



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Protected B

Officer Options

Officer Induction Training Program
X3035-N
January 2016

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Participant Guide *with Instructor Notes*

Training and Development Directorate

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The Training and Development Directorate, Canada Border Services Agency, developed this material in partnership with the Programs Branch. The content was reviewed for technical accuracy in June 2012.

Examples and scenarios have been created using fictional names. Any resemblance to persons real, imaginary, or deceased is purely coincidental. There is no intention for examples to depict stereotyping on any basis.

Unless otherwise stated, whenever the masculine pronoun is used, both men and women are included.

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The Training and Development Directorate maintains the master version of this document.



This document was created using the template version dated June 2013.

Updates

Section	Description	Effective as of	Date	By
1.3.9	Update: the exclusion period for misrepresentation is now for a five-year.	OITP 6	June 04, 2015	FF
1.3.7	Instructor note pertaining to conditions for issuing TRP for A36(2) and one-time only fee exemption for FN and instructor note regarding a fee exemption for issuing TRP under A41 only has been incorporated into the lesson text under the table located under the Authority to Issue header within this teaching point. (Helpdesk received June 29, 2015)	OITP 6	July 2, 2015	MB
Exercises 3, 5 &6	44(1) report form look modified (contents are still the same)	OITP 7	October 6, 2015	FF

Lesson Setup Requirements

For this lesson you will need:

A) Reference documents:

- *Immigration and Refugee Protection Act (IRPA)*
 - Section 3
 - Section 6
 - Section 11
 - Section 15
 - Section 18
 - Section 20
 - Section 23
 - Section 24
 - Section 33
 - Section 34
 - Section 35
 - Section 36
 - Section 37
 - Section 38
 - Section 39
 - Section 40
 - Section 41
 - Section 44
 - Section 45
 - Section 55
 - Section 95
- *Immigration and Refugee Protection Regulations (IRPR)*
 - Section 7
 - Section 28
 - Section 37
 - Section 40
 - Section 42
 - Section 43
 - Section 45
 - Section 53
 - Section 63
 - Section 228
- *Citizenship and Immigration Canada Enforcement Manual (CIC ENF Manual)*
 - Chapter 3, Section 6
 - Chapter 5, Section 8
 - Chapter 7
 - Chapter 8
 - Chapter 20

B) Familiarity with the following:

- *CIC Overseas Processing Manual Chapter 1 (OP1), Section 8*
- *CIC Enforcement Manual Chapter 4 (ENF4)*
- *Operational bulletin PRG-2012-34*
- *All forms located in Appendix A*
- *IMM 1392*
- *BSF517*

C) Additional items include:

- Lesson Exercise Booklet handout for participants*
- Lesson Exercise Answers*
- GCMS*

Delivery Recommendations

The participant guide is designed to provide participants with all of the technical knowledge required for a new BSO. It is the responsibility of the participant to read the entire lesson on his own time. In class, as an instructor, you must present this content in a way that will facilitate the participants' learning and enhance their learning experience. This can be done by explaining the content in your own words, by providing examples and by encouraging the participants to be active in their learning.

Instructor notes have been included to provide timing, activity instructions and some additional information that goes above and beyond what is technically required by the participants. However, the lesson materials and instructor notes are not a "script" detailing how you should teach the material.

You are encouraged to thoroughly review this lesson prior to teaching it. You are responsible for providing context and realistic examples to help participants learn how to apply this knowledge in the workplace.

A few additional tips:

- *Rather than reading long portions of content, explain topics in your own words.*
- *Use various delivery methodologies; provide examples, have participants discuss or research a piece of legislation, have them prepare a job aid, etc.*
- *Watch the time carefully in order to ensure you are able to cover all of the material.*
- *Encourage participants to be active and responsible for their own learning. It is not your responsibility to ensure that they have read every single word of a lesson.*
- *Ensure that you prepare all the material that is required for the lesson prior the class.*
- *Try to relate the content to real situations on the job.*
- *Encourage the participants to read all the references included in the lesson.*

Instructor Notes Legend

The following icons and acronyms appear in the instructor guide and are intended to assist the instructor during delivery.













<i>Icon/ Acronym</i>	<i>Description</i>	<i>Icon/ Acronym</i>	<i>Description</i>
	<i>Emphasize:</i> Additional information is provided and requires attention drawn to it.		<i>Present:</i> Instructions for presenting the information.
	<i>Discussion Questions:</i> Questions for the instructor to ask participants.		<i>Reference:</i> Reference materials related to the content being presented.
	<i>Group Activity:</i> Instructor-lead group activity.		<i>Slide:</i> PowerPoint slide.
	<i>Group Discussion:</i> Questions or situations to generate a discussion.		<i>Time:</i> Time allocated for a specific section or activity.
	<i>Job Aid:</i> A job aid for participants.		<i>Written Activity:</i> Instructions for a written learning activity.
	<i>Online Activity:</i> Activity to be completed online.	QTC	<i>Question to Class</i>
		ANS	<i>Anticipated answers</i>
	<i>Video:</i> Video presentation		

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Before you Begin



5 minutes

Introduction

In previous lessons you learned how to grant temporary resident status and how to identify a person who may be inadmissible to Canada. You also learned the inadmissible sections under the *Immigration and Refugee Protection Act* (IRPA) and how to equate foreign convictions to offences under an act of parliament.

In this lesson you will learn what options you have as a Border Services Officer (BSO) when you believe that a person is inadmissible to Canada. You will also complete an A44 report acceptable for presentation to a Minister's Delegate and, potentially, to an Admissibility Hearing.

In this lesson you will also learn how your decisions must be governed by the principles of natural justice, including procedural fairness.

Your Learning Objectives

After completing this lesson, you will be able to:

- Define when an examination under IRPA ends at a port of entry (POE).
- Identify the options available to a BSO at a POE during an examination.
- Know the forms associated with these options.
- Define the roles of a BSO and a Minister's Delegate.
- Prepare an A44 report.
- Gather evidence in support of the A44 report.
- Discuss the burden of proof as it relates to establishing admissibility.
- Explain procedural fairness.

Prerequisites

- *Inadmissible Categories A34-A37*
- *Inadmissible Categories A38-A41*

Supplementary Learning Material

For this lesson you will need:

A) Reference documents:

- *Immigration and Refugee Protection Act (IRPA)*
- *Immigration and Refugee Protection Regulations (IRPR)*
- *Citizenship and Immigration Canada Enforcement Manual (CIC ENF Manual)*

B) Additional items include:

- Lesson Exercise Booklet
- Lesson Exercise Answers

Duration

Please note that these are estimates only.

Topic	Time
Before you Begin	0h 05m
Officer Options at the POE	2h 40m
Writing an A44 Report	1h 55m
Evidence	2h 35m
Lesson Summary	0h 15m
Total	7h 30m

1. Officer Options at the POE



160 minutes

A BSO working at PIL has two options when determining the admissibility of an individual:

1. Authorize entry; or
2. Refer for additional examination.

At secondary, the officer has a number of additional options to consider. BSOs may authorize entry to foreign nationals seeking to become temporary residents or permanent residents. A BSO may also determine that a person is inadmissible to enter Canada following a secondary examination; in this case, a number of options may be available including writing a report of inadmissibility pursuant to subsection 44(1) of IRPA (an A44 Report).

1.1 Designation of Officers and Delegation of Powers

Before we look at the various options available when dealing with an inadmissible person, it is important to understand where your authority to use these options comes from. Generally, the Minister of Citizenship, Immigration and Multiculturalism is responsible for the administration of *Immigration and Refugee Protection Act (IRPA)*. However, the Minister of Public Safety is responsible for the administration of this Act when it comes to the following:

- Examinations at the POE;
- Enforcement of IRPA, including arrest, detention and removals;
- The establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; and
- Declarations referred to in section 42.1 of IRPA.

Either Minister, depending on their responsibilities, may designate persons as officers in order to carry out certain provisions of IRPA, or delegate their authorities to persons to act on their behalf.

Designated Authority

A “designated authority” refers to the position that has been given the legal authority by the Minister to carry out the delegated function.

In statutes or regulations, references are often made to "an officer" or "any officer designated by the Minister". In order to identify the officer who may perform the relevant function or duty, either Minister, as the case may be, designates the titles of the positions of the officers. The designation gives the officers holding those titles the legal authority to carry out the duties of the Minister.



Explain to participants that the CBSA falls under the umbrella of the Department of Public Safety.

The memorandum of understanding between CIC and CBSA was signed April 1st, 2008.



We will discuss some examples where a BSO may or may not have been designated as officers to exercise certain options under IRPA later in the lesson.

Delegated Authority

In certain statutes or regulations, where the Minister has powers or duties, there may also be the authority for the Minister to delegate these authorities. He or she may exercise the option to delegate some or all of these authorities to persons at the appropriate level to carry out, where reference is made to the "Minister" in the statute, the duty or function. Once the authority is delegated, the person holding the position named in the delegation instrument may perform the relevant function or duty.

The Minister has the ability, by virtue of A6(2) of IRPA, to delegate these authorities to certain persons. We will refer to these persons as "Minister's Delegates". In the POE context, the Minister's Delegate could either be a BSO, a Superintendent, a Chief or a Director, depending on the nature of the case and/or the status of the traveller.

1.2 Examination of a Person at a POE

IRPA defines when an examination must occur and when it ends.

