

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 AND VERIFICATION PROCEDURE (A-1) checklist. 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 August 31, 2016.</p> <p>New developments:</p> <ul style="list-style-type: none"> • People smuggling. In <i>B010 v. Canada (Citizenship and Immigration)</i>, 2015 SCC 58, the Supreme Court of Canada held that s. 37(1)(b) of the IRPA does not cover all acts of assistance to illegal immigrants. Acts committed by people who are not themselves members of criminal organizations, who do not act in knowing furtherance of a criminal aim of such organizations, or who do not organize, abet, or counsel serious crimes involving such organizations, do not fall within s. 37(1)(b). A migrant who aids in his own illegal entry or the illegal entry of other refugees or asylum seekers in their collective flight to safety is not inadmissible under s. 37(1)(b); acts of humanitarian and mutual aid do not constitute people smuggling under the IRPA. • Conditional sentence may reasonably be construed as a term of imprisonment under IRPA, s. 36(1)(a). In <i>Tran v. Canada (Public Safety and Emergency Preparedness)</i>, 2015 FCA 237, the Federal Court of Appeal held that conditional sentence orders may constitute a “term of imprisonment” with respect to a right of appeal. The court held that the decision of the minister’s delegate to refer the respondent to the Immigration Division of the IRB for a determination of whether he should be found inadmissible on account of serious criminality under s. 36(1)(a) of the IRPA was within the range of reasonable outcomes. The decision is under appeal to the Supreme Court of Canada, scheduled to be heard in January 2017. • Administrative changes to processing. As of March 1, 2016, the IAD introduced an additional administrative change to the appeal process in regard to the cancellation of a stay of a removal order under s. 68(4) of the IRPA. The IAD will no longer automatically ask the parties to provide written submissions upon receipt of a notice of cancellation. Instead, 15 days after the IAD has received a notice of cancellation from the minister, the notice and the appeal file will be forwarded to a member for decision, and the IAD may dispose of the appeal on the basis of the documents in the appeal file without a hearing. See the IRB website at www.irb-cisr.gc.ca/Eng/ImmApp/Pages/NotAviChaProApp.aspx. In regard to the July 2, 2015, administrative changes to the appeal process, see www.irb-cisr.gc.ca/Eng/ImmApp/Pages/NotAviAdmCha.aspx. • Law Society Rules. On July 1, 2015, revised and consolidated Law Society Rules came into effect. See www.lawsociety.bc.ca/page.cfm?cid=4089&t=Law-Society-Rules-2015. • Code of Professional Conduct for British Columbia (the “BC Code”). In July 2015, rule 3.7-9 was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file. 					

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<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 & Practice</i> and annual course materials. <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> Interview the Client Request Disclosure Pre-hearing Steps Preparation for Alternative Dispute Resolution Preparation for Appeal Hearing Conduct at Appeal Hearing Follow-up After the Hearing <p style="text-align: center;">CHECKLIST</p> <p>1. INTERVIEW THE CLIENT</p> <ol style="list-style-type: none"> 1.1 Consider Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. 1.2 Conflicts of interest. See <i>Code of Professional Conduct for British Columbia</i> (“BC Code”), s. 3.4 and the model conflicts of interest checklist on the Law Society website at www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf. 1.3 Confirm whether the client has a right of appeal. <i>IRPA</i>, ss. 63 and 64 set out who has a right of appeal to the IAD. Those who have been found inadmissible to Canada on grounds of security (as defined in <i>IRPA</i>, s. 34), for violating human or international rights (<i>IRPA</i>, s. 35), for serious criminality (<i>IRPA</i>, s. 36), or for organized criminality (<i>IRPA</i>, s. 37) do not have a right of appeal (<i>IRPA</i>, 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 (<i>IRPA</i>, s. 64(2)). 1.4 Collect additional information: <ol style="list-style-type: none"> 1 Personal information and documents: <ol 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 <i>IRPA</i>, 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 (IAD Rules 5(3) and 7(2)). (c) If the client is a legal aid referral, confirm the Legal Services Society (“LSS”) referral has been received; note the LSS assignment date and the expiry date of LSS 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 his or her 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); 					

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<p>(iii) Availability of family and other social supports;</p> <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>3. If you agree to act, advise the client of the scope and amount of your retainer and if it must be paid in advance. Follow up in writing, confirming your retainer and setting out the manner in which the fees, disbursements, interest, and taxes will be determined (See <i>BC Code</i>, s. 3.6 for the rules regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges.) If you will be providing limited representation under the auspices of a not-for-profit organization, see <i>BC Code</i>, rules 3.4-11.1 to 3.4-11.4.</p> <p>1.4 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>1.5 Send the client a letter confirming the discussion set out in item 1.4.</p>					

