



Immigration, Refugees
and Citizenship Canada

Immigration, Réfugiés
et Citoyenneté Canada

ENF 28

Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

Canada 

Table of contents

Updates to chapter	4
Listing by date	4
1 What this chapter is about	6
2 Program objectives	6
3 The Act and Regulations	6
3.1 Forms	9
4 Instruments and delegations	10
4.1 Authorities	10
4.2 Guidance	10
5 Departmental policy	11
5.1 Danger opinion provisions	11
5.2. Removal of Convention refugees or protected persons [A115]	11
6 Definitions	12
7 Procedure: issuing ministerial opinions	13
7.1 Identification by a CBSA officer of danger opinion cases	13
7.2 When to request the Minister's opinion	13
7.3 Determinant factors	14
7.4 Factors	15
7.5 Procedural fairness	16
7.6 Notification letter: intent to seek the Minister's opinion	17
7.7 Danger opinion package	18
7.8 Documentation	19
7.9 Urgent consideration	20
7.10 Humanitarian and compassionate considerations	21
7.11 The <i>Youth Criminal Justice Act</i> (YCJA)	21
7.12 Disclosure	22
7.13 Extension requests for submissions	22
7.14 Following receipt of submissions	23
7.15 After the Minister's delegate's danger opinion decision	23
7.16 Reconsideration of danger opinion	23
7.17 Info-alert	24
Appendix A Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(a)	25
Appendix B Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(b)	27

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

Appendix C Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraphs A115(2)(a) and (b).....	29
Appendix D <i>Danger Opinion Narrative Report</i> form for use in paragraph A115(2)(b) cases and hybrid cases involving paragraphs A115(2)(a) and (b)	31

Updates to chapter

Listing by date

2017-11-21

Section 7.16 has been updated to include guidance for officers reconsidering danger opinions pursuant to section 115(2)(a) of the Immigration and Refugee Protection Act (IRPA).

2016-09-16

Most sections of this chapter have been updated to include more information regarding the processing of cases involving paragraph 115(2)(b) of the IRPA and to reflect respective responsibilities of Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).

2005-11-07

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

Section 4: Clarification added to indicate that “the Minister” refers to the Minister of Citizenship and Immigration.

Section 4.1: Removed list of delegated authority.

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

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

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

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

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

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

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

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

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

1 What this chapter is about

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

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

2 Program objectives

The program objectives for the issuance of danger opinions with respect to protected persons are to

- protect the health and safety of Canadians and to maintain the security of Canadian society; and
- promote international justice and security by denying access to Canadian territory to protected persons who were found inadmissible under section 34, section 35, subsection 36(1) or section 37 of the *Immigration and Refugee Protection Act* (IRPA) on grounds of security, violation of human or international rights, serious criminality or organized criminality.

The IRPA is to be construed and applied in a manner that

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

3 The Act and Regulations

Reference should be made to the IRPA and the *Immigration and Refugee Protection Regulations* (IRPR) for the full and complete wording of the texts.

Provision	IRPA and IRPR
A permanent resident or a foreign national is inadmissible on security grounds for	A34(1)
<ul style="list-style-type: none">• engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	A34(1)(a)

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

<ul style="list-style-type: none"> engaging in or instigating the subversion by force of any government; 	A34(1)(b)
<ul style="list-style-type: none"> engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada; 	A34(1)(b.1)
<ul style="list-style-type: none"> engaging in terrorism; 	A34(1)(c)
<ul style="list-style-type: none"> being a danger to the security of Canada; 	A34(1)(d)
<ul style="list-style-type: none"> engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or 	A34(1)(e)
<ul style="list-style-type: none"> being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c). 	A34(1)(f)
A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	A35(1)
<ul style="list-style-type: none"> committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>; 	A35(1)(a)
<ul style="list-style-type: none"> being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the <i>Crimes Against Humanity and War Crimes Act</i>; or 	A35(1)(b)
<ul style="list-style-type: none"> being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or 	A35(1)(c)

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.	
A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	A36(1)
<ul style="list-style-type: none"> having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; 	A36(1)(a)
<ul style="list-style-type: none"> having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or 	A36(1)(b)
<ul style="list-style-type: none"> committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. 	A36(1)(c)
A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	A37(1)
<ul style="list-style-type: none"> being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or 	A37(1)(a)

