

# CP 6 - Prohibitions

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### Updates to chapter

#### **Date: 2010-06-08**

Appendix 11 was added to incorporate Operational Bulletin 186 - Citizenship applicants with hybrid (dual/crown elect) offences, February 15, 2010.

Appendix 12 was added to incorporate Operational Bulletin 175 – Urgent guidelines on processing criminal and security clearances, December 29, 2009.

Appendix 13 was added to incorporate Operational Bulletin 164 – Finalizing immigration clearances sent to the Query Response Centre (QRC), November 18, 2009.

#### **2010-04-14**

Section 7.4 has been added to require all citizenship offices to do an immigration FOSS check before a citizenship application is referred to a citizenship judge for decision.

#### **2008-06-23**

CP 6 has been completely revised and expanded. Previous versions of CP 6 should be deleted.



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### 1. What this chapter is about

This chapter is about:

- Immigration, criminal and security checks for citizenship applicants;
- Sharing client information between citizenship offices and CIC immigration or CBSA offices;
- Procedures for handling cases with exception clearance status;
- Assessing prohibitions;
- Section 29 investigations; and
- Receiving third party information.

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### 2. Program objectives

Sections 20 and 22 of the *Citizenship Act* give the reasons an applicant:

- Cannot be granted citizenship;
- Cannot take the oath.

Section 21 outlines the periods of residence in Canada that do not count towards citizenship.

The purpose of doing immigration, criminal, and security checks is to ensure that an applicant for citizenship is:

- Still a permanent resident of Canada;
- Is not prohibited from being granted or taking the oath of citizenship; and
- Meets the residence criteria.

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### 3. The Act and Regulations

#### 3.1. Statutory provisions of the *Citizenship Act*

Reference	Provision
<u>A5(1)(c)</u>	Requires that at the time of the grant, an adult citizenship applicant be a permanent resident of Canada and have accumulated three years of residence, within the four years immediately prior to the date of the application.
<u>A5(1)(f)</u>	Requires that at the time of the grant, an adult citizenship applicant not be under a removal order and not be the subject of a section 20 declaration.
<u>A5(2)(a)</u>	Requires that at the time of the grant, a minor citizenship applicant be a permanent resident of Canada.
<u>A8(b)</u>	Requires that an applicant for retention either reside in Canada for one year immediately prior to the person's application, or establish a substantial connection with Canada.

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Reference	Provision
<u>A9(1)(b)</u>	Requires that an applicant for renunciation not be the subject of a section 20 declaration.
<u>A11(1)(b)</u>	Requires that at the time of the grant, an applicant for resumption not be the subject of a section 20 declaration. (This paragraph also states that a person cannot resume citizenship if they previously lost citizenship through revocation.)
<u>A11(1)(c)</u>	Requires that at the time of the grant, a resumption applicant not be under a removal order.
<u>A11(1)(d)</u>	Requires that at the time of the grant, a resumption applicant be a permanent resident of Canada and have accumulated one year of residence by the date of application. (There is an exception to this under 11(1.1).)
<u>A14(1.1)</u>	Prohibits the citizenship judge from making a decision if an applicant is the subject of an admissibility hearing under IRPA and there has been no final decision on whether a removal order will be issued against the applicant.
<u>A19</u>	Outlines the procedures to follow before a declaration may be made by the Governor in Council under section 20.
<u>A20(1)</u>	Prohibits granting citizenship, administering the oath or issuing a renunciation certificate, if the Governor in Council declares, following procedures described in section 19, that a person will engage in activity that constitutes a threat to the security of Canada or is part of a pattern of criminal activity.
<u>A20(2)</u>	Requires that an application or appeal be automatically rejected, if a person is the subject of a subsection 20(1) declaration..
<u>A20(3)</u>	Limits the declaration under subsection 20(1) to 2 years.
<u>A 20(4)</u>	Permits a further declaration under subsection 20(1) to be made.
<u>A21</u>	Prohibits counting time served on probation, on parole or imprisoned towards the residence requirement. Time spent imprisoned while awaiting trial cannot be counted towards the residence requirement.
<u>A22(1)</u>	Prohibits granting citizenship or administering the oath: <ul style="list-style-type: none"> <li>• while a person is under a probation order, on parole, or in a penitentiary, jail, reformatory or prison;</li> <li>• while a person is charged with, on trial for, subject to, or a party to an appeal of an indictable offence or an offence under subsection 29(2) or (3);</li> <li>• if a person has been convicted, is under investigation, charged with, on trial for, subject to, or a party to an appeal of an offence under sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>;</li> <li>• if a person did not obtain the authorization to return to Canada as required by <u>A52(1)</u> of IRPA;</li> <li>• if a person ceased to be a Canadian citizen under subsection 10(1) within the five years immediately prior to their application.</li> </ul>

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Reference	Provision
<u>A22(2)(a)</u>	Prohibits granting citizenship or administering the oath if a person has been convicted of an indictable offence, or an offence under subsection 29(2) or 29(3), during the three-year period immediately prior to the date of the person's application.
<u>A22(2)(b)</u>	Prohibits granting citizenship or administering the oath if a person has been convicted of an indictable offence, or an offence under subsection 29(2) or 29(3), after the date of the person's application but before the person has taken the oath of citizenship.
<u>A28</u>	Empowers the Minister to decide the form of applications, certificates and other documents required for the purposes of the <i>Citizenship Act</i> .
<u>A29</u>	Describes the offences under the <i>Citizenship Act</i> .
<u>A30</u>	Holds it an offence under the <i>Citizenship Act</i> if an offence, described in section 29, is committed outside Canada..
<u>A31</u>	Limits the time to start proceedings under sections 29 or 30 to three years.

### 3.2. Regulatory provisions of the *Citizenship Act*

Reference	Provision
<u>R11(1)</u>	Provides the basis on which clearance checks are done. This subsection requires the Registrar to make the necessary inquiries to determine whether an applicant meets the requirements of the Act and Regulations.
<u>R11(5)</u>	Requires all adult grant, retention, renunciation and resumption applications to be submitted to a judge for a decision, after the necessary inquiries have been completed.
<u>R28</u>	Requires an applicant to provide any additional evidence needed to establish that he or she meets the requirements of the Act and Regulations.

### 3.3. Forms

Form name	Form number
Attachment to Request for Fingerprints	<u>CIT 0423</u>
Prohibitions under the <i>Citizenship Act</i>	<u>CIT 0039</u>
Request for a Court Information sheet or Certificate of Conviction	<u>CIT 0029</u>
Request for Fingerprints – Adult	<u>CIT 0421</u>
Request for Fingerprints – Minor	<u>CIT 0422</u>

## 4. Instruments and delegations

Not applicable to this chapter.

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### 5. Departmental policy

#### 5.1. Clearance checks for citizenship applicants

These agencies check applicants for the following:

Agency	Type of applicant	Type of check
Canadian Security and Intelligence Agency (CSIS)	Adult grant applicants ( <i>includes 5(1) and 11(1) applicants</i> ) Minor grant (5(2)(a)) applicants 15.5 years and older* Renunciation applicants	Security (CSIS Clearance)
Citizenship and Immigration Canada, Query Response Centre (QRC), Canada Border Services Agency (CBSA)	Adult grant applicants ( <i>includes 5(1) and 11(1) applicants</i> ) Minor grant (5(2)(a)) applicants	Immigration (FOSS Clearance)
Royal Canadian Mounted Police (RCMP)	Adult grant applicants ( <i>includes 5(1) and 11(1) applicants</i> ) Minor grant (5(2)(a)) applicants 15.5 years and older* In some circumstances, retention 8 applicants	Criminal (RCMP Clearance)

\* Even though there is no age restriction on prohibitions, criminal and security clearances are initialized in GCMS at 15 years and a half to ensure that, at the time of oath, all grant applicants 16 years of age and older are not subject to any prohibition.

#### 5.2. When clearances are initiated

When CPC Sydney (CPC-S) completes the data entry in GCMS for a grant application ("Capture" stage), criminal, immigration and security clearances are electronically requested. In general, applicants cannot be scheduled for a test, an interview with a judge, or a ceremony without all family members in the same file completing the clearance process.

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### 5.3. Clearance activities, sub-activities and status in GCMS

**Note:** The spelling of activities, sub-activities and status appear below as they appear in GCMS.

Clearance Activity	Sub-activity	Status
FOSS Clearance	Request Immigration Clearance	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• Not Required</li> <li>• Cancelled</li> <li>• Retransmission Required</li> <li>• In Process</li> <li>• Passed</li> <li>• QRC Required</li> </ul>
FOSS Clearance	Request QRC Verification	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• Not Required</li> <li>• Cancelled</li> <li>• Batch Sent</li> <li>• Passed</li> <li>• Follow-Up Required</li> </ul>
FOSS Clearance	Request Follow-up	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• Not Required</li> <li>• Cancelled</li> <li>• In Process</li> <li>• Passed</li> <li>• Under Review</li> <li>• BF-Under Review</li> <li>• Failed</li> </ul>

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Clearance Activity	Sub-activity	Status
RCMP Clearance	Request Criminal Clearance	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• Not Required</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Retransmission Required</li> <li>• In Process</li> <li>• Passed</li> <li>• RCMP Requires Fingerprints</li> </ul>
RCMP Clearance	Send Client Fingerprint Letter	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• In Process</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Letter Sent</li> <li>• Did Not Provide Fingerprints</li> <li>• Fingerprints Received</li> </ul>
RCMP Clearance	Send Fingerprints to RCMP	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Fingerprints Sent to RCMP</li> </ul>
RCMP Clearance	Refer to Officer	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• In Process</li> <li>• Resend Fingerprints Letter</li> <li>• Passed</li> <li>• Failed: No Fingerprints</li> <li>• Require Police/Court Documents</li> <li>• Under Review</li> </ul>

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Clearance Activity	Sub-activity	Status
RCMP Clearance	Send Letter for Court Documents	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Sent</li> </ul>
RCMP Clearance	Assess Police Court Documents	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Passed</li> <li>• Failed</li> <li>• Failed: No Court Documents</li> </ul>
CSIS Clearance	Request Security Clearance	<ul style="list-style-type: none"> <li>• Not Started</li> <li>• Not Required</li> <li>• CRI Conversion</li> <li>• Cancelled</li> <li>• Retransmission Required</li> <li>• Duplicate</li> <li>• In Process</li> <li>• Pending</li> <li>• Please Send Paper</li> <li>• Under Consideration</li> <li>• Under Review</li> </ul>

### 5.4. Clearances valid for up to one year

Clearances must be valid at the time of approval as well as during the granting of citizenship and the taking of the oath. Clearances are valid for one year. Clearance activities must be redone in GCMS if they have expired. Clearance activities can also be redone if an office believes that the clearance will expire before the applicant can take the oath or be granted citizenship. Unless adverse information has been received, security clearances should not be redone if there is still more than four months of validity left.

To redo CSIS Clearance, a new sub-activity "Request Security Clearance" with the status "In Process" must be created.

To redo FOSS Clearance, a new sub-activity "Request Immigration Clearance" with the status "In Process" must be created.

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To redo RCMP Clearance, where fingerprints were not requested previously, a new sub-activity "Request Criminal Clearance" with the status "In Process" must be created.

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### 5.5. Correct clearance expiry dates should appear on the CARF and decision forms

All the decision forms, including the Citizenship Application Review form (CARF), should indicate the correct clearance expiry date(s), up to the moment the applicant acquires or is refused citizenship. When clearances are redone, the cancelled clearance expiry dates should be crossed out, and the new ones must be added manually along with the initials of the official who has confirmed the results.

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### 5.6. Redoing RCMP clearance for a previous fingerprint hit

The following procedure is to be used on all files in which fingerprints have been previously requested:

- Return prints and/or the Criminal Convictions report to the RCMP for updated clearances;
- Create a new sub-activity "Send Fingerprints to RCMP" with the status "Fingerprints Sent to RCMP".

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**Note:** Where the applicant only submitted electronic fingerprints which came back with a "No Record" and no paper copy of the fingerprints are on file, the applicant must be requested to submit a new set of fingerprints.

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### 5.7. When new clearance needed

Redo clearance activities when:

- An applicant uses, or has previously used, a name or date of birth that was not previously recorded in GCMS (for example, an applicant has changed his or her name between filing an application and taking the oath, or information on a previously used name came to light in a Quality Assurance interview);
- Information is received indicating a person has been charged or convicted of an offence;
- Information is received that Immigration/CBSA enforcement action is forthcoming or has been initiated.

An applicant cannot take the oath or receive a certificate in the above situations until new clearances are received.



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### 5.8. Requesting a new certificate

If an officer decides to request a new certificate showing a correction in the name and/or date of birth, the complete file (including certificate and supporting documentation) is returned to CPC Sydney along with an explanatory memo.

Where the applicant has not yet taken the oath, it is the local office's responsibility to ensure that the name(s) and/or date of birth have been correctly recorded in GCMS and, where applicable, that new clearances have been requested, before the complete file is returned to CPC Sydney for a certificate correction.

If the applicant has taken the oath, CPC Sydney will ensure that the required changes have been recorded into GCMS before issuing the new certificate.

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### 5.9. Urgent clearances

There are occasions when an application will need to be processed urgently. Clearances are provided on an urgent basis by agencies (QRC, RCMP, CSIS) for exceptional cases only. See [CP 13, Section 10: Policy on urgent application cases](#). Refer all requests for urgent clearances to Case Management Branch.

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**Note:** Once fingerprints have been sent to the RCMP, they cannot be processed urgently.

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### 5.10. Splitting files where one applicant's clearance is in process

In general, one file is created for each family group that applies for citizenship at the same time. On occasion, an applicant may request to be split from the file in order to proceed independently. In most cases such a request can be accommodated with the exception of the following situations:

- The principal applicant's security clearance is in process;
- The principal applicant is being pursued for failure to comply with terms and conditions as an entrepreneur, and the terms and conditions also apply to the dependents;
- The person who sponsored the applicant(s) is being investigated for misrepresentation or is the subject of a 44 report for misrepresentation, and there has been no decision.

The principal applicant refers to the person who was the principal applicant under the immigration process. In the above situations, the accompanying family members cannot be split from the file or proceed to the next processing stage. GCMS automatically prevents members of the family group from being scheduled for an event (test, hearing, ceremony) until each person on the file has obtained a valid clearance.

Similarly, where one of the family members applies for citizenship separately from the principal applicant, this file may also be put on hold subject to the completion of the principal applicant's security or immigration clearance.

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### 5.11. Splitting files where the principal applicant's security clearance is in process

In the event that the principal applicant does not obtain a valid security clearance, the immigration status of the principal applicant as well as that of the family members may be affected. For this reason, family members should not be split from the file prior to the principal applicant obtaining a security clearance.

There are some situations where the family members will not be affected by the results of the principal applicant's clearance. This is determined only after careful review and consultation with

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our partners in Immigration could be split.

Where this has been determined to be the case, a file

When a request is received to split an adult family member from a file, where the principal applicant's security clearance status is that of "In Process," "Pending," "Please Send Paper," or "Under Consideration," hold the file until the principal applicant is either cleared or proceeds to the status of "Under Review"—whichever occurs first.

If the principal applicant is cleared, the local office may decide whether or not to split the file.

If the principal applicant proceeds to the status of "Under Review," an e-mail request to split the file can be sent to Case Review, Case Management Branch. Case Review has the authority to decide whether the applicant may be split from the file, subject to careful review and consultation with Immigration

## 6. Definitions

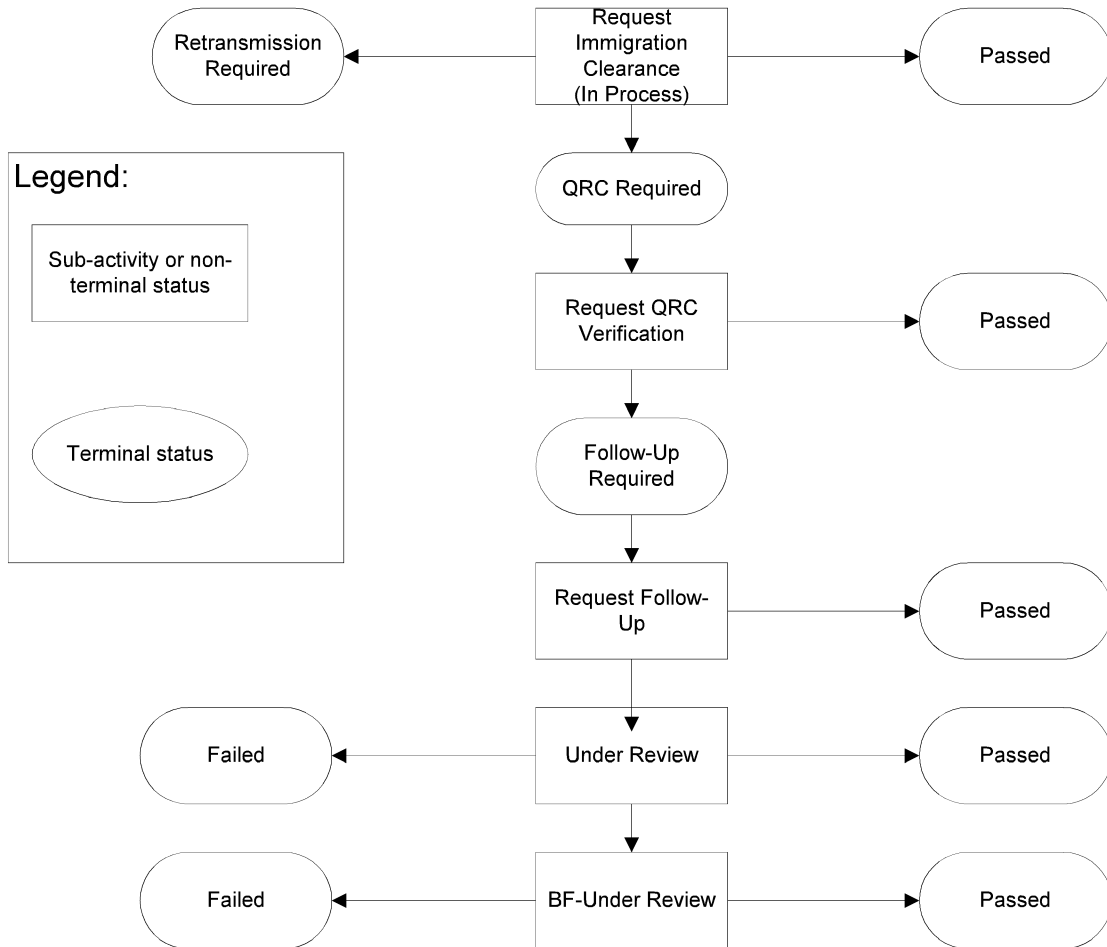
<b>CBSA</b>	Canada Border Services Agency
<b>CMB</b>	Case Review, Citizenship Cases, Case Management Branch
<b>IRPA</b>	<i>Immigration and Refugee Protection Act</i>
<b>NCB</b>	Non-computer-based entry in FOSS. Similar to a client note in GCMS.
<b>Permanent residence document</b>	<i>Record of Landing (IMM 1000) or Confirmation of Permanent Residence (IMM 5292 or IMM 5509) or Permanent Resident Card (PRC) or any other document that confirms permanent residence was granted and the date on which permanent residence was granted.</i>
<b>RX-1 Visa</b>	Counterfoil coding of a travel document issued to a permanent resident without a permanent resident card under A31(3)(c) of IRPA. Overseas decision that the permanent resident has not complied with the residency obligation under IRPA. However, the permanent resident was physically present in Canada at least once within the 365 days before the examination, and the applicant has appealed or may appeal to the Immigration Appeal Division (IAD) under A63(4) of IRPA.
<b>Third Party Information</b>	Unsolicited information received from a person or entity, other than a governmental organization, concerning an applicant or possible applicant for citizenship.  Third party information is also commonly referred to as "tips", "poison-pen" letters or "snitch" letters.
<b>UCI</b>	Universal Client Identifier, Unique Client Identifier

See Appendices 7, 8, 9 and 10 for a list of terms encountered when assessing prohibitions.

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### 7. Immigration clearance

#### 7.1. Immigration clearance flow in GCMS



#### 7.2. FOSS clearance sub-activities and status

**Note:** The spelling of activities, sub-activities and status appear below as they appear in GCMS.

Sub-activity	Status	Description
All	Not Started	GCMS default when activity is created. No action has been taken.
All	Not Required	This indicates that the sub-activity in question does not need to be undertaken. The only time this status should appear for immigration clearance activities is when a sub-activity was created in error.
All	Cancelled	This value indicates that the request has been terminated or was created in error. Entering this status will not permit a case to move forward.

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Sub-activity	Status	Description
Request Immigration Clearance	Retransmission Required	There was an error during the transmission: submit a problem report to the Help Desk.
Request Immigration Clearance	In Process	<p>This status indicates that an immigration clearance request has been initiated. "In Process" must be manually selected when the initial immigration clearance request is redone. Please note that the effective date should <b>not</b> be entered manually when redoing a clearance request.</p> <p>If the initial request stays "In Process" longer than <b>48 hours</b>, the initial request should be redone. If the second request remains "In Process" longer than <b>48 hours</b>, a problem report should be submitted to the Help Desk.</p>
Request Immigration Clearance	Passed	For this sub-activity, the "Passed" status can only be generated by the system (based on an electronic response from FOSS) or be selected by Case Management Branch. This means that the FOSS check revealed no adverse information and the citizenship application can continue to be processed. This status sets the immigration clearance expiry date on the case, which is from the date the response was received.
Request Immigration Clearance	QRC Required	Possible adverse information found in FOSS. Manual verification by QRC is needed. This status will automatically generate the sub-activity "Request QRC Verification" with the status "Not Started."
Request QRC Verification	Batch Sent	Request sent to QRC. This is a CRS value and should not exist after September 4, 2005.
Request QRC Verification	Passed	QRC inputs this status when no adverse information is found, allowing the citizenship application process to continue. This status sets the immigration clearance expiry date on the case, which is from the date the status was entered into GCMS.
Request QRC Verification	Follow-Up Required	QRC has found possible adverse information. The local citizenship office needs to follow up. This status will automatically generate the sub-activity "Request Follow-Up" with the status "Not Started."

