ENF 5 Writing 44(1) Reports

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Updates to chapter

Listing by date:

Date: 2013-08-20

Sections 3 and 9 have been updated to reflect the addition of subsections 16(1.1) and 16(2.1) to the *Immigration and Refugee Protection Act* as of the coming into force of the *Faster Removal of Foreign Criminals Act*.

Subsection 8.4 was added to provide guidance on further allegations of inadmissibility subsequent to a declaration pursuant to A42.1 by the Minister of Public Safety and Emergency Preparedness.

Date: 2011-01-01

The following changes were made to chapter ENF 5, entitled "Writing 44(1) Reports":

Section 1: Minor changes were made to section 1

Section 4: Minor changes were made throughout Section 4.

Section 5: Minor changes were made to Section 5.1.

Section 8: Changes were made to the paragraph explaining the *Cha* decision in 8.1

Section 8: Minor changes were made to Section 8.2

Section 8: Minor changes were made to Section 8.3

Section 8: Minor changed were made to Section 8.5

Section 8: Minor changes were made to Section 8.9

Section 11: Reference to ID manual deleted**.**

Date: 2009-10-30

The following changes were made to chapter ENF 5, entitled "Writing 44(1) Reports":

Hyperlinks to manuals and forms were added throughout ENF 5 for ease of reference.

Section 3: Hyperlinks were added to access forms in Section 3.1.

Section 4: Minor changes were made to include internet and intranet websites for the Delegation and Designation Authorities and Instruments.

Section 8: Minor changes were made throughout Section 8.1.

Section 8: Minor changes were made to Section 8.4.

Section 8: A paragraph was added to Section 8.9, writing an A44(1) report on a permanent resident. Minor changes were made to the paragraph on released cases to clarify when an officer may require counsel to leave.

Section 11: All reference to the Reciprocal Agreement between the United States and Canada was removed as it expired on October 30, 2009. This section was combined with section 10: Procedure: Point of Finality as section 10.1.

Section 12: Minor changes were made to section 12.1.

Section 12: Section 12.2 was updated to reflect the procedure on accessing the HELP screen in FOSS and is now section 11.2.

Section 12: Section 12.4 was rewritten for clarity and is now section 11.4.

Section 13: Minor changes were made to the Note for clarity and is now section 12.

2007-08-10

The following changes were made to ENF 5 Appendices A and B entitled “Writing a report against a foreign national” and “Writing a report against a permanent resident”.

Appendix A: Items to bring to the interview have been ammended to reflect documents held by foreign nationals.

Appendix B: Permanent residents have been advised that they may have legal counsel present if they wish, however it is not a right, it is a privilege.

2007-04-12

The following changes were made to chapter ENF 5, entitled “Writing 44(1) Reports”:

Section 1: The words “Minister of CIC” have been added at the end of the first paragraph.

Section 4: Minor changes were made to paragraph 3 in order to include CBSA.

Section 8: Substantial changes appear to sections 8.1 and 8.7.

Section 12: The words “Minister of CIC” have been added in section 12.1, and an insert was added to section 12.3, first paragraph.

Section 13: Minor changes have been made throughout the section.

Appendices A and B: Substantial changes appear to both appendices.

2005-11-04

Changes made to reflect transition from CIC to CBSA. The term "delegated officer" was replaced with "Minister's delegate" throughout text, references to "departmental policy" were eliminated, references to CIC and CBSA officers and the Ministers of CIC and PSEP were made where appropriate, and other minor changes were made. Appendix C was removed and Appendix D and E were renamed C and D.

2004-08-20

ENF 5 - **Writing 44(1) Reports** has been updated to reflect an amendment to paragraph 229(1)(k) of the *Immigration and Refugee Protection Regulations.* The amendment allows the Immigration Division of the Immigration and Refugee Board to issue a removal order at a hearing resulting from multiple allegations that include failure to comply with residency obligations.

2003-09-22

Chapter ENF 5, entitled Writing 44(1) reports, specifically Section 8 on Making a decision to write an A44(1) report, has been updated and is now available on CIC Explore.

The amendments were made in response to commitments made to Standing Committee during their study of IRPA which called on CIC to strengthen guidelines with respect to how we make a determination to refer reports to the IRB, especially in cases of permanent residents. These changes were made in consultation with all the domestic regions as well as the Enforcement Program Management Board. The guidelines are intended to ensure greater consistency in the steps taken to obtain information, prior to deciding the disposition of an A44(1) report.

Among the changes to this chapter, the highlights include:

Section 8:

Section 8.1 has been updated to provide clear guidelines on keeping a record of an inadmissibility in all cases.

Section 8.3 addresses the issue of forwarding incomplete files to the Hearings Unit.

Section 8.7 establishes information-gathering guidelines that are to be undertaken prior to writing an A44(1) report.

Appendix A and Appendix B were also revised.For further information, please contact: susan.savriga@cbsa.gc.ca.

1. What this chapter is about

This chapter provides functional direction and guidance on writing a report under the provisions of A44(1) of the *Immigration and Refugee Protection Act* (IRPA); and how to prepare and present such a report to the Minister of Public Safety (PS) or the Minister of Citizenship and Immigration Canada (CIC).

2. Program objectives

The objectives of Canadian immigration legislation with regard to the inadmissibility provisions are:

- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons, including refugee claimants, who are criminals or security risks;
- to promote compliance and support all the objectives and requirements of the Act by incorporating specific inadmissibility provisions relating to non-compliance.

3. The Act and Regulations

Title	Act and Regulations
Delegation of powers	A6(2)
Examination by officer	A15(1)
Obligation - answer truthfully Obligation- appear in person for examination Obligation - relevant evidence Obligation- interview with the Canadian Security Intelligence Service	A16(1) A16(1.1) A16(2)(*b*) A16(2.1)
Obligation on entry - permanent residence Obligation on entry - period for their stay	A20(1)(*a*) A20(1)(*b*)
Permanent resident	A21(1)
Temporary resident Dual intent	A22(1) A22(2)
Entry to complete examination or hearing	A23
Temporary resident permit	A24(1)
Residency obligation	A28
Security	A34 through A37
Criminality	A36(2)(*b*)
Health grounds	A38
Non-compliance with Act – foreign national Non-compliance with Act – permanent resident	A41(*a*) A41(*b*)
Inadmissible family member	A42(*b*)
Report on inadmissibility Referral or removal order	A44(1) A44(2)
Applicable removal order	A45(*d*)
No return without prescribed authorization	A52(1)
Ineligibility Serious criminality	A101(1)(*f*) A101(2)(*b*)
Protected person	A115(1)

Inadmissible - danger to the public	A115(2)(*a*)
Seizure	A140(1)
Definition of "family member"	R1(3)
Rehabilitation	R18
Seeking to enter Canada	R28(*b*)
Medical examination	R29
Medical examination required Inadmissible under A38(1) Medical certificate	R30 R30(1)(*d*) R30(4)
Conditions A16(2)	R32
Transit	R35
End of examination	R37
Direct back	R41(*b*)
Conditions A23	R43(1)
Removal – family members	R227(2)
Exclusion order – A20	R228(1)(*c*)(iii)
Applicable removal order	R229(1)

3.1. Forms

Table 2: Forms

Form Title	Form Number
Direction to Return to the United States	IMM 1237B
Allowed to Leave Canada	IMM 1282B
Report under subsection 44(1)	IMM 5480E
Report under subsection 44(1) (continued)	IMM 5066B
Notice of Requirement to Carry a Foreign National from Canada	BSF502 formerly IMM 1216B
Subsection 44(1) and 55 Highlights – Inland Cases	IMM 5084B
Subsection 44(1) Highlights – Port of Entry Cases	IMM 5051B

4. Instruments and delegations

Pursuant to A6(1), the Minister of PS has the authority to designate specific persons as officers to carry out any purpose of any provision of IRPA with respect to their individual mandates as described in A4, and to specify the powers and duties of the officers so designated. In addition, A6(2) authorizes that anything that may be done by the Minister under the Act and Regulations may be done by a person that the Minister authorizes in writing. This is referred to as delegation of authority.

While A4 gives the Minister of PS the policy lead for enforcement with respect to IRPA, the Minister of Citizenship and Immigration Canada is responsible for screening applicants for inadmissibility and for acting on that responsibility according to its delegated authority.

