



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

CP 7

Waivers

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Updates to chapter

Listing by date:

Date: 2006-07-27

A minor change has been made only to sections 1.5, 1.8, 1.13 and 2.17 to reflect that, effective April 18, 2005, the knowledge and language requirements are waived for individuals 55 years and over.

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1. Waivers

1.1. This section is about

This section is about when certain requirements for a grant or renunciation of citizenship can be waived and special grants of citizenship.

1.2. Authorities

Citizenship Act

- Section 5(3), 5(4)
- Section 9(2)
- Section 23
- Section 27
- Section 28

Citizenship Regulations

- Section 3
 - Section 14
 - Section 15
 - Section 28
-

1.3. Context

Section 5(3) says the Minister can waive some of the requirements on compassionate grounds for granting citizenship.

Section 9(2) says the Minister can waive some of the requirements on compassionate grounds for an adult renouncing citizenship.

Section 5(4) says the Governor-in-Council has the discretion to direct the Minister to grant citizenship to anyone in unusual cases. See section on [Grant of citizenship](#).

Compassionate grounds—grant—Section 5(3) of the *Citizenship Act*

1.4. Requirements that can be waived

The following requirements can be waived on compassionate grounds:

Requirement	for	Type of applicant
knowledge of an official language and/or knowledge of Canada (section 5(1)(d), section 5(1)(e))		any applicant
<ul style="list-style-type: none">• age (section 5(1)(b))• length of residence (section 5(1)(c))• taking the oath of Citizenship		a minor
taking the oath of Citizenship		any person who cannot understand the significance of the oath because of a mental disability

1.5. Waiver of language and knowledge requirements at local office for those over 55

All field officers are delegated to waive the language and knowledge requirements for any person 55 years of age and over.

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1.6. All other waivers

The authority to exercise discretion under section 5(3) for all other cases has been delegated by the Minister to the Citizenship Registrar of Integration Branch and to the Director General of Case Management Branch. In most cases, the applicant is required to submit a medical opinion provided by his or her physician attesting to the fact that one or more requirements cannot be met.

1.7. Recommendation to Case Management Branch (BCM)

All recommendations to waive the language, knowledge, age, residence or oath requirements under section 5(3) are to be sent to Case Management Branch (BCM). [Note: waiver of age or residence applies to minors only]. Waivers are only to be recommended in cases of genuine need. Do not abuse recommendations. For any case referred to BCM, include all required documents, such as completed medical form, judge's decision and legal guardianship document if applicable. If the documentation provided is not sufficient for BCM to make an informed decision, the request for waiver will be returned to the local office for additional clarification.

1.8. Cases warranting waivers of language and \ or knowledge

Case management Branch may waive the requirements of language and or knowledge for any applicant. This discretionary authority is to be granted only in exceptional cases of genuine need for persons between the ages of 18 and 54 inclusive. In most cases, the applicant is required to submit a medical opinion provided by his or her physician attesting to the fact that a requirement cannot be met. See following sections on waivers under 5(3).

1.9. Cases warranting waivers of the oath

The only reason to waive the requirement for an adult or a minor person aged 14 or over to take the oath is inability to understand the significance of the oath because of medical disability. In such cases, the applicant is required to submit evidence of the mental disability and, if an adult, will be required to provide evidence of who the legal guardian is applying on behalf of the applicant. See details on waiver of the oath and guardianship in [section 2](#) of this chapter.

1.10. Waivers for minors

The Minister has the discretion to waive the oath, language, knowledge and residence requirements for minors who are applying as an adult. The Minister also has the authority to waive the oath for a minor person aged 14 or over who suffers from a mental disability. See Minor applying as an adult in the [chapter on grants](#).

1.11. Roles and Responsibilities

The citizenship judge, local office and BCM all have responsibilities regarding cases recommended for waiver. These responsibilities apply to all types of waiver requests.