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

<ul style="list-style-type: none"> engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering. 	A37(1)(b)
A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	A115(1)
<p>Subsection (1) does not apply in the case of a person</p> <ul style="list-style-type: none"> who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or 	A115(2)(a)
<ul style="list-style-type: none"> who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada. 	A115(2)(b)

3.1 Forms

The forms required for requests for danger opinions pursuant to paragraphs A115(2)(a) and (b) are as follows:

Form title	Form number
<i>Danger Opinion Narrative Report</i> (for paragraph 115(2)(b) and hybrid cases only)	See Appendix D
<i>Danger to the Public – Ministerial Opinion Report</i> (for paragraph 115(2)(a) cases only)	IMM 5367B

4 Instruments and delegations

Pursuant to subsections A6(1) and (2), the Minister of IRCC has delegated persons or a class of persons as officers to carry out any purpose of any provision, legislative or regulatory, and has specified the powers and duties of the officers so delegated. These delegations may be found in chapter IL 3, *Designation of officers and delegation of authority*.

4.1 Authorities

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

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

All requests for danger opinions pursuant to paragraphs A115(2)(a) and (b), as well as complete documentation, must be sent to the CBSA's Danger Assessments Section (DAS), which acts as the centralized point of contact, at the following address:

Manager
Danger Assessments Section
Inland Enforcement Operations and Case Management Division
Canada Border Services Agency
191 Laurier Avenue West, 13th floor
Ottawa, ON
K1A 0L8

4.2 Guidance

The Operational Management and Coordination Branch, IRCC, National Headquarters (NHQ), may be contacted at the following email address for guidance on **policy** issues regarding opinions on danger to the public in Canada: OMC-GOC-Immigration@cic.gc.ca.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

The DAS, CBSA, NHQ, may be contacted at the following email address for guidance regarding danger to the security of Canada or nature and severity cases under paragraph A115(2)(b) as well as on **specific cases** regarding danger opinions under paragraph A115(2)(a): CBSA-ASFC_Danger_Assessments-Evaluations_De_Danger@cbsa-asfc.gc.ca.

5 Departmental policy

5.1 Danger opinion provisions

The IRPA allows for a danger opinion to be issued in the following situation:

Exception to non-refoulement (removal)

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

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

5.2. Removal of Convention refugees or protected persons [A115]

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

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

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

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

- it has been determined that the person concerned is described under section A34, section A35, subsection A36(1) or section A37;
- a removal order was issued;
- the Minister of IRCC has issued an opinion that the person concerned is a danger to the public in Canada [A115(2)(a)], that the person should not be allowed to remain in Canada on the basis of the nature and severity of the acts committed or that the person concerned is a danger to the security of Canada [A115(2)(b)].

6 Definitions

Act of Parliament	Legislative act or statutory law: A bill that has been created or arrived at through the will of the electorate and their elected officials and that has been enacted by federal legislature into law
Convention refugee	A person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries or, not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country
IAD	Immigration Appeal Division
ID	Immigration Division
IRB	Immigration and Refugee Board
Person in need of protection	A person in Canada whose removal to their country or countries of nationality, or, if they do not have a country of nationality, their country of former habitual residence would subject them personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention against Torture or to a risk to their life or to a risk of cruel and unusual treatment or punishment if the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country; the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

	international standards, and is not caused by the inability of that country to provide adequate health or medical care
Protected person	A person on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected
RAD	Refugee Appeal Division
Recidivism	A tendency to relapse into a habit of criminal activity or behaviour
RPD	Refugee Protection Division

7 Procedure: issuing ministerial opinions

7.1 Identification by a CBSA officer of danger opinion cases

Officers are responsible for identifying persons who may be recommended for a Minister's opinion on danger to the public of Canada, on danger to the security of Canada or on the basis of the nature and severity of acts committed. This occurs when a protected person has been found inadmissible under section A34, section A35, subsection A36(1) or section A37 and is the subject of a removal order that is in force. The officer must obtain their manager's approval before submitting a case to the DAS, CBSA, NHQ.

7.2 When to request the Minister's opinion

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

The officer may initiate a request for the Minister's opinion when

- a protected person or a person who is recognized as a Convention refugee is found inadmissible on grounds of serious criminality; and
- that person constitutes, in the opinion of the officer, a danger to the public in Canada.

