



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# CP 8

## Appeals

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## **CP 8 – Appeals**

### **Updates to chapter**

#### **Listing by date:**

**Date: 2009-04-08**

CP 8 has been completely revised and expanded. Previous versions of CP 8 should be discarded.

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### 1. Appeals

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#### 1.1. This section is about

This section is about the appeal of a citizenship judge's decision to the Federal Court for adult grant, retention, renunciation, and resumption applications.

When an appeal is allowed, the procedures described pertain to grant and resumption applications, since a citizenship officer must grant citizenship and the applicant must take the oath of citizenship to complete the process.

For retention and renunciation applications, the appeal process is similar, but the file is usually at Case Management Branch (CMB) at National Headquarters, or at the Case Processing Centre in Sydney (CPC Sydney). The last step of the process in these cases will be the issuance of a citizenship certificate or of a renunciation certificate, instead of the step to take the oath of citizenship.

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#### 1.2. Related topics

See [CP 5 - Residence](#) and [CP 7 - Waivers](#).

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#### 1.3. Authorities

##### ***Citizenship Act***

- Subsection 5(1)
  - Section 8
  - Subsection 9(1)
  - Subsection 11(1)
  - Section 14
  - Section 16
- 

#### 1.4. Applicant and Minister have the right to appeal

The Minister of Citizenship and Immigration and the applicant both have the right to appeal a citizenship judge's decision to the Federal Court.

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#### 1.5. Appeal at Federal Court

The Federal Court assesses the evidence reviewed by the citizenship judge and the citizenship judge's decision. It is not a trial *de novo*; that is, no new evidence is presented. The decision of the Federal Court is final and no further appeals are allowed.

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#### 1.6. Reasons for appeal

An applicant may appeal the citizenship judge's decision where the citizenship judge non-approved the application and the applicant believes the citizenship judge made an error in the decision or did not take all evidence into account. The most common reasons for applicant appeals are for applications non-approved on the basis of language, knowledge or residence.

The Minister may appeal the citizenship judge's decision where the citizenship judge approved the application and the Minister believes the citizenship judge made an error or did not correctly apply Federal Court jurisprudence.

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### 1.7. Time period to file an appeal

An appeal must be filed with the Federal Court:

- within 60 days of the date that the registered letter was mailed to the applicant informing him/her of the citizenship judge's decision to non-approve the application, in the case of an applicant appeal; OR
- within 60 days of the date of the citizenship judge's decision to approve the application, in the case of a Ministerial appeal.

In cases of Ministerial appeals, the 60 days are divided as follows:

- no more than 20 days for the citizenship officer to submit the request for appeal to Litigation Management (BCL);
- no more than 20 days for BCL to take a decision on whether to appeal;
- no more than 20 days for the Department of Justice (DOJ) to file and serve the appeal.

For detailed information and procedures on Ministerial appeals, see section 3.

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### 1.8. Once an appeal has been filed

The timeframe for production and delivery of the Certified Tribunal Record (CTR) starts on the day following the performance of a given action (for example, filing of a *Notice of Application / of Appeal*). When the last day of a timeframe falls on a Saturday or statutory holiday (Sundays and religious and civic holidays), the deadline is moved to the following working day. For example, a *Notice of Application / of Appeal* is **filed** on March 2. The timeframe is 20 days. It therefore starts on March 3 and ends on March 22. If March 22 falls on a Saturday, the deadline is moved to Monday, March 24.

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**Note:** Refusal letters **must** be sent to the applicant by registered mail.

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### 1.9. Appeal is not de novo

Since 1998, the appeal is not an appeal *de novo*. This means that only the evidence examined by the citizenship judge in rendering his decision is admissible in court. Evidence which was not examined by the judge, or which post-dates the decision, is not admissible.

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## 2. Applicant appeal

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### 2.1. This section is about

This section is about the process for an appeal filed by the applicant.

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### 2.2. Retention of the applicant's file at the local citizenship office

Keep the file for a non-approved applicant in the local CIC office until either:

- the citizenship judge receives a *Notice of Application / of Appeal*; OR
- 180 days have elapsed since the non-approval letter was mailed to the applicant by registered mail.

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### 2.3. Transmission of file to CPC Sydney, in absence of a filed appeal

If there is no appeal of a non-approval by the end of the 180-day period, send the applicant's file to CPC Sydney for file retirement and right of citizenship fee refund, if applicable. Attach a cover note or tag indicating the date the applicant was provided with the non-approval letter.

### 2.4. Procedure to prepare the Certified Tribunal Record (applicant appeals)

The Certified Tribunal Record (CTR) is a fundamental and required component of the citizenship appeal process at the Federal Court—care must therefore be taken in its preparation. Note that any inadvertent errors present in the CTR may generate serious and/or unforeseen consequences.

Step	Procedure
NOTICE OF APPLICATION / OF APPEAL	<p>The applicant files the <i>Notice of Application / of Appeal</i> in the Federal Court. The applicant then serves the notice on the Department of Justice. (The Federal Court occasionally assumes responsibility for serving the notice.)</p> <p>The Department of Justice then notifies CIC Litigation Management (BCL).</p> <p>BCL in turn informs the local CIC office. The local office ensures that the citizenship judge receives a copy of the <i>Notice of Application / of Appeal</i> for their records.</p>
PREPARATION AND CONTENT OF RECORD	<p>BCL helps the local CIC office prepare the CTR by means of instructions, where necessary, as follows (see Appendix E for sample e-mail from BCL, and Appendix A for information regarding documents that may need to be excluded from the CTR):</p> <p><b><u>Content of CTR</u></b> Please read <u>all</u> instructions before preparing and copying the CTR.</p> <p>The CTR <u>must</u> contain the documents listed below, in the following order:</p> <ul style="list-style-type: none"> <li>• a copy of the application, including a copy of all the documents submitted by the applicant.</li> <li>• a copy of the citizenship judge's decision form <i>Notice to the Minister of the Decision of the Citizenship Judge</i> (depending on the application—CIT 0053B, CIT 0054B, CIT 0055B, or CIT 0056B—and where applicable a copy of the Citizenship Application Review form (CARF) CIT 0065B).</li> <li>• a copy of the refusal letter <u>and</u> a copy of the Canada Post manifest, indicating the date the refusal letter was mailed to the applicant by registered mail. This is important as the 60 days begin the day the refusal letter was mailed to the client.</li> <li>• a copy of <u>all</u> other documents that the citizenship judge examined in order to render his/her decision. The rest of the documents in the CTR <b>must be in chronological order</b> (starting with the most recent document on top).</li> </ul> <p><b><u>Instructions on preparing the CTR</u></b></p>

