

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and CLIENT FILE OPENING AND CLOSING (A-2) checklists. It is intended for use by immigration counsel representing persons who are appealing removal orders. Some removal orders may be issued by the Immigration and Refugee Board (“IRB”) following admissibility hearings, or by the Minister (either the Minister of Public Safety and Emergency Preparedness or the Minister of Citizenship and Immigration) following examination at hearings before the Immigration Appeal Division (“IAD”) of the IRB. The process for appealing such orders is governed by the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27 (the “IRPA”), the Immigration Appeal Division Rules, SOR/2002-230 (the “IAD Rules”), and accompanying regulations and rules. This checklist is current to September 1, 2023.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Virtual hearings. During the pandemic, the IRB has moved largely to a virtual hearing model. All IRB hearings are scheduled as virtual hearings by default. Individuals can request the use of IRB premises and equipment to participate in virtual hearings. In-person hearings may be scheduled upon request or at the discretion of the IRB. See “Practice Notice: Scheduling of virtual, hybrid and in-person hearings at the IRB”, updated and in effect for hearings scheduled on or after September 5, 2023. • Immigration Refugee Board Chairperson’s Guidelines. The IRB issued several revised Chairperson’s Guidelines: <ul style="list-style-type: none"> • “Guideline 3: Proceedings Involving Minors at the Immigration and Refugee Board” (effective October 31, 2023); • “Guideline 4: Gender Considerations in Proceeding before the Immigration and Refugee Board” (effective October 31, 2023), which includes language regarding trauma-informed adjudication, updated to reflect language used in Guidelines 3 and 8); • “Guideline 8: Accessibility to IRB Proceedings—Procedural Accommodations and Substantive Considerations (effective October 31, 2023); and • “Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics” (effective December 2021). • Electronic exchange of documents using My Case. Effective October 26, 2020, all Divisions allow the exchange of documents electronically using IRB’s self-service Web Portal, My Case. My Case will allow parties to provide documents to the IRB and to receive documents from the IRB. Electronic exchange of documents permitted through other processes such as email or epost Connect™ continue unchanged. See “Refugee Protection Division Practice Notice: Exchange of documents through Canada Post epost Connect”. • Communicating by email with the IAD. Effective January 31, 2020, the IAD allows submission of documents or other correspondence by email in all IAD registry offices. On consent, the IAD will communicate with a party by email. Providing an email address is considered consent. The IAD will not transmit documents by email if it contains Protected B (which includes solicitor-client privileged information) or higher or if it has been declared confidential or subject to publication restriction. 					

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<p>• My Case online accounts. Counsel should ensure they open a My Case online account with the IRB (see https://my-case-mon-dossier.irb-cisr.gc.ca/en-US/) and are fully registered to file and receive documents. My Case is now in Phase 3 and counsel can now add up to four delegates to their account, such as legal assistants, paralegals, and associates as well as articling students. Lawyers must create either Sign-In Partner or GCKey accounts for themselves with the federal government to facilitate registration. Counsel should also ensure they are ready for online hearings, including having adequate high-quality internet access, arrangements available for witnesses, and the ability to participate in online hearings from their own computers enabled with the necessary hardware and software.</p> <p>Of note:</p> <ul style="list-style-type: none"> • Additional resources. Detailed information about procedure under the <i>IRPA</i> is available on the IRB website at www.irb-cisr.gc.ca. CLEBC resources relating to immigration practice include annual editions of the <i>Annual Review of Law and Practice</i> (CLEBC) and annual course materials. • Law Society of British Columbia. For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Initial Interview 3. Request Disclosure 4. Pre-hearing Steps 5. Preparation for Alternative Dispute Resolution 6. Preparation for Appeal Hearing 7. Conduct at Appeal Hearing 8. Follow-up after the Hearing 9. Closing the File <p style="text-align: center;">CHECKLIST</p> <p>1. INITIAL CONTACT</p> <ol style="list-style-type: none"> 1.1 Conduct a conflicts of interest check and complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist. 1.2 Arrange the initial interview. If an interpreter will attend the interview, ensure that the interpreter contacts the client and advises the client of the interview date. 1.3 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110). 1.4 Gather the following information. <ol style="list-style-type: none"> .1 Caller: <ol style="list-style-type: none"> (a) Full name, address, telephone number, occupation. (b) Relationship to client. 					

