



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# CP 2

## Decision-Making

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Updates to chapter

**Listing by date:**

**Date: 2006-06-08**

A minor change has been made to section 3.8 of CP 2 to reflect that, effective April 18, 2005, the knowledge of Canada and language requirements are waived for individuals 55 years and over.

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### 1. General Policy On Decision-Making

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#### 1.1. This section is about

This section is about decision-making procedures and rules of natural justice.

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#### 1.2. Authorities

<b><i>Citizenship Act</i></b>	<b><i>Citizenship Regulations</i></b>
<ul style="list-style-type: none"><li>• Section 14</li><li>• Section 15</li><li>• Section 23</li><li>• Section 26</li><li>• Paragraph 27(e)</li></ul>	<ul style="list-style-type: none"><li>• Section 11</li><li>• Section 12</li><li>• Section 18</li></ul>

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#### 1.3. Concepts

When citizenship judges make a decision they must be sure that:

- they have the legal authority to make the decision; and
  - the decision follows the administrative law principles of natural justice and procedural fairness.
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#### 1.4. Administrative law

Administrative law is:

- the legal principles relating to the government's powers and organization;
- the legal control of the government's actions and decisions.

Administrative law ensures there is a legal basis for any action by a government representative, such as a citizenship judge. It sets standards that government officials must meet in making decisions about individuals.

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

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#### 1.5. Powers granted by the *Citizenship Act*

The *Citizenship Act* gives many powers, such as the powers to grant citizenship and issue certificates of citizenship.

Section 23 of the *Citizenship Act* says the Minister can delegate those powers to those responsible for applying the law. The delegation of authority must be in writing.

As a matter of policy, the power to determine citizenship status and to grant, retain, renounce, or resume citizenship, is only delegated to Canadian citizens.

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### 1.6. Appeal

The Act authorizes an appeal of the decision of a citizenship judge to the Federal Court of Canada - Trial Division. This appeal is not de novo, meaning that only the evidence examined by the citizenship judge is admissible in court. When the Federal Court hears an appeal, it:

- examines the merits of the decision;
- determines whether it was the correct decision.

See **CP 8 – Appeals**.

### Applying the Act and examining the facts

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#### 1.7. Steps in making a decision

Section 14 of the Act gives the judge authority to consider certain citizenship applications.

There are three steps in making a decision on a citizenship application:

- The judge must determine whether the applicant meets the requirements of the Act.
- If not, the judge must decide whether to recommend an exercise of the Minister's discretion under subsection 5(3) or to recommend a grant pursuant to subsection 5(4).
- If the judge decides not to make a recommendation, he or she must non-approve the application.

The judge must bear in mind not only the Act's provisions, but also the Federal Courts' interpretations of those provisions.

#### 1.8. Period of time

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A citizenship judge has 60 days to make a decision.

#### 1.9. Burden of proof

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Unlike the criminal law standard of proof "beyond a doubt," citizenship proof is the civil law standard of "balance of probabilities."

It is up to applicants to demonstrate that the balance of probabilities indicates that they meet the requirements of the Act.

### Natural justice and procedural fairness

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#### 1.10. Decision-maker

It is an administrative law principle that, in the absence of a legislative provision to the contrary, the decision-maker is master of the decision-making process.

Depending on the nature of the decision, a fairly high degree of procedural fairness is required. A decision likely to affect the rights of an individual (for example, deportation), requires more procedural guarantees than a decision that does not affect an individual's status.

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### 1.11. Method can be more important than decision

In administrative law, the way a decision is made is often more important than the decision itself. Consequently, the decision-maker (the citizenship judge) always has a duty to act fairly and in accordance with the principles of natural justice.

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### 1.12. Basic elements of natural justice

The duty to act fairly includes rights and obligations that must be observed.

The two basic elements of natural justice are

- the right to be heard, and
  - impartiality.
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### 1.13. The right to be heard

The first principle of natural justice is the right to be heard.

If a decision might affect an individual, the individual must have a chance to be heard.

While the right to be heard implies a hearing, it does not always mean an oral hearing. Submissions can be made in writing. This procedure is known as a file hearing.