- Do not mark or number any documents on the file. Instead, make a copy of all the documents in the file. This will serve as the “**master copy**” of the CTR.
- Sort the documents in this master copy. On top will be the cover letter, then the applicant’s citizenship application and supporting documents, the judge’s decision form, the refusal letter, the Canada Post manifest, then all the remaining documents in the file in chronological order.
- The master copy must include all material relevant to the assessment of the application for citizenship and to the non-approval by the citizenship judge (including electronic copies if relevant to the case as well as the physical contents of the applicant’s file).
- **The master copy must not include any material that post-dates the non-approval of citizenship by the citizenship judge.**
- **The master copy must not include the e-mail memorandum from BCL.**
- Review the master copy to ensure that you are not releasing any information that should not be disclosed. See Appendix A for guidelines, and consult with BCL. (The citizenship officer must consult with BCL before preparing the CTR if he/she is of the opinion that certain information should not be disclosed in the CTR.)

### **Before numbering the pages of the master copy of the CTR**

- Fully exempted pages of the CTR are to be photocopied **blank** (only the page number will be written in the upper right-hand corner of the blank page). The blank page must be inserted in the same place in the CTR where the exempted document would have been.
- For pages containing partial exemptions (where only parts of the page are to be exempted) the exempted protected portions must be whited-out. Ensure that the whited-out sections completely obscure the text, and place parentheses “()” at the beginning and end of the whited-out areas, to indicate that something was removed from the document in that space.
- Fully exempted pages, and partial exemptions, must be referred to in the certification cover letter, and **must** include the reasons for the objection to the release of the information as per Appendix A and/or instructions from BCL.

### **Page numbering of the master copy of the CTR**

- When the master copy of the CTR is completely ready, number the pages of the master copy in the upper right-hand corner of each page. The cover letter must be on top, and must not be numbered. Page one will be the client’s application. All other pages must be numbered, including any blank exempted pages. Care should be taken not to write too



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	<p>close to the corner of the page, since that part of the page could be cut off when the pages are photocopied.</p> <ul style="list-style-type: none"><li>• When the master copy of the CTR is ready, and has been numbered, make the required number of copies of the entire master copy. The number of copies to be made will depend on the applicant's request.</li><li>• Certify the copies of the CTR by binding all the pages together in a secure way, and having as the first page of the CTR the appropriate cover letter (Appendix B if <u>no</u> documents are excluded from the CTR; or Appendix C <u>or</u> the cover letter provided by BCL if there <u>are</u> documents to be excluded from the CTR).</li><li>• Keep the complete <b>original master copy</b> that was used to make the CTR copies in the applicant's file.</li></ul> <p>If the applicant so requests, within <b>20 days</b> of the date that the local CIC office received the copy of the <i>Notice of Application / of Appeal</i> from BCL, the local CIC office distributes certified copies of the complete CTR including the cover letter to:</p> <ul style="list-style-type: none"><li>• the Federal Court;</li><li>• the applicant, or the applicant's counsel;</li><li>• the Department of Justice, Litigation; AND</li><li>• Litigation Management (BCL).</li></ul> <p>Please note that the copy for Litigation Management (BCL) does not have to be certified.</p> <p><b>If the applicant makes no such request, the local CIC office sends only a copy of the CTR (not certified) to the Department of Justice, and to BCL.</b></p>
CASE NOTE IN GCMS	The local CIC office enters a case note indicating that the applicant has filed an appeal and noting the date the CTR was distributed.

**Note:** The local CIC office keeps the original record until the end of the appeal process.

### 2.5. Appeal heard

The Federal Court hears the appeal in the city closest to where the applicant resides. The applicant is notified in writing of the Federal Court decision. The decision is also communicated to the citizenship judge and the Minister. The Minister's notice is forwarded to the Litigation Management (BCL) analyst.

The BCL analyst enters a GCMS case note indicating the results of the appeal.

### 2.6. Appeal allowed – Federal Court judge substitutes his/her decision for that of the citizenship judge

In most cases, when the appeal is allowed, the Federal Court rules that the applicant meets the requirements of the Act and the citizenship application should be approved. The local CIC office ensures that the file contains valid clearances and a valid citizenship certificate. Citizenship may be granted by the Case Management officer or the local citizenship officer and the results entered in GCMS. The local CIC office schedules the applicant to take the oath of citizenship.

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### 2.7. Appeal allowed but Federal Court refers case back to a new citizenship judge for redetermination

The Federal Court may allow an appeal by the applicant, and remit the application back for consideration before a different citizenship judge. This generally happens when the Federal Court feels that the citizenship judge has made an error in assessing the application. This can also be done on consent of both parties (applicant and Minister's counsel).

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### 2.8. Appeal allowed but Federal Court refers case back to the original citizenship judge for redetermination

The Federal Court may allow an appeal by the applicant, and remit the application back for consideration before the original citizenship judge. This generally happens when the Federal Court feels that the citizenship judge has not given proper consideration to all the evidence in the tribunal record when making his/her decision. This can also be done on consent of both parties (applicant and Minister's counsel). If the original citizenship judge is no longer available, the case is referred to another citizenship judge and a Transfer of Jurisdiction form (CIT 1-0078B) must be completed.