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<p>.2 Client:</p> <ul style="list-style-type: none"> (a) Full name, home and business address, home and business telephone number, occupation(s). (b) Present location. (c) Age and date of birth. (d) Immigration status in Canada. (e) Languages spoken. <p>1.5 Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Also advise that if the matter becomes more complicated, the fees and disbursements might have to be increased.</p> <ul style="list-style-type: none"> .1 If the case is a referral from Legal Aid BC (the Legal Services Society), advise the caller and client that you will not act until the client’s coverage has been confirmed from Legal Aid BC. <p>1.6 If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/).</p>					
<p>2. INITIAL INTERVIEW</p> <p>2.1 Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Also advise that if the matter becomes more complicated, the fees and disbursements might have to be increased.</p> <p>2.2 Confirm whether the client has a right of appeal. Sections 63 and 64 of the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27 (the “IRPA”) set out who has a right of appeal to the Immigration Appeal Division (the “IAD”) of the Immigration and Refugee Board (“IRB”). Those who have been found inadmissible to Canada on grounds of security (as defined in IRPA, s. 34), for violating human or international rights (IRPA, s. 35), for serious criminality (IRPA, s. 36), or for organized criminality (IRPA, s. 37), do not have a right of appeal (IRPA, s. 64). Those with a serious criminality finding due to a conviction in Canada punished by a term of imprisonment of less than six months retain their right of appeal (IRPA, s. 64(2)).</p> <p>2.3 Collect additional information:</p> <ul style="list-style-type: none"> .1 Personal information and documents: <ul style="list-style-type: none"> (a) Citizenship and immigration status; place and date of birth; the basis on which the client was first admitted to Canada; whether the client is under legal disability or is a minor child; confirmation of appointment of a designated representative under IRPA, s. 167(2). (b) Copies of removal order and filed notice of appeal. The notice of appeal must be received by the IAD within 30 days after the appellant received the removal order (Immigration Appeal Division Rules, SOR/2002-230 (“IAD Rules”), Rules 5(3) and 7(2)). (c) If the client is a legal aid referral, confirm the Legal Aid BC (Legal Services Society) referral has been received; note the Legal Aid assignment date and the expiry date of coverage. (d) Details of education, including any current schooling or training. 					

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<p>(e) Details of employment history, including:</p> <ul style="list-style-type: none"> (i) Current employment: employer’s name, address, and phone number (obtain permission to contact employer); job title; length of employment with that employer; name of immediate supervisor; hours regularly worked; approximate income; typical duties and future prospects. (ii) Previous employment: same details as set out in preceding paragraph; reason for leaving. (iii) If unemployed: employment prospects, likelihood that prospective employer will in fact hire the client. <p>(f) Family:</p> <ul style="list-style-type: none"> (i) Marital status; date and place of marriage, if applicable; possible pregnancy. (ii) Children’s names, ages, sexes, and custody arrangements. (iii) Dependants, including whether the client is under an obligation to make support payments; if so, whether the client is up-to-date with those payments. (iv) Whether the client has other relatives living in Canada; if so, their names, addresses, and occupations, and details of the client’s relationship with them. (v) Parents’ names (or names of persons other than parents who raised the client), and their addresses, phone numbers, occupations, and the details of their relationship with the client. (vi) Siblings (ages, addresses, occupations). <p>(g) Names, addresses, and occupations of friends, employers, members of the community, or family members who will attest to the client’s good character.</p> <p>(h) Roots in the community, such as:</p> <ul style="list-style-type: none"> (i) Social or cultural engagement (e.g., membership in clubs, participation in organized sport). (ii) Financial roots (e.g., whether client owns a home, has a business, has immovable assets). <p>(i) Client’s future plans (e.g., education, career, marriage, family).</p> <p>(j) Client’s health and well-being. For example:</p> <ul style="list-style-type: none"> (i) Addiction to alcohol or drugs, and participation in any treatment program. (ii) Any medical condition or treatment that would be affected by their removal from Canada. <p>(k) Conditions in the client’s country of origin that could cause the client hardship if returned, such as:</p> <ul style="list-style-type: none"> (i) Civil war, civil unrest, and/or violence; (ii) Risk of discrimination against those in the client’s particular situation (e.g., gender, race, sexual orientation); (iii) Availability of family and other social supports; 					