1.11.1 Role of the Citizenship Judge

It is the responsibility of the citizenship judge to ensure that the request for waiver is relevant to the applicant's condition. The medical opinion provided by the client's physician must therefore provide information relevant to the request for the waiver. The reasons for the waiver recommendation, which may be medical and/or psychological, must be clearly stated in the judge's recommendation for waiver and must be supported by the doctor's report. The report must:

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- provide substantive reasons for the medical exemption, i.e. provide the diagnosis and specifically state why the applicant cannot learn one of the official languages and \ or acquire knowledge about Canada, and
- include the doctor's address and signature

If the judge is unable to form an opinion because of the way the medical opinion is written, or because there is inadequate substantiation, he/she will enlist the aid of the local office in seeking additional information from the client. The local office will request the client provide a further clarifying report from the doctor or a specialist. This report must include the following information:

- a formal diagnosis
- when the condition developed'
- when the condition caused the applicant to become disabled to the point that he/she could not learn or understand the significance of the oath
- a description of current treatment
- when the current treatment was initiated and
- whether the condition prevents the applicant from attending to his/her normal daily activities and work.

If the condition is psychiatric or psychological in nature, a full report must be provided which includes both a clarifying report and a "Global Assessment of Functioning".

The citizenship judge is not compelled to make a recommendation for a waiver under section 5(30 simply because a client has submitted a medical opinion. There must be enough evidence presented to substantiate that a medical condition clearly prevent the client from ever satisfying the language and \ or knowledge requirements, and the judge must be satisfied there are compassionate ground which warrant the recommendation.

1.11.2 Role of the Local Office

The local office is responsible for ensuring that all requests to waive the oath, knowledge and \ or language requirements include a completed "Request for Medical Opinion" signed by the applicant's physician and all accompanying documentation relevant to the request. For example, if the medical opinion indicates that the client is unable to understand the oath, an affidavit must be provided. Further details on waiver for mentally incapacitated persons are provided in Section 2 of this chapter.

The local office is also responsible for seeking clarification, if required, before forwarding a recommendation for waiver to BCM. For example, where there is doubt as to the authenticity of the physician providing the medical opinion, it is the responsibility of the local office to verify this information. This can be done by checking the telephone directory and \ or by contacting the appropriate provincial college of physicians and surgeons.

If the evidence to support the request for waiver is still incomplete or unclear following efforts to seek clarification, the file should be returned to the citizenship judge for further consideration or decision.

1.11.3 Role of Case Management Branch

Officers in Case Management Branch (BCM) are the Minister's delegates for the purposes of determining whether a recommendation for waiver falls within the guidelines established by the Minister. Usually Case Management Branch, on behalf of the Minister, grants a waiver when a medical condition clearly prevents the applicant from ever satisfying the knowledge and or the

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language requirements. Case Management Branch can grant a waiver for other medical reasons only in exceptional circumstances, i.e. terminal illness.

To expedite the processing of Requests for Waivers, it is imperative that all documentation be included on the file before it is forwarded to BCM. If there is insufficient documentation for BCM to make an informed decision, the file will be returned to the local office for additional clarification.

Case Management Branch will review and make the final decision on a recommendation to waive the requirements under section 5(3). Officers in BCM are obligated to review all the evidence provided by the judge and to communicate the final decision to the judge. Where the Minister's delegate does not grant the waiver, the reasons for not granting are also communicated to the judge. Once a judge receives the decision from BCM, the judge completes his or her own decision and notifies the client that the client is either approved or not approved.

An applicant has the right to appeal the judge's decision to the Federal court of Canada. See chapter on [appeals](#).

1.12. Medical Opinion needed for applicant unable to act on own behalf

Applicants who cannot understand the significance of becoming a Canadian citizen may not be able to legally act on their own behalf. A legal guardian must represent them if they are 18 years old or older. Parents are usually the legal guardians of minors under 18.