The Minister of PS has designated officers of both the Canada Border Services Agency (CBSA) and CIC to write reports, and has delegated the review of those reports to officers of both the CBSA and CIC. For full information, the Designation/Delegation Authorities (Instruments) signed by the Minister of PS can be found on the internet at: http://cbsa-asfc.gc.ca/agency-agence/delegation/arch/irpa-lipr-2009_12-eng.pdf and on the intranet at: http://atlas/about-sujet/legislation/delegations/index_e.asp. As a general rule, CIC officers have been designated the authority to write reports for all inadmissibilities except A34 (security grounds), A35 (grounds of violating human or international rights) and A37 (grounds of organized criminality). These cases will be referred to the CBSA. The Minister's delegates at CIC and the CBSA will review all reports written by their respective officers, and may issue removal orders or refer the reports to the Immigration Division.

5. Departmental policy

5.1. Burden of proof

The burden of proof, in the context of immigration legislation, refers to who is responsible for establishing admissibility under IRPA.

Under the provision of A45(d), the burden of establishing admissibility depends on whether or not the person has been authorized to enter Canada. For more information, see Table 2.

Table 2: Burden of proof for authorization of persons to enter Canada

Persons authorized/not authorized to enter	Details
Permanent residents and foreign nationals authorized to enter	A45(d) requires the Immigration Division to make a removal order against a permanent resident or a foreign national who has been authorized to enter Canada, if it is satisfied that they are inadmissible. Consequently, in cases involving persons with lawful status in Canada, including permanent residents, the onus rests on the Minister of Public Safety to establish that the person is inadmissible. Once an admissibility hearing has commenced, a hearings officer must be prepared to offer evidence to support the allegation(s) of inadmissibililty and rebut any statements that may be made by the person concerned.
Foreign nationals not authorized to enter	A45(d) requires the Immigration Division to make a removal order if it is not satisfied that a foreign national who has not been authorized to enter Canada is not inadmissible. A21(1) states that a foreign national becomes a permanent resident and A22(1) states that a foreign national becomes a temporary resident if an officer is satisfied that, *inter alia*, the foreign national is not inadmissible. This applies to persons seeking entry into Canada or those persons who have entered illegally. Consequently, the onus is on these persons to establish that they are not inadmissible. Synopsis: In cases where the Minister's delegate has jurisdiction under A44(2) to make a removal order and the person does not hold status, the burden of proof lies with that person.

5.2. Preparation and transmission of an A44(1) report: Prescribed circumstances

Although an A44(1) report may result from an examination, an examination is not a necessary prerequisite for an officer to prepare and transmit a report to the Minister's delegate. This is due to the fact that officers are only authorized to proceed with an examination under prescribed circumstances.

Under A44(1), an officer may prepare and transmit a report if that officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible.

6. Definitions

No information available.

7. Procedure: *Immigration and Refugee Protection Act* – Subsection A44(1)

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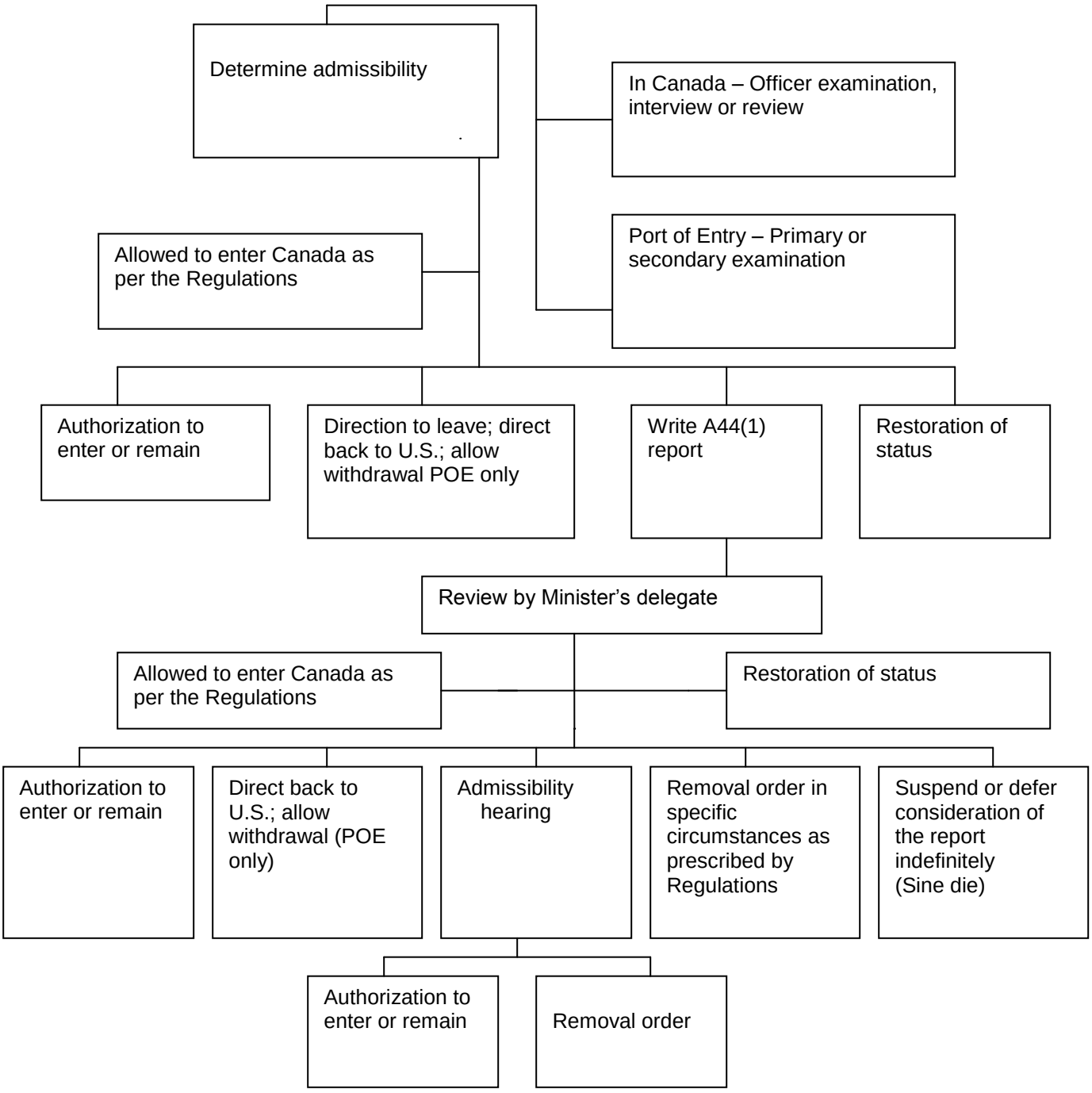

8. Procedure: Making a decision to write an A44(1) report

8.1. Considerations before writing an A44(1) report

The fact that officers have the discretionary power to decide whether or not to write an inadmissibility report does not mean that they can disregard the fact that someone is, or may be, inadmissible, or that they can grant status to that person under A21 and A22.

Rather, this discretion gives officers flexibility in managing cases where no removal order will be sought, or where the circumstances are such that the objectives of the Act may or will be achieved without the need to write a formal inadmissibility report under the provisions of A44(1).

However, note that the scope of discretion varies depending on the inadmissibility grounds alleged, whether the person concerned is a permanent resident or a foreign national, and whether the report is to be referred to the Immigration Division.

For example, in the case of *Minister of Public Safety and Emergency Preparedness v. Cha* (2006 FCA 126), a case involving a foreign national inadmissible under s.36(2)(a), the Federal Court of Appeal held that in spite of the use of the word "may" in the wording of subsection A44(2), there are limits to the discretion afforded to officers and Minister's delegates. The court held that with respect to foreign nationals inadmissible for criminality or serious criminality, officers and Minister's delegates have limited discretion under s.44(1) and (2) of the Act. The court outlined that the particular circumstances of the foreign national, the nature of the offence, the conviction, and the sentence are beyond the scope of the discretionary power of the officer when considering whether or not to write an A44(1) report for criminality or serious criminality against a foreign national.

Officers should carefully consider the consequences of writing or not writing a report given that their decision may have an impact on possible future dealings with the person.