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### 1.14. Rules must be observed

In both oral and file hearings, certain rules must be observed before making a decision.

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### 1.15. "Whoever hears the parties makes the decision."

It is up to whoever examines the evidence and documents submitted to make the decision.

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### 1.16. Exception

There is one exception that is frequent in government: one person reads, hears and evaluates all the pertinent information and then submits a report to another official who makes the decision. This exception is allowed as long as the decision-maker takes all the information into account. An example of this is found in the citizenship process. Officers gather information, administer citizenship tests and then provide the material evidence to a citizenship judge.

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### 1.17. Key duties of citizenship officer

- A. The officer evaluates the documentation and information gathered and recorded by him or herself and by others (CPC Sydney, Immigration, etc.).
- B. The officer must ensure the evidence is satisfactory to him or herself before submitting the file to a judge. In other words, the evidence necessary to grant citizenship must be available to the officer.
- C. An officer submits the file to the judge only when there is enough evidence on file to allow the judge to make a decision. The officer may request more information or evidence from the client when it is not clear that the subject has complied with regulatory requirements.
- D. The officer ensures all evidence is available to the judge. The file must contain any relevant information gathered by CIC in its investigations such as records of conversations with port of entry officials regarding a client's immigration status or residence in Canada.

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- E. The officer must make a decision about the grant of citizenship based on the judge's determination. The citizenship officer refers the file to Case Management Branch (Litigation Management) if the officer believes the Minister may wish to exercise his right of appeal.

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### 1.18. All the evidence must be heard

The judge must take all pertinent information and evidence into account, no matter how extensive.

The judge must assess the applicant's credibility and may require additional documentation to support certain statements, such as a claim of residence in Canada during the four years preceding the application.

If the evidence is rejected because of a lack of credibility, the decision must give the reasons.

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### 1.19. Applicant submits evidence

The decision must be based on the evidence submitted by the applicant. Citizenship judges have the authority to request more evidence.

Keep in mind, it may be considered unfair to base a decision on information that the applicant has not had an opportunity to comment on.

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### 1.20. Must give reasons for decision

The decision-maker must justify the decision.

This means that the parties should receive a clear explanation of the reasons for the decision, how it was reached, and the evidence that was taken into account.

Section 15 of the *Citizenship Act* says there is an obligation to give reasons for a decision when a citizenship judge non-approves an application.

Failure to give reasons for a decision when the law requires reasons for a decision may result in reversal of that decision.

Properly justifying a decision makes it possible to inform the applicant of the reasons for the decision. It also makes it possible for the applicant to consider whether or not to appeal the decision.

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### 1.21. Giving reasons cannot be delegated

The judge who makes the decision must give the reasons for the decision.

This cannot be delegated.

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### 1.22. Bias

An applicant has the right to a fair and impartial hearing and a fair and impartial decision-maker.

The applicant does not have to prove that the decision-maker was biased. The mere possibility of bias may be enough to show bias.

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### 1.23. Personal bias

Decision-makers must not allow personal beliefs or interests influence their decisions.

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### 1.24. Types of bias

The following are examples of situations that may show bias:

- commenting on a question before the hearing;



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- attitudes revealing prejudices: the application must be studied impartially and without regard to what the decision-maker considers to be a good citizen;
- prior involvement in the case;
- a relationship between the decision-maker and one of the parties;
- marked hostility toward one of the parties;
- possibility of financial benefit from the outcome of the proceedings.

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### 1.25. Deal with each case on individual basis

Examine each case on an individual basis. Circumstances that are bias in one case may not be bias in another case.

### Content of the decision

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### 1.26. Give reasons for decision

When the judge does not approve an application, the judgment:

- tells the applicant that the application is not approved;
- gives full reasons for the decision;
- presents the reasons for the decision so the applicant or the Minister of Citizenship and Immigration can decide whether to appeal the decision.

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### 1.27. What to include in justifying the decision

The decision must include:

- the facts;
- an analysis of the facts; and
- the deductions from the analysis.