If a citizenship officer or judge believes an applicant cannot act on his or her own behalf, give the applicant a Request for Medical Opinion. The applicant's physician must complete the form. In addition, a document confirming the applicant is under the legal care of another person is required. See [section 2](#) on guardianship.

1.13. Be sure applicant understands impact of citizenship

Officers and judges are responsible for ensuring applicants clearly understand the significance of the oath and that becoming a Canadian citizen can mean loss of other citizenship or succession rights.

Occasionally, an applicant with a Medical Opinion saying that he or she cannot understand the significant of the oath, does appear to understand the significance. Before recommending a waiver, ask the individual for clarification from his or her medical doctor.

In many cases, doctors complete the form incorrectly. Before recommending a waiver of the oath, confirm that the applicant cannot understand the oath even after it is explained in the applicant's mother tongue.

Persons 55 and over are not required to demonstrate knowledge of either an official language or of Canada. These requirements are waived automatically and the applicant's only appearance before a CIC official may be at the time the identity is verified or at time of the oath taking. Where it is apparent to a judge or an officer at a citizenship ceremony, that a person is not capable of understanding the significant of the oath, even when explained in the applicant's mother tongue, the oath will not be administered and the certificate will not be presented. See [section 2.17 - 2.22](#) of this chapter for details.

1.14. Advance approval for waivers

If a delay in approving the use of section 5(3) causes an applicant unnecessary inconvenience, ask for advance approval for a waiver.

These cases are usually a combined or simultaneous interview and presentation, for instance, at a hospital or nursing home.

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Fax requests for advance approval to Case Management Branch. Include the relevant documentation and information.

Ask for advance approvals of waiver only in exceptional cases.

1.15. Include advance approval on file

When BCM gives advance approval, include the approval in the applicant's file. After citizenship is granted, send the file to the officer in BCM who granted the advance approval.

1.16. If advance approval given but judge decides not to recommend a waiver

If BCM gave advance approval but the judge decides not to recommend a waiver or decides a waiver is not required, approve or not approve the application as usual. In these cases, there is no need to inform BCM the advance approval was not used.

1.17. Questions about waivers for language, knowledge, oath

Refer any questions about the use of section 5(3) waiver to Integration Branch or Case Management Branch.

Compassionate grounds—renunciation—Section 9(2) of the Citizenship Act

1.18. Renunciation requirements

Section 9 states that a Canadian citizen may renounce citizenship if the applicant:

- is a citizen or will become a citizen of another country
 - is not prevented from renouncing citizenship because of security reasons
 - is not a minor
 - is not prevented from understanding the significance of renunciation because of a mental disability
 - does not reside in Canada
-

1.19. Waivers for renunciation

The Minister may waive only two requirements for renunciation. The following requirements for renouncing citizenship can be waived on compassionate grounds :

- applicant is not prevented from understanding the significance of renunciation because of a mental disability
 - applicant does not reside in Canada
-

1.20. Examples

The following are examples of the type of renunciation cases to refer to Case Management Branch with a recommendation for a waiver:

Mental disability

The applicant:

- is an adult who does not understand the meaning of renouncing Canadian citizenship

Example: Most of the applicant's

Resides in Canada

Example: The applicant:

- has Canadian citizenship and citizenship from another country AND
- resides in Canada and is a diplomat representing

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family live in another country, are concerned about the applicant's well-being, and wish to have the applicant live with or closer to them.

another country. Some foreign governments will not allow their diplomatic representatives in Canada to be Canadian citizens.

1.21. Examples of documents needed

The following are examples of the documents needed to waive the requirements for renunciation of Canadian citizenship on compassionate grounds:

For mental disability

- a medical opinion, signed by the applicant's physician, confirming that the applicant does not understand the impact of renouncing Canadian citizenship because of mental health disability
- a letter from the applicant's guardian approving of the application for renunciation
- a document proving the guardian has the legal care of the applicant.