For more information, see sections 8.2 "Non-criminal inadmissibilities", 8.3 "Special considerations for security and criminality inadmissibilities", and 8.10 "Writing an A44(1) report on a permanent resident".

8.2. Non-criminal inadmissibilities

Although not considered exhaustive, the following are some factors that officers may choose to consider when deciding whether or not to write an A44(1) inadmissibility report for a non-criminal inadmissibility.

- Is the person concerned a permanent resident or a foreign national?
- What is the nature or category of the inadmissibility?
- Is the person already the subject of a removal order?
- Is the person already the subject of a separate inadmissibility report incorporating allegations that will likely result in a removal order?
- Is the officer satisfied that the person is, or soon will be, leaving Canada? And in such a case, is the imposition of a future requirement to obtain consent to return warranted?
- Is there a record of the person having previously contravened immigration legislation?
- In the case of non-compliance, was it unintentional or excusable for a valid reason?
- Has the person now been fully counselled on the topic of their inadmissibility? And is the officer satisfied that the person now understands what is required in future to overcome their inadmissibility?
- Is there any reason to believe that, after having previously been counselled on the topic of their inadmissibility, the person simply chose to ignore that counselling?
- Has the person been cooperative?
- Is there any evidence of misrepresentation?

- Has the person applied for restoration of status, and does the person appear to be eligible?
- Has a temporary resident permit been authorized?
- How long has the person been in Canada?
- Has the person been a permanent resident of Canada since childhood? Was the permanent resident an adult at the time of admission to Canada?
- How long has the permanent resident resided in Canada after the date of admission?
- Are family members in Canada emotionally or financially dependent on the permanent resident? Are all extended family members in Canada?
- Are there any special circumstances in the likely country of removal, such as civil war or a major natural disaster?
- Is the permanent resident financially self-supporting or employed? Does the person possess a marketable trade or skill?
- Has the permanent resident made efforts to establish themselves in Canada through language training or skills upgrading?
- Is there any evidence of community involvement? Has the permanent resident received social assistance?
- Has the permanent resident been cooperative and forthcoming with information?
- Has a warning letter been previously issued?
- Does the permanent resident accept responsibility for their actions?
- Is the permanent resident remorseful, or has the person supplied any necessary documentation requested by an officer?

8.3. Special considerations for security and criminality inadmissibilities

Cases involving inadmissibilities for criminality, security, war crimes and crimes against humanity (as described in A34, A35, A36 and A37) are to be treated with utmost seriousness. In *Cha*, Mr. Justice Décary explained that Parliament's intention in drafting IRPA was to make security a top priority for immigration law enforcement officials. Although the above factors are always to be considered when writing an A44(1) report, the officer must always be mindful of the various objectives of the IRPA, in particular A3(1)(*h*) and (*i*). In cases of criminal inadmissibility, the scope of discretion enjoyed by the officers making a decision regarding whether or not to write an A44(1) report will be narrower. The following factors are to be considered when making a decision on writing an A44(1) report in cases of criminal inadmissibilities.

- In minor criminality cases, is a decision on rehabilitation imminent and likely to be favourable?
- Has the permanent resident been convicted of any prior criminal offence? Based on reliable information, is the permanent resident involved in criminal or organized criminal activities?
- What is the maximum sentence that could have been imposed?
- What was the sentence imposed?
- What are the circumstances of the particular incident under consideration?
- Did the conviction involve violence or drugs?

Regardless of the above factors, in all cases where an officer is of the opinion that a person is inadmissible on grounds involving security, violating human or international rights, serious criminality or organized criminality, it is important to have a formal record of that inadmissibility. This is best accomplished by preparing an A44(1) inadmissibility report.

CIC has been designated the authority to write reports for inadmissibilities. except in circumstances where an inadmissibility on grounds involving A34 (security), A35 (human or international rights violations) and A37 (organized criminality) has been identified. Where these inadmissibilities have been identified, the case is to be referred to the CBSA office, which will make a decision on pursuing the allegation. For further instructions on this process, see ENF 7, section 7.

In essence, it is important for the officer to seriously consider whether the information might be important for future dealings with the person and to weigh the longer-term consequences of not doing so. These impacts include, but are not limited to the following: the person's eligibility to claim refugee status at a later date; access to the Pre-Removal Risk Assessment (PRRA) stream; future primary inspection line (PIL) referrals; and the safety and security of officers dealing with this individual in subsequent investigations.

In rare instances, officers may choose not to prepare a report regarding a person who, in their opinion, is inadmissible on grounds involving security (A34), violation of human or international rights (A35), serious criminality (A36(1)) or organized criminality (A37). In these cases, officers should notify their supervisor in writing, and enter a Type 01 non-computer-based (NCB) "Watch For" into the Field Operational Support System (FOSS). This will ensure a long-term historical record of the decision and will generate future hits should the person concerned return to Canada at a later date. The NCB entry should include full details of the inadmissibility, a brief account of what happened, the officer's rationale for not writing the A44(1) report, and the officer's initials or name.

In addition, the officer must write, sign and send a letter to the person (and their counsel if applicable) indicating that although they may be inadmissible to Canada, a report is not being prepared at this time (except for POE cases). The letter must explain the inadmissibility ground(s) being considered by the officer, and the officer's rationale and reasons for not writing a report. The letter must **not** imply that a report will never be prepared for that specific allegation (e.g., A36, A37, etc.). It is important that the CBSA retains the option to pursue an allegation at a later time should new circumstances warrant it. The officer will include a copy of the signed letter in the person's file.

Where a decision is taken not to write a report for a "less serious inadmissibility," officers should still enter an NCB into FOSS with the inadmissibility details and an account of what transpired, as well as their initials or name. The following is an example of when the recording of such an inadmissibility might be useful:

Example: A foreign national or permanent resident already has a removal order, based on criminality, and is again convicted in Canada of another criminal offence. Although the officer may decide that a report is not necessary since an order has already been issued against the person, it would be useful to have a record of that inadmissibility in case that person is convicted again later, and the next officer dealing with the case wants to pursue a danger opinion.

8.4. Allegations of inadmissibility subsequent to a declaration under A42.1

A decision by the Minister to make a declaration under section A42.1 of the IRPA means that the matters referred to in A34, A35(1)(*b*) or (*c*), or A37(1) do not constitute inadmissiblity in respect of that person, *but only in respect of the facts that were reasonably available at the time the Minister made the declaration*. Should a person who has been granted an exception pursuant to section A42.1 of the IRPA subsequently engage in activities that would render them inadmissible on the same or other grounds, or should new and material facts omitted from the record considered by the Minister as a result of an error or misrepresentation on the part of the person concerned **come to the attention of the CBSA**, an officer may prepare a report that sets out the relevant facts pursuant to subsection A44(1).

Before making an allegation that the person is inadmissible on the grounds of A34, A35(1)(*b*) or (*c*), or A37(1), an officer should ensure that the basis of the allegation does not include solely those facts that the Minister has already taken into consideration in granting a declaration under A42.1.

8.5. Counselling persons who are allowed to leave Canada

Before writing an inadmissibility report under A44(1), officers should determine whether the objectives of the Act are better served by allowing the person to withdraw their application to enter Canada. In such circumstances, the same factors as outlined in section 8.1 above, "Considerations before writing an A44(1) report," are applicable.

If a person is allowed to leave Canada voluntarily, officers should counsel the person as follows:

- inform the person why they are believed to be inadmissible;
- inform the person that if they leave Canada voluntarily, they will be free to seek entry to Canada once the factor causing inadmissibility has been overcome;
- if the person appears to be eligible for a temporary resident permit, counsel them on this option, including cost recovery; and
- inform the person of the possible consequences of an A44(1) report, including the possibility of an admissibility hearing and/or a removal order being made against them.

If officers at a port of entry allow persons to withdraw their application to enter Canada, then the officers must give them an Allowed to Leave Canada form (IMM 1282B). See also ENF 4,, Port of Entry Examinations.

8.6. When the decision has been made to prepare an A44(1) report

A44(1) gives officers the discretionary authority whether to prepare a report or not. Officers cannot delegate the discretionary authority to another person, nor can another person oblige an officer to do or not do something that is at the officer's discretion.

