



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# ENF 2

## Evaluating Inadmissibility

## ENF 2/OP 18 Evaluating Inadmissibility

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### Updates to chapter

#### Listing by date:

##### **Date: 2006-05-24**

Changes were made to Appendix C in order to reflect the United Nations Security Council Resolution 1672 listing four individuals under the travel ban and assets freeze for Sudan.

##### **2006-03-14**

The wording of section 3.7 was amended to clarify its contents.

Changes were made to Appendix C in order to reflect the UN Security Council Resolution 1636 implementing a travel ban and assets freeze against individuals to be listed by the Committee of the UNSC as suspected of involvement in the planning, sponsoring, organizing or perpetrating of the terrorist bombing that killed the former Lebanese Prime Minister Rafiq Hariri on 14 February 2005. However, no one has yet been listed; therefore, no action is required at this time.

Changes were also made to Appendix C in order to reflect the addition of a list of persons designated under the travel ban and assets freeze for Ivory Coast.

##### **2006-02-06**

Changes were made to ENF 2 in order to reflect the Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) policy responsibility and service delivery roles.

Changes were made to sections 3 and 14 to change the wording from “acts and omissions” to “committing an act” in order to reflect the wording in the Act.

Sections 3.5, 3.8 and 3.9 have been updated. The amendments were made to reflect the policy that the “committing an act” provisions of the *Immigration and Refugee Protection Act* (IRPA) may be used when a conviction has been registered for the offence, but a certificate of conviction is not available.

Section 9 has been amended to specify the procedure when processing cases abroad involving misrepresentation for provincial nominees.

Section 13.5 has been updated to specify that, for the purposes of A64(2), multiple consecutive sentences are not included for appeals.

Appendix C has been updated to reflect a change in the individuals designated under the UN travel ban for Liberia. The UN Security Council has also passed resolutions implementing travel bans for designated individuals of the Democratic Republic of Congo (Kinshasa), Ivory Coast and Sudan. Appendix C has been amended to reflect these new resolutions.

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Changes were also made to Appendix C in order to reflect the coming into force of a regulation amending the *United Nations Democratic Republic of Congo Regulations P.C. 2005-1722* and the addition of a list of persons designated under the travel ban for this country.

### **2005-02-25**

Updates to ENF 2 at section 9 were published on December 13<sup>th</sup>, 2004. Unfortunately, some of the changes were omitted in the French version of the text. The text has now been rectified and it is recommended that any former version of this chapter be discarded in favour of the one now appearing in CIC Explore.

### **2004-12-13**

Substantive and minor changes as well as clarifications have been made throughout section 9.

### **2004-03-03**

Appendix C – The Web links to the travel ban lists for Afghanistan, Sierra Leone and Liberia have been updated.

### **2003-12-04**

Chapter ENF 2, entitled “Evaluating Inadmissibility” and, in particular, Section 4 entitled “Departmental policy on organized criminality” has been updated and is now available on CIC explore.

The amendments were made to include the procedures related to the National Initiative to Combat Money Laundering and, in particular, to the application of section A37(1)(b) of the Immigration and Refugee Protection Act (IRPA).

More information on CIC’s role within the national initiative and on money laundering issues is available on the intranet, on the Organized Crime Directorate (RZTO) Web site.

Questions about this policy or procedures may be directed to RZTO via e-mail at Nat-Organized- Crime.

Among the changes to this chapter, the highlights include:

- Section 4 – “Departmental policy on organized criminality,” Section 4.4 “Mandate and procedures for cases involving money laundering.”
- Appendix D – “Form for cases where money laundering and/or terrorist financing is suspected” has been added. Until the reporting template becomes operational from RZTO Web site, as an interim measure, the form may be sent to RZTO by fax at 613-952-0694.

### **2003-07-07**

Both minor and substantive changes and clarifications have been made throughout ENF 2 - Evaluating inadmissibility. It is recommended that any former version of this chapter be discarded in favour of the one now appearing in CIC Explore.

### **2003-06-11**

Both minor and substantive changes and clarifications have been made throughout the ENF 2 Manual. It is recommended that any former version of this manual be discarded in favour of the one now appearing in CIC Explore.

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### 1. What this chapter is about

This chapter provides guidance for officers when they need to determine whether a person is inadmissible to Canada.

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### 2. Program objectives

Permitting Canada to pursue the maximum social, cultural and economic benefits of immigration, protecting the health and safety of Canadians and maintaining the security of Canadian society are important objectives of the *Immigration and Refugee Protection Act* (IRPA or the Act).

The Minister of Citizenship and Immigration (C&I) is responsible for the administration of the Act, with the exception of the following:

The Minister of Public Safety and Emergency Preparedness (PSEP) is responsible for the administration of the Act as it relates to the following:

- ◆ examination at ports of entry;
- ◆ the enforcement of the Act, including arrest, detention and removal;
- ◆ the establishment of policies respecting the enforcement of the Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- ◆ determinations under any of subsections A34(2), A35(2) and A37(2).

By applying the inadmissibility provisions as set out in Part 1, Division 4, of the Act (hereinafter referred to as Division 4), officers can help achieve these objectives.

Most persons described in Division 4 cannot be admitted because of criminal, medical or security restrictions. Division 4 makes distinctions based on categories of inadmissibility related to:

- criminality;
- organized criminality;
- security;
- human or international rights violations;
- health;
- financial reasons;
- misrepresentation;
- non-compliance with Act;
- inadmissible family members.

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For information on writing and reviewing A44 reports in Canada, please refer to ENF 5 and ENF 6.

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### 3. Departmental policy on criminality

CIC has the policy responsibility with respect to criminality [A36]

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#### 3.1. Reasonable grounds versus balance of probabilities

Section A33 states specifically that the facts that constitute inadmissibility under sections A34 to A37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur. However, A36(3)(d) provides an exception for A36(1)(c), where the facts must be established on the balance of probabilities that a permanent resident committed an offence.

There have been several rulings from the Federal Court of Appeal to clarify the meaning of reasonable grounds. The key points may be summarized as follows:

1. "Reasonable grounds" is a *bona fide* belief in a serious possibility based on credible evidence. "Reasonable grounds" is a lower standard of proof than the civil standard which is the "balance of probabilities."
2. If you have reasonable grounds to believe, you are more than suspicious. You have some objective basis for your belief. Put another way, the fact itself need not be proven; it is enough to show reasonable grounds for believing the allegation true.
3. Reasonable grounds to believe" imports a standard of proof which lies between mere suspicion and the "balance of probabilities."
4. Balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. "Balance of probabilities" is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

#### **Question: Would a rational person with the same information reach the same conclusion?**

For example, an anonymous letter alleging certain facts may arouse suspicion but would not normally constitute reasonable grounds. On the other hand, a document from a proper authority may be sufficient to establish reasonable grounds that an event has occurred.

#### **Synopsis**

Reasonable grounds are a set of facts and circumstances that would satisfy an ordinarily cautious and prudent person, and which are more than mere suspicion. Information used to establish reasonable grounds should be specific, credible and be received from a reliable source.

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### 3.2. Convicted in or outside Canada/Committing an act

IRPA bars entry into Canada to persons who fall into any of nine classes of criminality. Two classes of criminality specifically relate to organized criminality (for which the CBSA has the policy responsibility); consequently, they are more fully described in Section 4 of this chapter.

The remaining seven classes of criminality are specified within the provisions of section A36 (for which CIC has the policy responsibility) and may be distinguished by the following category headings:

- convicted in Canada, see Section 3.3;
- convicted outside Canada, see Section 3.4;
- committing an “act” outside Canada or upon entering Canada, see Section 3.5.

It is important to note that in respect of provisions contained within section A36, there are different rules for the taking of an enforcement action against a permanent resident versus a temporary resident.

Put simply, evidence of serious criminality is required before a permanent resident may be subject to possible removal from Canada, whereas foreign nationals are subject to enforcement action for lesser criminality.

The preamble of subsection A36(1); it clearly specifies that both permanent residents and foreign nationals are subject to its provisions. In contrast, however, subsection A36(2) specifies that only foreign nationals are subject to its provisions.

Furthermore, a determination of whether a permanent resident has committed an act described in paragraph A36(1)(c) must be based on a balance of probabilities [A36(3)(d)].

An offence that may be prosecuted either summarily or by way of indictment is deemed an indictable offence, even if it has been prosecuted summarily [A36(3)(a)].

Inadmissibility may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal [A36(3)(b)].

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* (<http://laws.justice.gc.ca/en/C-38.7/index.html>) or an offence under the *Young Offenders Act* [A36(3)(e)].

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**Note:** The *Young Offenders Act* was repealed in 2003. The *Youth Criminal Justice Act* is now in force and may be found at <http://laws.justice.gc.ca/en/Y-1.5/index.html>

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Officers should never speculate on the disposition of an inadmissibility report.

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### 3.3. Convictions in Canada

This is the first group of the three category headings mentioned in Section 3.2 of this chapter; included are persons described in A36(1)(a) and A36(2)(a). These paragraphs affect persons convicted in Canada of offences under an Act of Parliament punishable:

- in the case of permanent residents and foreign nationals, by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

or

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- in the case of a foreign national, by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence.

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### 3.4. Convictions outside Canada

This is the second group of the three category headings mentioned in Section 3.2 of this chapter; included are persons described in A36(1)(b) and A36(2)(b). These paragraphs affect persons who, an officer has reasonable grounds to believe, were convicted outside Canada of one or more offences.

The offence must be equivalent to an offence in Canada (for examples, see Appendix A), and:

- in the case of permanent residents and foreign nationals, be punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years;

or

- in the case of a foreign national, constitute an indictable offence, or constitute two offences not arising out of a single occurrence under an Act of Parliament.

The matters referred to in paragraphs A36(1)(b) and A36(2)(b) do not constitute inadmissibility in respect of a person who, after the prescribed period, satisfies the CIC Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated [A36(3)(c); R17 and R18]. For Relief provisions, see also Section 13.

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### 3.5. “Committing an act” provisions – A36(1)(c) and A36(2)(c)

The “committing an act” provisions are not to be used where a conviction has been registered and where the appropriate evidence of conviction has been obtained. However, where it is not possible to obtain a certificate of conviction as indicated above, then the provisions may be used.

As part of Canada's international commitment to combat transnational crime, the policy intent in applying the provisions is first and foremost to deny entry into Canada and thereby prevent Canadian territory being used as a safe haven by persons who are subject to a criminal proceeding in a foreign jurisdiction; or are fleeing from such proceedings.

The “committing an act” provisions of the Act are not intended to bar the entry into Canada of persons who may have committed, but have not been convicted of, one or more summary offences.

The practical application of the policy with respect to the “committing an act” provisions is to deny entry into Canada to persons against whom there is evidence of criminal activity that could result in a conviction if there were a prosecution in Canada. Good judgment is important to ensure that the objectives of the Act are supported in applying these provisions.

Officers should also recognize that a decision by a local policing authority not to prosecute is often a result of considerations that are specific to the criminal justice context and not necessarily consistent with the objectives of managing access to Canada. In other words, a decision by a local policing authority not to lay or proceed with charges should not automatically be considered as *prima facie* evidence that an offence was not committed; nor should officers be overly capricious in the use of the Act's inadmissibility provisions.

The matters referred to in paragraphs A36(1)(c) and A36(2)(c) do not constitute inadmissibility in respect of a person who, after the prescribed period, satisfies the CIC

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Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated [A36(3)(c); R17 and R18]. For Relief provisions, see Section 13 of this chapter.

For more information about:

- Essential case elements, see Section 3.7;
- When to use the “committing an act” provisions, see Section 3.8;
- When not to use the “committing an act” provisions, see Section 3.9;
- Use of the “committing an act” provisions in unusual situations, see Section 3.10;
- Reasonable grounds to believe and the gathering of evidence, see Section 3.11.

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### 3.6. Foreign judicial process

These provisions cannot be used where the person has been acquitted. Similarly, when a court has made a finding of not guilty, the process and the decision will be respected and negate any reasonable grounds to believe that the person committed the offence.

However, if a foreign investigating authority decides not to lay or proceed with charges in a country whose criminal justice concepts are similar to ours, it should not be assumed that a crime was not committed or that there was insufficient evidence to obtain a conviction.

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### 3.7. Essential case elements

In determining, on reasonable grounds for a foreign national, and a balance of probabilities for a permanent resident, that an act was committed, the following case elements must be established:

- an act was committed;
- the act occurred outside Canada;
- the act is an offence under the laws of the place where it occurred; and
- for foreign nationals, the offence in question has a Canadian equivalent that is an indictable offence;
- for permanent residents or foreign nationals, the offence in question has a Canadian equivalent that is an offence punishable by a maximum term of imprisonment of at least 10 years.

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### 3.8. When to use the “committing an act” provisions

The “committing an act” inadmissibility provisions would generally be applied in the following scenarios:

- an officer is in possession of intelligence or other credible information indicating that the person committed an offence outside Canada;
- authorities in the foreign jurisdiction indicate that the alleged offence is one where charges would be, or may be, laid;

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- the person is the subject of a warrant where a formal charge is to be laid;
- charges are pending;
- the person has been charged but the trial has not concluded;
- the person is fleeing prosecution in a foreign jurisdiction
- a conviction has been registered for the offence, however a certificate of conviction is not available.

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### 3.9. When not to use the “committing an act” provisions

The “committing an act” inadmissibility provisions would generally not be applied in the following scenarios:

- in most cases, when authorities in the foreign jurisdiction indicate they would not lay a charge or make known to an officer their decision or intent to drop the charges;
- the trial is concluded and no conviction results (for example, acquittal, discharge, deferral);
- the person admits to committing the act but has been pardoned or the record is expunged;
- the act was committed in Canada.

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### 3.10. Use of the “committed an act” provisions in unusual situations

The above guidelines are put forward in an effort to achieve the desired policy intent and promote consistency in the application of the “committing an act” provisions contained within the IRPA..

It must be recognized that there may be unusual situations, such as where a criminal justice system in a foreign jurisdiction has concepts not found in Canadian law, where the use of the provisions would be entirely appropriate.

For example, where money is paid and charges are dropped as a result of the payment; in such a case it may be appropriate to apply this provision, provided there is evidence that the person committed an act.

Should policy clarification be required regarding the application of these provisions,

requests should be directed to the Legislative and Regulatory Policy Division,

Admissibility Branch, CIC, NHQ at: [NHQ-Legislative-Policy@cic.gc.ca](mailto:NHQ-Legislative-Policy@cic.gc.ca).

For case specific queries relating to these provisions, contact the Director, Case Review, via e-mail: [Nat-Case-Review@cic.gc.ca](mailto:Nat-Case-Review@cic.gc.ca).

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### 3.11. Reasonable grounds to believe and the gathering of evidence

As indicated previously, permanent residents who commit an act outside Canada will have their inadmissibility assessed using the higher standard of “balance of probabilities.” In the case of a foreign national, an officer must be satisfied that there are “reasonable grounds to believe” that an act has occurred.

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In both cases, officers must be satisfied that the act is reportable under the provisions of the IRPA.

For example, circumstances may exist where a charge alone may not always be *prima facie* evidence that an act has occurred. If an officer has doubts, the officer should interview the person concerned to obtain their version of events.

Officers may also seek out sources of additional information if further corroboration is required. For example, a credible explanation from the person concerned may either negate or justify the need for an officer to obtain further information, such as a police incident report.

Officers are expected to take whatever action they deem proper to establish, in their opinion, that the applicable standard of proof has been met to support an inadmissibility allegation involving a reportable act.

In order for a “committing an act” allegation to apply under the provisions of section A36, the offence must have been committed outside Canada; **and** be an offence in the place where it was committed; **and** there must be a Canadian equivalent offence. Where necessary, copies and translations of the relevant statutes should be obtained.

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### 3.12. Committing on entering Canada [A36(2)(d)]

#### For information about:

- Policy intent, see Section 3.13
- Policy application, see Section 3.14
- Presumption of innocence, see Section 3.15
- Reasonable grounds to believe and the gathering of evidence, see Section 3.16
- Essential case elements, see Section 3.17
- When to use the “committing, on entering Canada” provisions, see Section 3.18
- When not to use the “committing, on entering Canada” provisions, see Section 3.19
- “Committing, on entering Canada” provisions - application in unusual situations, see Section 3.20

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### 3.13. Policy intent

IRPA recognizes that a decision by a local policing authority not to prosecute is often a result of considerations that are specific to the criminal justice context and not necessarily consistent with the objectives of managing access to Canada.

In keeping with Canada's continuing efforts to protect Canadian society and to prevent criminals from accessing Canada, paragraph A36(2)(d) is intended to enhance the ability of officers at a port of entry (POE) to efficiently remove foreign nationals where the commission of an offence occurs at the POE, regardless of a local policing authority decision or practice not to lay charges.

It is important to note that it is not the government's intention that the A36(2)(d) provision be used as an alternative to prosecution. In fact, when charges are laid officers are to await the disposition of those charges before alleging inadmissibility under any of the criminality provisions. Where charges have not been laid, however, officers may consider writing an A44(1) inadmissibility report using the provisions of A36(2)(d).