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### 2.9. Appeal dismissed

When the Federal Court dismisses an appeal, the original non-approval decision of the citizenship judge stands. The local CIC office is notified and ensures that the file is closed and forwarded to CPC Sydney for file retirement. The right of citizenship fee is refunded, if applicable.

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### 2.10. Appeal dismissed but the Federal Court refers the case back to a new citizenship judge or to the Minister for reconsideration under subsections 5(3) or 5(4)

The Federal Court may dismiss an applicant or Minister's appeal but issue instructions to a new citizenship judge or to the Minister to reconsider a file and recommend a waiver under subsection 5(3) or a discretionary grant under subsection 5(4).

Where the new citizenship judge reviews the application but does not change the original decision, the applicant is notified in writing by the new citizenship judge that a waiver under subsection 5(3) or a discretionary grant under subsection 5(4) was not recommended and that the non-approval stands. This second decision could be the subject of a further appeal under subsection 14(5).

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### 2.11. Appeal dismissed but the Federal Court refers the case back to the original citizenship judge for reconsideration under subsections 5(3) or 5(4)

In cases where the Federal Court dismisses the applicant's appeal and returns the file back to the original citizenship judge for further consideration, upon receipt of the Federal Court decision the citizenship judge must reconsider the decision. After re-determination, the citizenship judge may or may not decide to change the original decision.

Where the citizenship judge reviews the application but does not change the original decision, the applicant is notified in writing by the citizenship judge that the application was reconsidered under subsections 5(3) and/or 5(4) and that the non-approval stands.

If the citizenship judge, after reviewing the file, makes a recommendation for a waiver under subsection 5(3) or a discretionary grant under subsection 5(4), Case Management Branch (CMB) is informed. A case analyst, as Minister's delegate, makes the decision for the waiver under subsection 5(3). The Director General of CMB, as Minister's delegate, writes a memorandum to the Minister regarding a recommendation for a discretionary grant under subsection 5(4) to the Governor in Council (GIC).

If the 5(3) waiver is approved by CMB:

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- CMB, as Minister's delegate, notifies the citizenship judge of the 5(3) approval;
- CMB returns the file to the local CIC office;
- the local CIC office ensures clearances are valid;
- the citizenship judge approves the application;
- the local CIC office grants the applicant, and schedules the applicant to take the oath.

If the 5(4) discretionary grant is approved by the GIC:

- the Director General of CMB, as Minister's delegate, ensures clearances are valid, and approves and grants the applicant under 5(4);
- CMB returns the file to the local office;
- the local CIC office schedules the applicant to take the oath.

If the citizenship judge, after reviewing the file, makes a recommendation for a waiver under subsection 5(3) or a discretionary grant under subsection 5(4) and CMB, as Minister's delegate, does not approve the waiver under subsection 5(3), or the Director General of CMB, as Minister's delegate, does not recommend a discretionary grant under subsection 5(4):

- CMB notifies the citizenship judge (and copies the Senior Citizenship Judge in the case of a waiver under subsection 5(3)) in writing;
- the written note to the judge will indicate that, notwithstanding the Federal Court's dismissal of the appeal and referral to the citizenship judge for a waiver or a discretionary grant, the Minister has not granted the waiver under subsection 5(3) or recommended a discretionary grant under subsection 5(4);
- the written note to the judge will provide reasons for the Minister's delegate's decision;
- the citizenship judge reviews the decision of the Minister's delegate regarding the 5(3) waiver, or the 5(4) discretionary grant;
- the citizenship judge non-approves the citizenship application;
- the citizenship judge sends a non-approval letter to the applicant notifying the applicant of the decision based on the written note of the Minister's delegate;
- the letter will provide the reason the 5(3) waiver was not granted, or the reason the Minister did not believe a recommendation to GIC was warranted for a 5(4) discretionary grant.

See [CP 7 – Waivers](#) for guidelines.

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### **2.12. Appeal dismissed but the Federal Court refers the case to the Minister for use of discretion under subsections 5(3) or 5(4)**

In cases where the Federal Court dismisses the applicant's appeal but refers the file to the Minister for use of discretion under subsections 5(3) or 5(4), the Minister must reconsider the decision and after a new determination may or may not decide to change the original decision. In these cases the file is reviewed by a case analyst in CMB for a 5(3) application and by the Director General of CMB for a 5(4) application, and not by a citizenship judge.

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If the Minister's delegate in CMB approves the subsection 5(3) waiver:

- the citizenship judge is notified in writing by CMB that the Minister's delegate has approved the waiver under subsection 5(3);
- CMB returns the file to the local CIC office;
- the local CIC office ensures clearances are valid;
- the citizenship judge approves the application;
- the local CIC office grants the applicant, and schedules the applicant to take the oath.

If the Governor in Council (GIC) directs the Minister to grant citizenship under subsection 5(4):

- the Director General of CMB, as Minister's delegate, ensures clearances are valid, and approves and grants the applicant under 5(4);
- CMB returns the file to the local CIC office;
- the local CIC office schedules the applicant to take the oath.

If the Minister's delegate at CMB does not approve the waiver under subsection 5(3):

- the Minister's delegate in CMB sends a letter to the citizenship judge notifying the judge of the reason the 5(3) waiver was not granted;
- CMB returns the file to the local CIC office;
- the citizenship judge non-approves the citizenship application;
- the citizenship judge sends a letter to the applicant notifying the applicant of the decision and the reason for the non-approval based on the written note of the Minister's delegate.

If the Minister's delegate at CMB does not recommend a discretionary grant under subsection 5(4):

- the Director General of CMB, as Minister's delegate, sends a non-approval letter to the applicant;
- the letter will indicate that, notwithstanding the Federal Court's dismissal of the appeal and referral to the Minister for a discretionary grant under subsection 5(4), the Minister has not recommended a discretionary grant under subsection 5(4).

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### 2.13. Appeal after 60-day limit

If an applicant appeals **after** the 60-day appeal period, Litigation Management (BCL) will request a copy of the Canada Post manifest, indicating the date that the non-approval letter was mailed to the applicant by registered mail.