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Sub-activity	Status	Description
Request Follow-Up	In Process	While this status is presented as an option by GCMS, it should never be selected for this sub-activity. The cases "In Process" for this sub-activity cannot be selected as an operational report, and having this status roll up to the parent activity causes errors in management clearance reports. This might give some users the wrong impression on the real status of the case.
Request Follow-Up	Passed	Immigration clearance has been authorized by a citizenship officer because: the reason for referral has been resolved; there is no indication that the applicant is subject to loss of permanent resident status; and there is no active immigration or CBSA investigation. This status sets the immigration clearance expiry date on the case, which is from the date the response was received.  <b>Note:</b> This is one of the only instances where the effective date should be input manually. If confirmation from CIC Immigration or CBSA was received to continue processing the citizenship application, the date of that confirmation should be reflected in the effective date before saving the record.
Request Follow-Up	Under Review	The local citizenship office has contacted CIC Immigration or CBSA to clarify an enforcement issue.
Request Follow-Up	BF-Under Review	CIC Immigration or CBSA has confirmed that there is an ongoing enforcement issue and that the citizenship application should not be processed. There should be a BF on this case to indicate when the next update will be done.
Request Follow-Up	Failed	CIC or CBSA Immigration Office has confirmed, by writing, the following : <ul style="list-style-type: none"> <li>• The applicant is under a removal order; or</li> <li>• The applicant is no longer a permanent resident of Canada</li> </ul>

### 7.3. Initial immigration clearance check

All grant applications go through an electronic immigration check to verify the following:

- The applicant's name and date of birth match immigration records;
- The applicant obtained permanent resident status;
- The applicant is still a permanent resident; and

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- The applicant is not subject to any Immigration/CBSA enforcement action.

The immigration check is also used to flag applications for criminality and residence.

This initial electronic immigration check is done through a FOSS/GCMS interface. The majority of grant applications are cleared at this initial stage. If there is a "hit" (usually in 20% of cases but this can vary over time), the case is referred to QRC for manual verification.

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### 7.4. Final immigration clearance check

Following the citizenship knowledge test but prior to referral to the citizenship judge for decision, citizenship offices must complete a final immigration clearance check on all citizenship grant applicants 14 years of age and older in FOSS (based on names and dates of birth – not FOSS ID) to ensure:

- That applicants continue to meet all requirements for citizenship; and
- That citizenship judges are provided the most complete up to date information available to CIC in order to make their decision.

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**Note:** Offices that perform FOSS checks prior to all tests, hearings and ceremonies should continue to do so.

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### 7.5. QRC verification

Applications are referred to QRC because of:

- Multiple identities/hits, i.e., more than one 99% match to a permanent resident;
- Name or date of birth in the FOSS record that is not in GCMS;
- The following NCB types in FOSS
  - ◆ 01 - Watch For
  - ◆ 10 - Vol. Relinq. of Status
  - ◆ 11 - Canadian Citizen
  - ◆ 13 - Deemed Deport-Dep Not
  - ◆ 27 - Residency Obligation
  - ◆ 28 - PRC Lost/Stolen;
- No record of permanent residence found or no 99% match with a permanent resident;
- Active enforcement document after permanent residence obtained (reports, warrants, removal orders, confirmation of departure, detention, inquiry, appeal, etc.).

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**Note:** There is only a referral to QRC if, after permanent residence was obtained, the active enforcement document appears on the record that was a 99% permanent residence match (i.e., if

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other client IDs exist for the same client and the enforcement document appears on the client ID which does not contain the permanent residence record, this will not generate a referral to QRC).

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QRC does a name and date of birth query in FOSS on each application referred. Occasionally QRC will need to check its microfilm. Five to ten percent of these applications are referred to the local citizenship office for follow-up. When a case is referred to the local office for follow-up, a "Caution" note is added to the case in GCMS with a short description of the problem. The rest are cleared in GCMS by QRC.

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### 7.6. Follow-up required

Local citizenship offices are responsible for managing all applications under this status. A list of applications with this status can be obtained in GCMS through an operational report.

QRC refers applications to the local citizenship office in the following situations:

- Enforcement Information Index (EII) warrant;
- "Citizenship Alert" NCB/IMM 705 submitted;
- Terms and Conditions (T's & C's) not met (entrepreneurs, investors, medical conditions, and marriage under the former *Immigration Act*);
- Conviction of an indictable offence;
- Term of imprisonment exceeding six months;
- No record of permanent residence found (see note below for exceptions);
- Information in GCMS on when and how permanent residence was obtained is different than in FOSS;
- Voluntary relinquishment of permanent resident status;
- Permanent resident status deemed lost, residency obligation being assessed;
- Possession of valid US resident alien card, green card, permanent residence card or permanent resident status in any other country;
- Lengthy stays outside Canada frequent entries/leaves (residency);
- Possible involvement in smuggling;
- Sexual assault, assault, assault with a weapon;
- RRP (returning resident permit) issued or refused (under the 1976 *Immigration Act*);
- RX-1 Visa issued;
- Minister's consent required, deported but not admitted at the time permanent residence was obtained;
- Consideration for a 44 report, subject of a 44 report with no final decision, subject of an admissibility hearing, under a removal order;

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- Imprisoned, litigation in progress, appeal of deportation ongoing, deported;
- Any indication of criminal activity, of charges being laid, of ongoing criminal and security investigations;
- "Watch For," depending on contents of NCB.

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**Note:** Active T's & C's are not hits in the FOSS/GCMS interface but are referrals to the local office if seen by QRC.

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**Note:** "No record of permanent residence found" is not a referral to the local office for resumption applicants applying under 11(1.1). All the other referral criteria, however, do apply.

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### 7.7. Active immigration/CBSA file

The purpose of the immigration check is to ensure the applicant is still a permanent resident and is not under a removal order. Any activity that might lead to a removal order, or might jeopardize an applicant's status as a permanent resident, must be clarified. For 11(1.1) applicants, the purpose of the immigration check is to ensure the applicant is not under a removal order.

It is not up to the citizenship officer to determine whether an applicant is no longer a permanent resident or is under a removal order. There must be written confirmation from Immigration on file (this includes e-mails from immigration and CBSA officers if their names and titles are clearly indicated) before the immigration clearance is failed in GCMS and the applicant is scheduled for a hearing with a citizenship judge.

Each citizenship office should contact their local immigration/CBSA office to develop a protocol for dealing with these types of cases. It is important to note that the immigration office or CBSA office which is handling the investigation may not be located in the same city where the applicant currently resides. The protocol should include:

- Points of contact (to whom should referrals be sent, different contacts depending on the type of situation (CBSA, inland, entrepreneurs, etc.), what to do or who to contact if the active immigration file or enforcement is in another CIC or CBSA office, etc.).

The following are situations where a citizenship application must be suspended (status of "Under Review" or "BF- Under Review") until the applicant's immigration status is resolved with confirmation in writing:

- NCB indicating that an applicant is under investigation and will possibly be the subject of an inadmissibility report;
- NCB indicating that the applicant has an active court case and that immigration is keeping tabs on the outcome;
- NCB indicating that the applicant is involved with false documents, smuggling, organized crime or is the subject of an RCMP, CSIS, or war crimes investigation;
- 44 report (or 27 report or 20 report under the 1976 *Immigration Act*) issued after permanent residence was obtained, unless the disposition was positive;
- Active arrest warrant;
- Active appeal;
- Removal order issued after permanent residence was obtained;



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- Applicant's absences from Canada make him or her subject to loss of permanent resident status;
- Residency obligation being assessed;
- Returning Resident Permit (under the 1976 *Immigration Act*) refused by a mission;
- RX-1 Visa issued;
- Any indication that the applicant is subject to loss of permanent resident status.

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### 7.8. Procedure if case referred to local citizenship office

The local citizenship office runs the Immigration-Clearances operational report in order to identify referred cases.

The local citizenship office checks the GCMS case note and FOSS to determine why the immigration clearance was referred for follow-up and not authorized by QRC.

If the reason for referral has been resolved or only concerns the applicant's eligibility for citizenship (i.e., there is no indication that the applicant is subject to loss of permanent resident status and there is no active immigration or CBSA investigation):

- The citizenship officer authorizes immigration clearance in GCMS;
- The citizenship officer adds an explanatory case note.
- The local office continues processing the citizenship application.

If there is no indication in FOSS as to when the immigration or CBSA case will be conducted:

- The status in the FOSS Clearance activity "Request Follow-Up" in GCMS is changed to "BF-Under Review";
- The citizenship officer contacts the local immigration/CBSA office responsible for the case;
- The citizenship file is BF'd for two months;
- Immigration/CBSA should respond within 60 days to the request for an update.

If Immigration/CBSA confirms the investigation is ongoing:

- The file is BF'd for six months or to the date the next update on the immigration/CBSA case will take place, if known (a file should never be BF'd for longer than one year);
- The status in the FOSS Clearance activity "Request Follow-Up" in GCMS is changed to "BF-Under Review";
- An explanatory "Caution" case note is added;
- At the end of the BF period, if no update has been received, Immigration/CBSA must be contacted again for follow-up until Immigration/CBSA indicates all enforcement action has been completed.

If Immigration/CBSA indicates that the applicant is clear to proceed with the citizenship process:

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- The citizenship officer authorizes immigration clearance in GCMS and enters the date Immigration/CBSA indicated as the effective date of clearance;
- The citizenship officer adds an explanatory case note
- The local office continues processing the citizenship application.

If an immigration/CBSA officer confirms **in writing** that the applicant is subject to a removal order or that the applicant is no longer a permanent resident of Canada:

- The citizenship officer fails immigration clearance in GCMS;
- The citizenship officer adds an explanatory "Caution" case note with his or her initials;
- The citizenship officer prepares an explanatory memo to the citizenship judge;
- The applicant is referred to the citizenship judge for a hearing once criminal and security clearances have been received.

If the immigration or CBSA office does not respond within 60 days of the query, the e-mail should be resent to the local manager responsible for CIC immigration or CBSA. The e-mail should be sent with a high priority, 'read receipt' should be requested, and the message should indicate that citizenship processing will resume in 30 days if no response is received.

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**Note:** It is important that all clearance steps are reflected in GCMS through the proper clearance activities, status and explanatory case notes. "Caution" case notes should be used when the information being entered may have an impact on scheduling and/or the decision.

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### 7.9. Outstanding T's & C's

It is not the responsibility of citizenship officers to ensure permanent residents meet their terms and conditions. If the citizenship office becomes aware that an applicant for citizenship has outstanding T's & C's (usually because of a referral from QRC), the local immigration/CBSA office should be advised. If no enforcement action is initiated within 30 days (this could simply be a "CitAlert" NCB), the processing of the citizenship application may continue. Citizenship officers should not communicate to applicants on behalf of Immigration to confirm that terms and conditions have been met.

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**Note:** Active T's & C's are not hits in the FOSS/GCMS interface but are referrals to the local office if seen by QRC.

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### 7.10. Removal order and stay of removal

A permanent resident under a removal order does not meet the requirements for citizenship under paragraphs 5(1)(f) or 11(1)(c) of the *Citizenship Act* and can be referred to a judge for a decision, even if the removal order has been stayed. A memo for the judge should be prepared indicating that the applicant is under a removal order.

### 7.11. Adverse information received after immigration cleared

The above procedures also apply if information affecting the immigration clearance is received after all clearances have already been completed. Information received must be directed immediately to the office that holds the physical file and a "Caution" case note created.

If the applicant is scheduled for a hearing or ceremony, it should be cancelled. The local office has the discretion to decide whether the citizenship test should be administered or postponed.

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However the application should not be referred to a citizenship judge for decision until the matter is resolved.

If the information is received **before the approval**, a new FOSS clearance sub-activity "Request Follow-Up" should be created with the status "BF-Under Review". Make sure that the FOSS Clearance expiry date is blank and that the case is not available for scheduling in GCMS. Add an explanatory "Caution" case note. The processing of the citizenship application is to be suspended until the local immigration or CBSA office advises that all enforcement action against the applicant has been completed. Updates on the file should be done every six months.

If the information is received **after the approval but before the grant**, and the 60 day appeal period has **not** expired, it may be possible to appeal the decision. Consult with Case Management Branch.

If the information is received **after the approval but before the oath of citizenship**, the 60 day appeal period **has** expired, and the client is prohibited from being granted citizenship or from taking the oath, the applicant must be advised in writing that he or she is prohibited from acquiring citizenship and that the file is being closed. See Appendix 4 for a sample letter.

Officers may also wish to consult Case Management Branch before any action is taken to determine the following:

- Should the judge's decision be appealed?;
- Was the application granted in error?;
- Are there grounds for a section 29 investigation?

If the information is received **after the oath of citizenship**, all the relevant information on file should be forwarded to Case Management Branch which will determine if revocation should be pursued.

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### 7.12. Discrepancies in name or date of birth

An officer must determine where the error occurred (data entry in GCMS, on permanent residence document given to applicant, or data entry in FOSS) and take the appropriate action (correct GCMS, advise QRC of error, etc.).

In some cases the applicant might have to be counselled on amending their permanent residence document or amending the name and/or date of birth that will appear on their citizenship certificate. See [CP 3, Section 3: Name and Change In Name](#), and [CP 3, Section 4: Date of Birth and Change In Date of Birth](#).

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### 7.13. Problem with date permanent residence obtained or *Record of Landing* (IMM 1000)

If the 'date permanent residence was obtained' appears on the applicant's copy of the IMM 1000 but not in FOSS, a copy of the applicant's IMM 1000 should be forwarded to QRC. If the 'date permanent residence was obtained' does not appear in FOSS or on the applicant's copy of the IMM 1000, the applicant will have to be referred to the local immigration office. If there is no record of permanent residence for the applicant, but the applicant has a permanent residence document, a copy of the document should be faxed to QRC at (613) 957-4660 with an explanatory note. If there is no permanent residence record for the applicant and they did not provide a copy of their permanent residence document, they must be referred to the local immigration office.

In some cases, QRC will not find the permanent residence record because the applicant obtained permanent residence under a different name, which was not entered as an alias in GCMS. This usually occurs in the case of a woman who obtained permanent residence under her maiden or married name and now uses the other name. In this type of situation, all aliases must be entered

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into GCMS and all three clearances must be reworked, so that the background checks can be done on all names. This type of situation should be rare as almost all information on grant applicants is converted from FOSS.

Persons who have lost their permanent resident status, or who were never permanent residents, must be referred to the citizenship judge for a decision. Confirmation in writing, from Immigration or CBSA, must be attached to the file before being presented to the judge. The judge may decide to refer the application to the Minister for a discretionary grant under 5(4). Before presenting the file to a judge, a citizenship officer should assess whether the operational bulletin OB 031 Handling Special Cases of Certain People Living in Canada without Status should apply.

Sometimes the IMM 1000/PRC Number that appears in GCMS is not the actual permanent residence document number in FOSS but a correction document, which appears in the same FOSS client record. Also, by error, a client record could have been created in GCMS without the proper FOSS client information, so the IMM 1000/PRC Number field in GCMS remains blank, even though the client exists in FOSS. In this type of situation, and as long as there are no identity or enforcement issues, the immigration clearance can be continued, an explanatory case note added, and the correct immigration document number attached to GCMS. Make sure that all the aliases in FOSS appear in GCMS. If names and dates of birth are added to GCMS, it will be necessary to redo criminal and security clearances.

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### 7.14. Applicants under 11(1.1)

Persons applying for citizenship under subsection 11(1.1) might not be permanent residents of Canada. However, the immigration checks are still necessary to verify whether the applicants are under a removal order. The immigration checks are also useful for identifying information about criminality.

In order to streamline processing for 11(1.1) applicants, CPC Sydney will create a case note in GCMS indicating that the application is under 11(1.1). This will allow QRC to finalize the immigration clearance if no record of the applicant is found in immigration records. If a record does exist, regular referral criteria procedures apply.

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### 7.15. Voluntary relinquishment of permanent resident status

There are different procedures regarding voluntary relinquishment of permanent resident status, depending on whether a person relinquished permanent resident status under the former *Immigration Act* or under the current *Immigration and Refugee Protection Act*. See sections 7.9 and 7.10 of ENF 23.

If there is any indication in FOSS that a person voluntarily relinquished permanent resident status or their permanent residence document, the local immigration/CBSA office should be advised that a person who might have relinquished permanent resident status has applied for citizenship.

If the immigration or CBSA office does not respond within 60 days of the query, the e-mail should be resent to the local manager responsible for CIC immigration or CBSA. The e-mail should be sent with a high priority, "Read receipt" should be requested, and the message should indicate that the application will be assigned an immigration clearance and citizenship processing will resume in 30 days if no response is received.

There must be confirmation **in writing** from an immigration/CBSA officer that the applicant is no longer a permanent resident of Canada before the application can be forwarded to a citizenship judge for a hearing and decision.

A voluntary relinquishment of status is a strong indicator that an applicant might have had substantial absences from Canada and that his or her ties and connection with Canada may have been severed. For this reason, the applicant's residence in Canada, for the purpose of meeting the citizenship requirement, should be assessed. See next section.

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### 7.16. Residence

In some cases, there will be indications that the applicant has had numerous or long absences from Canada, some of which might or might not have been declared on their citizenship application. See [CP 5 Residence](#), [OB 022 Assessing declared residence](#) and [Section 13 – Section 29 Investigations](#).

If there is any indication that the applicant might be subject to loss of permanent resident status, contact Immigration for clarification.

Where a citizenship officer has any doubt that an applicant for citizenship might not meet the residence requirement, the officer should take the following steps before presenting the file to a citizenship judge for review or scheduling the applicant for a hearing before a judge:

- Request the applicant provide a copy of all pages, including the blank pages, of the passport or travel document used to enter Canada and of any passport(s) or travel document(s) issued since;
- Request the applicant provide proof of employment and/or studies in Canada for the four years immediately preceding the date of his or her citizenship application;
- Request the applicant complete the residence questionnaire and provide documents substantiating residence for the four years immediately preceding the date of his or her citizenship application.

In some cases, verification of the passport(s)/travel document(s) or the employment/school records will be sufficient to remove doubt. Where doubt of residence remains an issue, a completed residence questionnaire along with proofs of residence should be requested before an applicant is referred for a hearing before a citizenship judge.

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### 7.17. Evaluating residence when the applicant has lost permanent resident status

In general, most applicants who have lost permanent resident status reside outside Canada, and their applications for citizenship are abandoned when they miss the two scheduled appointments for a hearing with a citizenship judge.

However, if the applicant does appear for the interview, the citizenship judge should be able, as much as possible, to assess all the requirements before rendering a decision. For this reason, whenever it appears that the applicant might not meet the residence requirement for citizenship, the client should be requested to complete a residence questionnaire and provide proofs of residence.

In order to minimize the delays in finalizing a file, local offices may consider including a request for the completed residence questionnaire and proofs of residence with the hearing notice as well as requesting the applicant to provide documentation in advance of the hearing, so that the officer may review the file before it is presented to the judge for a decision.

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## 8. Sharing client information between citizenship and immigration offices

This section describes the procedures for communicating information between citizenship offices and either CIC Immigration or Canada Border Services Agency (CBSA) offices. See also [ENF 7, section 9.4 - Communicating adverse information about a permanent resident to a citizenship office](#).

CIC Immigration and the CBSA often have access to information which is relevant to the citizenship application. Also, citizenship offices often have criminal record information which is

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relevant for CIC immigration or CBSA officers who may want to pursue enforcement action against a client. These instructions for communicating client-specific information emphasize the close links between our processes as well as our shared commitment to program integrity.

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### 8.1. Communicating adverse information about a permanent resident to Citizenship

If a CIC immigration or CBSA officer has information that might affect a permanent resident's eligibility to become a Canadian citizen, it is the officer's responsibility to advise the appropriate citizenship office and to clearly indicate the information in FOSS. See ENF 7, section 9.4 - Communicating adverse information about a permanent resident to a citizenship office.

The CIC immigration or CBSA officer will create a type 01 NCB. The NCB remarks will begin with "CITALERT – HOLD PROCESSING," and it will briefly describe the enforcement concern along with the file number, the office location, and the name of the officer entering the NCB. The CIC immigration or CBSA officer will also determine if the individual has a citizenship application in process. If so, the officer will send an urgent e-mail to CPC Sydney ([CPC-Sydney-Search-Enquiry@cic.gc.ca](mailto:CPC-Sydney-Search-Enquiry@cic.gc.ca)) or to the local citizenship office where the application was referred, so that the processing of the application can be suspended until the enforcement issue is resolved. Please note that "urgent" should be indicated in the subject line.

If there is no application in process, the NCB is sufficient as QRC will advise the local office of the "Citalert" if an immigration check is done on a future application.

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### 8.2. Information of interest to Citizenship

In some cases, a CIC immigration or CBSA officer will have information that is relevant to citizenship processing, but which does not affect the immigration clearance (for example, an interview with a port of entry officer indicates that the applicant has significant absences from Canada). In this situation, the procedures are the same as above (8.1 Communicating adverse information about a permanent resident to Citizenship), but the NCB remarks will begin with "CITALERT – FOR INFO ONLY."

The local citizenship office will evaluate and, where appropriate, act on the information received and also include the information on the file for consideration by the citizenship judge.

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### 8.3. Information relevant to CIC Immigration or the CBSA

Citizenship should inform CIC Immigration or the CBSA when information gathered during the citizenship process may be of interest to them. The following information has been determined to be of interest to local CIC immigration and CBSA offices and could also affect the citizenship application:

- Permanent resident was convicted of an indictable offence;
- Permanent resident was given a term of imprisonment exceeding six months;
- Permanent resident has provided personal information which differs from FOSS (for example, undocumented aliases, undocumented changes to dates of birth);
- Permanent resident does not appear to meet the residence requirement under IRPA;
- Permanent resident cannot confirm that terms and conditions, imposed at the time permanent residence was obtained, have been met.

If a citizenship officer becomes aware of any of the above, this information should be transmitted to the appropriate office, and processing of the citizenship application should be suspended for 30 days. If no response, advising the hold of the application for a longer time period, is received

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from CIC Immigration or CBSA within 30 days, processing should resume. The officer should do a final check in FOSS before resuming the citizenship application.

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**Note:** CIC Immigration has authority to write A44(1) reports and issue removal orders for all inadmissibilities, except A34, A35 and A37 (i.e., the CBSA writes reports for security/espionage, subversion, terrorism, danger to safety or security, crimes against humanity/war crimes, and organized crime).