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As indicated throughout this chapter, officers are expected to exercise good judgment. In the context of an inadmissibility report under the provisions of subsection A44(1), good judgment may be defined to include that:

- officers may write inadmissibility reports where the evidence and circumstances support the writing of such a report; and
- the decision to write an inadmissibility report will be in accordance with the objectives of the Act.

Officers should never speculate on the disposition of an inadmissibility report.

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### 3.14. Policy application

The practical application and intent of paragraph A36(2)(d) is to bar the entry into Canada of foreign nationals who commit offences in Canada, specifically at our borders. Officers are expected to use good judgment in applying the provisions of paragraph A36(2)(d).

As indicated previously, it is expected that officers will not use these provisions in those cases where a local policing authority, perhaps working in conjunction with the CBSA are pursuing formal charges with the objective being a registered conviction against the person in Canada. In these types of scenarios, officers are to await the court's disposition with respect to the charges and, if a conviction results, apply the provisions relating to having a conviction in Canada.

In these types of cases the objective is clear: actions are being undertaken by lawful authorities to have a conviction registered against the person in Canada. Consequently, the examination should be adjourned (pursuant to A23) with a view to resuming once a conviction in Canada has been registered. At that point, the provisions relating to an in-Canada conviction would apply.

The situation is somewhat different in a case where no charges are being contemplated even though the evidence and circumstances clearly indicate that a person has committed an offence on entering Canada.

In such cases, officers are expected to investigate further the reason why no formal proceedings are being advanced and/or why no charges were laid against the person. If, despite this information, the officer is still of the opinion that the evidence and circumstances justify the writing of an A44(1) inadmissibility report, then officers may write an inadmissibility report using the provisions of paragraph A36(2)(d).

It is important to note that offences covered by A36(2)(d) must be offences under a prescribed Act of Parliament. R19 currently lists the prescribed Acts of Parliament for the purposes of A36(2)(d) as: the *Criminal Code of Canada*, the *Immigration and Refugee Protection Act*, the *Firearms Act*, the *Customs Act* and the *Controlled Drugs and Substances Act*.

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**Note:** Only indictable offences are prescribed.

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Officers should never speculate on the disposition of an inadmissibility report.

It is important to note that the “committing, on entering Canada” allegation only affects a person’s admissibility on the occasion of that person seeking to enter Canada. In other words, if an officer believes a person to be inadmissible for having committed an offence “on entering Canada,” and that person is subsequently allowed to withdraw or otherwise leaves Canada, the person cannot at some future date or time be viewed as being inadmissible for a past “committing, on entering Canada” offence. For greater clarity, the A36(2)(d) inadmissibility allegation provision may only be used in the circumstance of a “present tense” scenario.

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### 3.15. Presumption of innocence

There is an important distinction between the test and purpose of a criminal justice proceeding and that of an administrative process for the purpose of determining who has a right to enter Canada or who is or may become authorized to enter and remain in Canada. No criminal conviction and sentence may result from a subsection A44(1) report and admissibility hearing. Therefore, the presumption of innocence in a criminal context does not preclude writing a subsection A44(1) report where no charges are laid.

As indicated earlier, officers should recognize that a decision by a local policing authority not to prosecute is often a result of considerations that are specific to the criminal justice context and not necessarily consistent with the objectives of managing access to Canada. In other words, a decision by a local policing authority not to lay charges should not automatically be considered as *prima facie* evidence that an offence was not committed; nor should officers be overly capricious in the use of the Act's inadmissibility provisions, such as paragraph A36(2)(d).

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### 3.16. Reasonable grounds to believe and the gathering of evidence

In the case of paragraph A36(2)(d), an officer must be satisfied that there are "reasonable grounds to believe" that an offence was committed on entering Canada. The officer must also be satisfied that the offence committed was an offence under a prescribed Act of Parliament for the purposes of paragraph A36(2)(d) of IRPA. See also R19.

In most cases, it is expected that officers will be able to examine the person concerned to obtain their version of events. Officers may also seek out sources of additional information if further corroboration is required.

It is further expected that officers will recognize that a credible explanation from the person concerned may either negate or justify the need for an officer to obtain further information (such as a copy of the CBSA incident and/or seizure report, police reports, etc.) and if deemed warranted, proceed with the writing of a formal inadmissibility report under the provisions of subsection A44(1).

Officers are expected to take whatever action they deem proper to establish, in their opinion, that there are "reasonable grounds to believe" that an inadmissibility allegation is justified.

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### 3.17. Essential case elements

In determining whether the "committing, on entering Canada" provisions should be applied, the following case elements must be established:

- there are reasonable grounds to believe that an offence was committed;
- the offence was committed on entering Canada, that is, at a port of entry;
- the offence committed is an indictable offence under a prescribed Act of Parliament for the purposes of paragraph A36(2)(d).

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### 3.18. When to use "committing, on entering Canada" provisions

The "committing, on entering Canada" inadmissibility provision would generally be applied in the following scenarios:

- an officer is in possession of information indicating that the person did commit, on entering Canada, an indictable offence under a prescribed Act of Parliament for the purposes of paragraph A36(2)(d);

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- the officer is not satisfied that the offence was committed unwittingly or accidentally, such as would be the case if an act is not an offence in the country of departure; or the person was unaware of the act they had committed;
- no formal charge is to be laid, or is being contemplated to be laid, by the local policing authority.

**Example:** 1: A person who upon entering Canada is found to be in possession of less than 15 grams of marijuana. CBSA Customs Secondary officers provide sufficient evidence to support the inadmissibility allegation. There is evidence to suggest that the person has had past involvement with drugs and illegal substances. The person is either uncooperative and does not admit to anything or having any involvement; or the person freely admits that the marijuana is for their own personal use and provides details of how the marijuana came to be in their vehicle or possession. This would constitute an indictable offence under the provisions of the *Controlled Drugs and Substances Act*, specifically, subsection 6(1), Importing and exporting.

**Example:** 2: A person who upon entering Canada fails to pass an "Approved Screening Device" (ASD) test (as administered by a CBSA Customs Secondary officer) for the purposes of determining whether that person's blood alcohol level may be in excess of the legal limit. In such a case, an officer would have "reasonable grounds to believe" that the person may be committing, on entering Canada, an offence under the *Criminal Code*, specifically, section 253, Operation while impaired.

### 3.19. When not to use the "committing, on entering Canada" provisions

The "committing, on entering Canada" inadmissibility provision would generally not be applied in the following scenarios:

- A conviction will be, or is likely to be, registered in Canada for the offence;
- The local policing authority, in conjunction with the CBSA, are proceeding with the laying of formal charges. This may include incarceration pending a court appearance date;
- The person unwittingly committed the offence or claims no knowledge of the illegal article or substance in their possession or vehicle and is considered credible by the officer. The person has co-operated fully throughout the examination and there is no evidence to suggest that the person is involved with illegal activities, substances or has been the subject of related offences;
- The person freely admits to ignorance of Canadian law and the person's credibility is not in doubt. The person also expresses, in the officer's opinion, genuine remorse at having committed an offence and the chances of the person committing a similar or related offence in future, in the officer's opinion, are unlikely.

**Example:** 1: A person who upon entering Canada neglects to declare to the CBSA the importation of an item (such as an undeclared wedding ring; a gift; or a firearm - provided the act of possessing and/or carrying the firearm would not have violated any law in the USA state opposite or from which the person immediately came from and sought entry into Canada) and in the officer's opinion, the person did not declare the item as a result of a genuine forgetfulness, carelessness or any other terminology that gives rise to the meaning that the person did not knowingly and/or deliberately intend to mislead or otherwise misrepresent the true facts, either directly or indirectly. Evidence of this may include, in the officer's opinion, a genuine expression of remorse by the person at having committed a

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wrongdoing. The officer should also be of the opinion that the chances of the person committing a similar or related offence in the future are unlikely.

**Example:** 2: A CBSA Customs Secondary officer discovers a small amount of marijuana in the back seat of a car driven by an otherwise seemingly credible and genuine temporary resident. After examining the person and hearing the evidence of the CBSA Customs Secondary officer, the CBSA immigration officer is of the opinion that the person was unaware of the marijuana being in the vehicle; is satisfied as to person's credibility; and is of the opinion that the person had no involvement whatsoever with the marijuana.

### 3.20. "Committing, on entering Canada" provisions – application in unusual situations

The above guidelines are put forward in an effort to achieve the desired policy intent and promote consistency in the application of the "committing, on entering Canada" provisions contained within IRPA.

It must be recognized that there will be unusual situations and officers are expected to assess the circumstances of each case on its own merits.

Should policy clarification be required regarding the application of these provisions, requests should be directed to the Legislative and Regulatory Policy Division, Admissibility Branch, CIC. NHQ at NHQ-Legislative-Policy@cic.gc.ca

For case-specific queries relating to these provisions, contact the Director, Case Review, via e-mail: Nat-Case-Review@cic.gc.ca.

## 4. Departmental policy on organized criminality

The CBSA has the policy responsibility with respect to organized criminality [A37]. Should CIC officers encounter an issue involving organized crime, they must seek guidance from the appropriate section of the National Security Division at the CBSA, NHQ.

Two classes of criminality within the Act that specifically relate to organized crime are paragraphs A37(1)(a) and A37(1)(b).

In the case of paragraph A37(1)(a), an applicant is inadmissible for being a member of an organization that is believed on reasonable grounds to be or to have been:

- engaged in activity that is part of a pattern of criminal activity; and
- as part of this pattern, the organization must be acting to help commit an indictable offence in Canada, or an "act" or "omission" outside Canada that would constitute an offence if committed in Canada that may be punishable under an Act or Parliament by way of indictment.

An applicant is inadmissible for reasons described in paragraph A37(1)(b) for engaging in transnational crime activities, such as people smuggling, trafficking in persons or money laundering.

With respect to paragraph A37(1)(b), it should be noted that this paragraph provides that, in addition to those transnational crime activities listed, namely, people smuggling, trafficking in persons or money laundering, the activities listed are not exhaustive. To clarify, because the paragraph contains within its provisions the statement "in activities such as", the paragraph is sufficiently broad to cover any transnational crime activity.

A37(1) does not apply in the case of a person who satisfies the Minister of Public Safety and Emergency Preparedness (PSEP) that their presence in Canada would not be detrimental to the national interest [A37(2)(a)].

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With reference to A37(2)(a), the Minister of PSEP is not authorized to delegate the exercise of this discretion [see A6(3)].

Persons, whose involvement with criminal organizations is limited to having used their services for the purpose of coming to Canada to claim refugee protection, will not be considered a member of such an organization and will have access to the refugee determination process [A37(2)(b)].

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### 4.1. Policy intent

The activities of organized crime present a major threat to the security of all nations. The benefits of globalization, including the increased ease with which people, goods, and information are able to cross national boundaries, are not confined to legitimate businesses.

The Act contains specific provisions to bar the entry into Canada of persons associated with organized crime and those who engage in transnational crime activities.

Subsection A37(1) enables Canada to protect itself from the threat of organized crime by excluding not only those intending to commit crimes, but also those whose presence in Canada may be used to strengthen a criminal organization or advance its criminal objectives.

Paragraph A37(1)(b) responds to Canada's commitment to contribute, in concert with the international community, to the fight against criminals who seek to profit from human suffering and to the fight against money laundering.

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### 4.2. Policy application

Officers are expected to use good judgment in applying the provisions of subsection A37(1).

As indicated previously, there is an important distinction between the test and purpose of a criminal justice proceeding and that of an administrative process for the purpose of determining who has a right to enter or who is or may become authorized to enter and remain in Canada.

Furthermore, the evidentiary requirements for an admissibility hearing are quite different from those in a criminal case; for example, information used by the CBSA might well be dissimilar to that obtained and used by a local policing authority.

Therefore, although the A37(1) provisions will not generally be used in those cases where a local policing authority is pursuing formal charges of participation in organized crime or transnational crime in Canada, neither is the use of A37(1) provisions in such cases precluded.

Put another way, generally, although officers will not write an A44(1) inadmissibility report—preferring instead to await the court disposition with respect to the charges and if a conviction results, apply the provisions relating to having a conviction in Canada—officers may choose to exercise their discretion and write an inadmissibility report using the provisions of A37(1).

In addressing the scenario of no Canadian authority laying charges or otherwise advancing formal proceedings when the evidence and circumstances clearly indicate A37(1) would apply, officers are expected to investigate further to determine, if possible, why no formal proceedings are being advanced and/or no charges have been, will be or are being contemplated to be laid against the person. If despite this information the officer is still of the opinion that the evidence and circumstances justify the writing of an A44(1) inadmissibility report, then the officer may write such a report using the appropriate provisions of subsection A37(1).

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### 4.3. Mandate of Organized Crime Section

The Organized Crime Section (RZTO) is a section of the National Security Division, CBSA, NHQ

The mandate of the section is to:

- gather and disseminate intelligence on organized crime groups and members;
- provide advice and guidance to personnel in Canada and abroad;
- manage a temporary resident vetting program;
- analyze background and trends in relation with transnational criminal activities;
- work in close partnership with various partner agencies and other law enforcement agencies;
- develop profiles on organized crime groups in cooperation with partners;
- provide strategic advice on organized crime trends and issues;
- coordinate a national strategy on organized crime;
- provide training sessions and briefing sessions on transnational criminal activities; and
- provide a 24-hours-a-day, seven-days-a-week (24-7) service to the field.

In all cases where there is an Enforcement Information Index (EII) hit for organized crime, or where an officer has concerns about involvement in transnational criminal activities, or when an officer intends to use A37(1) as an allegation, RZTO must be contacted.

The section can be reached via e-mail at Nat-Organized-Crime@cic.gc.ca or by telephone at (613) 952-8482. RZTO can also be reached after regular working hours through the Immigration Warrant Response Centre (IWRC).

The RZTO may be contacted for the following reasons:

- to take advantage of existing intelligence with regard to suspect criminal activity or a suspected member of a criminal group;
- RZTO analysts can provide assistance to officers by suggesting areas to explore and provide background information with regard to the suspected criminal activity;
- RZTO analysts can liaise with other points of service having an interest in a case;
- RZTO analysts can advise partner agencies having an interest in a case; and
- to contribute to the CBSA's role in terms of intelligence.

For further assistance when dealing with outlaw motorcycle gangs, Criminal Intelligence Service of Canada (CISC) Headquarters can provide specific information on these groups and can also assist officers in identifying persons who are suspected members of such a group. CISC may be contacted during regular working hours at (613) 993-8338; and after hours at: 1-877-660-4321.

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### 4.4. Mandate and procedures for cases involving money laundering

The Organized Crime Section (RZTO) of the National Security Division at CBSA, NHQ has the following mandate with respect to money laundering :

- to assess and collect information on clients suspected of having engaged in money laundering activities;
- to further investigate persons involved in criminal activities with particular emphasis on money laundering activities;
- to uphold their partnership obligations with FINTRAC, law enforcement agencies and CSIS for the purpose of combating organized crime and money laundering.

RZTO will serve as the point of contact with FINTRAC and other agencies for cases related to money laundering activities.

Procedures concerning money laundering cases

In any case where organized crime is suspected, and whenever money laundering activities could be involved, missions, ports of entry, inland and enforcement offices may request RZTO's assistance to conduct further checks. If available, the following documents are required :

- copy of the application form;
- copy of identity documents;
- any relevant supporting documents based on the type of case; and
- a summary of the officer's concerns.

RZTO will analyze the information and will provide the person requesting the information with an assessment with regard to organized crime and/or money laundering.

For interceptions at ports of entry, RZTO can always be reached through the Immigration Warrant Response Centre after regular working hours, or through the duty cellular phone at (613) 795-8192.

All cases where money laundering is suspected, regardless of the outcome or decision, must be referred to RZTO for the purpose of gathering intelligence and to determine whether the case should be disclosed to FINTRAC or other partners.

**How to report to RZTO** : See Appendix D for the form designed to assist officers in collating all information pertaining to a case that could involve money laundering activities. This form (Appendix D) is also available on the RZTO Web site in the intranet where it can be retrieved, completed and sent electronically to RZTO. You may also reach RZTO by e-mail at the Nat-Organized-Crime address in the address book.

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### 4.5. Interpretation

The meaning of "member – membership" includes anyone who is knowingly linked to an organized crime group and benefits from this association; this may include:

- persons who devote themselves full time or almost full time to the organization;
- persons who are associated with members of the organization, especially over the course of a lengthy period of time;

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- persons who do not personally commit acts, provided that they are connected to the criminal organization;
- persons who are directly, indirectly, or peripherally involved with the organization;
- persons who are not involved in the management of the organization but derive an economic benefit from their association with the organization;
- persons working for a legitimate company while knowing it is controlled by organized crime; and
- persons who do not have formal membership as long as they belong (or belonged) to the criminal organization. Belonging to an organization is assumed where persons join voluntarily and remain in the group for the common purpose of actively adding their personal efforts to the group's cause.