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<p>(iv) Economic and educational opportunities;</p> <p>(v) Availability of health care required by client for any identified medical conditions.</p> <p>.2 Criminal record and charges:</p> <p>(a) Consider accuracy of the information of Citizenship and Immigration Canada (“CIC”) and/or Canada Border Services Agency (“CBSA”) regarding offences, convictions, places, dates, penalties.</p> <p>(b) Discuss circumstances, especially mitigating circumstances.</p> <p>(c) Obtain the names, addresses and phone numbers of all previous criminal defence counsel and signed authorizations from the client to obtain information and copies of the client’s files.</p> <p>(d) Discuss breaches of probation or parole, escapes, failures to appear in court.</p> <p>(e) Consider whether the client is on probation or parole now; if so, the expiry date.</p> <p>(f) If applicable, existing charges and number of appearances to date, and, if represented, the name, address, and phone number of criminal defence counsel.</p> <p>2.4 Advise the client on the issues involved in the appeal, which will depend on the basis for the appeal.</p> <p>(a) The IAD has the power to uphold, quash, or stay a removal order (<i>IRPA</i>, s. 66), on legal or humanitarian and compassionate grounds (<i>IRPA</i>, s. 67).</p> <p>(b) If you intend to argue humanitarian and compassionate factors (per s. 67(1)(c)), review the <i>Ribic</i> factors, from <i>Ribic v. Canada (Minister of Employment and Immigration)</i>, [1985] I.A.B.D. No. 4 (QL), and endorsed by the Supreme Court of Canada in <i>Chieu v. Canada (Minister of Citizenship and Immigration)</i>, 2002 SCC 3.</p> <p>(c) Discuss the likelihood and type of dispositions (<i>IRPA</i>, s. 66(1)); discuss client’s willingness and ability to comply with possible terms of stay of the deportation order (<i>IRPA</i>, s. 68).</p> <p>3. REQUEST DISCLOSURE</p> <p>3.1 If not already received, follow up with the Immigration Division of the IRB (in the case of a removal order made by the Immigration Division at an admissibility hearing) or the Minister (in the case of a removal order made by a CIC or CBSA officer at an examination) to obtain the appeal record, which contains the removal order, evidentiary documents, any written reasons for the decision to make the removal order; in cases where there was an admissibility hearing, obtain a transcript (<i>IAD Rules</i> 6(1) and 8(1)). The appeal record is to be provided to the appellant within 45 days of the Immigration Division or Minister receiving the notice of appeal (<i>IAD Rules</i> 6(3) and 8(4)).</p> <p>3.2 File requests for the client’s full electronic and physical file from both IRCC and CBSA pursuant to the <i>Privacy Act</i>, R.S.C. 1985, c. P-21. These requests can be done online (www.irb-cisr.gc.ca/en/contact/Pages/AtipAiprp.aspx). Information on a client file will be released to counsel only if the appropriate consent forms are provided.</p>					

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<p>3.3 If the client had previous hearings at the IRB (such as a previous refugee hearing), file a request for the client’s full IRB file pursuant to the <i>Privacy Act</i>, by mail, fax, or email (www.irb-cisr.gc.ca/en/contact/Pages/AtipAiprp.aspx). The appropriate consent form will be required for release of client information.</p> <p>3.4 Complete and file a <i>Privacy Act</i> request (as in item 3.2) seeking any Corrections Service records, including risk assessments, health records, rehabilitation and other programs completed.</p> <p>3.5 If applicable, obtain a full copy of any relevant court and/or police records. Court records can be obtained directly from the local courthouse. Police records for British Columbia police departments will require a request pursuant to the <i>Freedom of Information and Protection of Privacy Act</i>, R.S.B.C. 1996, c. 165.</p>					
<p>4. PRE-HEARING STEPS</p>					
<p>4.1 Fix and diarize the date set for the hearing (and any pre-hearing conferences).</p>					
<p>4.2 Advise the client in writing of the hearing date(s) set.</p>					
<p>4.3 Diarize the deadlines for making disclosure and for filing expert reports and witness summaries of anticipated evidence.</p>					
<p>4.4 Research legal issues and any risks faced by the client if deported. If there is an issue of constitutional validity, consider the notice provisions of IAD Rule 52.</p>					
<p>4.5 Interview potential references, witnesses, and experts (e.g., employers, family members, probation officers, doctors, psychiatrists, service organization representatives, or country condition experts).</p>					
<p>4.6 Obtain statements and expert reports from potential lay and expert witnesses, respectively, whom you have decided to call. Find out if witnesses are represented by counsel. See <i>BC Code</i>, s. 5.3 and rules 7.2-4 to 7.2-9 with respect to communicating with witnesses who may be represented by counsel and those who are unrepresented. If a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person’s lawyer, approach, communicate, or deal with the person on the matter or attempt to negotiate or compromise the matter directly with the person.</p>					
<p>4.7 Collect and prepare documentary disclosure, which should be prepared with the <i>Ribic</i> factors and relevant legal issues in mind.</p>					
<p>4.8 Make a preliminary evaluation of the case. Consider the facts, law, and character of the client, and whether the situation warrants exploring a mediated disposition with a CBSA hearings and appeals officer.</p>					
<p>4.9 Meet with the client to discuss your evaluation of the case (including risk factors for the client if deported to their country of citizenship), and obtain the client’s written instructions concerning a proposed disposition.</p>					
<p>4.10 Advise the tribunal of any need for an interpreter (if not already done when fixing the hearing date).</p>					