If the applicant makes a request for a copy of the record in the *Notice of Application / of Appeal*, BCL will forward instructions to the local CIC office to prepare and forward a copy of the Certified Tribunal Record (CTR) to all parties.

The Department of Justice will attempt to have the *Notice of Application / of Appeal* struck by the Federal Court, who will determine if the appeal was filed within the allowable 60-day time limit. BCL will advise the local CIC office of the Federal Court decision.

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### 2.14. Applicant re-applies during an appeal

An applicant can make a subsequent citizenship application while the first application is being appealed. The local CIC office must inform Litigation Management (BCL) that a second application has been received. The second application is processed in the regular manner. It is neither expedited nor is it held pending the Federal Court's decision on the appeal.

If the second application is approved, the second application is finalized through to oath and the local CIC office informs BCL that citizenship has been granted for the second application. BCL will have the Department of Justice advise the applicant (via counsel) to withdraw the appeal of the first application. The local CIC office should also advise the applicant, at the time of the oath of citizenship, to withdraw the appeal of the first application.

Where the Federal Court allows the appeal and the applicant is granted citizenship on the first application, before the second application is finalized, the second application will be considered closed. See CP 13, section 8, Multiple Applications. The client must be notified in writing by the local CIC that the second application is closed, and the Right of Citizenship fee is refunded, if applicable.

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## 3. Ministerial Appeal

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### 3.1. This section is about

This section is about the process for an appeal filed by the Minister.

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### 3.2. Citizenship officer reviews the judge's decision before granting citizenship

The citizenship officer is responsible for ensuring that all requirements of the Act have been met before granting citizenship. A citizenship officer may not grant citizenship where a citizenship judge approves an application and the citizenship officer believes the citizenship judge may have made an error, or did not take all evidence into account. In these cases, the citizenship officer should bring the file and reasons for not granting citizenship to their manager's attention. The local CIC office manager will make the decision whether or not to recommend a Ministerial appeal.

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**Note:** Subsection 14(5) of the *Citizenship Act* allows the Minister or an applicant to appeal to the Federal Court from the decision of the citizenship judge. An applicant initiates appeal procedures on his or her own behalf. In view of the limited number of appeals filed by the Minister and the strict timelines imposed by the Federal Court, authority to initiate appeal procedures has been delegated **only** to the Director, Litigation Management in Case Management Branch. See CP 5, section 5 – Residence policy for persons who have absences from Canada for situations where a file **must** be referred to Litigation Management (BCL) for possible appeal.

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### 3.3. Forwarding the recommendation memorandum and relevant documentation to Litigation Management (BCL)

If the local CIC office manager recommends that the Minister appeal the citizenship judge's decision, the citizenship officer who prepared the reasons for the appeal faxes the relevant documentation to support their recommendation to BCL, along with a covering memorandum or letter, explaining why the local CIC office feels the Minister may or may not wish to exercise his/her right of appeal. The memorandum must clearly indicate the date of the citizenship judge's decision and the date the appeal period expires.

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### 3.4. File reviewed by Litigation Management (BCL)

Litigation Management (BCL) is responsible for reviewing recommendations from citizenship officers regarding the appeal of decisions approved by citizenship judges.

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If the Director of Litigation Management (BCL) agrees that an appeal is warranted, the Department of Justice files the appeal with the Federal Court on behalf of the Minister.

If the Director of Litigation Management (BCL) decides that an appeal is not warranted, the local CIC office is notified of the decision and processing continues on the respondent's application for citizenship.

### 3.5. Ministerial appeals treated as urgent

An appeal must be filed with the Federal Court within 60 days of the date of the citizenship judge's decision to approve the application. Therefore, in order that the appeal may be filed in time, the local CIC office must forward the relevant documentation from the citizenship file in support of their recommendation, to Litigation Management (BCL), immediately after the citizenship judge's decision is rendered. The 60 days are divided as follows:

- no more than 20 days for the citizenship officer to submit the request for appeal to BCL;
- no more than 20 days for BCL to take a decision on whether to appeal;
- no more than 20 days for DOJ to file and serve the appeal.

### 3.6. Procedures to prepare the Certified Tribunal Record (Ministerial appeals)

The Certified Tribunal Record (CTR) is a fundamental and required component of the citizenship appeal process at the Federal Court—care must therefore be taken in its preparation. Note that any inadvertent errors present in the CTR may generate serious and/or unforeseen consequences.

Step	Procedure
SENDING RECORD TO LITIGATION MANAGEMENT (BCL)	<p>The citizenship officer brings to his/her manager's attention the reasons for which citizenship should not be granted.</p> <p>If the local CIC office manager recommends that the Minister appeal the citizenship judge's decision, the citizenship officer sends to Litigation Management (BCL), a covering memorandum and key documents in the file (for example, a copy of the citizenship application and a signed copy of the decision rendered by the citizenship judge), indicating:</p> <ul style="list-style-type: none"> <li>• the reasons why the citizenship officer is of the opinion that the Minister may wish to exercise his/her right of appeal;</li> <li>• the date of the citizenship judge's decision; AND</li> <li>• the date on which the right of appeal expires.</li> </ul>
PRIORITY PROCESSING OF APPEAL COMMENCED BY MINISTER	<p>The Minister has 60 days from the date of a citizenship judge's decision to file a <i>Notice of Application / of Appeal</i>.</p> <p>In order to meet the 60-day limit, the local CIC office must send the documents to BCL within <b>20 days</b> of the citizenship judge's decision, thereby allowing BCL 20 days to make a decision on whether to appeal, and 20 days for DOJ to file the appeal.</p>
PREPARATION AND	The local CIC office receives a copy of the <i>Notice of Application / of</i>

