THE CANADIAN BAR ASSOCIATION
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December 2, 2005

David Manicom
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Citizenship and Immigration Canada
Operational Coordination
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Julie Stock
Acting Director
Citizenship and Immigration Canada
Legislative and Regulatory Policy
300 Slater Street
Ottawa, ON K1A 1L1

Dear Mr. Manicom and Ms. Stock:

Re: Appendix A, Manual Chapter ENF 5

On behalf of the Citizenship and Immigration Section of the Canadian Bar Association (the CBA Section), I am writing to bring to your attention some deficiencies in the form letter notifying permanent residents that they face possible removal from Canada (Appendix A, Enforcement Manual, Chapter 5). The CBA Section fears that its wording may be based upon unrealistic assumptions about the level of knowledge permanent residents possess about the internal workings of Canada's immigration system. The letter fails to alert them to the significance of the various steps in the removal process and the criteria against which the Department will evaluate their circumstances. A person facing removal may be ill prepared to present relevant information to the Department due to insufficient information in the letter. The CBA Section has some suggested clarifications.

Overview of the Letter

The letter does four things. It states that the Department is about to make a decision whether to seek a removal order:

> It is alleged that you may be inadmissible to Canada under section ____ of the Immigration and Refugee Protection Act, specifically: Insert IRPA wording here A decision to allow you to remain in Canada or to seek to have a removal order issued against you will be made in the near future.

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Second, it states that there will be a review of the person's circumstances:

> The next step in the process is to conduct a review of the circumstances of your case. Information such as your age at the time you became a permanent resident of Canada, the length of time you have been here; the location of your family support and related responsibilities; your degree of establishment (work, language, community involvement); any criminal activity in which you may have been involved and any other relevant factors will be considered in the decision making process.

Third, it invites the person to an interview:

> You are requested to present yourself at this office for an interview on:
> DATE
> Please bring your passport, travel document or national identity card and your Record of Landing (IMM 1000), confirmation of Permanent Residence (IMM 5292B or IMM 5509B) or permanent resident card. Also, you may bring any other supporting documentation that you wish to be considered. If you require interpretation, please bring a translator with you. Please be advised that should you fail to report for this interview, a decision will be made based on the information available on file.

Fourth, it advises the person about the absence of an appeal:

> Please note that, based on the information on file, you
> may
> may not
> have appeal rights to the Immigration Appeal Division should a removal order be issued against you. Section 64 of the Immigration and Refugee Protection Act states that:
> no appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality* or organized criminality.
> *must be in respect to a crime that was punished in Canada by a term or imprisonment of at least two years.

<u>Deficiencies and Recommended Clarifications</u>

This notice is deficient in at least seven ways:

- It does not state the link between the impending decision and the review of the circumstances. The link should be made explicit. The notice letter should say that the decision whether to seek a removal order is discretionary, and that the decision will be based on a review of all the circumstances.

- It does not state the purpose of the interview, namely to elicit circumstances relevant to the decision whether to seek a removal order. The notice does not say why the interview is happening, other than stating that without an interview, a decision will be based on the information on file. The letter needs to state that this interview is an opportunity for the permanent resident to present to the Department the reasons why he or she believes it should not seek a removal order.

- It is vague about documentation, saying only that the recipient should bring any documentation he or she wishes to be considered. That advice needs elaboration. The letter should provide examples of relevant documentation, including: a written narrative by the person concerned, letters of support from friends and relatives, job letters and letters of reference from employers, written corroboration of involvement in community activity, personal financial records of assets and financial records from any business in which the individual is involved, proof of ownership of property, and so on.

- It does not explain the implications of the lack of appeal rights. The notice should say that absent a humanitarian application, the interview is the only opportunity the person will have to present to anyone in authority the reasons why he or she should not be required to leave Canada. It should say also that a humanitarian application is an alternate method of presenting these reasons to the Department. However, it does not suspend removal and may not be decided before a person is required to leave.

- It does not state the criteria used to make the decision whether to seek a removal order. The criteria are the same as those used by the Immigration Appeal Board under the *Immigration Act, 1976* to decide whether or not to allow an appeal from removal, as set out in *Ribic* v. *Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 (QL):

  > In each case the Board looks to the same general areas to determine if having regard to all the circumstances of the case, the person should not be removed from Canada. These circumstances include the seriousness of the offence or offences leading to the deportation and the possibility of rehabilitation or in the alternative, the circumstances surrounding the failure to meet the conditions of admission which led to the deportation order. The Board looks to the length of time spent in Canada and the degree to which the appellant is established; family in Canada and the dislocation to that family that deportation of the appellant would cause; the support available for the appellant not only within the family but also within the community and the degree of hardship that would be caused to the appellant by his return to his country of nationality. While the general areas of review are similar in each case the facts are rarely, if ever, identical. This list is illustrative, and not exhaustive. The weight to be accorded to any particular factor will vary according to the particular circumstances of a case.

  The notice should repeat what the Board said in *Ribic*, replacing references to the Board and the appellant with references to the Department and the person concerned, respectively.

- It makes absolutely no mention of children. The fate of children will not be relevant to every impending removal, but it is highly relevant to some. The form letter should state that, in conformity with the *Convention on the Rights of the Child*, when an officer makes a decision whether or not to seek removal of the person, the best interests of any child affected by the decision, whether Canadian or not, will be a primary consideration. The letter should invite the individual to address those best interests through documentation and at the interview.

- It is silent about the relevance of representatives. We suggest just repeating what is found in the Manual [IP 5 section 5.28] about representatives:

  > [R]epresentatives are welcome to attend when available on the date set for the interview. The presence of a representative should not impede the interview process. A representative does not necessarily mean a lawyer or other legal

> representative. A representative may be a friend, relative or any other interested person who is there with the permission of the applicant. It is to be noted that, effective April 13, 2004, new regulations state that paid representatives must be authorized to conduct business on behalf of clients when dealing with the Government of Canada in immigration and refugee matters; or to provide advice or assistance.

Some of the above information may seem obvious to those with an intimate understanding of the immigration system. However, all too many people now show up at interviews not knowing why the interview is happening, not bringing relevant documents, not realizing that this interview is their last chance to show the Department why they should be allowed to remain to Canada, not understanding what are relevant criteria and why questions are being asked, not understanding the importance of the fate of affected children and not understanding the relevance or value of legal assistance. If everyone received a notice with the amendments suggested here, the CBA Section believes that incidents of that sort would decrease sharply.

If you have any questions about our proposed clarifications to the letter, please contact me.

Sincerely,

(*Original signed by Kerri Froc on behalf of Robin Seligman*)

Robin Seligman
Chair, National Immigration & Citizenship Law Section

cc: David Dunbar, Justice Canada