Contents

Updates to chapter

Listing by date:

2025-02-20
Substantive and minor changes, as well as clarifications, have been provided throughout the chapter to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Content added throughout to reflect new inadmissibilities for sanctions under section 35.1 and transborder criminality under subsection 36(2.1) of the IRPA.
Section 8 and section 10: Content updated to reflect jurisprudence on officer scope of discretion under subsections 44(1) and 44(2) of the IRPA.
Appendices B, C, D: Updates to align with new court decisions.
Appendix F: Updates to reflect legislative and regulatory changes.

2023-04-17
Minor corrections and clarifications have been made throughout the chapter. Updates made to reflect changes to other manual chapters.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Section 6.6: New section added to provide guidance and resources on dealing with vulnerable persons, including victims of gender-based violence (GBV).
Section 9.5: Amended to reflect regulatory changes to include new ground for directing persons back to the United States under section 41 of the IRPR where the foreign national is prohibited from entering Canada by an order or regulation made under the *Emergencies Act* or the *Quarantine Act.*
Section 9.6: Content on restoration of status updated to reflect change in terminology from "implied" status to "maintained" status.
Section 9.9: New section added on impact of Ministerial public policies.
Section 12.4: Updates to content on information sharing and evidence obtained by mistreatment or torture.
Section 13.4: Additional guidance on multiple allegations.

2019-10-28
Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Sections have been re-written for clarity and/or moved and re-organized for more logical flow of information.
Section 3.1: Amended to include several new or updated forms.
Section 9.8: Content added to reflect amendments to IRPA provisions regarding inadmissible family members under section A42.
Section 11.6: New section added to clarify the scope of end of examination for a person who makes a claim for refugee protection at a port of entry or inland office, following the addition of subsection R37(2) of the IRPR.
Section 14.6: New section added to reflect changes to IRPA and IRPR requiring that decision-makers impose prescribed conditions on security (A34) inadmissibility cases.

2013-08-20
Sections 3 and 9 have been updated to reflect the addition of subsections 16(1.1) and 16(2.1) to

the Immigration and Refugee Protection Act as of the coming into force of the Faster Removal of Foreign Criminals Act.
Subsection 8.4 was added to provide guidance on further allegations of inadmissibility subsequent to a declaration pursuant to A42.1 by the Minister of Public Safety and Emergency Preparedness.

2011-01-01
The following changes were made to chapter ENF 5, entitled “Writing 44(1) Reports”: Section 1: Minor changes were made to section 1
Section 4: Minor changes were made throughout Section 4. Section 5: Minor changes were made to Section 5.1.
Section 8: Changes were made to the paragraph explaining the Cha decision in 8.1 Section 8: Minor changes were made to Section 8.2
Section 8: Minor changes were made to Section 8.3 Section 8: Minor changed were made to Section 8.5 Section 8: Minor changes were made to Section 8.9 Section 11: Reference to ID manual deleted.

2009-10-30
The following changes were made to chapter ENF 5, entitled “Writing 44(1) Reports”: Hyperlinks to manuals and forms were added throughout ENF 5 for ease of reference. Section 3: Hyperlinks were added to access forms in Section 3.1.
Section 4: Minor changes were made to include internet and intranet websites for the Delegation and Designation Authorities and Instruments.
Section 8: Minor changes were made throughout Section 8.1. Section 8: Minor changes were made to Section 8.4.
Section 8: A paragraph was added to Section 8.9, writing an A44(1) report on a permanent resident. Minor changes were made to the paragraph on released cases to clarify when an officer may require counsel to leave.
Section 11: All reference to the Reciprocal Agreement between the United States and Canada was removed as it expired on October 30, 2009. This section was combined with section 10: Procedure: Point of Finality as section 10.1.
Section 12: Minor changes were made to section 12.1.
Section 12: Section 12.2 was updated to reflect the procedure on accessing the HELP screen in FOSS and is now section 11.2.
Section 12: Section 12.4 was rewritten for clarity and is now section 11.4.Section 13: Minor changes were made to the Note for clarity and is now section 12.

2007-08-10
The following changes were made to ENF 5 Appendices A and B entitled “Writing a report against a foreign national” and “Writing a report against a permanent resident”.
Appendix A: Items to bring to the interview have been amended to reflect documents held by foreign nationals.
Appendix B: Permanent residents have been advised that they may have legal counsel present if they wish, however it is not a right, it is a privilege.

2007-04-12
The following changes were made to chapter ENF 5, entitled “Writing 44(1) Reports”: Section 1: The words “Minister of CIC” have been added at the end of the first paragraph. Section 4: Minor changes were made to paragraph 3 in order to include CBSA.
Section 8: Substantial changes appear to sections 8.1 and 8.7.
Section 12: The words “Minister of CIC” have been added in section 12.1, and an insert was

added to section 12.3, first paragraph.
Section 13: Minor changes have been made throughout the section. Appendices A and B: Substantial changes appear to both appendices.

2005-11-04
Changes made to reflect transition from CIC to CBSA. The term "delegated officer" was replaced with "Minister's delegate" throughout text, references to "departmental policy" were eliminated, references to CIC and CBSA officers and the Ministers of CIC and PSEP were made where appropriate, and other minor changes were made. Appendix C was removed and Appendix D and E were renamed C and D.

2004-08-20
ENF 5 - Writing 44(1) Reports has been updated to reflect an amendment to paragraph 229(1)(k) of the Immigration and Refugee Protection Regulations. The amendment allows the Immigration Division of the Immigration and Refugee Board to issue a removal order at a hearing resulting from multiple allegations that include failure to comply with residency obligations.

2003-09-22
Chapter ENF 5, entitled Writing 44(1) reports, specifically Section 8 on Making a decision to write an A44(1) report, has been updated and is now available on CIC Explore.
The amendments were made in response to commitments made to Standing Committee during their study of IRPA which called on CIC to strengthen guidelines with respect to how we make a determination to refer reports to the IRB, especially in cases of permanent residents. These changes were made in consultation with all the domestic regions as well as the Enforcement Program Management Board. The guidelines are intended to ensure greater consistency in the steps taken to obtain information, prior to deciding the disposition of an A44(1) report.
Among the changes to this chapter, the highlights include: Section 8:
Section 8.1 has been updated to provide clear guidelines on keeping a record of an inadmissibility in all cases.
Section 8.3 addresses the issue of forwarding incomplete files to the Hearings Unit.
Section 8.7 establishes information-gathering guidelines that are to be undertaken prior to writing an A44(1) report.
Appendix A and Appendix B were also revised. For further information, please contact: susan.savriga@cbsa.gc.ca.

1 What this chapter is about

This chapter provides functional direction and guidance on writing a report under subsection 44(1) of the *Immigration and Refugee Protection Act* (IRPA) and how to prepare and present such a report to the Minister of Public Safety and Emergency Preparedness (PS) or the Minister of Immigration, Refugees and Citizenship Canada (IRCC).

2 Program objectives

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

- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons, including refugee claimants, who are criminals or security risks.

3 The Act and Regulations

The following table includes some of the most relevant provisions under the IRPA or the *Immigration and Refugee Protection Regulations* (IRPR) that may apply during the A44(1) process. Some of the authorities listed below pertain specifically to Border Services Officers (BSOs) at the port of entry or IRCC officers assessing applications; others are more relevant to CBSA Inland Enforcement Officers (IOEs).

Table 1: Sections of the IRPA and the IRPR applying to the A44(1) process

Provision	**Act and Regulations**
Delegation of powers	A6(2)
Examination by officer	A15(1)
Obligation - answer truthfully Obligation- appear in person for examination Obligation - relevant evidence Obligation- interview with the Canadian Security Intelligence Service	A16(1) A16(1.1) A16(2)(b) A16(2.1)
Obligation on entry - permanent residence Obligation on entry - period for their stay	A20(1)(a) A20(1)(b)
Permanent resident	A21(1)
Temporary resident Dual intent	A22
Entry to complete examination or hearing	A23
Temporary resident permit	A24
Residency obligation	A28
Security	A34
Human or international rights violations	A35
Sanctions	A35.1

Serious criminality	A36(1)
Criminality	A36(2)
Transborder criminality	A36(2.1)
Organized criminality	A37
Health grounds	A38
Financial reasons	A39
Misrepresentation	A40
Cessation of refugee protection	A40.1
Non-compliance with IRPA or IRPR – foreign national Non-compliance with IRPA or IRPR – permanent resident	A41(a) A41(b)
Inadmissible family member	A42
Imposition of conditions	A44(3)
Mandatory imposition of conditions – inadmissibility on grounds of security Duration of conditions	A44(4) A44(5)
Applicable removal order – Immigration Division	A45(d)
No return without prescribed authorization	A52(1)
Right of appeal to Immigration Appeal Division (IAD)	A63
Loss of appeal rights	A64
Protected person	A95
Ineligibility to refer refugee claim	A101
Cessation or refugee protection	A108
Vacation of refugee protection	A109
Non-refoulement – Protected person	A115(1)
Ministerial Opinion for protected person – Danger to the public	A115(2)(a)
Rehabilitation	R18
Seeking to enter Canada	R28(b)
End of examination	R37(1)
End of examination – claim for refugee protection	R37(2)
Direct back to the United States	R41(b)
Withdrawing application/Allow to leave	R42
Conditions A23	R43(1)
Report – family members	R227(1)
Applicable removal order – Minister	R228
Applicable removal order – Immigration Division	R229

3.1 Forms

The following table includes some common forms used in the A44(1) process. This is a non-exhaustive list and some may only apply to officers carrying out the administration of the IRPA at the port of entry.

Table 2: Forms

Form Title	Form Number
Direction to Return to the United States	BSF505
Allowed to Leave Canada	IMM 1282B
Subsection 44(1) and 55 Highlights – Inland Cases	IMM 5084B
Subsection 44(1) Highlights – Port of Entry Cases	BSF516
Request for Criminal Information	BSF567
Acknowledgement of Conditions	BSF821
Notes to File	BSF788
Acknowledgement of Conditions for IRPA Section 34 Cases	BSF798
Entry for Further Examination or Admissibility Hearing	BSF 536
Use of a Representative	IMM 5476

4 Instruments and delegations

A4 sets out which Minister is responsible for the administration of the IRPA. The Minister of Citizenship and Immigration [also known as Immigration, Refugees and Citizenship Canada (IRCC)] and the Minister of Public Safety and Emergency Preparedness (PS) are jointly responsible for the administration and enforcement of the IRPA, however there are some differences. The IRCC Minister is responsible for the overall administration of the IRPA, unless otherwise specified. The Minister of PS has the primary responsibility for the administration of the IRPA as it relates to the following:

- port of entry examinations;
- policy lead relating to enforcement of the IRPA including arrest, detention and removal;
- establishment of policies respecting the enforcement of the IRPA and inadmissibility under A34/A35/A35.1/A36(2.1)/A37; and
- declarations referred to under A42.1 (Ministerial Relief provision)

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

Each Minister who has responsibilities under the IRPA has written an instrument of delegation and designation that is periodically updated. The Delegation of Authority and Designations of Officers (D & D) instruments stipulate who has the authority to perform specific immigration-related functions. CBSA and IRCC personnel are designated by position to perform all delegated or designated authorities, including those associated with A44(1)/A44(2) functions. It is to be noted that the IRPA D & D instruments have a hierarchical link which means only the lowest level of authority is included in the D & D instruments as every position above this one (with a direct hierarchical link) has the same authority to perform specific immigration-related functions.

CBSA and IRCC officers should always review both the CBSA and the IRCC D & D instruments as they have authorities delegated and designated under both instruments, which can be found on the IL 3 – Designation of Officers and Delegation of Authority.

The authority of an officer to prepare an inadmissibility report under A44(1) has been designated to certain CBSA and IRCC officials. It is important to note that while IRCC officers have been designated the authority to write reports for most inadmissibility sections, A44(1) reports for inadmissibility under A34 (security grounds), A35 (grounds of violating human or international rights), A35.1 (sanctions) and A37 (grounds of organized criminality) may only be prepared and reviewed by CBSA.

All reports written by CBSA or IRCC officers will be reviewed by the Minister's Delegate (MD) who has been delegated the authority under the D & D instruments. If the MD is of the opinion that the report is well-founded, the MD will make the appropriate decision based on the evidence and determine whether to:

- issue a removal order, if the allegation is within the MD's authority pursuant to R228); or
- refer the report to the Immigration Division of the Immigration and Refugee Board (IRB) pursuant to R229.

For additional information see Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

Note: Policy requires that even where officers and officials acting in the capacity of the Minister's Delegate (including chiefs and directors) have the delegated authority under the D & D instruments, they should not perform Minister's Delegate functions and reviews until they have successfully completed the necessary training to perform the A44(2) function. This policy is consistent with the Federal Court's decision in Zhang v. Canada (Citizenship and Immigration), 2014 FC 362 where judicial review was granted based on a finding that there was an inadequate record before the court to conclude that the MD had received the required Minister's Delegate Review training and was therefore authorized to issue a removal order.

5 Definitions

Adult legally responsible
An adult legally responsible for a minor or suspected incompetent person may be their parent or legal guardian. If the accompanying adult is not a parent or guardian, reasonable efforts must be made to contact a parent or guardian. For more information on accompanying adults, please refer to ENF 21 Recovering Missing, Abducted and Exploited Children.

Foreign national
A person who is not a Canadian citizen or a permanent resident; includes a stateless person [A2(1)].

Indian
A person who is registered as an Indian under the Indian Act [R2].

Minor
A minor is a person under 18 years of age. Persons claiming to be less than 18 years of age. are to be treated as minors unless there is conclusive evidence that they are 18 years old or older.

Permanent resident
A person who has acquired permanent residence status and has not subsequently lost that status under A46 [A2(1)].

Persons unable to appreciate the nature of proceedings
This phrase refers to persons who are unable to understand the reason for the proceedings or why they are important, or cannot give meaningful instructions to counsel about their case. An opinion regarding competency may be based on the person's own admission, the person's observable behaviour at the proceeding, or an expert opinion on the person's mental health or intellectual or physical faculties. Pursuant to R228(4)(b) and R229(4)(b), the authority to issue any removal order for persons unable to appreciate the nature of the proceedings shall be the ID.

Protected person
A person on whom refugee protection is conferred in Canada and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)]

6 Departmental policy

6.1 Procedural fairness

All officers involved in the administration and enforcement of the IRPA must consider and weigh all the relevant facts and factors before them. All officers are to support the objectives of the IRPA by ensuring all decisions taken under the IRPA are consistent with the Canadian Charter of Rights and Freedoms (Charter)[1] and the principles of natural justice and procedural fairness.

The principles of natural justice exist as a safeguard for individuals in their interactions with the state. These principles stipulate that whenever a person's "rights, privileges or interests" are at stake, there is a duty to act in a procedurally fair manner.

This includes, but is not limited to, the individual's rights to the following:

- know the case to be met;
- have an opportunity to present evidence relevant to the case;
- provide a response to facts or new information that will be considered by the decision-maker;
- receive notice of decision and reasons for the decision;
- have the evidence fully and fairly considered;
- right to impartial decision-maker who is free from bias; and
- right to an interpreter where necessary and, where the person is detained, right to counsel.

[1] *Constitution Act*, 1982, PART I

In general terms, procedural fairness considerations to be applied in each case will be different, depending on a number of factors. The Federal Court has found that the content of the duty of fairness in A44 proceedings will vary depending on the nature and circumstances of the decision being made. For example, in Awed v. Canada (Citizenship and Immigration) 2006 FC 469, the Court found that where an officer calls a permanent resident or foreign national for an interview in order to confirm facts that would support an A44(1) opinion and report, the content of the duty of fairness at the initial stage is minimal. The Court found, however, that such a degree of fairness requires that the officer advise the person of the purpose of the interview so that the person is put on notice of the possible consequences and has an opportunity to make meaningful submissions. In Canada (Minister of Public Safety and Emergency Preparedness) v. Cha, 2006 FCA 126, the Federal Court of Appeal (FCA) found that it was open to the Federal Court judge to find that the officer had breached the duty of fairness in failing to inform the applicant of the possible consequences of the initial A44(1) interview, however the FCA disagreed with the Federal Court's conclusion that section A44 determinations call for a relatively high degree of participatory rights in respect of persons who are inadmissible on grounds of serious or simple criminality in Canada, as officers and MDs are simply on a fact-finding mission at the A44 stage.

It is important for officers to differentiate those cases where the MD may issue a removal order and those cases where the jurisdiction to issue a removal order lies with the ID, as different procedural requirements and considerations will apply in order to ensure that procedural fairness and natural justice are met.

The spectrum of procedural fairness will also depend on the status of the person concerned and additional considerations will apply for permanent residents and protected persons (See section 8, 'Considerations before writing an A44(1) Report- Scope of officer discretion'; section 9.2, 'Special considerations for protected persons'; section 10, 'A44(1) reports concerning permanent residents of Canada').

6.2 Procedures for persons less than 18 years old or persons unable to appreciate the nature of the proceedings

R228(4) provides for specific safeguards for certain vulnerable persons by requiring that where the person:

- is under 18 years of age and not accompanied by a parent or an adult legally responsible for them; or
- is unable, in the opinion of the Minister, to appreciate the nature of the proceedings and is not accompanied by a parent or an adult legally responsible for them

the matter must be referred to the ID for an admissibility hearing. **In these cases, the MD does not have jurisdiction to issue a removal order.**

Such cases will call for a higher degree of procedural fairness at the A44 stage and officers must take extra care to ensure that the person's interests are represented and that the evidence has been fully and fairly considered.

During the ID proceedings, a designated representative will be appointed pursuant to A167(2) to represent the person's interests and ensure that procedural fairness requirements are met with

respect to presenting evidence relevant to the case and providing a response to facts or new information that will be considered by the decision-maker. In these hearings, parties will also be governed by the Immigration and Refugee Board of Canada Chairperson Guideline 8: 'Procedures With Respect to Vulnerable Persons Appearing Before the IRB'

Where a person appears to be unable to appreciate the nature of the proceedings, it is important for officers to identify this as soon as possible during the A44(1) process. Where an officer, in the course of their interactions with a person, has identified that a person has a suspected or known mental illness and does not appreciate the nature of the proceedings, this should be clearly documented in notes and flagged for the MD.

In such cases, officers should also ensure that other departmental and agency guidelines with respect to dealing with vulnerable persons are followed. See section 6.6 'Dealing with vulnerable persons'; ENF 20 Detention; and ENF 34 Alternatives to Detention.

For additional guidance, including how to identify a vulnerable person, see IRCC Program delivery instructions on Processing in-Canada claims for refugee protection of minors and vulnerable persons.

6.3 Official languages

Both the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms* establish the right of individuals who are subject to administrative proceedings in Canada to communicate with employees of IRCC and CBSA in the official language of their choice, either in French or English. Officers carrying out the administration of the IRPA must respect the right of the individual to proceed in French or English. In order to ensure that procedural fairness is maintained, officers should ensure that the Minister's documents are provided in the language of the proceedings and, where necessary, obtain translations (e.g., a certificate of conviction from another country that is not in French or English that the Minister is relying on as evidence).

6.4 Interpreters

Officers must be satisfied that the person concerned is able to understand and communicate in either of the official languages in which the proceeding is being held. If necessary, an interpreter is to be provided to enable the persons to understand and communicate fully.

Note: Travellers arriving at a port of entry into Canada do not have an automatic right to an interpreter upon request during routine port of entry examinations, however there are situations where officers at the port of entry are required to suspend the proceedings until a qualified interpreter is available. This may include circumstances where the officer is considering denying entry to the traveller. For further information, see Nere v. Canada (Citizenship and Immigration), 2018 FC 672.

CBSA officers should consult guidelines on the use of interpreters contained in ENF 4 Port of entry examinations (section 8.5, 'Use of interpreters').

For further information, see IRCC Program delivery instructions (PDI) on interpreters.

6.5 Counsel

Persons do not have a right to counsel at examinations or A44(1) interviews **unless they are detained**. In all detained cases, persons must be given the opportunity to obtain and instruct counsel at their own expense. Counsel includes a barrister, solicitor, family member, consultant or friend.

In detained cases, officers must inform persons of their right to counsel prior to commencing the interview. This right applies in all cases (port of entry or inland) where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence and interviewed for IRPA purposes.

Port of entry: Generally, CBSA's policy is not to permit counsel at a port of entry examinations unless arrest/detention has occurred. However, if an officer is dealing with an individual who does have counsel present, the officer should allow the counsel to remain present as long as counsel does not interfere with the examination process.

Note: In Dehghani v. Canada (Minister of Employment and Immigration), [1993] 1 S.C.R. 1053], the Supreme Court of Canada (SCC) determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering, such as that gathered at port of entry examination interviews. The SCC further held that an Immigration Secondary examination at a port of entry does not constitute a detention within the meaning of paragraph 10(b) of the Canadian Charter of Rights and Freedoms.[2]

For further information regarding the right to counsel at POE examinations, see ENF 4 Port of entry examinations.

In non-detained inland cases (CBSA/IRCC): A non-detained person does not have the right to have counsel present during A44(1) interviews, however in the spirit of procedural fairness, the officer shall inform the person of the possibility of obtaining counsel prior to commencing the interview. Officers should permit counsel's participation should the individual subject to the A44(1) process have a counsel. Call-in notices for interviews should advise the person that they may have counsel present.

Where counsel is representing the person concerned at an examination or A44(1) proceeding, officers should ensure that counsel's identity, the fact of counsel's presence at the proceeding and statements made by counsel on behalf of the person concerned are documented in the officer's notes, and that counsel's representations have been considered in their decision. Officers may also need the person's representative to complete a Use of a Representative form (IMM 5476).

For further information, see IRCC Program delivery instructions (PDI) on Use of

[2] Although the SCC held that secondary examination does not constitute detention, this decision also highlighted that detention within the meaning of section 10(b) of the Charter would result where restraints on the person's liberty by state authorities have gone beyond those required for the routine processing or screening of their application to enter Canada. Further, while the SCC's decision affirmed that delays in routine examinations due to operational necessity do not mean the person is "detained", officers should be cognizant that unreasonably lengthy delays in the examination could lead to the conclusion that the person is detained within the meaning of section 10(b) of the Charter.

Representatives.

Participation by counsel involves speaking on the client's behalf, presenting evidence and making submissions on the issues. Allowing counsel to participate, if ready to do so, does not mean that the officer is required to tolerate disruptive or discourteous behaviour by counsel. Where such conduct is encountered, counsel may be asked to leave and/or the proceeding may be adjourned to another time. In such cases, the officer should ensure to document their reasons for taking such action.

6.6 Dealing with vulnerable persons

6.6.1 Considerations for vulnerable persons in the context of A44

It is an overall goal of Canada's immigration program to treat all persons with dignity and respect. In exercising their IRPA authorities, officials must approach all cases in a nonjudgmental manner, remain sensitive to the potential needs and limitations of vulnerable persons, and recognize that a person they are dealing with may have experienced some form of violence, abuse or trauma.

In the context of A44, vulnerable persons may face particular challenges, including an impaired ability to answer questions/provide information to officials respecting a potential IRPA inadmissibility, due to a physical or psychological frailty or for other reasons. Such persons may include, but would not be limited to:

- minors (under 18 years of age), including unaccompanied minors;
- elderly persons;
- individuals with severe medical conditions or physical disabilities;
- persons with a suspected or known mental illness;
- persons who have suffered traumatic experiences that resulted in some degree of vulnerability, including:
    - victims[3] of gender-based violence (GBV) (see section 6.6.3);
    - victims/suspected victims of trafficking in persons (VTIPs) or family violence.

In the context of A44 procedures, officers should:

- Identify vulnerable persons at the earliest opportunity in order to ensure that appropriate accommodations are made and any relevant considerations are factored into decisions and actions taken. In some instances, officers will need to use their observational skills, discretion and sound judgement in identifying a person as vulnerable.

- Recognize that a vulnerable individual's ability to respond to questions or provide information may be severely impaired, and remain sensitive to the impact of a perceived vulnerability during the A44 process, including during interviews.

- To the extent possible, prevent vulnerable persons from becoming traumatized or re-traumatized during the A44 process.

[3] It is important to recognize wherever the term "victim" is used, that some persons who have experienced violence, trauma or abuse may prefer to be referred to as "survivors" rather than "victims".

Where an individual who is subject to IRPA enforcement action is identified as a victim of violence, trauma or abuse, including victims of GBV, family violence or trafficking in persons, or other forms of abuse such as sexual abuse or labour abuse, officers must take a victim-centered and trauma-informed approach in order to avoid re-victimizing people who report violence or abuse.

A **victim-centred** approach focuses on the needs and concerns of victims to ensure a compassionate and sensitive delivery of services in a nonjudgmental manner.

A **trauma-informed** approach is one that avoids triggering trauma that may have placed the individual in their current situation.

The guidelines in sections 6.6.2 to 6.6.5 are aimed at assisting officers in identifying vulnerable persons and applying a victim-centred and trauma-informed approach when dealing with vulnerable persons at A44.

In addition to the guidelines set out in this manual chapter, officers should always ensure that other Departmental and Agency guidelines with respect to dealing with vulnerable persons and minors are followed, including IRCC's Program delivery instructions on Identifying sensitive cases and on Processing in-Canada claims for refugee protection of minors and vulnerable persons, where applicable.

6.6.2 Sexual orientation and gender identity and expression and sex characteristics[4]

Some IRPA enforcement cases may involve individuals with, or who are perceived to have, sexual orientations, gender identities and expressions (SOGIE)[5] that may not conform to socially accepted norms in a particular cultural environment. Such individuals include, but are not limited to: Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex and additional sexually and gender diverse (2SLGBTQI+) individuals. Depending on factors such as race, ethnicity, religion, faith or belief system, age, disability, health status, social class and education, individuals with diverse sexual orientations and identities may recognize and express their identity differently.

Individuals may conceal their SOGIE out of mistrust or fear of repercussion by state and non-state actors, or due to previous experiences of discrimination, stigmatization, bullying, ostracism, violence or sexual assault. These circumstances may manifest themselves as an individual being reluctant to discuss, or having difficulty discussing, their SOGIE with an officer based on a fear or general mistrust of authority figures, particularly where intolerance or punishment of individuals with diverse SOGIE are sanctioned by state officials in an individual's country of origin.

Officers need to be sensitive to the possibility that SOGIE issues may exist in any case they encounter when executing their IRPA authorities. Officers must follow all relevant guidelines and procedures pertaining to handling SOGIE cases during the A44 process, remain sensitive to

[4] Please note that terminology in this section may have further evolved following the publication date of this manual. Consult most recent GoC publications for most up to date terminology.
[5] Also includes individuals with, or who are perceived to have diverse sex characteristics and may also be referred to as SOGIESC. For example, see the Immigration and Refugee Board of Canada's Chairperson's Guidelines on Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics: https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx

gender-related considerations when interacting with the person and be careful to use gender-neutral or inclusive terms or terms that reflect the person's gender identification in documentation/notes and when completing Departmental and Agency forms.

Officers should consult the Internationally recognized sexual orientation or gender identity or expression (SOGIE) definitions on IRCC's Connexion for further information.

6.6.3 Victims of gender-based violence (GBV)

When considering enforcement under A44, officers need to be sensitive to the fact that a person they encounter may have been subjected to specific violence, trauma or abuse based solely on their **gender, perceived gender, gender identity or gender expression**, as well as **sexual orientation**. This is referred to as gender-based violence (GBV), which is a human rights violation.

It is important to note that GBV is not limited to physical violence and can also include emotional/psychological abuse, harassment, threats, sexual violence, coercive control, humiliation, financial abuse, discrimination or neglect. It is important to note that these may also occur online through "cyberviolence"[6].

Officers should be aware that certain individuals face a greater risk of experiencing GBV, including: women, girls, 2SLGBTQI+ people and people living with disabilities. Moreover, the risk of GBV may be increased with the intersection of any two or more of these characteristics. Other groups that may experience high levels of GBV may also include Black women and newcomer women to Canada[7].

Intimate partner violence (IPV), also referred to as domestic violence or spousal violence, is a widespread form of GBV that encompasses multiple forms of harm perpetrated by a current or former intimate partner or spouse. IPV can occur in many types of relationships, including between married or common-law spouses as well as within dating relationships, regardless of gender and sexual orientation and whether or not the partners co-habit.

For further information respecting IPV, see the Government of Canada's Fact sheet on Intimate partner violence.

Depending on their cultural background, victims of GBV may be reluctant to disclose their experiences in order to not "shame" their families or communities. Similarly, women who have been subjected to IPV/domestic violence or abuse may also be reluctant to provide information, especially against the alleged perpetrator. Officers should be alert to such cases and will ensure to the extent possible that specific accommodations are made during interviews as set out (e.g., have a female officer either conduct or be present during an interview, and arrange, if possible, for a female interpreter). See section 6.6.4 below for additional guidance on conducting interviews.

Victims and survivors of GBV may be encountered both at the port of entry or inland. In such cases, officers should:

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[6] "Use of technologies to facilitate virtual or in-person harm including observing and listening to a person, tracking their location, to scare, intimidate or humiliate a person" (Government of Canada, Fact sheet: Intimate partner violence (Canada.ca).

[7] Government of Canada, What is gender-based violence? (Canada.ca)

- Consider the factors that led to the individual's breach of IRPA requirements or conditions, including the possibility that the person was placed in their situation as part of abuse or through coercion or threats;
- Be aware that perpetrators of GBV are known to use threats of denunciation to immigration authorities as a tool to control and oppress victims through fear of deportation and/or detention. For example, Immigration Enforcement Officers (IEOs) responding to a tip about a foreign national overstaying their status shall consider any such factors that may lead the officer to believe that the foreign national was placed in that situation by an abuser;
- Within the confines of an officer's limited discretion at A44(1), be sensitive to personal circumstances as well as the consequences of immigration enforcement;
- Where appropriate and within an officer's scope of discretion, consider other options where there are IRPA inadmissibility concerns. At the port of entry, this may include allowing the person to withdraw their application to enter Canada (i.e. Allowed to leave) or issuing a Temporary resident permit (TRP) to overcome an inadmissibility that may have resulted from GBV. In the inland and port of entry context, this may include a referral to IRCC for TRP consideration and/or to community-based service organizations experienced in providing services to GBV victims and survivors in accordance with existing policy and regional procedures or allowing the person to make arrangements to leave Canada if they plan to do so.

For further resources on GBV, please refer to the Government of Canada's Gender-Based Violence Knowledge Centre (Canada.ca).

6.6.4 Interviewing vulnerable persons

Officers must be alert to situations where a person's ability to answer questions and present information during A44 proceedings may be impacted by one or more factors listed in section 6.6.1 above. Officers may find that vulnerable persons may have issues affecting their memory, behaviour, or ability to recount relevant events including symptoms that have an impact on the consistency and coherence of their statements.

Officers should be cognizant that individuals react to violence, trauma and abuse in different ways and not all victims will exhibit identical or even similar signs and/or symptoms. While some individuals may show signs of distress, including anxiety, irritability, nervousness, agitation, anger and aggressiveness, others may be easily intimidated and have difficulty communicating.

In order to conduct A44 interviews in a way that avoids traumatizing vulnerable persons or re-victimizing persons who have experienced violence, trauma or abuse, officers should:

- Recognize that some vulnerable persons may display less obvious symptoms of a vulnerability, which may not become apparent until the person is interviewed/examined. Officers may need to rely on observational skills and sound judgement in identifying signs and symptoms of a vulnerability.
- Be aware that some vulnerable persons may require special accommodations during the interview. Remain sensitive to the fact that victims of severe trauma may have difficulties coping with the interview process because they are confined to a closed room with the interviewer.
- Create optimum conditions to minimize stress. Allow for frequent breaks, if necessary and to the extent possible.

- Be conscious of cultural and gender considerations which may affect communication such as the person and officer being the same gender, where possible.
- Recognize that victims of violence or abuse may fear people in authority and may be intimidated by the many questions that are being asked by officials.
- Recognize that victims of GBV or other forms of violence or abuse may become distressed at the prospect of being interviewed by an officer of the opposite sex.
- Where appropriate, speak to the person alone first in a confidential setting and ask if they are comfortable speaking in front of family members (particularly parents, children or relatives of a particular gender).
- Provide the person with a fair opportunity to tell the story.
- Be cognizant that there may only be one opportunity for an individual to reach out to authorities, and for authorities to refer a victim of violence or abuse to victim support services.
- Be courteous, respectful, sensitive and aware of own biases.
- Be aware that some questions may cause a victim to recall painful events.
- Treat the person with sensitivity and with empathy and with full respect of their human rights.
- Avoid an authoritarian approach.
- Avoid over-familiarity through eye contact or body language.
- Ask simple questions and use encouragement.
- Use active listening.
- Allow free speech and avoid interruption.
- Remember that if the vulnerable person is under 18 years of age or unable to appreciate the nature of the proceedings, procedural safeguards set out in section 6.2 will apply.

6.6.5 TRPs for victims or suspected victims of trafficking in persons (VTIP) or family violence

Officers should keep in mind that there are specific policy guidelines in place respecting suspected or known victims of trafficking in persons (VTIP) and victims of family violence. While only IRCC officials may issue TRPs to VTIPs or victims of family violence, CBSA officials should follow the guidelines set out in the IRCC Program delivery instructions for handling these cases. For example, cases in which a foreign national is identified by the CBSA as a VTIP or victim of family violence should be referred to the responsible IRCC local office on an urgent basis. There are also instructions pertaining to IRCC procedures for contacting CBSA with respect to individuals who are subject to a removal order that are applying for a VTIP or victim of family violence TRP.