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<p>5. PREPARATION FOR ALTERNATIVE DISPUTE RESOLUTION</p> <p>5.1 The IAD may require the client and the Minister’s representative at the CBSA to participate in alternative dispute resolution (“ADR”) to encourage the parties to come to an agreement with a hearing. The ADR process is governed by IAD Rule 20.</p> <p>5.2 If the IAD has not already selected the client’s appeal for ADR, and if the case seems suitable, write to the IAD, copying the Minister’s representative at the CBSA, requesting that the IAD consider designating the appeal for ADR (IAD Rule 20).</p> <p>5.3 Study and review the appeal record and all disclosure. Ensure the client has also reviewed the appeal record and disclosure.</p> <p>5.4 Interview the client in light of the evidence and prepare them for questioning by the Minister’s representative at the CBSA. The client should be prepared to speak to the circumstances leading to the removal order (i.e., conviction) and to all <i>Ribic</i> factors.</p> <p>5.5 Contact the Minister’s representative at the CBSA and determine their position on the appeal. Discuss this position with the client.</p> <p>5.6 After obtaining written instructions from the client, consider preparing a disposition (stay of the removal order) on terms and conditions to which the client is agreeable.</p> <p>5.7 If the proposed disposition is acceptable, or such other terms are negotiated with the consent of client, prepare an affidavit and written materials in support of the disposition and provide them to the Minister’s representative at the CBSA and the IAD’s ADR personnel in advance of the ADR meeting, along with any documentary disclosure on which you intend to rely.</p> <p>5.8 The ADR meeting will be conducted by a dispute resolution officer from the IAD.</p> <p>(a) If the Minister’s representative at the CBSA, after questioning the appellant at the ADR meeting, is satisfied that the appeal should be allowed, then the agreement to resolve the appeal is signed at that time, following which the dispute resolution officer will submit it to the IAD for approval.</p> <p>(b) If the appeal is not resolved through the ADR process, the case will proceed to a full appeal hearing. With some exceptions, any information, statement, or document given in the ADR process is confidential (IAD Rule 20(4)). If a member of the IAD acted as the dispute resolution officer in the ADR, they will not be the member to hear the appeal (IAD Rule 20(2)).</p> <p>6. PREPARATION FOR APPEAL HEARING</p> <p>6.1 Study and review the appeal record and all disclosure. Ensure the client has also reviewed the appeal record and disclosure.</p> <p>6.2 Interview the client in light of the evidence in the appeal record and disclosure. Prepare the client for questioning by counsel and the IAD Member and cross-examination by the Minister’s representative at the CBSA.</p> <p>6.3 Witnesses:</p> <p>.1 Arrange for interview and statements. Find out if witnesses are represented by counsel. See item 4.6 in this checklist.</p>					

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<p>.2 Decide whom to call to give evidence.</p> <p>.3 Prepare witnesses for hearing.</p> <p>.4 Provide witness and document disclosure to the tribunal and all parties at least 20 days prior to the hearing (IAD Rules 30 and 37(3)), including witness information respecting:</p> <p>(a) contact;</p> <p>(b) purpose and substance of testimony (or assigned summary statement, if the witness is an expert);</p> <p>(c) the time needed for the witness’s testimony;</p> <p>(d) the client relationship to the witness;</p> <p>(e) a description of an expert’s qualifications; whether the witness will testify by telephone (in which case you must supply to the IAD a long distance telephone card) or videoconference; and</p> <p>(f) proof of disclosure to any other parties.</p> <p>.5 Summons to a witness (IAD Rule 38):</p> <p>(a) Request that the IAD registry issue a summons.</p> <p>(b) Deliver the summons to a process server, or arrange other service through the CBSA or CIC, as the case may be. Pay, or offer to pay, the summoned person the applicable witness fees and travel expenses set out in Tariff A of the Federal Court Rules, 1998 (IAD Rule 38(3)(c)).</p> <p>(c) Obtain verification of service or affidavit of attempted service.</p> <p>(d) Consider arrangement for teleconference evidence from witnesses unable to attend hearing and notify the tribunal.</p> <p>6.4 Prepare a hearing plan.</p> <p>6.5 Decide if you require an adjournment, which must be requested by a written application pursuant to IAD Rule 48, and if so:</p> <p>.1 Discuss it with the client.</p> <p>.2 Notify the Minister’s representative and see if they will consent.</p> <p>.3 Notify the tribunal in writing, pursuant to IAD Rule 48 and by telephone, explaining the reasons for seeking an adjournment.</p> <p>.4 If the adjournment is granted:</p> <p>(a) Fix the new date and diarize it.</p> <p>(b) Explain to the client, and ensure that the client has noted the date. Confirm the date with the client in writing.</p> <p>(c) Notify witnesses.</p> <p>6.6 Prepare a hearing brief, including:</p> <p>.1 List of the essential elements of the case you have to prove.</p> <p>.2 Your client’s testimony. Consider your duty as an officer of the court and the conduct expected of you as an advocate in <i>BC Code</i> rules 5.1-1, 5.1-2, and 5.1-4 to 5.1-6.</p> <p>.3 Direct examinations.</p>					