Membership does not include persons who had no knowledge of the criminal purpose or acts of the organization.

However, the structure of A37(1)(a) makes it clear that "membership" of a gang and engaging in gang-related activities are discrete, but overlapping grounds on which a person may be inadmissible for "organized criminality." The "engaging in gang-related activities" ground of "organized criminality" was added by IRPA.

See Section 14.4 of this chapter for the definition of "organization".

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### 4.6. Participation in a legitimate business

It is not always possible to draw a clear line between the legitimate business activities of a criminal organization and its criminal activities. The former may be used to launder the proceeds of the latter, while the organization's criminal activities may in turn be financed by profits made from a successful legitimate business that it controls. Therefore, a person's participation in a legitimate business, knowing that it is controlled by a criminal organization, in some instances may support a reasonable belief that the person is a member of the criminal organization.

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### 4.7. Interviewing organized crime applicants

When an officer has information concerning possible organized crime involvement, or is planning to refuse entry into Canada under the provisions of A37(1), the applicant should be convoked for an interview and provided with an opportunity to address the allegation.

Any convocation letter should clearly outline the officer's concerns regarding the organized crime involvement and subsection A37(1) should be quoted. As the information an officer has is likely to be protected, the convocation letter should state that information about the applicant has been received and it is considered to be of a serious nature. The letter should also state that, although the details cannot be disclosed in the letter, the relevant issues will be discussed over the course of the interview.

If, at the conclusion of the interview, a decision has been reached to refuse an applicant, it may be more effective to refuse based on information provided at the interview than based on the protected information received. Such cases are also more likely to withstand judicial review.

Consequently, an effective interview strategy is essential. In such cases, valuable guidance can be provided by RZTO analysts. For more information on issues relating to organized crime, an officer may always consult with the RZTO Section.

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### 5. Security

The CBSA has the policy responsibility with respect to security [A34]. Should CIC officers encounter security issues, they must seek guidance from the appropriate section of the National Security Division at the CBSA, NHQ.

#### 5.1. National security issues - A34(1)

Paragraphs A34(1)(a), (b), (c), (d), (e), and (f) describe people who may not be admitted to Canada for reasons of national security; this includes espionage, subversion, terrorism or violence.

The provision is also meant to include all persons who an officer has reasonable grounds to believe will engage or have engaged in any one of the aforementioned activities.

A34(1)(f) may also include persons who an officer has reasonable grounds to believe are or were members of organizations that engage, have engaged or will engage in any one of the paragraphs dealing with espionage, subversion or terrorism.

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**Note:** See Section 4.5 of this chapter, titled “Interpretation” for the definition of “member – membership” and Section 14.4 of this chapter for the definition of “organization”.

**Note:** For the purpose of determining whether a person is inadmissible under paragraph A34(1)(c), if a previous decision or determination was rendered as described in R14, then the findings of fact as set out in that previous determination or decision shall be considered as conclusive findings of fact; and the person may be deemed inadmissible without the need to re-establish the findings of fact as set out in that previous decision or determination.

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A34(1)(e) specifically covers persons who would or are likely to engage in acts of violence that may endanger the lives or safety of persons in Canada.

A34(1)(d) is an additional class of persons who an officer has reasonable grounds to believe may be a danger to the national security of Canada and are not covered under any of the other classes.

The matters referred to in subsection A34(1) do not constitute inadmissibility in respect of a person who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest [A34(2)].

The Minister of PSEP is not authorized to delegate the exercise of A34(2) discretion [A6(3)].

An officer should not refuse an application based on an A34(1)(a), (b), (c), (d), (e) or (f) allegation without first consulting with Security Review (RZTZ) of the National Security Division at CBSA, NHQ . Similarly, officers will first consult with RZTZ before writing an A44(1) inadmissibility report.

If an officer considers an applicant to fall within any of the aforementioned A34(1)(a), (b), (c), (d), (e), or (f) classes, they should inform RZTZ of the case details; state why the applicant may be inadmissible and copy this information to the office of the Senior Director Geographic Operations, International Region (RID), CIC as well.

See also chapter IC 1, Security and Criminal Screening of Immigrants, for further information about these classes of inadmissibility.

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### 6. Human or international rights violations

The CBSA has the policy responsibility with respect to human and international rights violations [A35]. Should CIC officers encounter these issues, they must seek guidance

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from the appropriate CBSA Regional War Crimes Unit or the Modern War Crimes Section of the National Security Division at CBSA, NHQ.

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### 6.1. Human or international rights [A35(1)]

This section of the Act describes what actions and/or circumstances might make a permanent resident or a foreign national inadmissible on grounds of violating human or international rights, and includes:

- persons who have committed outside Canada an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;
- persons who were prescribed senior officials in the service of a government that, in the opinion of the Minister of PSEP, engages or has engaged in terrorism, systematic or gross human rights violations, genocide, war crimes or crimes against humanity;
- persons who, **other than permanent residents**, are nationals or representatives of a government or country against which Canada has imposed, or has agreed to impose, sanctions in concert with an international organization of states or association of states of which Canada is a member.

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**Note:** With reference to A35(1)(c), see also Appendix C.

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Officers are advised to contact their Regional War Crimes Unit or the Modern War Crimes Section of the National Security Division at CBSA, NHQ for assistance with case file preparation in all paragraph 35(1)(a) or (b) human or international rights violation cases. This is necessary as experience has shown that there is considerable effort required before these types of cases may go forward. See also chapter ENF 18 , War Crimes and Crimes Against Humanity.

In the case of paragraph A35(1)(a), persons may be deemed inadmissible as a human or international rights violator without the need to re-establish findings of fact as set out in any previous decision or determination, provided that previous decision or determination was made by:

- an International Criminal Tribunal established by the United Nations;
- the Immigration and Refugee Board (IRB) on a finding that the applicant is excluded on grounds of being a person referred to in section F of Article 1 of the Refugee Convention: or
- a Canadian court rendering a decision made under the *Criminal Code* of Canada or the *Crimes Against Humanity and War Crimes Act* concerning a war crime or crime against humanity [R15].

A permanent resident or foreign national who is described in either paragraph A35(1)(b) or A35(1)(c) and who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest is not inadmissible on grounds of violating human or international rights. No such exemption exists for persons described in A35(1)(a); they are forever inadmissible.

The Minister of PSEP is not authorized to delegate the exercise of A35(2) discretion [A6(3)].

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### 6.2. Policy intent

The policy of the government is clear: individuals who have committed, or who are complicit in the commission of a war crime, a crime against humanity, genocide, or any

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other reprehensible act, regardless of when or where these crimes occurred, are not welcome in Canada.

A four-pronged approach in dealing with modern-day war criminals is taken by:

- refusing their visa applications abroad as foreign nationals, refugees, or temporary residents;
- denying their entry into Canada at ports of entry;
- excluding them from the refugee determination process in Canada;
- removing them from Canada.

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### 6.3. Crimes against humanity, genocide, war crimes and terrorist acts

The following descriptions apply:

#### **Crimes against humanity**

Murder, extermination, enslavement, imprisonment, torture, sexual violence, or any other inhumane “act” or “omission” that is committed against any civilian population or any identifiable group, whether or not the state is at war, and regardless of whether the “act” or “omission” is a violation of the territorial law in force at the time. The acts or omissions may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.

#### **Genocide**

An “act” or “omission” committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, whether committed in times of peace or war, by state officials or private individuals.

#### **War crimes**

“Acts” or “omissions” committed during an armed conflict (war between states and civil war), which violate the rules of law as defined by international law. These “acts” or “omissions” include the ill treatment of civilians within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

#### **Terrorist acts**

Terrorist acts have a wider application than war crimes or crimes against humanity because:

- they can be committed against both persons and property;
- they can be isolated incidents: they do not have to be committed in a widespread or systematic manner;
- they can be committed in times of both war or peace.

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### 6.4. Senior members/officials of governments designated by the Minister of PSEP

A35(1)(b) describes senior members or officials of governments designated by the Minister of PSEP as governments that engage in terrorism, systematic or gross human rights violations, genocide, war crimes or crimes against humanity. This allegation may not be used unless a government is designated.

As of this writing (i.e., February 2002), the following governments have been designated:

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- **Designated 16 June 1993:** the Bosnian Serb regime between 27 March 1992 until 10 October 1996.
- **Designated 12 October 1993:** the Siad Barré regime in Somalia between 1969 and 1991.
- **Designated 8 April 1994:** the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994 except the period August - December 1993.
- **Designated 21 October 1994:** the former Marxist regimes of Afghanistan between 1978 and 1992.
- **Designated 3 September 1996:** the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power since 1968.
- **Designated 27 April 1998:** the government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 1994.
- **Designated 30 June 1999, amended 14 March 2001:** the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998 and October 7, 2000.
- **Designated 14 March 2001:** the Taliban regime in Afghanistan from September 27, 1996.

For additional guidelines on the application of A35(1)(b) and a current listing of designated governments, see ENF 18, Appendix E , War Crimes and Crimes Against Humanity.

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### 6.5. International travel sanctions [A35(1)(c)]

In the application of A35(1)(c), it must be recognized that although the following paragraphs refer specifically to the United Nations (UN), the provisions of A35(1)(c) are equally applicable to any decision, resolution or measure that an international organization of states or association of states might make, so long as Canada:

- is a member of that international organization or association of states; and
- has imposed or has agreed to impose, as the case may be, the particular decision, resolution or measure.

With the aforementioned in mind, and using Canada's membership in the United Nations as an example for discussion purposes, as a signatory to the Charter of the United Nations, and as a United Nations member, Canada is under an international legal obligation to implement binding United Nations Security Council (UNSC) decisions that impose sanctions on certain states.

In keeping with this obligation, the provisions of A35(1)(c) allow Canada to fully implement United Nations resolutions where other provisions of the Act might not apply. For example, A35(1)(b) relates to persons who "being a prescribed senior official in the service of a government . . ." Clearly, this provision may not include spouses or children of these persons unless they themselves are found to be a part of this group; nor might it include other individuals in neighbouring countries who may be providing financial and/or military support to armed rebel groups.

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Also of note, in the case of other individuals providing financial and military support, some of these individuals may well come from countries not requiring visas; this would make it all the more difficult to control the admissibility of such persons to Canada.

In such cases, the provisions of A35(1)(c) sufficiently provide Canada with the necessary authority to fully implement any UNSC resolutions and, as a result, meet its international obligations.

See Appendix C for a listing of web sites and of sanctions, as at the time of this writing.

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### 7. Medical inadmissibility

CIC has the policy responsibility with respect to medical inadmissibility [A38].

A38(1) bars entry into Canada to persons with three types of medical conditions:

- people with a health condition that is likely to be a danger to public health [A38(1)(a)]; see also R31.
- people with a health condition that is likely to be a danger to public safety [A38(1)(b)]; see also, R33.
- people with a health condition that might reasonably be expected to cause excessive demand on health or social services [A38(1)(c)]; see also R1 and R34.

Applicants for permanent residence and, in certain cases, temporary entry into Canada, will be required to undergo a medical examination to determine their health admissibility. Those applicants who do not comply with the medical examination requirement will be considered to have abandoned their application for entry into Canada.

Foreign nationals in Canada who fail to undergo a required medical examination or any medical procedure that is required as a part of that examination, or who fail to abide by the conditions of any follow-up medical surveillance imposed as a condition of entry, may be reported pursuant to subsection A44(1) and be ordered removed from Canada.

Medically admissible applicants will only have an electronic "medical certificate" issued. Results are found in CAIPS and/or FOSS. Medically inadmissible applicants will have a hard copy medical certificate [IMM 5365B] issued to the visa/immigration office in addition to the electronic notification.

Medical assessments for applicants covered by A38(2) will clearly indicate that the assessment was based only on public health and public safety.

It will be inferred from the issuance of the aforementioned "documents" that there is a medical assessment on file, where indeed a medical examination was required. No hard copy "medical certificate" will be provided to an applicant per se.

When an officer is of the opinion that a foreign national may be a member of an inadmissible class described in subsection A38(1), the officer may require persons described within the provisions of R30 to undergo a medical examination.

Conditions may be imposed pursuant to R32 requiring the person to report at a specified time and place for a medical examination and to provide proof, at a specified time and place, of compliance with the conditions imposed.

An officer may form the opinion that a person may be medically inadmissible by:

- observation: the person may appear to be sick or may require assistance; and

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- questioning: has the person recently been discharged from hospital? Has the person recently been sick? Is the person taking medication for a serious illness?

R29 provides that, for the purposes of paragraph A16(2)(b), a medical examination includes any or all of the following: a physical examination; a mental examination; a review of past medical history; laboratory tests; diagnostic tests; and a medical assessment of records respecting the applicant.

R30(4) provides that every foreign national referred to in R30(1) who seeks to enter Canada must hold a medical certificate that indicates that they are not inadmissible on health grounds and that is based on the last medical examination to which they were required to submit within the previous 12 months.

In a port-of-entry (POE) case, where there are grounds to believe – based on a “balance of probabilities” – that a person is medically inadmissible, an officer may proceed as follows:

### **Action at land ports/ferry ports**

At land or ferry ports, persons who require an immigration medical examination will be required to go to a designated medical practitioner in the United States of America (USA). A list of accredited designated medical practitioners in the USA will be issued to the person. If the person continues to demand immediate entry into Canada, or leaves but returns to seek entry into Canada prior to having an electronic “medical certificate” in FOSS - that indicates the person is not inadmissible on health grounds [see R30(4)], an officer may choose to write an A44(1) inadmissibility report citing allegation A41(a) and A20(1)(a) or (b), as appropriate.

In the case of a foreign national, this allegation is within the jurisdiction of the Minister's delegate and may result in the Minister's delegate making a removal order against the person [R228(1)(c)(iii)].

### **Action at international airports**

Where it is believed that a person may be medically inadmissible at an international airport, normally, after consultation by telephone with a medical officer with the Operations Directorate, Medical Services Branch, CIC, the examination should be adjourned under the provisions of A23.

The person would then be required to undergo a medical examination pursuant to R30(1)(d) by a Designated Medical Practitioner in Canada. Officers must ensure they impose appropriate conditions as allowed for under R32 in addition to those conditions that must be imposed pursuant to R43(1); that is, that the person is required to report at a specified time and place for a medical examination and is to provide proof, at a specified time and place, of compliance with conditions imposed.

Because of the aforementioned, where feasible, officers should make every effort to make the appointment for the person. All appointments should be scheduled for the earliest possible date.

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**Note:** Persons will be expected to pay for their own medical examinations; officers should advise Designated Medical Practitioners of this fact at the time the appointment is made.

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If an officer believes that the person is an immediate public health or safety risk, an order to detain the person and an A44(1) report written for A41(a) and A16(2)(b) would be appropriate. In such a case the officer should also immediately notify a medical officer.

See also ENF 20, Detention.

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### 7.1. Medical inadmissibility for temporary entry

An applicant inadmissible as a permanent resident may not be inadmissible as a temporary resident. A permanent resident may require services that a temporary resident with the same condition would not require. An officer cannot use the results of a permanent resident's examination to refuse an application for temporary entry into Canada.

When an applicant changes categories, an officer must review the medical examination results for the new category. When a medical notification for the new category is received, an officer may then make a decision.

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### 7.2. Medical inadmissibility for permanent residence

A person who fails a temporary resident medical examination is also likely to fail an permanent resident examination. Still, an officer cannot use results of a temporary resident examination to refuse an application for permanent residence. An officer must have the results from a medical assessment for a permanent resident.

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## 8. Financial reasons

CIC has the policy responsibility with respect to financial inadmissibility [A39].

A39 describes people who are or will be unable or unwilling to support themselves or any person who is dependent on them for care and support. If the person satisfies an officer that adequate arrangements for care and support (not involving social assistance) are in place, then they do not fall within this inadmissibility provision.

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### 8.1. Protected persons in Canada and their family members

Protected persons, within the meaning of subsection A95(2), are exempted from the application of section A39. Protected persons may apply for permanent resident status through the Case Processing Centre (CPC) in Vegreville, Alberta; their application for permanent resident status may include their family members abroad [A21(2), R139(3), R176(1) and R21].

If a protected person becomes a permanent resident and subsequently sponsors a family member, the provisions of R133 would apply.

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## 9. Misrepresentation

CIC has the policy responsibility with respect to misrepresentation [A40]

The Auditor General's Year 2000 Report strongly recommended more effective measures to discourage fraudulent immigration applications.

The *Immigration and Refugee Protection Act* (IRPA) responds to this recommendation in two ways:

1. by rendering inadmissible, for misrepresentation, foreign nationals abroad. Pursuant to the former *Immigration Act*, the misrepresentation provisions applied only in Canada. With the advent of the IRPA, the misrepresentation provisions have been expanded to apply abroad as well; and
2. subsection A64(3) limits the right of appeal for sponsors of family class members who make misrepresentations on applications for permanent residence, to cases of the spouse, common-law partner or dependent child of the sponsor.