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

The officer may initiate a request for the Minister's opinion when

- a protected person or a person who is recognized as a Convention refugee is inadmissible on grounds of security, violating human or international rights or organized criminality; and

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

- the person concerned is a person who, in the opinion of the officer, should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

Officers must consult with the DAS of the CBSA for guidance before initiating a request for a danger opinion pursuant to paragraph A115(2)(b).

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

In hybrid cases, the officer should initiate a request for the Minister's opinion when

- a protected person or a person who is recognized as a Convention refugee is inadmissible on grounds of security, violating human or international rights, or organized criminality **as well as** on grounds of serious criminality; and
- the person concerned is a person who, in the opinion of the officer, constitutes a danger to the public and is a danger to the security of Canada or should not be allowed to remain in Canada on the basis of the nature and severity of acts committed.

Detained cases

In the case of a person who is detained for serious criminality, the officer who initiates a request for the Minister's opinion should do so at least one year prior to the date of the person's earliest anticipated date of release.

7.3 Determinant factors

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

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

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

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

In determining whether to seek the Minister's opinion on danger to the security of Canada or on the basis of the nature and severity of the acts committed, the officer must examine the seriousness and nature of the person's actions or the actions of the organization of which the person was a member if it is determined that the person made a contribution to the nefarious activities of the organization.

In cases of danger to the security of Canada, the officer will also consider what activities there are reasonable grounds to believe the individual may engage in in the future.

For all requests pursuant to paragraph A115(2)(b) cases, the officer will submit a request for guidance from the DAS of the CBSA prior to providing notification to the person concerned that a danger opinion will be sought in their case. Upon receipt of such a request, the DAS will review the information provided and complete a pre-assessment to determine if the CBSA should move forward in seeking the Minister's opinion.

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

7.4 Factors

Criminal factors

The following factors must be considered in the preparation of a danger opinion submission for serious criminality as well as for organized criminality:

- criminal history and established patterns of violent criminal behaviour or threats of violent behaviour that suggest present and future danger to the public, and evidence to support the person's pattern of behaviour;
- convictions for serious offences involving but not limited to violence, weapons, drug trafficking, human smuggling and trafficking, sexual offences and economic crimes;
- documents illustrating an escalation of violence or of gravity in the convictions;
- convictions for actions by the person that caused or might reasonably be expected to have caused death, serious physical or psychological harm or significant property damage;
- evidence to substantiate the link between the criminal conviction, the likelihood that the person will re-offend and a pattern of increasingly serious criminal activity;
- police, correctional services or other credible source information indicating that the person continues to pose a danger to the public;
- the circumstances of the offence(s) in order to provide insight into the level of risk the person may present to the public;

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

- evidence of rehabilitation on the part of the individual (education or training certificates, psychological reports, reports from the parole officer, evidence of employment, etc.);
- multiple convictions, including serious offences, that **could** form the basis for a danger opinion;
- a single conviction that may sustain a finding of danger to the public if it is clearly demonstrated that the person poses a present or future risk of danger to the public, as evidenced by the nature and circumstances of the offence. The jurisprudence indicates that it is possible to base a danger opinion on a single serious conviction when sufficient evidence exists.

Danger to the security of Canada and the nature and severity of the acts committed: factors

The following are some of the factors that must be considered in the preparation of a danger opinion based on danger to the security of Canada or on the nature and severity of the acts committed:

- acts committed by the individual or the group, if applicable;
- activities undertaken by the person in the furtherance of the group's objectives;
- the level of involvement of the person in the acts committed by the organization; and
- the level of threat either direct or indirect that the person presents to the security of Canada.

7.5 Procedural fairness

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

Exceptionally, information may be used that cannot be disclosed to the person concerned where the disclosure of this information would be injurious to national security or would endanger the safety of any person. In such circumstances, all efforts should be made to provide as much information as possible to the person concerned and to limit the amount of undisclosed information to be considered. Consultation with the DAS, CBSA, is required in such circumstances.