Subsection **A15(1)** of IRPA provides for an officer to proceed with an examination where a person makes an application to the officer in accordance with the Act.

R28(b) provides that a person seeking to enter Canada is making an application. Additionally, **A18(1)** requires that every person seeking to enter Canada appear for an examination to determine whether they have the right to enter Canada or may be authorized to enter and remain in Canada.

1.2.1 End of the Examination

The end of an examination is defined in the *Immigration and Refugee Protection Regulations* (IRPR). Pursuant to **R37** an examination is considered to end when one of the following actions occurs:

- **R37(a)** - A final determination is made that the person has a right to enter Canada, or is authorized to enter Canada, AND leaves the POE.
For example, an examination may be continued if during a baggage examination, evidence arises that indicates the person may be inadmissible to Canada, even if his passport has already been stamped (either at primary or secondary). The decision to admit the person is not final and may be revisited as long as he has not left the controlled area of the POE.
- **R37(b)** - A person in transit departs from Canada.
Certain passengers in transit through Canada are not required to appear for examination if they remain in a controlled area pending their onward flight out of Canada. They are nevertheless subject to examination. If for any reason, they seek to leave the area at an airport that is reserved for



Explain to participants that, before they can perform functions or duties as a Minister's Delegate, they must attend the Minister's Delegate Review (MDR) Training which is generally offered when an officer has acquired sufficient experience in the application of IRPA.



Refer participants to A15(1), A18(1) and R28 and give them a few minutes to review.



Emphasize that an examination is not final until the person has left the controlled area of the POE or, if no controlled area exists, has left the POE.

passengers who are in transit or who are waiting to depart Canada, they must report for examination (as per A18(2)).

- R37(c) - The person is allowed to leave Canada and an officer verifies their departure from Canada.
A CBSA officer may determine a person to be inadmissible and allow them to withdraw their application to enter Canada pursuant to R42 if no A44(1) report is prepared, or, if prepared, the Minister does not make a removal order. The examination concludes once their departure is verified. If for any reason the person does not depart, then the examination resumes.
- R37(d) - Entry is authorized by the Minister's Delegate.
The Minister's Delegate, in reviewing a report pursuant to A44(1), continues the examination of the person seeking entry. If the Minister's Delegate determines the report is not founded or if the evidence is not sufficient to support the allegation, the person will be allowed to enter Canada.
- A removal order is issued by the Minister's Delegate.
The Minister's Delegate, after reviewing a report pursuant to A44(1), may issue a removal order.
- The Minister refers the case to the Immigration Division for an admissibility hearing.
The Minister's Delegate, after reviewing a report pursuant to A44(1), may determine that the report is well founded and issue a removal order (R228) or refer the case to the Immigration Division of the Immigration and Refugee Board (IRB) for an admissibility hearing (R229).



The Immigration Division is an administrative tribunal whose decisions are made through the exercise of a quasi-judicial power. Members of the Immigration Division are impartial decision-makers who must consider the evidence presented at a hearing by the Minister's counsel and by the person concerned before making a decision (CIC ENF Manual 3, chapter 6).

1.3 Options Available to BSOs during an Examination at a POE

In this section we will discuss some of the options you have as a BSO when you determine a person may be inadmissible to Canada. Each of these options have different consequences for the traveller and, in many situations, one option may be more appropriate than another. One of the challenges facing the BSO is to determine which option is most appropriate given the circumstances of each case.

CIC ENF Manual references for instructors:

- *Options available to a BSO – CIC ENF4, chapter 15 (TRP) and chapter 18*
- *Arrests and detentions – CIC ENF4, CIC ENF7 and CIC ENF20*
- *Deposits and guarantees – ENF8*

Group Discussion – Inadmissible Persons

1. Can you describe why someone could be deemed inadmissible to Canada?
2. What do you think you could do as a BSO at the POE if you believe, on reasonable grounds, that a traveller is inadmissible?

1.3.1 Entry to Complete Further Examination

Situations or circumstances may arise where an adjournment is necessary to ensure a proper examination by a BSO in immigration secondary. This involves allowing the person to physically enter Canada while deferring the decision regarding their admission.

For example, an interpreter or additional documents, information or evidence may be required to determine admissibility.

A23 authorizes a BSO to allow a person to enter Canada for the purpose of further examination. R43(2) clarifies that persons who are authorized to enter Canada for further examination do not acquire temporary resident or permanent resident status and the examination is not considered complete as defined in R37.

Mandatory Conditions

If the BSO adjourns the examination under A23, R43(1) requires that mandatory conditions be imposed. Specifically, the individual must:

- Report in person at the time and place specified for the completion of the examination or the admissibility hearing;
- Not work in Canada;
- Not attend any educational institution; and
- Report in person to an officer at a POE if the person decides to withdraw his application to enter Canada.

Any person who has an examination deferred and fails to report as required for the continuation of the examination is reportable for non-compliance under A41(a), specifically A15(1) and R43(1)(a). In this case, a warrant may be issued and the person could be subject to removal order.



For an entry to complete further examination:

- Complete form BSF536 (IMM 5396B), Entry for further Examination or Admissibility Hearing.
- Document the entry in GCMS. Include detailed comments regarding the case.



A1: Refer participants to the Inadmissible Categories A34-A37 and A38-A42 lessons. Refer to sections 34 to 42 of IRPA. Answers could include inadmissibility for criminality, financial reasons, health, misrepresentation, non-compliance, etc.

A2: Discuss with participants what they think they could do. Answers could include refer to secondary (when working at PIL), detain for exam, entry for further examination, allow to leave, direction to leave, TRP, A44 report, etc.



Refer participants to Appendix A for an image of form BSF536.

1.3.2 Withdrawal of Application

This is commonly referred to as 'allowed to leave' and refers to cases where the person has been found to be inadmissible and voluntarily wants to leave Canada. This only applies in cases where you, as the examining officer, not the Minister's Delegate, have decided not to prepare an A44(1) report. If an A44(1) was prepared, withdrawal of application (or 'allowed to leave') can only occur if the Minister does not make a removal order or does not refer the report to the Immigration Division for an admissibility hearing.



For a withdrawal of application:

- Document the decision in GCMS with an Allowed to Leave.
- Or, complete form IMM 1282B, Allowed to Leave Canada.

1.3.3 Direction to Leave

A direction to leave is issued to a person who cannot be properly examined. This action usually occurs in instances where a person is intoxicated and cannot be properly examined, or cannot be examined due to mental incapacity. This action is more often used at land borders.

R40(1) states that an officer who is unable to examine a person who is seeking to enter Canada at a POE shall direct the person, in writing, to leave Canada. This does not apply to protected persons within the meaning of subsection 95(2) of the Act.



For a direction to leave:

- Document the direction in GCMS.
- Complete form BSF503 (IMM 1217B), Direction to Leave Canada. Give a copy to the person concerned and the transporter.



Mention to participants that R42(1) states an officer 'shall' allow a person to withdraw their application to enter Canada unless R42(2) the officer is preparing an A44 report.

R42(3) states the obligation of the person to confirm their departure.



Refer participants to Appendix A for an image of form IMM 1282B.



Refer participants to Appendix A for an image of form BSF503.

1.3.4 Direct Back or Direction to Return to the United States

A 'direct back' is used only in cases where travellers are arriving from the United States and it is used almost exclusively at land borders. This should not be used with refugee protection claimants.

A BSO may direct a person back to the U.S. when:

- There is no officer available to complete the examination.
- There is no Minister's Delegate available to review the report.
- The person has been referred to an admissibility hearing and there is no member of the Immigration Division readily available.



For a direction back:

- Document the direction in GCMS with a Direction to Return to the United States.
- Or, complete form BSF505 (IMM 1237B), Direction to Return to the United States.

1.3.5 Detention on Entry

Pursuant to subsection A55(3) of IRPA a BSO may detain a foreign national or a permanent resident upon entry if:

- they consider it necessary to do so in order for the examination to be completed; or
- there are reasonable grounds to suspect that the person is inadmissible on national security grounds or violating human or international rights.

This provision is often used in the airport environment and accompanies a withdrawal of application or allowed to leave.



For a detention on entry:

- Complete form BSF304, Order for Detention, if the person is transferred to a detention center or to a federal institution. Or, complete a GCMS entry.
- Complete form IMM 0689B, Notice of Rights Conferred by the Vienna Convention.
- Document the decision in GCMS (if the order for detention was not entered in GCMS).



Refer participants to section R41 for additional information.



Refer participants to Appendix A for an image of form BSF505.



QTC: What is the difference between a direct back and a direction to leave?

ANS: A direct back, or Direction to Return to the U.S., is used when services are not available to examine the traveller, whereas a Direction to Leave is used when a person cannot be examined due to circumstances within the traveller's control.



Form IMM 0689B, Notice of Rights Conferred by the Vienna Convention defines the rights conferred to the detained person. This form MUST be signed by the detainee, the BSO and the interpreter, if applicable.



Refer participants to Appendix A for images of forms BSF304 and 0698B.

1.3.6 Arrest and Detention without Warrant

Pursuant to subsection A55(2) of IRPA, an officer may, without a warrant, arrest a foreign national other than a protected person if there are reasonable grounds to believe the foreign national is inadmissible and a danger to the public or unlikely to appear for examination, a hearing, removal from Canada or a proceeding that could lead to the making of a removal order. A foreign national may also be arrested if he fails to satisfy the BSO as to his identity.