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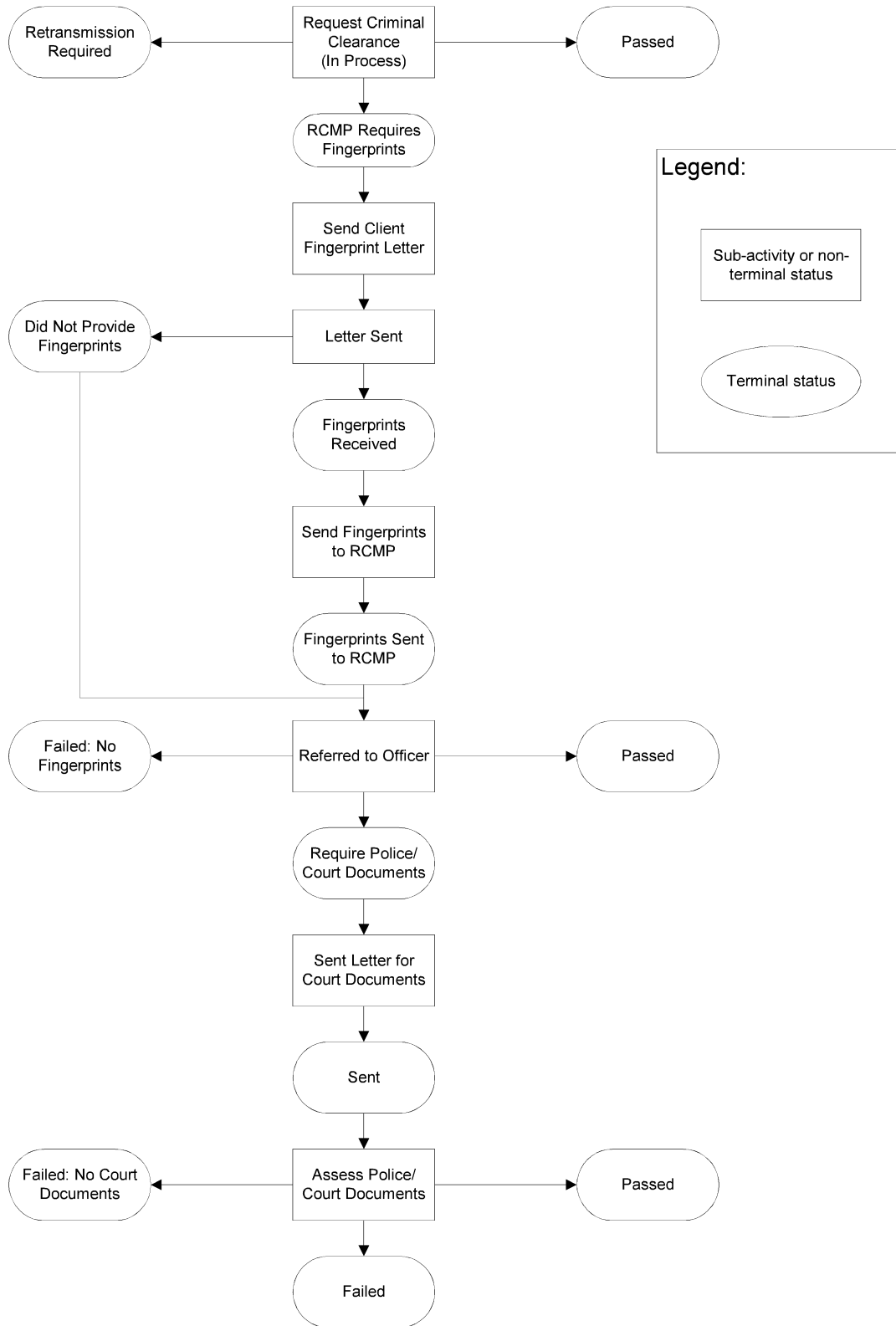
### **9. Criminal clearance**

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#### **9.1. Criminal clearance flow in GCMS**



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### 9.2. RCMP clearance sub-activities and status

**Note:** The spelling of activities, sub-activities and status appear below as they appear in GCMS.

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Sub-activity	Status	Description
All	Not Started	GCMS default when activity is created. No action has been taken.
All	CRI Conversion	This value indicates that clearance was processed prior to CRS. This means that the clearance could have been "Passed" or "Failed" or any step in between. If the case is still active, the "Request Criminal Clearance" sub-activity must be redone.
All	Cancelled	This value indicates that the request has been terminated or was created in error. Entering this status will not permit a case to move forward.
Request Criminal Clearance	Not Required	GCMS default for grant applicants under 15.5 years of age and for section 8 (retention) applicants. This value indicates that the criminal clearance is not required for this case or case type.
Request Criminal Clearance	Retransmission Required	<p>There was an error during the transmission.</p> <p>The following must be checked: The primary name record is the legal name and includes a family name, date of birth, and country of birth (i.e., these fields are not blank). If necessary, create a new primary name record with the appropriate information. For any name records that lack information in one of these fields, change the name type to "Entered in Error."</p> <p>Once the corrections have been made, redo the initial "Request Criminal Clearance." If the status returns to "Retransmission Required" or if the primary name record is complete, submit a problem report to the Help Desk.</p> <p>If the client has more than three family names or five given names, send an e-mail to CMB for a manual criminal clearance.</p>
Request Criminal Clearance	In Process	<p>This status indicates that a criminal clearance request has been initiated. This is the status that must be manually selected when the initial criminal clearance request is redone. Please note that the effective date should not be input manually when redoing a clearance request.</p> <p>If the initial request stays "In Process" longer than <b>two weeks</b>, the initial request should be redone. If the second request remains "In Process" longer than <b>two weeks</b>, a problem report should be submitted to the Help Desk.</p>

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Sub-activity	Status	Description
Request Criminal Clearance	Passed	For this sub-activity, this status can only be generated by the system (based on an electronic response from the RCMP) or by Case Management Branch. This status means that the criminal check revealed no criminal record and the citizenship application can continue to be processed. This status sets the criminal clearance expiry date on the case at one year from the date of the RCMP response.
Request Criminal Clearance	RCMP Requires Fingerprints	The name and date-of-birth check indicates that it is possible the client has a criminal record. The RCMP requires the client's fingerprints to confirm this information. This status will automatically generate the sub-activity "Send Client Fingerprint Letter" with the status "Not Started."
Send Client Fingerprint Letter	Letter Sent	Letter requesting client to provide fingerprints has been sent.  <b>Note:</b> This is not a terminal status and can be modified.  The date the letter is sent to the client should be manually added to the effective-date field. Currently GCMS defaults the BF date into the effective date field.
Send Client Fingerprint Letter	Did Not Provide Fingerprints	Client did not provide fingerprints as requested within 60 days. This status will automatically generate the sub-activity "Referred to Officer" with the status "Not Started."
Send Client Fingerprint Letter	Fingerprints Received	The local citizenship office has received the client's fingerprints. This status will automatically generate the sub-activity "Send Fingerprints to the RCMP" with the status "Not Started."
Send Fingerprints to RCMP	Fingerprints Sent to RCMP	For ink and roll prints, the local citizenship office has sent the client's fingerprints to the RCMP. In the case of electronic fingerprints, the local citizenship office has received e-mail confirmation from the fingerprint agency that the client's prints have been taken and electronically submitted to the RCMP. This status will automatically generate the sub-activity "Referred to Officer" with the status "Not Started."

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Sub-activity	Status	Description
Referred to Officer	In Process	While this status is presented as an option by GCMS, it should never be selected for this sub-activity. The cases "In Process" for this sub-activity cannot be selected as an operational report, and having this status roll up to the parent activity causes errors in management clearance reports. This might give some users the wrong impression on the real status of the case.
Referred to Officer	Passed	<p>Criminal clearance has been authorized by a citizenship officer because the fingerprints came back from the RCMP with a "No Record" stamp; or the convictions/charges or jail/probation time indicated on the RCMP conviction report do not make the client ineligible for citizenship. This status sets the criminal clearance expiry date on the case at one year from the date the RCMP response was received.</p> <p><b>Note:</b> This is one of the only instances where the effective date should be input manually. The effective date should reflect the date of the "No Record" stamp or the date of the RCMP conviction report.</p>
Referred to Officer	Failed: No Fingerprints	<p>The criminal clearance cannot be authorized because the client has failed to provide fingerprints. He or she will be scheduled for a hearing with a citizenship judge, and the judge will request the client to provide fingerprints.</p> <p><b>Note:</b> The user must manually move the case stage to "Assess" (if not already there) in order for the client to be available for scheduling.</p>
Referred to Officer	Require Police/Court Documents	<p>There are convictions/charges or jail/probation time that may make the client ineligible for citizenship. Court documents are necessary to confirm client's eligibility for citizenship.</p> <p>This status will automatically generate the sub-activities "Send Letter for Court Documents" and "Assess Police Court Documents" with the status "Not Started."</p>
Referred to Officer	Under Review	<p>There is a criminal investigation or CIC is considering a referral to the RCMP for investigation.</p> <p><b>Note:</b> Currently not to be used, as this status is not rolling up to the RCMP Clearance parent activity and is instead changing the status of this clearance to "In Process."</p>

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Sub-activity	Status	Description
Referred to Officer	Resend Fingerprints Letter	This indicates that there was a problem with the original set of fingerprints and that a new set is required.  This status will automatically generate the sub-activity "Send Client Fingerprint Letter" with the status "Not Started."
Sent Letter for Court Documents	Sent	A letter requesting court documents has been sent to the client. If using a letter not generated by GCMS (e.g., MS Word), users should attach the letter to the file in GCMS.
Assess Police/Court Documents	Passed	Criminal clearance has been authorized by a citizenship officer because the court documents confirm that the client is not prohibited from acquiring citizenship. This status sets the criminal clearance expiry date on the case at one year from the date the RCMP response was received.  <b>Note:</b> This is one of the only instances where the effective date should be input manually. The effective date should reflect the date of the RCMP conviction report.
Assess Police/Court Documents	Failed	Based on the court documents, the client is prohibited from acquiring citizenship. This client will be scheduled for a hearing with a citizenship judge.
Assess Police/Court Documents	Failed: No Court Documents	The criminal clearance cannot be authorized because the client has failed to provide court documents. They will be scheduled for a hearing with a citizenship judge, and the judge will request the client to provide court documents.  <b>Note:</b> The user must manually move the case stage to "Assess" (if not already there) in order for the applicant to be available for scheduling.

### 9.3. Initial criminal check

All applicants for citizenship, who are 16 years and older, require a criminal clearance from the Royal Canadian Mounted Police (RCMP). Criminal clearances are requested for all grant applicants who are 15.5 years and older in order to accomplish this.

The initial criminal clearance check is a name and date-of-birth check against the Canadian Police Information Centre (CPIC) computer system by the RCMP. This initial clearance is provided through an electronic exchange of information between CIC's electronic system (GCMS) and the RCMP's electronic systems.

Individuals who are identified by the RCMP, as possibly named in Canadian criminal indices, will be asked to submit fingerprints for clearance purposes. In these cases, the criminal clearance

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requested through GCMS comes back with the status "RCMP requires fingerprints." Approximately 15 to 20% of citizenship applicants are requested to provide fingerprints.

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### 9.4. Private fingerprint agencies

The Canadian Criminal Records Information Service (CCRIS) only accepts fingerprint submissions from accredited Canadian police services or from agent(s) acting on their behalf. Police services will continue to be responsible for the quality and integrity of the fingerprints submitted through the police service or their agent(s). Accreditation is not required for government employees charged with taking fingerprints, and thus no accreditation is required for immigration and citizenship officials who are authorized to take fingerprints.

The RCMP will maintain a list of police-certified private fingerprint agencies. To ensure internal control, each agency is required to bear an official police service stamp, clearly noting that the fingerprint agency is making a submission as a *bona fide* agent of that police service.

In situations where neither the RCMP nor the local police take fingerprints, the onus is on the police service to provide CIC clients with the names of private agents acting on their behalf.

It is the responsibility of the local office to bring to the attention of the RCMP or local police service any situation where the integrity of these agencies is called into question.

See [9.14 - Fingerprints taken outside of Canada](#).

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### 9.5. Requesting fingerprints

A citizenship official requests an applicant to provide fingerprints in a standard letter which may be sent by regular mail or handed to the applicant in person. The standard adult and minor fingerprint letters, approved by the Registrar, are available on CIC Explore and GCMS. They must be used for these requests. The standard letter advises the applicant to contact the RCMP or local police service for approved fingerprint agencies in the area.

Local offices must include an attachment to the standard letter that provides the applicant with the option of having their fingerprints taken electronically at one of two approved fingerprint agencies: **Commissionaires Fingerprinting and Identification Services** (Commissionaires) [www.commissionaires.ca](http://www.commissionaires.ca) or **Comnetix Inc** (International Fingerprinting Services Canada (IFSC)) [www.comnetix.com](http://www.comnetix.com). Local offices may assist applicants by also providing information on local RCMP detachments or police services. Local offices may also include a list of agencies and addresses with the letter, in cases where the police services have indicated in writing that one or more private agencies have been accredited to take fingerprints on their behalf in the area.

A template is available on CIC Explore to prepare this type of attachment.

Local offices should include a self-addressed envelope – not stamped – so the applicant can return the fingerprint form. Local offices may include a fingerprint form with the letter. Ensure that the 'Name & Address of Contributing Agency/Dept.' section on the fingerprint form shows the address of the citizenship office making the request.

The applicant must return the fingerprint form within 60 days.

Citizenship offices must use GCMS to track the fingerprint process.

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### 9.6. Procedures when ink and roll fingerprint form received

Make sure that the applicant completed the fingerprint form properly and that it was signed by the fingerprint agency and the applicant.

All known names and dates of birth should be indicated on the fingerprint form. **If any are missing, they should be added.** If the applicant did not provide most of the information requested on the fingerprint form, attach a photocopy of the application to the fingerprint form before sending it to the RCMP.

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**Note:** If the RCMP add information to the photocopied application, keep the photocopy with the applicant's file.

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Check the form for the following:

- Any change of address or telephone number—make the appropriate changes in GCMS;
- Applicant's signature matches the signatures on the application form and the identity documents.

The officer must be satisfied that the fingerprints belong to the applicant before authorizing the criminal clearance in GCMS.

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### 9.7. If signatures do not match

If the signatures on the application, the fingerprint form and the identity documents do not match, return the fingerprint form to the RCMP or the agency that took the prints. Ask for clarification.

If the RCMP or other agency states there is a possibility of fraud, do not continue processing. Immediately send the application to Case Management Branch, with all documents, for a possible section 29 investigation.

Where the capacity exists, some local offices may consider taking the fingerprints in order to ensure that no fraud is committed.

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**Note:** Judgment should be used when comparing signatures. Some newcomers change their signature after residing in Canada, especially if their former signature used a different script. In some cases, handwriting may change over time. However, officers must be satisfied that the person who is submitting the fingerprints is the person who has applied for citizenship.

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### 9.8. Sending fingerprints to the RCMP

Send the fingerprint form to the RCMP. Stamped, self-addressed envelopes no longer have to be included.

Use the Criminal Clearance operational report in GCMS, to ensure that there is a follow-up if the RCMP do not reply within 6 months. Enquiries may be sent to [civilnps2@rcmp-grc.gc.ca](mailto:civilnps2@rcmp-grc.gc.ca).

Send fingerprints, updates of RCMP conviction reports and requests for clarification to:

The Director  
Canadian Criminal Real Time  
Identification Services  
RCMP HQ, NPS Bldg.  
1200 Vanier Parkway  
Ottawa, Ontario  
K1A 0R2

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### 9.9. Procedures for electronic fingerprints

If the applicant exercises the option to have fingerprints taken electronically, the fingerprints are submitted directly from the agency to the RCMP, and an e-mail is sent by the agency to the local office advising them that this has been done. The local office records this information in GCMS.

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### 9.10. Keep fingerprints until process completed

The RCMP sends the results of both ink and roll and electronic prints to the local office using Civil Product form RTID/ITR 100.01. Do not destroy this form until the application process is completed. Fingerprints are destroyed after the ceremony if the application has been approved

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and the oath administered. In the case of non-approval, fingerprints are destroyed before the file is sent to CPC-S for retirement (but after the 180-day waiting period in case of appeal).

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### 9.11. Fingerprints that have a reference file number (RFN)

Fingerprints that have a reference file number (RFN) are held in the refugee fingerprint database. These must be returned to the RCMP for purging if the individual becomes a Canadian citizen.

After the ceremony, send fingerprints with an RFN to the RCMP (address indicated in section 9.8) with a memo, stating that the individuals have become citizens and that the fingerprints in question should be purged from the refugee fingerprint database.

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### 9.12. If the applicant does not provide fingerprints

If the applicant does not return the ink and roll fingerprint form within 60 days, or if an e-mail has not been received from the fingerprint agency confirming that the application had electronic fingerprints taken, schedule the applicant for a hearing with a citizenship judge. Prepare a memo for the judge explaining that the applicant did not provide fingerprints. Also prepare a letter requesting fingerprints that the judge can give to the applicant at the hearing.

If the applicant does not provide his or her fingerprints in the time specified by the judge (usually 30 days plus a week, to account for mailing delays), return the file to the judge for a decision. Contact the Citizenship Commission to obtain templates of standard non-approval letters, including a non-approval letter for failure to provide fingerprints.

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### 9.13. RCMP responses

The RCMP sends the local citizenship office the results of all fingerprint checks using the same form. In addition to information on criminality, the form will indicate if the person has fingerprints on file in the refugee fingerprint database (RFN number).

If there is no record, the form will state that the fingerprints submitted on a specific date, under the name and date of birth indicated, were searched against the national repository and that no record has been found. A dry seal embossment will be applied to further authenticate the statement on the form. Where the response from the RCMP indicates no record, the citizenship office authorizes criminal clearance in GCMS and continues normal processing. The effective date when clearing in GCMS is the date the search was completed or certified.

Where there is a positive identification with fingerprints registered under an RFN number, but no existing criminal record, the file should be processed as "No Record." The only difference is that these fingerprints must be returned to the RCMP for purging from the refugee fingerprint database if the individual in question becomes a Canadian citizen (see [section 9.11](#)). Because of positive identification, this form will be certified and display a dry seal embossment to authenticate the document.

Where there is a criminal record (which may or may not affect eligibility), the form will indicate that a positive identification was made with fingerprints registered under a criminal FPS number. A Criminal Conviction Report (Form C-480) will be attached. This form will be certified and display a dry seal embossment to authenticate the document. There may or may not be a positive identification with an RFN number, that is, a hit in the refugee fingerprint database (see [section 9.11](#)).

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### 9.14. Fingerprints taken outside Canada

Although applicants are directed to their local RCMP detachment, local police service or accredited fingerprint agencies, some applicants submit fingerprints taken outside Canada. The RCMP Web site ([http://www.rcmp-grc.gc.ca/crimrec/finger\\_e.htm](http://www.rcmp-grc.gc.ca/crimrec/finger_e.htm)) has guidelines on fingerprints taken outside Canada. The RCMP need to accept fingerprints taken outside Canada because the



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civil fingerprinting process is used for a variety of reasons including: adoption, employment, foreign travel, immigration to Canada, volunteer work, or foreign residence.

Applicants for citizenship, on the other hand, except for 11(1.1) and some retention applicants, are expected to reside in Canada and to be available for: testing, a hearing, a ceremony, and Quality Assurance. Also there are concerns regarding fingerprints taken outside Canada related to the identity of the person being fingerprinted, and the RCMP have no jurisdiction if questions of reliability. There could also be translation issues if the form and the information provided on the form are not in English or French. Because of these reasons, in general, fingerprints taken outside of Canada should not be accepted for citizenship applications.

When an office receives fingerprints taken outside of Canada, and it concerns an application other than a retention or an 11(1.1) applicant, an officer should attempt to contact the applicant to find out why the applicant was unable to have the fingerprints taken in Canada. If there is nothing preventing the applicant from having his fingerprints taken in Canada, then the applicant should be advised to do so. If the applicant is outside Canada and does not want to pay to come only to have their fingerprints taken, the office could schedule the applicant to take the citizenship test at the same time. Officers should also keep in mind that there may be a residence issue in this case.

In situations where there are good reasons that the applicant is not able to come to Canada to take fingerprints, the officer has the discretion to accept the fingerprints taken outside Canada. However, written justification will have to be attached to the file. No justification is required for 11(1.1) and retention applicants residing outside Canada.

Fingerprints taken outside Canada must have the following characteristics:

- The completed fingerprint form includes rolled and flat impressions of all ten fingers in black ink; full name, date of birth, and sex of the applicant; the name and address of the police agency; and the signature of the official taking the fingerprints. The requirements for fingerprints taken outside Canada are specified by the RCMP on their Web site at [http://www.rcmp-grc.gc.ca/crimrec/finger2\\_e.htm#Obtain](http://www.rcmp-grc.gc.ca/crimrec/finger2_e.htm#Obtain);
- Fingerprint forms that are not in English or French must be accompanied by a translation along with an affidavit from the person who completed the translation (translation cannot be completed by the applicant or a family member). See CP 12, Section 2: Translation of Foreign Documents for more information on acceptable translations.

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### 9.15. Poor quality fingerprints

When the RCMP receives poor quality ink and roll fingerprints, they are returned to the local citizenship office with a "Poor Quality Fingerprints" memo. Sometimes this memo will indicate that a CPIC check was done with the name and date of birth, and that the results of the check were negative (similar to a "No Record" stamp). In general, the RCMP do not perform a CPIC check on the first set of rejected fingerprints.

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**Note:** When the RCMP receives poor quality electronic fingerprints, they deal directly with the fingerprint agency to obtain acceptable prints.

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The first time the fingerprints are returned with a "Poor Quality Fingerprints" memo, the local citizenship office should contact the applicant to have his or her fingerprints retaken. The applicant should be given a letter to explain why fingerprints need to be retaken, so that the agency personnel taking the fingerprints are aware that the first set were of poor quality and that extra care is needed when obtaining the second set. The agency should also confirm in writing that the fingerprints obtained were the best quality possible, and if there were problems taking the prints, a note explaining why.

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Before sending the second set of fingerprints back to the RCMP, and only if the agency has confirmed that these were the best quality obtainable, the citizenship office should write on the fingerprint form "BEST QUALITY POSSIBLE" in the area where the four fingers are taken together, but without obliterating any of the prints. The citizenship office must also fill in all other names and dates of births of the applicant on file. If the prints are still too poor to be checked, the RCMP will do a name and date-of-birth check in CPIC and return the results of the CPIC check.

A "No Record" based on a CPIC check by the RCMP should only be accepted if:

1. the best possible quality fingerprints were obtained; and
2. the RCMP were advised of all the applicant's known names and dates of births.