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CONTENT OF RECORD	<p><i>Appeal</i> from the Department of Justice. The local CIC office notifies BCL, by fax, of the receipt of the <i>Notice of Application / of Appeal</i>.</p> <p>BCL helps the local CIC office prepare the CTR by means of instructions, where necessary, as follows (see Appendix F for sample e-mail from BCL, and Appendix A for information regarding documents that may need to be excluded from the CTR.)</p> <p><b>Preparation of CTR:</b> Please read <u>all</u> instructions before preparing and copying the CTR.</p> <p>The CTR <u>must</u> contain the documents listed below, in the following order:</p> <ul style="list-style-type: none"><li>• a copy of the application, including a copy of all the documents submitted by the applicant.</li><li>• a copy of the citizenship judge's decision form <i>Notice to the Minister of the Decision of the Citizenship Judge</i> (depending on the application—CIT 0053B, CIT 0054B, CIT 0055B, or CIT 0056B—and where applicable a copy of the Citizenship Application Review form (CARF) CIT 0065B).</li><li>• a copy of <u>all</u> other documents that the citizenship judge examined in order to render his/her decision. The rest of the documents in the CTR <b>must be in chronological order</b> (starting with the most recent document on top).</li></ul> <p><b>Instructions on preparing the CTR:</b></p> <ul style="list-style-type: none"><li>• Do not mark or number documents on the file. Instead, make a copy of <u>all</u> the documents in the file. This will serve as a “<b>master copy</b>” of the CTR.</li><li>• Sort the documents in this master copy. On top will be the cover letter, then the respondent's citizenship application and supporting documents, the judge's decision form, then all the remaining documents in the file in chronological order.</li><li>• The master copy <u>must</u> include all material relevant to the assessment of the application for citizenship, and to the approval by the citizenship judge (including electronic copies if relevant to the case as well as the physical contents of the applicant's file).</li><li>• <b>The master copy <u>must not</u> include any material that <u>post-dates</u> the approval of citizenship by the citizenship judge.</b></li><li>• <b>The master copy <u>must not</u> include the e-mail memorandum from BCL.</b></li><li>• Review the master copy to ensure that you are not releasing any information that should not be disclosed. See Appendix A for guidelines, <u>and</u> consult with BCL (the citizenship officer <u>must</u> consult with BCL before preparing the CTR if he/she is of the opinion that certain information should not be disclosed in the CTR).</li></ul> <p><b><u>Before numbering the pages of the master copy of the CTR:</u></b></p>
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## CP 8 – Appeals

	<ul style="list-style-type: none"> <li>• Fully exempted pages of the CTR are to be photocopied <b>blank</b> (only the page number will be written in the upper right-hand corner of the blank page). The blank page must be inserted in the same place in the CTR where the exempted document would have been.</li> <li>• On pages containing <u>partial exemptions</u> (where only parts of the page are to be exempted) the exempted portions must be whited-out. Ensure that the whited-out sections <u>completely obscure the text</u>, and place parentheses “( )” at the beginning and end of the whited-out areas, to indicate that something was removed from the document in that space.</li> <li>• Fully exempted pages, <u>and</u> partial exemptions, must be referred to in the certification cover letter, and <b>must</b> include the reasons for the objection to the release of the information as per Appendix A and/or instructions from BCL.</li> </ul> <p><b><u>Page numbering of the master copy of the CTR:</u></b></p> <ul style="list-style-type: none"> <li>• When the master copy of the CTR is <u>completely</u> ready, number the pages of the master copy in the upper right-hand corner of each page. The cover letter must be on top, and <b>must not be numbered</b>. Page one will be the respondent’s application. All other pages must be numbered, including any blank exempted pages. Care should be taken not to write too close to the corner of the page, since that part of the page could be cut off when the pages are photocopied.</li> <li>• When the master copy of the CTR is ready, and has been numbered, make four (4) copies of the entire master copy.</li> <li>• Certify the four (4) copies of the CTR by binding all the pages together in a secure way, and having as the first page of the CTR the appropriate cover letter (Appendix D if <u>no</u> documents are excluded from the CTR; or the cover letter provided by BCL if there <u>are</u> documents to be excluded from the CTR).</li> <li>• Keep the complete <b>original master copy</b> that was used to make the CTR copies on the respondent’s file.</li> </ul> <p>Within <b>20 days</b> of the date of receipt by the local CIC office of the copy of the <i>Notice of Application / of Appeal</i> from the Department of Justice, the local CIC office distributes certified copies of the complete CTR including the cover letter:</p> <ul style="list-style-type: none"> <li>• to the Federal Court;</li> <li>• to the respondent or the respondent’s counsel;</li> <li>• to the Department of Justice, Litigation; AND</li> <li>• to Litigation Management (BCL).</li> </ul> <p>Please note that the copy for Litigation Management (BCL) does not have to be certified.</p>
CASE NOTE IN GCMS	The local CIC office enters a case note indicating that the Minister has filed an appeal and noting the date the CTR was distributed.



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**Note:** The local CIC office keeps the original record until the end of the appeal process.

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### 3.7. Appeal heard

The Federal Court hears the appeal in the city closest to the citizenship judge's area of jurisdiction. The Minister is notified in writing of the Federal Court decision. The decision is also communicated in writing to the citizenship judge and to the applicant. The Minister's notice is forwarded to the Litigation Management (BCL) analyst.

The BCL analyst enters a GCMS case note indicating the results of the appeal.

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### 3.8. Appeal dismissed

When the Minister's appeal is dismissed, the Federal Court rules that the citizenship judge made a correct decision in determining that the applicant meets the requirements of the Act and should be granted citizenship. The local CIC office ensures that the file contains valid clearances and a valid citizenship certificate. Citizenship may be granted by the Case Management officer or the local citizenship officer and the results entered in GCMS. The local CIC office schedules the applicant to take the oath of citizenship.

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### 3.9. Appeal allowed

When the Federal Court allows a Ministerial appeal, the original approval decision of the citizenship judge is reversed. The local CIC office and the applicant are notified that citizenship will not be granted. The applicant may re-apply for citizenship at any time but may not appeal the decision of the Federal Court. The local CIC office ensures that GCMS is updated and that the file is closed and forwarded to CPC Sydney for file retirement. The right of citizenship fee is refunded, if applicable.