The same forms used for detention on entry (BSF304 and IMM 0689B) are also used for an arrest and detention without warrant. The rights conferred by the Vienna Convention apply any time a non-Canadian is arrested under any act.

In addition, pursuant to A55(1), when you encounter a person where there is an immigration warrant for their arrest, you must establish that it is still valid and execute the warrant.

Note: Arrest and detention under IRPA will be covered in detail in an upcoming lesson.

1.3.7 Temporary Resident Permit

Normally, persons who do not meet the requirements of IRPA are refused permanent resident or temporary resident visas abroad, denied entry at a POE or have their application refused within Canada.

However, in some cases, there may be compelling reasons for an officer to issue a temporary resident permit (TRP) to allow a person who does not meet the requirements of the Act to enter or remain in Canada (refer to subsection A24(1) of IRPA).

A TRP is issued to a foreign national who has been determined to be inadmissible. While the TRP does not overcome the inadmissibility, it does allow temporary entry by granting temporary resident status. A TRP is issued at the discretion of the officer.

The following must be considered before issuing a TRP:

- Validity (no longer than necessary);
- Eligibility (do circumstances warrant it);
- Assessment of benefit to Canada versus risk; and
- Fee of \$200 payable to the Receiver General for Canada.



You may mention that a BSO should consider issuing a TRP for an A36(2) inadmissibility, where the two following conditions exist:

1. the person was convicted of an offence, not including child pornography or any sexual offence, and received no term of imprisonment as part of the sentence imposed; AND
2. there have been no other convictions or acts committed that would render the person inadmissible.

As of March 1, 2012, a one-time only fee exemption is available to a FN who is granted a TRP where the two conditions listed above exist. **Reference: Operational Bulletin PRG-2012-34.**

A fee exemption would also apply if a TRP is issued to a FN who is inadmissible solely under A41, and who is either:

- a traveller in Canada's Transit Without Visa (TWOV) Program or the China Transit Trial (CTT) and, due to unforeseen circumstances, is unable to leave Canada the same day; OR
- a traveller whose aircraft was not destined to come to Canada but must land in Canada due to unforeseen circumstances beyond their control.

The following are examples of situations when it may be appropriate to issue a TRP:

- First time, unaware of inadmissibility.
- Coming for business reasons that would benefit Canadians.
- Urgent family situation such as a funeral, wedding or other low risk compassionate reasons.
- Traveller is truthful and cooperative.
- Minor inadmissibility such the lack of a visa (for example, a student with a valid study permit but an expired visa) or has minor, non-violent criminality.

Note: Any one of these reason may not necessarily be sufficient by itself; the officer always has to consider **all** the facts of the situation.

A TRP may be valid for re-entry or for only one trip and may be issued for up to 3 years (R63(d)).

A TRP does not exempt the permit holder from the requirement to apply for work and study permits if they wish to work or study in Canada. In the case of a visitor, if a TRP is issued, there is no need to issue a Visitor Record as well; the conditions would be outlined on the TRP.

Public Policy to Exempt Certain Foreign Nationals from the Inadmissibility Provisions for a Temporary Purpose

The public policy procedures apply to individuals where the need for facilitation through the issuance of a TRV rather than a National Interest TRP has been identified.

Entry to Canada and referral to Immigration Secondary is the decision of the BSO. In the event that persons approved for a TRV outside Canada under the public policy are referred to Immigration Secondary, the BSO will note that the public policy has been applied in GCMS and allow the person to proceed as normal.

BSOs still retain the discretion to refer such persons to a secondary examination if other sufficient indicators exist.



If a holder of a TRV issued under the public policy is referred to Immigration Secondary, an e-mail message should be sent to Case Management Branch (CMB) and the issuing visa office abroad.



In such a case, the visa will be coded PAX-1.

Authority to Issue

The authority to issue a TRP depends on the inadmissibility for which the permit is being issued. Below is a summary of the different designated authorities that are relevant to TRPs.

TRP Action	Designated Authority
Issue a TRP for: <ul style="list-style-type: none"> • Criminality A36(2); • Non-compliance A41; or • An inadmissible family member A42. 	BSO
Issue a TRP for: <ul style="list-style-type: none"> • Serious criminality A36(1); • Health grounds A38; • Financial reasons A39; or • Misrepresentation A40. 	Superintendent
Issue a TRP for: <ul style="list-style-type: none"> • Security A34 • Violation of human or international rights A35; or • Organized criminality A37. 	CIC National Headquarters only
Cancel a TRP that had been issued to overcome any inadmissibility	CIC only

For example, BSOs should consider issuing a TRP for an A36(2) inadmissibility, where the two following conditions exist:

1. the person was convicted of an offence, not including child pornography or any sexual offence, and received no term of imprisonment as part of the sentence imposed; AND
2. there have been no other convictions or acts committed that would render the person inadmissible.

As of March 1, 2012, a one-time only fee exemption is available to a FN who is granted a TRP where the two conditions listed above exist. **For more information, please refer to the Operational Bulletin PRG-2012-34.**

Please note that a fee exemption would also apply if a TRP is issued to a FN who is inadmissible solely under A41, and who is either:

- a traveller in Canada's Transit Without Visa (TWOV) Program or the China Transit Trial (CTT) and, due to unforeseen circumstances, is unable to leave Canada the same day; OR
- a traveller whose aircraft was not destined to come to Canada but must land in Canada due to unforeseen circumstances beyond their control.

1.3.8 Deposit or Guarantee upon Entry

In instances where a BSO has concerns regarding a foreign national's admissibility, but insufficient evidence to warrant refusing entry, he may consider requesting a deposit and/or guarantee for compliance with any conditions imposed (as per R45(1)).

In instances where a foreign national is authorized entry to Canada and a deposit is taken, that person's entry should be documented on a visitor record.

Refer to R45(2) and ENF8, Section 5.1 for additional guidelines.



Explain that participants will learn more about security deposits when they arrive at their POE.



Q: IRPA states an officer 'may' write a report. Why do you think it does not say 'shall' write a report?

A: This wording reflects the fact that officers have the discretion to utilize other options.

1.3.9 Report on Inadmissibility

An A44 report is a document that states a person is inadmissible to Canada. It serves as the notification of an allegation of inadmissibility to the Minister's Delegate or the member of the Immigration Division at an admissibility hearing (as per A44(1)).

The Role of the Minister's Delegate

The Minister's Delegate is an experienced BSO or superintendent who has been trained and designated to exercise additional duties under IRPA while still performing their regular duties.

When an officer prepares an inadmissibility report, that report must be referred to the Minister's Delegate for review. When reviewing the report, the Minister's Delegate can utilize any of the options that were available to the BSO, as well as the following:

- Issue a removal order; or
- Refer for an admissibility hearing.

Subsection A44(2) of IRPA gives the Minister's Delegate the authority to review the report and R228 of IRPR sets out the allegations that fall within the Minister's Delegate's jurisdiction to issue a removal order. In all other cases, if the Minister's Delegate wishes to obtain a removal order, the report must be referred to the Immigration Division for an admissibility hearing.

Types of Removal Order

As you have seen previously, there are three types of removal orders: departure order, exclusion order and deportation order. Depending under which type of order the person is removed, it will affect their future eligibility to return to Canada.

A **departure order** is made under R228(2) or R228(3) or under R229(1)(k). A person who has left Canada under a departure order would not require consent to return to Canada, under two conditions: (1) their initial departure was within 30 days of the order coming into force, and (2) they have obtained a certificate of departure from a BSO confirming their exit from Canada.

If one or both of those conditions are not met, the departure order becomes a deportation order.

An **exclusion order** is made under R228(1)(c)(i), (iii), (iv) or (v) or under paragraphs R229(1)(f), (g), (h), (j), (l), (m) or (n). Under an exclusion order, the person concerned may not return to Canada without the written consent of an Immigration officer (not a BSO) within 12 months or 5 years if issued for misrepresentation as per R225(3) after leaving Canada.

A **deportation order** is made under subsections R228(1)(a), (b), (c)(ii) or R229(1)(a), (b), (c), (d), (e) or (i). It is used for the most serious contraventions to IRPA and the IRPR. Under a deportation order, the person concerned may not return to Canada without the written consent of an Immigration officer (not a BSO) for any time after leaving Canada.



Briefly explain that additional training in the areas of issuing removal orders, appeal rights and eligibility determination for refugee claimants is required to perform the functions of the Minister's Delegate.

Current policy requires that BSOs work for a minimum of one year (beyond the completion of OITP) in an immigration secondary function prior to attending this training.



Briefly discuss this topic with the participants. Invite them to refer to sections 228 and 229 of the IRPR on their own time.



Tell participants that they will learn about confirmation of departure after they arrive at their POE.



Tell participants that this written consent is known as an Authorization to Return to Canada, or ARC.

1.4 Considerations

There are several options available to you as a BSO during an examination at a POE. It is important that you remember these options so that you can select the most appropriate one.

When selecting an option, keep in mind the objectives found in section 3 of IRPA; you must balance the need to facilitate entry of deserving individuals with denying access to those who pose a threat to Canada or whose bona fides are in question.