When dealing with victims or suspected victims, officers must continue to apply existing policy guidance respecting VTIPs and victims of family violence. For example, officers will take a victim-centred and trauma-informed approach when a permanent resident or foreign national is identified as a possible VTIP and follow existing guidelines and procedures specific to identifying and interviewing suspected VTIPs, as well as identifying and conducting interviews for suspected human traffickers who are encountered at the port of entry or inland.

Officers should always be alert to any information that raises concerns that a minor child has been trafficked, smuggled or abducted. In such situations, officers should refer to the procedures set out in the following guidance:

- ENF 21 Recovering missing, abducted and exploited children
- Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons

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

7.1 Preparation and transmission of an A44(1) report

Under A44(1), an officer may prepare a report if that officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible. Officers cannot assign the discretionary authority to another person, nor can another person fetter an officer's discretion by obliging an officer to do or not do something that is at the officer's discretion. However, once a report is prepared under A44(1), it must be transmitted to the MD.

Although an A44(1) report may result from an examination, an examination is not a necessary prerequisite for an officer to prepare and transmit a report to the MD. This is due to the fact that officers are only authorized to proceed with an examination under prescribed circumstances. For further information regarding the examination process, please refer to section 11.4, 'Procedure: Overview of the examination process' and ENF 4 Port of Entry Examinations.

The wording of A44(1) allows an officer to prepare a report in relation to a permanent resident or a foreign national "who is in Canada". In most cases, particularly in regards to foreign nationals, the inadmissibility will be directly linked to the person's physical presence in Canada (e.g., non-compliance with A29(2) for remaining in Canada beyond the period authorized). In general, an officer will only prepare an A44(1) report where the person is physically present in Canada, however this requirement must be considered in context. Where an officer receives credible evidence that a foreign national or permanent resident is no longer in Canada, the officer should not proceed to write a report under A44(1). However, given that permanent residents have a right of entry and may be out of Canada for a number of reasons (e.g., vacation, work, etc.), it may be reasonable for an officer to proceed to write an A44(1) report against a permanent resident without confirming that the permanent resident is physically present in Canada at the time of the writing of A44(1) report, as long as procedural fairness requirements have been met. This will also depend on the facts and circumstances of the case and may only be considered where there is no credible information to suggest that the person is no longer residing in Canada.

7.2 Procedure: Evidentiary requirements

To form the opinion that a person is inadmissible to Canada, an officer must have knowledge of the evidentiary rules and requirements for immigration matters. Knowledge of what may be required to substantiate an allegation of inadmissibility is an important consideration in all cases. Each allegation has specific requirements for evidence and officers are to be guided by the content of ENF 1 Inadmissibility; ENF 2 Evaluating Inadmissibility; and ENF 18 Human or international rights violations.

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

7.3 Burden of proof

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

Under A45(d), the burden of establishing admissibility depends on whether or not the person has been authorized to enter Canada.

In cases of foreign nationals who are seeking entry (primarily applicable to Port of Entry cases) or those who entered Canada illegally, the onus is on the individual to establish that they are not inadmissible. Where the person has been authorized to enter Canada, the burden to establish inadmissibility is on the Minister.

Table 3: Burden of proof

Persons authorized/not authorized to enter	Details	Burden of proof
Permanent residents and foreign nationals authorized to enter	A45(d) requires the Immigration Division to make a removal order against a permanent resident or a foreign national who has been authorized to enter Canada, if it is satisfied that they are inadmissible. Consequently, in cases involving persons who were granted entry into Canada, including permanent residents, the onus rests on the Minister to establish that the person is inadmissible.	Minister
Foreign nationals not authorized to enter	A45(d) requires the Immigration Division to make a removal order if it is not satisfied that a foreign national who has not been authorized to enter Canada is not inadmissible. A21(1) states that a foreign national becomes a permanent resident and A22(1) states that a foreign national becomes a temporary resident if an officer is satisfied that, inter alia, the foreign national is not inadmissible. This applies to persons seeking entry into Canada or those persons who have entered illegally. Consequently, the onus is on these persons to establish that they are not inadmissible.	Foreign national

7.4 Standard of Proof

The term “standard of proof” refers to the degree to which the decision-maker must be satisfied.

Immigration proceedings are civil in nature and therefore the general standard of proof is the one applicable to civil matters: balance of probabilities. However A33 provides that, unless otherwise provided, the standard of proof for allegations listed under sections A34 to A37, is a lower standard of proof: reasonable grounds to believe that the facts have occurred, are

occurring or may occur, applies.

"Balance of Probabilities" is a civil standard of proof used in administrative tribunals. It means that the evidence presented must show that the facts as alleged are more probable than not. The party having the burden of proof must demonstrate that the evidence presented outweighs any opposing evidence or arguments. It 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.

"Reasonable grounds to believe" is a bona fide belief in a serious possibility that a fact has been established based on credible evidence. Reasonable grounds to believe is more than suspicion. Some objective basis for the belief has to exist. Put another way, the fact itself need not be proven; it is enough to show reasonable grounds for believing the allegation true. Information used to establish reasonable grounds should be specific, compelling, credible and be received from a reliable source.

The following table summarizes the standard of proof for sections A34 to A42:

Table 4: Standard of proof

Reasonable grounds to believe	Balance of probabilities
• Security (A34) • Violation of human or international rights (A35) • Sanctions (A35.1) • Criminality (A36) – except for A36(1)(c) for permanent residents • Transborder criminality [A36(2.1)] • Organized criminality (A37)	• Act committed outside Canada – for permanent residents only [A36(1)(c)] • Health grounds (A38) • Financial grounds (A39) • Misrepresentation (A40) • Cessation (A40.1) • Non-compliance with the Act or the Regulations (A41) • Inadmissible family member (A42)

8 Considerations before writing an A44(1) Report- Scope of officer discretion

8.1 Limited discretion of officer at A44(1)

The fact that an officer has the discretionary power to decide whether or not to write an A44(1) report does not mean that the officer can disregard the fact that someone is, or may be, inadmissible.

Rather, discretion under A44 means that officers and MDs have some flexibility in managing cases where the person is inadmissible, however the objectives of the IRPA may or will be

achieved without the need to seek a removal order or write a formal inadmissibility report under A44(1), for example:

- where an officer allows the voluntary withdrawal of an application to enter Canada (Allowed to leave) option at a port of entry (see section 9.4);
- where an officer decides to issue a Temporary Resident Permit (TRP) to a foreign national who is seeking entry to work in Canada and who was convicted of a non-violent offence many years ago, taking into account the relevant assessment risk factors (see section 9.7);
- where a person is already the subject of a removal order and an officer has determined that the objectives of the IRPA would not be served by the issuance of an additional removal order;
- where an IRCC officer restores status to a foreign national who has remained in Canada beyond the period authorized.

While the body of case law respecting the scope of an officer's discretion varies, the courts have affirmed that an officer's discretion under A44, is very limited.

The courts have also found that this scope of discretion varies depending on the inadmissibility grounds alleged, whether the person concerned is a permanent resident or a foreign national, and whether the MD or the Immigration Division has the authority to issue a removal order. In other words, the scope of discretion has been viewed as "variable and flexible".[8]

For example, in Canada (Minister of Public Safety and Emergency Preparedness) v. Cha, 2006 FCA 126, a case involving a foreign national inadmissible under paragraph 36(2)(a) of the IRPA, the Federal Court of Appeal (FCA) outlined that the particular circumstances of a foreign national, the nature of the offence, the conviction, and the sentence are beyond the reach of an officer when considering whether or not to write an A44(1) report for criminality or serious criminality against a foreign national.

More recent jurisprudence[9] confirms that officers making decisions under A44 have very limited discretion, particularly in matters concerning serious criminality and organized criminality, and that there is no obligation to consider factors related to humanitarian and compassionate (H&C) or 'personal circumstances'. These decisions also confirm that at this the 44 stage, officers and MDs are conducting a fact-finding mission into "readily and objectively ascertainable facts" and that this administrative screening function applies to both foreign nationals and permanent residents.

In all cases, officers must carefully consider the consequences of not writing an A44(1) report as a means of creating a formal record of an inadmissibility, given that this decision may have an impact on possible future dealings with the person. This will be particularly important in cases involving security (A34), violation of human or international rights(A35), sanctions (A35.1), serious criminality [A36(1)] and organized criminality (A37), regardless of the status of the individual. In such cases, it is important to have a formal record of that inadmissibility. This is best accomplished by preparing an A44(1) report.

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[8] Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319.

[9] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

Note: In most cases where an officer has made a decision to manage a case of an inadmissible person without writing an A44(1) report (e.g., where an officer is exercising their discretion to issue a TRP to overcome inadmissibility or allow the withdrawal of an application to enter Canada), there will be a corresponding disposition in GCMS which contains the officer's reasons and rationale. However, where an officer's decision does not have a corresponding record in GCMS, officers should record their decision, rationale and any specific circumstances considered in their decision in GCMS notes.

8.2 Priority Cases: Inadmissibility under A34, A35, A35.1, A36(1) and A37 of the IRPA

It was affirmed by the FCA in Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319, that within the context of A44, officers and the MD must always be mindful of Parliament's intention in drafting the IRPA to make security of Canadians a top priority.

In *Sharma*, the FCA also concluded that the Court's rationale in Cha in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

Although the factors contained in these guidelines may be considered when writing an A44(1) report, an officer must always consider the various objectives of the IRPA, in particular A3(1)(h) and (i). As suggested by Federal Court of Canada jurisprudence, in cases of inadmissibility under A34, A35, A36(1) and A37, the scope of discretion enjoyed by officers making a decision regarding whether or not to write an A44(1) report will be very narrow and it generally is reasonably open to an officer or an MD to prioritize public safety and security.

9 A44(1) reports concerning foreign nationals

9.1 Considerations before writing an A44(1) report

Keeping in mind the scope of discretion related to considerations for writing an A44(1) report outlined in section 8 of these guidelines, the following non-exhaustive factors may be considered when exercising the limited discretion under A44(1) with respect to foreign nationals (including officer options at the port of entry such as allowing the person to withdraw their application to enter Canada under R42):

- Has the person been granted protected person status in Canada? What is the nature or category of the inadmissibility?
- Is the person already the subject of a removal order?
- Is the person already the subject of a separate inadmissibility report incorporating allegations that will likely result in a removal order?
- Is the officer satisfied that the person is, or soon will be, leaving Canada on their own volition? And in such a case, is the imposition of a future requirement to obtain an authorization to return warranted?
- Is there a record of the person having previously contravened immigration legislation?
- In the case of non-compliance, was it unintentional or excusable for a valid reason?
- Has the person now been fully counselled on the topic of their inadmissibility? And is the officer satisfied that the person now understands what is required in future to overcome their inadmissibility?

- Is there any reason to believe that, after having previously been counselled on the topic of their inadmissibility, the person simply chose to ignore that counselling?
- Has the person been cooperative?
- Is there any evidence of misrepresentation?
- Has the person applied for restoration of status, and does the person appear to be eligible?
- Has a temporary resident permit been authorized?
- How long has the person been in Canada?
- In minor criminality cases, is a decision on rehabilitation imminent and likely to be favourable?

9.2 Special considerations for protected persons

Under the IRPA, protected persons are provided with certain protections, including the right of *non-refoulement* under A115(1) and, subject to A64, the right under A63(3) to appeal to the Immigration Appeal Division (IAD) against a decision to make a removal order against them. This was recognized by Justice Décary in Cha, who noted that the Act and the Regulations treat permanent residents differently than Convention Refugees who are, in turn, treated differently than other foreign nationals.

It should be noted, however that the Federal Court jurisprudence would support that protected persons are not entitled to a higher degree of procedural fairness or participatory rights with respect to the operation of A44(1) than other foreign nationals or permanent residents [see Awed v. Canada (Citizenship and Immigration) 2006 FC 469]. Officers should also keep in mind that the Federal Court has made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place [Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693].

In cases of protected persons, officers may also consider as an additional factor in their recommendation to the MD, whether the facts of the case would support a referral for a Ministerial opinion (‘Danger Opinion’) under A115(2). For further information, see section 14.5, ‘Overview: Minister's opinions/interventions’.

9.3 Dual intent

A22(2) states that the intention of a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that the person will leave Canada by the end of the period authorized for their stay.

Dual intent is present when a foreign national who has applied for permanent residence in Canada (or is entitled to apply for permanent residence within Canada) also seeks to enter Canada for a temporary period as a visitor, worker or student. If an officer has concerns/doubts about the foreign national's bona fides, the foreign national must be made aware of these concerns and given an opportunity to respond to them.

Some examples of dual intent could include:

- a foreign national frequently visiting a Canadian spouse who has complied with previous conditions of entry and is otherwise not inadmissible, even if an application

for permanent residence has not yet been submitted;
- a foreign national who has applied or intends to apply for permanent residence, but is visiting Canada to assess employment opportunities, setting up household, etc.

The Federal Court in Rebmann v. Canada (Solicitor General), 2005 FC 301 held that an officer is required to take into account the foreign national's dual intent in entering/remaining in Canada as a temporary resident and provide analysis of the relevant evidence with regards to the foreign national's intention to establish permanent residence in Canada to show that the foreign national will not leave Canada by the end of the period authorized for their stay as a temporary resident.

An officer should distinguish between a foreign national whose intentions are bona fide and a foreign national who has no intention of leaving Canada at the end of their authorized stay if the application for permanent residence is refused.

However, the possibility that a foreign national may, at some point in the future, be approved for permanent residence does not absolve the individual from meeting the requirements of a temporary resident, specifically, to leave Canada at the end of the period authorized for their stay, in accordance with R179.

In assessing the foreign national's intentions, officers should weigh all the factors relevant to the case, including the length of time the foreign national has spent in Canada, the means of support; obligations and ties in the home country, previous compliance with requirements of the IRPA and any compassionate circumstances of the person concerned. These factors should be considered before proceeding with administrative enforcement action [i.e., writing an A44(1) report].

Officers are reminded to use their own judgment and the flexibility afforded to them by subsection A22(2) when making decisions on cases where the foreign national also has the intention to become a permanent resident.

In all cases, officers must ensure that GCMS notes clearly demonstrate the officer's reasoning in their decision.

For further guidance on assessing dual intent considerations, see IRCC Program delivery instructions on Dual intent. See also: ENF 4 Port of entry examinations.

9.4 Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)

If a Border Services Officer examines a foreign national seeking entry and the person is alleged to be inadmissible, the officer may allow the person to voluntarily withdraw their application to enter the country and leave Canada.

Under R42, the officer who examines a foreign national who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the foreign national to withdraw their application, unless R42(2) applies.

R42(2) provides that a foreign national shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, unless the

Minister does not make a removal order or refer the report to the ID for an admissibility hearing. **In other words, once an officer writes an A44(1) report, the allowed to leave option may only be exercised at the MD level.**

Before writing an inadmissibility report under A44(1), officers should determine whether the objectives of the IRPA are better served by allowing the person to voluntarily withdraw their application to enter Canada pursuant to R42. In such circumstances, the same factors as outlined above in section 9.1, 'Considerations before writing an A44(1) report', are applicable.

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

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

If a person is allowed to leave Canada voluntarily, the officer or MD must give the person an Allowed to Leave Canada form (IMM 1282B).

For further information on this procedure, see ENF 4 Port of entry examinations.

9.5 Procedure: Directing persons back to the United States under R41

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

- no officer is able to complete an examination (R41(a));
- the Minister is not available to consider, under A44(2), a report made with respect to the person (R41(b));
- an admissibility hearing cannot be held by the ID (R41(c); or
- the foreign national is prohibited from entering Canada by an order or regulation under the *Emergencies Act* or the *Quarantine Act*

In such cases, the person concerned may be given a Direction to Return to the United States form (BSF505) in appropriate circumstances.

Officers should be aware that **refugee claimants** may only be directed back to the U.S. under **exceptional circumstances**. For further guidance on how and when to use the direct back policy for refugee claimants at land POE under exceptional circumstances, officers must consult ENF 4 Port of entry examinations.

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

Note: Persons directed back to the U.S. who choose not to return to Canada will not be subject to enforcement action, as they have no desire to continue with their application to enter Canada.

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

In exceptional cases, it may be appropriate to pursue enforcement action for persons seeking entry who have failed to comply with R44(3) following a Direction under R41. Officers should consider all information and individual circumstances of each case before they elect to proceed with writing an A44(1) report for non-compliance, including the circumstances surrounding the failure to comply and the intent of the person concerned.

For further information, see ENF 4 Port of entry examinations.