Sometimes the RCMP reject the first set of fingerprints and still do a CPIC check. In this case, the negative (no record) results can be accepted without having the applicant redo fingerprints, if all the applicant's known names and dates of birth appeared on the fingerprint form in question. If the names and dates of birth were incomplete, return the fingerprints and the memo to the RCMP and request a new CPIC check with all the applicant's known names and dates of birth.

### 9.16. Adverse information received after the criminal check is complete

It may come to the local office's attention that a person who has already completed the criminal clearance process may have been charged with or convicted of a crime. This type of information could come directly from the applicant (often at the test, hearing or ceremony), or this type of information can be discovered during the immigration clearance process (through an NCB in FOSS), or this could be discovered when the fingerprints or criminal convictions report is returned to the RCMP for an update.

In this situation, the local office contacts the applicant to obtain the appropriate court documents so that the applicant's eligibility for citizenship can be reassessed.

If the information that comes to light makes the applicant ineligible for citizenship (and should have been discovered during the criminal clearance process but was not), the local office will also request the applicant to provide fingerprints, unless the fingerprints are already on file. The fingerprints (or the RCMP conviction report) and the court documents should be resent to the RCMP so that the RCMP can update their database.

If the applicant is prohibited from taking the oath and citizenship has already been granted, the applicant must be advised in writing that he or she cannot acquire citizenship because he or she is prohibited from taking the oath. See Appendix 4 for a sample letter.

### 9.17. Requesting court documents

If the RCMP conviction report indicates that there is a charge, conviction or sentence that could have an impact on the applicant's eligibility for citizenship, either by prohibiting the applicant from acquiring citizenship or by affecting the basic residence requirement, the court documents must be requested to clarify or confirm the information in the RCMP conviction report.

The applicant is responsible for obtaining the court record. Some courts charge a fee for records.

Step	Action
1	The local office requests the local court record from the applicant. The record is obtained from the provincial court that made the charges/convictions.

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Step	Action
2	<p>The officer reviews the court documents to determine if the client is, in fact, prohibited or if there is an impact on the applicant's basic residence requirement.</p> <p>If the applicant is not prohibited, the officer will clear the applicant in GCMS and continue normal processing. The effective date when finalizing criminal clearance in GCMS is the date of the RCMP conviction report. The RCMP conviction report and the citizenship officer's assessment, with initials or signature, are placed in the file. Documentation must be attached to the Citizenship Application Review Form (CARF) when the file is referred to the judge. If the residence requirement is affected by time spent on probation, on parole or imprisoned, the applicant should be scheduled for a hearing with a citizenship judge, and the officer should prepare an explanatory memo.</p> <p>If the applicant is prohibited, the criminal clearance is failed in GCMS and the applicant is scheduled for a hearing with a judge. The RCMP conviction report and the citizenship officer's assessment, with initials or signature, are placed in the file. Documentation must be attached to the decision form when the file is referred to the judge.</p>
3	<p>The officer reviews the file to determine whether or not to refer the case to Case Management Branch for investigation under section 29 of the <i>Citizenship Act</i> (see <a href="#">section 13 - Section 29 Investigations</a>) and whether or not to refer the case to Immigration for possible report (see <a href="#">section 8.3 Information relevant to CIC Immigration or CBSA</a>).</p>

### 9.18. If applicant does not provide court documents

If the applicant does not provide the court documents within 60 days, schedule the applicant for a hearing with a citizenship judge. Prepare a memo for the judge explaining that the applicant did not provide court documents. Also prepare a letter requesting court documents that the judge can give to the applicant at the hearing.

If the applicant does not provide his or her court documents in the time specified by the judge (usually 30 days plus a week to account for mailing delays), return the file to the judge for a decision. Contact the Citizenship Commission to obtain templates of standard non-approval letters, including a non-approval letter for failure to provide court documents.

### 9.19. Information that does not appear on the RCMP conviction report

Sometimes the RCMP are not aware of a charge or conviction and the information comes to light either from CIC Immigration, or CBSA, or from a declaration by the client. This might occur because the RCMP received the information after the criminal clearance check was done. This also might occur if an applicant is charged with a crime for the first time, and the local police agency does not forward the fingerprints of the accused to the RCMP until there has been a decision in the case.

If the applicant divulges police involvement, that may make the applicant ineligible for citizenship, or if a citizenship officer becomes aware of a charge or conviction that will make them ineligible for citizenship, and the charge or conviction does not appear on the RCMP conviction report, then the applicant should be requested to provide fingerprints (unless a set are already on file) and a

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copy of the applicable court documents. The fingerprints or the RCMP conviction report should be returned to the RCMP with a copy of the court documents and a memo requesting an update of the fingerprint check.

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### 10. Assessing prohibitions

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#### 10.1. Refer to *Criminal Code of Canada*

To determine that the applicant's criminal record affects eligibility for citizenship, check the *Criminal Code of Canada* to determine whether the offence is indictable, summary or a hybrid.

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**Note:** When the user is determining if a conviction record affects eligibility, check the *Criminal Code of Canada* in effect at the time of the applicant's conviction.

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#### 10.2. Three types of offences in the *Criminal Code*

There are three types of offences in the *Criminal Code*: summary, indictable and hybrid offences.

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#### 10.3. Summary offence

Summary conviction offences are minor offences and carry the most lenient penalties (for example, shoplifting). They are tried by a provincial court judge without a jury. The maximum sentence for summary offences is generally a fine up to \$2,000 or 6 months in jail or both (unless otherwise indicated).

Summary offences, except those under subsection 29(2) of the *Citizenship Act*, do not make an applicant ineligible for citizenship under section 22.

However, the applicant cannot be granted or take the oath while imprisoned, on probation or on parole.

Time spent imprisoned, on parole or on probation may have an impact on residence because of section 21.

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#### 10.4. Indictable offence

Indictable offences are the most serious offences and carry the most severe penalties (for example, drug trafficking).

The accused always gets a choice about how they wish to be tried (three options). Therefore, if a court document indicates that the accused may elect the type of trial, then the offence is indictable.

An indictable conviction prohibits a person from acquiring citizenship for three years after the date of conviction.

An indictable conviction after an application for citizenship, but before citizenship is acquired (the oath taken or citizenship granted), also prohibits a person from acquiring citizenship.

Time spent imprisoned, on parole or on probation may have an impact on residence because of section 21.

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#### 10.5. Hybrid offence (also known as Crown elect or dual offence)

For a hybrid offence, the Crown has the discretion to prosecute by way of indictment or by way of summary conviction procedures.

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If the Crown elects to proceed by indictment, the accused then gets a choice as to the mode of trial. If the Crown elects to proceed summarily, the offence is tried by a provincial court judge.

In light of the Federal Court decision *Vithiyananthan v. Canada (A.G.)*, [2000] 3 F.C. 576 (T.D.), a hybrid offence is considered indictable until a conviction is registered, even if the Crown elects to proceed summarily.

Once a conviction is registered, the hybrid offence is considered indictable or summary depending on the final outcome.

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### 10.6. Consider three years before application and current status for section 22 prohibition

You must consider all convictions, sentences and conditional sentences that fall within the three years before the date of application.

You must consider convictions, sentences and conditional sentences that occur after the date of application.

You must consider if the applicant is currently on probation, on parole or imprisoned.

You must consider current criminal charges.

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### 10.7. Consider four years before application for residence and section 21

You must consider time imprisoned, conditional sentences, probation orders and parole terms that fall within the four years before the date of application.

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### 10.8. Section 21

Section 21 states that any time spent on probation (as a result of a conviction), on parole or imprisoned, or any time spent on a conditional sentence order, cannot be counted as a period of residence. This includes time detained, by a Lieutenant Governor's order, where a person was found not guilty by reason of insanity under section 16 of the Criminal Code. In the latter situation, the person is deemed to be under a probation order, even though the Criminal Code does not refer to the disposition as a probation order.

A person in the above circumstances is not necessarily subject to prohibitions. However, there may be time that cannot be counted as a period of residence, and the applicant may not meet the residence requirement under 5(1)(c) as a result. The period described in section 21, other than time spent on probation as a result of a conditional discharge, **is subtracted before dealing with the absences** (i.e., cannot be included when calculating basic residence).

Any time spent on probation as a result of a conditional discharge may be counted as residence provided the person has not been charged with "breach of probation" or "failure to comply with probation order." When a charge of breach of probation has been laid, this indicates that there is an allegation that probation was not successfully completed.

The distinction, between probation as a result of a conditional discharge and probation as a result of a conviction, is the product of the *Holmes versus Secretary of State* decision. In the *Holmes* decision, the Federal Court judge stated that probation as a result of a conditional discharge can be counted as a period of residence since the person was not convicted.

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**Note:** Probation as a result of a **conviction** cannot be counted as residence.

**Note:** Probation as a result of **conditional discharge** is counted as a period of residence, if the probation is completed successfully.

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### 10.9. Paragraph 22(1)(a)

Paragraph 22(1)(a) refers to current situations and prohibits granting citizenship or taking the oath while a person is under a probation order, a conditional sentence, on parole or imprisoned.

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There is **no** distinction between probation as a result of conviction or conditional discharge. The prohibition remains in effect **while** a person is on probation as a result of a conditional discharge or conviction.

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**Note:** Prohibitions are assessed at the time of application, at the time of decision (approval or grant) and at the time of oath. Assessing prohibitions is **not** to be delayed until the end of a probation.

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### 10.10. Paragraph 22(1)(b)

Paragraph 22(1)(b) refers to current situations and prohibits granting citizenship or taking the oath while a person is charged with, on *trial* for, or subject/party to an appeal of an indictable offence. A person currently charged with, on trial for, or subject/party to an appeal of a summary offence is not prohibited under this paragraph. Until a conviction is registered, a hybrid offence is considered an indictable offence.

A person who is currently charged with, on trial for, or subject/party to an appeal of an offence, under subsection 29(2) or 29(3) of the *Citizenship Act*, is also prohibited under this paragraph. Offences under subsection 29(2) are summary offences and those under subsection 29(3) are indictable. The prohibition is in effect whether the person is charged (etc.) for a summary or indictable offence under the *Citizenship Act*, whereas the prohibition is in effect only for indictable offences under any Act of Parliament.

### 10.11. Paragraph 22(1)(c)

Paragraph 22(1)(c) deals with current situations with respect to offences under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*. A person cannot be granted citizenship or take the oath while they are under investigation, charged with, or on trial for these offences.

### 10.12. Paragraph 22(1)(d)

Paragraph 22(1)(d) prohibits a person from being granted citizenship or taking the oath, if the person has been convicted of an offence under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*. There is no time limit on this prohibition, that is, the person is prohibited **forever** from being granted citizenship.

### 10.13. Paragraph 22(1)(e)

Paragraph 22(1)(e) prohibits a person, who has been removed from Canada and who has not obtained the consent of the Minister of Citizenship and Immigration to be readmitted to Canada as a permanent resident, from being granted citizenship or taking the oath. This paragraph refers to a situation where a removal order has been executed. It does not apply to a situation where the person is still in Canada awaiting the result of an immigration appeal.

### 10.14. Paragraph 22(1)(f)

Paragraph 22(1)(f) prohibits a person from being granted citizenship or taking the oath of citizenship if their Canadian citizenship has been revoked within the five years immediately preceding the date of application.

### 10.15. Paragraph 22(2)(a)

Paragraph 22(2)(a) deals with indictable offences and offences under the *Citizenship Act*. It prohibits granting citizenship or taking the oath if there has been a **conviction** for an indictable offence or a **conviction** for an offence under the *Citizenship Act* within the three years prior to the date of application. A person given a conditional or an absolute discharge of an indictable offence would not be subject to this section. In the *Mohammed Asaf Choudhury versus Secretary of State* decision, it was ruled that a person given a conditional or absolute discharge has not been convicted of the offence.

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### 10.16. Paragraph 22(2)(b)

Paragraph 22(2)(b) prohibits granting citizenship or taking the oath if a person has been convicted of an indictable offence or an offence under the *Citizenship Act* **between** the date of the application for citizenship **and** the date that the person would otherwise be granted citizenship or take the oath.

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### 10.17. Subsection 29(2)

Subsection 29(2) deals with circumstances that are considered offences under the *Citizenship Act*. It deals with: false representation, fraud or knowingly concealing pertinent information; using another person's certificate; permitting the use of one's own certificate; or trafficking in certificates. All of these offences are punishable by way of summary conviction. A person charged with or convicted of an offence under this subsection is subject to the prohibition outlined in section 22.

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### 10.18. Subsection 29(3)

Subsection 29(3) outlines the following offences under the *Citizenship Act*: unlawfully issuing, altering or counterfeiting a certificate, or using such a certificate. These offences are considered more serious and are punishable by indictment. A person charged with or convicted under this subsection is subject to the prohibition in section 22.

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### 10.19. Sentencing

Judges have two options when sentencing after there has been a guilty verdict: a discharge (absolute or conditional) or a conviction.

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### 10.20. Sentence: absolute discharge

Under an absolute discharge, the accused has been found guilty but the judge has discharged the accused absolutely, that is, there is no conviction and no probation.

**Section 22:** There is no effect on prohibitions.

**Section 21:** There is no effect on residence.

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### 10.21. Sentence: conditional discharge

Under a conditional discharge, the accused has been found guilty but the judge has discharged the accused under the conditions set out in a probation order. The probation order may or may not include a reporting condition.

If the offender fails to fulfil the conditions set out in the probation order or commits a new offence, the conditional discharge may be revoked, and the offender may be convicted of the original offence and charged with an additional offence of failure to comply with a probation order.

**Section 22:** There is no effect on prohibitions **unless the person is currently on probation**. A person cannot be granted or take the oath of citizenship while on probation.

**Section 21:** There is no effect on residence as the person has not been **convicted**. Unless the person has been charged and convicted with "breach of probation" or "failure to comply with probation order," the person is deemed to have successfully completed their probation period. Time spent on probation, where the conditional discharge was subsequently revoked, cannot be counted towards the residence requirement.

Some clients may tell you that their probation has been shortened. In most cases their reporting conditions have been eliminated, but the probation period was not shortened. The probation order

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must show a variance, signed by the judge who originally ordered the probation, in order to establish that the probationary period has been shortened.

Where the court documents have been requested and there is no indication that the condition has not been met, or when the RCMP conviction report demonstrates that the probationary period has passed, it is an indication that all conditions have been met and one proceeds with the application. Please ensure, however, that the RCMP conviction report is dated at least four weeks after the expiration of the probationary period. This is to ensure that the court has enough time to inform the RCMP, should the conditions not have been satisfactorily met.

Where the probationary term has only just expired, the applicant should provide confirmation that all conditions have been met. In cases where the conditions were not fully met and the discharge consequently revoked, confirmation of the conviction, related to the conditional discharge, is required.

All documentation related to the conditional discharge must be included in the judge's file for their consideration and then forwarded to CPC Sydney for file retention once the application process is completed.

### 10.22. Sentence: conviction

The accused has been found guilty and convicted.

A conviction may be accompanied by a:

**Fine** – A fine should not be confused with restitution. Restitution is paying for the cost of replacing a broken window, for example. A fine is the imposition of a monetary payment as punishment;

**Sentence of imprisonment** – A sentence of imprisonment may be imposed intermittently. An **intermittent** sentence is served non-continuously, normally just on weekends, which allows a person to go to work during the week and serve their sentence on weekends. **A weekend = four days.** While on intermittent sentence, a person is generally also placed on probation for the entire period, that is, until the last day of time served. Reference to the probation order is required in order to verify whether the person is on probation while serving their intermittent sentence.

**Example:** A person is given 28 days imprisonment to be served intermittently. Thus the person is on probation for seven weeks, the time it takes to complete the intermittent sentence (serving weekends at four days per weekend). For the section 21 assessment, the officer must deduct all seven weeks, not just 7 X 4 days because the person is on probation between each time in jail.

A person who has been sentenced to 60 days intermittently, and placed on probation throughout the intermittent sentence plus two years afterwards, would have 15 weeks and two years subtracted from their residence;

**Imprisonment** – If there has been a continuous term of imprisonment, the term of probation starts when the term of imprisonment is completed;

**Suspended sentence** – A suspended sentence is an option where the judge suspends the sentencing of the accused and releases the offender under the conditions of a probation order. If the offender violates the conditions, probation may be revoked and the offender brought back before the court for sentencing for the original offence. The offender may also be charged with the additional offence of failure to comply. Any period of probation associated with a suspended sentence order cannot be counted as a period of residence;

**Conditional sentence order** – A conditional sentence order refers to a term of imprisonment that the offender serves in the community under the supervision of a probation officer. A conditional sentence order may be followed by a period of probation that starts **after** the sentence. Any time indicated as a conditional sentence cannot be counted as a period of residence. Any period of probation associated with a conditional sentence order cannot be



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counted as a period of residence. A violation of any of the conditions of the sentence may result in the imprisonment of the offender, for a part or the entire remainder of the conditional sentence.

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**Note:** Probation can be added to any one of the above.

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### 10.23. Key questions

When examining cases for citizenship, there are areas that must be examined in relation to prohibitions in order to assess prohibitions and properly counsel applicants for citizenship.

Some of the questions that must be answered are:

1. What was the court decision: a conviction or a discharge?
2. How did the courts proceed: summarily or by indictment?
3. What is the current situation: are there current charges; is the person currently on probation?
4. Does probation, parole, imprisonment, or time spent on a conditional sentence order affect the residence requirement?

These questions will be answered by examination and analysis of court documents.

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**Note:** A fifth question that is not discussed in detail in CP 6 is: If the applicant is ineligible for citizenship, either because they are prohibited or because they do not meet the section 21 residence requirement, on what date would the applicant be eligible?

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### 10.24. Discharge: absolute or conditional

There has been a finding of guilt but **no conviction registered** when the decision indicates an absolute or conditional discharge.

When the court documents indicate the decision is an **absolute discharge**, there is no need to further analyze the documents. **There is no prohibition.**

When the court documents indicate the decision is a **conditional discharge** there is no need to determine how the courts proceeded. **There is no prohibition under subsection 22(2) of the Citizenship Act.**

Since probation is always attached to a conditional discharge, Question #3 in section 10.23 must be answered: Is the person currently on probation? Paragraph 22(1)(a) prohibits a person who is **currently** on probation from being granted citizenship or taking the oath. A person who is currently on probation is **not** prohibited from applying for citizenship; however, at the time of grant or oath-taking they must have completed the probationary period.

A conditional discharge of an indictable offence has no effect on residence, if probation is completed successfully, nor is there a prohibition under section 22(2).

Where court documents have been requested and there is no indication that the condition has not been met, or when the RCMP conviction report demonstrates that the probationary period has passed, it is an indication that all conditions have been met and one proceeds with the application. **Please ensure, however, that the RCMP conviction report is dated at least four weeks after the expiration of the probationary period.** This is to ensure that the court has enough time to inform the RCMP, should the conditions not have been satisfactorily met.

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### 10.25. Conviction

There has been a finding of guilt **and a conviction registered** when the decision indicates either:

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- Fine;
- Sentence;
- Suspended sentence;
- Conditional sentence order; or
- Imprisonment.

When it has been established that the offence is a conviction, Questions #2, #3 and #4 in section 10.23 must be answered.

### **How did the courts proceed: summarily or by indictment?**

If the court documents indicate that the charge was dealt with by indictment, then the person is prohibited from taking the oath or being granted citizenship for three years after the date of conviction as outlined in paragraph 22(2)(a) of the *Citizenship Act*.

If the court documents indicate that the charge was dealt with by summary conviction there is no prohibition. The only exception is a conviction under subsection 29(2) of the *Citizenship Act* which also results in a prohibition for three years from the date of conviction.

### **What is the current situation?**

A person who is currently on probation, on parole, imprisoned or on a conditional sentence order is prohibited under paragraph 22(1)(a) and cannot be granted citizenship or take the oath.

A person currently charged with an indictable or a hybrid offence is prohibited under paragraph 22(1)(b) and cannot be granted citizenship or take the oath.

A person currently charged with a summary offence is not prohibited.

### **Has probation, parole, jail or time spent on a conditional sentence order affected residence?**

When the court decision indicates a conviction, any time spent on probation, as a paroled inmate, imprisoned, or on a conditional sentence order cannot be counted as a period of residence.

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**Note:** Section 21 is the section of the Act that provides for the disqualification of time counted towards the residence requirement. But, the requirement affected is paragraph 5(1)(c) - residence.

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## 11. Young offenders

### 11.1. Young offenders

Criminal checks for minors are the same as checks for adults. Process applications from minors, who may have a criminal record, the same way as applications from adults who may have a criminal record.

If you ask for a minor's fingerprints, use the standard letter generated by GCMS.

Send the letter by regular mail to the person who applied on behalf of the minor, usually a parent or guardian, or give the letter to the parent or minor, in person.

In cases where the applicant only has a conviction under the *Youth Criminal Justice Act* and received a youth sentence, or only has a conviction under the previous *Young Offenders Act*, or is under 18 years of age, the RCMP forwards the results of the fingerprint check ("No Record" stamp on fingerprint or criminal conviction report) directly to the applicant and not to the local office. In cases where the RCMP state that they have actioned the request but no results from the

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fingerprint check have been received, a citizenship official will have to contact the applicant or the applicant's parent to find out if they have received the results of the fingerprint check directly from the RCMP.

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**Note:** There is no age restriction on prohibitions under the *Citizenship Act*. While criminal and security checks are initiated electronically only if an applicant for citizenship is 15.5 years or older, fingerprints or court documents may be requested from applicants under that age by a citizenship officer if the officer becomes aware of information (NCB in FOSS, third party information client declaration) that indicates a client may be prohibited from acquiring citizenship.

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### 11.2. Special provision of the *Youth Criminal Justice Act* (or the previous *Young Offenders Act*)

The *Youth Criminal Justice Act* states that once a convicted young offender receives and completes a youth sentence, the conviction no longer has effect. The same applies for a young offender convicted under the previous *Young Offenders Act*.

This means that if the minor has **not** completed his or her sentence when applying for citizenship, the prohibitions from being granted citizenship or taking the oath apply.

If the young offender has completed his or her sentence before applying for citizenship, the prohibitions of the *Citizenship Act* do not apply.

Young offenders convicted under the *Youth Criminal Justice Act* who receive an adult sentence must be treated the same as adults with criminal records.

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### 11.3. RCMP conviction report

The RCMP conviction report includes "Youth Court" in its first column to show a conviction under the *Youth Criminal Justice Act* (or the previous *Young Offenders Act*).