Some other examples of factors that might lead a BSO to find one option to be more appropriate over another include:

- Work location, for instance airport vs. land border environment (for example, the direct back option would not be reasonable in an air environment).
- Whether or not the foreign national has been truthful and cooperative.
- Foreign national will soon be eligible for rehabilitation and a removal order is not warranted.
- Family ties in Canada.
- Foreign national was unaware of the inadmissibility and the inadmissibility is less serious in nature.
- National policy encourages us to write A44 reports for cases involving serious criminality and security risks. Additional information may be found in Immigration ENF Manual 5 section 8.



25 minutes:

- 20 minutes for exercise 1

- 5 minutes for exercise 2



Exercise 1 - Officer Options Case Studies

Exercise 2 - Enforcement Options

2. Writing an A44 Report

An A44 report is only one of the many enforcement options that you may choose when you determine that someone is inadmissible to Canada. As BSOs you will be required to complete many A44 reports over the course of your career; this report is required for issuing a removal order against a person.

2.1 Purpose and Legal Requirements

The inadmissible classes can be found in sections 34 to 42 of IRPA. Subsection A44(1) of the Act provides the avenue for making a formal allegation of inadmissibility against a person. This takes the form of a "Report Under Subsection A44(1) of IRPA", which is completed in GCMS or a hand-written carbon-copy form in case of emergency.

The A44 report is a **legal document**, which sets out the alleged inadmissibility. Upon completion, it must be transmitted to a Minister's Delegate who will determine if the inadmissibility is well founded and supported with sufficient evidence.

The report must specify the exact paragraph of inadmissibility upon which you based your decision that the person concerned should not be admitted to Canada.

In cases of inadmissibility for A41, the report must set out the specific requirement of the Act or Regulations that is not being complied with. For example, in the case of a foreign national who is inadmissible for lacking a temporary resident visa, it is not enough to write that he is inadmissible under A41(a) because he does not comply with a requirement of the Act or Regulations. It is necessary to specify which requirement he does not meet; in this case A20(1)(b) and R7.

In addition, the report must be correct and complete in all other respects. Specifically:

- It must be issued and signed by the BSO who conducted the examination.
- The subject's name must be complete and spelled correctly, and his date of birth properly cited.
- The place and date of issue must be cited.
- All other sections of the report must be properly completed.

When the Minister's Delegate determines that your report is well founded, he then has the legal jurisdiction to proceed to a further decision on the case.



115 minutes

In this section we will learn:

- *the purpose and legal requirements of an A44 report; and*
- *how to write an A44 report.*



The A44 report is addressed to the Minister of Citizenship and Immigration (but the review is done by the Minister's Delegate).

2.1.1 Admissibility Hearing

One of the options available to the Minister’s Delegate who has received an A44 Report is to cause an admissibility hearing to be held. An admissibility hearing is a quasi-judicial hearing at which the person concerned may be represented by counsel and evidence is presented before a member of the Immigration Division who makes a final ruling on the person's admissibility to Canada.

In cases where an admissibility hearing is to be held, it becomes even more important that your A44 Report be complete and accurate, as it serves as the basis for the admissibility hearing. The hearings officer (HO) represents the Minister at the admissibility hearing. He must present evidence to support your opinion that the subject should not be admitted to Canada and argues the case through questioning of the subject and, possibly, witnesses.

To assist the HO in this function (and to aid the Minister’s Delegate in making a decision in the case), another form may need be completed whenever an A44 Report is prepared. It is called a Case Report/Case Claim Highlights (IMM 5051B). This form sets out the background details of the person concerned, describing his arrival, identification documents, history, purpose of travel, and the reason(s) why you find the person inadmissible. This will help the Minister’s Delegate make a proper decision on the case and, should he cause an admissibility hearing to be held, the Case Report/Case Claim Highlights will provide the HO all the background information needed to effectively argue the case before a member of the ID.

2.1.2 Hybrid Reports

In cases where you, the BSO, are considering reporting the person for more than one allegation, you should consider whether each allegation falls within or outside the Minister’s Delegate’s jurisdiction; this will determine how you will proceed with the allegations.

In instances where the Minister’s Delegate receives one report containing multiple allegations, some of which are within their jurisdiction and others which are not, the report must be referred to the Immigration Division. If you write two separate reports, one for each jurisdiction, the Minister’s Delegate has the option to choose which report to action. If the choice is to action the report that falls within the Minister’s Delegate’s jurisdiction, the other report is not actioned.



Refer to ENF 5, section 11.1 for more information on the Case Report form.



This form and its use may vary from region to region.



Case notes should always be **factual, concise** and should **never be based on unsubstantiated opinions**. Remember that Immigration files are accessible to the public under the *Access to Information Act* and *Privacy Act*.



Both of these Acts were discussed in prior lessons.

2.2 Completion of an A44 Report

Although not all of the A44 reports you complete will appear before a board member at the Immigration Division, each report should be constituent. Because the report is an allegation rather than evidence, anything that you refer to in the report must be supported by fact.

2.2.1 Four functions of an A44 Report

An A44 report is completed by a BSO in order to:

1. inform a person of the allegation being made against them (natural justice);
2. bring the allegation before a decision-maker (i.e. Immigration Division or Minister's Delegate);
3. record an officer's decision in GCMS; and
4. record the disposition of the report.

2.2.2 Parts of an A44 Report

An A44 report is divided into four parts: biographical data, status of individual, allegation and narrative.

Biographical Data

Biographical data provides detailed information regarding the identification of the subject. Accuracy is of utmost importance. The misspelling of a name or an error in the date of birth puts into question whether the person named in the report is the same individual as the person before the decision maker. Careful proofreading is essential.

Status

Is the subject a foreign national or a permanent resident? Has the foreign national been authorized to enter Canada or not? This information will determine wherein lies the burden of proof – with the CBSA after authorization or with the subject prior to authorization.

Allegation

The correct cause code must be selected. When citing the allegation, you must choose a cause code that reproduces the right subcategory. The cause selected must be narrow enough to be specific but also broad enough to accommodate.

For example, if you are reporting a PR with a Canadian conviction for which a sentence of more than 6 months was imposed, make sure you have the cause code for that specific allegation (A13, A14 or A15) since there are three cause codes for A36(1)(a).

Narrative

In the narrative section, document all information that supports the allegation. Break down the allegation into its elements and then make sure there is a statement of fact to support each element.





Explain that with a foreign offence, the BSO must equate the foreign offence to a Criminal Code offence in their report narrative.

2.2.3 A44 Report Narrative DOs and DON'Ts

Keep in mind the following when completing an A44 report narrative:

When Writing an A44 Report Narratives	Example
<input checked="" type="checkbox"/> DO: Include a fact for each element of the allegation.	For example, when dealing with a previously deported person, one of the elements would be "was removed from Canada". A statement of fact to include in the narrative would therefore be "Mr. Traveller was removed from Canada on November 21, 1998 at Douglas, British Columbia".
<input checked="" type="checkbox"/> DO: Include only relevant facts in chronological order	When dealing with a previously deported person, it would be irrelevant to state that the traveller had come into Canada without reporting for examination. Even though this fact might be important to the overall nature of the case, it is not relevant to the particular allegation made. As required, additional details of the case can be included in the case highlights/case file notes.
<input checked="" type="checkbox"/> DO: Identify the facts as thoroughly as possible.	It is not enough to state that the subject "was ordered deported". Rather, include all of the pertinent details such as "on November 21, 1998 at Douglas, British Columbia".
<input checked="" type="checkbox"/> DO: Use IRPA terminology correctly.	When referring to a legal entry, state "Mr. Traveller was authorized to enter" rather than "Mr. Traveller came into Canada".

When Writing an A44 Report Narratives	Example
<p> Do not include an opinion.</p>	<p>It would be inappropriate to conclude your narrative by stating "and therefore should be ordered deported".</p>
<p> Do not draw inferences.</p>	<p>It is the Immigration Division's role to draw the inferences and come to a decision. In the narrative section of the A44 report, the BSO is simply laying out the facts that support the already stated decision that the person concerned is inadmissible.</p>



- Exercise 3 - A44 Report Errors**
- Exercise 4 -A44 Report Narrative Facts**
- Exercise 5 - Writing an A44 Report**



50 minutes:

- 10 minutes for exercise 3
- 10 minutes for exercise 4
- 30 minutes for exercise 5



155 minutes

3. Creating a Case File

The gathering of evidence for the case file is a continuous process. As you examine a traveller seeking entry to Canada, it is good practice to note the relevant information provided to you, even if you admit the traveller without issuing any documentation.

However, the ability to take notes and create a case file becomes critical once you have determined that someone is inadmissible; even more so if you have decided to prepare an A44 Report.

As you have seen earlier, once an inadmissibility has been identified and the allegation has formally been documented on an A44 report, this report must be transmitted to a Minister's Delegate for review. If the Minister's Delegate determines your report is valid and if he decides to refer it to an Admissibility Hearing, the Immigration Division of the Immigration and Refugee Board would then make the final decision regarding the person's admissibility. Determining that a person is inadmissible is one challenge; convincing a decision-maker to share this determination is another.

To convince the decision-maker, you must rely on evidence. The better prepared, the more complete and the more reliable the evidence, the more likely it is to convince.

Finally, your notes will allow you, and ultimately the decision-maker, to determine that you made your determination in a fair and just manner.

3.1 What is Evidence?

Evidence is anything that tends to prove or disprove the existence of an alleged fact.

There are three categories of evidence: physical, verbal and documentary.

Group Discussion - Categories of Evidence

Can you provide examples of the three different types of evidence?