9.6 Restoration of status

R182 describes a mechanism by which a visitor, worker or student who has lost temporary resident status for having failed to comply with any of the conditions imposed under R185(a), R185(b)(i) to (iii) or R185(c), may nevertheless submit an application to IRCC within the 90-day period of the loss of their status and, if eligible, have that status restored.

It is important to note that under the D & D instruments, only IRCC officials have the authority to consider an application for restoration of status.

The application submitted to IRCC shall be approved if the processing officer is satisfied that the foreign national continues to meet the initial requirements of their stay, and has not failed to comply with any other conditions imposed and is not the subject of a declaration made under A22.1. It is to be noted that an officer shall not restore the status of a student if the student is not in compliance with a condition set out in R220.1(1).

Note: If a temporary resident has applied for an extension of their authorized status **before** the status expires, they are considered to have **maintained status** (formerly referred to as “implied status”) until a decision is made on their application. Maintained status works by operation of law [R183(5)], and the temporary resident cannot be reported for non-compliance until a decision is made on their application for an extension, unless other IRPA inadmissibilities are present. For further details regarding procedures for persons with maintained status, see IRCC Program delivery instructions on Temporary residents: Maintained status during processing (previously called implied status).

The following guidelines must be taken into account by Inland Enforcement Officers (IEOs) prior to taking enforcement action in such cases:

Scenario 1: Foreign national is out of status, but has applied for restoration of status within the 90-day period and is otherwise admissible– decision pending

Foreign nationals who have submitted an application to have their status restored within the 90-day period, and who are not inadmissible under any other section of the IRPA or the IRPR, should not be subject to an A44(1) report. In such circumstances, officers must allow for a decision to be rendered by IRCC before taking enforcement action, an approach which is consistent with the Federal Court’s findings in Sui v. Canada (Minister of Public Safety and Emergency Preparedness), 2006 FC 1314.

Scenario 2: Foreign national is out of status and has not applied for restoration of status but still within 90-day eligibility period

While there is nothing in the IRPA or the Regulations that prohibits an officer from writing an inadmissibility report during the 90-day restoration period where no application for restoration has yet been made, officers should consider whether or not to pursue enforcement action in such cases. After taking appropriate steps to ensure that a restoration application has not been made, should an officer decide to write an A44(1) report and refer the report to the MD for review, the officer should articulate their reasoning for pursuing enforcement action in the decision, if such action is pursued prior to the expiration of the 90-day eligibility period.
In order to adhere to the principles of procedural fairness and natural justice, the officer must consider each case on its own merits and may consider the following:

- Does the foreign national state that they wish to remain in Canada and for what purpose?
- Has the foreign national already made arrangements to depart Canada in the immediate future?
- Is the foreign national evasive about their departure plans or the intent to remain in Canada?
- Has the foreign national otherwise been in compliance with the terms and conditions of their temporary resident status?
- If the foreign national does not apply for a restoration of status, is the officer satisfied that the foreign national will appear for future immigration interviews and/or depart Canada voluntarily?
- If the officer is satisfied that the foreign national will seek to remedy lapsed status within the 90-day period, then the officer may wish to allow the 90-day application period to lapse before reviewing the case again in consideration of enforcement action.

Scenario 3: Foreign national is out of status beyond the 90-day restoration of status eligibility period, or is otherwise inadmissible under the IRPA or Regulations

If an officer encounters a foreign national who has overstayed their authorized period of stay beyond the 90-day eligibility period for applying for restoration of status, or where the foreign national is otherwise inadmissible under the IRPA or Regulations, the officer may pursue appropriate enforcement action, which includes writing an A44(1) report and referring it to the MD for a review under A44(2).

9.7 Temporary Resident Permits (TRPs) - Port of entry and IRCC only

In some cases, a designated officer may exercise their authority under A24(1) to issue a TRP to allow a foreign national who is inadmissible or does not meet the requirements of the IRPA to enter or remain in Canada where it is justified in the circumstances. TRPs are always issued at the discretion of the delegated authority and may be cancelled at any time.

The authority to issue a TRP is determined by the IRCC Designation and Delegation (D & D) Instrument and depends on the nature of the allegation.

Note: For CBSA, TRPs may only be issued by designated officials at the **port of entry**.

There are instances where the person who has the delegated authority to review the A44 report (the MD) does not have the designated authority to issue a TRP. In such cases, the official with authority to review the report (i.e., the MD) may make a recommendation to the person with the designated authority to issue a TRP.

TRPs should only be issued in accordance with the IRPA and the IRPR, and must follow the IRCC Program delivery instructions on Temporary resident permits. In all cases, officers and MDs must leave a record, which includes detailed notes entries in GCMS, of their decision or recommendation. For further information, see ENF 4 Port of entry examinations, section 15.5, 'GCMS remarks'.

TRPs should only be issued after careful consideration of **all assessment factors** as the document carries privileges greater than those accorded to other visitors, students and workers with temporary resident status. Before issuing a TRP, an officer must consult the departmental and agency guidelines on risk assessment factors and procedures for issuing TRPs. This applies to both initial and subsequent TRPs.

Where an officer does not have the authority to issue a TRP but has reviewed the case and is recommending the issuance of a TRP, the officer must prepare a written a case summary that includes a recommendation for a final decision. The officer will refer the case file to the decision-maker with the designated authority to issue a TRP for a final determination. If the decision is made to issue a TRP, the decision-maker will determine the period of validity of the TRP.

For further instructions and procedures for TRPs, officers must refer to the IRCC Program delivery instructions on Temporary resident permits and ENF 4 Port of entry examinations.

Additional considerations for TRP issuance:

- A person is **not eligible for a TRP if less than 12 months have passed since their claim for refugee protection was last rejected** [or determined to be withdrawn or abandoned as described under A24(4)].

  Exception: The one-year ban on accessing a TRP under A24(4) does not bar an IRCC officer, on their own initiative, from considering a TRP for a victim of human trafficking.

- There are specific IRCC policy guidelines respecting certain **vulnerable persons including suspected or known victims of human trafficking or victims of family violence.** Only IRCC officials may issue TRPs to victims of human trafficking or victims of family violence, however CBSA officials should follow the procedures set out in the Program delivery instructions above for handling these cases.

- If a **student, worker or visitor with valid temporary resident status is reported under A44(1)** but a decision is made not to hold an admissibility hearing or issue a removal order, that person remains a temporary resident, and a TRP is not required

9.8 A44(1) reports for inadmissible family members

Officers should be aware that they may need to assemble information about the family members of a person who is the subject of an A44(1) report and decide whether family members should

also be reported and/or made subject to a removal order. Under A42, accompanying and non-accompanying family members may be inadmissible to Canada under prescribed circumstances. This provision may only apply to family members who are foreign nationals, other than protected persons.

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

R1(3) provides that:

1.(3) For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations, other than paragraph 7.1 (3)(a) and sections 159.1 and 159.5, "family member" in respect of a person means:

(a) the spouse or common-law partner of the person;
(b) a dependent child of the person or of the person's spouse or common-law partner; and
(c) a dependent child of a dependent child referred to in paragraph (b).

Officers should note that under A42, a foreign national who is a temporary resident, applying to enter or remain as a temporary resident and has a family member who is inadmissible under A34, A35, A35.1 or A37, is inadmissible to Canada whether they are accompanying them or not. It is also important to note that pursuant to the exceptions set out under A42(2), foreign nationals seeking temporary resident status who have an accompanying or non-accompanying family member who is inadmissible under any of the other provisions (A36, A38, A39, A40 or A41) of the IRPA cannot be reported under A42.

Where an officer writes an A44(1) report against a family member for inadmissibility under A42, the MD has jurisdiction under R228 to issue the applicable removal order. Officers should note, however, that for the purposes of A52(1), the making of a removal order against a foreign national on the basis of inadmissibility under A42 is a prescribed circumstance that does not oblige the foreign national to obtain the authorization of an officer in order to return to Canada.

R227 sets out the prescribed circumstances under which an A44(1) report against a foreign national is also considered a report against the foreign national's family members in Canada.

R227(2) provides that, in the case of a report and a removal order made by the ID against a foreign national who has family members in Canada, the removal order issued by the ID against a foreign is also a removal order against the family members in Canada without the need for a separate inadmissibility report provided that an officer informed the family member(s):

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

While this procedural avenue may be available under the IRPR, it is generally recommended that where an officer decides to pursue enforcement action against inadmissible family members of a foreign national under A42, the officer should proceed by way of writing a

separate A44(1) report for each family member after the removal order has been made against the foreign national.

Officers should always be alert to the possibility that the family member of a foreign national may be inadmissible in their own right and be mindful of situations where the evidence against a foreign national also independently supports an A44(1) report against their family member that is unrelated to the A42 inadmissibility.

9.9 Impact of Ministerial public policies

Before writing an A44(1) report, officers should be aware of any public policies approved by the responsible Minister that are currently in force, as well as any operational guidance related to impacts of the public policy on procedures or considerations for decisions made under the IRPA. In general, these public policies grant temporary remedies or exemptions for certain IRPA requirements for certain categories of persons who meet specified criteria set out in the policy. They are generally in place for a specific and temporary period of time, however, some public policies may remain in place for an extended period. Officers should ensure that they follow any new guidance or instructions related to new public policies.

Officers should be aware that, unless a public policy specifies that a person is excluded from certain requirements under the IRPA or the IRPR, all other legislative obligations and inadmissibility provisions continue to apply.

10 A44(1) reports concerning permanent residents of Canada

While permanent residents are given an opportunity to make submissions as part of procedural fairness during the A44 process, they cannot be **compelled** to attend an interview, answer questions or provide submissions. As noted in section 11.7, permanent residents are only subject to an obligation to answer questions when subject to examination at a port of entry, and only insofar as it relates to establishing that they hold permanent resident status.

The submissions and evidence provided on behalf of a permanent resident should be reviewed on a case-by-case basis and an officer must clearly articulate which factors were considered.

Officers must ensure that all relevant factors have been addressed in their written recommendation to the MD and may best achieve this by preparing a narrative report under A44(1), which is to accompany the A44(1) report when it is transmitted to the MD. Officers must also ensure that they forward to the MD all submissions and documents filed by the person concerned as well as any other evidence relied on in the officer's recommendation.

In Hernandez v. Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 725, the Federal Court held that while a narrative report is not required when referring the A44(1) report to the MD, where the officer has prepared such a report, all accompanying notes or appendices must be provided to the MD in full. The court also held that once such material is created and delivered to the Minister, it must be provided to the person concerned prior to the admissibility hearing – this is particularly so when a specific request has been made.

See Appendix E: Sample A44(1) Narrative report.

Officers should also provide reasons for giving more weight to certain documents over others where there is conflicting or inconsistent information before them. For example, where there are conflicting versions of events pertaining to a criminal offence, an explanation as to why one version is being relied on over the other should be provided in the officer's recommendation.

10.1 A44(1) reports for criminality cases

In Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51, the SCC stated that the objectives in the IRPA reflect an intent to prioritize security and that this objective is given effect by removing persons with criminal records from Canada. The SCC noted that in drafting the IRPA, Parliament demonstrated a strong desire to treat criminals less leniently than under the former Immigration Act. This was noted in Sharma, where the FCA affirmed that officers and MDs, when dealing with matters under A44(1) and A44(2), must always be mindful of the various objectives of the IRPA, in particular A3(1)(h) and (i). The FCA also concluded that the Court's rationale in Cha in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

It is strongly urged that, whenever possible, officers who prepare the A44(1) report in serious criminality cases obtain detailed documentation to support the assessment. Hearings Officers will also find this documentation essential when presenting the case before the ID or when defending a removal order that is challenged at the IAD.

Three principal factors indicate the seriousness of an offence:

- the circumstances of the particular incident under consideration;
- the sentence imposed; and
- the maximum sentence that could have been imposed.

The fact that a conviction falls within A36(1) is itself an indication of its seriousness for immigration purposes. It is also important for officers to be aware that sentences imposed by the courts may have been subject to plea bargaining. The Crown may agree to a reduced sentence if the person pleads guilty. The circumstances of the crime are not viewed less seriously, but saving the court the time and expense of a full trial is taken into consideration in determining the sentence.

The best documentation is a transcript of the trial judge's remarks on conviction or sentencing, commonly known as the Judge's Reasons for Sentence. Additionally, reports from probation officials, police agencies, correctional facilities, etc. provide valuable information regarding the circumstances of the offence and sometimes the potential for rehabilitation.

The following may be considered when assessing the seriousness of an offence:

I. Circumstances of the offence:

- Did the crime involve violence?
- Did the crime include the use of a firearm?
- Was it a crime against a person (specifically, was it a crime against a child or children, mentally or physically challenged persons, or senior citizens), a racially motivated crime, a crime of gender-based violence, a hate crime or a crime involving trafficking in large

quantities of drugs or in hard drugs (for example, heroin)?
- How serious were the consequences for the victim?

II. Criminal history:

- Is the permanent resident a first time offender?
- Is there a pattern of committing offences (recidivist), and, if so, are the offences committed becoming more serious?
- Was the permanent resident influenced by others in the commission of the crime?

III. Length of sentence:

- What type of sentence was imposed on the permanent resident?
- Was jail imposed?
- Has probation or parole been denied?

10.2 Loss of appeal right cases

During the assessment under A44(1) for permanent residents and protected persons, officers should gather all information pertaining to whether or not the person will have a right of appeal to the Immigration Appeal Division (IAD).

For inadmissibility under A36(1)(a) for permanent residents, it is important for officers to obtain the most accurate evidence of the sentence imposed to determine whether the person retains a right of appeal. Under A64, a loss of appeal rights for serious criminality under A36(1)(a) must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months. Where it is not clear from the evidence whether the sentence meets the six month threshold under A64(2), before making any assessment under A44(1), the officer should determine how the judge calculated the total sentence imposed as reflected in the court documents, taking into account the imposition of further credits for time served. Regardless of what assessment is made by the officer, and especially in cases where the right of appeal is in doubt, officers should clearly articulate that the determination as to whether the person concerned retains a right of appeal ultimately rests with the IAD.

10.3 Whether to consider personal circumstances for permanent residents and protected persons in recommendation to MD to accompany A44(1) report

During the course of A44(1) proceedings, an officer may receive evidence or submissions relating to a permanent resident or protected person's personal circumstances and why a removal order should not be sought.

As confirmed by the courts[10], officers are not obligated to consider personal circumstances during the A44(1) process. However, the courts have also affirmed that officers retain the discretion to consider these circumstances, and if they exercise their discretion to do so, it has to be reasonable. The discretion is tempered by their limited role at A44(1).[11] The guidance in this section is intended to assist officers determine when and how to exercise such discretion.

[10] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902
[11] Dass v. Canada (Public Safety and Emergency Preparedness), 2024 FC 624

Officers must always keep in mind the principles set out in sections 8.2 and 10.1 above when rendering decisions under A44(1), including Parliament's intention in drafting the IRPA to make security of Canadians a top priority.

In consideration of the various objectives of the IRPA and the limited discretion of officers at A44 as confirmed by the courts, the CBSA's policy is that officers must consider the factors below when deciding whether or not to exercise their limited discretion to consider evidence or submissions filed by the person concerned regarding personal circumstances.

Generally speaking, the following factors would weigh **against** consideration of personal circumstances in an officer's recommendation to the MD:

- the inadmissibility falls under section A34, A35, A35.1 or A37;

- A36(1) serious criminality cases in the following circumstances:
  - the permanent resident or protected person was previously issued a warning letter by CBSA or had a previous removal order stayed or quashed by the IAD on humanitarian and compassionate grounds;
  - the reportable offence: involved violence that resulted in bodily or psychological harm to another person, the use of a firearm or is a sexual offence; was committed against a vulnerable person (e.g. minor child or intellectually or physically challenged persons, or senior citizen), was a racially motivated crime, a crime of gender-based violence, including domestic violence, a hate crime or a crime involving trafficking or smuggling in large quantities of a controlled substance or weapons;
  - the criminal record of the permanent resident or protected person demonstrates a pattern of escalating seriousness

If the decision is **not** to consider personal circumstances, the officer at 44(1) should state this in their recommendation to the MD. For example, the officer may state in their decision: "I am not exercising my discretion to consider evidence and/or submissions filed on behalf of (*name of person concerned*) pertaining to their personal circumstances given the seriousness of the reportable offence".

If an officer exercises discretion to consider personal circumstances

While the courts have affirmed that an officer is not required to consider personal circumstances, if an officer does exercise their discretion to consider such factors, they must ensure that the factors considered are weighed in a fair manner and render a decision that is "justified, intelligible and transparent".[12] Any assessment of a person's personal circumstances must be **reasonable** in the circumstances of the case. In addition, the courts have held that in cases involving allegations of criminality or serious criminality, where such factors are rejected, an explanation should be provided, even if only very brief in nature.[13]

[12] Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov] wherein the SCC affirmed at para. 85 that a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker".