Before officers make a decision to write a report under the provisions of A44(1), they must be satisfied that the applicable standard of proof may be met and that sufficient evidence has been or may be gathered to ensure that each element of an inadmissibility allegation may be satisfied.

Officers should be mindful that any piece of evidence gathered may be used at an admissibility hearing. All evidence gathered should therefore be of a quality sufficient to satisfy the Minister's delegate, or a member of the Immigration Division, of the person's inadmissibility.

Officers must take steps in all cases to provide adequate documentation to substantiate the inadmissibility allegation(s) in a report. If a decision has been made to write a report but the evidence is not immediately available, officers should not delay completing the report; this ensures that FOSS accurately reflects the status of a person's case. This is especially important in cases where detention is also being pursued. Files should not be forwarded to the Immigration Division or the Minister's delegate unless all evidence substantiating the allegation is on file, except in rare circumstances. In such cases, officers will record in the case-file notes the attempts that were made to obtain the evidence, so that the Minister's delegate and the hearings officer, if applicable, may follow up, where it is agreed that this is appropriate.

For more information, see section 8.7 "Evidentiary requirements" below.

8.7. Evidentiary requirements

To form the opinion that a person is inadmissible to Canada, an officer must have knowledge of the evidentiary rules and requirements for immigration matters. Knowledge of what may be required to substantiate an allegation of inadmissibility is an important consideration in all cases.

Each allegation has specific requirements for evidence; officers are to be guided by the content of chapters ENF 1, Inadmissibility and ENF 2, Evaluating Inadmissibility.

Proof ''beyond a reasonable doubt" is the evidentiary rule only in criminal cases. The standard of proof in the context of immigration matters depends on the specific inadmissibility allegation and will be based on either "reasonable grounds to believe" or a "balance of probabilities."

"Reasonable grounds to believe" is a *bona fide* belief in a serious possibility based on credible evidence. That is, the grounds are a set of facts and circumstances that would satisfy an ordinarily cautious and prudent person and that are more than mere suspicion.

"Balance of probabilities" means that the evidence presented must show that the facts as alleged are more probable than not.

8.8. Reports on persons claiming to be Canadian citizens

Should officers detect the possibility of Canadian citizenship, the officers shall investigate or cause an investigation of the matter to be initiated before taking any further steps to cause a Minister's delegate review (also referred to as a Minister's proceeding) or an admissibility hearing.

In questioning persons in this regard, officers should be fully cognizant of the *Citizenship Act* and/or make contact with a citizenship officer who can provide assistance and guidance.

Should a person claiming to be a Canadian citizen make a refugee claim to an officer, the officer should ascertain whether that person is indeed a Canadian citizen. If such is the case, the officer shall advise the person that IRPA does not allow for a determination of refugee status of Canadian citizens who are in Canada.

Furthermore, the intent and purpose of Canada's refugee determination process is to offer protection to those who might otherwise be required to return to a country where they fear persecution. Canadian citizens are not subject to this risk.

8.9. Reports on permanent residents and persons claiming to be permanent residents

If an officer concludes that a person who claims to be a permanent resident is not a permanent resident, or has lost permanent resident status pursuant to section A46(1) of the Act, and if the officer consequently decides to report the person under the provisions of A44(1), the officer — depending on the circumstances — shall cite as grounds for the report, either:

- that the person is a permanent resident in Canada who is, in the officer's opinion, inadmissible pursuant to A41(b) because the person failed to comply with the residency obligation of A28; or
- in the case of a person who is unable to present any evidence of permanent resident status, that the person is a foreign national in Canada who has not been authorized to enter and who is, in the officer's opinion, inadmissible pursuant to A41(a) because the person has failed to comply with a requirement of the Act; specifically, the requirement of A20(1)(a) that every foreign national who seeks to enter or remain in Canada must establish, to become a permanent resident, that they hold the visa or other document required under the Regulations.

For more information, see section 8.10 below, "Writing an A44(1) report on a permanent resident."

8.10. Writing an A44(1) report on a permanent resident

Gathering information from the client

All permanent residents who are or may be subject to a report are to be informed of the criteria against which their case is being assessed and of the possible outcome if the case is referred to the Immigration Division for an admissibility hearing, including the possibility of a loss of appeal rights in A64 cases (see "Loss of appeal right cases" below). All permanent residents shall also be provided with the opportunity to make submissions. The Federal Court affirmed this in its decision. Hernandez v. Canada (Minister of Citizenship and Immigration). This can be done by way of an in-person interview or in writing.

The officer shall conduct a review of the details relevant to the case, including, but not limited to, the person's age at the time they became a permanent resident of Canada; the length of time they have been in Canada; the location of their family support and related responsibilities; their degree of establishment (work, language, community involvement); any criminal activity in which they may have been involved; and any other relevant factors the officer deems appropriate to include. Examples of both a notice for an in-person interview and a written notice, where the review of the case is to be prepared without the benefit of an in-person interview, can be found in Appendix B.

For submissions in writing, sufficient time shall be allowed for receipt by regular mail. If the deadline for receipt is 15 days, an officer should not make a decision on day 15, but shall wait an additional seven days to allow for mail delays. All detained cases should be interviewed in person.

The officer must always ensure that the person concerned understands the proceedings. For that purpose, the officer must provide the person concerned with an interpreter if required.

The person concerned must also be given the opportunity to have counsel present at the interview. This is not to be confused with an unqualified right to have counsel present.

In detained cases: persons have the right to have a counsel of their choosing present during the interview. The officer must inform the person of their right to counsel prior to commencing the interview.

In released cases: the officer must inform the person of the possibility to retain counsel prior to commencing the interview. The persons do not have the right to have their counsel present during the interview. However, in the spirit of procedural fairness, counsel's presence should be permitted by the officer. Allowing counsel to be present does not mean that officers are required to tolerate disruptive or discourteous behaviour. At any time during the interview, the officer may require counsel to leave if the officer is of the opinion that such an action is warranted.

Loss of appeal right cases

In A64 cases where the loss of appeal rights may be involved, the person was not originally called in for an in-person interview, and no further information has been received within the specified timeframe, it is recommended that the officer attempt to interview the person, either by telephone or in person. This will ensure that the person concerned is aware of the fact that they may not have appeal rights in their case should a removal order be issued.

Where an interview is not possible because the person refuses to meet or talk with an officer, the officer must keep a record of the efforts made to gather the information and provide sufficient time for the person to submit the information for consideration.

Security or serious criminality cases

It is important to balance the requirement to gather information according to the considerations outlined in ENF 6, section 19.2 and the need to protect the safety of Canadian society. There will be cases where advising a person that an officer is reviewing the circumstances of their alleged inadmissibility could hamper an ongoing investigation. When officers are considering the arrest and detention of such a person for being a danger to the public (for example, criminal intelligence exists that the person is committing crimes of a violent nature), for being a security risk or for being involved in organized crime, it is recommended that the report be written and a decision to refer the matter to the Immigration Division be made prior to the arrest. Once the person is in custody, the officer will explain the process and possible outcome to the individual, conduct the interview to gather information with respect to the criteria considered, and provide the information to the Minister's delegate who made the decision to refer the matter to the Immigration Division. After reviewing the information, if the person making the decision determines that the admissibility hearing is not warranted, they may withdraw the referral in accordance with Rule 5 of the Immigration Division Rules.

See Appendix C for more information on Minister's opinions/interventions.

Referral of a report to the Minister's delegate

All A44(1) reports concerning permanent residents must be referred to the Minister's delegate making the final decision about whether or not to refer the matter to the Immigration Division, and must be accompanied by either a detailed memorandum or an A44(1) case highlights form (IMM 5084B) which must include:

- the person's identity, with name, aliases, date and place of birth, citizenship, marital status, present immigration status, and details of passports and travel documents;

- details of the violations, and the first possible parole or release date if the person is serving a sentence;
- the officer's opinion based on the assessment of the criteria outlined in ENF 6, section 19.2, and the recommendation(s); any submissions received from the person or notes taken at the interview; and, if applicable, the reasons for any delay in submitting the report.