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### 1.28. Conclusion not enough

Giving a conclusion and repeating the criteria set out in the *Citizenship Act* is not enough.

The arguments and the evidence must be discussed.

The judge must then show why the decision was made, and state the evidence supporting the decision.

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### 1.29. Elements of a decision to refuse citizenship

The following are the elements of a decision to refuse citizenship:

- a summary of the evidence considered;
- the evidence rejected (if applicable), and reasons for rejecting the evidence;

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- findings of fact (evidence);
- an explanation of the findings and how they relate to the requirements of the Act;
- show that the applicant has been given the two options open to him or her:
  - ◆ submit a new application when the applicant believes that he or she meets the requirements of the Act;
  - ◆ appeal the decision to the Federal Court-Trial Division within 60 days of being notified of the decision.

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## 2. Transferring Jurisdiction

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### 2.1. This section is about

This section is about transferring section 5(1) grant, renunciation, retention, and resumption applications from one citizenship judge to another.

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### 2.2. Authorities

<b><i>Citizenship Act</i></b>	<b><i>Citizenship Regulations</i></b>
<ul style="list-style-type: none"><li>• Subsection 5(1)</li><li>• Section 8</li><li>• Subsection 9(1)</li><li>• Subsection 11(1)</li><li>• Paragraph 27(e)</li></ul>	<ul style="list-style-type: none"><li>• Subsection 11(5)</li><li>• Subsection 11(7)</li><li>• Subsection 11(8)</li><li>• Subsection 11(9)</li><li>• Section 18</li></ul>

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### 2.3. Policy

The citizenship judge who hears an application makes the decision about the application.

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### 2.4. Procedure

Only transfer in exceptional circumstances. Once a citizenship judge starts a file, he or she can only refer the file to another judge in exceptional circumstances.

Exceptional circumstances include:

- a prolonged absence from work
- serious illness
- death

The judge who receives the file may ask the applicant for another interview or request more documentation.

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### 2.5. To transfer a file

To transfer a file to another citizenship judge, the local manager must formally transfer the file by completing a Transfer of Jurisdiction form. A note is entered in CRS.

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### 2.6. One form for each transfer

Sign a Transfer of Jurisdiction Form for each application you transfer, even where applications are in the same file or in the same family group. A copy of each form is attached to the paper file.

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## 3. Judge's Decision

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### 3.1. This section is about

This section is about the information a citizenship officer should provide to a citizenship judge with an application.

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### 3.2. Authorities

<b><i>Citizenship Act</i></b>	<b><i>Citizenship Regulations</i></b>
<ul style="list-style-type: none"><li>• Section 14</li><li>• Section 15</li><li>• Section 17</li><li>• Subsection 26(2)</li><li>• Paragraph 27(f)</li></ul>	<ul style="list-style-type: none"><li>• Subsection 11(5)</li><li>• Subsection 11(7)</li><li>• Subsection 11(8)</li><li>• Subsection 11(9)</li><li>• Section 12</li><li>• Section 28</li></ul>

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### 3.3. Context

Citizenship officers must provide complete and accurate information to a citizenship judge who is considering an application for a subsection 5(1) grant, a section 8 retention, a subsection 9(1) renunciation, or a subsection 11(1) resumption of citizenship.

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### 3.4. Information judge should receive

Only refer an application to a judge when all the needed documents and information are available.

The applicant's file should include, at least:

- the application form;
- the decision form (for a 5(1) grant, the complete Citizenship Application Review Form (CARF));
- the results of the written citizenship test, if relevant;
- any relevant residence documents and information;
- any other documents and/or information that might help the citizenship judge make a decision.

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### 3.5. Act gives judge 60 days to make decision

The citizenship judge has 60 days from the date of referral to make a decision on applications under subsections 5(1), 9(1), and 11(1) and under section 8.

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### 3.6. Section 17 allows six-month suspension

The Minister of Citizenship and Immigration can suspend the processing of an application for up to six months. The Federal Court of Canada says a grant application can only be suspended under section 17 when more information is needed from the applicant and the applicant has been asked to provide more information. See **CP 13, Section 6: Suspending Applications**.