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### 9.1. Policy intent

The purpose of the misrepresentation provisions is to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada.

The provisions are broad enough to cover a range of scenarios to encourage compliance with the legislation and support the integrity of the program. Yet, it is also imperative that the application of the provisions be guided by the use of good judgment to support the objectives of the Act and ensure fair and just decision-making.

This inadmissibility section can be used to deny visas at visa offices abroad and to deny entry into Canada at ports of entry to prospective permanent residents and foreign nationals. It can also be used as grounds for removal once in Canada and for refusing in-Canada applications.

Section A40 applies to:

- applications for permanent residence;
- applications for visas for permanent resident status;
- applications for temporary residence;
- applications for student and work permits; and
- renewals and extensions of status,

whether these applications are made abroad, at the ports of entry or in Canada.

However, the misrepresentation provisions do not apply to protected persons. Section R22 provides that those persons who have claimed refugee protection, if disposition of their claim is pending, and protected persons are exempted from the application of the misrepresentation provision.

In addition, the misrepresentation provisions do not apply to family members abroad of protected persons by virtue of sections R176 and A21.

Subsection R176(1) enables a protected person applying to remain in Canada as a permanent resident to include any of their family members in the application.

Subsection R176(2) permits the issuance of a permanent resident visa to a family member who is outside Canada at the time of application, if

- (a) the family member makes an application outside Canada to an officer within one year after the day on which the applicant becomes a permanent resident; and
- (b) the family member is not inadmissible on the grounds listed in subsection A21(2).

Misrepresentation is not a listed ground of inadmissibility under section A21 and as such does not apply.

If the person misrepresented their relationship to the applicant, the officer may have grounds to refuse the application on the basis that the applicant did not provide sufficient evidence to show proof of family relationship with the protected person in Canada. If the misrepresentations were made with respect to the basis for which the IRB granted protected status, then, pursuant to A109, an application to vacate status should be made to the IRB. [See section 9.12 below]

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### 9.2. Misrepresentation or withholding material facts

Persons who misrepresent or withhold material facts, either directly or indirectly, relating to a relevant matter that induces or could induce an error in the administration of the Act are inadmissible to Canada pursuant to paragraph A40(1)(a).

#### Definitions

##### Misrepresentation:

Misstating facts to obtain money, goods, benefits or some other thing desired by a person who might otherwise not be entitled to it. Misrepresentation may also be referred to as "false pretences."

**Example:** An individual appears at a port of entry with someone else's passport and represents his identity as that of the owner.

##### Withholding:

To hold back from doing or taking an action; to keep (within); to refrain from granting, giving, allowing or "letting 'it' be known." A person can misrepresent themselves by being silent just as easily as a person who actively states a "mistruth." A person who refuses or declines to answer a question, preferring instead to allow outdated or false information to be accepted as current or true information, is engaging in the activity of misrepresentation.

**Example:** A vehicle with four individuals arrives at a port of entry and the driver is asked if all the occupants in the car are Canadian citizens, to which the driver replies, "yes." One of the passengers is a foreign national and remains silent. That individual is withholding facts.

##### Direct and indirect misrepresentation:

Direct misrepresentation includes situations where the person makes a misrepresentation or withholds information themselves—on their own behalf.

**Example:** An individual at a port of entry, when asked about criminality, states they have never been convicted of a crime. A CPIC check reveals a criminal record. This is direct misrepresentation.

Indirect misrepresentation is where a third party makes a misrepresentation or withholds information.

##### Instances of indirect misrepresentation include:

**Example:** Situations where the applicant does not make the misrepresentation themselves but, rather, it is done by someone else—a third party to the application. For example, a consultant or agent for an entrepreneur submits a monitoring report on behalf of the entrepreneur and provides false information on the establishment of a business.

**Example:** The misrepresentation need not be willful or intentional—it can also be unintentional. An applicant need not be aware of a misrepresentation in order to be found inadmissible on the grounds of A40. For example, an applicant asks a relative to obtain information in support of an application. The information provided by the applicant's representative is false and the applicant claims to not be aware of the falsity. The applicant is responsible for ensuring that the application is truthful and the supporting documents are genuine. The applicant could therefore be inadmissible for misrepresentation for submitting false documents even though he was not the one who fabricated evidence.

**Example:** Non-disclosure of facts relating to admissibility or inadmissibility which, if known, would be material and relevant to induce or which could induce an error in the administration

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of the Act, e.g., the person concerned does not disclose that they were previously deported—this constitutes indirect misrepresentation.

### **Arranged employment cases (visa applications – R76, R77 and R82):**

In the specific case of arranged employment, where the misrepresentation is discovered, care should be used in applying section A40. Many clients involved in this fraud are not aware that the jobs to which they are destined are not genuine.

In keeping with the dictates of procedural fairness, the applicant must be given the opportunity to refute any negative information. The decision-maker must be satisfied on a balance of probabilities that the person committed the misrepresentation. This could be a factor in determining whether to use section A40 or not.

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### **9.3. Principles**

Officers are to be guided by the following principles when applying the misrepresentation provision:

- Procedural fairness: An individual should always be given the opportunity to respond to concerns about a possible misrepresentation. At a visa office, once the applicant has been given the opportunity to respond to the concerns, then the designated officer shall render a final decision regarding the misrepresentation to issue or refuse the visa. At a port of entry or inland, the Minister's delegate shall determine whether or not to refer the case to the IRB for an admissibility hearing.
- It must be recognized that honest errors and misunderstandings sometimes occur in completing application forms and responding to questions. While in many cases it may be argued that a misrepresentation has technically been made, reasonableness and fairness are to be applied in assessing these situations.
- Material facts are not restricted to facts directly leading to inadmissible grounds. There are varying degrees of materiality. Fairness should be applied in assessing each situation.
- Misrepresentations are sometimes made to conceal sensitive personal information to avoid embarrassment. Where the fact is of limited relevance or materiality, it should not affect the outcome of the application.
- Applicants are responsible for ensuring that all the information submitted in their application is truthful and that all documents submitted are genuine.
- The test to be applied in the application of this provision is the "balance of probabilities." This is a higher standard than "reasonable grounds to believe." Where the standard is not met, the provision should not be invoked.
- Misrepresentation can either be made orally or in writing (by submitting false supporting documents or writing a false statement or omitting to include the proper information in the application).

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### **9.4. Materiality**

With respect to relevancy and materiality, the following principles apply:

- What is relevant is a broader concept than what is material.

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- All material factors will be relevant. However, what is relevant may not always prove to be material:
  - (1) information requested from applicants will be considered relevant, otherwise this information would not be requested; but
  - (2) this relevant information will not always affect the process undertaken by an officer or the final decision. Only when it affects the process undertaken, or the final decision, does it become material. At this point, misrepresentation of the information means section A40 would apply, regardless of the decision outcome.

**Example:** A sponsored parent, 65 years of age, is asked in background information about his educational history. This is relevant information because the educational background is pertinent for security review. The individual has always told his family he is a high school graduate, and completes the information accordingly. In fact, we discover that he failed his final exam 45 years ago and did not receive a diploma. The information is relevant, but not material because whether he did or did not graduate from high school affects neither his eligibility nor the security review process the officer would have used.

### Provincial nominees :

The following procedure should be used for provincial nominee cases processed abroad:

In provincial nominee cases, misrepresentation may be an issue that needs to be addressed by CIC as well as by the province. Where, in examining the application, there is persuasive evidence that the province's selection decision was based on direct or indirect misrepresentation or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of IRPA, the following should be considered.

It is CIC's responsibility to determine whether applicants are inadmissible. This includes misrepresentation. Before rendering an inadmissibility decision pursuant to A40, the officer must examine issues of relevancy and materiality. As this may be related to the selection decision made by the province, the visa officer should consult with the provincial official to gather all the information necessary regarding materiality and relevancy. This consultation process and the evidence gathered from the province should be clearly explained and recorded in the file notes for possible use as evidence in the Federal Court or before the IRB.

The procedure outlined below should be followed in cases involving misrepresentation:

1. As per normal standards of procedural fairness, the visa officer should advise the applicant of the concerns and give the applicant at least 30 days to respond to the concerns. The province should receive a copy of this letter, and the applicant should be advised that the province is being provided with the copy.
2. If the reply from the applicant provides a satisfactory explanation to meet the visa officer's concerns, case processing may continue normally without referral to the province.
3. If there is no reply, or if the reply does not provide a satisfactory explanation to meet the concerns of misrepresentation in line with normal procedural fairness standards, the visa officer should proceed as follows:
  - ◆ Consult with the responsible provincial authority, asking the province to confirm the concerns regarding misrepresentation and request that they withdraw the provincial nomination certificate
  - ◆ The visa office must

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- a) provide the province with documentation from the file regarding their concerns;
- b) advise the province that the applicant had been provided with an opportunity to respond and the nature of that response; and
- c) inform them of the visa officer's conclusion that misrepresentation of a material fact relating to a relevant matter has occurred.

- **Misrepresentation related to the provincial selection decision where province agrees:**

Should the province agree, and following confirmation by the province that the certificate has been withdrawn, the designated officer may proceed to refuse the case based on the recommendation of the visa officer. The refusal letter should be based on A40 and A15(2) and sent to the client. A copy of the refusal letter should also be sent to the province.

For those cases where the province agrees that there was misrepresentation, but does not withdraw the certificate, the refusal letter should be based on A40 only.

- **Misrepresentation related to the provincial selection decision where province disagrees and does not withdraw the certificate:**

Where there is disagreement on the materiality and relevancy of the misrepresentation regarding the selection decision, the province and the designated manager should first attempt to resolve that disagreement. Where the disagreement remains and the provincial authority does not withdraw the certificate, cases must be examined individually to determine whether an A40 refusal can be maintained, if necessary in consultation with Case Management, cc. IR/RIM. The agreement of the province is not necessary to refuse based on A40, however, to maintain a refusal in these circumstances a visa officer will require strong evidence to be able to demonstrate that there was misrepresentation and it was material and relevant, notwithstanding the province's conclusion.

Should a refusal on A40 be maintained, the refusal letter from the designated officer should be based on A40 and sent to the client with a copy to the province.

- **Misrepresentation not related to the provincial decision on the case:**

If the misrepresentation was not related to the provincial selection decision on the case, then visa officers should refer to the general guidelines on misrepresentation in section 9.3, Principles, above.

If the A40 test is met, then the refusal letter should be based on A40 and sent to the client with a copy to the province.

- **Use of R87 (Negative substituted evaluation)**

The use of A40 is the preferred tool in situations where misrepresentation has occurred. Generally, where the province has not withdrawn its certificate and has thereby maintained its opinion that successful establishment is likely, the use of negative substituted evaluation is not advised as a basis for the refusal.

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### 9.5. An error in the administration of the Act

Erroneous determinations that a person satisfies the requirements for:

- a visa or other document;
- temporary resident status;

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- permanent resident status; or
- admissibility;

are clearly errors in the administration of the Act.

In carrying out the duties under subsection A11(1) at a visa office and section A21 and subsection A22(1) at a port of entry (POE), as well as inland for all applications (for extensions of status, applications for work or study permits and applications for permanent residence etc.), officers are required to be satisfied that a person meets the requirements and is not inadmissible.

To make these determinations, officers decide what procedures, including investigations, interviews and verifications, are required. Some procedures are required by law—others are administrative.

Instances of misrepresentation that could also induce an error in the administration of this Act include:

**Example:** If the misrepresentation prevented or could have prevented the officer from undertaking correct procedures that would normally have been taken, it can be said that the fact is material. If the wrong administrative process is followed to support the decision made under the Act, then it can be said that the misrepresentation could induce an error in the administration of this Act.

**Example:** It can also be said that if the right procedure is followed by using the wrong information provided, that this could induce an error in the administration of this Act—an error which was induced by misrepresentation. For example, the applicant states that he was in the U.K. when, in fact, he was in the USA. In this case, the officer will proceed with a background security check (right procedure) but based on the wrong information (wrong location to conduct the security checks). This would have induced an error in the administration of the Act.

**Example:** Misrepresentations that lead to the issuance of documents containing false information provided by or on behalf of the client, e.g., visas, PR cards, permits with incorrect names, date and place of birth.

It should be noted that the resulting error does not have to relate to the person who makes the misrepresentation; that is, it may relate to another person, such as an accompanying family member in which case all the family members will be inadmissible pursuant to A42.

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### 9.6. Fraudulent documents

Verification of documents sometimes reveals that documents submitted by applicants are fraudulent; this does not automatically lead to inadmissibility. These documents may not be material and/or relevant and/or may not induce an error in the administration of the Act. Officers should consider and be guided by the following principles:

- The source: It is preferable if the issuing authority is able to confirm in writing that the document was either fraudulently obtained or that it is not genuine. Some organizations may advise that they believe a document is fraudulent because they have no record of having issued the document. On its own, this information may not be sufficient evidence to conclude there has been a misrepresentation. Officers should consider the reliability of the source as well as other reasons for suspecting the validity of the document. If the information that a document is fraudulent is not from the issuing authority, the source should be a recognized expert in document analysis.

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- The information must be material in accordance with the general principles outlined previously.
- Was the document provided to make a misrepresentation? Sometimes fraudulent documents are obtained to support true facts that cannot be verified because records are otherwise unobtainable or difficult to obtain. In these circumstances, if the facts are otherwise established to the satisfaction of the officer, it is questionable that the misrepresentation could have induced an error.
- In the case of fraudulent documents, section A40 should be used. However, if the officer cannot be certain that the evidence satisfies all the elements of this provision, then paragraph A36(2)(c) is another possible option. There may be circumstances where the officer may use paragraph A36(2)(c) – for instance, when it is not clear that there has been an error in the administration of the Act, yet an offence was committed.

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### 9.7. At visa offices and ports of entry

An application for a visa abroad, or for entry into Canada at a port of entry may be denied based on a misrepresentation made in connection with the current application or examination only, unless the person was previously the subject of a refusal for misrepresentation and the resulting two-year inadmissibility period has not elapsed.

Failure to satisfy an officer of certain facts or intentions does not equate to misrepresentation. For example, if an officer does not find a person's stated intention to leave Canada before the expiry of the period authorized to be credible, this is not sufficient to support inadmissibility based on misrepresentation. Rather, non-compliance with paragraph A20(1)(b) would better define the situation as temporary residents must establish that they will leave Canada by the end of the period authorized for their stay.

Where, on a balance of probabilities, there is sufficient evidence of misrepresentation at a port of entry, officers may write a subsection A44(1) report. Officers should refer to the procedural guidelines outlined in ENF 5 for writing reports.

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### 9.8. In Canada

A permanent resident in Canada who obtained status as a result of misrepresentation may be the subject of a section A44 report on grounds of inadmissibility for misrepresentation. In the case of misrepresentation, it is viewed as continuing so long as the person remains in Canada.

**Example:** Misrepresentations are sometimes made by foreign nationals on applications for a permanent resident visa. A visa is granted and the foreign national subsequently becomes a permanent resident [A21(1)]. The misrepresentation is only discovered after permanent resident status is granted, when the permanent resident makes a sponsorship application for a family member. It is during the examination of the sponsorship application that the officer discovers that the sponsor made a misrepresentation to obtain status. Paragraph A40(1)(a) may be used to render the permanent resident sponsor inadmissible to Canada. The officer may write a subsection A44(1) report to the Minister's delegate who may refer the report to the IRB for an admissibility hearing and possible removal.

A further example might involve a person seeking to enter at a port of entry. The person is authorized to enter based on statements (that is, representations) made at the time of seeking entry into Canada. A few days later, it is determined that the statements are false; thus, the person was untruthful, thereby obtaining permanent resident status under false pretences. In such a case, the person may be reported pursuant to section A44 on the grounds of misrepresentation.

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In the case of misrepresentations made by permanent residents who have become Canadian citizens, there is a possibility of revoking their citizenship pursuant to the *Citizenship Act* if the misrepresentation was made in order to obtain permanent resident status. See the Citizenship chapter CP 9, section 5, entitled “Revocation of citizenship”.

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### 9.9. Visa office procedures

An officer who suspects that an applicant may be inadmissible for misrepresentation should carefully document the reasons for the concern in their notes. They must then provide the individual with information on the basis for their concern and invite the person to respond. This can be done at an interview or in writing. If in writing, the person should be given at least 30 days from the time of receipt of the officer’s notice to respond. The information provided in the response should be carefully assessed in accordance with the principles outlined previously.

If the officer believes that the person is inadmissible for misrepresentation, and the officer is not a designated officer for the use of section A40, then the officer refers the case to a designated officer. The decision based on section A40 is solely the decision of the designated officer who renders the decision on the basis of the information before them, including any further information or interview the designated officer feels is necessary. The designated officer enters appropriate file notes on their own assessment of the case and the factors leading to the decision. The section A40 decision is not a “concurrence” with another officer’s decision.

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### 9.10. Examples

Officers are to apply the aforementioned guidelines designed to support the consistent and fair application of the misrepresentation provisions. It is not possible to provide an exhaustive list of all scenarios. In each case, all the relevant information and the circumstances should be carefully considered. The following examples generally illustrate the intent of these guidelines.