A court record should state that a conviction was under the *Youth Criminal Justice Act* (or the previous *Young Offenders Act*).

If the RCMP conviction report or the court record indicate that the minor was tried in Youth Court under the *Criminal Code of Canada*, and not under the *Youth Criminal Justice Act* (or the previous *Young Offenders Act*), the minor may be prohibited. The minor may also be prohibited if he or she received an adult sentence and was convicted under the *Youth Criminal Justice Act*.

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### 11.4. Requesting court documents

The applicant is to be asked whether they have any objections to submitting the local record in the following situations:

- The RCMP conviction report indicates that there is a charge, conviction or sentence that could have an impact on the applicant's eligibility for citizenship;
- The 5(2)(a) applicant has made a declaration on his or her application form that would indicate that the applicant might be prohibited from acquiring citizenship;
- The applicant divulges at any time, between the date of filing and the date that they would otherwise be granted citizenship or take the oath, that he or she has been charged with a crime, or has a pending court case, or has been convicted of a crime.

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### 11.5. If the applicant submits court documents

Should the applicant submit the local record, the application is to be processed and the content of the local record taken into consideration at the time of hearing for 5(1) applications, or at the time of granting and of the oath for 5(1) and 5(2)(a) applications; notwithstanding the fact that the

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RCMP may have informed Citizenship that they have no record of the applicant affecting their citizenship.

### 11.6. If the applicant does not submit court documents

Should the applicant not want to submit the local record, the case is to be referred to Case Management Branch with a covering memorandum. The program officer will review these on a case-by-case basis and inform the appropriate local CIC of further action to be taken.

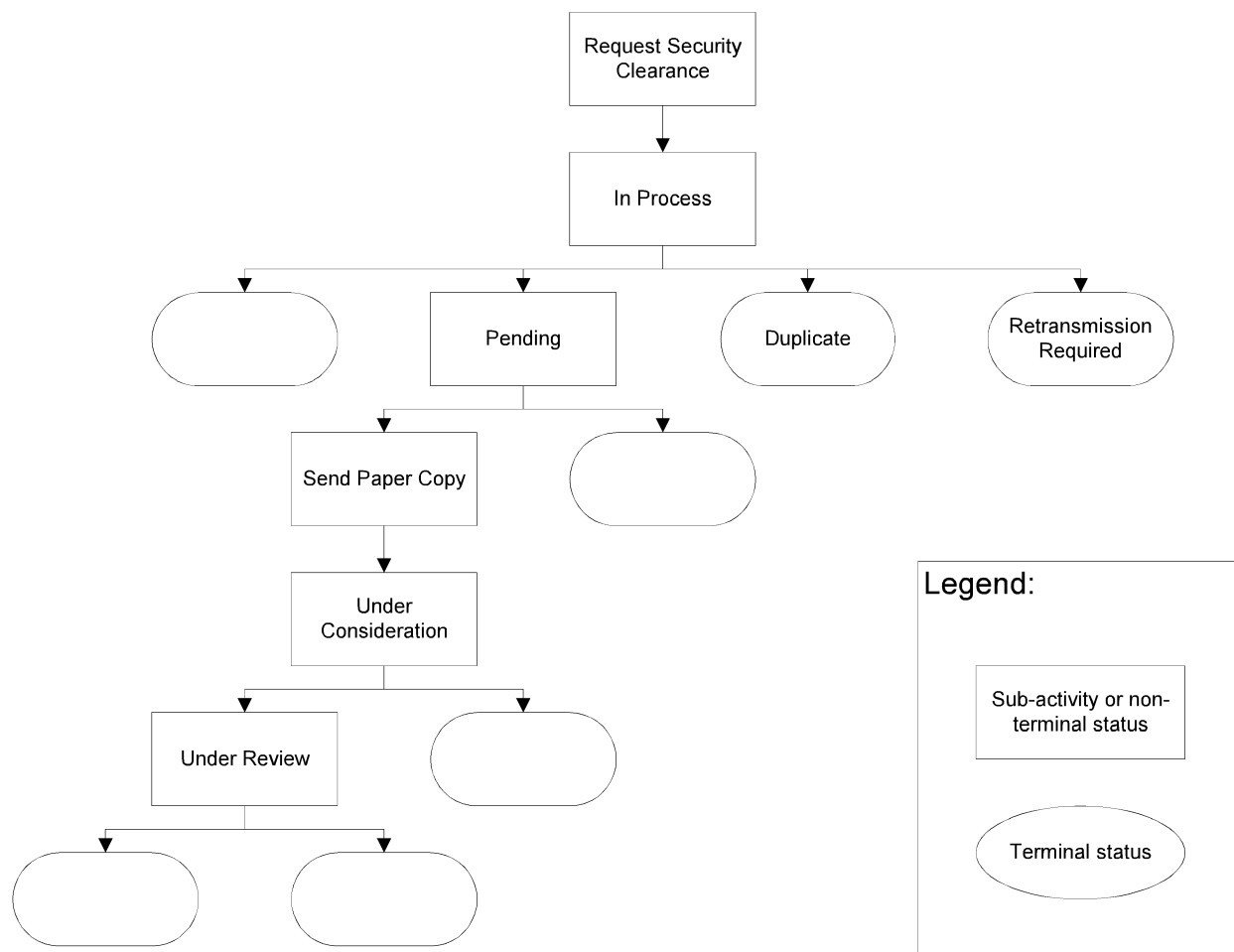
Applicants who received an adult sentence or who were tried in an adult court, and who applied under 5(1) and do not want to submit the local record can be scheduled for a hearing with a citizenship judge.

### 11.7. Refer questions about young offenders to Case Management Branch

Questions about dispositions, the *Youth Criminal Justice Act* (or the previous *Young Offenders Act*), or procedures to follow for prohibited minors are referred to the Case Review Unit, Case Management Branch.

## 12. Security clearance

### 12.1. Security clearance flow in GCMS



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### 12.2. CSIS clearance sub-activities and status

**Note:** The spelling of activities, sub-activities and status appear below as they appear in GCMS.

Sub-activity	Status	Description
Request Security Clearance	Not Required	GCMS default for grant applicants under 15.5 years of age. This value indicates that the security clearance is not applicable to the case type.
Request Security Clearance	Not Started	GCMS default when activity is created. No action has been taken.
Request Security Clearance	CRI Conversion	This value indicates the clearance was processed prior to CRS. This means that the clearance could have been or any step in between. If the case is still active, the "Request Security Clearance" sub-activity must be redone.
Request Security Clearance	Batch Sent	This status exists only for converted cases. The "Request Security Clearance" sub-activity must be redone.
Request Security Clearance		This status can only be selected by Case Management Branch. This means that the client cannot acquire citizenship as the client is the subject of a declaration under section 20 of the <i>Citizenship Act</i> .
Request Security Clearance		This status can only be entered by the system (based on an electronic response from CSIS) or Case Management Branch. This means that the security check revealed no adverse information and the citizenship application can continue to be processed. This status sets the security clearance expiry date on the case from the date the CSIS response was received.  <b>Note:</b> This is the only security clearance status where the effective date should be input manually. The effective date should reflect the date the clearance was obtained and not the date the clearance was entered.
Request Security Clearance	Pending	The clearance request is currently being processed by CSIS. This indicates that CSIS cannot provide a clearance based on the initial electronic request and that a manual verification by a CSIS officer is required.  If the clearance request remains at "Pending" for more than <b>eight weeks</b> , an e-mail should be sent to Case Management Branch requesting the status of the CSIS clearance review.

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Sub-activity	Status	Description
Request Security Clearance	Retransmission Required	<p>There was an error during the transmission.</p> <p>The following must be checked:</p> <ul style="list-style-type: none"> <li>• Residential address must be included. If there is no residential address in GCMS, add it;</li> <li>• Residential phone number must be listed. If a client provides only one telephone number, irrespective of the type, it must also be recorded as a phone number of type "Residence" and checked as the primary phone number;</li> <li>• The primary name record is the legal name and has a family name, date of birth, and country of birth (i.e., these fields are not blank). If necessary, create a new primary name record with the appropriate information. For any name records that lack information in one of these fields, change the name type to "Entered in Error";</li> <li>• All family names and given names, including aliases, start with a letter or quotation marks (i.e., " is acceptable; ' or « or » are not acceptable). Names must not start with a blank space;</li> <li>• All family names and given names, including aliases, only contain letters, spaces, dashes or quotation marks (i.e., " is acceptable, ' or « or » are not acceptable);</li> <li>• Dates of birth only contain numbers, front slashes and asterisks. Please note that the year of birth must be present.</li> <li>• The Country of Birth field is filled. "Unknown" cannot be selected for country of birth; If a place of birth is entered, it only contains letters, dashes and commas (i.e., no brackets, numbers, etc.).</li> </ul> <p>Once the corrections have been made, redo the initial Security Clearance Request. If the status returns to "Retransmission Required" or if none of the above apply, submit a problem report to the Help Desk.</p> <p>If the client does not have a given name, send an e-mail to Case Management Branch requesting a manual security clearance. A copy of the application and immigration document must also be sent by fax.</p>

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Sub-activity	Status	Description
Request Security Clearance	Under Consideration	<p>The local office selects this status when they send a copy of the application and the permanent residence record to CSIS. The case should be BF'd for <b>three months</b>.</p> <p>After <b>three months</b>, if the case has not received a status of ' ' or "Under Review," an e-mail should be sent to Case Management Branch requesting the status of the CSIS clearance. CMB will contact the local office if they require the physical file.</p>
Request Security Clearance	Under Review	<p>This case requires further review by CSIS.</p> <p>Requests for updates on status should only be sent to Case Management Branch if at least <b>six months</b> have passed since this status was created, or since the last update by CMB (check the case notes).</p>
Request Security Clearance	Cancelled	<p>This status is only to be used by Case Management Branch. This value indicates that the request has been terminated or was created in error. Entering this status will not permit a case to move forward.</p>

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Sub-activity	Status	Description
Request Security Clearance	In Process	<p>This status indicates that a security clearance request has been initiated. This is the status that must be manually selected when the initial security clearance request is redone. Please note that the effective date should not be input manually when redoing a clearance request.</p> <p>If the status remains "In Process" for longer than <b>five weeks</b>, the following must be checked:</p> <ul style="list-style-type: none"> <li>• A residential address must exist. If there is no residential address in GCMS, add it and redo the initial clearance request;</li> <li>• The primary name record is the legal name and includes a family name, date of birth, and country of birth (i.e., these fields are not blank). If necessary, create a new primary name record with the appropriate information and redo the initial clearance request. For any name records that lack information in one of these fields, change the name type to "Entered in Error" before redoing the clearance request.</li> </ul> <p>If the residential address exists in GCMS and the primary name record is complete and:</p> <p>the initial request was created <b>more than eight months</b> ago, the initial security clearance request should be redone.</p> <p>the initial request was created <b>within the last eight months</b>, submit a problem report to the Help Desk.</p>
Request Security Clearance	Expired	This is not to be used in any situation as this erases the previous status.



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Sub-activity	Status	Description
Request Security Clearance	Duplicate	Electronic response from CSIS indicating that the request has been cancelled or that this is a duplicate record.  If CSIS clearance still remains outstanding, submit a problem report to the Help Desk. If information is needed on why this status was returned by CSIS, contact Case Management Branch.
Request Security Clearance	Please Send Paper	CSIS is requesting a copy of the client's application and permanent residence record. Once the appropriate documentation has been sent to CSIS, the status should be updated to "Under Consideration" by the local office.

### 12.3. Initial security check

All applicants for grant of citizenship, who are 16 years and older and all renunciation applicants require a security clearance from the Canadian Security Intelligence Service. Security clearances are requested for all grant applicants who are 15.5 years and older in order to accomplish this. This clearance is provided through an electronic exchange of information between CIC's electronic system (GCMS) and CSIS' own electronic systems.

### 12.4. Follow-up by local citizenship offices

Local citizenship offices should regularly check for cases (either through the operational reports or through a query on activities) that have a security clearance with the status:

- "Please Send Paper";
- "Under Consideration" for more than three months;
- "In Process" for longer than five weeks;
- "Pending" for longer than eight weeks;
- "Under Review" for longer than six months, and it has been at least six months since the last update by Case Management Branch.

### 12.5. Follow-up by CPC Sydney

CPC Sydney is responsible for the same follow-up as local offices when the application is completely processed in CPC Sydney (i.e., renunciation applicants and 11(1.1) applicants who reside outside Canada).

CPC Sydney is responsible for security clearances with the status of "Retransmission Required."

### 12.6. File referred to Case Management Branch

All security matters are handled by CMB. CMB will contact the local citizenship office if the physical file is required. When a case requires further review by CSIS (i.e., receives status "Under Review" in GCMS), CSIS will send a brief to CMB when the review is complete.

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If the brief from CSIS indicates

CMB will contact the responsible

CBSA Branch.

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### 13. Section 29 Investigations

Subsections 29(2) and 29(3) list the offences under the *Citizenship Act*. Paragraph 22(1)(b) prohibits a person who is charged with an offence under subsection 29(2) or 29(3) from being granted citizenship and from taking the oath. Subsection 22(2) prohibits a person from being granted citizenship and from taking the oath, if that person has been convicted of an offence under subsection 29(2) or 29(3) in the three years immediately prior to applying for citizenship, or between the date of application and the date that the person would otherwise have been granted citizenship or taken the oath.

Because offences under the *Citizenship Act* are federal in jurisdiction, only the RCMP may lay charges under subsections 29(2) and 29(3).

Case Management Branch decides which cases are forwarded to the RCMP for a section 29 investigation. Citizenship officers evaluate whether a referral for a section 29 investigation to Case Management Branch is warranted.

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#### 13.1. Offences under subsection 29(2) and 29(3)

Subsection 29(2) makes it an offence to:

- Make a false representation, commit fraud, or knowingly conceal any material circumstances, for the purpose of applying for citizenship (or for a citizenship certificate);
- Obtain or use a certificate to impersonate another person;
- Knowingly permit another person to use one's certificate for impersonation;
- Traffic in certificates or possess any certificate for the purpose of trafficking.

Subsection 29(3) makes it an offence to:

- Issue or alter a certificate without lawful authority;
- Counterfeit a certificate;
- Use, act on, or cause or attempt to cause a person to use/act on a certificate knowing it to have been unlawfully issued, altered or counterfeited.

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#### 13.2. Types of cases to refer to Case Management Branch before a decision

Refer cases to Case Management Branch before the application is sent to a citizenship judge for a hearing or decision when:

- The applicant may have defrauded the fingerprint process;
- The applicant may have used a fraudulent permanent residence or identity document;
- The applicant's action or lack of action may be a war crime or a crime against humanity;
- The applicant may have been involved in criminal activity outside Canada.

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### 13.3. Types of cases to refer after non-approval

Refer the following types of cases to Case Management Branch, for review and possible referral to the RCMP for investigation under section 29 of the *Citizenship Act*, if the application was non-approved and the applicant did not admit to prohibitions on the application form:

- Within the three year period immediately preceding the date of the application, the person was convicted of at least **one indictable** offence which, according to the *Criminal Code of Canada* or other legislation (e.g., *Controlled Drugs and Substances Act*), carries a **maximum** prison term of **five years or more**. (Please note that the person need not have actually been sentenced to a prison term of five years or more.);
- Within the three year period immediately preceding the date of the application, the person was convicted of at least **three indictable** offences—pattern of criminal activity;
- The person has been convicted of at least **three** offences, **indictable or summary**, and the sentence (or period of probation or prison term) for **at least one** of the convictions **affects residence** (pattern of criminal activity). Please note that the convictions need not fall within the relevant three year period immediately preceding the date of the application;
- Within the three year period immediately preceding the date of the application, the person has been convicted of **an offence under section 29** of the *Citizenship Act*.

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**Note:** The above information might also be of interest to CIC Immigration or the CBSA. See [section 8.3 - Information relevant to CIC Immigration or the CBSA](#).

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The following type of case should also be referred to Case Management Branch for a possible section 29 investigation after non-approval:

- Applicant declared few or no absences on the application and it is determined, through the Quality Assurance Program or through a residence evaluation, that the person was in fact, **absent from Canada for more days than indicated on the application form**. Note: do not refer files where, once unclaimed absences are accounted for, the applicant has less than a total of 100 days outside of Canada.

When an application is non-approved due to a prohibition under section 22 or because the applicant did not meet the residence requirement, an officer must review the case immediately to determine if an investigation under section 29 is warranted. In the case of non-approval, if a section 29 investigation is not warranted, the file is held at the local office for the 180-day waiting period. See [CP 8 - Appeals](#).

Where an officer determines that the case does warrant referral to Case Management Branch for investigation, the file is forwarded immediately. The policy of holding a non-approved application for 180 days does not apply in these cases, given the three year limitation on laying charges under section 29 of the *Citizenship Act*.

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**Note:** A file is not referred for a section 29 investigation on criminality if the applicant admitted to prohibitions on the application form.

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### 13.4. Types of cases to refer after approval or grant or oath

Information may come to light after an application has been approved, granted or after the applicant has taken the oath that, had it been known sooner, would have rendered the client ineligible for citizenship. See [section 7.10 – Adverse information received after immigration cleared](#) and [section 14 – Third party information received regarding an application for citizenship](#).

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If the information is received **after the approval but before the grant**, and the 60-day appeal period has **not** expired, it may be possible to appeal the decision. Consult with Case Management Branch.

If the information is received **after the approval but before the oath**, and the 60-day appeal period has expired, and the client is prohibited from being granted citizenship or taking the oath, the applicant must be advised in writing that he or she is prohibited from acquiring citizenship and that the file is being closed. See Appendix 4 for a sample letter.

Officers may also wish to consult Case Management Branch before any action is taken to determine the following:

- Should the judge's decision be appealed?
- Was the application granted in error?
- Are there grounds for a section 29 investigation?

If the information is received **after the oath of citizenship**, all the relevant information on file should be forwarded to Case Management Branch who will determine if revocation should be pursued.

### 13.5. How Case Management Branch handles file

The following table shows how Case Management Branch handles a file sent for a section 29 investigation.

If investigation is required	If no investigation is required
Case Management Branch refers the file to the RCMP.	Case Management Branch returns the file to CPC Sydney or the local citizenship office accordingly.
RCMP investigate.	
Case Management Branch keeps the file until RCMP finish investigating.  When RCMP finish investigating and all procedures are complete, Case Management Branch returns the file to CPC Sydney or to the local citizenship office accordingly.	

**Note:** If Case Management Branch must keep a file for more than six months after a non-approval letter is sent, the case officer is responsible for advising CPC Sydney that a refund is required.

## 14. Third party information received regarding an application for citizenship

### 14.1. Third party information

On occasion, unsolicited information with the potential to affect a citizenship application is forwarded to CIC by third parties.

It is the role of the citizenship officer to gather the necessary information before referring an application to a citizenship judge for a decision. Information gathering includes conducting the inquiries necessary to provide the decision maker with information concerning the credibility, relevance and possible value of any third party information.

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### 14.2. Including third party information on a client's file

All personal information received about a client is the client's information, even if information involves allegations that are found to be false. Any third party information received about an applicant must become part of his or her file.

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### 14.3. Disclosure of third party information and principles of fairness

Administrative law principles of fairness require that CIC disclose to applicants the existence of third party information which has the potential to affect their application. Such disclosure allows the applicant a chance to respond to allegations. However, an applicant who wishes to be informed about the specific details of third party information on the file should go through the process of making an access to personal information request. Possible release of information can then be assessed by Public Rights Administration (PRAD) against relevant privacy legislation, particularly where information may affect the safety of an individual, national security, or an ongoing criminal investigation.

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### 14.4. Information received by CPC Sydney

- When third party information is received at CPC Sydney, FOSS and GCMS are queried for the name of the person against whom the allegations are made.
- If the file is at CPC Sydney, the file, third party information, and a covering note explaining the circumstances surrounding receipt of the information are sent to the local office.
- If the file is at a local office, CPC Sydney sends the third party information to that office along with a covering note explaining the circumstances. A case note is added to GCMS by CPC Sydney indicating that third party information has been received.
- If the client is a Canadian citizen, but there is no active citizenship application, CPC Sydney determines if the letter contains sufficient information to permit further investigation. If so, the third party information and a covering note are sent to Case Management Branch. Case Management determines the appropriate follow-up. If the letter does not contain enough information to permit further investigation, the letter is kept on file at CPC Sydney for at least two years as per the *Privacy Act*.
- If the client has a FOSS record but has not applied for citizenship, CPC-S makes an entry in FOSS and creates the client (with client note) in GCMS, in case of a possible future citizenship application. The third party information is forwarded to the appropriate regional or local enforcement office for possible follow-up action.

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### 14.5. Information received at the Call Centre and other points of service

If "Tips" are received by phone, the Call Centre completes a "CTZ\_Tips" e-mail template and forwards it to the relevant office. Other points of service may also forward information directly to a local office by e-mail.

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### 14.6. Information received at local offices: No active application for citizenship

- If the client is a Canadian citizen, the third party information and a covering note are sent to Case Management Branch. Case Management determines the appropriate follow-up.
- If the client has a FOSS record but has not applied for citizenship, the local office makes an entry in FOSS and creates the client (with client note) in GCMS, in case of a possible future citizenship application. Depending on the nature of the referral, the third party information is

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forwarded to the appropriate local CIC immigration or CBSA office for possible follow-up action. A copy should be sent to CPC-S for possible attachment to a future application.

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### 14.7. Information received at local offices: Citizenship application is active

- The officer reviews information and makes a decision to follow up in these cases:
  - ◆ Where unreported absences or residence status in Canada is in question, the client is sent a residence questionnaire and informed that this questionnaire must be filled out because third party information concerning the issue of residence has been received. Details about the sender and specifics of the information should not be released to the client.
  - ◆ Officer determines if follow-up to gather more information is warranted. The officer has the discretion to request and verify additional documentation until satisfied that third party information is or is not substantiated.
- If after examination, the officer considers third party information to be **unsubstantiated**:
  - ◆ Information is kept on the file and a note (signed and dated) is added detailing the officer's inquiry. The name of the officer should be legible. Suggested wording: "The tip/information received on Client X, file number #, was examined to the extent possible and in my opinion cannot be substantiated at this time."
- If after examination, the officer considers third party information to be **substantiated**:
  - ◆ Information is kept on the file and a note (signed and dated) is added detailing the officer's inquiry. The name of the officer should be legible. Suggested wording: "The tip/information received on Client X, file number #, was examined to the extent possible and in my opinion can be substantiated at this time."
  - ◆ Case Management Branch is alerted and determines follow-up action (e.g., possible action under section 29 of the *Citizenship Act*).
- If action under section 29 of the *Act* is not taken, the file is put back into the appropriate processing stream along with documentation on the third party information and all corroborative information collected by the officer.

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### Appendix 1. GCMS Procedures for Problem Clearances

	Immigration	Criminal	Security
Processing times for initial request	24 hours	3 to 5 days	3 to 4 weeks
Processing times for QRC	3 to 4 weeks	N/A	N/A
Processing times for RCMP – where fingerprints are not a hit in any of their systems	N/A	3 to 6 months	N/A
Processing times for RCMP – where fingerprint identification number exists	N/A	3 to 6 months	N/A
If the initial request stays "In Process" longer than ...	If the initial request stays "In Process" longer than <b>48 hours</b> , the initial request should be redone. If the second request remains "In Process" longer than <b>48 hours</b> , a problem report should be submitted to the Help Desk.	If the initial request stays "In Process" longer than <b>2 weeks</b> , the initial request should be redone. If the second request remains "In Process" longer than <b>2 weeks</b> , a problem report should be submitted to the Help Desk.	<p>If the initial request stays "In Process" longer than <b>5 weeks</b>, check the following:</p> <ul style="list-style-type: none"> <li>Residential address must be listed. If there is no residential address in GCMS, add it and redo the initial clearance request.</li> <li>The primary name record is the legal name and has a family name, date of birth (DOB), and country of birth (i.e., these fields are not blank). If necessary, create a new primary name record with the appropriate information and redo the initial clearance request. For any name records that lack information in one of these fields, change the name type to "Entered in Error" before redoing the clearance request.</li> </ul> <p>If the residential address exists in GCMS and the primary name record is complete and:</p> <p>the initial request was created <b>more than eight months ago</b>, the initial security clearance request should be redone.</p> <p>the initial request was created <b>within the last eight months</b>, submit a problem report to the Help Desk.</p>

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<p>If the status is "Retransmission required"</p>	<p>Submit a problem report to the Help Desk.</p>	<p>Check that the primary name record is the legal name and includes a family name, date of birth, and country of birth (i.e., these fields are not blank). If necessary, create a new primary name record with the appropriate information, then redo initial request. For any name records that lack information in one of these fields, change the name type to "Entered in Error" before redoing the clearance request.</p> <p>If family name and DOB are not blank, submit a problem report to the Help Desk.</p> <p>If client has more than 3 family names or 5 given names, send an e-mail to CMB for a manual criminal clearance.</p>	<p>Check the following:</p> <ul style="list-style-type: none"> <li>• Residential address must be listed;</li> <li>• Residential phone number must be listed;</li> <li>• The primary name record is the legal name and has a family name, date of birth, and a country of birth (i.e. these fields are not blank). If necessary, create a new primary name record with the appropriate information. For any name records that lack information in one of those fields, change the name type to "Entered in Error";</li> <li>• All family names and given names, including aliases, start with a letter or quotation marks (i.e., " is acceptable but ' or « or » are not). Names must not start with a blank space;</li> <li>• All family names and given names, including aliases, only contain letters, spaces, dashes and quotation marks (i.e., " is acceptable but ' or « or » are not);</li> <li>• Dates of birth only contain numbers, front slashes and asterisks. Please note that the year of birth must be filled;</li> <li>• The Country of Birth field is filled and "Unknown" is not selected for country of birth;</li> <li>• If a place of birth is entered, it only contains letters, dashes and commas (i.e., no brackets, numbers, etc.).</li> </ul> <p>Once the corrections have been made, redo the initial Security Clearance Request. If the status returns to "Retransmission Required" or if none of the above apply, submit a problem report to the Help Desk.</p> <p>If the client does not have a given name, send an e-mail to CMB for a manual security clearance. A copy of the</p>



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		application and the immigration document must also be sent by fax.
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**Note:** Only GCMS superusers may submit a ticket or a problem report to the Help Desk regarding GCMS issues.

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### Appendix 2. Information Required When Contacting Case Management Branch

Send the request to: [NHQ-Citizenship-Case-Review@cic.gc.ca](mailto:NHQ-Citizenship-Case-Review@cic.gc.ca)

Situation	Information required in the e-mail
Urgent Clearances	<ul style="list-style-type: none"> <li>• Case ID, File # or UCI;</li> <li>• Family Name, Given Name;</li> <li>• All other known names except the certificate name (criminal clearance only);</li> <li>• DOB;</li> <li>• Sex (criminal clearance only);</li> <li>• IMM 1000 or IMM 5292 number (immigration clearance only);</li> <li>• Reason for requesting urgent clearance;</li> <li>• Subject line that indicates the reason for the request and the clearance type: Request for (FOSS, RCMP or CSIS) urgent clearance.</li> </ul>
Redoing security clearance within 8 months because of a new name or date of birth	<ul style="list-style-type: none"> <li>• Case ID, File # or UCI;</li> <li>• Family Name, Given Name;</li> <li>• DOB;</li> <li>• Subject line: Update CSIS because of new info.</li> </ul>
The same initial clearance sub-activity got created twice. One of the two clearance sub-activities is then passed, but the results won't roll up to the parent activity or generate an expiry date because the duplicate clearance activity is still outstanding	<ul style="list-style-type: none"> <li>• Case ID, File # or UCI;</li> <li>• Family Name, Given Name;</li> <li>• Subject line: (FOSS, RCMP or CSIS) Passed but won't roll up.</li> </ul>
Criminal clearance retransmission required because more than 3 family names or more than 5 given names	<ul style="list-style-type: none"> <li>• Case ID, File # or UCI;</li> <li>• Family Name, Given Name;</li> <li>• All other known names except the certificate name;</li> <li>• DOB;</li> <li>• Sex;</li> <li>• Subject line: RCMP clearance multiple names.</li> </ul>
All other situations: <ul style="list-style-type: none"> <li>• Security "Pending" over 8 weeks</li> <li>• Security "Under Consideration" over 3 months</li> <li>• Security "Under Review," and more than 6 months since last update</li> <li>• Client has no given name and security clearance requires retransmission**</li> </ul>	<ul style="list-style-type: none"> <li>• Case ID, File # or UCI;</li> <li>• Family Name, Given Name;</li> <li>• Descriptive subject line that also indicates the clearance type;</li> </ul> <p>** For this situation only: A copy of the application and the immigration document (IMM 1000 or Permanent Resident Card) must also be sent by fax to CMB, Attention "CLEARANCES (CSIS)"</p>

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### Appendix 3. Sample Fingerprint-Attachment Letter

#### ATTACHMENT TO REQUEST FOR FINGERPRINTS

Fingerprints must be taken by the RCMP, local police, or an accredited private fingerprint agency. Please contact the RCMP or local police for approved fingerprint agencies in your area.

#### When you go to have your fingerprints taken, you must bring along:

- The letter requesting your fingerprints so that your citizenship file number and the address of the citizenship office requesting your fingerprints are properly noted on the fingerprint form;
- Your proof of permanent resident status (Record of Landing (IMM 1000) or Permanent Resident Card);
- At least one other piece of valid identification that contains a photo and signature; and
- The appropriate fees.

#### Once your fingerprints have been taken:

- Return the fingerprints to the appropriate citizenship office by using the enclosed self-addressed envelope.

#### If your fingerprints are taken electronically (not by ink):

- If your fingerprints are taken by **Commissionaires Fingerprinting and Identification Services** (Commissionaires) or **Comnetix Inc** (International Fingerprinting Services Canada (IFSC)), you will have the option to have your fingerprints taken electronically instead of by ink. In this case, you do not have to return the fingerprint form to the citizenship office. Commissionaires and Comnetix (IFSC) will send the form directly to the RCMP and will advise the appropriate citizenship office that your fingerprints have been taken and forwarded to the RCMP
- Please make sure that you request and receive a paper copy of your fingerprints. Keep this document in a safe place until your citizenship application is finalized. Once a fingerprint check is done by the RCMP, it is valid for one year. If, for any reason, we need to redo that fingerprint check, the citizenship office will contact you and ask for your fingerprints again. You may, **at that time**, submit the paper copy you receive from Commissionaires or Comnetix (IFSC) to the citizenship office so that you do not have to go through the procedure again. **Please do not send a paper copy of your fingerprints to the citizenship office unless asked to do so.**
- Please note that fingerprints taken electronically will be processed faster than fingerprints taken by ink.

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### Appendix 4. Sample Letter for Refusal to Grant/Administer the Oath

**Note:** This letter is a sample letter that can be used when an application has been approved by a judge, but the client is prohibited from being granted citizenship or taking the oath.

Citizenship and Immigration Canada

Address

Date

#### REGISTERED MAIL

File: \_\_\_\_\_

Name and address

Dear (Client name):

I am writing to advise you that your application for Canadian citizenship filed on (date) has been refused for the following reason(s):

(Example) On June 5, 2006, you were convicted of Assault with a weapon CC 267(a), Carrying a concealed weapon CC 90(1) and Threatening death CC 264.1(1)(a). You were sentenced to three consecutive Conditional Sentences of 60 days each (for a total of 180 days) and three concurrent terms of probation of 12 months each (for a total of 12 months).

(Provide appropriate sections of the Act, for example)

Paragraph 22(1) of the *Citizenship Act* states:

“Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or take the oath of citizenship

- (a) while the person is, pursuant to any enactment in force in Canada,
  - (i) under a probation order,
  - (ii) a paroled inmate, or
  - (iii) confined in or is an inmate of any penitentiary, jail, reformatory or prison.”

Paragraph 22(2) of the *Citizenship Act* states:

“Notwithstanding anything in this Act, but subject to the *Criminal Records Act*, a person shall not be granted citizenship under section 5 or subsection 11(1) or take the oath of citizenship if,

- (a) during the three year period immediately preceding the date of the person’s application, or
- (b) during the period between the date of the person’s application and the date that the person would otherwise be granted citizenship or take the oath of citizenship,

the person has been convicted of an offence under subsection 29(2) or (3) or of an indictable offence under any Act of Parliament, other than an offence that is designated as a contravention under the *Contraventions Act*.”

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You are therefore prohibited under section 22 of the *Citizenship Act* from being granted citizenship (and/or from taking the oath).

You may make a new application for citizenship at any time. Before making another application, however, it is recommended that you review your situation carefully to determine whether or not it is likely that you can meet the legislative requirements for citizenship, including the residence in Canada requirement, that is, three out of four years immediately preceding the date of application.

Section 21 of the *Citizenship Act* states:

“Notwithstanding anything in the Act, no period may be counted as a period of residence for the purpose of this Act during which a person has been, pursuant to any enactment in force in Canada,

- (a) under a probation order;
- (b) a paroled inmate; or
- (c) confined in or been an inmate of any penitentiary, jail, reformatory or prison.”

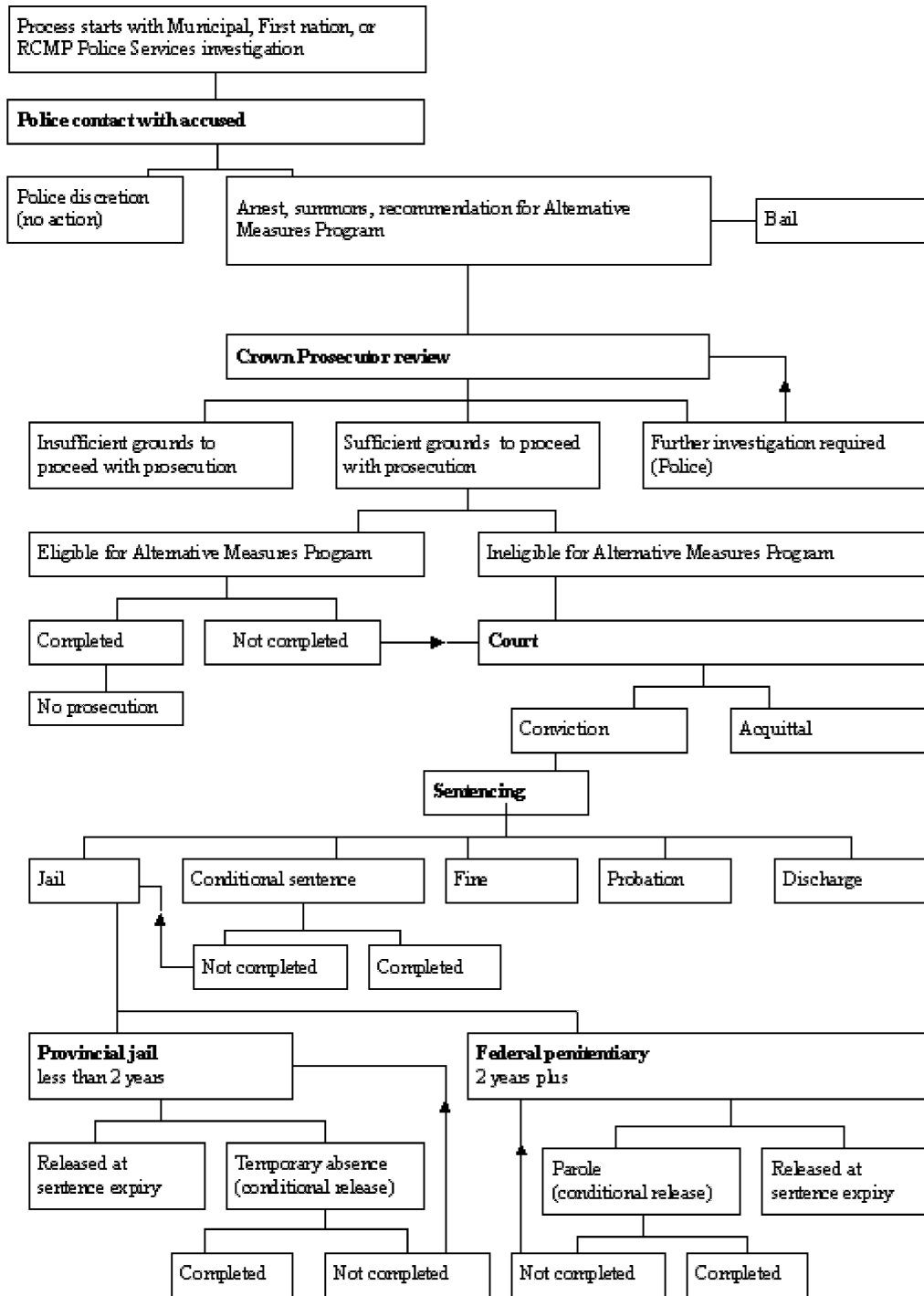
When you are ready to submit a new application, please go to our Web site at [www.cic.gc.ca](http://www.cic.gc.ca) or contact the Call Centre at 1-888-242-2100 to obtain the appropriate application form.

Yours truly,

Citizenship Officer

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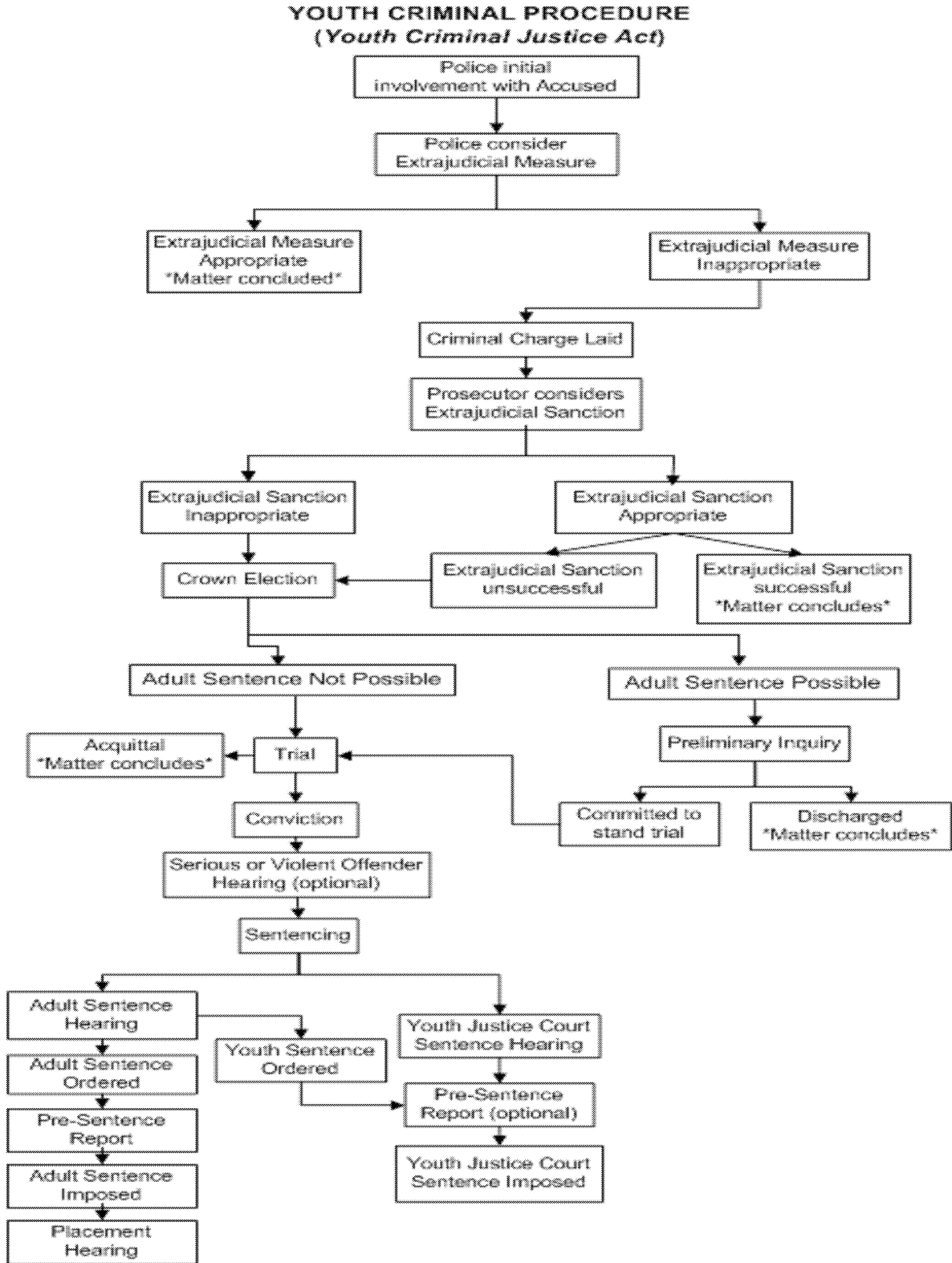
### Appendix 5. Criminal Justice Process: Adult



Source: [http://www.justice.gov.ab.ca/criminal\\_pros/process\\_adults.aspx](http://www.justice.gov.ab.ca/criminal_pros/process_adults.aspx)

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Appendix 6. Criminal Justice Process: Youth



Source: [http://www.justice.gov.ab.ca/criminal\\_pros/process\\_youth.aspx](http://www.justice.gov.ab.ca/criminal_pros/process_youth.aspx)

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### **ABSOLUTE DISCHARGE / ABSOLUTION INCONDITIONNELLE**

See Appendix 9 - Sentencing.

### **ACCUSED / ACCUSÉ**

The person charged with a crime or an offence. Also called the offender.

### **ACQUITTAL / ACQUITTEMENT**

A legal judgment that the accused is not guilty.

### **ADJOURNMENT / AJOURNEMENT**

The postponement of a court proceeding to a later date.

### **ARRAIGNMENT / INTERPELLATION**

Court proceeding where the charge is read to the accused, and the accused enters a plea of guilty or not guilty.

### **ARREST / ARRESTATION**

The act of detaining a person accused of committing a criminal offence and taking him or her into police custody.

### **ANY ENACTMENT IN FORCE IN CANADA / DISPOSITION LÉGISLATIVE EN VIGUEUR AU CANADA**

Any law, statute or regulation adopted by the federal parliament, a provincial or territorial legislature or a municipality.

### **APPEAL / APPEL**

A review of a case that has been previously tried in lower courts.

**BAIL / MISE EN LIBERTÉ SOUS CAUTION**

Described in the *Criminal Code* as "judicial interim release," a court order permitting the release from custody of an accused person pending trial, or of a convicted person pending appeal (decided at a bail hearing).

**BREACH OF PROBATION / MANQUEMENT AUX CONDITIONS DE LA PROBATION**

A violation of one's probation condition.

**CHARGE (OUTSTANDING) / ACCUSATION (EN SUSPENS)**

See [Appendix 8 - Charges and offences](#).

**COMMUNITY SENTENCE / SENTENCE COMMUNAUTAIRE**

See [Appendix 9 - Sentencing](#).

**COMMUNITY SERVICE / TRAVAIL COMMUNAUTAIRE**

See [Appendix 9 - Sentencing](#).

**CONCURRENT SENTENCES / PEINES CONCURRENTES**

See [Appendix 9 - Sentencing](#).

**CONDITIONAL DISCHARGE / ABSOLUTION SOUS CONDITION**

See [Appendix 9 - Sentencing](#).

**CONDITIONAL SENTENCE / ORDONNANCE DE SURSIS**

See [Appendix 9 - Sentencing](#).

**CONFINED IN / DÉTENU DANS**

To keep a person within a defined area, or to incarcerate or imprison a person. Refers to persons kept in prison, jail, etc. whether or not they are inmates (see wording of section 21 and paragraph 22(1)(a) of the Act).

**Use:** Any time spent in confinement, except when the charge for which confinement was imposed resulted in an acquittal, pardon or discharge, may not be calculated towards the residence requirement, nor can citizenship be granted or the oath of citizenship taken while in confinement.

**CONSECUTIVE SENTENCES / PEINES CONSÉCUTIVES**

See [Appendix 9 - Sentencing](#).

**CONVICTION / CONDAMNATION**

See [Appendix 8 - Charges and offences](#).

**COURT DOCUMENT / DOCUMENT DU TRIBUNAL, DOCUMENT DE LA COUR**

See [Local record](#).

**CRIME AGAINST HUMANITY / CRIME CONTRE L'HUMANITÉ**

As defined under subsection 4(3) of the *Crimes Against Humanity and War Crimes Act* which reads as follows:

“murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission”

**Use:** Paragraphs 22(1)(c) and (d) prohibit a person from being granted citizenship or from taking the oath of citizenship:

while being investigated by the Minister of Justice, the RCMP or CSIS; charged with on trial for convicted of any offence listed in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

The applicant is also subject to this prohibition when they or the Crown appealed the court’s decision and the appeal has not yet been heard, and also during any possible period where an appeal could be launched (i.e. 30 days after conviction or acquittal).