1. Physical evidence.
2. Verbal evidence.
3. Documentary evidence.



Q: Ask participants to name examples of each type of evidence and record them on flip chart. Further specify the types of evidence that could be presented at an admissibility hearing.

A1: Although commonly found in a criminal trial, examples of physical evidence could include stolen property, drugs, weapon, etc. This type of evidence is almost never used at an immigration hearing.

A2: Some examples of verbal testimony include the person concerned, the BSO or an expert witness.

A3: Some types of documentary evidence include passports, immigration forms, birth certificates, letters, pay stubs, airline ticket, itinerary, Certificates of Conviction or Police Certificates.

3.2 Case File Notes

There are three formats used for documenting, in your case file, the facts that lead you to conclude that the person you are examining is inadmissible:

1. Narrative summary
2. Question and answer
3. Admission

Each has strengths and weaknesses that should be considered when deciding on which format to use.



The styles are described in CIC ENF Manual 7 section 14.

Narrative Summary

The narrative summary style consists of a declaration recounting the facts known to the officer, For example: "I interviewed John DOE and he told me that..." The narrative summary would also include statements of facts pertaining to actions taken or observed by the officer.



Give participants a few minutes to read the narrative summary style example. Discuss the strengths and weaknesses of this style.

Example	I am a border services officer and, on the 5 th of October 2006 at Vancouver International Airport, Richmond, BC, I interviewed one John DOE. He told me that his name was John DOE, and that he was born the 13 th of May in 1954 in Denver Colorado, USA; that he was neither a Canadian citizen nor a permanent resident of Canada; that he is seeking to enter Canada to visit his relatives for the weekend; that he was convicted in Denver Colorado in May 2005 of Driving While Under The Influence; that he has not applied for or received a pardon for his conviction.
Strengths	<ul style="list-style-type: none"> ✓ Efficient ✓ Concise
Weaknesses	<ul style="list-style-type: none"> ✗ Officer's interpretation of events ✗ May be selective ✗ Could be based on hearsay

Question and Answer

The question and answer style is simply a record of an interview in which all the questions and answers are carefully recorded.



Give participants a few minutes to read the question and answer style example. Discuss the strengths and weaknesses of this style.

<p>Example</p>	<p>I am a border services officer, that on the 13th of April 1991 at Vancouver International Airport, Richmond , BC I interviewed one John DOE, and asked him the following questions (Denoted by "Q ") and received the following answers (Denoted by "A") :</p> <p>Q : What is your name? A : Q : When and where were you born? A : Q : Is that A : Yes Q : Are you a Canadian citizen or permanent resident of Canada? A : No Q : Why are you coming into Canada? A : To visit my in-laws for the long weekend. My wife and son travelled together to Canada last week but I could not accompany them as I had to work. Q : How long do you intend to stay in Canada? A : Three days, just the long weekend. Q : Have you ever been charged or convicted of a crime in the United States or any other country? A : Yes, I was convicted of Driving Under the Influence in Denver Colorado years ago. I received a fine. This was my only charge or conviction.</p>
<p>Strengths</p>	<ul style="list-style-type: none"> ✓ Reproduces an exact conversation allowing the reader to draw his/ her own conclusions ✓ Objective version of an interview
<p>Weaknesses</p>	<ul style="list-style-type: none"> ✗ May not be as convenient as the narrative style ✗ May require documenting several questions required to establish one fact ✗ Does not allow the recording of observed facts (such as the subject's behaviour during questioning)

Admission

The admission style consists of a statement by the subject. It is an objective statement of fact because it is not subject to interpretation and recording errors by the officer. It is, however, the least effective format, unless the subject makes the statement in the presence and with the assistance of counsel. In the absence of counsel, the reader might have doubts that the statement was made entirely voluntarily with full knowledge as to the consequence of his actions.



Give participants a few minutes to read the admission style example. Discuss the strengths and weaknesses of this style.

Example	<p>I am an American citizen. I am not a Canadian citizen and I don't have permission to live in Canada permanently. My birth date is</p> <p>I am coming to Canada to look for work in the construction industry. I heard there are a lot of jobs in Canada, so I thought I might be able to find work. I have not applied for a work permit. I was hoping to work for cash and get paid under the table.</p>
Strengths	✓ Contains the subject's own words
Weaknesses	<ul style="list-style-type: none"> ✗ Could suggest entrapment ✗ The officer usually has to assist in its completion to the point where it is not purely the subject's own statement



Note: *The Federal Court of Appeal has frowned on the use of this type of writing style.*



Form IMM 1392B

<http://cicintranet.ci.gc.ca/cicexplore/english/form/imm1000/IMM1392B.pdf>



Depending on your office/Region, it may or may not be the POE officer's responsibility for collecting documentary evidence for an admissibility hearing.

3.2.1 Writing a Narrative Summary

Any case going to a hearing can be divided into three segments that need to be addressed with evidence: identity, inadmissibility and detention factors.

Narrative Summary Segment	What to Include in the Summary	
Identity	In every case include: <ul style="list-style-type: none"> • Full name • Date of birth • Place of birth • Citizenship 	In some cases include: <ul style="list-style-type: none"> • Aliases • Mother's maiden name • Father's name • Country of last permanent residence
Inadmissibility In many cases, successfully proving inadmissibility at an admissibility hearing rests on the documentary evidence provided by the officer.	Support each element of every allegation you are making with the corresponding fact. Each element is a fact requiring proof. Whenever possible, include originals or certified copies of documents (Certificate of conviction, passports, medical certificates, etc.).	
Detention Detention factors will only pertain where you wish to exercise your authority to detain.	Put forward those facts that are known to you about the person's concerned behaviour, history or present circumstances that support your decision to detain him or her. The kind of information required will be covered in the Search, Seizure, Arrest and Detention under IRPA lesson.	


3.2.2 Case File Notes DOs and DON'Ts


In addition to properly documenting the subject's identity, inadmissibility and detention factors, keep in mind the following Do's and DON'Ts when completing a narrative summary:

<input checked="" type="checkbox"/> DO	<input checked="" type="checkbox"/> DON'T
<ul style="list-style-type: none"> ✓ Limit yourself to the facts ✓ Include only facts relating to the case ✓ Include the date of the declaration ✓ Include the signatures of the declarant and the person receiving the declaration ✓ Use proper IRPA terminology 	<ul style="list-style-type: none"> ✗ Do not express opinions ✗ Do not draw conclusions ✗ Do not use legal or technical terms

3.2.3 Notes and Legal Considerations

The duty to act fairly is comprised of various rights and obligations, which must be observed. One of the major principles of natural justice is the right to have a fair and impartial decision-maker. For a decision to be disqualified it is not necessary to show actual bias or acts that are not impartial; the mere perception of bias may suffice.

 The consequences of poor note taking could be significant. Refer to Appendix B for highlights of the Baker Decision (an example of a case where poor note taking lead to important consequences).

 Some of the concepts in the Baker case are complex. The decision refers to “best interest of the child” and “humanitarian and compassionate considerations”. The case is being presented now to demonstrate the consequences of poor note taking and consequences of the inclusion of personal opinions and conclusions.


Refer participants to the highlights of the Baker Decision in Appendix B. Give them a few minutes to read and then debrief.

3.3 Burden and Standard of Proof

Since evidence is always required to support A44 reports, it is important to revisit the topic of proof: the burden of proof and the standard of proof.

Simply put, the burden of proof refers to the obligation to prove or disprove a position. The standard of proof refers to the level of proof required to support a position.

According to section 33 of IRPA, the standard of proof for determining inadmissibility under sections 34 to 37 is “reasonable grounds to believe” while the standard of proof for the other sections is “balance of probabilities”.

 Q1: Ask participants to identify who has the responsibility (the burden of proof) to establish is an individual is admissible to Canada.

A1: Under the provisions of paragraph A45(d), this depends on whether or not the person has been authorized to enter Canada.

- The Minister is responsible for establishing that a person WITH lawful status in Canada is inadmissible.

- An individual WITHOUT lawful status in Canada (i.e. seeking entry or entered illegally) is responsible for establishing that they are not inadmissible.

Q2: What is the difference between reasonable grounds to believe and balance of probabilities?

A2: Balance of probabilities means that the evidence shows that the facts as alleged are more probable than not. It is the civil standard and is a higher standard than reasonable grounds. However, this standard is lower than the standard used in criminal proceedings (beyond a reasonable doubt).

Reasonable grounds is a legitimate belief in a serious possibility based on credible evidence..The fact need not be proven but there must be enough reason to believe it true. This is more than mere suspicion.

Group Discussion

1. Burden of Proof: Who has the responsibility of establishing admissibility to Canada?
2. Standard of Proof: What is the difference between the standards reasonable grounds to believe and balance of probabilities?

3.4 Statutory Declaration

A statutory declaration is an affidavit or written declaration made under oath before an authorized official. It can be used to support a decision or an action taken by a BSO under IRPA. It can also be used as evidence to support an A44 report under IRPA at a Minister's Delegate review or at an admissibility hearing.



Form IMM 1392B, Declaration.



Statutory Declaration forms are currently not widely used across the country. Most times the officer will record their own examination notes while conducting an interview.

Statutory declarations derive their weight as evidence from the authority contained in section 41 of the *Canada Evidence Act*. The statements contained in them are certified to be true and have the same force and effect of oral testimony made under oath.