**The following situations would generally constitute misrepresentation:**

- An applicant fails to disclose that they recently applied for a visa to Canada.
- An applicant fails to disclose a criminal record, even if it is eventually established that they are not inadmissible under the criminality provisions (either due to lack of equivalency or because of the deemed rehabilitated class, for example).
- An applicant for a visa fails to disclose the existence of family members, even if the family members could satisfy the requirements of the Act [R117(9)(d)].
- An applicant fails to disclose that they were previously issued a removal order in Canada, even if they would not require consent to return.
- An applicant includes a nephew in their application and lists this person as a son.
- An applicant misrepresents the age of a family member who could otherwise not be included in the application.
- A skilled worker applicant submits a false education certificate in an effort to meet selection criteria that they would not otherwise meet.
- Failure to disclose changes in marital status or changes in material facts since visa issuance abroad [R51].

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### The following situations would not generally constitute misrepresentation:

Mistakes or misunderstandings:

- An applicant who indicates the current year as their year of birth; or reverses the date and month of birth on an application form.
- An applicant who indicates being single, when in fact they are widowed.
- An applicant who fails to disclose being denied entry into Canada when attempting to enter from the United States for an afternoon five years ago. The applicant explains that because “withdrawal” was effected, the notion of having been denied entry into Canada was not properly understood (that is, the applicant did not believe entry into Canada had been denied because the option of withdrawal or “Allowed to Leave” was offered and exercised) and the applicant, in the officer’s opinion, is credible.
- Other cases where a person answers truthfully at an interview without hesitation and it is reasonable to believe that the person did not understand the question on the application form or forgot the relevant information at that time.

### Misrepresentations that are of limited relevance:

Often, these are misrepresentations for reasons unrelated to Canada's immigration requirements. Sometimes the purpose is to conceal what the applicant considers sensitive personal information from officials, from other family members included in the application, or from the sponsor. Some examples include:

- an elderly family class applicant who misleads an officer by indicating graduation from high school when, in fact, graduation was not achieved;
- an applicant who fails to disclose the birth of a child that was given up for adoption.

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#### 9.11 Sponsorship cases

Where a permanent resident sponsor misrepresents information in a sponsorship application related to the sponsored family member’s application, the family member being sponsored may be inadmissible for misrepresentation as per paragraph A40(1)(a).

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#### 9.12 Vacation of refugee status for misrepresentation

Vacation of refugee status under the Act is deemed a nullification of refugee protection. A46(1)(d) provides that a final determination to vacate refugee status for fraud or misrepresentation also results in a loss of permanent resident status.

A40(1)(c) provides that a person will be determined inadmissible if there is a final determination to vacate a refugee protection decision with respect to a permanent resident or a foreign national.

However, if refugee protection status was granted pursuant to subsection A95(1), then misrepresentation cannot be used as grounds to apply for vacation of status before the IRB.

Where a report is written and a decision is made to issue a removal order, the Act provides that such persons will be issued a removal order by the Minister’s delegate without the need to re-establish the grounds of misrepresentation at an admissibility hearing.

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Despite this streamlined process up to and including the issuance of a removal order, officers must still be cognizant that the Act provides and authorizes the Federal Court to review decisions relating to all immigration and refugee protection matters. Consequently, officers are advised to also refer to other manual chapters when dealing with such cases, including, ENF 24, Ministerial Interventions; ENF 9, Judicial Review; and ENF 10, Removals.

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### 9.13 Ceasing to be a citizen under paragraph 10(1)(a) of the *Citizenship Act*

Persons who cease to be citizens under the provisions of paragraph 10(1)(a) of the *Citizenship Act*, in the circumstances set out in subsection 10(2) of that same Act, are inadmissible to Canada.

Paragraph 10(1)(a) of the *Citizenship Act* provides for the loss of Canadian citizenship for reasons of false representation or fraud or by knowingly concealing material circumstances.

Paragraph 10(2) provides that: “a person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.”

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### 9.14 Two-year inadmissibility and return to Canada

Pursuant to subsection A40(2), a permanent resident or a foreign national determined to be inadmissible for reasons of misrepresentation continues to be inadmissible for a two-year period following:

- in the case of a determination made outside Canada, the date the officer renders a final decision, i.e., the date of the refusal letter; and
- in the case of a determination made in Canada, the date the removal order is enforced.

Pursuant to section A49, a removal order comes into force on the latest of the following dates, except in respect to a refugee protection claimant [A49(2)]:

- a) the day the removal order is made, if there is no right to appeal;
- b) the day the appeal period expires, if there is a right to appeal and no appeal is made; and
- c) the day of the final determination of the appeal, if an appeal is made.

Where a permanent resident or a foreign national is determined to be inadmissible under this provision, and where a request is made to return to Canada within the two-year period, consideration may be given to issue a temporary resident permit (TRP), where warranted. See chapter IP 1, Temporary Resident Permits, for more guidance.

See also Section 10.2, Examples of non-compliance allegation wording applicable to foreign nationals; and Section 10.3, Removal orders and returning without consent.

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## 10. Non-compliance

CIC has the policy responsibility for non-compliance [A41]

Under the provisions of A41, a person is inadmissible for failing to comply with “this Act.” Pursuant to subsection A2(2), unless otherwise indicated, references in the Act to “this Act” include the Regulations made under it.

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It is important to note that a non-compliance allegation must be coupled with a specific requirement of either the Act or the Regulations; it is not meant to be, nor should it be, a “stand-alone” allegation.

The table that follows at Section 10.2 provides some example of the various sections of the Act that may be coupled with an A41 non-compliance allegation. For a complete listing of all non-compliance allegations, officers should refer to a current Field Operation Support System (FOSS) manual or FOSS Release Notes publication.

Generally, inadmissibility for non-compliance will end as soon as the person is no longer in a state of non-compliance or leaves Canada.

This does not prevent an officer from writing an A44(1) report covering a person who:

- is still or otherwise remains in Canada; and
- during the period of that person’s current authorized stay or presence in Canada, violates (or violated) a condition or requirement of the Act.

For example, in the case of a person who performed an unauthorized work activity but who now claims to no longer be in a state of non-compliance because the work activity has ceased, these persons are and will remain reportable for non-compliance for the duration of their current stay in Canada because, during the period of their current stay in Canada, they violated a condition or other requirement of the Act; namely, they were not in possession of a work permit nor were they authorized to work.

This rationale is consistent with the “in Canada” misrepresentation provisions outlined previously in this chapter at Section 9.8 in that, in the case of a misrepresentation, the misrepresentation is viewed as continuing so long as the person remains in Canada

Synopsis:

Permanent residents will be determined to be inadmissible under the provisions of A41 only if:

- they fail to comply with the residency obligation pursuant to section A28; or
- they fail to comply with any conditions imposed under the Regulations.

Foreign nationals will be determined to be inadmissible under the provisions of A41 :

- through an “act” or “omission” that contravenes, directly or indirectly, a provision of the Act.

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### 10.1. Policy intent

This section provides for the refusal of entry into Canada, or the removal from Canada, of those persons who have contravened any condition or requirement of the Act or who are not respecting their obligations under the Act.

Examples include:

- persons who stay in Canada longer than the period for which they are authorized to stay;
- persons in Canada who, despite not being authorized to work, have engaged in a work activity;
- persons who do not comply with any condition, requirement or obligation lawfully imposed.

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Officers should note that persons described may be those who have disregarded the law knowingly (that is, intentionally) or unknowingly. For this reason, officers are expected to look closely at the overall circumstances, paying special attention to the person's intent, before recommending an enforcement action. An infraction may be quite innocent; however, it may also have been committed knowingly and purposefully.

Officers are expected to recommend or decide, if within their jurisdiction, the appropriate enforcement action to be taken keeping in mind the person's character, intent, motivation and other equally important factors that led to the person's contravention of the law.

### 10.2. Examples of non-compliance allegation wording applicable to foreign nationals

**Note:** For a complete listing of all non-compliance allegations, officers should refer to a current Field Operation Support System (FOSS) manual or FOSS Release Notes publication.

A41 stipulates:

41. A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act;...

**Table 1: Wording in the Act—FOSS allegation wording**

Section	Wording in the Act	FOSS allegation wording
A11(1)	A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations.	The requirement of subsection A11(1) that a foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations.
A16(1)	A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	The requirement of subsection A16(1) that a person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires. The requirement of subsection A16(1) that a person who makes an application must answer truthfully all questions put to them for the purpose of the examination. The requirement of subsection A16(1) that a person who makes an application to enter Canada must produce a visa. The requirement of subsection A16(1) that a person who makes an application to enter Canada must produce all relevant evidence and documents that the officer reasonably requires.
A16(2)(b)	In the case of a foreign national, the foreign national must submit to a medical examination on request.	The requirement of paragraph A16(2)(b) that a foreign national must submit to a medical examination on request.
A18(1)	Every person seeking to enter Canada must appear for an examination to determine whether that person has a	The requirement of subsection A18(1) that every person seeking to enter Canada must appear for an examination

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	right to enter Canada or is or may become authorized to enter and remain in Canada.	to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.
A20(1)(a)	Every foreign national, other than a foreign national referred to in section 19, 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 and have come to Canada in order to establish permanent residence.	<p>The requirement of paragraph A20(1)(a) that every foreign national, other than a foreign national referred to in section 19, 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 and have come to Canada in order to establish permanent residence.</p> <p>The requirement of paragraph A20(1)(a) that every foreign national, other than a foreign national referred to in section 19, 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.</p> <p>The requirement of paragraph A20(1)(a) that every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a permanent resident, that they have come to Canada in order to establish permanent residence.</p>
A20(1)(b)	Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	<p>The requirement of paragraph A20(1)(b) that every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the Regulations and will leave Canada by the end of the period authorized for their stay.</p> <p>The requirement of paragraph A20(1)(b) that every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a temporary resident, that they will leave Canada by the end of the period authorized for their stay.</p> <p>The requirement of paragraph A20(1)(b) that every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the Regulations.</p>

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A29(2)	A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re- enter Canada only if their authorization provides for re-entry into Canada.	The requirement of subsection A29(2) that a temporary resident must comply with any conditions imposed under the Regulations and with any requirements under this Act and must leave Canada by the end of the period authorized for their stay. The requirement of subsection A29(2) that a temporary resident must comply with any conditions imposed under the Regulations and with any requirements under this Act. The requirement of subsection A29(2) that a temporary resident must leave Canada by the end of the period authorized for their stay.
A30(1)	A foreign national may not work or study in Canada, unless authorized to do so under this Act.	The requirement of subsection A30(1) that a foreign national may not work or study in Canada unless authorized to do so under this Act. The requirement of subsection A30(1) that a foreign national may not work in Canada unless authorized to do so under this Act. The requirement of subsection A30(1) that a foreign national may not study in Canada unless authorized to do so under this Act.
A52(1)	If a removal order has been enforced, a foreign national shall not return to Canada unless authorized by an officer or in other prescribed circumstances.	The requirement of subsection A52(1) that, when a removal order has been enforced, a foreign national shall not return to Canada unless authorized by an officer or in other prescribed circumstances.

### 10.3. Removal orders and returning without consent

The Act contains provisions regarding the issuance of removal orders and their effect on persons who are found to be inadmissible to Canada.

Subsection A52(1) provides that, if a removal order has been enforced, the person concerned shall not return to Canada unless authorized by an officer or in other prescribed circumstances.

The three types of removal orders that may be issued are deportation orders, exclusion orders and departure orders. The Regulations establish under what conditions a specific removal order may be issued and the effect of those orders [R223 through R228].

The Regulations also provide that the Minister's delegate may issue a deportation order to foreign nationals who may have previously been removed from Canada and who return without prior authorization [R228].

#### Deportation orders

The Regulations provide that receipt of a deportation order obliges the foreign national to obtain the written authorization of an officer to return to Canada at any time after the order is enforced.

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For the purposes of subsection A52(1), the making of a deportation order against a foreign national on the basis of inadmissibility under paragraph A42(b) (that is, 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 [R226].

### Exclusion orders

The provisions respecting exclusion orders specify that:

- an exclusion order obliges the foreign national to obtain the written authorization of an officer in order to return to Canada for a period of one year after the order has been enforced; and
- a foreign national who is issued an exclusion order as a result of being found inadmissible for misrepresentation must obtain the written authorization of an officer to return to Canada for a period of two years after the order has been enforced.

For the purposes of subsection A52(1), the making of an exclusion order against a foreign national on the basis of inadmissibility under paragraph A42(b) (that is, 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 [R225].

### Departure orders

The provisions respecting departure orders specify that:

- a departure order does not oblige a foreign national to obtain the authorization of an officer in order to return to Canada provided the foreign national who is issued the departure order satisfies the requirement related to departure from Canada within 30 days of the order becoming enforceable, failing which the order would become a deportation order [R224].
- if the foreign national is detained within the 30-day period or the removal order is stayed, the 30-day period is suspended.

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#### 10.4. When is a removal order considered to be enforced?

R240 provides that a removal order shall be considered to have been enforced against a foreign national if the subject of that order:

- (a) appears before an officer at a port of entry to have their departure from Canada verified;
- (b) obtains a certificate of departure;
- (c) departs from Canada; and
- (d) has been authorized to enter, other than for purposes of transit, their country of destination.

### Visa offices

R240 provides that foreign nationals who apply for a visa abroad, and against whom a removal order has not been enforced, must establish that their removal has been enforced.

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Removal orders may be enforced by an overseas officer if, following an examination, the foreign national is able to establish that they have complied with certain removal requirements; these include:

- appearing before an officer outside of Canada;
- providing verification that they are the same person named on the removal order;
- demonstrating that they were lawfully admitted to the country in which they are physically present at the time that the application is made; and
- proving that they are not a threat to security, have not violated human or international rights and have not been involved in serious or organized criminality.

Allowing for removal orders to be enforced abroad provides persons with an opportunity to further regularize their admissibility status. Persons who fail to have their removal order enforced prior to seeking re-entry into Canada may find that they are the subjects of outstanding arrest warrants.

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### 10.5. Evidence for returning without consent

Evidence demonstrating inadmissibility for returning without consent may include:

- evidence the person was ordered excluded or deported
  - ◆ in the case of a person ordered excluded, evidence that one year has not elapsed since the enforcement of the exclusion order or, in the case of an exclusion order issued as a result of a misrepresentation finding, that two years have not elapsed [A40(2)(a)].
- evidence the person has not obtained the written authorization of an officer to return
  - ◆ in the case of a person issued with a departure order, evidence the person was given a departure order and has not complied with the provisions respecting enforcement of that order; specifically, the provisions of R240 which include the requirement to obtain a certificate of departure.

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### 10.6. Application of A20(1)(b)

A20(1): Every foreign national, other than a foreign national referred to in A19, who seeks to enter or remain in Canada must establish,

(b) to become a temporary resident, that they hold the visa or other document required under the Regulations and will leave Canada by the end of the period authorized for their stay.

For more information about the application of A20(1)(b), see:

- Considerations, below;
- Policy intent, below;
- Evidence to support an A20(1)(b) allegation, below;
- Examinations involving non-genuine applicants, below.

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### Considerations

The determination of an officer that a foreign national may become a temporary resident is very much dependent upon the foreign national, because the burden of proof rests on the foreign national to satisfy an officer that:

- they hold the visa or other document required under the Regulations; and
- they will leave Canada by the end of the period authorized for their stay.

### Policy intent

Subsection A20(1) describes what obligations foreign nationals must meet when they seek to enter or remain in Canada. It is important to note that the provisions of A20(1) relate to all persons except Canadian citizens, registered Indians and permanent residents. Consequently:

- persons who want to become permanent residents must establish that they hold the visa or other document required by Regulations and that they have come to Canada to establish permanent residence;
- persons who want to become temporary residents must establish that they hold the visa or other document required by Regulations and that they will leave Canada by the end of the period authorized for their stay;
- persons who are subject to a province's sole selection responsibility under a federal-provincial agreement must establish that they hold a document issued by the province indicating that they comply with the selection criteria of the province.

Apart from lacking a visa or other document as required, the only way a person could be found inadmissible under this provision would be if an officer forms the opinion that the person is a non-genuine applicant for the status being sought.

If such is the case, the officer's opinion must be based on a logical assessment of the facts and circumstances. It is important that the rationale used by officers be such that, given the same set of facts and circumstances, an ordinarily prudent and cautious individual would come to a similar or like conclusion.