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**Note:** Paragraph 22(1)(d) prohibits a person **forever** from being granted citizenship or taking the oath if the person has been **convicted** of an offence under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

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**CRIMINAL CODE OF CANADA / CODE CRIMINEL DU CANADA**

A federal statute that defines crimes, maximum punishments, and legal procedures for dealing with those crimes.

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**Note:** When you are determining if a conviction record affects eligibility, check the *Criminal Code of Canada* in effect at the time of the applicant’s conviction.

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**“CRIMINAL CONVICTIONS AND RELATED INFORMATION” SHEET / FEUILLE DES « CONDAMNATIONS AU CRIMINEL ET RENSEIGNEMENTS CONNEXES »**

The “Criminal Convictions, Conditional and Absolute Discharges and Related Information – Summary of Police Information” Sheet contains a summary of what appears in the RCMP databases relating to criminal offences. Commonly referred to as the RCMP conviction report or the criminal convictions report.

**Use:** The local record is to be requested when information appearing on the RCMP conviction report indicates that a charge, conviction or sentence may have an impact on an applicant’s eligibility for citizenship. **The date of the offence will also be a determining factor.**

A copy of the RCMP conviction report is to be kept on the local CIC’s file for future reference and for comparison with an updated RCMP conviction report, where applicable. The new report sets the criminal clearance date.

Where the applicant had a favourable decision and the updated RCMP conviction report indicates a new offence, the local record is to be obtained, where applicable. When such document confirms that the applicant is subject to the citizenship prohibitions, an officer must send a letter informing the applicant that, notwithstanding the fact that the judge approved the application, that they are unable to become a Canadian citizen along with the reason. See Appendix 4 for a sample letter.

The RCMP conviction report is to be part of the material referred to the judge for consideration. Once the application process is completed (i.e., applicant becomes a citizen, application is abandoned or not approved) the original RCMP conviction report is also to be returned to CPC Sydney for file retention.

## **CRIMINAL RECORD CHECK / VÉRIFICATION DU CASIER JUDICIAIRE**

A procedure in which a police agency determines if a person has a criminal record. A criminal record check will reveal convictions, conditional discharges, peace bonds, and sentences, but it will not reveal offences under criminal investigation or where charges are pending. It may or may not reveal charges that have been pardoned.

## **CROWN ELECT (HYBRID OFFENCE) / INFRACTION MIXTE**

See [Appendix 8 - Charges and offences](#).

## **DISCHARGE / ABSOLUTION**

See [Appendix 9 - Sentencing](#).

## **DUAL OFFENCE/DUAL PROCEDURE (HYBRID OFFENCE) / INFRACTION MIXTE**

See [Appendix 8 - Charges and offences](#).

## **FAILURE TO COMPLY (BREACH OF PROBATION) / DÉFAUT DE SE CONFORMER (MANQUEMENT AUX CONDITIONS DE LA PROBATION)**

See [Appendix 9 - Sentencing](#).

## **FINE / AMENDE**

See [Appendix 9 - Sentencing](#).

## **HYBRID OFFENCE / INFRACTION MIXTE**

See [Appendix 8- Charges and offences](#).

## **IMPRISONMENT / EMPRISONNEMENT**

See [Appendix 9 - Sentencing](#).

## **INDICTABLE OFFENCE / ACTE CRIMINEL**

See [Appendix 8 - Charges and offences](#).

## **AN INFORMATION / UNE DÉNONCIATION**

A document that provides the details of the offence(s) charged. A copy is submitted to the applicant once the accused has been arraigned.

**Use:** The "information" document contains, in part, the name of the person being charged, the date the offence took place, the name of the city where the offence took place, and a description of the offence. The court's document indicates the mode of procedure (i.e., summarily or by indictment) the Crown elected to proceed. Once a trial has taken place, the bottom part of the court document indicates the results of the trial (i.e., found guilty, amount of fine, length of probation, etc.).

## **INMATE / DÉTENU**

A person who, having been sentenced or committed to an institution, has been received and accepted at an institution pursuant to the sentence or committal, and has not been lawfully discharged therefrom.

**Use:** Time spent as an inmate in institutions such as those mentioned in section 21 of the Act may not be calculated towards the residence requirement, nor may citizenship be granted or the

oath of citizenship taken while the applicant is an inmate of a penitentiary, jail, reformatory or prison.

### **INTERMITTENT SENTENCE / PEINE DISCONTINUE**

See [Appendix 9 - Sentencing](#).

### **JAIL / PRISON PROVINCIAL**

A provincial correctional or detention centre for persons convicted of a criminal offence and sentenced to imprisonment for two years less a day.

**Use:** Any time spent in a jail, except when the charge for which the imprisonment was imposed was pardoned, may not be calculated towards the residence requirement, nor may citizenship be granted, nor the oath of citizenship taken while a person is in jail.

### **JUDICIAL STAY / SUSPENSION JUDICIAIRE**

Many criminal charges brought against individuals are stayed because Charter rights have been breached. If the Crown does not seek to appeal the decision, then it is akin to an acquittal - for citizenship purposes.

### **KEEPING THE PEACE / ENGAGEMENT À NE PAS TROUBLER L'ORDRE PUBLIC**

A mandatory condition of a probation order.

### **LOCAL RECORD / DOSSIER LOCAL, DOCUMENT LOCAL**

A document from the provincial (or other) court confirming, in part, the name, date and place of birth of the person who committed the offence, the nature of the offence, date of judgement by the court, and the sentence.

**Use:** When the applicant divulges involvement with the police which is outside the prohibitions, the local record should not be requested unless the applicant becomes a fingerprint hit.

Should the local record be submitted at the time of application, a copy of same is to be kept on the local CIC's file.

Following receipt of an RCMP conviction report, where it is determined that the local record is required, the applicant is to obtain same (unless it is already on file).

Where the provincial or other court is unable to provide a local record to the applicant, they should provide them with a letter clearly stating this. The letter is also to contain, if possible, any relevant information pertaining to the offence.

Once the local record is received, please ensure that the document indicates whether the offence was dealt with summarily or by indictment.

Although a rare situation, should it be confirmed, either by the applicant or by the RCMP conviction report, that there has been a criminal conviction, but it is not clear whether such conviction is summary or indictable and no record exists at the provincial (or other) court or the local police (this should be documented), the information available ("information" document, court scheduling record, etc.) is to be requested and eventually provided to the judge who will make a determination on the basis of information. To determine the procedure of a charge (summary or indictable) one may have to consult a transcript of the proceedings.

If the applicant divulges involvement with the police, which may make the applicant ineligible for citizenship, or if a citizenship officer becomes aware of a charge or conviction that will make the applicant ineligible for citizenship, and the charge or conviction does not appear on the RCMP conviction report, the applicant should be requested to provide fingerprints (unless a set are already on file) and a copy of the applicable local record. The fingerprints or the RCMP conviction

report should be returned to the RCMP with a copy of the local record and a memo requesting an update of the fingerprint check.

### **OFFENCE / INFRACTION**

See Appendix 8 - Charges and offences.

### **OFFENDER / CONTREVENANT**

A person who has been convicted of a criminal offence. He or she may also be called the accused, the perpetrator, or the defendant.

### **PARDON / PARDON**

There are two types of pardons. The first and more common type is granted by the National Parole Board pursuant to the *Criminal Records Act*. The National Parole Board may grant a pardon to anyone who has served his or her sentence, has demonstrated good behaviour, and has not been charged with any other offences. Usually a waiting period of at least five years is required.

The second type is rare and called the Royal Prerogative of Mercy. It can be issued pursuant to section 748 or 748.1 of the *Criminal Code* by the Governor in Council.

**Use:** Any type two cases are to be transmitted to Case Management Branch who will then refer them to Legal Services as they are rare and can be either "free" or "conditional."

For type one cases, a pardon indicates that the person has satisfied the sentence imposed and subsequently shown, through responsible actions, to have successfully reintegrated into society.

The pardon may be revoked if the person is subsequently convicted of a further offence, or on evidence that the person is no longer of good conduct, or that the person knowingly made false or deceptive statements in relation to the pardon application.

The RCMP will forward a "Name search reveals no record which will affect citizenship" where their records indicate that the person was granted a pardon since all judicial records of a person who has been pardoned are ordered to be kept separate and apart from other criminal records, and are not to be disclosed to anyone without prior approval from the Solicitor General. Such approval is granted only when they are satisfied that it is in the interest of the administration of justice or related to the safety or security of Canada or a state allied with Canada.

Should the applicant inform Citizenship that he or she was granted a pardon and the RCMP have identified a possible record, fingerprints must nevertheless be requested and a copy of the pardon should be sent to the RCMP with the fingerprints.

Where the applicant submits proof of a pardon granted for an offence, for which information is contained in our records, such proof is to be forwarded under covering memorandum to the Chief, Records and Certificates Division in Sydney. They will ensure that an annotation concerning the pardon is indicated on the microfilm box, or that the offence records related to the pardon be destroyed, where the case file is still active.

### **PAROLE / LIBÉRATION CONDITIONNELLE**

Parole is a conditional release that allows an offender to serve part of their sentence in the community. The paroled person is under conditions designed to reduce risk and foster reintegration. The decision to grant an offender parole is made by a parole board. An offender who breaches their parole risks returning to custody (jail or prison).

**Use:** Any time spent under parole, except when the charge was pardoned, may not be calculated towards the residence requirement nor may citizenship be granted or the oath of citizenship taken while on parole.

**PAROLED INMATE, PAROLED OFFENDER / DÉTENU EN LIBÉRATION CONDITIONNELLE, CONTREVENANT EN LIBÉRATION CONDITIONNELLE**

A person to whom parole has been granted.

**Use:** A paroled inmate's sentence of imprisonment continues in force until its expiry even though they are permitted to serve part of it in the community. Such persons are considered inmates until the expiry of their sentence.

Any time spent as a paroled inmate may not be calculated towards the residence requirement, nor may citizenship be granted or the oath of citizenship taken while a paroled inmate.

**PEACE BOND / ENGAGEMENT À NE PAS TROUBLER L'ORDRE PUBLIC**

An amount of money pledged to ensure that a person keeps the peace, is of good behaviour and complies with other conditions set by a court with summary conviction jurisdiction, for any period not exceeding twelve months.

**PENITENTIARY / PÉNITENCIER, PRISON FÉDÉRAL**

An institution operated by Correctional Services of Canada (federal) for the custody of persons sentenced or committed to penitentiary (anyone sentenced to a term of imprisonment of two years or more).

**Use:** Any time spent in a penitentiary may not be calculated towards the residence requirement, nor may citizenship be granted or the oath of citizenship taken while in a penitentiary.

**PERIOD OF PROBATION / PÉRIODE DE PROBATION**

A term during which an offender is directed by the court to comply with the conditions that they "keep the peace and be of good behaviour" and any number of other conditions prescribed in the probation order.

A probation order ceases at the end of its term.

**PLEA / RÉPONSE À L'ACCUSATION**

The answer given by an accused when arraigned on a criminal offence - "guilty" or "not guilty."

**PRE-TRIAL CUSTODY / EMPRISONNEMENT AVANT LA TENUE DU PROCÈS**

The time between arrest and charge when the accused person is detained in custody prior to the disposition of the charge(s).

**Use:** Any time spent in jail may not be calculated towards the residence requirement nor may citizenship be granted or the oath of citizenship taken. This period of time, even if the person was later acquitted, is to be counted as time in custody for the purpose of calculating residence.

**PRISON / PRISON**

A custodial institution that may be municipal, provincial or federal.

**PROBATION, PROBATION ORDER / PROBATION, ORDONNANCE DE PROBATION**

See [Appendix 9 - Sentencing](#).

**QUASH / CASSER**

To annul, set aside or make void.

## RCMP CONVICTION REPORT / RAPPORT DE DÉCLARATION DE CULPABILITÉ DE LA GRC

See "Criminal Convictions and Related Information" Sheet.

### RECOGNIZANCE / ENGAGEMENT

An obligation undertaken before a magistrate by which an accused person is released, with or without a bond and/or sureties, to keep the peace and obey any other court instruction, such as to appear in court at a certain time.

### REFORMATORY / MAISON DE CORRECTION

A place of detention, usually a provincial institution.

**Use:** Any time spent in a reformatory may not be calculated towards the residence requirement, nor may citizenship be granted or the oath of citizenship taken while in a reformatory.

### RESTITUTION / RESTITUTION

See Appendix 9 - Sentencing.

### STAY OF PROCEEDINGS / SURSIS DE L'INSTANCE

A suspension of court proceedings.

**Use:** Where a notice to recommence the proceedings stayed is not given within one year after the entry of the stay of proceedings, the proceedings shall be deemed never to have been commenced.

A stay of proceedings is an outstanding charge **unless** a Crown agent confirms in writing that the Crown does not intend to take further proceedings against the applicant on the charge they face.

When the Crown has not made such a decision, please request that the applicant provide a local record confirming the method of prosecution (i.e., summary or indictable).

No matter what the method of prosecution, the application process is to be continued. In the case of an indictable method, the application should be not approved pursuant to paragraph 22(1)(b) of the Act.

The processing of the application can be resumed once the year is completed, and the RCMP conviction report may be returned to the RCMP for an update. If the proceedings were not recommenced, the RCMP conviction report will still show the stay of proceedings; if recommenced, a conviction, where one is obtained, will be indicated instead of the stay of proceedings.

### SUMMARY CONVICTION OFFENCE / INFRACTION PUNISSABLE PAR PROCÉDURE SOMMAIRE

See Appendix 8 - Charges and offences.

### SUSPENDED SENTENCE / CONDAMNATION AVEC SURSIS

See Appendix 9 - Sentencing.

### WAR CRIME / CRIME DE GUERRE

As defined under subsection 4(3) of the *Crimes Against Humanity and War Crimes Act* which reads as follows:

"an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional



international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.”

**Use:** A person is prohibited from being granted citizenship or from taking the oath of citizenship,

- while being investigated by the Minister of Justice, the RCMP or CSIS;
- charged with;
- on trial for; or
- convicted of

an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

The applicant is also subject to this prohibition when they or the Crown have appealed the court's decision and the appeal has not yet been heard. The prohibition is effective during any possible period where an appeal could be launched (i.e., 30 days after conviction or acquittal).

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**Note:** Paragraph 22(1)(d) prohibits a person **forever** from being granted citizenship or taking the oath if the person has been **convicted** of an offence under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

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## **WARRANT FOR ARREST / MANDAT D'ARRESTATION**

An order from a justice of the peace or judge, giving the police permission to arrest someone.

## **WEEKEND INCARCERATION / INCARCÉRATION LES FINS DE SEMAINE**

See [Appendix 9 - Sentencing](#).

## **YOUNG OFFENDERS ACT (YOA) / LOI SUR LES JEUNES CONTREVENANTS (LJC)**

### **1. Sections 21 and 22 of the *Citizenship Act* and the *YOA***

#### **a) Where the disposition under the *Young Offenders Act* is completed**

Subsection 36(1) of the *Young Offenders Act* indicates that a young person found guilty of an offence is deemed not to have been found guilty or convicted of the offence where all dispositions in respect of the offence have ceased to have effect. For citizenship purposes, this means that the young person is subject to any prohibitions up until the dispositions are completed. Once completed, however, the young person is not subject to the prohibitions pursuant to sections 21 and 22 of our Act. This effect is similar to that of a conditional discharge where the probation was satisfactorily completed. Note that in the case of a young offender, once the disposition period is completed, it is to be presumed that the dispositions were satisfactorily met.

#### **b) Where the disposition under the *Young Offenders Act* is not completed**

Where the disposition is not completed, the prohibitions apply as they would to an adult.

The case should be referred to the judge for 5(1) applications for which a hearing has not taken place. For a 5(1) with a favourable decision, where the applicant was put under a probation order subsequent to the hearing, and for a 5(2)(a), where the applicant is prohibited from being granted citizenship or taking the oath of citizenship, the applicant must be advised in writing that he or she is prohibited from being granted citizenship or taking the oath of citizenship. See Appendix 4 for a sample letter.

### **2. Questions which may be asked/Information which may be divulged**

Given that once the dispositions are completed the prohibitions do not apply, the information related to an offence becomes irrelevant for citizenship purposes. Certain questions on the application form are consequently irrelevant for minors. Where any of the remaining questions associated with prohibitions are answered in the affirmative, or where the applicant divulges at any time between the date of filing and the date that they would otherwise be granted citizenship or take the oath, the applicant is to be asked whether they have any objections to submitting the local record.

The reasons for asking the applicant for the local record relates to sections 40-46 of the *Young Offenders Act*. These specify in which circumstances and to whom youth records may be made available. The Registrar is not designated as a person entitled to obtain such records. While we are entitled to ask the above questions, we are not entitled to youth records from the appropriate authorities (provincial and youth courts, police agencies, crown agent, etc.), nor to the disclosure by the RCMP of a record or possibility of a record for which the person was tried in a youth court. We are, however, entitled to be given access to records where the minor was tried in an adult court.

#### **Local record submitted**

Should the applicant submit the local record, the application is to be processed and the content of the local record taken into consideration at the time of hearing for 5(1) applications, or at the time of granting and of the oath for 5(1) and 5(2)(a) applications, notwithstanding the fact that the RCMP may have informed Citizenship that they have no record of the applicant which will affect citizenship.

#### **Local record not submitted**

Should the applicant not want to submit the local record, the case is to be referred to Case Management Branch under covering memorandum. The program officer will review these on a case-by-case basis and inform the appropriate local CIC of further action to be taken.

#### **YOUNG PERSON / ADOLESCENT**

Subsection 2(1) of the *Youth Criminal Justice Act* defines "young person" as "a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act."

#### **YOUTH CRIMINAL JUSTICE ACT (YCJA) / LOI SUR LE SYSTÈME DE JUSTICE PÉNALE POUR LES ADOLESCENTS (LSJPA)**

##### **1. Sections 21 and 22 of the Citizenship Act and the YCJA**

###### **a) Where the young offender received a youth sentence**

Subsection 82(1) of the *Youth Criminal Justice Act* indicates that a young person found guilty of an offence and who received a youth sentence is deemed not to have been found guilty or convicted of the offence where all dispositions in respect of the offence have ceased to have effect. For citizenship purposes, this means that the young person is subject to any prohibitions up until the dispositions are completed. Once completed, however, the young person is not subject to the prohibitions pursuant to sections 21 and 22 of our Act. This effect is similar to that of a conditional discharge where the probation was satisfactorily completed. Note that in the case of a young offender, once the disposition period is completed, it is to be presumed that the dispositions were satisfactorily met.

###### **b) Where the young offender received an adult sentence**

Where the young offender was convicted under the *Youth Criminal Justice Act* and received an adult sentence, the prohibitions apply as they would to an adult. Follow the same procedures as you would for an adult applicant, if the young offender applied under 5(1). If the young offender applied under 5(2)(a) and is prohibited from being granted citizenship or taking the oath of citizenship, the applicant must be informed in writing that he or she is prohibited from being granted citizenship or taking the oath of citizenship. See Appendix 4 for a sample letter.

**c) Where the disposition under the YCJA is not completed**

Where the disposition is not completed, the prohibitions apply as they would to an adult.

The case should be referred to the judge for 5(1) applications for which a decision has not taken place. For a 5(1) with a favourable decision, where the applicant was put under a probation order subsequent to the approval/grant, and for a 5(2)(a), where the applicant is prohibited from being granted citizenship or taking the oath of citizenship, the applicant must be advised in writing that he or she is prohibited from being granted citizenship or taking the oath of citizenship. See Appendix 4 for a sample letter.

**2. Questions which may be asked/Information which may be divulged**

Given that for a youth sentence, once the dispositions are completed, the prohibitions do not apply, information related to an offence becomes irrelevant for citizenship purposes. Certain questions on the application form are consequently irrelevant for minors. Where any of the remaining questions associated with prohibitions are answered in the affirmative, or where the applicant divulges at any time between the date of filing and the date that they would otherwise be granted citizenship or take the oath of citizenship, the applicant is to be asked whether they have any objections to submitting the local record.

The reasons for asking the applicant for the local record relates to sections 118 to 129 of the *Youth Criminal Justice Act*. They specify in which circumstances and to whom youth records may be made available. Up until the Registrar is designated as a person entitled to obtain such records, while we are entitled to ask the above questions, we are not entitled to youth records from the appropriate authorities (provincial and youth courts, police agencies, crown agent, etc.) nor to the disclosure by the RCMP of a record or possibility of a record for which the person was tried in a youth court and received a youth sentence. We are, however, entitled to be given access to records where the minor received an adult sentence or was tried in an adult court.

**Local record submitted**

Should the applicant submit the local record, the application is to be processed and the content of the local record taken into consideration at the time of hearing for 5(1) applications, or at the time of granting and of the oath for 5(1) and 5(2)(a) applications, notwithstanding the fact that the RCMP may have informed us that they have no record of the applicant which will affect citizenship.

**Local record not submitted**

Should the applicant not want to submit the local record, the case is to be referred to Case Management Branch under covering memorandum. The program officer will review these on a case-by-case basis and inform the appropriate local CIC of further action to be taken.

Applicants who received an adult sentence or who were tried in an adult court, who applied under 5(1), and who do not want to submit the local record can be scheduled for a hearing with a citizenship judge.

**Appendix 8. Charges and Offences**

**Charge (outstanding) / Accusation (en suspens)**

A formal accusation that a person has committed a specific offence/crime.

An accused is officially charged with an offence when the police officer appears before a Justice of the Peace (J.P.), recounts what was told to them or what they observed and swears to their belief in, or the truth of that account. Where the account is factually sufficient, the J.P. will produce an "information," the formal document charging the accused with an offence which remains outstanding until there has been a final outcome (sentence, stay, acquittal, etc.).

**Use:** When informed by the applicant of a "current outstanding charge," the nature, date and place of the charge as well as the date and place of the upcoming trial are to be obtained. The applicant may be able to provide this information since they may have a copy of the "information" document in their possession. The applicant is then to be made aware of the wording of paragraph 22(1)(b), where necessary.