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<p>2. REQUEST DISCLOSURE</p> <p>2.1 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 (IAD Rules 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 (IAD Rules 6(3) and 8(4)).</p> <p>2.2 File requests for the client’s full electronic and physical file from both CIC and CBSA pursuant to the <i>Privacy Act</i>, R.S.C. 1985, c. P-21. These requests can be done online at www.irb-cisr.gc.ca/Eng/contact/Pages/AtipAiprp.aspx. Information on a client file will be released to counsel only if the appropriate consent forms are provided.</p> <p>2.3 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/Eng/contact/Pages/AtipAiprp.aspx). The appropriate consent form will be required for release of client information.</p> <p>2.4 Complete and file a <i>Privacy Act</i> request (as in item 2.2) seeking any Corrections Service records, including risk assessments, health records, rehabilitation and other programs completed.</p> <p>2.5 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>3. PRE-HEARING STEPS</p> <p>3.1 Fix and note the date set for the hearing (and any pre-hearing conferences).</p> <p>3.2 Advise the client in writing of the hearing date(s) set.</p> <p>3.3 Note the deadlines for making disclosure and for filing expert reports and witness summaries of anticipated evidence.</p> <p>3.4 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>3.5 Interview potential references, witnesses, and experts (e.g., employers, family members, probation officers, doctors, psychiatrists, service organization representatives, or country condition experts).</p> <p>3.6 Obtain statements and expert reports from potential lay and expert witnesses, respectively, whom you have decided to call.</p> <p>3.7 Collect and prepare documentary disclosure, which should be prepared with the <i>Ribic</i> factors and relevant legal issues in mind.</p>					

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<p>3.8 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>3.9 Meet with the client to discuss your evaluation of the case (including risk factors for the client if deported to his/her country of citizenship), and obtain the client’s written instructions concerning a proposed disposition.</p> <p>3.10 Advise the tribunal of any need for a translator (if not already done when fixing the hearing date).</p>					
<p>4. PREPARATION FOR ALTERNATIVE DISPUTE RESOLUTION</p>					
<p>4.1 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>4.2 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>4.3 Study and review the appeal record and all disclosure. Ensure the client has also reviewed the appeal record and disclosure.</p>					
<p>4.4 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>4.5 Contact the Minister’s representative at the CBSA and determine their position on the appeal. Discuss this position with the client.</p>					
<p>4.6 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>4.7 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>4.8 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>					

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<p>5. PREPARATION FOR APPEAL HEARING</p> <p>5.1 Study and review the appeal record and all disclosure. Ensure the client has also reviewed the appeal record and disclosure.</p> <p>5.2 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>5.3 Witnesses:</p> <p>.1 Arrange for interview and statements. Find out if witnesses are represented by counsel. See <i>BC Code</i>, s. 5.3 and rules 7.2-6 to 7.2-9. 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>.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>5.6 Prepare a hearing plan.</p> <p>5.7 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 he or she will consent.</p>					

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<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>5.8 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> <p> .4 Cross-examinations, considering:</p> <p> (a) Who the CBSA hearings and appeals officer will call.</p> <p> (b) What each witness will say (or prove).</p> <p> (c) The weaknesses of each witness.</p> <p> (d) What testimony each can give that might help the client.</p> <p> (e) How to frame questions to emphasize evidence that assists the client and minimize the impact of evidence that does not.</p> <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> .10 If any professional responsibility issues arise, consult the <i>BC Code</i>. For more assistance, contact a Law Society Practice Advisor for confidential help, or a Bencher or a senior lawyer.</p>					
<p>6. CONDUCT AT APPEAL HEARING</p> <p>6.1 When the case is called, introduce yourself, say that your client is present and that you are ready to proceed.</p> <p>6.2 Consider any preliminary motions.</p> <p> .1 Apply for adjournment if it was previously refused.</p> <p> .2 If provided with late disclosure, renew any objections.</p> <p>6.3 Opening statement: set out whether the appeal is on legal or equitable grounds, or both.</p> <p>6.4 Call witnesses. See <i>BC Code</i>, s. 5.4 regarding rules respecting communication with witnesses giving evidence.</p>					

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<p>6.5 Consider getting written instructions that the client does or does not wish to have certain witnesses called to testify.</p> <p>6.6 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>6.7 Make final argument.</p> <p>7. FOLLOW-UP AFTER THE HEARING</p> <p>7.1 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. <p>7.2 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. .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>7.3 If the appeal is dismissed:</p> <ul style="list-style-type: none"> .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; <i>Federal Court Immigration and Refugee Protection Rules</i>, SOR/93-22). .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. .3 If there are indications that the client may face a risk of persecution, death, torture, or cruel or unusual treatment should he or she be removed to his or her 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 160(3), and IRP Regulations, SOR/2002-227, s. 232. .4 Send a reporting letter and a statement of account. .5 If the client is not going to pursue judicial review or PRRA, close the file. Consider storage and destruction requirements. See <i>Closed Files—Retention and Disposition</i>, July 2015, Appendix B at www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf. 					