7.6 Notification letter: intent to seek the Minister's opinion

Notification letter

As soon as a CBSA manager or supervisor agrees with the officer to seek a Minister's opinion, the person concerned must be notified by letter. In paragraph A115(2)(b) cases, this happens only after consultation with the DAS at the CBSA, NHQ. The notification letter must be accurate and make reference to the appropriate section(s) of the IRPA and should

- explain the effect of the Minister's opinion on the person's ability to remain in Canada;
- advise the person concerned of the opportunity to make representations or submit any other evidence regarding danger, nature and severity of the acts committed, risks upon removal, and humanitarian and compassionate considerations, including written statements from others;
- confirm that the deadline for the submissions is 15 calendar days from the day that the notice is received by the person (the 15 days do not include the day on which the letter was issued but do include the fifteenth day, unless it falls on a holiday or weekend, in which case the deadline is the next working day);
- include a list and attached copies of some of the material that is expected to form the record that may be forwarded to the Minister's delegate for making the decision;
- not include evidence in the danger opinion package that could prejudice a third party, unless the source has authorized disclosure for this purpose (if disclosure has not been authorized, the information cannot be disclosed to the person concerned);
- be signed by the CBSA manager or supervisor; and
- be dated when served or sent to the person concerned.

Samples of notification letters

- Appendix A Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(a)
- Appendix B Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(b)
- Appendix C Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraphs A115(2)(a) and (b)

Service of notification letter

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

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

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

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

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

7.7 Danger opinion package

For paragraph A115(2)(a) and (b) requests, if no extension has been granted at the expiration of the period for receiving submissions, the CBSA regional office should review all danger opinion material to determine that the package is complete before forwarding it to the CBSA, NHQ.

The officer or manager should not summarize or comment on the documents submitted by the person concerned when completing the documentation.

The officer should forward copies of all documentation and submissions to the DAS at the CBSA, NHQ (see section 4.1). The following is to be included in the danger opinion package:

- notice to the person concerned and their counsel, if known;
- acknowledgement of service to the client;
- all documentation provided to the person concerned; and
- submissions made by the person concerned or their counsel, if any.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

In cases where the person concerned is detained, it is imperative that the regional officer clearly identify this information on the cover letter when referring the case to NHQ and that any future changes in detention status be forwarded without delay.

In hybrid cases involving both paragraphs A115(2)(a) and (b), the DAS at the CBSA, NHQ, will coordinate the preparation and disclosure of both assessments with IRCC Case Management so that they can be done simultaneously.

After preparing the assessment of the danger to the security of Canada and/or of the nature and severity, the DAS will contact IRCC Case Management at NHQ for them to prepare the assessment of the risks associated with removal and of humanitarian and compassionate considerations prior to disclosure. Once both assessments have been completed, the DAS will provide the package for disclosure to the regional office concerned. See section 7.12.

Note: A copy of the danger opinion package should be kept in the responsible originating office file.

7.8 Documentation

When possible, when third parties are involved, certified copies should be made by the issuing authority of the original document. Authority to disclose third-party information should be sought where required.

Copies of original documentation that must be provided to NHQ within the danger opinion package include

- the *Danger to the Public – Ministerial Opinion Report* form [IMM 5367B] in hybrid and paragraph 115(2)(a) cases only;
- the *Danger Opinion Narrative Report* form, found in Appendix D, in hybrid and paragraph 115(2)(b) cases;
- a section A44 report highlights form [IMM 5051B or IMM 5084B], which details the person's inadmissibility and personal history (employment, family, community involvement, associations, etc.) in Canada;
- the person's *Basis of Claim* form (BOC) or *Personal Information Form* (PIF), if applicable;
- relevant interview notes;
- decisions from the Immigration Refugee Board (IRB), including available transcripts, exhibits and removal orders or detention reviews;
- any permanent residence, citizenship, sponsorship or overseas immigration applications;
- for each offence, police occurrence or observance reports linking the person to criminal activity or known associates, organizations or accomplices, if releasable;

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

- court decisions, pre-sentence reports or the judge's sentencing remarks, which should determine that the level of risk is consistent with the officer's recommendation;
- probation and parole services and Correctional Service Canada documentation addressing rehabilitation issues;
- Correctional Service Canada reports that include information about the crime;
- an RCMP *Summary of Police Information* form [C480], which must be obtained by forwarding the person's fingerprints to the RCMP (after an RCMP *Summary of Police Information* form is obtained, conviction certificates for each conviction are not required);
- only credible and reliable evidence underlying criminal charges, and not the charges in and of themselves, which can be used in the absence of a criminal conviction, when they indicate a pattern of negative behaviour;
- all evidence, whether it be positive or negative to the person concerned;
- evidence of rehabilitation; information concerning the person's behaviour during immigration proceedings, criminal proceedings and detention;
- media reports regarding the person, the organization and the offences committed (keeping in mind that while media accounts may not be completely accurate, they are of use in demonstrating the impact of the crimes on the community);
- any other document on file that could be relevant to assessing the danger the person represents to the public or to the security of Canada or the nature and severity of the acts committed.