[13] McAlpin v. Canada (Public Safety and Emergency Preparedness), 2018 FC 422

If an officer decides to consider the personal circumstances of the permanent resident (or protected person), the CBSA's policy is that they must balance these with the objectives of the IRPA to protect public health and safety, and maintain the security of Canadian society by denying access to Canadian territory to persons who are criminals or security risks.

If an officer does exercise their discretion to consider personal circumstances in their recommendation to the MD, considerations may include, but are not limited to the following:

- Age at time of landing—has the person been a permanent resident of Canada since childhood?
- Was the permanent resident an adult at the time of admission to Canada?
- Was the person granted protected person status in Canada?
- Length of residence—how long has the person resided in Canada after the date of admission?
- Location of family support and responsibilities—are family members in Canada emotionally or financially dependent on the permanent resident? Are all extended family members in Canada?
- Degree of establishment—is the permanent resident financially self-supporting? Are they employed? Do they have a marketable trade or skill? Has the permanent resident made efforts to establish themselves in Canada through language training or skills upgrading? Is there any evidence of community involvement? Has the permanent resident received social assistance (frequency/duration)?
- Criminality—has the permanent resident been convicted of any prior criminal offence? Based on reliable information, is the permanent resident involved in criminal or organized crime activities? What is the nature and frequency of the person's interactions with the law? (for further details please refer to section 10.1 'A44(1) reports for criminality cases').
- What is the potential for rehabilitation? How much time has passed since the last conviction? Has the permanent resident already been released? For how long? Has the permanent resident accepted culpability, expressed remorse, enrolled in or completed educational, skills upgrading or rehabilitation programs (for example, Alcoholics Anonymous, Narconon/narcotics rehabilitation programs, anger management programs, life skills)? Are family members willing and able to support/assist?
- History of non-compliance and current attitude—has the permanent resident been cooperative and forthcoming with information? Has a warning letter been previously issued? Does the permanent resident accept responsibility for their actions? Are they remorseful?
- Best interests of any children directly affected by the decision.
- Right of appeal—does the person have a right of appeal to the Immigration Appeal Division if a removal order is issued?

None of these factors will necessarily outweigh other factors of the case. Moreover, in Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693 the Federal Court made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place.

Overall, any consideration of personal circumstances, which is **not required** but if done, must be reasonable, and must be weighed against the objectives of the IRPA to protect public health

and safety, and maintain the security of Canadian society, denying access to Canadian territory to persons who are criminals or security risks.

Note: By inviting a permanent resident to provide information or make submissions regarding their personal circumstances at A44(1), this creates an expectation that the officer will engage with this information in the A44(1) assessment and address it in the decision.

Where the officer at A44(1) has exercised their discretion to consider personal circumstances in their recommendation, the MD must consider this information and explain in their decision whether or not they concur with the officer's recommendation.

10.4 Residency obligation cases under A28(2) - Prescribed considerations

If, following an examination of a permanent resident, an officer concludes that a permanent resident has failed to comply with the residency obligation under A28, the officer may prepare a report for inadmissibility under A41(b) against a permanent resident, taking into account prescribed considerations set in the IRPA. A28(2)(c) specifically requires officers and the MD to take into account humanitarian and compassionate considerations, including the best interests of a child directly affected by the determination, when assessing whether such considerations overcome any breach of the residency obligation prior to the determination.

Officers must articulate consideration of these prescribed factors in the decision to write a report under A44(1) and/or their recommendation to the MD.

Note: Officers should be aware that there are procedures in place for permanent residents who wish to renounce their permanent resident status pursuant to A46(1)(e). In certain cases, it may be appropriate for a designated officer (IRCC or port of entry CBSA) to process a renunciation application under R72.6 in place of an A44(1) report. For further guidance, officers should consult with the IRCC Program delivery instructions on Renouncing permanent residence.

For further information, see ENF 23 Loss of permanent resident status.

11 Procedure: Gathering evidence for the A44(1) report

11.1 Evidentiary requirements

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

Officers must take steps in all cases to provide adequate documentation to substantiate the inadmissibility allegation(s) in a report and evidence must be on file to support all elements of the inadmissibility. Files should not be forwarded to the MD or to the Hearings Officer (where jurisdiction lies with the ID) unless all evidence substantiating the allegation is on file, except in rare circumstances. In such cases, officers will record in the case notes the attempts that were made to obtain the evidence, so that the MD or the Hearings Officer, if applicable, may follow up, where it is agreed that this is appropriate. This is especially important in cases where detention is also being pursued.

For further information on obtaining evidence and determining equivalency, see ENF 1 Inadmissibility and ENF 2 Evaluating Inadmissibility

11.2 Evidentiary requirement: Proof of status in Canada

Under the IRPA, Canadian citizens and persons registered as Indians under the *Indian Act* have an unqualified right to enter and remain in Canada and are not subject to the inadmissibility provisions of the IRPA. Therefore, before writing an A44(1) report, an officer must have evidence to confirm that the person does not hold such status in Canada. In cases of permanent residents, officers must confirm through the appropriate queries that the person has not obtained Canadian citizenship and ensure that due diligence has been exercised before proceeding with further enforcement action.

For permanent residents, the officer must also obtain documentary evidence to establish that the person holds such status in Canada. For further information, see ENF 1 Inadmissibility and ENF 2 Evaluating Inadmissibility

Note: Due to the possibility of duplicate identities in GCMS, officers should conduct full name queries in the GCMS Integrated Search view to ensure accurate information is obtained.

11.3 Persons claiming to be Canadian citizens or registered Indians under the *Indian Act*

Under the IRPA, Canadian citizens and persons registered as Indians under the *Indian Act* have an unqualified right to enter and remain in Canada and are not subject to the inadmissibility provisions of IRPA. Therefore, before writing an A44(1) report, an officer should have evidence to confirm that the person does not hold such status.

In cases of permanent residents, officers must confirm through the appropriate queries that the person has not obtained Canadian citizenship and ensure that due diligence has been exercised before proceeding with further enforcement action.

Should an officer detect the possibility of Canadian citizenship or registered Indian status, the officer shall investigate or cause an investigation of the matter to be initiated before taking any further steps to write a report or refer the case to an MD.

In questioning persons in this regard, officers should be fully cognizant of the *Citizenship Act* and/or make contact with a citizenship officer who can provide assistance and guidance. Should a person claiming to be a Canadian citizen make a refugee claim to an officer, the officer must ascertain whether that person is indeed a Canadian citizen. If such is the case, the officer should advise the person that Canadian citizens may not make a refugee claim, as they already enjoy the protection of Canadian citizenship and the right to enter and remain in Canada.

11.4 Procedure: Overview of the examination process

The procedural requirements and legal obligations related to gathering information from the person for the purpose of writing an A44(1) report will depend on whether the person is still subject to examination.

Pursuant to A15(1), individuals who make applications under the IRPA are subject to an

examination for various reasons, including to determine whether that person has a right to enter Canada or may become authorized to enter or remain in Canada pursuant to A18(1).

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

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

Where the person makes an application, there is a legal obligation under A16(1) to answer truthfully all questions put to them by an officer for the purpose of the examination, and produce all documents or other evidence reasonably required.

Moreover, pursuant to A16(1.1), a person who makes an application must, on request of an officer, appear in person for an examination. The power to compel someone to submit to an examination under 16(1.1) may be used overseas, inland and at ports of entry.

- For foreign nationals, the requirement to produce evidence may extend to the provision of photographic and fingerprint evidence [A16(2)].
- Pursuant to A16(2.1), a foreign national who makes an application must, on request of an officer, appear for an interview for the purpose of an investigation conducted by the Canadian Security Intelligence Service (CSIS) and must answer truthfully all questions put to them during the interview. Officers should note, however, that the power to compel for a CSIS interview under A16(2.1) can only be used for inland and port of entry applications.

For further information, see ENF 4 Port of entry examinations (section 5, ‘Examinations’)

11.5 End of examination

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

R37 specifies the point at which the examination of a person who seeks to enter Canada, or makes an application to transit through Canada, ends. In general terms, examinations will end when an officer makes a decision on the application before them or, in cases referred to the MD, when a decision has been made.

At a port of entry, with the exception of refugee claimants, persons seeking to enter or transit through Canada remain subject to an examination until:

> (a) a determination is made that the person has a right to enter Canada, or is authorized to enter Canada as a temporary resident or permanent resident, the person is authorized to leave the port of entry at which the examination takes place and the person leaves the port of entry;
> (b) if the person is an in-transit passenger, the person departs from Canada;
> (c) the person is authorized to withdraw their application to enter Canada and an officer verifies their departure from Canada; or
> (d) a decision in respect of the person is made under subsection 44(2) of the Act and the person leaves the port of entry.

This means that during an examination at a port of entry the person may be brought back to an officer for a re-examination of their admissibility and appropriate action could be taken until the examination is complete. Such re-examinations may result in an A44(1) report.

It should be noted by officers at the port of entry that while permanent residents are subject to examination when seeking entry, the IRPA gives permanent residents of Canada the right to enter Canada at a port of entry pursuant to A19(2) once the officer is satisfied that the person holds permanent resident status. The obligation to answer truthfully under A16(1) for permanent residents is linked to A18(1) and must be related to examination for the purpose of establishing that the person holds permanent resident status in Canada.

While an officer who is satisfied at examination that a person holds permanent resident status must admit that person, the officer may also form an opinion during examination that the permanent resident is inadmissible for other reasons under the IRPA. In such cases, the officer should advise the person that while it has been established that they have a right to enter Canada, there are reasons to believe that they could become the subject of a report under the IRPA which could lead to the issuance of a removal order. If the person wishes to continue answering questions or providing information/submissions pertaining to the allegation, they should be given an opportunity but are not required to do so. Even if a permanent resident becomes the subject of an A44(1) report, they continue to have a right to enter until a final determination has been made regarding their loss of status.

For further information, see ENF 4 Port of entry examinations (section 5.6, ‘End of examination’ and section 11.4, ‘Investigating permanent residents for inadmissibility’)

11.6 Procedure: End of examination for refugee claimants

The point at which examination ends is different where the person is a refugee claimant as the application exists up until the claim has been decided.

R37(2) provides designated officers the authority to examine a refugee claimant until a decision is made in regards to the claim.

> End of examination — claim for refugee protection
>
> (2) The examination of a person who makes a claim for refugee protection at a port of entry or inside Canada other than at a port of entry ends when the later of the following occurs:
>
> (a) an officer determines that their claim is ineligible under section 101 of the Act or the Refugee Protection Division accepts or rejects their claim under section 107 of the Act;
>
> (b) a decision in respect of the person is made under subsection 44(2) of the Act and, in the case of a claim made at a port of entry, the person leaves the port of entry.

This means that even after a claim is determined eligible and referred to the Refugee Protection Division (RPD), officers may compel a refugee claimant to appear for an examination to verify and/or obtain information from the refugee claimant as the circumstances warrant, even where the initial examination took place at the port of entry. However, the circumstances under which a claimant is directed to answer questions or produce evidence related to ineligibility should be limited to the scope of the inadmissibility section or exclusion grounds being investigated. The

purpose of the examination should be related to identity or grounds of ineligibility, such as serious inadmissibility [A34, A35, A35.1, A36(1) or A37] or exclusion under section E or section F of Article 1 of the Refugee Convention.

During the examination, officers (including inland officers) will be able to question the refugee claimant for the purposes of the examination and require the claimant to produce all relevant evidence and documents that the officer reasonably requires, as new information or evidence becomes available while the claim is in process.

- Officers should be mindful that where the refugee protection hearing is underway by the RPD, the authority to examine under R37(2) should proceed in a manner that does not interfere with the refugee protection hearing.
- Concerns relating to the merits of the claim, or a refugee claimant's general credibility should not be the purpose of the examination. Instead, matters relating to the merits of the claim or credibility shall be raised before the RPD in the context of a Ministerial intervention (see section 14.5, 'Overview: Minister's opinions/interventions')
- At ports of entry, if a refugee claimant is determined to be ineligible to be referred to the Refugee Protection Division, the claimant continues to be under examination until: (i) a decision in respect of the person is made under A44(2), and (ii) leaves the port of entry. For information concerning port of entry immigration "end of examinations", refer to ENF 4 Port of Entry Examinations.
- At inland offices, if a refugee claimant is determined to be ineligible to be referred to the RPD, the authority to examine the claimant ends, pursuant to R37(2)(a). Should additional information be required from the person to gather additional evidence necessary for an admissibility hearing before the ID, or to enforce a removal order, it may be collected under the authority provided in A16(3)- where arrested, detained, or subject to examination or a removal order. Otherwise, the officer may request an in-person interview where determined to be appropriate (See also: section 11.7, 'Procedure: Gathering evidence for persons not subject to examination').
- It should be noted that when refugee claimants have identified a counsel of record in their Basis of Claim (BOC) form or elsewhere in the record of the RPD, they have a right to have counsel present at an interview held in respect of their refugee claim. Counsel are to be notified of and given an opportunity to be present for any interview conducted for the purpose of gathering evidence for the refugee hearing (post-eligibility).

  Note*:* this is to be distinguished from IRPA interviews for other purposes. A refugee claimant does not have a right to counsel at an interview relating to their eligibility to claim refugee status.

See Appendix A: Sample call-in letter for interview - Refugee claimant

11.7 Procedure: Gathering evidence for persons not subject to examination

Where the person is no longer subject to examination, there is no legal obligation under A16 to provide information, however officers may request that the person voluntarily attend an interview in order to gather evidence and information for the purpose of determining whether an A44(1) report will be written and referred. In such cases, including cases for permanent residents, the call-in notice should state the purpose of the interview and follow the procedural fairness guidelines noted earlier in this manual.

As noted in preceding sections, permanent residents benefit from a higher degree of

participatory rights during the A44(1) process.

11.8 Procedure: In-person interview (all cases)

Where proceeding by way of an in-person interview, officers must always ensure that the person concerned understands the proceedings. For that purpose, the officer must provide the person concerned with an interpreter if required.

The person concerned must also be given the opportunity to have counsel present at the interview. This is not to be confused with an unqualified right to have counsel present, however as already set out in section 6.5, detained individuals have the right to have a counsel of their choosing present during the interview. Officers must inform persons of their right to counsel prior to commencing the interview. This right applies in all cases where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence. As stated in previous sections, all detained cases should be interviewed in person.

See Appendix D: Sample Call-in letter for interview- Person no longer subject to examination (includes permanent resident and protected person)

Reasonable efforts should be made to ensure that the notification letter is delivered to the most current address of the person concerned. Where appropriate, this may include a site visit and/or telephone call. This will be particularly important in cases where the loss of appeal rights under A64 may be involved. See section 11.10, 'Procedure: Failure to appear at A44(1) interview'.

11.9 Procedure for submissions where no in-person interview is held: Persons no longer subject to examination

The Federal Court affirmed in Hernandez v. Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 725, a case involving a permanent resident of Canada, that an oral interview by the officer at the A44(1) stage is not always required, as long as the affected person is given an opportunity to make submissions and to know the case against them. This principle was affirmed in Sharma v. Canada (Public Safety and Emergency Preparedness), [2017] 3 FCR 492, 2016 FCA 319. In that case, the FCA also confirmed that the duty of fairness does not require that the A44(1) report is put before the person before a decision is made by the MD to refer that report to the ID pursuant to A44(2), provided that such a report is communicated to the affected person before the hearing of the Immigration Division. In other words, officers must ensure that the report under A44(1) is provided to the person concerned before the hearing of the ID. As a matter of practice, disclosure of the report will usually occur at the time that the admissibility hearing package is served on the permanent resident by a Hearings Officer or Hearings Advisor in advance of the hearing, in accordance with the ID Rules for disclosure.

Where an officer elects not to proceed by way of an in-person interview and elects to proceed by way of written submissions, the officer must notify the person concerned in writing of the allegation and the process to be followed, and provide them with an opportunity and reasonable time to provide submissions and information related to their case.

See Appendix B: Sample letter to be sent where no interview is requested- Person no longer subject to examination (includes permanent resident and protected person)

Where proceeding by way of written submissions, an officer may also choose to provide a questionnaire to the person concerned in order to facilitate the process and provide an information guideline to assist the person concerned.

See Appendix C: Sample Questionnaire

Note: For submissions in writing, sufficient time shall be allowed for receipt by regular mail. or example, if the deadline for receipt is 15 days, an officer should not make a decision on day 15, but shall wait an additional seven days to allow for mail delays.

Where the person concerned makes a request for an **extension of time** to provide submissions, the officer shall reasonably consider such a request, having full regard to the circumstances of the person concerned and the reasons for the request. The officer's decision must be issued in writing and provided to the person concerned.

As already noted, permanent residents (and foreign nationals who are no longer subject to examination) cannot be compelled to provide submissions or otherwise be required to participate in the A44(1) process. Where reasonable efforts have been made to ensure that the person concerned has been notified of the A44 process and no submissions are received **or** the person concerned has expressly declined to participate in the A44(1) process, the officer may proceed to write an A44(1) report based on all relevant evidence available and refer the report to be reviewed by an MD under A44(2).

