pursuant to paragraph 115(2)(b) of *Immigration and Refugee Protection Act* that you are a danger to the security of Canada

Dear Sir/Madam:

You are hereby advised that the Canada Border Services Agency (CBSA) possesses evidence suggesting you are a person in Canada who is a danger to the security of Canada. The CBSA intends to request an opinion, pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act*, from the Minister of Citizenship and Immigration, which, if given, will have serious consequences for you.

If the Minister is of the opinion that you are a danger to the security of Canada, you may be removed from Canada to the country from which you have been determined to be a Convention refugee.

In order for the Minister to consider whether it can be reasonably concluded that you constitute a danger to the security of Canada, an assessment will be made of the threat that you pose to the public in Canada. In addition, an assessment will be made of the possibility of risk which could be precipitated by your return to

- the country from which you came to Canada,
- your country of permanent residence,
- the country of your nationality, or
- your country of birth.

The following is a list of the materials that will be given to the Minister for consideration, copies of which are included with this letter:

- *List all documentary evidence pertinent to the danger issue that will be forwarded to Case Management Branch, NHQ.*

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres. This information includes the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material, such as the *United States Department of State Country Reports on Human Rights Practices*, the *Lawyers' Committee for Human Rights Critique*, *Amnesty International Reports*, the *Reporters Without Borders Report*, *World Europa* and the *Human Rights Watch World Report*.

Before an opinion is formed by the Minister, you may make written representations or arguments that you deem necessary, and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a danger to the security of Canada, and the extent to which your life or freedoms are threatened by removal from Canada, and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from the date you receive this letter. All material must be submitted in either of Canada's official languages.

You will be informed in writing of the decision of the Minister.

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Canada**

Yours truly,

Name of Manager, Canada Border Services Agency (CBSA)

Encl:

Receipt Acknowledged

Date

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Appendix D Letter advising the client that the CBSA will seek the Minister's opinion on the basis of inadmissibility on grounds of violating human or international rights and on the basis of the nature and severity of acts committed [A115(2)(b)]

Re: Notice of intention to seek the opinion of the Minister pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act* that you should not be allowed to remain in Canada on the grounds of violating human or international rights and on the basis of the nature and severity of acts committed

Dear Sir/Madam:

You are hereby advised that the Canada Border Services Agency (CBSA) possesses evidence suggesting you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed. The CBSA intends to request an opinion, pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act*, from the Minister of Citizenship and Immigration, which, if given, will have serious consequences for you.

If the Minister is of the opinion that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, you may be removed from Canada to the country from which you have been determined to be a Convention refugee.

In order for the Minister to consider whether it can be reasonably concluded that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, an assessment will be made of the threat that you pose to Canada. In addition, an assessment will be made of the possibility of risk which could be precipitated by your return to

- the country from which you came to Canada,
- your country of permanent residence,
- the country of your nationality, or
- your country of birth.

The following is a list of materials that will be given to the Minister for consideration, copies of which are included with this letter:

- *List all documentary evidence pertinent to the danger issue that will be forwarded to Case Management Branch, NHQ.*

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres. This information includes the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material, such as the *United States Department of State Country Reports on Human Rights Practices*, the *Lawyers' Committee for Human Rights Critique*, *Amnesty International Reports*, the *Reporters Without Borders Report*, *World Europa* and the *Human Rights Watch World Report*.

Before an opinion is formed by the Minister, you may make written representations or arguments that you deem necessary, and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, and the extent to which your life or freedoms are threatened by removal from Canada, and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from

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the date you receive this letter. All material must be submitted in either of Canada's official languages.

You will be informed in writing of the decision of the Minister.

Yours truly,

Name of Manager, Canada Border Services Agency (CBSA)

Encl:

Receipt Acknowledged

Date

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Appendix E Letter advising the client that the CBSA will seek the Minister's opinion that the person should not be allowed to remain in Canada on grounds of organized criminality and on the basis of the nature and severity of acts committed [A115(2)(b)]

Re: Notice of intention to seek the opinion of the Minister pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act* that you should not be allowed to remain in Canada on the grounds of organized criminality and on the basis of the nature and severity of acts committed

Dear Sir/Madam:

You are hereby advised that the Canada Border Services Agency (CBSA) possesses evidence suggesting you are a person in Canada who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed. The CBSA intends to request an opinion, pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act*, from the Minister of Citizenship and Immigration, which, if given, will have serious consequences for you.

If the Minister is of the opinion that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, you may be removed from Canada to the country from which you have been determined to be a Convention refugee.

In order for the Minister to consider whether it can be reasonably concluded that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, an assessment will be made of the threat that you pose to Canada. In addition, an assessment will be made of the possibility of risk which could be precipitated by your return to

- the country from which you came to Canada,
- your country of permanent residence,
- the country of your nationality, or
- your country of birth.

The following is a list of materials which will be given to the Minister for consideration, copies of which are included with this letter:

- *List all documentary evidence pertinent to the danger issue which will be forwarded to Case Management Branch, NHQ.*

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres. This information includes the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material, such as the *United States Department of State Country Reports on Human Rights Practices*, the *Lawyers' Committee for Human Rights Critique*, *Amnesty International Reports*, the *Reporters Without Borders Report*, *World Europa*, and the *Human Rights Watch World Report*.

Before an opinion is formed by the Minister, you may make written representations or arguments that you deem necessary, and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, and the extent to which your life or freedoms are threatened by removal from Canada, and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from

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the date you received this letter. All material must be submitted in either of Canada's official languages.

You will be informed in writing of the decision of the Minister.

Yours truly,

Name of Manager, Canada Border Services Agency (CBSA)

Encl:

Receipt Acknowledged

Date