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<p>.4 Cross-examinations, considering:</p> <ul style="list-style-type: none"> (a) Who the CBSA hearings and appeals officer will call. (b) What each witness will say (or prove). (c) The weaknesses of each witness. (d) What testimony each can give that might help the client. (e) How to frame questions to emphasize evidence that assists the client and minimize the impact of evidence that does not. <p>.5 Evidentiary arguments; arguments regarding advisability of statements, weight to be given to evidence in the alternative.</p> <p>.6 Arguments under the <i>Canadian Charter of Rights and Freedoms</i>.</p> <p>.7 Closing arguments.</p> <p>.8 Prepare submissions on disposition.</p> <p>.9 Prepare the client for the hearing, including dress, manner, testifying, and being cross-examined.</p>					
<p>7. CONDUCT AT APPEAL HEARING</p>					
<p>7.1 When the case is called, introduce yourself, say that your client is present and that you are ready to proceed.</p> <p>7.2 Consider any preliminary motions.</p> <ul style="list-style-type: none"> .1 Apply for adjournment if it was previously refused. .2 If provided with late disclosure, renew any objections. <p>7.3 Opening statement: set out whether the appeal is on legal or equitable grounds, or both.</p> <p>7.4 Call witnesses. See <i>BC Code</i>, s. 5.4 regarding rules respecting communication with witnesses giving evidence.</p> <p>7.5 Consider getting written instructions that the client does or does not wish to have certain witnesses called to testify.</p> <p>7.6 Consider whether to re-examine on new matters raised in cross-examination after the Minister’s representative and tribunal, respectively, have cross-examined and questioned the client.</p> <p>7.7 Make final argument.</p>					
<p>8. FOLLOW-UP AFTER THE HEARING</p>					
<p>8.1 If the removal order is quashed:</p> <ul style="list-style-type: none"> .1 Explain the significance to the client. .2 Send a reporting letter and statement of account. .3 Close the file (see item 9 in this checklist). <p>8.2 If the removal order is stayed:</p> <ul style="list-style-type: none"> .1 Explain to the client the terms and conditions of the order made by the tribunal. Explain the consequences of a breach of the order, and stress the effect of further arrest or any further offences. .2 Send a statement of account to the client. 					

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<p>.3 When the entered order is received from the tribunal, copy it for the client with written instructions (which you will have previously given orally to the client) in your reporting letter (with your statement of account, if the file was not billed at the conclusion of the hearing).</p> <p>8.3 If the appeal is dismissed:</p> <p>.1 Discuss with the client the advisability of a judicial review to the Federal Court of Canada. Note the special procedural requirements for leave applications concerning immigration matters (<i>IRPA</i>, ss. 72 and 74; Federal Court Immigration and Refugee Protection Rules, SOR/93-22).</p> <p>.2 Notify the client of any limitations period(s): 15 days to file and serve the notice of application for leave (<i>IRPA</i>, s. 72(2)(b)); if leave is granted, the judicial review hearing will be between 30 and 90 days of the date leave was granted (<i>IRPA</i>, s. 74(b)). Diarize the dates.</p> <p>.3 If there are indications that the client may face a risk of persecution, death, torture, or cruel or unusual treatment should they be removed to their home country, discuss with the client the possibility of submitting an application for a pre-removal risk assessment (“PRRA”) under <i>IRPA</i>, ss. 112 to 114, and IRP Regulations, SOR/2002-227, s. 232.</p> <p>9. CLOSING THE FILE</p> <p>9.1 Prepare a reporting letter and account as soon as practicable after closing. For a sample reporting letter, see the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/.</p> <p>9.2 If the client is not going to pursue an appeal to the RAD or judicial review or PRRA, close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					