11.10 Procedure: Failure to appear at A44(1) interview

If the person concerned does not appear for an interview on the date specified in the call-in letter and the responsible officer and/or office where the A44(1) investigation originated has not received notice or other indication from the person concerned stating why they were unable to attend the interview, then officers should make reasonable efforts to locate the person, including reasonable efforts to determine the reasons for the no-show (e.g., letter to the last known address, site visit and/or telephone call). This will be particularly important in cases where the loss of appeal rights under A64 may be involved.

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

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

Where, after making reasonable efforts, the officer has been unable to locate the person concerned and no correspondence or submissions have been received on their behalf, the officer may still proceed to write the A44(1) report based on all relevant evidence available and refer the report to be reviewed by an MD under A44(2).

12 Evidence gathering: Additional considerations

12.1 Serious inadmissibilities [A34, A35, A35.1, A36(1), A37]

It is important to balance the requirement to gather information according to the considerations outlined in the preceding sections and the need to protect the safety of Canadian society. There may be cases where an officer is pursuing enforcement under the IRPA for serious inadmissibility and the person constitutes either a danger to the public or a significant flight risk. For example, criminal intelligence exists that the person is committing crimes of a violent nature, is a security risk or is involved in organized crime, etc. In such cases where an arrest and detention is necessary, it may be appropriate that the A44(1) report be written and a decision to refer the matter to the ID be made without advising the client prior to the arrest. In such exceptional cases, officers must first document their recommendation, consult with their manager regarding this proposed course of action and receive concurrence before proceeding. If an arrest takes place, the officer will then provide the individual with a copy of the A44(1) report. If the matter concerns a permanent resident or a protected person and they wish to make submissions at that point, the officers will provide them with a reasonable opportunity to do so and will forward the submission to the MD for review.

12.2 Evidence of pending or withdrawn charges

Officers must be careful about how they rely on evidence of charges which did not lead to a conviction. In McAlpin v. Canada (Public Safety and Emergency Preparedness), 2018 FC 422, Chief Justice Crampton held that in exercising discretion to refer an individual for admissibility hearing, it is reasonable for the Minister or his delegate to place significant weight on the number of interactions that a person who is the subject of an A44(1) report has had with the law. Justice Crampton also found that while the Federal Court has previously found that pending or withdrawn charges may be considered by an officer or an MD in determinations under A44(1) and A44(2) and certain other contexts that arise under the IRPA, provided that such evidence is found to be credible and trustworthy[14], officers must be mindful that there are limitations to the way such evidence is used and officers should not treat the existence of withdrawn charges on their face as evidence of a person's history of criminality.

Officers must also be careful not to rely on convictions for which rehabilitation or a record suspension has been granted as evidence of a criminal record.

12.3 Offences under the *Youth Criminal Justice Act*

Officers must ensure that they do not rely on or refer to youth offences in their determination, except where access is authorized under the *Youth Criminal Justice Act* (YCJA). Information that is not accessible under the provisions of the YCJA cannot be considered and must not be included or referenced at any point during A44 proceedings. Moreover, contravention of the provisions of the YCJA is a serious matter.

The importance of verifying whether information is protected by YCJA provisions was highlighted in Abdi v. Canada (Public Safety and Emergency Preparedness) 2017 FC 950. In

[14] Sittampalam v Canada (Minister of Citizenship and Immigration), 2006 FCA 326; Thuraisingam v Canada (Citizenship and Immigration), 2004 FC 607; Kharrat v Canada (Citizenship and Immigration), 2007 FC 842

that case, the Federal Court held that the MD did not commit an error in relying on youth crimes that the applicant was found guilty of where access to these records was not restricted by virtue of section 119(9) of the YCJA. However, the MD's reliance on youth offences that were withdrawn or dismissed was unreasonable since section 119(2)(c) of the YCJA allows access to these records for only a brief period after dismissal or withdrawal of the youth charges and the access period to such charges had expired.

Officers conducting A44(1) and A44(2) functions must ensure that they only rely on youth records to which access is not restricted under the YCJA. It is therefore important for officers to be aware of the provisions of the YCJA which relate to access to youth records.

12.4 Privacy and information sharing

While information sharing is vital to protecting the safety and security of Canadians, the sharing of information must be done in a manner which complies with Canada's laws and legal obligations. When obtaining and disclosing information obtained from a third party, including a foreign government, officers must be aware of their legal obligations under information sharing agreements and legislation. In all cases, officers are required to assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination.

All information sharing activities must also comply with the *Security of Canada Information Disclosure Act* (SCIDA)[15]. The SCIDA provides the authorities for all Government of Canada institutions respecting the disclosure of information related to national security, including personal information, in order to protect Canada against activities that undermine the security of Canada.

When obtaining or assessing evidence at A44, officers must ensure that any and all information sharing activities comply with applicable information sharing legislation as well as all relevant departmental and agency information sharing policies. For further information, CBSA and IRCC officers should consult their respective Agency/Departmental information sharing guidance, policies and toolkits.

12.4.1 Evidence obtained by mistreatment or torture

In addition to ensuring that information is shared in a manner that complies with Canada's laws and legal obligations, officers must avoid knowingly contributing to mistreatment of persons by foreign entities. Bill C-59 gained Royal Assent in June 2019, thereby establishing the *Avoiding Complicity in Mistreatment by Foreign Entities Act* (ACA). Pursuant to subsection 3(2) of the ACA, a new *Order in Council* (OiC) issued to the CBSA in July 2019, which prescribes the directions for avoiding complicity in mistreatment by foreign entities. The OiC prohibits:

- the disclosure of information that would result in a substantial risk of mistreatment of an individual by a foreign entity;
- the making of requests for information that would result in a substantial risk of mistreatment of an individual by a foreign entity; and

[15] The *Security of Canada Information Sharing Act* (SCISA) was the previous legislation for national security information sharing. SCISA was amended and renamed SCIDA after Bill C-59, An Act respecting national security matters, received Royal Assent in June 2019.

- certain uses of information that was likely obtained through the mistreatment of an individual by a foreign entity.

12.4.2 Disclosure and procedural fairness considerations

Generally speaking, as a matter of procedural fairness, individuals subject to A44 proceedings have the right to know the case against them, which includes understanding what information the officer would rely on in making a decision. However, the Federal Court has recognized that each case must turn on its facts and that not every document considered by an officer must be disclosed at the A44 stage. The main question is whether the person has had the opportunity to meaningfully participate in the decision-making process [Karahroudi v Canada (Citizenship and Immigration), 2016 FC 522, [2017] 1 FCR 167; Gebremedhin v Canada (Minister of Citizenship and Immigration), 2013 FC 380; Bhagwandass v Canada (Minister of Citizenship and Immigration), 2001 FCA 49].

Officers should keep in mind that where there is relevant information before them which cannot be disclosed to the person due to privacy or information sharing legislation, and where the officer cannot obtain authorization to disclose the document with appropriate redactions, the information should not be relied upon in the officer's reasons. There are exceptions where the duty of fairness can be met without having to furnish all the documents and reports the decision-maker relied on, such as where a document is protected by privilege based on national security or on the solicitor-client relationship, however officers should be careful not to rely specifically on documents which cannot be disclosed. This position is consistent with Federal Court jurisprudence [for example, Moghaddam v. Canada (Citizenship and Immigration), 2018 FC 1063].

Where officers receive a request for disclosure of documents at the A44(1) stage, officers should turn their minds to whether the information sought is "**material and otherwise unknown and unavailable to the person concerned**". Where the information is not material (i.e., not being relied on in the offer's assessment) **or** is otherwise known or available to the person concerned (e.g., a person's criminal court records which they could access through a request), the officer is not subject to a duty to disclose and this may form the rationale for refusing to disclose it. An officer may still need to refuse to disclose on other grounds. In all cases, it is important for the officer to provide a rationale for the refusal. [for further information, see Durkin v. Canada (Public Safety and Emergency Preparedness), 2019 FC 174].

In Jeffrey v. Canada (Public Safety and Emergency Preparedness), 2019 FC 1180, the Federal Court relied on *Durkin* and concluded that the Minister does not have a duty to disclose information other than that which is "material and otherwise unknown or unavailable to the person" until after a decision has been made under A44(2) to hold an admissibility hearing. The court found that in the circumstances of the case, the officer was not subject to any duty to provide the disclosure sought by the applicant where the applicant was:

- advised of the reason why an inadmissibility report may be prepared pursuant to A44(1);
- informed of the nature of the specific allegations being considered;
- provided an opportunity to respond to those allegations;
- informed of what the relevant information in the officer's possession consisted of; and
- advised that copies of the information sought would not be provided since the applicant either provided that information or was present during the interviews where the information was obtained.

In other words, in responding to such requests for information, officers should ensure that the A44(1) procedure is fair.

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

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

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

13 Writing an A44(1) report – Form and content

13.1 A44(1) report requirements

Officers should be mindful that the A44(1) report is not evidence. It sets out the allegation and the underlining facts necessary to support the allegation. The report should not contain information which is unrelated to the allegation (e.g., issues related to grounds for detention or the person's full immigration history) or opinions of the officer and should be restricted to facts which support the allegation.

Since the A44(1) report is an allegation, not evidence, any additional information obtained during an interview which an officer wishes to include in support of the report should be provided by way of a separate statutory declaration from the officer.

The authority of the MD to cause an admissibility hearing or issue a removal order cannot be exercised unless the form and content of a report under A44(1) comply with specific requirements and contain required information relating to the IRPA inadmissibility upon which the report is based.

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

The report shall then be transmitted to the MD, along with any forms containing the officer's disposition, recommendation and rationale. This may be best accomplished by preparing an A44(1) case highlights form IMM 5084B (for inland cases) or BSF516 (for port of entry cases). For more complex cases, this may also be accomplished by way of a detailed memorandum or A44(1) narrative report (e.g., for permanent residents and protected persons). See also: section 14.2, 'Referral of a report to the Minister's Delegate'.

All A44(1) reports must:

- be in writing and must indicate the place and date of issue;
- be addressed to the Minister of PS or the Minister of IRCC and be signed by the officer who conducted the examination or is otherwise making the report;
- contain the complete name (correctly spelled) of the person who is being reported;
- contain the exact subsection(s)/paragraph(s) of the IRPA (and IRPR, if applicable) upon which the officer based the opinion that the person, who is the subject of the A44(1) report, is inadmissible;
- include a narrative section that justifies the inadmissibility opinion and cites the facts upon which that opinion is based. The narrative section must indicate the exact grounds for applying the particular inadmissibility section(s): these grounds are set out below the words: "This report is based on the following information that the above-named individual:".

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

> *This report is based on the following information that the above-named individual:*
>
> *Also known as (list other names used, where applicable)*
> *-Is not a Canadian citizen; is not a permanent resident of Canada; is not a registered Indian under the Indian Act;*
> *…has been convicted of an offence; namely, [Possession of Cocaine] on or about [22 November 1982] at or near [Pontiac, Michigan, USA]. This offence, if committed in Canada, would constitute an offence that may be punishable by way of indictment under paragraph 4(3)(a) of the Controlled Drugs and Substances Act and for which a maximum term of imprisonment [not exceeding seven years] may be imposed.*

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

13.2 Entering the A44(1) report into the Global Case Management System (GCMS)

All A44(1) reports are generated in the Global Case Management System (GCMS) under the 'Examination' process.

Officers must take care to avoid errors during the data entry process as the written report is a legal document and may be closely scrutinized not only by the MD, but also by Hearings Officers, members of the IRB, and even Federal or Supreme Court of Canada justices.

When officers enter a report into GCMS, they must ensure that the proper allegations are selected and that the dispositions of the examination process are accurately staged. Officers must review the contents of the narrative section of the report before finalizing the document. For technical instructions on GCMS processes and detailed instructions on how to enter a report into GCMS, officers should reference their IT Tools and guidelines.

For CBSA officers, step by step instructions are available in the GCMS Help Centre.

Note: Officers must also ensure that the report as well as the investigation process leading up to the report are recorded and updated in the National Case Management System (NCMS) in offices where NCMS is utilized.

13.3 A44(1) reports for non-compliance with IRPA requirements – A41

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

It is important to note that a non-compliance allegation must be coupled with a specific requirement of either the IRPA or the IRPR; it is not meant to be, nor should it be, a "stand-alone" allegation. This means that the report must cite both A41 and the specific IRPA provision that is the subject of the non-compliance (i.e., provision of the IRPA or the IRPR contravened); this structure is necessary in order to determine whether the jurisdiction to issue a removal order falls under the MD (R228) or the ID (R229).

Officers must also include the specific grounds for the non-compliance in the comments of the narrative portion of the A44(1) report, under the heading: "This report is based on the following information that the above-named individual:". In other words, the description of the particular contravention of an IRPA requirement (e.g., person's failure to leave Canada by the end of the period authorized for their stay) and any specific reference to a provision of the IRPA or the IRPR are to be incorporated in the officer's narrative justifying the inadmissibility allegation.

For further information on the elements of non-compliance under A41, see ENF 2/OP18 Evaluating Inadmissibility.

13.4 Multiple allegations

Where the person is inadmissible under multiple provisions of the IRPA, it is generally recommended that the officer writes a separate report for each allegation. The MD will then make a determination on each report during the A44(2) process.

If an officer is considering whether to write two separate inadmissibility reports on the same person, and if the objectives of the IRPA would not be further served by pursuing a removal order for an additional allegation for which the ID has jurisdiction, then the officer may use discretion and not write an A44(1) report containing the allegation for which the ID has jurisdiction [R228(1) and R229(1)]. For example, an allegation may not be worth pursuing because it will not affect the eligibility of a claim for refugee protection under A101, or because the MD may issue an exclusion order based on the other allegations and there is no concern that the person will be able to return to Canada without consent after one year. However, it is important to keep in mind the objectives of the IRPA: depending on the circumstances of the case, these objectives may be best served by writing an A44(1) report as a future record of the inadmissibility. In such cases, an officer may choose to write the A44(1) report but recommend no further action as the A44(2) disposition.

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

- that the grounds cited in the report are not valid, but in the officer's opinion, the person falls within some other inadmissible class; or

- there is an additional ground of inadmissibility

In such cases, the officer will need to prepare a new A44(1) report and forward the accompanying documents and evidence to the MD. The officer cannot simply amend the existing A44(1) report. Whether a new A44(1) report is written to replace a previous report or to report a new inadmissibility ground, in either case the officer must ensure that the person concerned is accorded the earliest possible notice of all the grounds against them in accordance with the rules of natural justice.

If an officer, during the course of an investigation, comes across evidence to support new allegations which fall within the jurisdiction of the ID where an existing A44(1) report has already been referred to the ID, the officer should contact the Hearings Officer to determine next steps, including whether the additional grounds of inadmissibility should be dealt with at the hearing simultaneously.

There may be instances where multiple allegations are contained within the same report. This practice is generally discouraged, especially where the jurisdiction for each inadmissibility does not lie with the same decision-maker (i.e., MD or ID). It should be noted, however, that where a report contains one or more inadmissibility allegation, and if the MD has jurisdiction for all inadmissibility allegations contained within that report, the MD can determine the disposition of that report. Conversely, where there are several inadmissibility allegations in a report and the MD has jurisdiction for only some of them, the MD is not authorized to determine a disposition for that report, and all allegations must be referred to the ID.

As set out in section 8 above, discretion under A44 means that officers and MDs have some flexibility in managing cases where the person is inadmissible, and assessing whether the objectives of the IRPA may or will be achieved without the need to seek a removal order or write a formal inadmissibility report under A44(1). Officers should note, however, that where the same evidence supports multiple allegations of inadmissibility, they should consider the fact that not pursuing a particular allegation until a later date may give rise to an abuse of process argument by the person concerned. This does not mean an A44(1) report should be written in circumstances where the officer is still in the process of gathering further evidence in relation to one or more inadmissibility ground, and officers will need to balance whether the objectives of the IRPA would be served by writing a report for all possible allegations or proceeding with only certain allegations at a given point in time.

Example: A CBSA officer is investigating a permanent resident for inadmissibility for serious criminality under A36(1)(b). The CBSA officer has obtained evidence to support an A44(1) report for the allegation, but has determined that the evidence further supports an A44(1) report for A40(1)(a) based on misrepresentation on the person's application for permanent residence. It may later be seen or determined by the Courts to be an abuse of process if the officer does not pursue the A40(1)(a) report at the same time as the A36(1)(b) report. On the other hand, using this same scenario as an example, if the officer is also investigating possible inadmissibility for organized criminality under A37(1)(a) but is still in the process of gathering evidence to establish this allegation, abuse of process is less likely to arise, even if there is overlapping evidence in both allegations. In this situation, however, the officer should consider whether to wait until the investigation into the A37(1)(a) allegation is complete before proceeding to write the report for A36(1)(b)/ referring it to the MD.