If officers recommend an admissibility hearing, they are required to attach the following documents, if applicable, in duplicate to the memorandum:

- certified true copies of all relevant immigration documents and other certificates and affidavits that can be obtained from the records manager of the Query Response Centre at CIC National Headquarters (NHQ), if applicable;
- originals or certified true copies of other documents relevant to the case, such as a birth certificate, marriage certificate, a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1);
- other documentary evidence that supports the allegation(s) or describes the person's attachment to Canada and potential for successful establishment;
- proof of a search of citizenship records.

When submitting certificates of conviction, officers are to ensure that the conviction (as opposed to the original charge) meets the equivalency requirements of the inadmissibility allegation.

See also, ENF 1, Inadmissibility; ENF 2, Evaluating inadmissibility; and ENF 23, Loss of Permanent Resident Status.

9. Procedure: Overview of the examination process

Under the Act, the concept of "examination" and the powers attached thereto include the assessment of any application made to an officer, whether abroad, at a port of entry or inland.

Specifically, A15(1) provides that an officer is authorized to proceed with an examination where a person makes an application to the officer.

R28 provides that, for the purposes of subsection A15(1), a person makes an application to an officer by:

- submitting an application in writing;
- seeking to enter Canada;
- seeking to transit through Canada as provided in R35; or
- making a claim for refugee protection.

It is important to note that all persons, including Canadian citizens and Canadian Registered Indians, can be examined when entering Canada.

In the case of Canadian citizens and Canadian Registered Indians, however, the approach to be maintained is that once the status of a Canadian citizen or a Canadian Registered Indian is established, they may enter Canada by right and cannot be the subject of further immigration examination.

The Act gives permanent residents of Canada an unqualified right to enter Canada at a port of entry, even if they become subjects of an inadmissibility report, until a final determination has been made regarding their loss of status.

Put simply, this means that all persons may be subject to an examination, whether it be when applying for a visa abroad, seeking entry to Canada, transiting through Canada as provided in R35, seeking to vary the conditions of entry in Canada, or making any other type of application, including a refugee claim.

Under the provisions of A16(1), all persons being examined have the obligation to answer truthfully all questions put to them by an officer for the purpose of the examination, and must produce all documents or other evidence reasonably required.

See also ENF 4, Port of Entry Examinations.

Pursuant to A16(1.1), a person who makes an application must, on request of an officer, appear in person for an examination.

Note: The power to compel someone to submit to an examination under section 16(1.1) of IRPA may be used overseas, inland and at ports of entry.

For foreign nationals, the requirement to produce evidence may extend to the provision of photographic and fingerprint evidence A16(2).

Pursuant to A16(2.1), a foreign national who makes an application must, on request of an officer, appear for an interview for the purpose of an investigation conducted by the Canadian Security Intelligence Service (CSIS) and must answer truthfully all questions put to them during the interview.

Note: The power to compel for a CSIS interview under section 16(2.1) can **only** be used for inland and port of entry applications.

10. Procedure: Point of finality

The Act provides that an examination begins “when a person makes an application to the officer.” Persons seeking to enter Canada are considered to have made an application pursuant to R28(b) as they are “seeking to enter Canada.”

R37 specifies the point at which the examination of a person who seeks to enter Canada, or makes an application to transit through Canada, ends. At a port of entry, persons seeking to enter Canada remain subject to an examination until an officer, or the Minister’s delegate, finally determines whether they have the right to enter Canada or authorizes their entry to Canada. Except for persons allowed to enter Canada for further examination, or for an admissibility hearing, the determination is not final until the person exits the controlled zone of the port of entry or, if no controlled zone exists, the port of entry.

Put simply, this means that an examination at a port of entry is not complete until the last CBSA officer who deals with the applicant allows that person to leave the controlled area of the port. Until then, the person may be brought back to an officer for a re-examination of their admissibility and appropriate action. This allows officers to make their determination based on all the information and evidence that become known while the person is at the port of entry.

Such re-examinations may result in an A44(1) report. Persons re-examined may have a passport or travel document that contains a port stamp impression. In such cases, if the officer is of the opinion that the person is inadmissible, the port stamp impression will be marked “CANCELLED”.

Other examinations will end when an officer makes a decision on the application before them or, in cases referred to the Minister’s delegate, when a determination has been made.

See also ENF 4, Port of Entry Examinations.

10.1. Procedure: Canada/United States of America

The U.S. will accept the return of individuals who are not “admitted” to Canada for permanent residence and are denied admission at the port of entry.

Persons re-examined as described above in section 10 “Point of finality” and believed to be inadmissible by an officer are returnable to the U.S., regardless of the cancelled port stamp, as they were not “admitted” to Canada.

It should be noted that the Act does not require an officer to stamp travel documents. Furthermore, a port stamp is not an official document nor is it evidence that a person was granted a particular status; it is simply an indication that the person was seen by an officer, nothing more.

NHQ, through the Canadian Embassy in Washington, D.C., first advised the United States Department of Homeland Security of this interpretation in 1998. At the time, a copy of the "point of finality" operations memorandum (OM PE 98-28) was also provided. The codification of the "point of finality" operations memorandum in IRPA simply re-affirms that which was previously conveyed.

11. Procedure: Writing an A44(1) report

11.1. Report requirements

The authority of the Minister's delegate to cause an admissibility hearing or issue a removal order cannot be exercised unless the form and content of a report under A44(1) are in accordance with the Act governing such procedures.

When an officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible, then that officer may prepare a report under the provisions of A44(1).

The report shall then be transmitted to the Minister's delegate, along with the officer's disposition recommendation and rationale. This is most easily accomplished by preparing an A44(1) case highlights form IMM 5084B (for inland cases) or IMM 5051B (for port of entry cases). All A44(1) reports must:

- be in writing and must indicate the place and date of issue;
- be addressed to the Minister of PS or the Minister of CIC and be signed by the officer who conducted the examination or is otherwise making the report;
- contain the complete name (correctly spelled) of the person who is being reported;
- contain the exact section and particulars of the Act upon which the officer based the opinion that the person, who is the subject of the report, is inadmissible;
- in all cases, and especially in those cases where the sections of the Act are not specific in themselves, indicate the exact grounds for applying the particular inadmissibility section(s). These grounds are to be explained in the narrative section of the report below the words "THIS REPORT IS BASED ON THE FOLLOWING INFORMATION."

All A44(1) reports must include a narrative that justifies the inadmissibility opinion and cites the facts upon which that opinion is based.

For example, in applying A36(2)(b), it is not sufficient to state that the person has been convicted of an offence. The report must fully specify the grounds of inadmissibility in the following manner:

THIS REPORT IS BASED ON THE FOLLOWING INFORMATION:

That [person's name]:

- has been convicted of an offence; namely, [Possession of Cocaine] on or about [22 November 1982] at or near [Pontiac, Michigan, USA]. This offence, if committed in Canada, would constitute an offence that may be punishable by way of indictment under paragraph 4(3)(a) of the *Controlled Drugs and Substances Act* and for which a maximum term of imprisonment [not exceeding seven years] may be imposed.

See also ENF 1, Inadmissibility, and ENF 2 Evaluating inadmissibility.

11.2. Entering reports in FOSS

An officer will normally "write" an A44(1) report using the "Full Document Entry" (FD) option in FOSS.

If, for some reason, FOSS is not available, an A44(1) report may be written on a hardcopy IMM 5480E, provided it is subsequently entered in FOSS via a Non-Computer Based (NCB) "Status Entry." Still, officers are advised that completion in FOSS using the FD option is the

preferred method, and should be considered the default method of reporting a person under the provisions of A44(1).

Officers must take care to avoid errors because the written report is a legal document and may be closely scrutinized not only by the Minister's delegate, but also by a hearings officer, members of the Immigration and Refugee Board, and even Federal or Supreme Court justices.

When officers use FOSS, they must take care to select the proper codes, especially when they feel that more than one inadmissibility code is being used or may apply.

For detailed instructions on how to use FOSS, officers are advised to refer to the Field Operations Support System Users' Guide which can be found at http://cicintranet.ci.gc.ca/cicexplore/english/systmguides/foss_ssobl/user_usager/index-eng.aspx . When an A44(1) report is entered into FOSS, officers may use either the "Full Document Entry" (FD) or a NCB "Status Entry;" however, as previously mentioned, FD mode is to be considered the preferred and default method of entry into FOSS.