The following documentation should not be included:

- statements that are speculative in nature;
- information that cannot be sourced; and
- information relating to charges under the *Youth Criminal Justice Act* (YCJA) that have been withdrawn or stayed. Absolute or conditional discharges must be blocked out (refer to section 7.11 below).

7.9 Urgent consideration

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

The officer must provide the following:

- justification for the request;
- the date of release from criminal incarceration, if applicable;
- where and by whom the person is being detained; and

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

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

7.10 Humanitarian and compassionate considerations

Any humanitarian and compassionate considerations submitted by the person concerned or their counsel must be considered by the decision maker in subsection A115(2) cases.

Further information on humanitarian and compassionate considerations is available in the program delivery instructions on permanent residents.

7.11 The *Youth Criminal Justice Act* (YCJA)

Any material references to a person's record under the YCJA, such as correctional reports and sentencing remarks, may be put before the decision maker when forming a danger opinion in the following circumstance:

Paragraph 119(2)(i) and subsection 119(9) of the YCJA allow for crimes committed by a young offender to be considered if the individual is convicted as an adult three years after the completion of the YCJA sentence for summary convictions and five years after the completion of the YCJA sentence for indictable offences.

For information that does not make up the individual's criminal record, such as charges that have been withdrawn or stayed, absolute or conditional discharges under the YCJA and convictions that do not fall within the three- or five-year exception, the officer preparing the danger opinion submission should

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

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

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

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

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

7.12 Disclosure

Disclosure prior to ministerial review

The CBSA regional office discloses the assessments of the danger to the public, danger to the security of Canada or nature and severity of the acts and the risks and humanitarian and compassionate considerations received from NHQ to the subject and their counsel for written submissions.

Upon receipt of the disclosure package, the CBSA regional office must

- advise the DAS when the package is received by them from NHQ;
- advise the DAS when the package is disclosed to the subject and counsel;
- provide the DAS with an electronic copy of the disclosure letter that has been signed by the person concerned acknowledging receipt of the disclosure package or with the refusal to sign or acknowledge, if applicable;
- provide the date by which submissions by the subject must be received (15 days); and
- advise the DAS when they receive submissions (or fail to receive them).

7.13 Extension requests for submissions

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

- consider the reasons for the request and consult with the DAS, CBSA, NHQ;
- grant the extension, if it is allowed, for a short period only;
- acknowledge the request in writing and include it in the danger opinion package; and
- advise the appropriate section at NHQ of the granted extension request and of the new date submissions are due.

If the request was made after submissions were due and the danger package has already been provided to the Minister for decision, advise the client or their counsel that, even though a late submission cannot be refused, there is no guarantee that the submission will be considered, as it may reach the decision maker after a decision has already been made. The DAS, CBSA, NHQ, must be made aware of such requests and will inform the IRCC decision maker, who must always be made aware of such requests.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

All submissions must be accepted by the local responsible office and referred to the appropriate section at NHQ, regardless of whether an extension was granted.

7.14 Following receipt of submissions

Upon receipt of a submission, the CBSA regional office will forward the following documentation to the DAS, CBSA:

- any submissions made by the subject or their counsel (depending on the size of the material, this can be done electronically or via mail);
- a copy of the signed disclosure letter sent to the client; and
- any additional evidence being introduced by the local responsible office that has been disclosed to the client.

7.15 After the Minister's delegate's danger opinion decision

After the Minister's delegate issues an opinion under paragraphs A115(2)(a) and/or (b), a copy of the decision will be sent by IRCC's Case Management Branch, NHQ, to the DAS, CBSA, NHQ, who will then forward the decision to the originating CBSA office for further action.

The manager of the originating CBSA office is responsible for notifying the person concerned **immediately**, in writing, of the decision. Notice should also be provided to the person's counsel when one is on file.

If the person is to be removed, the process will require coordination with the local Removals Screening Unit.

7.16 Reconsideration of danger opinion

Note 1: Requests for reconsideration will not stay the processing of a case, including removal. The removals officer is responsible for deciding whether a deferral of removal is appropriate in each case.