14 Procedures after the A44(1) report is written

14.1 Providing the A44(1) report to the person concerned

In order to comply with natural justice, persons who are reported under A44(1) should fully understand both the case against them, and the nature and purpose of the report. Wherever possible, an officer who writes an A44(1) report must also provide a copy of that report to the person concerned.

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

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

Where entry seems justified in the circumstances, officers should also inform persons about the option to apply for a TRP and about the cost recovery fee. For further information, see IP 1 Temporary Resident Permits; and ENF 4 Port of entry examinations.

For inland cases, where the MD has jurisdiction to issue the removal order, disclosure of the report may occur at the time of the MD review under A44(2). Where the ID has jurisdiction, disclosure of the report may occur at the time the admissibility hearing disclosure package is served on the person concerned. As mentioned in previous sections, the Federal Court of Appeal has confirmed that the duty of fairness does not require that the A44(1) report is put before the person before a decision is made by the MD to refer that report to the ID pursuant to A44(2) as long as the affected person is given an opportunity to make submissions and to know the case against them. (See also: section 11.9, ‘Procedure for submissions where no in-person interview is held: Persons no longer subject to examination’).

14.2 Referral of the A44(1) report to the Minister’s Delegate

All A44(1) reports concerning permanent residents and foreign nationals must be referred to the MD who will make the final decision about whether or not to issue a removal order (if within the MD’s jurisdiction) or refer the matter to the ID. Where the officer has also prepared an A44(1) case highlights form (IMM 5084B for inland cases or BSF516 for port of entry cases), a detailed memorandum or an A44(1) narrative report, this must also accompany the A44(1) report. Where the officer prepares one of these documents to set out their recommendation and rationale, such a document should include:

- the person's identity, with name, aliases, date and place of birth, citizenship, marital

status, present immigration status, and details of passports and travel documents;
- the officer's opinion based on the assessment of the criteria outlined in the sections above and the recommendation(s);
- any submissions received from the person or notes taken at the interview; and, if applicable, the reasons for any delay in submitting the report.

The officer must also forward, where applicable, any other documentation relied on by the officer, including but not limited to:

- for permanent residents, proof of a search of citizenship records
- copies of all relevant immigration documents and other certificates and affidavits that can be obtained from IRCC, if applicable;
- originals or copies of other documents relevant to the case, such as a birth certificate, marriage certificate, a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1);
- details of the violations, and the first possible parole or release date if the person is serving a sentence;
- other documentary evidence pertaining to the allegation(s), including all the evidence or submissions received from the person concerned.

This means that even if the officer at A44(1) does not exercise their discretion to consider personal circumstances, all evidence and submissions received from the person concerned must still be forwarded to the MD.

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

See also, ENF 1 Inadmissibility; ENF 2 Evaluating inadmissibility; and ENF 23 Loss of permanent resident status.

The importance of forwarding the officer's recommendation to the MD at the same time as the A44(1) report was highlighted in Wong v Canada (Citizenship and Immigration) 2011 FC 971. In that case, the Federal Court dealt with the legality of two removal orders issued by the MD prior to the A44 case highlights form being signed and dated. In finding that this sequence of events rendered the orders improperly issued and therefore null and void, the Court affirmed that the officer's recommendation needed to be reviewed by the MD as part of the A44 process **before** a removal order was issued.

It is in the officer's recommendation and rationale [contained in the A44(1) case highlights form, detailed memorandum or A44(1) narrative report] that the officer will set out the recommended disposition to the MD at the 44(2) proceedings, including but not limited to:

- Issuance of a removal order by the MD (cases within MD jurisdiction under R228);
- Referral to the ID for an admissibility hearing (cases within ID jurisdiction under R229)
- Allowing withdrawal of application to enter Canada (Port of entry only); see section 9.4, 'Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)';

- Issuance of a Temporary Resident Permit (TRP) (Port of entry only); for further information on TRPs, see section 9.7, 'Temporary Resident Permits (TRPs) - Port of entry and IRCC only';
- Issuance of a warning letter (inland- permanent residents and protected persons only); for further information on warning letters, see ENF 6 Review of reports under A44(2).

14.3 Procedure: Referring A44(1) reports when a Minister's Delegate is not on site

The IRPA requires that A44(1) reports be transmitted to the MD after being prepared: officers cannot prepare and then review their own A44(1) report. There may be circumstances where an MD is not physically on site and/or otherwise available to conduct a review under A44(2) in person and where deferring the MD review is not a viable option. In such circumstances, officers shall refer to ENF 6, section 10.7, ' Procedure: Reviewing A44(1) reports when a Minister's Delegate is not on site'.

14.4 Amending the A44(1) report

There is no mechanism to directly amend an existing A44(1) report in GCMS, therefore at the time the report is being created, officers must ensure that the proper allegations are selected and the contents of the narrative section of the A44(1) report are accurate before finalizing the document.

There are instances, however, where errors in an A44(1) report are identified following a review of the report after its issuance has been finalized. In such cases, it is important for officers to take appropriate steps to make necessary corrections, taking into account the nature of the error/information to be changed and the stage during which the error is identified.

Where, following the issuance of the A44(1) report, an error is identified which does not affect the substance of the report (for example, a typographical error regarding the date of a conviction) or it is determined that a change is warranted with respect to the wording in the narrative section of the report, the officer who issued the original A44(1) report may write an updated report in GCMS reflecting the appropriate corrections prior to review by the MD. Where the error is discovered by the MD, it remains open to the MD to send the matter back to the officer so that appropriate corrections may be made or for the officer to consider writing a new A44(1) report. In such cases, where a new A44(1) report is written to replace an existing report, officers must ensure the previous report is cancelled in GCMS in accordance with the procedures set out in the GCMS guidelines, including the creation of any process notes as required. In such cases, the person concerned should be provided with a copy of the amended report in accordance with the procedural fairness requirements outlined in previous sections of these guidelines at some point prior to the proceeding that may result in the issuance of a removal order (e.g., Minister's Delegate review or admissibility hearing).

Note: There is a specific process to be followed in GCMS where the MD decides to return the A44(1) to the officer. Based on errors or new information identified by the MD, the officer may create a new A44(1) report by following GCMS procedures for issuing a new A44 report after MD returns the report to an officer.

CBSA officers may consult the GCMS Help Centre for guidance on GCMS procedures where the MD returns the A44 report to an officer.

It is also important to note that there are circumstances in which amendments to an A44(1)

report may be made after the report has been referred to the ID, without the need for a new referral under A44(2). While it is generally preferred that amendments be made by way of writing a new A44(1) report containing the amended wording, there may be circumstances where amendments to the report can be made at the admissibility hearing stage, however, this is only possible where the amendment does not affect the substance of the report. For example, in Clare v. Canada (Citizenship and Immigration) 2016 FC 545, the Minister filed a Notice of Amendment to the A44(1) report, after the report had already been referred to the ID. The notice itself stated that the amendment did not represent a change in the substance of the original report. The narrative section of the revised version replaced the reference to a particular subsection of the *Controlled Drugs and Substances Act* with reference to a provision under the *Criminal Code of Canada*. The Federal Court found that the amendment to the A44(1) report did not need to be submitted to the MD for a fresh determination on a referral to the ID, so long as the amendment conformed generally to the description of the alleged illegal conduct in the original report and identified an offence that was punishable by a maximum of at least ten years imprisonment. Relying on Uppal v Canada (Minister of Citizenship and Immigration), 2006 FC 338, the Federal Court found that the question was whether the amendment was so significant that it required a fresh consideration by the MD, and held that the ID had reasonably relied on the amended report because there was no substantive change in the description of the offence on which it was based. Moreover, the person concerned and his counsel were made aware of the amendment to the report at the outset of the hearing.

On the other hand, it is important for officers to note that an A44(1) report cannot be amended at any point where further review reveals that the report contains a substantive error (e.g., wrong inadmissibility section under the IRPA). In addition, where further investigation leads to a finding that the grounds cited in the report are not valid but the person falls within some other inadmissible class, or identifies an additional ground of inadmissibility which the officer intends to pursue, the officer must write a new A44(1) report for a fresh referral to the MD. In such cases, where a new A44(1) report is written to replace an existing report, officers must ensure the previous examination case is cancelled in GCMS in accordance with required procedures, including the creation of any process notes where appropriate. Where substantive changes are made to the A44(1) report, officers must also ensure that the new report is provided to the person concerned in accordance with the procedural fairness requirements outlined in previous sections of these guidelines.

14.5 Overview: Minister's opinions/interventions

Identification of cases where an opinion under A115(2) of the Minister of IRCC for protected persons may be warranted

Information may come to the attention of an officer in the course of an investigation of a person who is a protected person under A95(2) which the officer believes may warrant flagging the case for a future request for a Minister’s opinion under A115(2) that a person is a danger to the public in Canada, or should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

While such a request may not be made until the person has been found to be inadmissible under A34, A35, A35.1, A36(1) or A37 and becomes the subject of a removal order that is in force, officers at the A44(1) stage may flag the case for consideration for a future request for a Minister’s opinion in their recommendation to the MD, where appropriate. If a removal order is issued, the case can then be referred for consideration of a request for a Minister’s opinion in accordance with agency guidelines and local processes.

For further information, see ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada.

Intervention, cessation and vacation

During the course of an A44(1) investigation, officers may have occasion to deal with information that may support a possible intervention in an outstanding claim for refugee protection, or a cessation or vacation application for a protected person or Convention refugee.

If such is the case, the information should be brought to the attention of the appropriate Hearings unit where the information and/or evidence can be reviewed with respect to a potential application to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).

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

- conduct an interview and take notes (see section 11. 6, ‘Procedure: End of examination for refugee claimants’;
- seize any relevant documents under A140(1) that could be used as evidence;
- update the National Case Management System (NCMS) to indicate that the case is under investigation and the reason(s) for the investigation;
- contact the appropriate Hearings unit to discuss case details;
- at the request of the Hearings Officer or Hearings Advisor, conduct a further investigation to collect additional evidence;
- when the investigation is complete, transfer the file and all supporting documentation to the Hearings Officer or Hearings Advisor with a memorandum outlining the case details.

Note: following a decision of the RPD that refugee protection has ceased under A108(2), the Minister may not simply rely on a previous removal order (issued against the person before protected person status was granted) to remove that person. In other words, a new A44(1) report based on inadmissibility under A40.1(1) would need to be written and a new removal order would need to be issued by the MD in these circumstances.

For further information, see ENF 24 Ministerial interventions.

14.6 Imposition of conditions following the A44(1) report

A44(3) authorizes officers to impose any conditions, including the posting of a deposit or the posting of a guarantee for compliance with conditions, that the officer considers necessary, on a permanent resident or foreign national who is the subject of an A44(1) report, an admissibility hearing or, being in Canada, a removal order.

At the port of entry, this includes circumstances where the officer does not authorize entry to a foreign national and prepares an A44(1) report.

For further information on deposits and guarantees, see ENF 8 Deposits and guarantees.

Mandatory Circumstances (POE cases)

There are also mandatory conditions which must be imposed at the port of entry pursuant R43(1) where the Border Services Officer adjourns an examination under A23:

1. to report in person at the time and place specified for the completion of the examination or the admissibility hearing;
2. to not engage in any work in Canada;
3. to not attend any educational institution; and
4. to report in person to an officer at a POE, if the person withdraws their application to enter Canada.

Note: A person whose examination has been deferred and who fails to report as required for continuation of their examination is reportable for non-compliance under A41(a).

For further information, see ENF 4 Port of entry examinations and ENF 6 Review of reports under A44(2).

Mandatory Circumstances (Prescribed Conditions for A34 inadmissibility)

It is important for officers to note that under A44(4), the imposition of baseline conditions is mandatory by designated CBSA officials in cases of inadmissibility on security grounds under A34. For each of the circumstances outlined below, the prescribed conditions to be imposed are found in R250.1.

CBSA officers should be aware that the prescribed conditions must be imposed by the designated CBSA authority in the following circumstances:

- when an inadmissibility report on grounds of security (A34) is referred to the ID and the subject of the report is not detained;
- when the subject of either an inadmissibility report on grounds of security (A34) that has been referred to the ID or a removal order for inadmissibility on grounds of security is released from detention.

Note: If the person is already subject to conditions imposed by the ID, an officer has no authority to vary or supersede an order previously issued by the ID. Generally speaking, the ID retains jurisdiction with respect to the variation of previous terms and conditions imposed by the ID. In circumstances where an officer believes that previously imposed conditions by the ID are no longer required or are insufficient to ensure compliance, but may not necessarily require that the person be re-arrested first, officers will refer the file to the appropriate Hearings unit, articulating the need to amend the existing conditions and request that a Hearings Officer make a request to the ID to vary the order.

Appendix List

Appendix A: Sample call-in letter for interview: Refugee claimant

Appendix B: Sample letter to be sent where no interview is requested- Person no longer subject to examination (includes permanent resident and protected person)

Appendix C: Sample Questionnaire to accompany Appendix B letter to provide submissions

Appendix D: Sample Call-in letter for interview – Person no longer subject to examination (includes permanent resident and protected person)

Appendix E: Sample A44(1) Narrative report

Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

Appendix A: Sample call-in letter for interview: Refugee claimant

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned) ;

A report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under the *Immigration and Refugee Protection Act.* If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases. The next step in the process is to conduct a review of the circumstances of your case.

Pursuant to subsection 16(1.1) of the *Immigration and Refugee Protection Act*, you are required to present yourself for an interview on:

(Insert Date and time) at (CBSA office address)

The purpose of the interview will be to discuss your admissibility to Canada and/or eligibility or issues related to your claim for refugee protection and to provide you with an opportunity to respond to any concerns the Minister may have.

Please bring the following to the interview: (check applicable boxes)

☐Any passports, travel or identity documents

☐Two recent passport photographs of yourself

☐Completed Details of Military Service and Details of Police Service Tables (attached)

☐Other - specify

Please confirm your attendance upon receipt of this letter. If you require the services of an interpreter, please inform the officer and an interpreter will be arranged for you.

Please be advised that you may have counsel present with you during the interview. Please note that the CBSA is not responsible for legal fees and that you must assume all the costs of the legal counsel yourself. Additionally, the CBSA reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful.

Please be advised that should you fail to report for this interview, a decision will be made based on the information available on file and further enforcement action may be taken.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix B: Sample letter to be sent where no interview is requested – Person no longer subject to examination (includes permanent resident and protected person)

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned);

This is to advise you that a report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under paragraph XXX of the *Immigration and Refugee Protection Act*.

(Insert IRPA wording here)

If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases.

A decision to allow you to remain in Canada or to seek to have a removal order issued against you will be made in the near future. The next step in the process is to conduct a review of the circumstances surrounding your alleged inadmissibility.

You may provide relevant evidence or submissions that you wish to be considered in relation to this matter of your admissibility to Canada. You should be aware that this office may obtain additional information pertaining to the alleged inadmissibility from other sources, such as reports prepared by other enforcement agencies.

Please note that any documentation that you choose to submit must be in English or French.

If you wish to provide submissions and/or documentation for consideration in this matter, you must ensure that all documents and relevant information, including the enclosed form, are sent to this officer by **(insert date and time).**

Submissions can be mailed to our office or dropped off at our front counter reception without an appointment (at applicable offices).

Depending on the circumstances of your case, you may or may not have the right to appeal to the Immigration Division should a removal order be issued against you. Subsection 64(1) of the *Immigration and Refugee Protection Act* states that:

> 64(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.
>
> 64(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).

If you choose not to provide submissions, an admissibility report against you may be prepared and referred to the Minister's Delegate without the benefit of your comments or submissions. The Minister's Delegate may, based upon the available evidence, issue a removal order if the allegation is within their jurisdiction, or refer your case to an admissibility hearing where a removal order may be issued against you by a member of the Immigration Division of the Immigration and Refugee Board.

Please quote your file number on all correspondence with this office.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix C: Sample Questionnaire to accompany Appendix A letter to provide submissions

Instructions to Officers:

This is a sample questionnaire with suggested wording. Preference as to final wording is left to the discretion of local managers provided the content remains consistent with the intent.

Permanent residents, protected persons and foreign nationals who are not subject to examination cannot be compelled to provide information for the purpose of the A44 process. The burden of proof is on the Minister to establish inadmissibility. However, individuals must be given an opportunity to provide relevant information and make submissions in relation to their case. Should the person elect not to respond or provide information/submissions, the officer may proceed by relying on the information available on file in to determine inadmissibility and whether to write and refer a report under A44(1).

Please complete and sign this form and return one signed copy with your completed package and keep one copy for your records.