Depending on the status being sought, officers may consider the following factors:

- What are the reasons the person is coming to Canada?
- What are the person's interest(s) in Canada?
- Are there any established links the person might have with Canada and their country of nationality?
- Did the person make any preparations in advance for their trip to Canada?
- What is the person's knowledge of Canada?
- What is the person's intended duration or stay and prospective plans while in Canada?
- Are there funds available for the person's trip (to cover the cost of such things as food, accommodation, transportation)? An officer should determine how the person

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plans to pay their expenses to be sure they are not inadmissible for financial reasons [A39];

- How does the person intend to leave Canada? Do they have a return air ticket or do they have some other means or plans by which they will leave Canada?
- Does the person have any friends or relatives in Canada should the need arise for in-Canada assistance? In other words, what plans does the person have should emergency assistance be required (for example, possible medical needs, running short of funds, etc.);
- What are the person's family responsibilities and obligations? What is the person's occupation in their home country? If applicable, why are the spouse and/or children not accompanying the person?
- What, if anything, would require the person to return to their home country by a certain date? Reasons commonly include: economic (money, employment, legal responsibilities); family responsibilities (work on the family farm or assist/take care of relatives); possible social, judicial or political reasons specific to their home country (military service).
- Has the person ever been arrested, charged or convicted of any crime or offence, in any country, at any time? Has the person ever been fingerprinted for any reason, and if so, why? Is the person the subject of an outstanding warrant for arrest? Is the person wanted by the police for any reason?
- Has the person been diagnosed as having any disease, disorder or any other health impairment of any kind?
- What is the political situation in the person's home country or country of nationality?

An officer should gather evidence to support an allegation very carefully. The examination should be conducted in a very thorough and accurate manner. The quality of an officer's notes, when used as evidence, may be crucial to a finding of inadmissibility by the Immigration Division. A case highlights form should be very detailed so as to assist the hearings officer prepare for the admissibility hearing.

### **Evidence to support an A20(1)(b) allegation**

If an officer believes a person to be inadmissible for being a non-genuine applicant [A20(1)(b)], then the officer should gather evidence to support that view.

The following are examples of what may be gathered to prove such a case:

- evidence that the person is seeking to come into Canada;
- evidence that the person is or was seeking to come into Canada for a temporary purpose;
- evidence to show that the person does not have a right to enter or remain in Canada, nor are they a permit-holder or a person seeking refugee protection;
- evidence that an officer examined the person;

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- evidence that there are grounds to believe that the person is a non-genuine applicant. This may include notes relative to the person's demeanour, intentions, history and/or reasonableness of their story.

An officer may establish the elements in a case by providing a statutory declaration of statements made by the person to the officer at the time of examination. An officer should always provide as much detail as possible.

An essential element in any non-genuine case should be evidence to support the view that the person's credibility is in doubt. It is important to make note of all contradictory statements that the person may have relayed. An officer should record the person's statements and then, if applicable, record the reason that the credibility of the statement is in question.

All hand-written notes should be neat, jargon-free and written in a respectful and professional manner. The officer's case file notes/highlights report should make note of the following:

- any explanation the person may have offered as to why they had difficulty recalling important details relevant to their story, yet on matters irrelevant, details were easily recalled;
- if applicable, an officer's notes should indicate how the person was evasive or, again if applicable, how the person made contradictory statements and provide examples;
- any instances where, in the opinion of the officer, the person's story seems unreasonable.

If a person is evasive, the officer should make note of this in the case file notes:

**Example:** I asked Mr. Jones three times during the examination who paid for his ticket to Canada and received a different reply each time. First, he stated that his brother paid for the airfare; then he said his parents gave him the money; and finally, he said that he sold his stereo to obtain the money for the ticket.

An officer should make note of any contradictions that occur during the course of an examination:

**Example:** Mr. Jones told me twice that he had never visited Canada previously; however, his passport indicates on page 3 that he was authorized to enter Canada as a temporary resident on 12 March 1999 at Blackpool, PQ.

An officer should also make note of a person's inability to recall important details:

**Example:** Mr. Jones cannot remember how he came to make the decision to come to Canada. However, he remembers quite clearly the details of his lengthy and varied employment history.

An officer should make note of any statements made by the person that seem unreasonable:

**Example:** Mr. Jones said that since childhood, he has always had a desire to visit Prince Rupert. This, in my opinion, is not credible as he does not know where Prince Rupert is in relation to the whole of Canada; he believes Prince Rupert to be a farming community when in fact it is a seaport city with no agricultural economy at all; and he claims he cannot stand rain yet Prince Rupert is widely known for the quantity of rain it receives each year.

If an officer is able to provide reasons to put in doubt the sincerity of the person's intentions on coming to Canada, then the question of whether the person will leave Canada as declared also becomes suspect. Credibility then becomes an issue. An officer

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must be cognizant of the fact that if called to give evidence at an admissibility hearing, or in the Federal Court, the officer must be able to swear or affirm to the truthfulness of every notation cited in their file notes/highlights report.

### **Synopsis:**

Officers should develop the case by gathering the facts and making note of relevant circumstances; then, supported by solid rationale, arrive at a conclusion.

Facts such as no requirement for a foreign national to return home by a certain date; lack of a job or employment prospects in their home country; few or no ties, personal possessions or obligations in the person's home country give reason to suspect that a person may not leave Canada.

### **Examinations involving non-genuine applicants**

If an officer conducts an examination of a person who they believe may be non-genuine, be it overseas or in Canada, the following format may be of assistance:

- Purpose of trip: What is the purpose for your trip to Canada?
- Interest in Canada: Why are you travelling to Canada at this time (tourism, business, study, medical care or other)?
- Contacts in Canada: Has someone invited you (family, friend, or other)?  
If yes, what is their relationship to you?
- How do you plan to get to your destination?
- If applicable, how did you receive the invitation (by letter, telephone, facsimile)?
- Trip preparation: Has your trip been planned for sometime or is this a recent decision to travel?
- Have you previously been in contact with any Canadian officials outside of Canada (High Commission, Embassy or Consulate)?
- Are you in possession of any tourist information concerning Canada?
- Have you been to Canada previously?
- Cost of trip: If the cost of the trip in relation to the person's circumstances seems unusual (such as where the cost of the air ticket is equal to the person's total annual income) questions such as how the air ticket was paid for, or who paid for the air ticket would be appropriate.
- Knowledge of Canada: Does the person have any knowledge about where they are going (geographical, political, cultural, social, meteorological, etc.)?

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### **10.7. Applications and documentation requirements**

The Act provides that foreign nationals are under an obligation to obtain certain required documents before entering Canada. The Regulations address mandatory requirements respecting applications.

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The purpose of the provisions is to establish which documents foreign nationals require before seeking to enter Canada. The Regulations also specify the requirements that must be met in order for an application to be considered; for example, the type of form to be used in making an application, the required information to be submitted on such a form, including any supporting documentation necessary, and the place where an application is to be filed.

For more information, see:

- What the Regulations do, below;
- Policy intent, below;
- Policy application, below;
- What is documentary evidence, below;
- What documentary evidence must foreign nationals produce, below;
- Are all foreign nationals required to produce a passport, below;
- What about temporary residents who have a passport but no airline ticket to leave Canada, below;
- How else can temporary residents establish that they are able to leave Canada, below;
- What to do if a temporary resident fails to establish to the officer's satisfaction that they are able to leave Canada, below.

### **What the Regulations do**

The application and documentation provisions prescribe:

- the circumstances in which visas are required to enter Canada;
- the circumstances in which foreign nationals are exempt from requiring temporary resident visas;
- the circumstances in which a study or work permit is required before entering Canada;
- the form, content, mandatory information required and place where an application may be made;
- the general rules regarding the form in which documents are required to be presented when the Act, which includes the Regulations, so specifies.

### **Policy intent**

The existence of regulatory provisions specifying the mandatory requirements of an application are intended to result in increases in self-compliance. Should an application not meet these requirements, it should be returned to the applicant without being processed.

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Failure to provide the necessary documentation in its required form may result in a refusal of the application. Foreign nationals will be refused entry into Canada, and may be removed, if they require visas and permits to enter Canada but have not obtained such documentation in advance.

### **Policy application**

Subsection A15(1) provides that an officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with the Act.

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

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

A16(1) provides that a person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

A16(2) provides that, in the case of a foreign national, the relevant evidence referred to in A16(1) includes photographic and fingerprint evidence. The foreign national must also submit to a medical examination on request.

### **What is documentary evidence?**

The definition of a document is: "Any writing or printing capable of being made evidence, no matter on what material it may be inscribed". Based on this, a passport, a visa, an airline ticket, money or even a bank statement of a person's assets may be considered documentary evidence.

### **What documentary evidence must foreign nationals produce?**

The Act is very thorough on what documents foreign nationals are required to produce. In addition, an officer may require additional relevant and/or documentary evidence that may not specifically be listed in the Act, yet, is considered by an officer to be reasonably required in order that a proper admissibility decision may be made.

### **Are all foreign nationals required to produce a passport?**

Unless otherwise prescribed by the Regulations, foreign nationals seeking to enter Canada as temporary residents, or to become permanent residents, must hold a passport or travel document from a prescribed list.

### **What about temporary residents who have a passport but no airline ticket to leave Canada?**

Temporary residents should be able to establish to the satisfaction of an officer that they are in fact able to leave Canada. Normally, all they need to do is produce an airline ticket or the money to buy one.

It is important to note, however, that an officer should not necessarily and automatically decide that a temporary resident is inadmissible simply because they are not able to produce either an airline ticket or the money to buy one. For example, during an authorized stay in Canada or the United States of America (USA), temporary residents will often decide to visit in the neighbouring country.

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In such cases, temporary residents may not be in possession of their return airline ticket or the necessary funds to buy one simply because they chose to leave the ticket at their relatives' or friends' home in the country where they initially commenced their visit. In this case, the explanation is reasonable and, unless the person's credibility is in doubt, or some other inadmissibility factor becomes known, the person should be authorized to enter without having shown a return airline ticket or sufficient money to buy one.

This example illustrates the importance of determining all relevant facts and considering reasonableness before making an opinion on admissibility.

### How else can temporary residents establish that they are able to leave Canada?

An officer should exercise good judgment in all cases. The following are offered as examples only:

- a letter from a relative agreeing to provide an airline ticket;
- a ticket left in the United States of America may be sent via priority courier and the person could present it after a period of adjournment or when next seeking entry into Canada;
- a confirmation from a travel agency that a ticket has indeed been issued.

### What to do if a temporary resident fails to establish to the officer's satisfaction that they are able to leave Canada?

In such cases, an officer may be justified in forming an opinion that the person is inadmissible. If deemed warranted, the officer may also go to the extent of writing an A44(1) report using the A41(a) non-compliance allegation coupled with A20(1)(b).

Since there is doubt as to whether the temporary resident will be in Canada temporarily, officers should make efforts to determine if there are any other factors that would warrant an inadmissibility opinion. For example, other aspects of the temporary resident's travel plans may be questionable enough to undermine the applicant's credibility.

In conclusion, what an officer may consider sufficient documentary evidence may vary depending on the circumstances of the case. An officer acting in good faith is not restricted on what may be considered.

Officers are expected to use good judgment in all cases.

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## 10.8. Non-compliance by permanent residents

A41: A person is inadmissible for failing to comply with this Act

(b) in the case of a permanent resident, through failing to comply with subsection A27(2) or section A28.

<b>A41(b) case elements</b>	<b>Explanation</b>
permanent resident	Only permanent residents may be reported under this paragraph.
balance of probabilities	Standard of proof to establish allegation is "balance of probabilities".
through failing to comply	Permanent residents must comply with the requirements of the Act.
with subsection A27(2)	This subsection requires compliance with any conditions imposed under the Regulations.
or	or
section A28	This section requires compliance with the

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	residency obligation with respect to every five-year period.
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### 10.9. Non-compliance with A27(2)

A27(2) applies to permanent residents who have not satisfied any of the conditions that may have been imposed under the Regulations. For example, the person may not have complied with the condition to marry a fiancé or to undergo medical treatment. This provision should not be used if there is a more specific ground of inadmissibility.

Put simply, a permanent resident is inadmissible under these provisions for failing to comply with a condition lawfully imposed; thus, the person has not respected their obligations under the law.

The recommended evidence to support this allegation will depend on the circumstances of the case; specifically, the particular condition(s) that the person is alleged to have not complied with.

See also chapter ENF 1, Inadmissibility.

### 10.10. Non compliance with the residency obligation of A28

The Act establishes residency requirements and obligations with respect to each five-year period after the granting of permanent residency status.

Pursuant to A28(2), a permanent resident complies with the residency obligation provisions, if for at least 730 days in that five-year period, the permanent resident is physically present in Canada or is:

- outside Canada accompanying a Canadian citizen spouse or common-law partner or, in the case of a child, their parent;
- outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province;
- outside Canada accompanying a permanent resident who is their spouse, common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province.

Paragraph A28(2)(c) provides that “humanitarian and compassionate” (H&C) considerations be given in cases where residency obligations have not been satisfied **before** any loss of status determination is made.

What this means is that each decision-maker involved in a residency obligation determination case, has a duty, as part of the decision-making process, to assess whether there are any compelling humanitarian and compassionate reasons to justify why permanent resident status should be retained, even though the person may not have complied with the residency obligation provisions of paragraph A28(2)(a). Officers are to keep in mind that the best interests of a child directly affected by the determination must also be considered when assessing humanitarian and compassionate factors that may justify the retention of permanent resident status.

In those cases where it is determined that humanitarian and compassionate considerations (including the best interests of a child) exist, and therefore retention of permanent resident status is justified, the H&C considerations will overcome any breach of those obligations that may have occurred or been determined prior to the H&C determination.

See also chapter ENF 23, Loss of Permanent Resident Status.

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### 11. Inadmissible family members

CIC has the policy responsibility with respect to inadmissible family members [A42]

#### 11.1. Persons whose accompanying family member is inadmissible

A42 stipulates:

**42.** A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible;

<b>A42(a) case elements</b>	<b>Explanation</b>
foreign national (other than a protected person)	Only foreign nationals, other than protected persons within the meaning of A95(2), may be reported under this section.
balance of probabilities	Standard of proof required to establish allegation is "balance of probabilities" .
accompanying family member	They are inadmissible because their accompanying family member is inadmissible.
or	or
in prescribed circumstances, a non-accompanying family member	They are inadmissible because, in prescribed circumstances, their non-accompanying family member is inadmissible.

See also chapter ENF 1, Inadmissibility

#### 11.2. Persons who are accompanying an inadmissible family member

A42: A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if:

(b) they are an accompanying family member of an inadmissible person.

<b>A42(b) case elements</b>	<b>Explanation</b>
foreign national (other than a protected person)	Only foreign nationals, other than protected persons within the meaning of A95(2), may be reported under this section.
balance of probabilities	Standard of proof required to establish allegation is "balance of probabilities" .
accompanying family member of an inadmissible person	They are inadmissible if they are an accompanying family member of an inadmissible person.

See also chapter ENF 1, Inadmissibility.

Foreign nationals are inadmissible if their accompanying family member is inadmissible or if they are themselves a family member who accompanies an inadmissible person. They would also be inadmissible, in circumstances prescribed by Regulations, if a family member who does not accompany them is inadmissible.

This section does not apply to permanent residents, nor does it apply to persons considered to be protected persons within the meaning of A95(2).

For a person to be declared inadmissible under A42, an officer must establish, in evidence, that the person is a family member as defined in R1(3). Proof of family relationship may take the form of birth certificate copies or other relevant documentation or correspondence. In the absence of this, the allegation is unsupported.

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Proof that a family member is inadmissible may take the form of certified copies of documents available from the Query Response Centre (QRC), CIC, for example, a copy of a removal order issued to a family member. Further proof may include any relevant documentation that the person concerned may have presented, produced or may have otherwise been found to have in their possession; or alternatively, that others may have in their possession that pertains to an inadmissible family member.

Further proof may include copies of any visa refusal letter that may have been issued to a family member. A copy of an Allowed to Leave Canada [IMM 1282B] or Direction to return to the United States [IMM 1237B], issued to an inadmissible family member, may also be used as evidence.

Still further proof may be the direct testimony of the person concerned, evidenced by a statutory declaration signed by that person or a statutory declaration from an officer (or officers) detailing statements made by the person concerned (or others) to an officer. Statutory declarations from other credible witnesses may also be used as evidence.

See also chapter ENF 1, Inadmissibility; and ENF 3, Admissibility Hearings.

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## 12. Refugees, protected persons and inadmissibility

CIC has the policy responsibility with respect to refugees and protected persons.

The concept of refugee protection within the Act includes persons who:

- are determined to be Convention refugees or are persons in similar circumstances under a visa application overseas and have been allowed to come to Canada for protection reasons;
- are determined in Canada by the Immigration and Refugee Board (IRB) to be Convention refugees or persons in need of protection;
- are granted protection by the Minister of Citizenship and Immigration (C&I) through a pre-removal risk assessment (PRRA).

A person who has had refugee protection conferred on them is a protected person [A95(2)].

A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection [A98].

Canada's obligations with respect to Convention refugees may be found in the provisions of the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol. Incorporated therein is the obligation that Convention refugees, lawfully in Canada, have a right to remain.

Consequently, a protected person, or a person who has been recognized as a Convention refugee, cannot be removed from Canada unless:

- they are determined to be inadmissible on grounds of serious criminality and constitute, in the opinion of the Minister of C&I, a danger to the public in Canada; or
- they are determined to be inadmissible on grounds of security, violating human or international rights or organized criminality and, in the opinion of the Minister of C&I, they should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or on the basis of being a danger to the security of Canada.