See: [Guardianship--this section](#)

For residence

- an official document from the Canadian Department of Foreign Affairs and International Trade. The letter must confirm that Canada will not accredit the applicant as a diplomatic agent in Canada because he or she appears to be a Canadian citizen
- other satisfactory evidence that the applicant must remain in Canada while or after renouncing citizenship.

Governor in Council - special grant of citizenship - Section 5(4)

1.22. Governor-in-Council directs Minister

Section 5(4) says the Governor in Council may direct the Minister of Citizenship and Immigration to grant citizenship to any person. The discretionary grant is to reward services of an exceptional value to Canada or to alleviate cases of special and unusual hardship.

1.23. Few directions

The Governor in Council has made few directions to the Minister to grant citizenship.

1.24. Special grant protected information

The name and circumstances of a person considered for a special grant of citizenship is protected information under the Privacy Act. **Refer questions to Case Management Branch.**

Refer all questions about special grants of citizenship to Case Review officers in Case Management Branch.

2. Guardianship

2.1. This section is about

This section is about individuals who cannot act on their own behalf in the citizenship process because of a mental disability.

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2.2. Introduction

The decision-maker must be confident that the person applying for citizenship understands the significance of what he/she is doing. If this is not certain, another person must apply on behalf of the applicant. The decision-maker must be convinced that the person applying on behalf of the applicant is acting in the best interest of the applicant.

2.3. Indications applicant can't act on own behalf

Indications that an applicant cannot act on his or own behalf include:

- a relative or friend applying for or with the applicant
 - a request to waive knowledge or language requirements because of mental disability.
-

2.4. Application

The citizenship legislation stipulates who may apply on behalf of a minor, and that adults make their own applications. There is nothing in the legislation addressing the situation when someone purports to act on behalf of an applicant who has a mental disability. This policy will help officers and judges to deal with those situations where an applicant cannot understand the significance of the oath of citizenship.

2.5. Policy

Where there is doubt that a citizenship applicant can conduct his/her own affairs in the citizenship process, another person must apply on their behalf. The person acting on behalf of the applicant must provide showing he/she has the legal right and duty to care for the incompetent person.

2.6. Parents are de facto guardians for minors

A parent is considered the guardian for their minor child. The birth certificate showing parentage is sufficient evidence.

2.7. Guardianship

The Canadian Law Dictionary defines "guardian" as a person who has the legal right and duty to care for another person. Guardianship can arise in a number of ways including:

- election by the incompetent (power of attorney)
 - appointment by the court (judicial court order)
 - assumption of the role of guardian without legal authority (guardianship role simply assumed by another party).
-

2.8. Guardianship Assumed

Where guardianship has been assumed (no power of attorney or court order obtained), an affidavit from the legal care giver is acceptable. This situation arises most commonly where the parent or sibling has the care for their mentally incompetent adult child or sibling.

2.9. Adult child care giver of parent

An adult child responsible for their incompetent parent will usually have a court order or power of attorney document.

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2.10. Documents needed for guardianship

Include with all waiver recommendations to waive the oath for medical reasons:

- a completed Request for Medical Opinion form
- the document proving guardianship
- power of attorney document and/or
- judicial court order and/or
- an affidavit, if required.

2.11. Affidavits in lieu of formal documents

An affidavit is acceptable where guardianship has been assumed and formal documentation is not easily obtained.

Affidavits should:

- be written by the guardian in the person's own style;
- indicate that he or she is qualified to act on the applicant's behalf;
- be expressed in simple understandable English or French;
- contain specific information outlined below; and
- include signed statements/letters, outlining the facts, of other family members/interested parties, if available.

2.12. The decision maker should be confident that

- the guardian understands the significance of guardianship and what is being done; and
- the guardian is acting in the best interest of the applicant.

After the supporting affidavit(s) are completed and accepted, the person designated to act on the citizenship applicant's behalf will carry out the normal application process, signing all standard forms on behalf of the applicant.

Related topic

See [Taking affidavits or declarations](#).

2.13. Refer questions to Case Management Branch

Ask Case Management Branch if in doubt about a guardianship or power of attorney document.

2.14. Waiver of oath under section 5(3)

In the case of an adult applicant, the citizenship judge has the power to recommend to the Minister that certain requirements be waived. Where the judge finds that a recommendation to waive the language and/or knowledge requirements and/or the requirement that the oath be taken, for reason of a mental disability, is justified, the applicant's file will include the guardianship documentation with the usual documentation. The applicant's complete file will be forwarded to Case Management Branch for consideration of the recommendation.

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2.15. Affidavit not required for minor

In the case of a minor over 14 years of age, if the citizenship officer is satisfied that the minor is prevented from understanding the significance of the oath of citizenship, for reason of a mental disability, the case will be forwarded to Case Management Branch for consideration with the usual documentation for waiver consideration. An affidavit is not required for minors as the person authorized by regulations to apply on behalf of the child (usually the parent) is the guardian.

2.16. When to obtain documentation

The request for documentation concerning a person who is mentally incompetent should be made as soon as CIC officials are made aware that the person may be mentally incompetent. Call Centres should inform the caller of the required documentation when the caller indicates he/she is calling on behalf of a person who is mentally incompetent. Mailed in applications accompanied by satisfactory documentation (medical opinion form and evidence of guardianship) may be processed in the usual way. Applicants will be referred to a judge for a personal appearance.

Where there is no indication prior to the test session that a person may be incompetent, the documentation will be requested as soon as CIC officials are made aware of the situation.

2.17. Over 55 and at ceremony

Persons 55 and over are not required to demonstrate knowledge of either official language or of Canada. These requirements are waived automatically and the applicant's only appearance before a CIC official may be at the time of the oath taking.

2.18. Do not administer oath or present certificate

Where it is apparent to an officer or judge at a citizenship ceremony, that a person is not capable of understanding the significance of the oath, even when explained in their mother tongue, the oath will not be administered and the certificate will not be presented.

2.19. Request documentation

The person assisting the incompetent person at the ceremony should be told that the application needs to be filed by someone who has the legal care of the applicant and that a recommendation to the Minister to waive the oath needs to be obtained before the applicant can be issued a citizenship certificate.

2.20. Refer applicant to judge

The applicant should be referred to a judge as soon as practicable. The judge will determine whether to recommend a waiver of the oath. The application form is to be forwarded to Case Management Branch with the documentation required (medical opinion and evidence of guardianship) and the citizenship certificate. Where the request for waiver is approved, Case Management Branch will return the file to the judge for completion of the judge's decision.

2.21. Advance Waiver

Advance waivers of the oath may be requested for incompetent persons over 60.

2.22. Mail certificate to applicant

When the oath has been waived, the certificate is mailed directly to the applicant.

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2.23. Information required for an affidavit to act on behalf of a citizenship applicant

Information to include:

An affidavit concerning guardianship should include information as follows,

- Application ID No. (If known by applicant)
- (Name of Guardian) of the city of (Name of City) in the province of (Name of Province) affirm that:
- Using the first person, the Guardian should state what his/her relationship is to the applicant (State Applicant's Name) born on (State Applicant's Date of Birth) in (State Applicant's Place of Birth), whose application for citizenship is being/was made on (State Date Application Made).
- The Guardian should state why he/she is acting on behalf of the client (State Applicant's Name). The Guardian should include any relevant facts including the nature of the relationship with the client and any legal authority presently held showing that the Guardian can represent the client.
- The Guardian should state whether he/she is acting in the best interest of the client. The guardian should include any known personal knowledge of the client's needs and wishes.
- The Guardian should state whether a medical certificate in respect to the client is on file or attached to the affidavit.
- The guardian signs the affidavit.
- The affidavit is attested by an authorized person.

Related Topic

See [taking affidavits or declarations.](#)