Note 2: Where the subject of a danger opinion pursuant to section A115(2)(a) has obtained a record suspension for the underlying serious criminality conviction(s), please request advice from the CBSA Danger Assessments Section (DAS) (CBSA-ASFC_Danger_Assessments-Evaluations_De_Danger@cbsa-asfc.gc.ca), who will consult with the IRCC Case Management Branch.

Upon receipt of a request for reconsideration of a danger opinion, the local CBSA office will forward the request to the CBSA DAS. A decision maker at the IRCC Case Management Branch will then be assigned to make a decision on the request.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

A decision maker will review the request and determine whether to reopen the original danger decision based on whether the request (along with any accompanying submissions) demonstrates one of the following:

- **New evidence has been submitted that meets all of the following criteria:**
 - a) **Reliable:** Is the evidence reliable, considering its source and the circumstances in which it came into existence?
 - b) **Relevance:** Is the evidence relevant to the decision type, in the sense that it is capable of proving or disproving a fact that is relevant to the proceeding?
 - c) **Materiality:** Is the evidence material, in the sense that the decision maker may have come to a different conclusion if it had been known?
 - d) **Newness:** Is the evidence new in the sense that it is capable of
 - i. proving the current state of affairs in the country of removal;
 - ii. proving a fact that was unknown at the time of the original decision;
 - iii. contradicting a finding of fact made by the original decision maker?
- **A principle of natural justice was violated by the original decision maker.**

Reopening and reconsidering

Where the decision maker decides that a reopening of the original danger opinion is required based on either or both of the 2 above assessments, it becomes as though the initial decision was never finalized, and a new decision must therefore be made. This second decision is termed the reconsideration decision. Before the new decision is rendered, the subject of the danger opinion and/or their counsel should be informed of the decision to reconsider, and a further opportunity for submissions should be provided.

Refusal to reopen and reconsider

Alternatively, after reviewing the request to reconsider and any new submissions made in support of the request, the decision maker may deny the request. The decision maker must explain the reasons for refusing to reopen the original decision with regard to the applicant's submissions and the policy guidelines. This may be done in letter format.

7.17 Info-alert

The Immigration Cases Division, Case Management Branch will enter an info-alert in the Global Case Management System (GCMS) regarding the decision of the Minister's delegate concerning a request for a danger opinion or a request for reconsideration.

Appendix A Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(a)

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

[Person's name]:

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

If the Minister is of the opinion that you are a danger to the public in Canada, you may be removed from Canada to [list the country or countries here].

An assessment will be made of the threat that you pose to the public in Canada. In addition, an assessment will be made of the possibility of risk you may face should you be removed from Canada to the country from which you have been determined to be a protected person, the country from which you came to Canada, the country of your permanent residence, the country of your nationality or the country of your birth as well as of any humanitarian and compassionate considerations. These assessments will be disclosed to you before they are presented to the Minister for decision. The following is a list of some of the materials that will be presented to the Minister for consideration, copies of which are included with this letter:

- [List all pertinent documentary evidence that will be forwarded to the Case Management Branch, IRCC, NHQ]

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centre. This information may include the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material.

You may make any written representations or arguments that you deem necessary and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a danger to the public, the risks you may face if removed from

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

Canada and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from the date you receive this letter. All material must be submitted in either of Canada's official languages.

Prior to being presented to the Minister's delegate for decision, you and/or your counsel will be provided with the assessment of the danger you may pose to the public, the risks you may face upon removal, and humanitarian and compassionate factors in your case as well as all supporting documentation considered in the assessment that has not already been disclosed to you or your counsel. Following receipt of this information, you will be invited to make further written submissions within a certain time frame. Your submissions, along with the documents disclosed to you, will be presented to the Minister's delegate for decision.

Once a determination is rendered, pursuant to paragraph 115(2)(a) of the IRPA, you will be informed in writing of the decision of the Minister.

Yours truly,

[Name of manager or supervisor], CBSA

Encl.: _____

Receipt acknowledged _____

[Date]

Appendix B Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraph A115(2)(b)

Subject: Notice of intention to seek the opinion of the Minister pursuant to paragraph 115(2)(b) of the *Immigration and Refugee Protection Act*

[Person's name]:

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

If the Minister is of the opinion that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of the danger to the security of Canada, you may be removed from Canada to [list the country or countries here].

An assessment of the nature and severity of acts committed or of the danger to the security of Canada will be made by the CBSA. In addition, an assessment will be made by IRCC of the possibility of risk you may face should you be removed from Canada to the country from which you have been determined to be a protected person, the country from which you came to Canada, the country of your permanent residence, the country of your nationality or the country of your birth as well as of any humanitarian and compassionate considerations. These assessments will be disclosed to you before they are presented to the Minister for decision.

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

- [List all documentary evidence pertinent to danger considerations that will be forwarded to the Case Management Branch, IRCC, NHQ]

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centre. This information may include the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

You may make any written representations or arguments that you deem necessary and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or the danger to the security of Canada, the risks you may face if removed from Canada and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from the date you receive this letter. All material must be submitted in either of Canada's official languages.

Prior to being presented to the Minister's delegate for decision, you and/or your counsel will be provided with the assessment of the danger it is believed you pose to the security of Canada, the nature and severity of the acts committed, the risks you may face upon removal and humanitarian and compassionate factors in your case as well as all supporting documentation considered in the assessment that has not already been disclosed to you or your counsel. Following receipt of this information, you will be invited to make further written submissions within a certain time frame. Your submissions, along with the documents disclosed to you, will be presented to the Minister's delegate for decision.

Once a determination is rendered pursuant to paragraph 115(2)(b) of the IRPA, you will be informed in writing of the decision of the Minister.

Yours truly,

[Name of manager or supervisor], CBSA

Encl.: _____

Receipt acknowledged _____

[Date]

Appendix C Letter advising the client that the CBSA will seek the Minister's opinion on the basis of paragraphs A115(2)(a) and (b)

Subject: Notice of intention to seek the opinion of the Minister pursuant to paragraphs 115(2)(a) and (b) of the *Immigration and Refugee Protection Act*

[Person's name]:

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

If the Minister is of the opinion that you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, the danger to the security of Canada or the danger to the public, you may be removed from Canada to [list the country or countries here].

An assessment of the nature and severity of acts committed or the danger to the security of Canada will be prepared by the CBSA. An assessment of the danger to the public, the possibility of risk you may face should you be removed from Canada to the country from which you have been determined to be a protected person, the country from which you came to Canada, the country of your permanent residence, the country of your nationality or the country of your birth as well as of any humanitarian and compassionate considerations will be prepared by IRCC. These assessments will be disclosed to you before they are presented to the Minister for decision. The following is a list of some of the materials that will be presented to the Minister for consideration, copies of which are included with this letter:

- [List all documentary evidence pertinent to danger considerations that will be forwarded to the Case Management Branch, IRCC, NHQ]

The Minister may refer to your refugee claim material, where applicable, and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centre. This information may include the *Human Rights Package*, the *Contextual Package*, the *Indexed Media Review* and the *Weekly Media Review*, which cover the country or countries to which you may be removed. The Minister may also use other annually published and publicly available material.

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

You may make any written representations or arguments that you deem necessary and submit any documentary evidence that you believe to be relevant. All representations, arguments or evidence—which should address whether you are a person who should not be allowed to remain in Canada on the basis of the nature and severity of acts committed, the danger to the security of Canada or the danger to the public and the risks you may face if removed from Canada, and any humanitarian and compassionate factors—that are to be considered by the Minister must be received by the CBSA at the address noted above on or before the expiration of 15 days from the date you received this letter. All material must be submitted in either of Canada's official languages.

Prior to being presented to the Minister's delegate for decision, you and/or your counsel will be provided with the assessment of the danger it is believed you pose to the security of Canada and the nature and severity of the acts committed as well as the assessment of the danger you may pose to the public, the risks you may face upon removal and humanitarian and compassionate factors in your case as well as all supporting documentation considered in the assessments that has not already been disclosed to you or your counsel. Following receipt of this information, you will be invited to make further written submissions within a certain time frame. Your submissions, along with the documents disclosed to you, will be presented to the Minister's delegate for decision.

Once a determination is rendered, pursuant to paragraphs 115(2)(a) and (b) of the IRPA, you will be informed in writing of the decision of the Minister.