This is your opportunity to have an officer consider any relevant information that you choose to submit at the time your case is reviewed, however, you may also provide other submissions and documentation instead of or in addition to this form.
Please complete this form legibly. If you require more space, please use additional sheets of paper the same size as this form and return them with this form. On each additional sheet, write your name and Unique Client Identifier (UCI) number in the top right-hand corner, and write the page number at the bottom. Please also indicate which question you are answering.

PROTECTED B WHEN COMPLETED
UCI: _____

A44(1) INADMISSIBILITY REPORT BACKGROUND AND PERSONAL INFORMATION FORM

PLEASE COMPLETE FULLY

PERSONAL DETAILS

Full Name Family name(s) (exactly as shown on your passport or travel document)	Given name(s) (exactly as shown on your passport or travel document)	
a) **Have you ever used any other name (e.g. former names, nicknames, maiden name, aliases, etc.)?** ☐ Yes ☐ No b) **If you answered "yes" to question a**), please provide the name(s) and specify (e.g. former legal name, nickname, maiden name, alias, etc.)		
Date of Birth (YYYY/MM/DD)	**Country of Birth**	**Place of Birth** City/Town/Province
Citizenship(s) – include current and former 1)	2)	
Sex ☐ Female ☐ Male ☐ Other _____ (please specify)	If you do not identify with the sex/gender on your passport, you may self identify your sex/gender:	
Current Marital Status ☐ Single ☐ Married ☐ Separated ☐ Divorced ☐ Common Law Partner ☐ Widowed		
Native Language/Mother Tongue	**Are you able to communicate in:** **English** ☐ Yes ☐ No **French** ☐ Yes ☐ No	
Date and place of your last entry to Canada (YYYY/MM/DD)	**Status Granted**	
Current Immigration Status in Canada		**Date Status Granted (**YYYY/MM/DD**)**
Height *cm	**Eye Colour**	**Hair Colour**
Marks/Scars/Tattoos/Identifying Features		
a) Do You Own a Motorized Vehicle in Canada? ☐ Yes ☐ No	**b) If you answered "yes" to question a),** please list make, model, year, and license plate number	

PROTECTED B WHEN COMPLETED
UCI: _____

CONTACT INFORMATION

Present Residential Address in Canada					
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

I Have Resided at This Address Since (MM/YYYY) ➧

Mailing Address (If different from above)

P.O. Box	Apt/Unit	Street No.	Street Name

City/Town	*Country	Province/State	Postal Code	District

Daytime Telephone Number	**Evening Telephone Number**
[ ] [ ] [ ]	**[ ] [ ] [ ]**
Country Code No. Ext.	Country Code No. Ext.
Cell Phone Number	**Email Address**
[ ] [ ] [ ]	
Country Code No. Ext.	

Social Media Accounts (Please list all applicable – e.g. Facebook, Instagram, Twitter, LinkedIn

Previous Addresses in Canada (last 3 years) **[☐ No Previous Addresses]**

Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

DOCUMENTARY IDENTIFICATION

Passport/Travel Document Number	**Country of Issue**	**Issue Date** (YYYY/MM/DD)
		Expiry Date (YYYY/MM/DD)

If you do not have a valid passport or travel document, please list any other identity documents in your possession (e.g., national identity card, birth certificate)

Document Number	**Place of Issue** (city/country – include parish/province if applicable)	**Issue Date** (YYYY/MM/DD)	**Expiry Date** (YYYY/MM/DD)

***Please attact a copy of the identity document(s) to this form**

CIRCUMSTANCES OF THE ALLEGATION

Provide a detailed description of the circumstances surrounding the immigration allegation listed in the cover letter. For example, if the alleged inadmissibility is based on a criminal conviction in Canada, you may speak to the details regarding that conviction.

(Attach a separate sheet of paper if necessary)

OTHER INFORMATION

Please provide any other information that you feel is important to your case. Please use additional paper if required for your submissions.

Signature of Person Concerned: _____ Date: _____

Appendix D: Sample Call-in letter for interview- Person no longer subject to examination (includes permanent resident and protected person)

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned;

This is to advise you that a report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under paragraph XXX of the *Immigration and Refugee Protection Act.*

(Insert IRPA wording here)

If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases. A decision on whether you are inadmissible to Canada or not and whether the officer will seek to have a removal order issued against you will be made in the near future. The next step in the process is to conduct a complete review of the circumstances surrounding your alleged inadmissibility. In order to fully assess the circumstances of your case and provide you with an opportunity to respond to any concerns the Minister may have, you are requested to attend an interview on:

(Insert Date and time) at (CBSA office address)

The purpose of the interview will be to discuss your alleged inadmissibility to Canada and to provide you with an opportunity to respond to any concerns the officer may have. As part of this process, you may make submissions and present any relevant information and documentation related to your admissibility to Canada.

You should be aware that this office may obtain information from other sources, such as reports prepared by other enforcement agencies. You may wish to address your history with other agencies at the interview.

Any relevant information that you choose to submit will be considered at the time your case is reviewed. Please note that any documentation that you submit must be in English or French.

Depending on the circumstances of your case, you may or may not have the right to appeal to the Immigration Division should a removal order be issued against you. Subsection 64(1) of *the Immigration and Refugee Protection Act* states that:

64(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

64(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).

Please confirm your attendance upon receipt of this letter. If you require the services of an interpreter, please inform the officer and an interpreter will be arranged for you.

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

Please be advised that should you fail to report for this interview, a decision will be made based on the information available on file and an admissibility report may be referred to the Minister's Delegate without the benefit of your comments and submissions.

Please quote your file number on all correspondence with this office.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix E: Sample A44(1) Narrative Report

Officer Instructions:

Note: This is a sample officer narrative report with suggested wording. Preference as to final wording is left to the discretion of local managers provided the content remains consistent with the intent.

This form is generally intended to be used in cases of permanent residents and protected persons. Persons such as permanent residents and protected persons who are not subject to examination cannot be compelled to provide information for the purpose of the A44 process. The burden of proof is on the Minister to establish inadmissibility. However, they may be given an opportunity to provide relevant information and make submissions in relation to their case. Should the person elect not to respond or provide information/submissions, the officer may proceed by relying on the information available on file in to determine inadmissibility and whether to write and refer a report under A44(1).

A44(1) NARRATIVE REPORT		
To: Minister's Delegate	From: (Name of reporting officer, office)	Date: UCI #: IRPA Allegation(s):

SECTION 1 **BACKGROUND INFORMATION**		
Surname/Family Name(s): **Given Name(s):**	**Alias(es) or Former Name(s)** (Specify Which):	
Date of Birth (YYYY/MM/DD):	**Country of Birth:**	**Place of Birth:** (City/Town/Parrish)
Gender/Sex: Female ☐ Male ☐ Other ☐_____	**Current Marital Status:** Single ☐ Separated ☐ Married ☐ Divorced ☐ Common Law Partner ☐ Widowed ☐	
Citizenship:	Permanent Resident ☐ Foreign National ☐	
Native Language/Mother Tongue:	**Able to Communicate In:** **English** ☐ Yes ☐ No **French** ☐ Yes ☐ No	
Date/Place of Last Entry to Canada:	**Status Granted:**	
Current Immigration Status in Canada:	**Date Status Granted** (YYYY/MM/DD):	

Physical Description:			
Height *cm	Eye Colour	Hair Colour	Marks/Scars/Tattoos/Identifying Features

Passport/Travel Document Number:	**Country of Issue:**	**Issue Date** (YYYY/MM/DD)
		Expiry Date (YYYY/MM/DD)

Copy on File? ☐ Yes ☐ No

Other Identity Documents (e.g., national identity card, birth certificate)			
Document Number	Place of Issue (include parish/province)	Issue Date (YYYY/MM/DD)	Expiry Date (YYYY/MM/DD)

FOR INDIVIDUALS SERVING SENTENCE (FEDERAL OR PROVINCIAL INSTITUTION)	
Correctional Institution Information:	
Place of Detention:	Name of Parole Officer:
Tel. Number of Parole Officer: ( )	Statutory Release Date(YYYY/MM/DD):
Full Parole Eligibility Date(YYYY/MM/DD):	Warrant Expiry Date(YYYY/MM/DD):

SECTION 2 **CONTACT INFORMATION**					
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

Person Has Resided at This Address Since (MM/YYYY):

Mailing Address (If different from above)			
P.O. Box	Apt/Unit	Street No.	Street Name

City/Town	Country	Province/State	Postal Code	District

Telephone Number: (with area code)	**Evening Telephone Number**: (with area code)
Cell Phone Number: (with area code)	**Email Address:**

Social Media Accounts (Please list all applicable – e.g. Facebook, Instagram, Twitter, LinkedIn)

Previous Addresses in Canada (last 3 years) **[☐ No Previous Addresses]**

Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

SECTION 3 **CIRCUMSTANCES OF ALLEGATION(S):**

Include as much detail as possible:

SECTION 4 **FOR CRIMINALITY CASES ONLY**

Is the person currently on supervision or conditions ordered by the courts (e.g., probation or parole)?
Please provide details:

Has the person breached supervisory orders or conditions in the past? Please provide details:

A. REPORTABLE CONVICTIONS

Offence:	Conviction Date:	Place of Conviction(s):	Sentence Received:

B. NON-REPORTABLE CONVICTIONS (Group counts of like offences e.g. assault X 4 counts; fail to appear X 3 counts, etc.)

Offence:	Conviction Date:	Place of Conviction(s):	Sentence Received:

SECTION 4 OFFICER'S RECOMMENDATION AND RATIONALE

Has a warning letter been issue to the person concerned in the past? ☐ Yes ☐ No If yes, provide details:
☐ Person concerned was notified regarding allegation(s) Date: ☐ Submissions received from persons concerned Date: ☐ Person concerned was interviewed in person Date:

Counsel/Lawyer:	**Address:**
Interpreter (if applicable):	**Language of Interview:**

If no interview and no submissions received, attempts to contact persons concerned (provide details):

Officer's Decision:

☐ No report written

☐ A44(1) report for (list IRPA allegation(s))

Officer's Recommendation:

☐ Referral to Immigration Division for Admissibility Hearing

☐ Issuance of removal order by Minister's Delegate

☐ Other (e.g. warning letter) (specify) _____

Name of reporting officer: Date (YYYY/MM/DD):

Signature:

SECTION 5 **LIST OF ATTACHMENTS**
☐ A44(1) Report ☐ Certified true copy of IMM 1000 or Confirmation of Permanent Resident Status (IMM 5509) ☐ Citizenship search ☐ QRC Certificates ☐ Warrant(s) of committal ☐ Certificate(s) of conviction ☐ Probation/parole reports ☐ Judge's reasons for sentence ☐ Presentence report ☐ Other (please specify) ☐ Other (please specify) ☐ Other (please specify)

SECTION 6 **REVIEW BY MINISTER'S DELEGATE**	
Decision: ☐ Refer to admissibility hearing ☐ Issue removal order ☐ Other (e.g. warning letter) (specify) _____ ☐ **I have reviewed all the facts of the case and the recommendation of the officer above** **Reasons:** Right of appeal ☐ Yes ☐ No	
Name of Minister's Delegate:	**Title** (per D&D Instruments, e.g. Supervisor, Inland Enforcement)**:**
Signature:	**Date** (YYYY/MM/DD):

Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

IRPA Section/ subsection	Inadmissibility	Paragraph	IRPA Text	IRPR reference	Jurisdiction to Issue Removal Order	Applicable Removal Order
A34	Security (PR and FN)	34(1)(a)	act of espionage against Canada or that is contrary to Canada's interests		ID	Deportation Order R229(1)(a)
		34(1)(b)	subversion by force of any government			
		34(1)(b.1)	subversion against democratic government, institution or process			
		34(1)(c)	terrorism	R14		
		34(1)(d)	danger to security of Canada			
		34(1)(e)	violence/endanger lives or safety of persons in Canada			
		34(1)(f)	membership in an organization described in (a)(b)(b.1) or (c)			
A35	Human or International Rights Violations (PR and FN)	35(1)(a)	Crimes against Humanity and *War Crimes Act*	R15	ID	Deportation Order R229(1)(b)
		35(1)(b)	prescribed senior official	R16		
		35(1)(c.1)	organ trafficking			
A35.1	Sanctions (FN only)	35.1(1)(a)	entry into or stay in Canada restricted due to international sanctions		MD	Deportation Order R228(1)(f)
		35.1(1)(b)	subject of an order made under *Special Economic Measures Act*			
		35.1(1)(c)	subject of an order made under *Justice for Victims of Corrupt Foreign Officials Act*			
A36(1)	Serious Criminality (PR and FN)	36(1)(a)	convicted in Canada- FN		MD	Deportation Order R228(1)(a)
			convicted in Canada- PR		ID	Deportation Order R229(1)(c)
		36(1)(b)	convicted outside Canada	R17	ID	
		36(1)(c)	committed an act outside Canada	R17	ID	
A36(2)	Criminality (FN only)	36(2)(a)	convicted in Canada (= by way of indictment or 2 offences)	R18.1	MD	Deportation Order R228(1)(a)
		36(2)(b)	convicted outside Canada (=indictment or 2 offences)	R17 R18	ID	Deportation Order R229(1)(d)
		36(2)(c)	committed an act outside Canada (=indictment)	R17 R18	ID	

A36(2.1)	Transborder Criminality (FN only)		committing, on entering Canada, a prescribed offence under an Act of Parliament	R19	ID	Deportation Order R229(1)(d.1)
					MD (specific offences only)	Deportation Order R228(1)(a.01)
A37	Organized Criminality (PR and FN)	37(1)(a)	member of an organization engaged in criminal activity/ engaging in pattern of activity	R16.1	ID	Deportation Order R229(1)(e)
		37(1)(b)	engaging in transnational crime (people smuggling/ trafficking, laundering money or other proceeds of crime)			
A38	Health Grounds (FN only)	38(1)(a)	danger to public health	R20	ID	Exclusion Order*° R229(1)(f)
		38(1)(b)	health condition danger to public safety	R20		
		38(1)(c)	excessive demand on health or social services	R24(3)		
A39	Financial Grounds (FN only)		unable or unwilling to support themself or dependents	R21	ID	Exclusion Order*° R229(1)(g)
A40	Misrep-resentation (PR or FN)	40(1)(a)	misrepresentation/ withholding material facts	R22	ID (exception: R228(1)(a.1)	Exclusion Order° R229(1)(h)
					MD (Misrep on eTA re: TRV-exempt status)	Exclusion Order R228(1)(a.1)
		40(1)(b)	being or having been sponsored by a person inadmissible for misrepresentation		ID	Exclusion Order R229(1)(h)
		40(1)(c)	final determination to vacate refugee claim or application for protection		MD	Deportation Order R228(1)(b)
		40(1)(d)	ceasing to be a Canadian citizen		ID	Deportation Order R229(1)(i)
A40.1	Cessation of refugee protection (PR and FN)	A40.1(1)	FN under A108(2)	A46(1)(c.1)	MD	Departure Order R228(1)(b.1)
		A40.1(2)	PR under A108(1)(a) to (d) [person becomes a FN under A46(1)(c.1)]			
A41(a)	Non-compliance with Act (FN only)	Foreign national — non-compliance Examples: A41(a) + A52(1) Obligation to obtain the authorization to return to Canada A41(a) + A20(1)(a) Does not hold the PR visa or other document required under the Regulations and have come to Canada in order to establish permanent residence		R6	MD MD	Deportation Order R228(c)(ii) Exclusion Order** R228(1)(c)(iii)

		A41(a) + A29(2) Failure to leave Canada by the end of the period authorized for their stay A41(a) + 30(1) Work or study without authorization		R183(1)(a) R183(1)(b), (c)	MD ID	Exclusion Order** R228(1)(c)(iv) Exclusion Order** R229(1)(n)
A41(b)	Non-compliance with residency obligation (PR only)	Permanent resident & non-compliance with residency obligation		A28	MD	Departure Order R228(2)
A42	Inadmissible Family Member (FN only)	A42(1)(a)	accompanying family member is inadmissible	R23	MD	Same removal order as inadmissible family member R228(1)(d)
		A42(1)(b)	FN is accompanying family member of person inadmissible under A34, A35, A35.1 or A37		MD	Deportation Order R228(1)(e)

ID: Immigration Division MD: Minister's Delegate

MD may not issue a removal order where R228(4) applies (unaccompanied minors and persons unable to appreciate nature of proceedings)

*Departure order for refugee claimants R229(2)
º Deportation order where R229(3) exceptions apply
**Departure Order for refugee claimants R228(3); Subject to R228(4)

Note: Only s. 34 deals with future events. Sections 35-37 are limited to past or present events

This chart is a quick reference tool reflecting the IRPA inadmissibility classes and corresponding removal orders in effect as of the most recent date of publication of ENF 5. Officers should reference full Act and Regulations on Justice.gc.ca website for complete information on IRPA inadmissibilities and jurisdiction to issue removal orders.