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### 3.10. Appeal allowed but Federal Court refers case back to a new citizenship judge for redetermination

The Federal Court may allow a Ministerial appeal and remit the application back for consideration before a different citizenship judge. This generally happens when the Federal Court feels that the citizenship judge has made an error in assessing the application.

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### 3.11. Appeal allowed but Federal Court refers case back to the original citizenship judge for redetermination

The Federal Court may allow a Ministerial appeal, and remit the application back for consideration before the original citizenship judge. This generally happens when the Federal Court feels that the citizenship judge has not given proper consideration to all evidence in the tribunal record when making his/her decision, or when the citizenship judge has provided insufficient reasons for the decision, or no reasons at all. If the original citizenship judge is no longer available, the case is referred to another citizenship judge and a Transfer of Jurisdiction form (CIT 1-0078B) must be completed.

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### Appendix A Preparation of the Certified Tribunal Record

The Certified Tribunal Record (CTR) contains photocopies of **only those documents related to the decision**. Documents received after the date of the decision of the citizenship judge are not relevant to the decision being challenged in the Federal Court and must not be included in the CTR.

Examples of sensitive documents which should be protected from disclosure, include but are not limited to:

- solicitor-client privileged communications;
- information obtained in confidence from governments/institutions of foreign states or from international organizations of states (or their institutions) which "would be injurious to national security or to the safety of any person" (see paragraph 83(1)(d) of the *Immigration and Refugee Protection Act (IRPA)*);
- materials which the government can object to disclosing pursuant to the *Canada Evidence Act* on the grounds of:
  - ◆ a "specified public interest" (section 37);
  - ◆ injury to "international relations and national defence and security" (section 38);
  - ◆ being "confidences of the Queen's Privy Council for Canada" (section 39);
- copies of the citizenship test questions and answers;
- copies of the questions used to evaluate language;
- information received in confidence from CSIS and/or RCMP;
- fingerprints;
- citizenship certificate;
- criminal conviction report (may be disclosed in some situations; if unsure verify with Litigation Management (BCL));
- unsolicited third party information (unless CIC has permission to disclose it, i.e. information provided by the client).

If any material in the file appears to fall into any of the above categories, do not create or distribute the CTR until you have discussed these documents with BCL and/or the litigator, in order that an informed decision can be made on how best to proceed.

Depending on which of the following three categories the documents fall into, a different procedure must be followed to maintain their confidentiality from disclosure:

**Solicitor-client privileged communications** (e-mails, letters, copies of draft affidavits, legal opinion, etc.) can be protected from disclosure by the litigator writing to the Court, pursuant to the Federal Court Rule 318(2), informing the Court that objection is being made to the production of documents by solicitor-client privilege;

## CP 8 – Appeals

**Paragraph 83(1)(d) of IRPA** materials are protected by litigation counsel making an application to the Court seeking an order permitting the non-disclosure of such information; the Court will determine if it must be disclosed or not;

**Sections 37 and 38 of the *Canada Evidence Act*** materials again must be protected through an application by litigation counsel to the Court, supported by "a Minister of the Crown" or other interested person certifying orally or in writing to the Court that the information should not be disclosed, and objecting to its disclosure. The Court will determine if it must be disclosed or not (**section 39** information is protected without the necessity of an application to the Court, but still requires a Minister of the Crown or the Clerk of the Privy Council to object to the disclosure by certifying such objection in writing).

On occasion, unsolicited third party information (also called "snitch letters", "tips", "poison pen letters", etc.) is received by offices advising of some unfavourable information concerning the applicant. These letters may contain personal information about the person providing the information and should not be divulged or edited before disclosure. It is advisable to discuss these types of materials with BCL **and/or** the litigator prior to releasing such material through the distribution of the CTR.

Litigation counsel should take action to secure protection from disclosure of this kind of information. It is crucial to carefully review all the documents and information in your file before preparing the CTR, immediately bringing to the attention of BCL **and/or** the litigator documents or information which we may not wish to make known in the CTR.

Sample wording to be used in the cover letter or memorandum for items that have been excluded from the CTR:

### Knowledge test (written)

Page XX is omitted in its entirety as it contains the applicant's responses to the knowledge test. Pursuant to rule 318(2), we object to the release of this information on the grounds that its disclosure would jeopardize the integrity of the knowledge test.

### Knowledge test (oral)

Please note that pages XX and XX are omitted in their entirety as they contain the applicant's questions and responses to the oral knowledge test. Pursuant to rule 318(2), we object to the release of this information on the grounds that its disclosure would jeopardize the integrity of the knowledge test.

### Language test (oral)

Please note that pages XX and XX are omitted in their entirety as they contain the applicant's questions and responses to the oral language test. Pursuant to rule 318(2), we object to the release of this information on the grounds that its disclosure would jeopardize the integrity of the language test.

### Fingerprints

Please note that page XX is not included. This page contains the applicant's fingerprints. As the above-noted document will become a matter of public record, CIC is of the opinion that it would be in the applicant's best interest if the information was not included in the record.

## CP 8 – Appeals

### Appendix B Sample cover letter for Certified Tribunal Record – Applicant appeal – No documents being withheld

This is a sample of the letter to be used ONLY IF NO DOCUMENTS ARE BEING WITHHELD from the CTR. For more information see Appendix A.

(Litigation Management (BCL) will provide an amended cover letter if there are documents in the file that ARE **NOT** BEING RELEASED in the CTR. Appendix C is a sample of such a letter.)

The sections in parentheses in **[bold]** indicate information that changes from case to case.

**[current date]**

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **[Name of Applicant] v. M.C.I., [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318.

I trust this is satisfactory.

Yours truly,

**[signed by a person in authority who is able to certify that the documents are complete]**

cc: **[Name of applicant], [c/o Name of Counsel (if represented)],** Counsel for the Applicant

**[Name of our DOJ Counsel],** Department of Justice, Counsel for the Respondent

**[Name of person concerned],** Litigation Management, Case Management Branch

## CP 8 – Appeals

### Appendix C Sample cover letter for Certified Tribunal Record – Applicant appeal – Documents not being released

**This is a sample of the letter to be used if there are documents in the file that ARE NOT BEING RELEASED in the CTR.** For more information see Appendix A.