Yours truly,

[Name of manager or supervisor], CBSA

Encl.: _____

Receipt acknowledged _____

[Date]

31

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

SECTION 3 CRIMINAL HISTORY			
List <u>all</u> offences, disposition and sentence			
Date	Charges	Disposition (withdrawn, convicted, not guilty, etc.)	Sentence
1.	1.	1.	1.
2.	2.	2.	2.
...
SECTION 4 CIRCUMSTANCES OF INADMISSIBILITY			
List all occurrences with police, role and activities on behalf of the organization, etc.			
SECTION 5 DEGREE OF ESTABLISHMENT			
Provide a brief description of subject's current and past employment and/or studies, of the assets and liabilities, the level of education, any trade/skills training, official languages ability, recent or past receipt of social assistance/unemployment insurance, of residence, of community involvement/ties, etc.			
SECTION 6 HUMANITARIAN, COMPASSIONATE AND RISK CONSIDERATIONS			
Provide any information on spouse, children, parents, siblings, etc. and the relationship with the subject including anyone dependent on the subject for financial or emotional support. Is the subject part of a nuclear family relationship? If there is a child, does the subject play a strong parental role? Is there any indication of drug/alcohol abuse or dependence? What hardship, if any, would the subject experience if removed to his/her home country? If removed, what hardship, if any, would anyone in Canada experience as a result of the removal? Has the subject been issued a warning letter in the past? If an interview was not conducted, what attempts were made to contact the subject?			
SECTION 7 POTENTIAL FOR REHABILITATION			
Provide any information as to whether the subject has admitted their guilt or participation in the activities during the interview, the testimony or by a guilty plea at trial. Is there an appeal of the conviction or sentence? Is the subject still in contact with any co-accused or members of the organization? Has the subject attempted to improve their life (i.e., entering a rehabilitation program, upgrading skills/education)? Does the subject have stable/supportive family members or others who are willing and able to assist in the rehabilitation efforts? Is the subject working or is there an offer of employment upon release? Has the subject reintegrated or made a plan to reintegrate into the community? Has the subject expressed remorse for their actions? Has the subject indicated a desire or need to rehabilitate? Does the offence or do activities seem isolated? Are there outstanding charges? What was the subject's attitude or level of co-operation while detained or at the interview? Etc.			
SECTION 8 RECOMMENDATION AND DANGER RATIONALE			
Provide information on whether the offence/activities involved violence. Were there any criminal proceedings or convictions? If so, what was the sentence? Is there a pattern of criminal behaviour and if so, is it escalating? What was the impact of the activities on the victim(s), public and society? Has the subject expressed remorse or renounced their activities? Is the subject still involved with the organization or its members? What is the likelihood of the subject becoming a contributing and law abiding member of society? Are there any removal impediments? Etc.			

ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada

SECTION 9 CORRECTIONAL INSTITUTION INFORMATION	
Case management officer and phone number:	Place of detention:
FPS number:	Day parole eligibility date: Full parole eligibility date:
Statutory release date:	Warrant expiry date:
SECTION 10 LIST OF ATTACHMENTS	
Please provide any and all document pertinent to assessing risks, danger to the public, danger to the security of Canada and/or nature and severity of the acts committed, such as the PIF, POE notes, CBSA/IRCC interview notes, A44 reports, any IRB decisions, transcripts, court decisions, police/correctional services/parole board reports, intelligence reports, etc.	
Information <input type="checkbox"/> <i>Personal Information Form (PIF) / Basis of Claim form (BOC)</i> <input type="checkbox"/> Refugee Protection Division (RPD) / Convention Refugee Determination Division (CRDD) decision(s) <input type="checkbox"/> A44 report(s) <input type="checkbox"/> Deportation order(s) <input type="checkbox"/> Immigration Division (ID) – Inadmissibility decision(s) <input type="checkbox"/> Immigration Division (ID) – Inadmissibility transcript (if on file) <input type="checkbox"/> Immigration Division (ID) – Detention review decision(s) <input type="checkbox"/> Court decision(s) <input type="checkbox"/> Interview notes (specify date and organization responsible): List all other documents being provided:	
SECTION 11 PUBLIC POLICY CONSIDERATIONS	
Please list any public policy considerations.	
SECTION 12 LITIGATION	
Please list any ongoing litigation for the subject.	
Name of reporting officer:	Signature ➤
Date:	

****THIS DOCUMENT IS FOR CBSA PURPOSES ONLY.**

TO REQUEST AUTHORIZATION TO SHARE THIS DOCUMENT, PLEASE CONTACT THE MANAGER OF THE CBSA DANGER ASSESSMENTS SECTION.**