See also the principle of non-refoulement [A115].

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### 12.1. Convicted in Canada

Persons are not eligible to make a refugee claim if they are found to be inadmissible on grounds of having been convicted in Canada of an offence for which 10 years or more imprisonment may be imposed and for which at least two years was imposed [A101(2)(a)].

### 12.2. Convicted outside Canada

Persons convicted outside Canada are not eligible to make a refugee claim provided the Minister of C&I determines that they are a danger to the public in Canada and 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 [A101(2)(b)].

The above provisions are meant to reinforce the concept that decisions to exclude persons convicted of offences will be based on decisions lawfully rendered by the Immigration Division.

#### Policy intent

A claimant, convicted outside Canada, is not ineligible to have their claim referred to the Refugee Protection Division on the basis of a serious criminality determination unless the Minister of C&I is of the opinion that the claimant is a danger to the public in Canada.

#### Rationale

The purpose of the provision is to provide an acceptable processing balance between identifying the most serious offenders convicted outside Canada, yet still provide for those instances where a foreign law or judicial system may not equate to Canadian standards; and/or where the possibility exists of politically motivated or spurious convictions and the imposition, by some countries, of an excessive penalty

### 12.3. Violators of human or international rights / security threats / organized criminality

Persons found to be inadmissible by the Immigration Division for reasons of security, violating human or international rights, serious or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph A35(1)(c), are not eligible to make a refugee claim [A101(1)(f)].

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## 13. Relief provisions

Both CIC and the CBSA have policy responsibility with respect to relief provisions.

CIC has the policy responsibility for rehabilitation with respect to criminality.

The CBSA has the policy responsibility for relief based on national interest for security, war crimes, crimes against humanity and organized crime inadmissibilities.

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### 13.1. Overview of relief mechanisms

The relief provisions in the Act are at the discretion of the respective Ministers.

The existence of these provisions does not constitute a right for inadmissible persons to be considered under them. An officer is not required to advise or counsel applicants on the existence or application of these provisions. Although an officer may submit a request for relief with a recommendation, the onus rests on the applicant to establish that relief (that is, an exemption) is warranted. To recommend relief, an officer must be satisfied

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that it is highly unlikely that the person concerned will become involved in any further criminal activities.

There are four separate mechanisms to grant relief to inadmissible persons:

- Pardon – National Parole Board;
- Rehabilitation – Minister of C&I;
- passage of time;
- national Interest – Minister of PSEP.

### Overview of relief mechanisms

The Act	Mechanism	Authority
A34(1)	National interest	Minister of PSEP [A34(2)]
A35(1)(b) and (c)	National interest	Minister of PSEP [A35(2)]
A36(1)(a) and A36(2)(a)	Pardon	National Parole Board [A36(3)(b)]
A36(2)(a): An applicant convicted in Canada (under any Act of Parliament of two or more summary conviction offences not arising out of a single occurrence) may be deemed rehabilitated if at least five years have elapsed since the sentences imposed were served; has not been refused a pardon for the offences and they have not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i> [R18(2)(c)].		
A36(1)(b) and A36(2)(b)	Rehabilitation	Minister of C&I [A36(3)(c)]
A36(2)(b): An applicant convicted outside Canada (of an offence that if committed in Canada would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of less than 10 years) may be deemed rehabilitated if 10 years have elapsed since the completion of the sentence imposed and they have not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i> [R18(2)(a)(i)].		
A36(2)(b): An applicant convicted outside Canada (of two or more offences not arising out of a single occurrence that, if committed in Canada, would constitute summary conviction offences under any Act of Parliament) may be deemed rehabilitated if five years have elapsed since the sentences imposed were served and they have not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i> [R18(2)(b)].		
A36(1)(c) or A36(2)(c)	Rehabilitation	Minister of C&I [A36(3)(c)]
A36(2)(c): An applicant who committed an act outside Canada (that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of less than 10 years) may be deemed rehabilitated if 10 years have elapsed from the commission of the act and they have not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i> [R18(2)(a)(ii)].		
A36(2)(d)	Passage of time (i.e., Next entry)	Officer
A37(1)	National interest	Minister of PSEP [A37(2)(a)]
A40(1)	Passage of time (i.e., 2 years)	Officer [A40(2)(a)]

### 13.2. Pardon for convictions in Canada

The *Criminal Records Act* provides authority for the granting of a pardon to persons who have convictions in Canada. Applicants can request a Pardon Application Guide or additional information from the following:

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Clemency and Pardons Division  
National Parole Board  
10 Laurier Avenue West  
Ottawa, Ontario K1A 0R1  
Tel: 1-800-874-2652 (callers in Canada or U.S. only) / Fax: (613) 941-4981  
Web site: <http://www.npb-cnrc.gc.ca>

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**Note:** The guide, which includes application forms, may be downloaded from the web site.

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For more information on pardons in Canada, see also chapter ENF 14, Criminal Rehabilitation.

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### 13.3. Criminal rehabilitation

For convictions and “committing an act” provisions outside Canada, the Act provides authority for the Minister of C&I to approve rehabilitation. In response to a formal application from the person concerned, rehabilitation approval is the decision of the Minister of C&I or delegated authority, that the person is rehabilitated. To approve rehabilitation the decision-maker must be satisfied that it is highly unlikely that the person concerned will become involved in any further criminal activities. A positive rehabilitation decision removes the ground of criminal inadmissibility.

For more information on criminal rehabilitation and the application process that applies, see also chapter ENF 14, Criminal Rehabilitation.

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### 13.4. Passage of time

Some grounds of inadmissibility cease to exist after the passage of time if the person concerned ceases to be involved in criminal activity. In order for this to occur, a prescribed period of time must pass since the completion of any sentence served or to be served during the period immediately preceding the date the applicant seeks entry into Canada.

For guidance in the interpretation of when a sentence is considered completed, see also chapter ENF 14, Criminal Rehabilitation.

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### 13.5. Imposed sentences incorporating a “time served” provision

In the context of having a right of appeal in order for the grounds of serious criminality to apply, a person must have been convicted in Canada and have received a sentence of two years or more [A64(2)].

For the purpose of calculating the term of imprisonment where there has been time served, i.e., pre-sentence custody, the officer must verify the credit given by the criminal court sentencing judge for the pre-sentence custody by reviewing the criminal court transcript. If there is no indication in the transcript of how the sentencing judge has credited the time served, each day of time served is credited as two days of a prison sentence.

For example, if a person were sentenced to one year of imprisonment plus 183 days of time served, the 183 days of time served would count as a 366-day sentence (2 x 183 = 366), plus a one-year sentence imposed for a total sentence of two years and one day. There is no appeal right because the total sentence exceeds two years.

When calculating the total sentence imposed, it is imperative that the sentence be calculated to the day and not rounded off to the month as the repercussion for meeting the two-year threshold is loss of a right of appeal. *R. v. Wust*, [2000] 1 SCR 455.

A64(2) is not meant to include multiple consecutive sentences. It only refers to a single sentence.

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See also ENF 19, Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB).

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### 13.6. National interest

Persons who have engaged in acts involving espionage, terrorism, human rights violations and subversion, and members of organizations engaged in such activities including organized crime, are inadmissible to Canada. The ground of inadmissibility may be overcome if the Minister of PSEP is satisfied that their entry into Canada is not contrary to the national interest.

Whereas criminal rehabilitation is specific and results in a decision that the person is not likely to re-offend, the concept of national interest is much broader. The consideration of national interest involves the assessment and balancing of all factors pertaining to the applicant's entry into Canada against the stated objectives of the *Immigration and Refugee Protection Act* as well as Canada's domestic and international interests and obligations.

When the Minister of PSEP decides that the entry into Canada of a particular individual is not contrary to the national interest, the individual is no longer inadmissible under that section.

For more information, see:

- Role of an officer outside Canada, below;
- Procedural fairness, below.

#### **Role of an officer outside Canada**

The relief provisions in the Act are at the discretion of the Minister of PSEP.

The existence of these provisions does not constitute a right for inadmissible persons to be considered under them. An officer is not required to advise or counsel applicants on the existence or application of these provisions. Although an officer may submit the request with a recommendation, the onus rests on the applicant to establish that an exemption is warranted.

Applicants who wish to apply for relief should be provided with the National Interest Information Sheet as outlined in Appendix B .

The application for entry into Canada should be held in abeyance while the Minister of PSEP considers the matter of relief.

The role of the officer in such cases is to:

- provide verification of the information provided by the applicant;
- obtain any other information that may be required;
- provide comments on the submission of the applicant;
- provide to the applicant any documents not in the applicant's possession that will be considered by the Minister of PSEP and provide the applicant an opportunity to respond;
- forward the submission to the appropriate section of the National Security Division at CBSA, NHQ , with a recommendation.

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### Procedural fairness

There is extensive case law from the Federal Court on procedural fairness in immigration processing. It is well established that applicants are entitled to know the test they have to meet, to have a meaningful opportunity to present the various types of evidence relevant to their case, to provide a response to information obtained by the officer and to have their evidence fully and fairly considered by the decision-maker. The evolution of this doctrine in immigration processing has resulted in the following rules for the processing of rehabilitation and relief applications submitted by the persons concerned:

- the decision-maker must make the decision on complete information. Therefore, all documents provided by the applicant must be forwarded and presented to the decision-maker for consideration. It is not acceptable that the contents of such documentation be summarized in a covering memorandum and provided to the decision-maker without attaching the primary documentation;
- except for information that must be protected for security reasons, the applicant is entitled to receive and comment on any relevant documents obtained by the officer that will be considered by the decision-maker. Where information must be protected, officers should contact the appropriate bureau for guidance;
- the applicant is entitled to be advised of issues raised by the officer and to respond to those issues;
- an officer cannot refuse to accept an application for relief if the immigration application is in process.

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### 13.7. National interest considerations

A submission to the Minister of PSEP should consist of three parts:

1. The first part must address the applicant's current situation with respect to the ground of inadmissibility;
2. The second part of the submission must deal with the immigration application and humanitarian and compassionate (H&C) considerations;
3. The third part provides the recommendation.

In order to assess the current situation regarding the ground of inadmissibility, evidence must be produced to address the questions stated in the following table:

Question	Details
Will the applicant's entry into Canada be offensive to the Canadian public?	<ul style="list-style-type: none"><li>• Is there satisfactory evidence that the person does not represent a danger to the public?</li><li>• Was the activity an isolated event? If not, over what period of time did it occur?</li><li>• When did the activities occur?</li><li>• Was violence involved?</li><li>• Was the person personally involved or complicit in the activities of the regime/organization?</li><li>• Is the regime/organization internationally recognized as one that uses violence to achieve its goals? If so, what is the</li></ul>

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	<p>degree of violence shown by the organization?</p> <ul style="list-style-type: none"> <li>• What was the length of time that the applicant was a member of the regime/organization?</li> <li>• Is the organization still involved in criminal or violent activities?</li> <li>• What was the role or position of the person within the regime/organization?</li> <li>• Did the person benefit from their membership or from the activities of the organization?</li> <li>• Is there evidence to indicate that the person was not aware of the atrocities/criminal/terrorist activities committed by the regime/organization?</li> </ul>
<p>Have all ties with the regime/organization been completely severed?</p>	<ul style="list-style-type: none"> <li>• Has the applicant been credible, forthright, and candid concerning the activities/membership that have barred entry into Canada or has the applicant tried to minimize his role?</li> <li>• What evidence exists to demonstrate that ties have been severed?</li> <li>• What are the details concerning disassociation from the regime/organization? Did the applicant disassociate from the regime/organization at the first opportunity? Why?</li> <li>• Is the applicant currently associated with any individuals still involved in the regime/organization?</li> <li>• Does the applicant's lifestyle demonstrate stability or a pattern of activity likely associated with a criminal lifestyle?</li> </ul>
<p>Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?</p>	<ul style="list-style-type: none"> <li>• Is the applicant's lifestyle consistent with Personal Net Worth (PNW) and current employment?</li> <li>• If not, provide evidence to establish that the applicant's PNW did not come from criminal activities.</li> </ul>
<p>Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?</p>	<ul style="list-style-type: none"> <li>• Does the applicant's lifestyle demonstrate any possible benefits from former membership in the regime/organization?</li> <li>• Does the applicant's status in the community demonstrate any special treatment due to former membership in the regime/organization?</li> </ul>
<p>Has the person adopted the democratic values of Canadian society?</p>	<ul style="list-style-type: none"> <li>• What is the applicant's current attitude towards the regime/organization, his membership, and his activities on behalf of the regime/organization?</li> <li>• Does the applicant still share the values and lifestyle known to be associated with the organization?</li> <li>• Does the applicant show any remorse for their membership or activities?</li> <li>• What is the applicant's current attitude towards violence to achieve political change?</li> <li>• What is the applicant's attitude towards the rule of law and</li> </ul>

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	democratic institutions, as they are understood in Canada?
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The second part of the submission should deal with the immigration application and any humanitarian and compassionate considerations. This includes:

- details of immigration application/status;
- Canadian interest including family in Canada and abroad;
- is the applicant a Convention refugee;
- does the applicant meet all other statutory requirements.

The recommendation should include a supporting rationale.

The rationale should demonstrate a thorough assessment and balancing of all factors relating to the entry into Canada of the person in accordance with the explanation of national interest as noted in Section 13.6 of this chapter.

The submission, with all supporting documents, should be marked to the attention of the appropriate division and submitted by mail to the following address:

Director General  
Case Management Branch  
Citizenship and Immigration  
Jean Edmonds North Tower  
300 Slater Street  
Ottawa, Ont. K1A 1L1

Should an officer require assistance with respect to a relief request, they may contact the appropriate section as follows:

For persons described in A34(1) contact the Security Review Section by e-mail: Nat-Security-Review@cic.gc.ca.  
For persons described in A35(1) contact the Modern War Crimes Section by e-mail: Nat-WARCRIMES@cic.gc.ca.  
For persons described in A37(1) contact the Organized Crime Section by e-mail: Nat-Organized-Crime@cic.gc.ca.

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## 14. Definitions

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### 14.1. Committing an act

Division 4 inadmissibility provisions refer numerous times to the term “act.” Section A33 makes specific reference to the term “omissions.” The term “act” is referred to extensively in sections A34 through A36. A41(a) has both the terms act and omission within its provisions.

What is an “act” or “omission”?

“Act”— an act is something done; a completed action; something that happened such as an event or circumstance.

“Omission”—an omission is a failure to do something, including the deliberate failure to act.

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### 14.2. Conviction

A conviction is a finding by a competent authority that a person is guilty of an offence.

A charge or a confession is not a conviction.

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In cases involving a charge or a confession, the use of the “committing an act” provisions within IRPA may be appropriate.

A conviction does not exist in the following situations:

- the conviction is set aside on appeal;
- the court grants an absolute or conditional discharge as provided for in the *Criminal Code*;
- the person is granted a pardon in a foreign jurisdiction and the pardon is recognized as equivalent to a Canadian pardon.

For more information on the effect of foreign pardons, see ENF 14, Section 27, Pardons outside Canada.

A conviction does exist in the following situations:

- the court delivers a suspended sentence;
- the person appeals the conviction;
- the person is convicted *in absentia*.

To assist officers in determining whether a conviction has occurred in the United States (U.S.), the following table provides some commonly used terminology in the U.S. along with the relative Canadian interpretation. All officers should use these interpretations so that the various provisions of the Act may be applied both consistently and universally.

### U.S. criminal dispositions

Terminology used	Defined
Acquittal contemplating dismissal	Not a conviction; would likely have the same effect as a conditional discharge.
Deferral of sentence	This is a conviction providing the offence equates to Canadian law; similar to a suspended sentence in Canadian law.
Deferral of prosecution	Not a conviction. A deferral indicates that no trial on the merits of the charge has been held; similar to a stay in Canadian law.
Deferral of judgment	Not a conviction. If the conditions imposed in the deferral are fulfilled, the judgment finally rendered may be a finding of "not guilty."
Deferral of conviction	Not a conviction. It is a form of disposition equivalent to a conditional discharge in Canada.
Nolo contendere	A Latin phrase meaning "I will not contest it." It is a plea that may be allowed by the court in which the accused does not deny or admit to the charges. This plea is similar to pleading guilty and a conviction results.
Nolle prosequi	A Latin phrase meaning "I will no longer prosecute." The effect is similar to a stay of prosecution in Canada and no conviction results.
Sealed record	A sealed record is, for the purposes of IRPA, a criminal record. The fact that a sealed record exists does not in and of itself constitute inadmissibility. An officer should determine the circumstances of the sealed record by questioning the person concerned. A sealed record is usually the process used in the case of young offenders; however, a sealed record may also be used because

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	<p>of an agreement between the prosecutor and the defendant or in security cases.</p> <p>In the state of Vermont, for example, a record may be sealed if a person abides by terms and conditions imposed by the court. A sealed record will appear on a person's "rap sheet"; however, the record will not be made public without a court order.</p> <p>In the case of a sealed record, an officer should ask whether the record was the result of a conviction as a minor. If the person was a minor, then it would most likely equate to an offence under the <i>Young Offenders Act</i> - unless the case would have been eligible for transfer to an adult court.</p>
Convicted of several counts	Multiple convictions. Counts in the U.S. are equivalent to charges in Canadian law.
Expunged	Not a conviction. Expunged means to strike out; obliterate; mark for deletion; to efface completely; deemed to have never occurred.