Officers will find that they can complete almost all fields in the A44(1) report with a numeric code or abbreviations found in the Coding Manual at http://cicintranet.ci.gc.ca/cicexplore/english/systmguides/foss_ssobl/helpaide/index-eng.aspx

The FOSS on-line HELP screens may also be of assistance to officers in determining which code or data field is required without having to reference a manual.

To sign on to the HELP screen, regardless of the type of terminal used, officers must first call up a blank screen by using the Page Up or Page Down key. Once a blank page appears, officers are to position the cursor at the top left corner of the screen, then type the word HELP and press the + or XMIT key. The system will then present the HELP screen menu.

Officers who prepare and complete an A44(1) hardcopy form manually (because FOSS is not available) are to ensure that the hardcopy form is entered into FOSS via a NCB "Status Entry" as soon as FOSS becomes available.

11.3. After the report is written

Wherever possible, an officer who writes a report must also provide a copy of that report to the person concerned. The officer must make all reasonable efforts to locate this person, and all steps and actions taken to do so should be clearly indicated on the person's file.

In port-of-entry cases, where the person concerned is immediately available, this should pose little difficulty. In other cases, however, such as where the person's whereabouts are unknown or the person is otherwise unavailable, this policy proves difficult to implement.

It is accepted in the context of natural justice that persons who are reported under A44(1) should fully understand both the case against them, and the nature and purpose of the report.

Therefore, in those cases where a report is prepared as a consequence of an examination (such as at a port of entry) or in any other case where the person concerned is on site and/or otherwise available to receive a copy of the report, then a copy of the report must be given to the person concerned. Officers should also counsel persons who are the subject of an A44(1) report on certain matters, as appropriate. These matters include the following:

- the reason why the report was prepared (or in the case of an R41 "Direct Back," may be prepared);
- the date and time the person should return if the Minister's delegate was not available to consider a report prepared (or that may be prepared) if the person chooses to return and pursue their entry request with respect to that person [R41(b)];
- if the review by the Minister's delegate is to be conducted at a place other than where the report was completed, appropriate instructions, such as where the office is located and how to get there;
- the purpose of the review and the options available to the Minister's delegate.

If entry seems justified in the circumstances, officers should also inform persons about the option to apply for a temporary resident permit and about the cost recovery fee. Persons should be

counselled that if they wish to apply for a temporary resident permit A24(1), they must pay the cost recovery fee for their application to be considered. They must also be informed that payment of the fee does not guarantee that a temporary resident permit will be authorized. See also IP 1, Temporary Resident Permits.

Note: The Regulations establish user fees for services offered to ensure that persons who benefit from the services share in their cost. This shifts responsibility for funding government services more directly onto users and reduces the financial burden on taxpayers generally. Persons who refuse to pay the required fee for a particular service will have their applications returned. In addition, the service requested will not be rendered if the correct fee is not paid.

11.4. Directing persons back to the U.S. R41

R41 authorizes an officer to direct a foreign national seeking to enter Canada from the U.S. to return to the U.S. if:

- no officer is able to complete an examination (R41(a));
- the Minister is not available to consider, under A44(2), a report made with respect to the person (R41(b)); or
- an admissibility hearing cannot be held by the Immigration Division (R41(c)).

In such cases, the person concerned shall be given a Direction to Return to the United States form (IMM 1237B) indicating an appropriate location, date and time, immediately above the pre-printed statement: “If you desire to continue with your application to enter Canada, please return on the date and time mentioned above.”

Additionally, if an IMM 1237B is given to a person, officers are required to complete the “DB – DIRECT BACK” from the FD menu in FOSS, and include in the remarks the full details of the inadmissibility and a brief account of what transpired and/or occurred.

A person who has been directed to return to the U.S. pending an admissibility hearing by the Immigration Division and who seeks to come into Canada for reasons other than to appear at that hearing is considered to be seeking entry. If such a person remains inadmissible for the same reason(s), and if a member of the Immigration Division is not reasonably available, the person may be directed again to return to the U.S. to wait until a member of the Immigration Division is available. In these circumstances it is not necessary to write a new A44(1) report.

In summary, if officers decide to use the direct-back option, they should:

- counsel the person on the same points as indicated above in section 12.3 “after the report is written”;
- arrange an appropriate time, date and place for the person to return;
- complete an IMM 1237B, which may be generated by FOSS. If FOSS is not available, officers should complete an IMM 1237B by hand and enter a NCB “Status Entry” into FOSS as soon as FOSS becomes available;
- provide the person concerned with a copy of the IMM 1237B;
- provide the person concerned with a copy of the A44 report where the direct-back is in relation to R41(b) or R41(c);
- complete a Notice of Requirement to Carry a Foreign National from Canada form BSF 502 (formerly IMM 1216B), if applicable; and
- provide the transportation company (if applicable) with copies of the BSF 502 (formerly IMM 1216B) and IMM 1237B, and arrange for compliance.

Note: Persons directed back to the US who choose not to return to Canada, as they have no desire to continue with their application to enter Canada, will not be subjected to enforcement

action. Such persons will simply be deemed to have withdrawn their application. Officers should therefore not counsel the person that failure to return in these instances will result in enforcement action.

See also ENF 4, section 18.4 Direct back and refugee claimants arriving at the land ports of entry from the United States.

11.5. Additional allegations: Amending the A44(1) report

There may be instances where an officer, after preparing or reviewing an A44(1) report, finds:

- that the grounds cited in the report are not valid, but in the officer's opinion, the person falls within some other inadmissible class; or
- there is an additional ground of inadmissibility.

In such cases, the Act requires that the rules of natural justice must be observed in that the person concerned is to be accorded the earliest possible notice of all the grounds against them.

Accordingly, the officer should correct or amend the original A44(1) report and sign just below the correction or amendment. A copy of the amended report must be given to the person concerned and, where applicable, their counsel.

If an officer is considering the possibility of additional allegations, and the report has already been referred to the Immigration Division, the officer should contact the hearings officer to determine whether the additional grounds can be added to the report or whether a separate report will be required.

11.6. Reporting family members

Officers may need to assemble information about the family members of a person who is the subject of a report and decide whether these family members should also be reported and/or made subject to a removal order by the Minister's delegate or the Immigration Division.

Officers should always consider including family members in order to avoid separating families or having other family members abandoned when one member must be removed from Canada.

R1(3) provides that:

> 1.(3) For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations, other than sections 159.1 and 159.5, "family member" in respect of a person means
>
> (a) the spouse or common-law partner of the person;
> (b) a dependent child of the person or of the person's spouse or common-law partner; and
> (c) a dependent child of a dependent child referred to in paragraph (b).

In cases involving allegations within the jurisdiction of the Minister's delegate, a separate A44(1) inadmissibility report is required for each family member under A42(b). In cases where the Immigration Division is involved, family members may be included in a removal order, unless the family member is a Canadian citizen or a permanent resident, without the need for a separate inadmissibility report.

R227(2) provides that, in the case of a report and a removal order made by the Immigration Division against a foreign national who has family members in Canada, the removal order may be made effective against the family members provided that:

- an officer informed the family member(s) of the report;
- an officer informed the family member(s) that they are the subject of an admissibility hearing and, consequently, have the right to make submissions and be represented, at their own expense, at the admissibility hearing;
- the family member is subject to a decision that they are inadmissible under A42 on grounds of being an inadmissible family member.

Note: For the purposes of A52(1), the making of a removal order against a foreign national on the basis of inadmissibility under A42(b), that is, being an inadmissible family member, is prescribed as a circumstance that does not oblige the foreign national to obtain the authorization of an officer in order to return to Canada.

See also ENF 6 Review of Reports under A44(1).

12. Procedure: Referring reports when a Minister's delegate is not on site

A44(1) requires that inadmissibility reports be transmitted to the Minister of PS after being prepared. Under the provisions of A6(2), an officer or a manager may be delegated to act for this Minister or the Minister of CIC, depending on the person's status. Officers should consult the delegation documents to determine the person to whom the different reports are to be referred.

Upon receipt of an A44(1) report, the Minister's delegate may, if of the opinion that the report is well-founded, refer the report to the Immigration Division for an admissibility hearing; or in specific circumstances, issue a removal order.

As officers cannot prepare and then review/determine their own report, in those instances where a Minister's delegate is not physically on site and/or otherwise available to conduct a review and determination in person, officers must contact a Minister's delegate by telephone for the purposes of reviewing and determining an A44(1) report.