(Litigation Management (BCL) will provide the necessary details for the second paragraph of this letter to the person preparing the CTR, depending on the documents that are being withheld from the CTR).

The sections in parentheses in **[bold]** indicate information that changes from case to case.

**[current date]**

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **[Name of Applicant] v. M.C.I., [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318.

Please note that the information (or a portion of the information) contained on page(s) \_\_\_\_\_ is not included. Pursuant to Rule 318(2), we object to the release of this information on the grounds that **[reason for refusal]**.

I trust this is satisfactory.

Yours truly,

**[signed by a person in authority who is able to certify that the documents are complete]**

cc: **[Name of applicant], [c/o Name of Counsel (if represented)],** Counsel for the Applicant

**[Name of our DOJ Counsel],** Department of Justice, Counsel for the Respondent

**[Name of person concerned],** Litigation Management, Case Management Branch

## CP 8 – Appeals

### Appendix D Sample cover letter for Certified Tribunal Record – Ministerial appeal – No documents being withheld

This is a sample of the letter to be used ONLY IF NO DOCUMENTS ARE BEING WITHHELD from the CTR. For more information see Appendix A.

(Litigation Management (BCL) will provide an amended cover letter if there are documents in the file that ARE **NOT BEING RELEASED** in the CTR. Appendix E is a sample of such a letter.)

The sections in parentheses in **[bold]** indicate information that changes from case to case.

**[current date]**

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **M.C.I. v. [Name of Respondent], [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318.

I trust this is satisfactory.

Yours truly,

**[signed by a person in authority who is able to certify that the documents are complete]**

cc: **[Name of Counsel]**, Department of Justice, Counsel for the Applicant

**[Name of Respondent], [c/o Name of Counsel (if represented)]**, Counsel for the Respondent

**[Name of person concerned]**, Litigation Management, Case Management Branch

## CP 8 – Appeals

### Appendix E Sample cover letter for Certified Tribunal Record – Ministerial appeal – Documents not being released

**This is a sample of the letter to be used if there are documents in the file that ARE NOT BEING RELEASED in the CTR. For more information see Appendix A.**

(Litigation Management (BCL) will provide the necessary details for the second paragraph of this letter to the person preparing the CTR, depending on the documents that are being withheld from the CTR).

The sections in parentheses in **[bold]** indicate information that changes from case to case.

**[current date]**

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **M.C.I. v. [Name of Respondent], [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318.

Please note that the information (or a portion of the information) contained on page(s) \_\_\_\_\_ is not included. Pursuant to Rule 318(2), we object to the release of this information on the grounds that **[reason for refusal]**.

I trust this is satisfactory.

Yours truly,

**[signed by a person in authority who is able to certify that the documents are complete]**

cc: **[Name of Counsel]**, Department of Justice, Counsel for the Applicant

**[Name of Respondent], [c/o Name of Counsel (if represented)]**, Counsel for the Respondent

**[Name of person concerned]**, Litigation Management, Case Management Branch

## CP 8 – Appeals

### Appendix F Sample e-mail instructions from BCL – Applicant appeal

Sample of e-mail instructions sent by Litigation Management (BCL) to the field when a *Notice of Application* is received from DOJ where the applicant is appealing the decision of the citizenship judge to non-approve their application for citizenship. The sections in brackets in [bold] indicate information that changes from case to case.

GCMS [File #] [Responsible CIC office]  
FOSS ID: [XXXX-XXXX]  
Federal Court File No.: [FC File #]  
DOJ File No.: [XX-XXXXXX]

Please be advised that the applicant has served on the Department of Justice a *Notice of Application*, appealing the decision of Citizenship Judge [name of citizenship judge], dated [date of non-approval], to refuse the applicant's application for Canadian citizenship on the grounds that [reason for refusal]. I will fax you a copy of the *Notice of Application*. PLEASE ENSURE THAT THE CITIZENSHIP JUDGE RECEIVES A COPY OF THE *NOTICE OF APPLICATION* FOR HIS/HER RECORDS.

In the application, the applicant has requested that certified copies of the citizenship file be sent to the applicant and to the Federal Court. Pursuant to the Federal Court Rules, the certified copies of the tribunal record must be transmitted to the Federal Court and to the applicant within 20 days of issuance of the *Notice of Application*. In this case, the *Notice of Application* was issued on [Date of Notice]. PLEASE ENSURE THAT THE COPIES OF THE TRIBUNAL RECORD LEAVE YOUR OFFICE, TO BE DELIVERED BY [20 days after Notice issued]. Keep evidence of transmission (e.g. date and manner of transmission) on the case file and/or in the GCMS computer system.

Please note the following instructions for preparation and transmission of the record:

- Copy and certify as complete the file of the applicant's application for citizenship. You can certify the file copies by binding all the pages together in a secure way and having as the first page of the package the cover letter below.
- Number the pages (i.e. make a copy of the original file—this will serve as a “master copy”—number the pages of the master copy, then make the copies from the numbered master copy).
- Retain the master copy in the file in your office. The package should include all material relevant to the assessment of the application for citizenship and to the non-approval (electronic copies if relevant to the case, as well as the physical contents of the client's file in chronological order, starting with the most recent document on top).

The certified package should NOT include this memorandum or any material that post-dates the non-approval of citizenship by the citizenship judge. ALSO, PLEASE REVIEW THE FILE TO ENSURE THAT WE ARE NOT RELEASING INFORMATION THAT SHOULD NOT BE DISCLOSED (e.g. information received in confidence from CSIS and/or RCMP, citizenship test questions and answers, citizenship certificate, fingerprints, third party information, documents protected under solicitor-client privilege, etc.). IF YOU ARE OF THE OPINION THAT CERTAIN INFORMATION SHOULD NOT BE DISCLOSED, PLEASE ADVISE LITIGATION MANAGEMENT (BCL) BEFORE PREPARING THE RECORD.