Although they have the same effect, the contents of the declarations are not necessarily of greater probative value than verbal testimony. Rather, because they are not subject to cross-examination, they may be accorded less weight than verbal testimony. Therefore, if a witness who is subject to cross-examination testifies to facts contrary to the contents of the declaration, greater weight may be assigned to the concerned person's evidence.

The advantage of statutory declarations is one of expediency. It is however, secondary evidence, the primary evidence being the viva voce (live voice) testimony itself. For this reason a statutory declaration may offend the best evidence rule and is best used when the declarant's testimony is not likely to be tested on cross-examination.

When entering a statutory declaration containing a statement from the appellant or claimant, even if he does not object on the basis of the best evidence rule, the effect of the statutory declaration is normally diminished by the following considerations:

- Was an interpreter present, and if so, can the department prove the interpreter's competence?
- Was the person confused or feeling threatened or exhausted by travel at the time they made the statement?

All of these considerations may lessen the impact of the evidence contained in a statutory declaration; especially if it is contradicted by the person's verbal testimony.

An officer signing a statutory declaration should be a disinterested party who has nothing to gain by inventing facts or misconstruing information. The wording of your declarations should reflect this reality.



Remind participants of the importance of taking quality notes and writing accurate and precise reports is essential.

If a file is created, all notes created by a BSO during an examination must be placed on the file.

It is important when presenting a contradiction in a person's circumstances to provide him with an opportunity to explain the contradiction. Only after he has failed to provide a credible explanation for the contradiction have you succeeded in making your point. Fairness requires that you give the person an opportunity to explain any contradictions.



Exercise 6 - Statutory Declaration Errors

Exercise 7 - Completing a Statutory Declaration



30 minutes:

- 10 minutes for exercise 6
- 20 minutes for exercise 7

Refer participants to the Lesson Exercise Booklet to complete exercises 6 and 7.

3.5 Procedural Fairness

One of the most significant grounds for judicial review is procedural fairness. The reason that this ground is often the basis for successful judicial reviews is that the concept of procedural fairness is constantly in a state of evolution.

Procedural fairness requires that the person concerned be given a reasonable opportunity to present his case as well as the opportunity to address the CIC and/or CBSA concerns. Procedural fairness also requires that the officer who is to make the decision be the one who examines all the evidence and information submitted and the person concerned must be given the reasons for the decision.



Discuss this concept with the class to ensure understanding. Reference CIC OP Manual 1, section 8.

The following are some of the principles of procedural fairness:

- **The right to be heard.**
 This means that the person concerned must be aware of the case that concerns him. Anything being considered by the decision maker should normally be disclosed to the person concerned. The record of decision must show that the officer made it after assessing all pertinent information from the applicant.
- **The right to have an unbiased decision maker.**
 Is there a reasonable apprehension of bias?
- **The right to an independent assessment.**
 The decision maker must exercise his authority independent of anyone else. Phrases such as "I am obliged to" or "my hands are tied" do not indicate an independent decision maker.

Discretion must not be improperly fettered. Officers may, of course, take advice before making a decision but it should be plain to the person concerned that the officer has used his authority to decide freely.



Fetter: to restrict or confine.

The record of decision should also indicate that, after weighing guidance among all relevant factors, the officer came to his own conclusion. If an officer tells the person concerned that a decision on their case is a result of advice from a superior, headquarters or procedure manuals, they are fettering their discretion. They would be violating two other principles of procedural fairness, namely: (1) whoever hears must decide; and (2) applicants must have the opportunity to disabuse decision makers of their concerns.

Lesson Summary

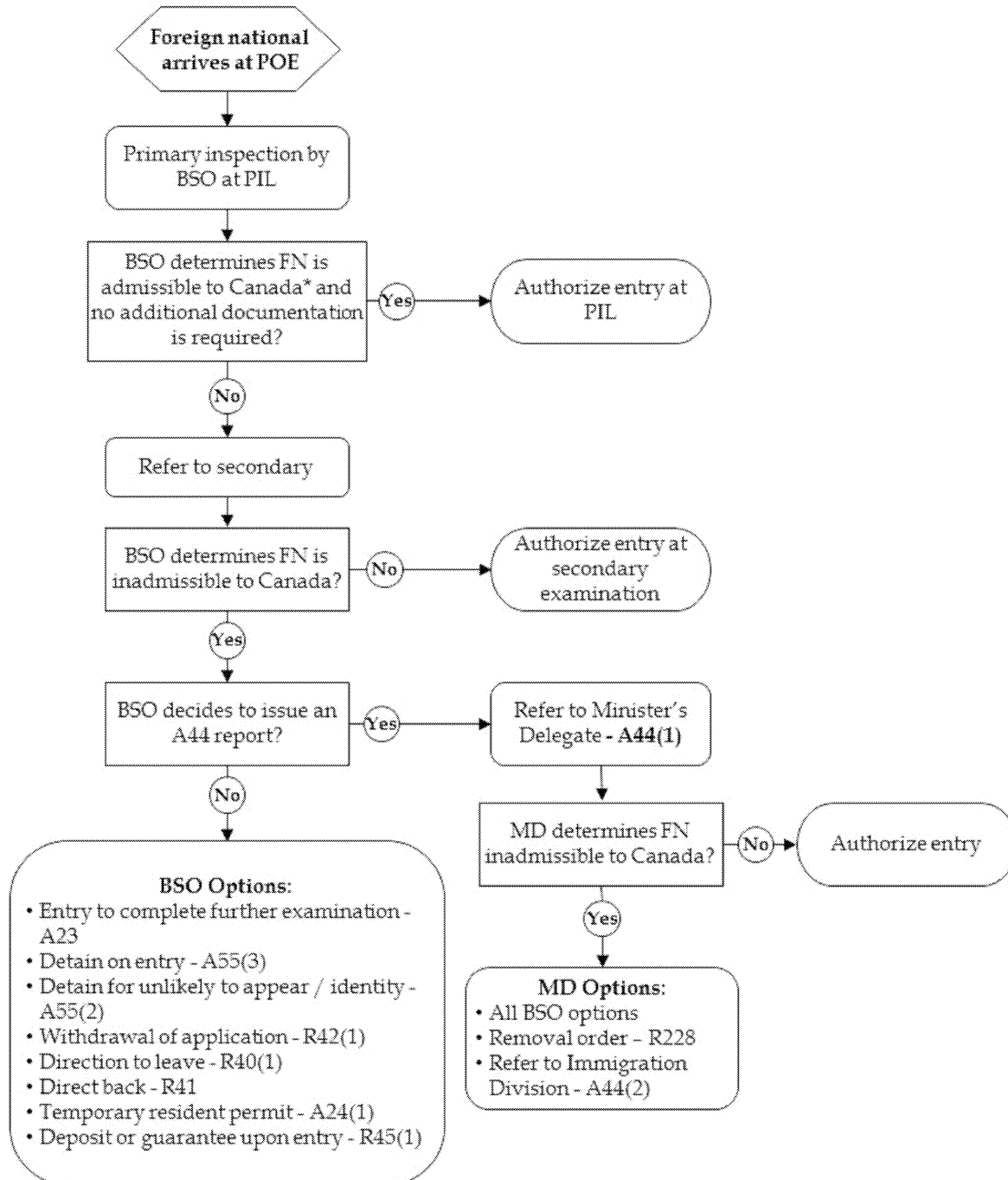


15 minutes

Officer Options Summary

The following diagram is a simple representation of the admissibility process for foreign nationals at the POE.

Review the process diagram with the participants and answer any questions they may have.



* NOTE: This process only focuses on the admissibility of the traveller.

Keep in mind as you exercise your officer options under IRPA, that you must gather all required evidence (documents, notes, statements, etc.) for the case file. You must do this in order to ensure procedural fairness and, when the case is referred, to allow the decision maker to determine the proper course of action.

Overview

In this lesson you learned:

- When an examination ends at a port of entry.
- What options a BSO may consider when determining how to proceed in the case of a foreign national who they believe may be inadmissible to Canada.
- The role of the Minister's Delegate.
- How to write an A44 report.
- The evidence required to support an A44 report.
- How to write case file notes and a statutory declaration.
- The burden of proof and standard of proof.
- The principles of natural justice.

Next Steps

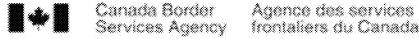
Ensure that you review the content of this lesson thoroughly and see your instructor as soon as possible if you have any questions.

Specifically, you should review:

- CIC Enforcement (ENF) Manuals 7, 8 and 20

Appendix A: Forms for Inadmissibility Options

BSF536, Entry for Further Examination or Admissibility Hearing



ENTRY FOR FURTHER EXAMINATION OR ADMISSIBILITY HEARING CONTRÔLE COMPLÉMENTAIRE OU ENQUÊTE

Surname • Nom de famille				Given name(s) • Prénom(s)				File no. • N° de dossier				Client ID • ID du client			
Date of birth Date de naissance		D - J		M		Y - A		Country of birth • Pays de naissance				Country of citizenship • Pays de citoyenneté			
Address in Canada • Adresse au Canada															

In accordance with section 23 of the *Immigration and Refugee Protection Act* you are authorized to enter Canada for:

Conformément à la section 23 de la *Loi sur l'immigration et la protection des réfugiés* l'entrée au Canada peut être autorisée en vue :

- further examination.
- an admissibility hearing.

- d'un contrôle complémentaire.
- d'une enquête.

