



# Fact Sheet

## Security Certificates under the *Immigration and Refugee Protection Act*

A Security certificate under the [Immigration and Refugee Protection Act \(IRPA\)](#) is one way for the Government of Canada to remove a person who poses a danger to national security or to the safety of any person. A certificate is only issued when there is a need to use sensitive information that needs to be protected for reasons of national security or for the safety of any person.

The *IRPA* allows for a certificate to be signed by the Minister of Public Safety and Emergency Preparedness Canada (PSEPC) and the Minister of Citizenship and Immigration Canada (CIC) when a permanent resident or foreign national (the individual) is deemed to be inadmissible on grounds of security such as subversion or espionage, violating human or international rights, terrorism, serious criminality or organized criminality.

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### The Effect of Security Certificates

Certificates have been part of Canada's immigration legislation since 1978. Given the serious consequences of issuing certificates, the process has been used judiciously over the years and is employed only in exceptional cases. Since 1991, 27 certificates have been issued.

The Government of Canada takes a broad-based approach to addressing threats. The certificate process is one of the many tools at the government's disposal to ensure the safety and security of Canada and the Canadian public.

### What Leads to the Issuance of a Security Certificate

A carefully considered and rigorous process is undertaken when it comes to the issuance of certificates. The decision by the Ministers of PSEPC and CIC to sign a certificate is based on security or criminal intelligence information and other information obtained in confidence.

Due to the serious implications of issuing a certificate, the preparation of supporting documentation follows a rigorous process.

The supporting documentation must contain sufficient information to allow the Ministers to conclude that an individual is inadmissible to Canada on grounds of security, violating human or international rights, serious criminality or organized criminality as defined by *IRPA*.

### **Judicial Process Once a Security Certificate is Signed**

The certificate process is based on a framework of judicial control. The certificate, once signed by the Ministers, is referred to a judge of the Federal Court, for a determination of the reasonableness of the certificate.

When a certificate is issued, all other immigration proceedings under *IRPA* regarding the individual are suspended until the Federal Court makes a decision on the reasonableness of the certificate.

A foreign national who is named in a certificate is automatically arrested and detained. A permanent resident may be arrested and detained if a warrant is issued. In order to do so, there must be reasonable grounds to believe that the person is a danger to national security, or to the safety of any person, or is unlikely to appear for a proceeding or for removal. Within 48 hours of the arrest, the Federal Court must commence a review of the reasons for the detention of the permanent resident and must do so at least once every six months following each preceding review.

Once signed, the certificate is referred to the [Federal Court of Canada](#). The judge examines the information and evidence in private, in the absence of the person named in the certificate and their counsel. Upon examining the information and evidence, the judge determines what information cannot be disclosed for reasons that its disclosure would be injurious to national security or to the safety of any person.

In order to enable the person named in the certificate to be reasonably informed of the circumstances giving rise to the certificate, the judge provides to the person a summary of the information and evidence which does not include anything which, in the opinion of the judge, would be injurious to national security or the safety of any person if disclosed.

The person named in the certificate is given the opportunity to provide evidence and be heard in open court in relation to their inadmissibility.

During the Federal Court proceeding, the person named in the certificate, if eligible, may make an application for a [pre-removal risk assessment](#) (PRRA). On request, the judge will suspend the proceeding in order for the Minister of CIC to make a decision on the PRRA application. The Federal Court judge will then resume the proceeding and will determine the lawfulness of the Minister's PRRA decision together with the reasonableness of the certificate.

The determination of the judge is final and may not be appealed or judicially reviewed. If a certificate is determined not to be reasonable, it is quashed and if detained, the individual is released from detention.

If a certificate is determined to be reasonable, it is considered conclusive proof that the permanent resident or foreign national named in the certificate is inadmissible and it constitutes a removal order which is in force.

If the individual has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, a Federal Court judge may, on application by the individual, order the individual to be released if the judge is satisfied that the individual will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

Additional information on Security Certificates under the *Immigration and Refugee Protection Act* is available through the [Canadian Security Intelligence Service](#) (CSIS).

## Facts

### **Security Certificates have been part of the immigration legislation since 1978:**

- The certificate process is contained in provisions of the *Immigration and Refugee Protection Act (IRPA)*, not the *Anti-Terrorism Act*.
- The use of certificates predates September 11, 2001. In fact, the certificate process has existed in immigration legislation in one form or another for over 20 years.
- Since 1991, twenty-seven certificates have been issued and, of these, only five have been issued since September 11, 2001.

### **Security Certificates are only used in exceptional cases:**

- A certificate is issued only in select cases when there is information that needs to be protected for reasons of national security or for the safety of any person.
- Given the serious consequences of issuing such a certificate, this process is used judiciously.
- It is only used on a limited basis in very serious cases for individuals who present the highest level of risk.

### **Security Certificates do not apply to Canadian citizens:**

- The provisions of the *IRPA* do not apply to Canadian citizens or to persons who are registered Indians pursuant to the *Indian Act*;
- Certificates only apply to permanent residents or foreign nationals who are inadmissible to Canada on grounds of security such as espionage, subversion or terrorism, violating human or international rights, serious criminality or organized criminality.

### **The security certificate process has been determined to be constitutional by the Canadian courts:**

- The [Supreme Court of Canada](#) has validated the certificate process. In 1992, it examined the issue of *in camera, ex parte* proceedings (*Chiarelli v. Canada*) and ruled that the process does not breach the principles of fundamental justice and that it was not necessary that the individual be given details of intelligence

investigation techniques or sources used to acquire the information upon which the two Ministers relied in issuing the Certificate.

- On December 10, 2004, the Federal Court of Appeal reiterated in the [Charkaoui](#) decision that the certificate process is constitutional and is in accordance to the *Canadian Charter of Rights and Freedoms*. You can also refer to the [Ahani](#) decision.