All A44(1) report reviews and determinations conducted by telephone must have an A44(1) case highlights form (IMM 5051B for port of entry cases and IMM 5084B for inland cases) completed by the officer. The officer who contacts the Minister's delegate must also undertake to make full and complete notes throughout all phases of the review and determination proceeding conducted by the Minister's delegate.

The officer must ensure that all notes made are kept with the case file so that a proper record exists. The officer, on behalf of the Minister's delegate, must also append to the case highlights form a written narrative of the Minister's delegate's decision and, if applicable, any other comments and/or instructions that the Minister's delegate wishes to have recorded.

In those cases where the Minister's delegate has jurisdiction to issue a removal order, officers must be particularly diligent to ensure that all matters relating to natural justice and procedural fairness are satisfied.

In cases where the Minister's delegate has jurisdiction to issue a removal order and if, for any reason, the opportunity does not exist for the person concerned to talk with the Minister's delegate via speaker telephone, or if, for any reason, the Minister's delegate is of the opinion that the person concerned does not truly appreciate the nature of the proceedings, then no decision on the report is to be rendered until a Minister's delegate is physically on site and able to conduct a review and determination of that report in person. See ENF 6, section 16 for further instructions to follow for *in abstentia* cases.

With respect to all manner of documentation that a Minister's delegate might issue, including a removal order, an officer must issue such documents on behalf of the Minister's delegate, only after having received the express verbal authorization from the Minister's delegate to issue such a document; and then only on condition that the officer signs such document on behalf of the Minister's delegate.

Note: If, for any reason, a Minister's delegate does not wish to proceed with or otherwise continue a telephone review and determination of an A44(1) report, an in-person interview will be required. In other words, the officer is not to contact other Minister's delegates by telephone if one such delegate has already been contacted and, for whatever reason, has declined to conduct an A44(1) telephone review.

12.1. Reports with allegations outside the Minister's jurisdiction

If a report contains one or more inadmissibility allegations, and if the Minister's delegate has jurisdiction for all inadmissibility allegations contained within that report, the Minister's delegate can determine the disposition of that report.

If, however, there are several inadmissibility allegations in a report and the Minister's delegate has jurisdiction for only some of them, then the Minister's delegate is not authorized to determine a disposition for that report, and all allegations must be referred to the Immigration Division.

A44(2) provides that a report based solely on lack of compliance with the residency obligation of A28 may not be referred to the Immigration Division. However, in cases where the admissiblity hearing resulted from an inadmissibility report based on multiple allegations, including non-compliance with A28, R229(1)(k) provides that the Immigration Division may issue a removal order at a hearing for failure to comply with the residency obligation of A28.

If the Minister's delegate receives two separate inadmissibility reports on the same person, then the Minister's delegate is authorized to make a determination and, if appropriate, issue a removal order on the report that contains only allegations for which the Minister's delegate has jurisdiction.

Further, on the matter of two separate inadmissibility reports on the same person, if the Minister's delegate refers one report to the Immigration Division, then the remaining report with grounds that need not be referred to the Immigration Division (that is, the report that contains only inadmissibility allegations that fall within the Minister's delegate's jurisdiction) should be held in abeyance pending the result of the Immigration Division hearing.

Note: If an officer is considering whether to write two separate inadmissibility reports on the same person, and if the allegation for which the Immigration Division has jurisdiction is not worth pursuing, then the officer may use discretion and not write an A44(1) report containing allegations for which the Immigration Division has jurisdiction [R228(1) and R229(1)]. For example, an allegation may not be worth pursuing because it will not affect the eligibility of a protection claim, or because the Minister's delegate may issue an exclusion order based on the other allegations and there is no concern that the person will be able to return to Canada without consent after one year.

See also Appendix D, A41 Non-compliance table/IRPA vs.1976 Act.

Appendix A: Writing a report against a foreign national

Call-in letter for an interview

TO: CLIENT ID NAME AND ADDRESS OF CLIENT	OFFICE LOCATION: 1234 ANY STREET SMALLTOWN CANADA

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. 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 first entered Canada; the length of time you have been here; the location of your family support and related responsibilities; any criminal activity in which you may have been involved; and any other relevant factors will be considered in the decision-making process.

You are requested to present yourself at this office for an interview on:

DATE

Please bring your passport, travel document, national identity card and any other supporting documentation that you wish to be considered.

You may also bring legal counsel with you should you wish it. Please note that the Agency is not responsible for legal fees and that you must assume all the costs of the legal counsel yourself. Additionally, the Agency reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful.

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.

Letter to be sent where no interview is foreseen

TO: CLIENT ID NAME AND ADDRESS OF CLIENT	OFFICE LOCATION: 1234 ANY STREET SMALLTOWN CANADA

A report under section 44(1) of the *Immigration and Refugee Protection Act* has been or may be prepared alleging that you may be inadmissible to Canada under paragraph _____ of the *Immigration and Refugee Protection Act*.

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. The next step in the process is to conduct a review of the circumstances of your case. If a report is prepared, the Minister's Delegate may cause an Admissibility Hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases.

You may make a *written* submission providing reasons why a removal order should not be sought. The submission may include details relevant to your case, including, but not limited to, the length of your stay in Canada, the location of family support and

responsibilities, the conditions in your home country, your degree of establishment, your criminal history, any history of non-compliance and your current attitude, and any other relevant factors.

You should be aware that this office may obtain information on these and other factors from other sources, such as reports prepared by other enforcement agencies. You may wish to address your history with other agencies in your submissions. You will find attached to this letter **all documentation that we intend to rely upon to make our decision.**

You must respond within **15 days of receiving this letter.** If you choose not to provide a submission, a report may be prepared and go to the Minister's Delegate without the benefit of your comments. The manager may, based upon evidence presented, cause an Admissibility Hearing to be held.

Appendix B: Writing a report against a permanent resident

Call-in letter for an interview

TO: CLIENT ID NAME AND ADDRESS OF CLIENT	OFFICE LOCATION: 1234 ANY STREET SMALLTOWN CANADA

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. 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.

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 (IMM1000), 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.

You may also be accompanied by legal counsel. Please note that you are responsible to pay for all your legal fees. CBSA reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful. Please be aware that the presence of counsel is not a right but rather a privilege.

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.

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. Subsection 64(1) of the *Immigration and Refugee Protection Act* states that:

> 64.(1) 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.

Letter to be sent where no interview is foreseen

TO:	OFFICE LOCATION:
CLIENT ID NAME AND ADDRESS OF CLIENT	1234 ANY STREET SMALLTOWN CANADA

A report under section 44(1) of the *Immigration and Refugee Protection Act* has been or may be prepared alleging that you may be inadmissible to Canada under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, because of your criminal conviction under section of the Criminal Code for .

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. The next step in the process is to conduct a review of the circumstances of your case. If a report is prepared, the Director may cause an Admissibility Hearing to be held, which could result in a removal order being issued.

You may make a *written* submission providing reasons why a removal order should not be sought. The submission may include details relevant to your case, including, but not limited to, your age at the time you acquired permanent residence; your length of residence in Canada; the location of family support and responsibilities; the conditions in your home country; your degree of establishment; your criminal history; any history of non-compliance and your current attitude; and any other relevant factors.

You should be aware that this office may obtain information on these and other factors from other sources, such as reports prepared by other enforcement agencies. You may wish to address your history with other agencies in your submissions. You will find attached to this letter **all documentation that we intend to rely upon to make our decision.**

You must respond within **15 days of receiving this letter.** If you choose not to provide a submission, a report may be prepared and go to the Director without the benefit of your comments. The manager may, based upon evidence presented, cause an Admissibility Hearing to be held.

Please also note that, based on information on file, you may not have appeal rights to the Immigration Appeal Division should a removal order be issued against you.

Appendix C: Overview: Minister's opinions/interventions

Requesting the opinion of the Minister of Citizenship and Immigration

Information may come to the attention of an officer during an examination or in the course of an investigation that may warrant securing the Minister's opinion that a person is a danger to the public.

For example:

- A refugee claimant has been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by at least 10 years' imprisonment [A101(2)(b)].

