

APPENDIX 11E

March 3, July 31, 1967

Mr. James Gordon, 1050 McGill
 Street, Suite 100,
 Montreal, Quebec,
 Quebec, Canada

Dear Mr. Gordon:

Your letter of July 3, 1967, on the subject of American entry into the Canadian Forces under several provisions of the Act.

It is well known that the 1952 Immigration Act is applicable only to foreign military personnel actually in service in Canada, and that consequently a foreign soldier who enters in Canada after leaving military service is not subject to its provisions. I am sure you are well aware, however, that neither Canada nor any of the members of NATO would be acting in the spirit of the North Atlantic Treaty if it granted immunity without conditions to deserters from the military forces of any member of the Alliance.

The definition of "agent" is not recognized in the Canadian Immigration Act, or in any other Canadian statute to the best of my knowledge. In any event, the word "agent" suggests that it really has no application in absence of friendly countries, particularly those having democratic forms of government similar to our own. The connotation usually is that a person lacking "asylum" status is fleeing from political persecution by a regime having totally different interests from ours. I know no law the Immigration Act, or from any of our NATO members, is certainly not in danger of political persecution, though he may well be faced with prosecution.

Foreign military admissions to Canada must be examined under its own criteria of non-eligibility as defined in the Immigration Act. Those seeking permanent residence in this country do, need to deal with us prospectively, however, and this means among other things that they must be able to meet the requirements set forth in Section 31 of the Immigration Regulations. The admission is a consequence of an individual's right of permanent residence under Section 31 of the Regulations. It is clearly to be noted that an Immigration officer has exercised the power of discretion and decided that he is not admissible under Section 31. With or without the circumstances you are faced or which simply as a matter of allowing people in or keeping them out, but

only when the basic decision as to admissibility has been reached. The remedy, of course, is that a person is refused admission, or accepted (temporarily), and simply because he lacks a visa or letter of pre-examination, although this may be the technical reason, but in substance because the lack of the document is indicative of a failure by an immigration officer that the person concerned is not admissible under Immigration law.

In reading Section 31 of the Regulations you will have noted that the admissibility of people who do not have relatives in Canada is made contingent on their likely ability to establish themselves successfully in Canada. Personal qualities are of major significance in reaching a decision on this point, and motivation is one of the qualities to be taken into account. A person who comes here because he believes it to be a good country to live in, and one that offers him better opportunities, is more likely other things being equal—to make the transition successfully than is a man whose chief motive is to avoid responsibilities in his own country. Accordingly, there have to be rather special circumstances before we accept an applicant seeking to escape from his creditors, his wife, or some other legal obligation under the laws of his own country. I think you will agree that, under the Immigration Act, we have to look at military deserters in this general category.

As you will appreciate from the foregoing, our policy in dealing with deserters from any country, not just from the United States, stems not only from NATO considerations; it is based more broadly on the Immigration Act and Regulations. The policy is not a new one, nor is it aimed specifically at deserters in general or at American deserters in particular. Rather, it is a reflection of general immigration policy on the admission of people to Canada.

If you have further questions on the subject, please feel free to ask. I will be glad to hear from you again in any case.

Yours sincerely,

J.C. Morrison,
 Director, Home Branch,
 the Assistant Deputy Minister
 (Immigration)