The following conditions are imposed on your entry:

Les conditions suivantes sont imposées à votre entrée :

You are required to report for further examination or your admissibility hearing as specified below.

L'obligation de se présenter en personne aux date, heure et lieu indiqués pour que soit effectué ou complété le contrôle ou l'enquête, le cas échéant

You may not engage in any work in Canada.

L'interdiction d'occuper un emploi au Canada.

You may not attend any educational institution in Canada.

L'interdiction de fréquenter un établissement d'enseignement au Canada.

You must report in person to an officer at a port of entry if you withdraw your application to enter Canada.

L'obligation de se présenter à un agent à un point d'entrée, si cette personne retire sa demande d'entrée au Canada.

Date				Time - Heure				Location - Endroit				<input type="checkbox"/> Report in person Vous présenter en personne				<input type="checkbox"/> Submit documents by mail Envoyer les documents par la poste			
D - J		M		Y - A				Hours Heures											

NOTE: This authorization to enter Canada does not confer status. Failure to comply with the above conditions may lead to the issuance of a warrant for your arrest and the making of a removal order against you.

NOTA : L'autorisation à entrer au Canada ne confère aucun statut. En cas de non-respect des conditions imposées ci-dessous, vous pourriez faire l'objet d'un mandat d'arrestation et d'une mesure de renvoi.

_____												D - J				M		Y - A					
Officer - Agent												Date											
I have read and understand the contents of this form. I accept and will comply with the conditions imposed.												J'ai lu le présent formulaire et j'en comprends le contenu. J'accepte et je vais me conformer aux conditions imposées.											

Signed - Signé																							

I, _____, solemnly declare that I have faithfully and accurately interpreted in the _____ language the information provided above. I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.												Je, _____, déclare solennellement avoir interprété fidèlement et exactement en _____ les renseignements fournis ci-dessous. Je fais cette déclaration solennelle croyant en conscience qu'elle est vraie et sachant qu'elle a la même force et les mêmes effets que si je l'avais faite sous serment.											
<input type="checkbox"/> By telephone Par téléphone												_____											
Signature of person making declaration - Signature du déclarant																							

Declared before me _____ at _____ this _____
 Déclaré devant moi _____ à _____ ce _____
 day of _____ of the year _____
 jour de _____ de l'an _____

The information provided on this form is collected under the authority of the *Immigration and Refugee Protection Act*. This information is stored in Personal Information Bank CIC PPU 042 or CIC PPU 054. You have the right of access to it and to its protection under the *Privacy Act*.

Les renseignements fournis dans ce formulaire sont recueillis en vertu de la *Loi sur l'immigration et la protection des réfugiés*. Ces renseignements sont conservés dans les fichiers de renseignements personnels CIC PPU 042 ou CIC PPU 054. Ils sont protégés et vous pouvez les consulter en application de la *Loi sur la protection des renseignements personnels*.

BSF503, Direction to Leave



Canada Border Services Agency
 Agence des services frontaliers du Canada

PROTECTED
PROTÉGÉ **A** when completed
 une fois rempli

DIRECTION TO LEAVE CANADA

ORDRE DE QUITTER LE CANADA

FOSS ID no. - N° d'ID SSOBL	
File no. - N° de référence	
To - Pour Surname of person concerned - Nom de la personne concernée	First name and initials - Prénom et initiales
Address - Adresse	
Date of examination - Date du contrôle D - J M Y - A	Port of entry - Point d'entrée
Province	

You are hereby directed to leave Canada as an officer was unable to examine you. See privacy statement at the bottom of this form.

Vous êtes par les présentes, ordonné de quitter le Canada puisque l'agent ne peut effectuer le contrôle. Voir au bas du présent formulaire l'énoncé portant sur la protection des renseignements personnels.

_____ Signature of Officer - Signature de l'agent	<table border="1"> <tr> <td style="width: 10%;">D - J</td> <td style="width: 10%;">M</td> <td style="width: 10%;">Y - A</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table> Date	D - J	M	Y - A			
D - J	M	Y - A					

**NOTICE TO TRANSPORTER CONCERNED
 (Where applicable)**

Under the terms of the *Immigration and Refugee Protection Regulations*, you are hereby ordered to carry, or cause the above-named person to be carried from Canada.

**AVIS AU TRANSPORTEUR COMMERCIAL CONCERNÉ
 (S'il y a lieu)**

En application des *Règlements sur l'immigration et la protection des réfugiés*, vous êtes par les présentes enjoint de transporter ou de faire transporter la personne précitée hors du Canada.

_____ Signature of Officer - Signature de l'agent	<table border="1"> <tr> <td style="width: 10%;">D - J</td> <td style="width: 10%;">M</td> <td style="width: 10%;">Y - A</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table> Date	D - J	M	Y - A			
D - J	M	Y - A					

NOTE: For a greater understanding of the obligations of transporters under the *Immigration and Refugee Protection Act*, write to Citizenship and Immigration HQ, Ottawa, Ontario K1A 1L1.

NOTA: Si vous désirez être mieux informé des obligations que doivent remplir les transporteurs commerciaux aux termes de la *Loi sur l'immigration et la protection des réfugiés*, veuillez écrire à l'Administration centrale de Citoyenneté et Immigration Canada à Ottawa (Ontario) K1A 1L1.

The information on this form is collected under the authority of the *Immigration and Refugee Protection Regulations - Section 40* for the purpose of serving a direction order to leave Canada. The personal information on this form is protected in accordance with the *Privacy Act*. The information may be disclosed to internal or external bodies as a consistent use for program evaluation and reporting to senior management.

L'information fournie dans le présent formulaire, qui a été collectée en vertu du *Règlement sur l'immigration et la protection des réfugiés - Section 40*, est requise afin de servir un ordre de quitter le Canada. Les renseignements personnels fournis dans ce formulaire sont protégés en vertu de la *Loi sur la protection des renseignements personnels*. Les renseignements peuvent être divulgués à des organismes internes et externes de l'Agence des services frontaliers du Canada pour un usage compatible utilisé pour les évaluations des programmes et informer la haute direction.

You have the right to access and/or correct your personal information under the *Privacy Act - Section 12*. The information collected is described under the Personal Information Bank *Traveller Processing CBSA PPU 1101* which is detailed at www.infosource.gc.ca.

Vous avez le droit d'accéder à vos renseignements personnels et/ou d'y apporter des corrections en vertu de l'article 12 de la Loi sur la protection des renseignements personnels. Les renseignements recueillis sont décrits dans le fichier de renseignements personnels *Le traitement des voyageurs ASFC PPU 1101*, qui est présenté en détail sur le site www.infosource.gc.ca.

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF THE CANADA BORDER SERVICES AGENCY
 FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'AGENCE DES SERVICES FRONTALIERS DE CANADA

BSF505, Direction to Return to the United States



Canada Border Services Agency / Agence des services frontaliers du Canada

PROTECTED / PROTÉGÉ **A** when completed / une fois rempli

DIRECTION TO RETURN TO THE UNITED STATES

ORDRE DE RETOURNER AUX ÉTATS-UNIS

Surname - Nom de famille		Given name(s) - Prénom(s)		FOSS ID no. - N° d'ID SSOBL	File no. - N° de référence
Date of birth / Date de naissance	D - J	M	Y - A	Country of birth - Pays de naissance	Country of citizenship / Pays de citoyenneté
Permanent or temporary address in the United States - Adresse permanente ou temporaire aux États-Unis					

You are directed to return to the United States pursuant to section 41 of the *Immigration and Refugee Protection Regulations* in that:

- no officer is able to complete an examination;
- the Minister is not available to consider a report under subsection 44(2) of the Act;
- an admissibility hearing cannot be held by the Immigration Division;

You may return to Canada at the time and place specified below at which time:

- an officer will be available to examine your application to enter Canada;
- the Minister will be available to consider a report made under subsection 44(2) of the Act;
- an admissibility hearing will be conducted by the Immigration Division.

Vous devez retourner aux États-Unis en application de l'article 41 du *Règlement sur l'immigration et la protection des réfugiés*, car :

- aucun agent n'est en mesure d'effectuer un contrôle complet;
- le ministre n'est pas disponible pour l'examen du rapport établi à votre sujet aux termes du paragraphe 44(2) de la Loi;
- une enquête ne peut être tenue par la Section de l'immigration.

Vous pouvez retourner au Canada à la date, l'heure et lieu précisés ci-dessous. À ce moment-là :

- un agent sera en mesure d'effectuer un contrôle complet de votre demande d'entrée au Canada;
- le ministre sera disponible pour l'examen du rapport établi en vertu du paragraphe 44(2) de la Loi;
- une enquête pourra être tenue par la Section de l'immigration.

Location - Endroit	Date D - J M Y - A
	Time - Heure

If you desire to continue with your application to enter Canada, please return on the date and time mentioned above.

Si vous souhaitez maintenir votre demande d'entrée au Canada, veuillez vous présenter à la date et à l'heure mentionnées ci-dessous.

Signature of officer - Signature de l'agent	Date D - J M Y - A
Port of entry - Point d'entrée	

**Affix
Photograph
Apposer la
photographie**

The information on this form is collected under the authority of the *Immigration and Refugee Protection Regulations - Section 41* for the purpose of serving a direction to return to the United States. The personal information on this form is protected in accordance with the *Privacy Act*. The information may be disclosed to internal or external bodies as a consistent use for program evaluation and reporting to senior management.