In such a case, if the Minister is of the opinion that the person is a danger to the public in Canada, and if it is determined at an admissibility hearing that the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years, then that person's claim would be ineligible to be referred to the Refugee Protection Division under the provisions of A101(1)(f).

- A protected person is inadmissible on grounds of serious criminality and constitutes, in the opinion of the Minister, a danger to the public in Canada A115(2)(a).

In such a case, if the Minister's opinion is issued, then that protected person (or person who is recognized as a Convention refugee by another country to which the person may be returned) will no longer be protected from the non-refoulement provisions [A115(1)].

Intervention, cessation and vacation

Officers may have occasion to deal with information that may support a possible intervention, cessation or vacation process.

If such is the case, the information should be brought to the attention of a hearings officer; the hearings officer will then decide if the information and/or evidence should be brought to the attention of the Immigration and Refugee Board (IRB).

In some cases, an officer may receive information that could affect the decision of the Refugee Protection Division. If an officer becomes aware of new information relative to any of the inadmissibility provisions under A34 through A37, or where there is information to suggest that there is a contradiction of any document or statement made by a refugee, officers should:

- conduct an interview with supporting notes (see ENF 7, section 14.2 – General rules for note-taking), and prepare a statutory declaration (see ENF 7, section 14.6 – Statutory declarations, recording information or identifying documents received);
- seize any relevant documents under A140(1) that could be used as evidence;
- create a general information NCB in FOSS and update the National Case Management System (NCMS) to indicate that the case is under investigation and the reason(s) for investigation, for example, "under investigation — grounds to support intervention, cessation or vacation (as appropriate) may exist";
- contact the hearings officer to discuss case details;
- at the request of the hearings officer, conduct a further investigation to collect additional evidence;
- when the investigation is complete, transfer the file and all supporting documentation to the hearings officer with a memorandum outlining the case details.

See ENF 7, Investigations and Arrests, and ENF 24, Ministerial Interventions.

Appendix D: A41 Non-compliance table/IRPA vs.1976 Act

A41

When an officer is using the A41 non-compliance allegation, and the Minister's delegate has jurisdiction for all other inadmissibility allegations contained in that A44(1) report, officers are to enter in FOSS only the broader A41 by A20(1)(a) or (b) allegation cause code numbers. The specific deficiency comments are then to be incorporated in the narrative portion of the A44(1) report, under the heading: "THIS REPORT IS BASED ON THE FOLLOWING INFORMATION."

In other words, the description of the particular deficiency in the visa or other required document (for example, a passport) and any specific reference to a regulation (for example, R52(1)(a)) are to be incorporated only in the officer's narrative justifying the inadmissibility allegation. This narrative appears under the heading: "THIS REPORT IS BASED ON THE FOLLOWING INFORMATION."

This is considered necessary in order to preserve the jurisdiction of the Minister's delegate under R228(1).

A41(a) - Foreign Nationals

	1976 Act	**Stated requirement under 1976 Act**	**IRPA A41(a) combined with:**	**FOSS Input (cause code A36 plus):**	**IRPA Equivalent**
1.	New		**A16(1.1)**	A63	Obligation – submit to an in-person examination
2.	New		**A16(2.1)**	A64 A65 A66	Obligation- interview with CSIS
3.	A19(2)(d) A9(1) No immigrant Visa	Have visa prior to appearing at port of entry	**A20(1)(*a*)**	A49	May not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa [R6]
4.	A19(2)(*d*) & A9(1) or R13(4) No CVV	Must have visa, student or employment authorization at port of entry	**A20(1)(*b*)**	A52	May not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa [R7]
5.	A19(2)(*d*) 10(*a*) and (*b*) or R13(4) No student authorization at POE	Must obtain student authorization if studying	**A20(1)(*b*)**	A52	May not enter Canada to study without first obtaining a study permit [R9]
6.	A19(2)(*d*) A10(*c*) or R13(4) No authorization at POE	Must obtain employment authorization if working	**A20(1)(*b*)**	A52	May not enter Canada to work without first obtaining a work permit [R8]
7.	A19(2)(*d*) A12(4)	Tell truth, produce documents or evidence	**A16(1)**	A43	When making application, must answer truthfully, produce any relevant or required document
8.	A19(2)(*d*) A11	Must under go a medical examination	**A16(2)(*b*) combined with R30(1)(*a*)**	A47 R07 R09 R11 R12	Must submit to medical examination

			through (*e*)	R13	
9.	New		**A20(1)(*a*)** **A20(1) (*b*)**	A49 A52	Must hold medical certificate that is based on last medical examination [R30(4)]
10.	A19(2)(*d*) R14(1)	Immigrant, no passport	**A20(1)(*a*)**	A49	Seeking to become a permanent resident at a POE, must hold document listed in R50(1) paragraphs (*a*) to (*h*)
11.	A19(2)(*d*) R14(3)	Visitor, no passport	**A20(1)(*b*)**	A52	Seeking to become a temporary resident at a POE, must hold document valid for period authorized, listed in R52(1) paragraphs (a) to (i)
12.	19(2)(*d*) A18(1)	Fail to fulfil conditions	**R45(1)**	R21	An officer can require a person or group of persons seeking to enter Canada to arrange guarantee or deposit money
13.	A19(1)(*h*)	Non-genuine visitor	**A20(1)(*b*)**	A52	Must establish that they will leave by end of period authorized
14.	A19(1)(*h*)	Non-genuine immigrant	**A20(1)(*a*)**	A49	Must establish intent to establish residency
15.	A19(1)(*i*)	Return without consent	**A52(1)**	A61	If subject of enforced removal order, must not return without authorization
16.	A27(2)(*b*)	Working without authorization	**A30(1)**	A58	Must not work unless authorized
17.	A27(2)(*e*)	Overstay	**A29(2)**	A55	Must leave Canada at end of period authorized for their stay
18.	A27(2)(*e*) A26(1)(*a*)	Cease to be visitor for failing to comply with terms or conditions	**A29(2)**	A55	TR must comply with any conditions imposed under the Regulations
19.	A27(2)(*e*) A26(1)(*b*)	Cease to be visitor for studying or working without authorization	**A30(1)**	A58	Must not work or study unless authorized
20.	A27(2)(*e*) A26(1)(*c*)	Cease to be visitor for remaining longer than authorized	**A29(2)**	A55	Must leave Canada at end of period authorized
21.	A27(2)(*e*) A26(1)(*c.1*)	Ship jumper	**A29(2) X** **R184(1)(*a*)** **R184(1)(*b*)** **R184(2)(*a*)** **R184(2)(*b*)** **R184(2)(*c*)**	A55 R28 R29 R30 R31	Cite the specific paragraph that applies

				R32	
22.	A27(2)(*f*)	Coming in at a place other than a port of entry and failing to report forthwith to an immigration officer	**A18(1) R27(2)**	A48 R06	Persons seeking entry at a place other than a POE must report for examination without delay
23.	New		**A18(1)** **R27(1)**	A48 R05	Persons seeking entry must report for examination without delay
24.	A27(2)(*f*)	Eluding examination	**A18(1) X** **R27(1)** **R27(2)**	A48 R05 R06	Persons seeking entry at a POE or at a place other than a POE must report for examination without delay
25.	A27(2)(*h*)	Returning without consent	**A52(1)**	A61	If subject of enforced removal order, must not return without authorization
26.	A27(2)(*g*)	Coming into or remaining in Cda by improper means	**A18(1) &** **R27(1)**	A48 R05	Persons seeking entry at a POE must report for examination without delay

A41(b) - Non-compliance - Permanent Residents

	1976 Act	**Stated requirement Under 1976 Act**	**IRPA A41(b) combined with:**	**FOSS**	**IRPA Equivalent**
1.	New		**A16(1.1)**	A63	Obligation - appear in person for examination
2.	A27(1)(*b*)	Knowingly contravened a term or condition	**A27(2)**	A37	Must comply with any condition imposed under the Regulations
3.	A19(2)(*d*) and A9(1)	At a port of entry, ceased to be a permanent resident	**A28(1)**	A38	Requires compliance with the residency obligation - must reside within Canada 730 days in a five-year period
4.	27(2)(*a*) 19(2)(d) A9(1)	In Canada, ceased to be a permanent resident	**A28(1)**	A38	Requires compliance with the residency obligation - must reside within Canada 730 days in a five-year period