

Required Evidence for A36

Required evidence for A36 includes convictions:

- In Canada
- Outside of Canada

Convictions in Canada - A36(1)(a) & A36(2)(a)

- Proof of conviction:
 - Certified copy of conviction certificate
 - Warrant of committal
 - Certified copy of court information containing accusations and indicating a conviction

Note: These should be obtained even if the individual concedes to the allegation.

Note: A Canadian Police Information Centre (CPIC) printout is not considered sufficient evidence.

Convictions in Canada - A36(1)(a) & A36(2)(a) (Part 2)

- Text of the Canadian statute to prove that the offence is punishable by a term of imprisonment stipulated in the allegation
- Testimony and/or declarations of the individual or witnesses. This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the individual may be unable to recite the details of the conviction.

Convictions outside Canada - A36(1)(b) & A36(2)(b)

- Proof of conviction:
 - Conviction certificates
 - Warrants of committal
 - Appropriately noted information or indictment (bill of indictment)
 - Faxed or e-mailed statement from the appropriate foreign authorities confirming that the relevant records indicate a conviction
 - Statutory declaration attesting to confirmation of the conviction

Note: These should be obtained even if the individual concedes the allegation.

Note: An NCIC printout is not considered sufficient evidence of US offences.

Convictions outside Canada - A36(1)(b) & A36(2)(b) (Part 2)

- Factual background that led to the conviction(s). This evidence may be obtained from the courts, the police authorities in the foreign country or the individual.
- The text of the foreign offence and the text of the equivalent Canadian offence. This evidence is required to establish equivalence. With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from an accredited website (such as a government or law school site), law libraries, embassies or consulates. The texts must be introduced into evidence at the admissibility hearing so that they will form part of the official record. It is recognized that not all countries codify their criminal laws in a text of statutes as is done in Canada. In such cases, officers should use their best efforts to obtain a legal description of the foreign offence. Such descriptions may be obtained from foreign jurisprudence in law libraries or from embassies or consulates. In the absence of such a description, evidence of the facts that led to the conviction may be sufficient to support a finding that the person is described.

Convictions outside Canada - A36(1)(b) & A36(2)(b) (Part 3)

- Evidence showing that the individual has not satisfied the Minister that they have rehabilitated. The individual has the onus of proving that the Minister has approved of their rehabilitation. However, the officer should nevertheless confirm whether such approval has been issued. This is to counter possible testimony by the person that rehabilitation approval was issued.
- Other documentary evidence includes, but is not limited to, credible media articles, scholarly journals and expert evidence, that is, evidence from a person who is a specialist in a subject and who may present an “expert” opinion.

Acts or Omissions - A36(1)(c) & A36(2)(c)

- Evidence of a prohibited act or omission outside Canada:
 - Police or security reports
 - Court records
 - Credible media articles
 - Arrest warrants
 - Statutory declarations from foreign officials that charges are pending, or that an indictment has been made
- Statutory declaration containing statements from the person made to an officer

Acts or Omissions - A36(1)(c) & A36(2)(c) (Part 2)

- The text of the foreign legislation and the text of the Canadian legislation to establish that the:
 - Act or omission is an offence in the foreign jurisdiction
 - Foreign offence equates to the Canadian
 - Canadian offence is the type specified in the allegation

With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from an accredited website, law libraries, embassies or consulates.

Other documentary evidence includes, but is not limited to, credible media articles, scholarly journals and expert evidence.