If the appropriate section of the *Criminal Code* or the "information" document indicates that the offence can only be processed summarily, the application process is to be continued, since the Act prohibits the grant of citizenship or the taking of the oath of citizenship to a person charged with an indictable offence only, not with a summary offence, except for section 29 of the *Citizenship Act*. The case, however, has to be closely monitored to confirm if there is a sentence at the time of decision or oath as the applicant might then be subject to paragraph 22(1)(a) of the Act.

When the appropriate section of the *Criminal Code* or the applicant provides documentation which confirms that the offence is hybrid or can only be processed by indictment, the application process is to be continued. This means that the application is not to be held until the charge is resolved but rather submitted to the judge for consideration. At the time of hearing, the judge should not approve the application pursuant to paragraph 22(1)(b) of the Act since the applicant is prohibited from being granted citizenship or taking the oath of citizenship while charged with an indictable offence (and a hybrid offence is considered an indictable offence until the conviction is registered). Especially for a hybrid offence, the case has to be closely monitored to confirm if there is a conviction and a sentence at the time of decision as this might have an impact on eligibility.

Where the charge relating to an indictable offence occurred after an approval but prior to the grant of citizenship or the taking of the oath of citizenship, the officer must send a letter to the applicant indicating that notwithstanding the judge's decision, a person may not be granted citizenship or, where such has been executed, he or she is prohibited from taking the oath of citizenship, whichever the case may be. See Appendix 4 for a sample letter.

### **Conviction / Condamnation**

A judgment by the court that the accused is guilty of the offence/crime.

### **Hybrid/Dual procedure/Dual offence/Crown Elect / Infraction mixte**

A criminal offence that can be prosecuted by a summary conviction or indictable offence. The decision is made by the Crown prosecutor, based on the seriousness of the offence and the time elapsed since the commission of the offence.

For citizenship purposes, until a conviction is registered, hybrid offences are considered indictable offences.

**Use:** Once the RCMP conviction report or an updated version of the same is received, and a verification in the *Criminal Code* or any other statute creating an offence demonstrates that the offence is hybrid, the local record is to be requested in order to identify whether the offence was proceeded summarily or by indictment.

If the charge has not yet been heard (still outstanding), consider the hybrid offence as an indictable offence.

### **Indictable offence / Acte criminel**

More serious types of offences that are established by the federal government. Some indictable offences carry maximum penalties up to life imprisonment, and several indictable offences have minimum jail terms. Most indictable offences give the accused the right to elect the mode of trial.

**Use:** Indictable offences are covered by Parts XVIII (18)\* and XIX (19)\* of the *Criminal Code*.

A person convicted of an indictable offence in the three (3) year period immediately before the date of application or between the date of application and the date they would otherwise take the oath of citizenship, is prohibited from being granted citizenship and from taking the oath of citizenship.

An approved application, where citizenship has been granted, is nullified by an indictable conviction where the conviction occurred during the period between the date of approval and the date the applicant would otherwise take the oath of citizenship.

In such cases, the officer sends a letter to the applicant stating that notwithstanding the judge's decision, a person is required to take the oath of citizenship in order to give effect to the grant of citizenship and that the applicant is prohibited from taking the oath of citizenship. See Appendix 4 for a sample letter.

\* These section numbers may have been different in the past and can change in the future.

### **Offence / Infraction**

A crime. A culpable breach of a law or an act, regulation, or by-law created by the federal parliament, a provincial or territorial legislation or municipality.

The main categories of criminal offences in Canada are *summary conviction offences* and *indictable offences*.

### **Summary conviction offence / Infraction punissable sur déclaration de culpabilité par voie de procédure sommaire**

A less serious offence that (unless otherwise stated) involves a maximum punishment of a fine of up to \$2000, a jail term of up to six months, or both. Summary offences are tried in provincial courts before a judge.

**Use:** A summary conviction is currently covered by Part XXVII (27)\* of the *Criminal Code*.

A person convicted of a summary conviction offence is not prohibited from being granted citizenship nor from taking the oath of citizenship except where the offence is pursuant to section 29 of the *Citizenship Act*. It is, however, important to establish whether the outcome of the summary conviction has an effect on the application (section 21 and subsection 22(1) of the Act). The outcome of or sentence for the offence will be indicated on the RCMP conviction report under the "Disposition" column.

\* This number may have been different in the past and can change in the future.

## Appendix 9. Sentencing

A sentence is the punishment imposed on an accused person who either pleads guilty to a charge, or who is found guilty of an offence/crime by the court. Sentencing options available to the courts include: absolute discharge, conditional discharge, probation, restitution, fines, community service, conditional sentence, intermittent imprisonment, imprisonment, long term offender designation and dangerous offender designation.

### **Absolute discharge / Absolution inconditionnelle**

Section 730 of the *Criminal Code* provides that any accused, other than a corporation, who pleads guilty or is found guilty of an offence, which is not punishable by a minimum term of imprisonment or a maximum term of fourteen years or life, may be discharged absolutely. If an accused is discharged absolutely, he or she is deemed not to have been convicted of the offence.

**Use:** Since there is no conviction and no probation order, an applicant who was granted an absolute discharge is not subject to sections 21 or 22 of the *Citizenship Act*.

### **Community sentence / Sentence communautaire**

Probation, conditional sentence, and parole are all forms of sentences served/supervised in the community – sometimes referred to as “community sentences.” Every community sentence includes a Supervision Plan established by a parole/probation officer. The plan is based on the conditions imposed by the court order as well as the offender's assessed needs and risk to re-offend.

### **Community service / Travail communautaire**

An order that the offender perform a certain number of hours of volunteer work in the community.

### **Concurrent sentences / Peines concurrentes**

Concurrent sentences are served simultaneously. This merged sentence is called an aggregate or combined sentence. For example, an offender who is sentenced to a term of 12 months and a term of 16 months concurrently, the aggregate sentence would be 16 months. Two terms of 12 months concurrent would result in an aggregate sentence of 12 months (not 24 months).

### **Conditional discharge / Absolution sous condition**

Where a court directs that an accused, who pleaded or was found guilty of an offence under any Act of Parliament, be discharged upon the conditions prescribed in a probation order, the accused shall be deemed not to have been convicted of the offence in question where such probation was successfully completed.

**Use:** When a person is discharged upon conditions prescribed in a probation order, the effect is the same as that of an absolute discharge **when the probation period is successfully completed.**

Where a person who was given a conditional discharge is convicted of an offence during the probation period, including the offence of willfully failing or refusing to comply with the probation order, a criminal court may revoke the discharge and convict the person of the offence to which the discharge relates. They may also impose any sentence that could have been imposed if that person had been convicted at the time of the discharge.

Time spent while on probation, where the conditional discharge was subsequently revoked, cannot be counted towards the residence requirement.

As there is no conviction attached to a conditional discharge where the probation period was successfully completed, the applicant is not subject to subsection 22(2) nor to section 21 of the

Act. Where the local record has been requested and there is no indication that the condition has not been met, or when the RCMP conviction report demonstrates that the probationary period has passed, it is an indication that all conditions have been met and one is to proceed with the application. **Please ensure, however, that the RCMP conviction report is dated at least four weeks after the expiration of the probationary period.** This is to ensure that the court has enough time to inform the RCMP should the conditions not have been satisfactorily met.

Applications are **not** to be delayed until the end of the probationary period. Where the probationary term has only just expired, confirmation whether all conditions have been met is to be obtained from the probation or parole officer, from the local authorities, or from the criminal court. In cases where the conditions were not fully met, and the discharge consequently revoked, confirmation of the conviction, related to the conditional discharge, is required.

All documentation related to the conditional discharge must be included in the judge's file for their consideration and forwarded to CPC Sydney for file retention once the application process is completed.

### **Conditional sentence / Ordonnance de sursis**

A sentence of imprisonment served in the community under conditions.

Where a person is convicted of an offence and the court imposes a sentence of less than two years imprisonment, the court may order that the sentence be served in the community, with certain conditions, instead of jail. All conditional sentence orders contain mandatory conditions. An offender serving a conditional sentence is released into the community and must comply with conditions ordered by the court for the specified period of time. The court must be confident that serving the sentence in the community will not endanger the safety of the public. The terms of conditional orders tend to be lengthy and restrictive. However, if the conditions are not met, the offender may be charged with a breach and ordered to serve the remainder of their sentence in jail.

**Use:** Any time served on a conditional sentence order cannot be counted as a period of residence. A person cannot be granted citizenship or take the oath during the period covered by the conditional sentence order.

### **Consecutive sentences / Peines consécutives**

Consecutive sentences run separately and begin one after the other. For example, an offender who is sentenced to two consecutive terms of 12 months each, would serve a 24-month sentence.

### **Discharge / Absolution**

The judge can "discharge" the accused of an offence, even after a finding of guilt, and no conviction will be registered. A discharge is available only if the offence carries no minimum penalty, has a maximum penalty of less than 14 years' imprisonment, is in the best interests of the offender, and is not contrary to the public interest.

### **Failure to comply - Breach of probation / Défaut de se conformer (manquement aux conditions de la probation)**

Failure to comply with any of the conditions of a court order (probation, recognizance, bond, undertaking) may result in the offender being charged with a breach of the court order in addition to the original offence.

### **Fine / Amende**

A financial penalty imposed by a court on a convicted accused.

A fine may be combined with another penalty, such as imprisonment or probation. Failing to pay the fine may lead to a civil judgment against the accused or a jail term. The judge cannot impose a fine, though, unless he or she is satisfied that the accused will be able to pay it.

**Use:** Subparagraph 22(1)(a)(iii) of the Act does not apply to a convicted person only because they have failed to pay a fine, even if it was imposed in lieu of spending time in jail. Subparagraph 22(1)(a)(iii) will not apply as long as that person is not in jail, because they may pay the fine at any time and avoid imprisonment. An application may not be kept in abeyance pending the payment of the fine.

### **Imprisonment / Incarcération**

Confinement in a jail/detention centre or prison/penitentiary.

An offender who is sentenced to less than two years serves the sentence in a provincial correctional centre. An offender sentenced to two years or more will serve the sentence in a federal penitentiary.

**Use:** Any time spent imprisoned, except when the charge which led to the imprisonment was subsequently pardoned, may not be calculated towards the residence requirement nor can citizenship be granted or the oath of citizenship taken while imprisoned.

### **Intermittent sentence / Peine discontinue**

An intermittent sentence of imprisonment up to 90 days may be ordered by the court. An intermittent sentence is served on specific days, usually weekends, and not consecutively. A probation order is mandatory when the offender is in the community. Example: An offender sentenced to an intermittent sentence could serve his or her time from Friday night to Monday morning (weekend sentence). If an offender re-offends/breaches probation while on an intermittent sentence, and is sentenced to a further term of imprisonment, the intermittent sentence is served on consecutive days like an ordinary sentence in addition to the new sentence imposed by the second trial judge.

**Use:** When serving an intermittent sentence, the offender is considered to be on probation for the entire period until the last day of time served. For example, 28 days jail to be served intermittently will take seven weekends (at four days per weekend). For the section 21 assessment, the officer must deduct all seven weeks, not just 7 X 4 days, because the person is on probation throughout the time they are serving their intermittent sentence. There may also be an additional period of probation following the probation that runs with the intermittent sentence.

### **Probation, Probation order / Probation, Ordonnance de probation**

Probation is a sentence that an offender serves in the community, for a specified length of time and with certain conditions. Probation may be imposed on its own, as a suspension of sentence, or in addition to other sentencing options. Probation cannot be longer than three years. All probation orders contain mandatory and other conditions imposed by the court. The mandatory conditions are:

- keep the peace and be of good behaviour;
- appear before the court when required to do so by the court; and
- notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

Offenders who break the conditions of their probation order may be charged with an additional offence of breach of probation. A breach of probation is punishable by a term of imprisonment of up to two years.



**Use:** Any time on probation, whether or not the applicant needs to report to a probation officer, may not be calculated towards the residence requirement (except where the person was under a probation order following a conditional discharge and the probation period was successfully completed). Nor may citizenship be granted or the oath of citizenship taken while on any kind of probation.

Although the Act is quite specific as to the consequences related to a person on a probation order, it does not prevent a person from applying for citizenship while on probation.

When assessing residence where probation is involved, the probationary period, other than on a conditional discharge, **is subtracted before dealing with the absences** (i.e., cannot be included when calculating basic residence). While a period of probation may not be counted towards the residence requirement, it does not break the continuity of an individual's residence in Canada.

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**Note:** Applications are **not** to be delayed until the end of the probationary period.

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### **Restitution / Restitution**

An order requiring the offender to compensate for injuries or to pay compensation for loss of, or damage to, property as a result of the offence.

### **Suspended sentence / Condamnation avec sursis**

The judge may choose to put off or suspend a sentence and release the offender on probation for a specified period of time. A person on probation with a suspended sentence remains out of custody but is under the supervision of a probation officer and must follow any conditions included in the probation order. Suspended sentences are available for many criminal offences if no minimum punishment is required by law.

**Use:** The applicant has been convicted of an offence; therefore, if the offence is within the prohibition period and is indictable, the application should not be approved pursuant to section 22 of the Act. There is always a probation order attached to a suspended sentence; therefore, the application may also be subject to non-approval pursuant to paragraph 5(1)(c), because of section 21 or subparagraph 22(1)(a)(i) of the Act.

### **Weekend incarceration / Incarcération de fin de semaine**

See Intermittent sentence.

## **Appendix 10. List of Abbreviations used in Court Documents**

T.T.P. : Time to Pay

P.G.O.B.C. : Possession of Goods Obtained by Crime i/d : In Default

R/C : Request of the Crown

T.A.P. : Temporary Absence Program

P.S.R. : Pre Sentence Report

WD/RC : WITHDRAWN - Request of the Crown

## Appendix 11. Citizenship applicants with hybrid (dual/crown elect) offences

### Operational Bulletin 186 – February 15, 2010

#### Issue

Due to a recent Federal Court decision, the manner of assessing prohibitions on citizenship applicants who are currently charged with a hybrid offence has changed.

#### Background

Currently, hybrid offences, offences where the Crown has the discretion to prosecute by way of indictment or by way of summary conviction procedures, are treated as indictable offences until a conviction is registered, even if the Crown elects to proceed summarily. This policy is stated in section 10.5 of CP 6 (Prohibitions) and is due to the Federal Court decision *Vithiyananthan v. Canada (A.G.)*, [2000] 3 F.C. 576 (T.D.).

Until recently, applicants facing outstanding hybrid charges were refused citizenship on the grounds that they were prohibited under paragraph 22(1)(b) of the *Citizenship Act*. However, in light of a recent decision by the Federal Court, this policy has now changed.

#### Context

In a recent Federal Court case, *Syed Ali Asghar Iqbal Ahmed v. M.C.I.* 2009 FC 672, the Court concluded that hybrid offences lose their indictable character once the Crown has made an election to proceed by summary conviction. This means that it would be inappropriate to apply a prohibition under paragraph 22(1)(b) of the *Citizenship Act* in cases where a client is currently charged with a hybrid offence and where the Crown has elected to proceed by summary conviction.

On the other hand, it is possible for the Crown to change its method of prosecution once a plea is entered by an accused. For example, an applicant could present documentation to CIC indicating that they have been charged with a hybrid offence and the Crown has chosen to proceed by summary conviction. However, it is possible for the Crown to have since changed its method of prosecution from summary to indictment. This creates a risk that an applicant could be granted citizenship when in fact they are prohibited under paragraph 22(1)(b) of the *Act*.

The opposite scenario is also possible: the Crown may have changed its method of prosecution from indictable to summary. That is, a client could present documentation indicating the Crown has elected to proceed by indictment, when in fact they have since chosen to proceed by summary conviction. The result is that a client could be mistakenly prohibited when in fact they could be granted citizenship.

#### New policy

When assessing prohibitions on citizenship applicants, hybrid offences must now be evaluated as either summary or indictable in nature, depending on the election of the Crown. In order to determine whether a hybrid offence will be deemed summary or indictable, local offices must request court documents from the applicant (see CP 6, section 9.17). Furthermore, because the nature of the offence can change (the Crown may change its election from summary to indictment or vice versa), local offices should ensure that they have up-to-date court documents throughout the process. This will help reduce the risk of clients being granted citizenship, when in fact they are prohibited under paragraph 22(1)(b) of the *Citizenship Act*. Conversely, obtaining recent court

documents also reduces the chance of an applicant being prohibited under paragraph 22(1)(b) when in fact this prohibition does not apply to them.

In some instances, the Crown may not have yet made its decision on whether to proceed by indictment or summary conviction. In these cases, the hybrid offence is deemed to be indictable until the Crown chooses to proceed by summary conviction. As a result, the local office must request court documents from the applicant in order to confirm that an election has not yet been made. Once the local office has confirmed that an election has not yet been made, the file should be sent to the citizenship judge for non-approval.

In all of the above scenarios, if the information in the court documents does not allow for prohibitions to be properly assessed, additional documentation may be sought from the client. If doubt still exists after additional documentation is provided, the application should be sent to the citizenship judge for non-approval.

**Note:** In contrast to the *Citizenship Act*, the *Immigration and Refugee Protection Act* deems all hybrid offences to be indictable. This Operational Bulletin applies to citizenship applicants only.

## Appendix 12. Urgent guidelines on processing criminal and security clearances

### Operational Bulletin 175 – December 29, 2009

#### Background

As part of the citizenship application process, most applicants must receive a valid criminal (RCMP) and security (CSIS) clearance. These urgent guidelines are to inform CIC staff of increased processing times for RCMP clearances and changes to the security clearance process.

#### Increased RCMP processing times for criminal clearances

The RCMP has confirmed that processing times for criminal clearances are currently in excess of **4 weeks**. This longer processing time is expected to continue until further notice.

Previously, local offices were instructed to redo (rework) the initial criminal clearance if it remained "In Process" for longer than 2 weeks (see CP 6, section 9.2). Due to the current backlog situation with the RCMP, reworking an initial criminal clearance after 2 weeks simply creates duplicate requests and unfortunately will not expedite the process.

In light of this current situation and in order to avoid creating duplicate requests, local offices are now instructed to wait at least **six weeks** before following-up on criminal clearances which remain "In Process". If the clearance result still remains outstanding after the six week period has passed, please submit a problem report to the IT HELPDESK NATIONAL. Local offices **must not** rework the clearance and should wait for a reply to the problem report sent to the Help Desk.

#### New security (CSIS) clearance procedures

On February 24, 2009, local offices were instructed by e-mail to stop sending notifications to Case Management Branch (CMB) regarding security clearance requests that had remained "Pending" for longer than 8 weeks.

Effective immediately, local offices can resume sending these notifications to CMB. However, this is limited to cases where the security clearance has remained "Pending" for longer than **12 weeks** (3 months). For more information, consult CP 6, section 12.

**Note:** The above procedures apply to regular cases only. Urgent processing of criminal and security clearances are the responsibility of the Case Management Branch (CMB). Requests for urgent processing of security and criminal clearances must be sent to the CMB mailbox at NHQ-Citizenship-Case-Review@cic.gc.ca (see Appendix 2 of CP 6, Prohibitions).

## **Appendix 13. Finalizing immigration clearances sent to the Query Response Centre (QRC)**

**Operational Bulletin 164 – November 18, 2009**

### **Background**

Adult grant, minor grant and resumption applicants go through an electronic immigration check to ensure an applicant meets the requirements for citizenship. This initial electronic immigration check is done through a FOSS/GCMS interface. The majority of grant applications are cleared at this initial stage. If the interface detects an issue, the case is referred to the Query Response Centre (QRC) for manual verification. In some situations, QRC refers the case to the local office for follow-up (See [section 7.5 of CP 6 Prohibitions](#)).

When an immigration clearance needs to be reworked, either because it has expired or because new information has come to light, the immigration clearance must be requested electronically. This may mean that an immigration clearance that was previously referred to a local CIC for follow-up and cleared (passed), will once again be referred to QRC.

### **QRC is responsible for the initial check if the FOSS/GCMS interface detects an issue**

Once a clearance has been referred to QRC, local office staff must wait for QRC to process the clearance before conducting a follow-up. Local offices must conform to this procedure even if the client's immigration clearance had previously been cleared by the local office.

Currently, some offices are clearing cases that have been referred to QRC. This is causing confusion and more work as QRC then needs to determine on what basis the immigration clearance was passed, in some cases requiring QRC to contact Operational Management and Coordination Branch or the local office in question.

### **Referral not always necessary when reworking immigration clearances**

Local offices sometimes need to rework immigration clearances where there is a known issue that will trigger a referral to QRC, for example, an [A44](#) report that was recently produced.

It is possible for QRC referral to be avoided in such cases. The local office can create the sub-activity of "Request Follow-Up" in GCMS. This removes any existing positive clearance status in the parent activity and also removes the clearance expiry date. If this method is used, a referral through the interface or to QRC will not be triggered. After proper evaluation, local offices are then able to pass or fail the immigration clearance.

### **QRC processing times**

QRC processing times are updated weekly on WebCart. For up-to-date processing times on immigration clearances, consult [http://cicwebcart/contact/cic/qrc\\_ont\\_e.htm#pt](http://cicwebcart/contact/cic/qrc_ont_e.htm#pt).

If no action has been taken on the clearance by QRC within the timeframe listed, a follow-up email may be sent to [Immigration-Clearances@cic.gc.ca](mailto:Immigration-Clearances@cic.gc.ca).

In all cases, local offices must not continue processing immigration clearances that have been sent to QRC and are pending action. Simply because an immigration clearance needs to be reworked does not mean it must be processed urgently. If urgent processing of an immigration clearance is required, the procedures below are to be followed.

## **Urgent immigration clearances**

If a case requires urgent processing, local offices may submit an urgent request to process immigration clearances directly to QRC. Such requests may be sent to the QRC mailbox at [Immigration-Clearances@cic.gc.ca](mailto:Immigration-Clearances@cic.gc.ca). Local offices must include "Urgent" in the subject field so that QRC can easily identify clearances that require urgent processing. In the message, the local office must also state the reason for requesting urgent processing of the clearance (see [section 10 of CP 13 Administration](#)).

QRC will endeavor to process requests for urgent clearances within **72** hours. However, the volume of these requests will be monitored by QRC and processing times may change.

*Note: Urgent processing of criminal and security clearances remain the responsibility of the Case Management Branch (CMB). Requests for urgent processing of security and criminal clearances must be sent to the CMB mailbox at [NHQ-Citizenship-Case-Review@cic.gc.ca](mailto:NHQ-Citizenship-Case-Review@cic.gc.ca) (see [Appendix 2 of CP 6 Prohibitions](#)).*