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### 3.7. Review cases with judge

Regularly review cases with the judge to ensure that a decision is made within the 60-day period.

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### 3.8. When judge does not have to interview 5(1) grant applicants

When the judge is satisfied with the information on file and has no doubts or questions, he or she can review and make a decision on a grant application without interviewing the applicant in the following circumstances:

- when the applicant is 55 years or older;
  - when the applicant passes the written test and is not a residence case.
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### 3.9. Minister may ask sections 8, 9, and 11 applicants to appear before judge

The Minister of Citizenship and Immigration, at the request of a judge, can ask applicants for retention (section 8), renunciation (subsection 9(1)) and resumption (subsection 11(1)) of citizenship to appear before a citizenship judge.

Note that sections 8, 9, and 11 do not require the applicant to appear in person unless the judge feels that an oral interview is necessary.

A personal interview is used when circumstances do not allow eligibility to be determined from documents alone.

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### 3.10. When interview necessary

As a general rule, citizenship judges should interview applicants who:

- fail the written citizenship test;
  - are caught cheating on the written citizenship test;
  - have a criminal, immigration or residence issue that must be resolved.
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### 3.11. Judge says what documents needed

A judge may want a personal interview with an applicant. The judge should say what documents he or she wants the applicant to provide.

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### 3.12. Applicant invited to interview by mail

When a judge requests an interview with an applicant, citizenship officials send a written notice by ordinary mail to the applicant's last-known address:

- giving the applicant a date, time and place for an interview before the judge;

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- telling the applicant what documents the applicant should bring to the interview;
- telling the applicant to ignore any notice of a time and place for swearing the oath of citizenship he or she may have received.

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### 3.13. Applicant does not appear for interview

If the applicant does not appear for the scheduled interview:

- reschedule the interview;
- send a second notice by registered letter to the applicant's last-known address, giving the date, time and place for the rescheduled interview.

If the applicant does not appear for the rescheduled interview:

- record the application as having been abandoned by the applicant.

See **CP 13, Section 5: Abandonment.**

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### 3.14. Approval shown on decision form or CARF

When the judge approves an application, he or she checks the appropriate box on the decision form or CARF and signs and dates the form. Citizenship can then be granted with the citizenship officer signing and dating the appropriate section. Please note that a signature stamp is not acceptable, and should not be used on a decision form or CARF. Once an application is granted, a date can be arranged for the oath of citizenship.

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### 3.15. Registered letter sent to non-approved applicants

If the judge does not approve an application, the applicant is sent a letter in writing giving the reasons for non-approval and advising the applicant of the right to file a new application and/or to appeal the decision to the Federal Court-Trial Division.

The letter is sent by registered mail to the applicant's last-known mailing address.

Keep a copy of the judge's letter of non-approval in the applicant's file.

A non-approved applicant has the right to appeal within 60 days. Hold a non-approved applicant's file for 180 days, and then retire it.

If no notice of appeal has been received at the end of 180 days, send the file to CPC Sydney for a refund of the Right to Citizenship fee and file retirement.

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### 3.16. Reasons for non-approval can be handed to applicant

If the judge decides not to approve an application immediately after the interview, the letter giving the reasons for the decision can be given to the applicant following the interview.

If the non-approval letter is handed to the applicant, the applicant must sign a dated receipt saying he or she has received it. Keep the receipt in the applicant's file. Keep a copy of the judge's letter of non-approval in the applicant's file.

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### 3.17. Give applicant decision within 60 days

Citizenship judges must inform applicants who are not approved that they only have 60 days from the date of mailing or receiving the letter of non-approval to appeal the decision. Applicants must also be advised that they can make a new application.

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### **3.18. If non-approval because of prohibition or residence, send file to Case Management Branch**

If a judge does not approve an application and the applicant failed to disclose prohibition or residence information, immediately refer the file to Case Management Branch if it falls within the guidelines. See **CP 6, Section 4: Section 29 Investigations**.

Attach the standard covering memorandum to the front of the file indicating: Possible Section 29 Investigation.