You have the right to access and/or to correct your personal information under the *Privacy Act - Section 12*. The information collected is described under the Personal Information Bank *Traveller Processing CBSA PPU 1101* which is detailed at www.infosource.gc.ca.

cc - File All details of this form should be entered in FOSS as a status entry.

L'information fournie dans le présent formulaire, qui a été collectée en vertu du **Règlement sur l'immigration et la protection des réfugiés - Section 41**, est requise afin de servir un retour temporaire vers les États-Unis. Les renseignements personnels fournis dans ce formulaire sont protégés en vertu de la *Loi sur la protection des renseignements personnels*. Les renseignements peuvent être divulgués à des organismes internes et externes de l'Agence des services frontaliers du Canada pour un usage compatible utilisé pour les évaluations des programmes et informer la haute direction.

Vous avez le droit d'accéder à vos renseignements personnels et/ou d'y apporter des corrections en vertu de **l'article 12 de la Loi sur la protection des renseignements personnels**. Les renseignements recueillis sont décrits dans le fichier de renseignements personnels **Le traitement des voyageurs ASFC PPU 1101**, qui est présenté en détail sur le site www.infosource.gc.ca.

c.c. Dossier Tous les renseignements figurant sur ce formulaire doivent faire l'objet d'une entrée du statut au SSOBL.

BSF505 (11) THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF THE CANADA BORDER SERVICES AGENCY / FORMULAIRE ÉTABLI PAR LE MINISTRE L'AGENCE DES SERVICES FRONTALIERS DE CANADA

BSF304, Order for Detention



PROTECTED B when completed
PROTÉGÉ B une fois rempli

ORDER FOR DETENTION ORDONNANCE DE DÉTENTION

The information collected on this form is under the authority of *Immigration and Refugee Protection Act*. It is protected and may be disclosed to internal or external bodies as a consistent use, or pursuant to other provisions listed under section 8(2) of the *Privacy Act* <http://laws.justice.gc.ca/en/P-21/index.html>. The information is held in Canada Border Services Agency Bank Immigration Enforcement CBSA ENF 008. Further explanations about the information contained in this Bank may be found in the Info Source guide located in public libraries, or online at www.infosource.gc.ca

FOSS no. - N° SSOBL

Les renseignements recueillis dans ce formulaire sont sous l'autorité de la *Loi sur l'immigration et la protection des réfugiés*. Les renseignements recueillis sont protégés et peuvent être divulgués aux organismes internes ou externes pour un usage compatible, ou conforme aux dispositions énumérées sous l'article 8(2) de la *Loi sur la Protection des renseignements personnels* <http://lois.justice.gc.ca/fr/P-21/index.html>. Les renseignements recueillis sont conservés dans les fichiers de l'Agence des services frontaliers du Canada Exécution concernant l'immigration ASFC ENF 008. D'autres explications au sujet des renseignements contenus dans ces fichiers se trouvent dans la publication Info Source disponible dans les bibliothèques publiques, ou en ligne au www.infosource.gc.ca

TO:
POUR :

In accordance with the provisions of section 55 of the *Immigration and Refugee Protection Act*.
Conformément aux dispositions de l'article 55 de la *Loi sur l'immigration et la protection des réfugiés*.

I hereby order that _____ Date of Birth _____ be detained
J'ordonne, par les présentes, que _____ Date de naissance _____ soit détenu(e)

forthwith for
immédiatement aux fins

- an examination
d'un contrôle
- an admissibility hearing
d'une enquête
- removal
d'un renvoi
- a proceeding that could lead to Minister's determination under A44(2)
d'une procédure pouvant mener à une détermination du ministre en vertu de L44(2)
- identity
d'identité
- suspected inadmissibility on grounds of security or for violating human or international rights, serious criminality, criminality or organized criminality
d'être soupçonné d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou pour grande criminalité, criminalité ou criminalité organisée
- being a designated foreign national under A20.1(2)
être un étranger désigné en vertu de A20.1(2)

Criminality
Criminalité Yes No
Oui Non

Detention publication provided
Publication liée à la détention fournie Yes No Language _____
Oui Non Langue _____

Dated at _____ this _____ day of _____ of the year _____
Fait à _____ ce _____ jour de _____ de l'an _____

Signature of officer - Signature de l'agent

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF PUBLIC SAFETY
FORMULAIRE ÉTABLI PAR LE MINISTRE DE LA SÉCURITÉ PUBLIQUE



IMM 0689B, Notice of Rights Conferred by the Vienna Convention



NOTICE OF RIGHTS CONFERRED BY THE VIENNA CONVENTION AND TO THE RIGHT TO BE REPRESENTED BY COUNSEL AT AN ADMISSIBILITY HEARING

PROTECTED WHEN COMPLETED - B
PROTÉGÉ UNE FOIS REMPLI

AVIS DES DROITS CONFÉRÉS EN VERTU DE LA CONVENTION DE VIENNE ET DU DROIT DE SE FAIRE REPRÉSENTER PAR UN CONSEILLER À UNE ENQUÊTE

FOSS no. - N° du SSOBL

Surname - Nom de famille		Given name(s) - Prénom(s)		File no. - N° de référence
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Date of birth Date de naissance	D - J M Y - A	Country of birth - Pays de naissance	Country of citizenship - Pays de citoyenneté
------------------------------------	---------------------	--------------------------------------	--

Accompanying dependents - Attach separate sheet, if necessary
Personnes à charge accompagnant le revendicateur - Joindre une feuille distincte, au besoin

Family name Nom de famille	Given name(s) Prénom(s)	File no. N° de référence	Date, place and country of birth Date, lieu et pays de naissance	M	F
			D - J M Y - A	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

The nearest representative of your government is:	Le représentant de votre gouvernement le plus près est :

APPLICABLE TO PERSONS ARRESTED OR DETAINED:
If you so request, an immigration officer will inform the nearest representative of your government that you have been arrested or detained. Any communication addressed by you to the nearest representative of your government will be forwarded by an immigration officer without delay. Your government representative will not be contacted at this time if you do not request it.

LES PERSONNES ARRÊTÉES OU MISES SOUS GARDE :
Si vous le demandez, un agent d'immigration informera le représentant de votre gouvernement de votre arrestation ou de votre mise sous garde. Toute communication adressée par vous à votre représentant de votre gouvernement sera transmise sans retard par l'agent d'immigration. Votre représentant de votre gouvernement ne sera pas informé de la situation de votre arrestation si vous ne faites pas de demande à cette fin.

Do you want your government representative to be informed of your arrest or detention? Yes No

Vous voulez-vous que votre représentant de votre gouvernement soit informé de votre arrestation ou de votre mise sous garde? Oui Non

SECTIONS 10(a) AND (b) OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS PROVIDES THAT:
Everyone has the right on arrest or detention:
a) to be informed promptly of the reasons therefor;
b) to retain and instruct counsel without delay and to be informed of that right.

LES ARTICLES 10(a) ET (b) DE LA CHARTE CANADIENNE DES DROITS ET LIBERTÉS PRÉVOIT QUE :
Tout individu a le droit, en cas d'arrestation ou de détention :
a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;
b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;

SECTION 167 OF THE IMMIGRATION AND REFUGEE PROTECTION ACT PROVIDES AS FOLLOWS:

167(1) Both a person who is the subject of Board proceedings and the Minister may, at their own expense, be represented by a barrister or a solicitor of their choice.

167(2) If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

Counsel need not necessarily be a lawyer. It may be any person, organization or society interested in your welfare.

Your right to counsel may be exercised at any time before or during an immigration admissibility hearing proceedings.

If you cannot afford legal counsel, access to legal aid may be made available to you.

167(1) L'intéressé peut en tout cas se faire représenter devant la Commission, à ses frais, par un avocat ou un autre conseil.

167(2) Est commis d'office un représentant à l'intéressé qui n'a pas dix-huit ans ou n'est pas, selon la section, en mesure de comprendre la nature de la procédure.

Il n'est pas nécessaire que ce conseiller soit avocat, vous pouvez choisir une personne, le représentant d'un organisme ou d'une société qui s'intéresse à votre bien-être.

Vous pouvez vous prévaloir de votre droit de recourir aux services d'un conseiller en tout temps, avant ou pendant l'enquête de l'immigration.

Si vous n'êtes pas en mesure de payer le coût des services d'un avocat, vous pourriez avoir accès à l'aide juridique.

RECEIPT ACKNOWLEDGED - REÇU

D - J	M	Y - A
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Signature of person concerned - Signature de la personne concernée

I, _____, solemnly declare that I have faithfully and accurately interpreted in the language the information provided above. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Je, _____, déclare solennellement avoir interprété fidèlement et exactement en _____ les renseignements indiqués ci-dessus. Je fais cette déclaration solennelle croyant en conscience qu'elle est vraie et sachant qu'elle a la même force et les mêmes effets que si elle était faite sous serment.

See reverse of copy 1 for Privacy Statement.
Voir au verso de la copie 1 l'énoncé sur la protection des renseignements personnels.

Signature of person making declaration - Signature du déclarant

Date

Declared before me _____ at _____ this _____ day of _____ of the year _____.

Déclaré devant moi _____ à _____ ce _____ jour de _____ de l'an _____.

Signature of the officer - Signature de l'agent

PERSON CONCERNED / PERSONNE CONCERNÉE 1 CIC FILE / DOSSIER DU CIC 2