Please prepare and SEND certified copies of the file to the following:

- (1) [Name and address of applicant], [c/o applicant's counsel (if represented)]
- (2) The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor



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Ottawa, Ontario  
K1A 0H9

(3) **[Name and address of our DOJ counsel]**

To accompany the certified package of documents, please prepare a cover letter as follows (PROVIDED THERE ARE NO DOCUMENTS THAT WE DO NOT WISH TO RELEASE, IN WHICH CASE BCL WILL PROVIDE YOU WITH AN AMENDED COVER LETTER):

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **[Name of applicant] v. M.C.I. – [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318. I trust this is satisfactory.

Yours truly,

**[signed by a person in authority who is able to certify that the documents are complete]**

cc: **[Name of applicant], [c/o Name of Counsel (if represented)],** Counsel for the Applicant  
**[Name of our DOJ Counsel],** Department of Justice, Counsel for the Respondent

Please also send a copy (it doesn't have to be certified) to BCL at the following address:

Litigation Management  
Case Management Branch  
Citizenship and Immigration  
300 Slater St., JET N., 9th Floor  
Ottawa, Ontario  
K1A 1L1

Attention: **[Name of DOJ coordinator]**

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Please retain the case file at your office.

We recognize that complying with the contents of this memorandum will require a substantial amount of your time and may disrupt your schedule somewhat. However, we request that you TREAT THIS REQUEST AS TOP PRIORITY TO ENABLE US TO MEET THE TIME LIMITATIONS SET OUT IN THE FEDERAL COURT RULES.

If you have any questions or concerns with regard to the contents of this memorandum, please do not hesitate to contact me. Thank you.

**[Name of BCL analyst]**

**[CIC e-mail signature information]**

## CP 8 – Appeals

### Appendix G Sample e-mail instructions from BCL – Ministerial appeal

Sample of e-mail instructions sent by Litigation Management (BCL) to the field/DOJ when the Minister makes the decision to appeal the decision of the citizenship judge. The sections in brackets in [bold] indicate information that changes from case to case.

GCMS [File #] [Responsible CIC office]

FOSS ID: [XXXX-XXXX]

Federal Court File No.: [FC File #]

DOJ File No.: [XX-XXXXXX]

[Name of officer who referred the file to BCL],

I refer to your recent memorandum, in which you recommended that the Minister look at appealing the decision of Citizenship Judge [name of citizenship judge] to approve the application for citizenship of [name of respondent], [citizenship file #]. BCL is in agreement with your recommendation and has decided to go forward with a Ministerial appeal in this case.

The Department of Justice in [area responsible for CIC office concerned] will file the *Notice of Application* and provide you with a copy, after which you will have 20 days to prepare and file the certified tribunal record with the Federal Court, the Justice lawyer and the respondent. Please note the following instructions for preparation and transmission of the record:

- Copy and certify as complete the file of the respondent's application for citizenship. You can certify the file copies by binding all the pages together in a secure way and having as the first page of the package the cover letter below.
- Number the pages (i.e. make a copy of the original file—this will serve as a “master copy”—number the pages of the master copy, then make the copies from the numbered master copy).
- The package should include all material relevant to the assessment of the application for citizenship and to the approval (electronic copies if relevant to the case, as well as the physical contents of the client's file, in chronological order, starting with the most recent document on top).

The certified package should NOT include this memorandum or any material that post-dates the approval of citizenship by the citizenship judge. ALSO, PLEASE REVIEW THE FILE TO ENSURE THAT WE ARE NOT RELEASING INFORMATION THAT SHOULD NOT BE DISCLOSED (e.g. information received in confidence from CSIS and/or RCMP, citizenship test questions and answers, citizenship certificate, fingerprints, third party information, documents protected under solicitor-client privilege, etc.). IF YOU ARE OF THE OPINION THAT CERTAIN INFORMATION SHOULD NOT BE DISCLOSED, PLEASE ADVISE BCL BEFORE PREPARING THE RECORD.

Once the *Notice of Application* has been received by your office, please prepare and send a certified copy of the file to the following:

- (1) [Name and address of respondent], [c/o respondent's counsel (if represented)]
- (2) The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9
- (3) [Name, address and telephone number of our DOJ counsel]

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To accompany the certified package of documents, please prepare a cover letter as follows (PROVIDED THERE ARE NO DOCUMENTS THAT WE DO NOT WISH TO RELEASE, IN WHICH CASE BCL WILL PROVIDE YOU WITH AN AMENDED COVER LETTER):

The Registry  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H9

Dear Sir/Madam:

Re: **M.C.I. v. [Name of respondent] – [Federal Court file number]**

This is in response to a request pursuant to Rule 317, for certain documents in possession of this office. Please find enclosed a copy of the documents requested, which I certify as a true copy of the originals pursuant to Rule 318. I trust this is satisfactory.

Yours truly,

[signed by a person in authority who is able to certify that the documents are complete]

cc: **[Name of our DOJ Counsel]**, Department of Justice, Counsel for the Applicant  
**[Name of client]**, Respondent

-----  
I will forward the case file to your attention this afternoon by Xpresspost. Please retain the case file at your office.

We recognize that complying with the contents of this memorandum will require a substantial amount of your time and may disrupt your schedule somewhat. However, we request that you TREAT THIS REQUEST AS TOP PRIORITY TO ENABLE US TO MEET THE TIME LIMITATIONS SET OUT IN THE FEDERAL COURT RULES.

Thank you.

-----  
**[Name of DOJ coordinator]**,

Please file the *Notice of Application* with the Federal Court and provide a copy to the **[Name of city/town of office]** citizenship office at **[Address of citizenship office]**. Once the *Notice of Application* has been filed with the Federal Court please fax a copy to my attention at 613-**[XXX-XXXX]**. Please note that the deadline for filing the *Notice of Application* is **[day of week, Month Day]**. Thank you.

**[Name of BCL analyst]**

**[CIC e-mail signature information]**