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### 14.3. Omission

See Section 14.1, Committing an act.

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### 14.4. Organization

An organization refers to any partnership, corporation, association or other legal entity and any union or group of individuals associated in fact although not a legal entity.

An organization contains the following elements:

- an association with a common purpose and continuity of structure and personnel although this does not imply that personnel will not change over time;
- the members of the organization must function as a continuing unit as shown by a hierarchical or consensual decision-making structure;
- normally not an organization that briefly flourishes and then fades;
- an organization can consist of central and local structures;
- a system of authority directs the group's pattern of activity on a continuing rather than a singular basis;
- the fact that some changes occur in the structure does not mean that there is not a structure of continuity;
- a group of corporations can be an organization;
- an informal and loosely connected criminal network can be an organization.

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### 14.5. Pattern of criminal activity

A pattern of criminal activity:

- signifies a common scheme, plan or motive and is not simply a series of disconnected acts;

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- contemplates multiple transactions or episodes, not just multiple acts, to promote an illegal objective;
- cannot be established without some indication that the acts are interrelated and that there is continuity or threat of continuity.

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### 14.6. Withholding

Withholding is to hold back from doing or taking an action; to keep (within); to refrain from granting, giving, allowing or “letting ‘it’ be known.” A person can misrepresent themselves by being silent just as easily as a person who actively states a mistruth. A person who refuses or declines to answer a question, preferring instead to allow outdated or false information to be accepted as current or true information, is engaging in the activity of misrepresentation.

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### Appendix A Examples of criminal equivalents

#### United States of America (USA) - Internal Revenue Code

Paragraph 7206(1) of 26 USC 1976 (the Internal Revenue Code of the United States) provides that "Any person who

willfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to any material matter . . .

shall be guilty of a felony . . . "

A corresponding Canadian provision might be paragraph 239(1)(a) of the *Income Tax Act*, which stipulates that "every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation . . .

is guilty of an offence . . . "

You could analyse the elements of these two provisions for equivalence as follows:

Foreign provision	Canadian provision	Equivalent element
any person who willfully makes and subscribes	every person who made, or participated in, assented to or acquiesced in the making	The foreign offence states the element of intent ("willfully"). While the Canadian offence does not specifically refer to intent, it would be argued that intention is clearly a required element of the Canadian offence. While the U.S. provision refers to making a return, the Canadian statute refers to making a statement in a return. It would be argued that both statutes attempt to control the making of false statements in returns, and while the language of the statutes may differ, their intent and operation are the same.
makes any return which contains or is verified	return filed or made as required by or under this Act or a regulation	Equivalent element. The Canadian offence may be wider in that it does not require the return to be verified by a written declaration made under penalties of perjury. The point is arguable since the Canadian statute contemplates that the return will be filed "as required by or under this Act or a regulation." Research of the Canadian statute may or may not reveal a Canadian

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		<p>compliance method equivalent to that contained in the U.S. statute. The argument here could be, first, that the two elements are equivalent on their face; second, that the adjudicator should find that the "narrower" U.S. element is included in the more broadly defined Canadian element and is therefore equivalent; and third, that if it is found that there is no equivalency on this element, it is irrelevant to the adjudicator's decision because the difference between the two elements is one of form, not of substance, and in any event, the element is not essential to the offence.</p>
<p>and which he does not believe</p>	<p>in the making of false or deceptive statements</p>	<p>The Canadian offence, it might be argued, is more broadly defined than the U.S. offence, since it contemplates the making of merely deceptive statements (which may well be true), as well as false statements. The U.S. statute refers to statements not believed to be true and correct. One could argue that these elements are equivalent and that, in any event, the element of the narrower American offence is included within the more broadly defined Canadian offence.</p>
<p>by a written declaration that it is made under the penalties of perjury to be true and correct as to any material matter</p>		<p>The U.S. statute refers to "any material matter," implying, perhaps, that untrue and incorrect statements might be permissible in a return if they were immaterial. Fortunately the Canadian statute, by omitting the concept of materiality, forces us to address the whole of the return as to false or deceptive statements, not just material matters. This, it could be argued, is a more broadly defined approach than that taken in the U.S. statute, and therefore the element of the U.S. statute is included in the Canadian element.</p>

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Based on this analysis, or similar arguments, an officer could say that the statute provisions are equivalent.

### Hong Kong Prevention of Bribery Ordinance

Paragraph 9(1)(b) of the Hong Kong Prevention of Bribery Ordinance provides that:

9.(1)"Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his  
b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,  
shall be guilty of an offence."

A corresponding Canadian provision might be subsection 426(1) of the *Criminal Code*:

"426.(1) Every one commits an offence who

(a) corruptly

(ii) being an agent, demands, accepts or offers or agrees to accept from any person, any reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal . . ."

One could analyse the elements of these two provisions for equivalence as follows:

Foreign provision	Canadian provision	Comments
Any agent who	agent	Apparently equivalent
without lawful authority or reasonable excuse	corruptly	Not equivalent - In <i>Li</i> (34 Imm.L.R. (2nd), page 109 (Fed. C.A.)) the term "corruptly" was held to mean "without disclosure" in Canadian law; and as such, would make it narrower than the Hong Kong offence.
solicits or accepts	demands, accepts, offers or agrees to accept	Apparently equivalent
any advantage	any reward, advantage or benefit of any kind	Apparently equivalent
as an inducement to or reward for or otherwise	as consideration	Apparently equivalent
Showing favour to any person	showing favour to any person	Apparently equivalent
in relation to his principal's affairs or business	with relation to the affairs or business of his principal	Apparently equivalent

It is certainly arguable that these two offences are equivalent. They seem to contain the same essential elements and would appear to have been enacted to achieve the same quality and degree of social regulation.

### South Africa Road Traffic Ordinance

Subsection 135(1) of the South Africa Road Traffic Ordinance provides that:

"The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal

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- (a) shall immediately stop the vehicle;  
 (b) shall ascertain the nature and extent of any damage sustained."

Section 252 of the *Criminal Code* stipulates that:

"252.(1) Every person commits an offence who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) another person,  
 (b) a vehicle, vessel or aircraft, or  
 (c) in the case of a vehicle, cattle in the charge of a person,

and with intent to escape civil or criminal liability, fails to stop his vehicle, vessel or, if possible, the aircraft, give his or her name and address and, where any person has been injured or appears to require assistance, offer assistance . . .

(2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel, or where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance, and give his name and address is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability."

One could analyse the elements of these two provisions for equivalence as follows:

Foreign provision	Canadian provision	Comments
The driver of a vehicle on a public road	Every person who has the care, charge or control of a vehicle	The Canadian element is more broadly defined. The argument could be made that a "driver" in the South African provision would be included in "Every person who has the care, charge or control" in the Canadian provision. Note that the element of the Canadian offence does not require that the offence take place on a public road.
at the time when such vehicle is involved in or contributes to any accident	that is involved in an accident	These elements would appear to be equivalent.
in which any other person suffers damage in respect of any property		Note the manner in which "damage" is treated in the South African provision, which includes a penalty for failure to stop to ascertain damage. The Canadian offence provides a penalty for failure to stop with intent to escape civil or criminal liability.
shall immediately stop the vehicle	fails to stop his vehicle	These elements are arguably equivalent although phrased differently.
	with intent to escape civil or criminal liability	Intention to escape civil or criminal liability is not an element of the South African offence. The onus in the South African offence is to stop to

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		ascertain the nature and extent of damage.
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It could be argued in this situation that the essential element of the Canadian provision that is, the intention to escape civil or criminal liability is not contained in the South African offence which focuses on the obligation to stop to ascertain the nature and extent of any damage sustained. Thus, although the offences are similar in nature, an Immigration Division member may not find them equivalent.

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### Appendix B National Interest Information Sheet

You have asked for relief under paragraph \_\_\_\_\_ of Canada's *Immigration and Refugee Protection Act* (ACT), which reads as follows:

You may be exempted from this ground of inadmissibility if the Minister of PSEP decides that your entry into Canada would not be contrary to Canada's national interest. The consideration of national interest involves the assessment and balancing of all factors pertaining to your entry into Canada against the stated objectives in Canada's *Immigration and Refugee Protection Act*, as well as any possible impact on Canada's domestic and international interests and obligations.

If you wish to be considered for this exemption, the onus rests with you to prepare a submission along with any supporting documentation that you deem relevant. To assist you in preparing your submission, it is suggested that you address the following:

Why are you immigrating to Canada?

Are there any special circumstances surrounding your application?

Provide evidence that you do not constitute a danger to the public.

Explain current activities you are involved in (employment, education, family situation, involvement in the community etc.).

If the ground of inadmissibility involves membership in a regime or organization, explain the purpose of the organization, your role in the organization and activities in which you were involved. You must provide extensive detail and be very thorough in explaining this, including dates, locations and impact of these activities. How long ago and for how long were you a member? Did these activities involve violence? If you are claiming to no longer be a member of this regime or organization, you must provide evidence.

Explain when and why you disassociated yourself from the regime/organization and whether you are still involved with persons who are members of the regime/organization. Lastly, explain your current attitude towards this regime/organization, its goals and objectives and how you feel about the means it has chosen to achieve its objectives.

Your submission need not be restricted to the above. You may provide any information and documents that you think may strengthen your request for an exemption.

Your submission, in English or French, should be provided to the local CBSA immigration office which will review your request, seek any required clarification and forward it to the Minister of PSEP with a recommendation.

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### Appendix C International sanctions for the purpose of A35(1)(c)

(Last Updated: 9 June 2005 – The *Canadian Economic Sanctions* Web site of International Trade Canada, found at <http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>, provides summaries of existing sanctions, including links to various lists. Officers are encouraged to visit the Web site to verify if new sanctions have been added, old sanctions removed, or if lists have been updated.)

Country	Restriction	Method Enforced
Afghanistan	No travel by senior officials belonging to or associated with the Taliban or Al-Qaida organization as stated by UNSCR resolution 1390 paragraph 2(b), 1267 para. 4(b) and UNSCR 1333, para. 8(c). UN Committee Web site identifies those persons at: <a href="http://www.un.org/Docs/sc/committees/1267/tablelist.htm">http://www.un.org/Docs/sc/committees/1267/tablelist.htm</a>	A35(1)
Democratic Republic of Congo (Kinshasa)	Resolution 1596 (2005) of the UNSC has expanded UNSCR 1493 (2003) to apply the arms embargo to any recipient within the DRC's territory, and impose a travel ban and assets freeze on those violating the embargo. The resolution is explained on the press release page at: <a href="http://www.un.org/News/Press/docs/2005/sc8361.doc.htm">http://www.un.org/News/Press/docs/2005/sc8361.doc.htm</a> <i>The Regulations Amending the United Nations Democratic Republic of the Congo Regulations</i> P.C. 2005-1718 entered into force on October 4, 2005. Information can be found at: <a href="http://canadagazette.gc.ca/partII/2005/20051019/html/sor306-e.html">http://canadagazette.gc.ca/partII/2005/20051019/html/sor306-e.html</a> <i>The Regulations Amending the United Nations Democratic Republic of the Congo Regulations</i> modify the arms embargo and impose an assets freeze and a travel ban to persons identified by a UN Committee. A list of persons has been published on November 1, 2005, and can be found at: <a href="http://www.un.org/Docs/sc/committees/DRC/1533_list.htm">http://www.un.org/Docs/sc/committees/DRC/1533_list.htm</a>	A35(1)
Ivory Coast	Resolution 1572 (2004) of the UNSC has imposed a travel ban and a freeze of assets on designated persons who constitute a threat to the peace and reconciliation process in Ivory Coast. Additional information on Resolution 1572 may be found at <a href="http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp#ivoire">http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp#ivoire</a> . See also the press release at: <a href="http://www.un.org/News/Press/docs/2004/sc8261.doc.htm">http://www.un.org/News/Press/docs/2004/sc8261.doc.htm</a> and the Canada Gazette at: <a href="http://canadagazette.gc.ca/partII/2005/20050518/html/sor127-e.html">http://canadagazette.gc.ca/partII/2005/20050518/html/sor127-e.html</a> The list of persons under this travel ban and assets freeze can be consulted at: <a href="http://www.un.org/Docs/sc/committees/CITemplate.htm">http://www.un.org/Docs/sc/committees/CITemplate.htm</a>	A35(1)
Liberia	Restrictions on travel of senior government and military officials from Liberia, together with other individuals providing financial and military support to armed rebel groups in countries neighbouring Liberia, pursuant to Resolution 1343 of UNSCR. The UN Committee Web site identifies those persons at: <a href="http://www.un.org/Docs/sc/committees/Liberia3/1521_list.htm">http://www.un.org/Docs/sc/committees/Liberia3/1521_list.htm</a>  Resolution UNSCR 1579 (2004) has updated Resolution 1521 (2003) of the UNSC to expand the travel ban list. The latest	A35(1)

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	<p>version of the travel ban list may be accessed at the following URL:  <a href="http://www.un.org/News/Press/docs/2005/sc8359.doc.htm">http://www.un.org/News/Press/docs/2005/sc8359.doc.htm</a></p>	
Sierra Leone	<p>No travel by members of the military junta or adult members of their family, as designated by para. 10(f), UNSCR 1132 (1997), restated by para. 5, UNSCR 1171.  The UN Committee Web site identifies those persons at:  <a href="http://www.un.org/Docs/sc/committees/SierraLeone/1132_list.htm">http://www.un.org/Docs/sc/committees/SierraLeone/1132_list.htm</a></p>	A35(1)
Sudan	<p>Resolution 1591 (2005) of the UNSC imposes a travel ban and a freeze of assets on those who impede the peace process in Darfur. The resolution is explained on the press release found at: <a href="http://www.un.org/News/Press/docs/2005/sc8346.doc.htm">http://www.un.org/News/Press/docs/2005/sc8346.doc.htm</a></p> <p>Resolution 1672 (2006) adopted by the Security Council at its 5423<sup>rd</sup> meeting on 25 April 2006 decides to impose a travel ban and assets freeze, as per paragraph 3 of Resolution 1591 (2005), in respect to four individuals. The text of Resolution 1672 (2006) with the names of the individuals concerned can be found at:  <a href="http://www.un.org/Docs/sc/committees/Sudan/SudanResEng.htm">http://www.un.org/Docs/sc/committees/Sudan/SudanResEng.htm</a></p>	A35(1)
Syria	<p>Resolution 1636 (2005) of the UN Security Council imposes a travel ban and an assets freeze against individuals suspected of involvement in the planning, sponsoring, organizing or perpetrating of the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri. The resolution is explained in the press release found at:  <a href="http://www.un.org/News/Press/docs/2005/sc8543.doc.htm">http://www.un.org/News/Press/docs/2005/sc8543.doc.htm</a>  No travel ban list has yet been established; therefore no one has been designated under this travel ban.</p>	

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### Appendix D Form Cases where Money Laundering and/or Terrorist Financing is Suspected

#### FOR OFFICIAL USE ONLY

Cases where money laundering \_\_\_\_\_ and/or terrorist financing is suspected \_\_\_\_\_

Office:	Officer:	File Number:
Date, place and time of interview or interception		
Applicant	Full Name:	
	Alias:	
	Date and place of birth:	
	Citizenship(s):	
	Address in country of residence:	
	Accompanying family members:	
	Passport details:	
	Application type:	
	Occupation:	
	Employer:	
	Address and phone number of employer:	
	Contact name/ supervisor:	
	Destination	Name of host:
Address and telephone number:		
Relationship:		
Name of host organization:		
Address and phone number:		
Purpose of trip:		

Funds (specify currency)	In his/her possession
	Available:
Bank accounts	Name of financial institution:
	Location:
	Branch/ transit number:
	Account number:
	Balance and date:
If multiple accounts are of concern, continue in this section	
Credit cards	Name of financial institution:
	Location:
	Credit card number:
	If multiple accounts are of concern, continue in this section

#### FOR OFFICIAL USE ONLY

Association of concern: Business:	Company name:
	Address and phone number:
	Contact name:
	Field of business:
Charitable, Not for Profit, Non Government Organization:	Concerns in regards to business:
	Name of organization:

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	Address and phone number:
	Contact name:
	Registration number:
	Purpose of organization:
	Concerns in regards to organization:
Associate	Name:
	Date and place of birth ( <i>if available</i> ):
	Address and phone number:
	Concerns in regards to associate:
Specific concerns	Explain the areas of concern in relation to potential money laundering activities or terrorist financing activities: