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## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

Most recent date of changes: 2008-04-21

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#### **Updates to chapter**

##### **Listing by date:**

##### **Date: 2008-04-21**

The email address was corrected in section 4 of chapter ENF 14/ OP 19.

##### **2007-02-26**

Minor clarifications were made to section 16 of chapter ENF 14 / OP 19.

##### **2005-12-05**

ENF 14 / OP 19 has been updated to reflect the CIC and CBSA policy responsibility and service delivery roles.

##### **2004-09-02**

ENF 14 - Criminal Rehabilitation has been updated to reflect amendments to paragraph 18(2) of the *Immigration and Refugee Protection Regulations*. The amendments clarify the requirements for persons with a criminal record to benefit from deemed rehabilitation.

The sections affected by these changes include:

Section 3;

Section 5.1;

Sections 7.1, 7.2 and 7.3

##### **2003-09-02**

Minor changes/clarifications were made to chapter ENF 14 (OP 19).

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## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **1 What this chapter is about**

The aim of this chapter is to provide functional direction and guidance to officers, managers and others concerning the deemed rehabilitation and rehabilitation provisions for persons who have been described in [A36](#).

Policies and procedures are outlined for officers at NHQ, local offices and visa offices who will be providing recommendations and rendering decisions on applications for Deemed Rehabilitation and Rehabilitation.

This chapter includes guidelines to determine criminal equivalencies, foreign monetary values, documentation, and the calculation of the prescribed period of time, as well as factors to assess the decision on rehabilitation and the risk of recidivism.

The policy mandate for rehabilitation and deemed rehabilitation are the responsibility of CIC and the service delivery mandate is the responsibility of both CIC and the CBSA. For more information, please consult [IL 3](#), Designation of Officers and Delegation of Authority, and Business Process Maps ([links](#)).

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## **2 Program objectives**

Persons who have committed criminal acts are inadmissible to Canada.

In order to overcome this inadmissibility in meritorious cases, the *Immigration and Refugee Protection Act* provides authority for the Minister and delegated authorities to approve rehabilitation for persons described for serious criminality in [A36\(1\)\(b\)](#) and [A36\(1\)\(c\)](#), and described for criminality in [A36\(2\)\(b\)](#) and [A36\(2\)\(c\)](#).

The objectives of the Act with respect to rehabilitation are to:

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

The Act is to be construed and applied in a manner that:

- furthers the domestic and international interests of Canada; and
- ensures that decisions taken under the Act are consistent with the *Canadian Charter of Rights and Freedoms*.

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### 3 The Act and Regulations

Reference should be made to the Act and to the Regulations for full and complete wording of the texts, as the following references may contain abridged versions.

**Table 1: Legislative and regulatory authorities**

***Immigration and Refugee Protection Act***

Omissions	Act
<ul style="list-style-type: none"> <li>The facts that constitute inadmissibility under <u>A36</u> include facts arising from omissions, and include facts for which there are reasonable grounds to believe that they have occurred.</li> </ul>	<u>A33</u>
<b>A permanent resident or a foreign national is inadmissible on grounds of serious criminality</b>	<b><u>A36(1)</u></b>
<ul style="list-style-type: none"> <li><b>in Canada</b></li> <li>for having been convicted of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or a term of imprisonment of more than six months has been imposed</li> </ul>	<u>A36(1)(a)</u>
<ul style="list-style-type: none"> <li><b>outside Canada</b></li> <li>for having been convicted of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years</li> </ul>	<u>A36(1)(b)</u>
<ul style="list-style-type: none"> <li><b>outside Canada</b></li> <li>for committing an act that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years</li> </ul>	<u>A36(1)(c)</u>
<b>A foreign national is inadmissible on grounds of criminality</b>	<b><u>A36(2)</u></b>
<ul style="list-style-type: none"> <li><b>in Canada</b></li> <li>for having been convicted of an offence under an Act of Parliament punishable by way of indictment, or convicted of two offences under any Act of Parliament not arising out of a single occurrence</li> </ul>	<u>A36(2)(a)</u>
<ul style="list-style-type: none"> <li><b>outside Canada</b></li> </ul>	<u>A36(2)(b)</u>

<ul style="list-style-type: none"> <li>for having been convicted of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or having been convicted of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament</li> </ul>	
<ul style="list-style-type: none"> <li><b>outside Canada</b></li> <li>for committing an act that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament</li> </ul>	<u>A36(2)(c)</u>
<b>The following provisions govern A36(1) and A36(2)</b>	<b>A36(3)</b>
<p>An offence that may be prosecuted either</p> <ul style="list-style-type: none"> <li>summarily, or</li> <li>by way of indictment</li> </ul> <p>is deemed to be an indictable offence, even if it has been prosecuted summarily</p>	<u>A36(3)(a)</u>
<p>Inadmissibility under A36(1) and A36(2) may not be based on a conviction in respect of which</p> <ul style="list-style-type: none"> <li>a pardon has been granted and has not ceased to have effect or been revoked under the <i>Criminal Records Act</i>, or</li> <li>there has been a final determination of an acquittal</li> </ul>	<u>A36(3)(b)</u>
<p>Matters referred to in A36(1)(b), A36(1)(c) and A36(2)(b), A36(2)(c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period,</p> <ul style="list-style-type: none"> <li>satisfies the Minister that they have been rehabilitated, or</li> <li>is a member of a prescribed class that is deemed to have been rehabilitated</li> </ul>	<u>A36(3)(c)</u>
<p>A determination of whether a permanent resident has committed an act described in A36(1)(c) must be based on a balance of probabilities</p>	<u>A36(3)(d)</u>
<p>Inadmissibility under A36(1) and A36(2) may not be based on an offence designated as</p> <ul style="list-style-type: none"> <li>a contravention under the <i>Contraventions Act</i>, or</li> <li>an offence under the <i>Young Offenders Act</i></li> </ul>	<u>A36(3)(e)</u>

**Immigration and Refugee Protection Act**

**R17 - Prescribed Period**

	<b>Regulation</b>

<ul style="list-style-type: none"> <li>For the purposes of <u>A36(3)(c)</u>, the prescribed period is five years</li> </ul>	R17
<ul style="list-style-type: none"> <li>after the completion of an imposed sentence, in the case of the matters referred to in <u>A36(1)(b)</u> and <u>A36(2)(b)</u>, if the person has not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i>; and</li> </ul>	R17(a)
<ul style="list-style-type: none"> <li>after committing an offence, in the case of matters referred to in paragraphs <u>A36(1)(c)</u> and <u>A36(2)(c)</u>, if the person has not been convicted of a subsequent offence other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Young Offenders Act</i></li> </ul>	R17(b)

**R18(1) - Rehabilitation**

<ul style="list-style-type: none"> <li>For the purposes of <u>A36(3)(c)</u>, the class of persons deemed to have been rehabilitated is a prescribed class</li> </ul>	R18(1)
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**R18(2) - Members of the class**

The following persons are members of the class of persons deemed to have been rehabilitated:	R18(2)
<p>(a) persons who have been convicted outside Canada of no more that one offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if <b>all of the following conditions apply, namely,</b></p> <ul style="list-style-type: none"> <li>the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,</li> <li>at least 10 years have elapsed since the day after the completion of the imposed sentence,</li> <li>the person has not been convicted in Canada of an indictable offence under an Act of Parliament,</li> <li>the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Youth Criminal Justice Act</i>,</li> <li>the person has not within the last 10 years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Youth Criminal Justice Act</i>,</li> <li>the person has not before the last 10 years been</li> </ul>	R18(2)(a)



<p>convicted outside Canada of more than one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and</p> <ul style="list-style-type: none"> <li>the person has not committed an act described in paragraph 36(2)(c) of the Act.</li> </ul>	
<p>(b) persons convicted outside Canada of two or more offences that, if committed in Canada, would constitute summary conviction offences under any Act of Parliament, <b>if all of the following conditions apply, namely,</b></p> <ul style="list-style-type: none"> <li>at least five years have elapsed since the day after the completion of the imposed sentences,</li> <li>the person has not been convicted in Canada of an indictable offence under an Act of Parliament,</li> <li>the person has not within the last five years been convicted in Canada of an offence under an Act of Parliament, other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Youth Criminal Justice Act</i>,</li> <li>the person has not within the last five years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Youth Criminal Justice Act</i>,</li> <li>the person has not before the last five years been convicted in Canada of more than one summary conviction offence under an Act of Parliament, other than an offence designated as a contravention under the <i>Contraventions Act</i> or an offence under the <i>Youth Criminal Justice Act</i>,</li> <li>the person has not been convicted of an offence referred to in paragraph 36(2)(b) of the Act that, if committed in Canada, would constitute an indictable offence, and</li> <li>the person has not committed an act described in paragraph 36(2)(c) of the Act,</li> </ul>	R18(2)(b)
<p>(c) persons who have committed no more than one act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, <b>if all of the following conditions apply, namely,</b></p> <ul style="list-style-type: none"> <li>the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,</li> <li>at least 10 years have elapsed since the day after the commission of the offence,</li> <li>the person has not been convicted in Canada of an indictable offence under an Act of Parliament,</li> <li>the person has not been convicted in Canada of any</li> </ul>	R18(2)(c)

summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

- the person has not within the last 10 years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,
- the person has not before the last 10 years been convicted outside Canada of more than one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and
- the person has not been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

### R309 - Determination of rehabilitation - Fees

The following fees are payable for processing an application for a determination of rehabilitation under paragraph <u>A36(3)(c)</u> :	<u>R309</u>
<ul style="list-style-type: none"> <li>• in the case of a foreign national inadmissible on grounds of serious criminality under paragraph <u>A36(1)(b)</u> or (c) - \$1000</li> </ul>	<u>R309(a)</u>
<ul style="list-style-type: none"> <li>• in the case of a foreign national inadmissible on grounds of criminality under paragraph <u>A36(2)(b)</u> or (c) - \$200</li> </ul>	<u>R309(b)</u>

### 3.1 Forms

The forms required are shown in the following table:

**Table 2: Forms**

Form title	Form number
Immigrant Visa and Record of Landing	IMM 1000
Confirmation of Permanent Residence	IMM 5292B
Application for Rehabilitation	IMM 1444E
Fees for Immigration Services – Approval of Rehabilitation	IMM 5310B
Kit number only for Applying for Approval of Rehabilitation - Persons who are Inadmissible to Canada because of Past Criminal Activity	IMM 5312E

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#### **4 Instruments and delegations**

Rehabilitation approval is the authority from the Minister of C&I or delegated authority to overcome the inadmissibility of persons who have been convicted of criminal offences or have committed criminal acts outside Canada. Regulations provide the authority to delegate approval of criminal rehabilitation. See [IL 3 Delegations of Officers and Designation of Authority](#), for more information.

Applications for rehabilitation, controversial or contentious cases, and requests for advice are to be forwarded to NHQ at:

Coordinator

Rehabilitation Unit  
Case Review (BCM)  
Case Management Branch  
Jean Edmonds Tower North  
300 Slater Street, 9<sup>th</sup> floor  
Ottawa, Ontario  
K1A 1L1

Telephone: 613-954-6058

Fax: 613-957-2608

E-mail: [NAT-Case-Review@cic.gc.ca](mailto:NAT-Case-Review@cic.gc.ca)

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## ENF 14 / OP 19 Criminal Rehabilitation

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#### 5 CIC policy - Criminal inadmissibility

Persons who are described under A36(1)(a), (b) or (c), and A36(2)(a), (b) or (c) are criminally inadmissible to Canada.

The Act introduces the deemed rehabilitation class of persons who are described under A36(2)(b) and (c).

The Act provides authority for the Minister to approve the rehabilitation of persons described in A36(1)(b) or A36(1)(c) and A36(2)(b) or A36(2)(c). The granting of rehabilitation removes the grounds of inadmissibility. It is granted in meritorious cases when the Minister or the delegated authority is satisfied that the person concerned meets certain criteria, has been rehabilitated, and is highly unlikely to become involved in any further criminal activities.

The National Parole Board has the authority to grant and issue pardons to persons described in A36(1)(a) and A36(2)(a) who have been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment. Neither deemed rehabilitation nor rehabilitation can be granted for these offences.

For further guidance, refer to ENF 2/OP 18 – Inadmissibility.

Officers should consult the Immigration Classified (IC) 1 chapter, *Security and Criminal Screening of Immigrants*, and IC 5, *Criminal Screening of Applicants for Permanent Residence*, for cases that may have implications regarding security, criminal, organized crime, war crimes and crimes against humanity.

##### 5.1 Deemed rehabilitation – Essential elements

Persons inadmissible pursuant to A36(2)(b) and (c) are deemed rehabilitated if they satisfy the requirements for deemed rehabilitation set out in the Regulations.

The following are important factors that must be present for a person to be deemed rehabilitated:

**Note:** *These lists are not exhaustive. For a complete listing of all elements in R18(2), see references to the Act and Regulations in section 3, above.*

##### Table 3: Deemed rehabilitation – Essential elements

**R18(2)(a)** deals with A36(2)(b) - persons who have been convicted outside Canada of no more than one offence that is the equivalent in Canada to an indictable offence with a maximum punishment of less than 10 years' imprisonment.

The following factors must be present:

- at least 10 years have elapsed since the day after the completion of the imposed sentence;
- the person has not been convicted (in or outside Canada) of any other offence within the last 10 years, other than offences under the *Contraventions Act* or the *Youth Criminal Justice Act* (YCJA);

and

- the person is not otherwise inadmissible under A36.

**R18(2)(b)** deals with A36(2)(b) - persons who have been convicted outside Canada of offences equivalent in Canada to two or more summary conviction offences.

The following factors must be present:

- at least five years have elapsed since the day after the completion of all sentences;
- the person has not been convicted of any other offence (in or outside Canada) within the last five years, other than offences under the *Contraventions Act* or the YCJA; and
- the person is not otherwise inadmissible under A36.

**R18(2)(c)** deals with A36(2)(c) - persons who have committed only one act outside Canada that is an offence in the place it was committed and is equivalent in Canada to an indictable offence with a maximum punishment of less than 10 years.

The following factors must be present:

- at least 10 years have elapsed since the day after the offence was committed;
- the person has not been convicted of any other offence (in or outside Canada) within the last 10 years;
- the person is not otherwise inadmissible under A36.

For more information on applying the deemed rehabilitation provisions, see [section 7](#), below.

## 5.2 Individual rehabilitation – Essential elements

If a person who was convicted of an offence or who has committed an act or omission does not meet the eligibility criteria for deemed rehabilitation, that person may be eligible to apply for rehabilitation. That person should be adequately counselled on the criminal inadmissibility criteria, and whether or not they meet the criteria to apply either for rehabilitation under IRPA or a pardon under the *Criminal Records Act*.

The application of the criminal rehabilitation provisions in the Act is at the discretion of the Minister or the Minister's delegate, but these provisions do not constitute a right for persons who are criminally inadmissible to be considered under them. The officer is not required to counsel applicants on the existence or application of these provisions. However, in the interests of procedural fairness, applicants should be provided with an application kit if they appear to meet the eligibility criteria and request information or an application for rehabilitation.

Although officers do not have the authority to approve rehabilitation, they may nonetheless provide the applicant with an opinion on eligibility, and indicate whether a positive or a negative recommendation would likely be submitted to the delegated authority.

When a negative recommendation is likely, the officer should advise the person that the processing fee will not be refunded if the application is refused. If the person wants to submit an application for rehabilitation after being provided with a negative recommendation, an officer cannot refuse to accept the application for rehabilitation.

If a person has submitted an application for a temporary or permanent

resident visa, the application for criminal rehabilitation should be processed simultaneously. If a person requests rehabilitation after a refusal of a visa application, they would have to submit another visa application.

**Table 4: Rehabilitation elements - Minister's decision**

Conviction for offence	Commission of act or omission
Permanent Resident or Foreign National	Permanent Resident or Foreign National
Conviction outside of Canada	Committed act or omission outside of Canada
Described in A36(1)(b) or A36(2)(b)	Described in A36(1)(c) or A36(2)(c)
Equivalent to an offence under an Act of Parliament	Equivalent to an offence under an Act of Parliament
Punishable by term of imprisonment of less than or more than 10 years	Punishable by term of imprisonment of less than or more than 10 years
At least 5 years have elapsed since completion of sentence	At least 5 years have elapsed since commission of act or omission
No convictions for any subsequent offences	No subsequent acts or omissions
Not equivalent to a contravention under the <i>Contraventions Act</i>	Not equivalent to a contravention under the <i>Contraventions Act</i>
Not equivalent to an offence under the <i>Young Offenders Act</i>	Not equivalent to an offence under the <i>Young Offenders Act</i>

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## **6 Definitions**

### **Act (a.k.a. act of commission)**

An act is something done or performed, especially voluntary; a deed; the process of doing or performing; an occurrence that results from a person's will being exerted on the external world; any event which is considered to be a hybrid offence under Canada's *Criminal Code*.

A hybrid offence is one that may be prosecuted either by way of indictment or summary. In A36(3)(a), a hybrid offence is deemed to be an indictable offence, even if the Crown has elected to proceed by way of summary conviction.

When a foreign statute equates to an offence in Canada that may be prosecuted either by way of indictment or summary, it shall be considered to be equivalent to an indictable offence, regardless of the procedure chosen by the foreign prosecutor.

### **Omission (a.k.a. act of omission or negative act)**

The failure to do something that is legally required; a non-occurrence that involves the breach of a legal duty to take positive action; takes the form of either a forbearance or an omission.

### **Rehabilitation**

The Act does not define "rehabilitation".

*Black's Law Dictionary* defines rehabilitation as:

*The process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes.*

Within the immigration context, the Federal Court of Appeal has described the rehabilitation decision as an assessment of possible future comportment based on actions, attitudes and behaviour since conviction.

Rehabilitation may be demonstrated by the passage of time and through an examination of the person's activities and lifestyle, both before and after the offence, but does not mean that there is no risk of further criminal activity - only that the risk is assessed to be highly unlikely.

The person's reasons for wanting to come to Canada, e.g., sponsorship by spouse, are not factors in assessing rehabilitation but may be important factors in determining whether to facilitate the application.

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## ENF 14 / OP 19 Criminal Rehabilitation

### DISTRIBUTION LIMITED TO CIC AND THE CBSA

## 7 Procedure: Deemed rehabilitation

### 7.1 When are deemed rehabilitation provisions applicable?

Below are some examples of when the deemed rehabilitation provisions apply:

**Two or more summary offences [A36(2)(b)]  
+ passage of time of at least five years  
= Deemed rehabilitation (no fee)**

Deemed rehabilitation applies to overcome inadmissibility based on two or more A36(2)(b) summary offences, if the prescribed period of time of at least five years has elapsed.

A person is not criminally inadmissible for having committed one single summary offence.

**Only one indictable offence with a maximum penalty of less than 10 years A36(2)(b) + no subsequent offences  
+ passage of time of at least 10 years  
= Deemed rehabilitation (no fee)**

Deemed rehabilitation applies to overcome inadmissibility based on one single A36(2)(b) indictable offence, if the prescribed period of time of at least 10 years has elapsed.

**Individual rehabilitation granted + subsequent indictable offence with a maximum penalty of less than 10 years A36(2)(b)  
+ passage of time of at least 10 years  
= Deemed rehabilitation (no fee)**

In a case where individual rehabilitation had been granted, deemed rehabilitation provisions apply to the subsequent indictable offence with a maximum penalty of less than 10 years, if the prescribed period of time of at least 10 years has elapsed. When individual rehabilitation has been granted for one offence, a subsequent offence has no effect on the rehabilitation granted for that earlier offence.

### 7.2 When are deemed rehabilitation provisions not applicable?

The deemed rehabilitation provisions cannot be used to overcome inadmissibility for offences in the following situations:

- the prescribed period of time of five years has not elapsed for a person who has committed two or more summary offences;
- the prescribed period of time of 10 years has not elapsed for a person who has committed one indictable offence;
- a person has committed one indictable offence, and then committed a subsequent indictable offence;
- a person was deemed rehabilitated, and then committed a subsequent offence. Any subsequent offence has the effect of removing the application of the deemed rehabilitation provisions for any earlier offence(s); or

- the offence under A36(2)(b) is also described in A36(1)(b).

### 7.3. Applying deemed rehabilitation

The following checklists may assist officers in assessing whether deemed rehabilitation is applicable:

#### Scenario 1 [A36(2)(b)]:

**Convicted of an offence outside Canada that, if committed in Canada, would constitute an indictable offence**

Y/N	Elements required to be deemed rehabilitated [R18(2)(a)]
	Offence is punishable in Canada by a maximum term of imprisonment of less than 10 years
	At least 10 years have elapsed since the day after the completion of the imposed sentence
	No conviction in Canada for an indictable offence
	No convictions in or outside Canada within the last 10 years (other than an offence under the <i>Contraventions Act</i> or the <i>Youth Criminal Justice Act</i> (YCJA))
	Before the last 10 years, no more than one summary conviction in Canada and one conviction outside Canada equivalent to a summary offence
	Not otherwise inadmissible for an act described in <u>A36(2)(c)</u>

#### Scenario 2 [A36(2)(b)]:

**Convicted outside Canada of two or more offences that, if committed in Canada, would constitute summary conviction offences**

Y/N	Elements required to be deemed rehabilitated [R18(2)(b)]
	At least five years have elapsed since the day after completion of the imposed sentences
	No conviction in Canada for an indictable offence
	No convictions in or outside Canada within the last five years (other than an offence under the <i>Contraventions Act</i> or the YCJA)
	Before the last five years, no more than one conviction in Canada for a summary conviction offence (other than an offence under the <i>Contraventions Act</i> or the YCJA)
	No convictions outside Canada for an offence that, if committed in Canada, would constitute an indictable offence
	Not otherwise inadmissible for an act described in <u>A36(2)(c)</u>

#### Scenario 3 [A36(2)(c)]:

**Committed an act outside Canada that is an offence in the place of commission and, if committed in Canada, would constitute an indictable offence**

Y/N	Elements required to be deemed rehabilitated [R18(2)(c)]
	Offence is punishable in Canada by a maximum term of imprisonment of less than 10 years
	At least 10 years have elapsed since the day after the

	commission of the offence
	No convictions in Canada for any indictable offences
	No convictions in or outside Canada within the last 10 years (other than an offence under the <i>Contraventions Act</i> or the YCJA)
	Before the last 10 years, no more than one summary conviction in Canada and one conviction outside Canada equivalent to a summary offence
	No conviction outside Canada for an offence that is equivalent in Canada to an indictable offence

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#### 7.4 At a port of entry (POE)

If a person seeking entry to Canada at a POE admits to any criminal convictions, acts or omissions, or if the officer suspects that a criminal history exists, the officer must follow the steps below to determine if the person meets the criteria for deemed rehabilitation:

- determine the criminal history by a thorough examination of the person;
- conduct criminal checks during the interview, to the extent possible; and
- evaluate the person's criminal history against the criteria for deemed rehabilitation;

After the officer has determined that a person qualifies for deemed rehabilitation to overcome inadmissibility under A36(2)(b) or (c), the officer:

- shall not complete an A44 report with respect to criminal inadmissibility, as the person seeking entry is not a member of that class of inadmissible persons;
- is not required to issue a Temporary Resident Record nor to enter information in FOSS/NCMS on the person's convictions;
- may, however, as is the case for all temporary residents, issue a Temporary Resident Record or enter information in FOSS/NCMS concerning a foreign national who is a frequent traveller to Canada in order to assist in future examinations, or for any other enforcement concerns. A notation shall be added in the Remarks section of the Temporary Resident Record with respect to the deemed rehabilitation under A36(2)(b).

If it appears that a person may meet the criteria for deemed rehabilitation, but the officer is not satisfied of the person's eligibility for deemed rehabilitation on the basis of the available information or evidence, the officer may complete an A44 report.

After a determination is made that a person who is criminally inadmissible does not meet the criteria for deemed rehabilitation, the options available to an officer are to:

- allow the person to leave;
- recommend a Temporary Resident Permit;
- prepare an A44 report, and refer the case to the Minister's delegate who may refer the person to an admissibility hearing at the Immigration and Refugee Board (IRB);

- counsel the subject to make an application for individual rehabilitation at the POE; or
- counsel the subject to make an application for individual rehabilitation at a Canadian visa office.

### 7.5 Applications at a visa office

If a person applying for a temporary or permanent resident visa, or for a student or work permit, admits to any criminal convictions or acts or omissions, or if the officer suspects that, although a criminal history exists, the person may qualify for rehabilitation, the officer must:

- interview the person to determine the person's criminal history;
- conduct criminal checks, to the extent possible, or request the person to provide documentation that establishes details of the conviction;
- evaluate the person's criminal history against the criteria for deemed rehabilitation;
- determine if the person is seeking to enter Canada for a legitimate purpose (i.e., to immigrate, study, work, visit or for tourism); and
- assess the probability that the person will become involved in criminal activities or will be law-abiding while in Canada.

If an officer determines that a person, who has applied for a temporary resident visa (TRV) or a permanent resident visa (IMM 5292B), qualifies for and is deemed rehabilitated to overcome inadmissibility under A36(2)(b) or A36(2)(c), the officer shall add a notation in the Remarks section of the TRV or the IMM 5292B with respect to the deemed rehabilitation under A36(3)(c).

Persons who do not satisfy the officer that they meet the criteria for deemed rehabilitation may be advised to make an application for individual rehabilitation. (see [Appendix A](#))

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#### **8 Procedure: Individual rehabilitation at CIC, POE or visa office**

The procedure is as follows:

- office provides an Application for Criminal Rehabilitation Kit (IMM 1444E) to the person;
- officer counsels applicant on the process and ensures that the application is signed, dated and that all mandatory documentation, including a copy of the foreign statute, is attached;
- an interview may be required to clarify and assess any contradictions or inconsistencies of the information provided by the applicant. The applicant is advised that the purpose of the interview is to address the above concerns in order to render a recommendation on the application. If credibility is questionable and the applicant cannot provide satisfactory explanations, the officer may make outside inquiries to obtain third-party information;
- the officer provides the applicant with a copy of all information included in the submission to the decision-maker, and allows the applicant the opportunity to respond;
- Part C of the application is to be completed by the recommending and reviewing officers;
- the officer provides recommendation to CIC NHQ (see address in section 4 above) or to the delegated decision-maker (for information on delegated decision makers, please see IL3); and
- Part D of the application is to be completed by the recommending officer after the decision is made.

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#### **9 Procedure: Application for Criminal Rehabilitation kit**

A client who has been determined to be inadmissible should be provided with an Application for Criminal Rehabilitation kit which contains:

- Kit number only for Applying for Approval of Rehabilitation - Persons who are Inadmissible to Canada because of Past Criminal Activity (IMM 5312E);
- Application for Criminal Rehabilitation (IMM 1444E);
- instructions on how to complete the form; and
- information on the processing fees (IMM 5310B).

Application kits, telephone numbers and addresses are available from:

- the CIC Web site <http://www.cic.gc.ca>;
- the CIC Call Centre in Canada;
- Canadian Immigration Centres (local offices) and the CBSA ports of entry;
- visa offices (High Commission, Embassy or Consulate).

The kit has been developed to record all necessary information pertaining to the request for rehabilitation. Incomplete applications and fees will be returned to the applicant (see [appendix B](#)). The completed application kit, originals of all mandatory documentation and the fee must be sent to the appropriate authority at the local or NHQ level.

All documentation and submissions must be in written format. Material not in this format, e.g., photos or videos, will be returned to the applicant with the notification that they cannot be considered.

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#### **10 Procedure: Procedural fairness**

In the extensive case law from the courts on procedural fairness in immigration processing, it has been well established that an applicant is entitled to:

- 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; and
- to have the evidence fully and fairly considered.

The evolution of this doctrine in immigration litigation has resulted in the following rules for the processing of rehabilitation applications:

- The decision-maker must render the decision based on complete information. Therefore, all documents provided by the applicant must be forwarded to the decision-maker for consideration. A covering memorandum provided to the decision-maker that summarizes the contents of the documentation without the primary documentation is not sufficient.
- With the exception of information that must be exempted for security reasons, the applicant is entitled to receive and comment on any relevant documents obtained by the officer that will be considered by the decision-maker. In the comments section of the (IMM 1444E), the recommending officer must confirm that the applicant was provided with this opportunity.
- The applicant must be advised of the issues raised by the recommending officer and have the opportunity to respond to those issues.
- An officer cannot refuse to accept an application for rehabilitation if an application for admission is in progress.

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#### **11 Procedure: Interview considerations**

##### **Single minor offence**

An interview may not be required in cases where an applicant has little difficulty convincing the officer of their rehabilitation when it appears that the offence was an isolated event, out of character for the individual, and not indicative of a pattern of criminal behaviour.

##### **Multiple or more serious offences**

Applicants involved in the following types of offences may require an interview and a thorough assessment of their background:

- pattern of offences that suggests a criminal lifestyle;
- use of weapons or explosives;
- violence or hostage-taking;
- sexual assault;
- substance or alcohol abuse;
- use of force;
- trafficking of narcotics; and
- fraud.

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## **12 Procedure: Documentation**

### **12.1 Mandatory documentation**

The onus is on the applicant to ensure that the documentation provided clearly establishes the date at which the sentence was completed, and that the prescribed period of time has elapsed since the completion of the sentence. Such documentation would include the following:

- criminal clearance certificates from the appropriate authorities in areas where the applicant has resided for a period of six months or more during the past 10 years, unless the circumstances of the case warrant that one be requested for a lesser period of residence;
- applicants who have resided in the U.S.A. must also obtain a police record from the FBI, and a State certificate from each State in which they have resided during the past 10 years
- original or certified true copies of conviction certificates for all convictions. If the conviction certificate does not include sufficient information to establish the nature of the offence, court records or transcripts should be obtained;
- where the person alleges to be a juvenile offender, a copy of the foreign statute establishing special measures for young offenders and evidence that the conviction was dealt with under these measures must be provided;
- if the officer is satisfied that the applicant has unsuccessfully exhausted all avenues in attempting to obtain conviction certificates, a statutory declaration from the applicant which must describe the offence(s) in as much detail as possible may be provided, with an explanation of the reasons why the applicant was unable to obtain a conviction certificate;
- where there is no conviction, the applicant must sign a statutory declaration that describes the act or omission in detail;
- a copy of the foreign statute which states the section and elements of the offence that the person committed or for which the person was convicted;
- applicant's written statements, as requested in questions 15 and 17 of the IMM 1444E;
- RCMP criminal clearance certificate (in-Canada applicants only).

Documentation that establishes the applicant's identification must also be submitted, as follows:

- photocopy of passport that shows name, date of birth and country of birth;
- photocopy of driver's licence and birth certificate (only for U.S. citizens who acquired U.S. citizenship at birth).

## 12.2 Optional documentation

Optional documentation includes the following:

- certificate or letter of rehabilitation;
- probation or parole officer's reports;
- judge's comments, including recommendation for parole;
- pardons that do not annul convictions retroactively;
- victim impact statement or other court records that would indicate physical or psychological harm done to the victim and evidence of remorse or restitution; and
- letters of recommendation from public officials or respected private citizens.

**Note:** Documents not in English or French must be accompanied by a certified translation.

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Determination of criminal equivalency

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#### **13 Procedure: Determination of criminal equivalency**

In order to determine the ground of inadmissibility, the foreign offence must be equated with a Canadian federal statute.

The Federal Court of Appeal has ruled that three methods can be used to determine criminal equivalency:

- compare the elements of the Canadian and foreign statutes;
- examine the circumstances to determine whether the acts of which a person was convicted abroad or the acts or omissions committed could result in a conviction in Canada; or
- a combination of the two above.

##### **13.1 Canadian statute considerations**

Considerations include the following:

- the equivalent Canadian statute must be an Act of Parliament;
- municipal and provincial statutes are not applicable;
- contempt of court, which is based in common law, is not applicable;
- the Canadian statute must be in force at the time that the criminal equivalency is carried out;
- if wider than the foreign statute, compare the elements of the statutes to establish equivalency;
- if narrower than the foreign statute, examine the circumstances and documents pertaining to the offence, including the arrest report, charges, or statement from the offender;
- all Canadian equivalents should be used in support of the refusal when the foreign offence equates with more than one Canadian equivalent; and
- no legal requirement to find the equivalence that is the most similar and make a decision on that provision only.

##### **13.2 Foreign statute considerations**

CIC NHQ can provide assistance in determining criminal equivalence if a copy of the foreign statute is faxed, containing the section and elements of the offence that the person committed or for which the person was convicted.

- Where the foreign offence is wider than the Canadian statute, examine the circumstances of the offence to determine if it would fall within a more specific Canadian statute.
- Where there is a difference between the charge and the conviction,

e.g., as the result of plea-bargaining to a lesser charge, the conviction, not the charge, should form the basis of the equivalency.

- No equivalents exist for offences which may have an equivalent Canadian statute, but taken within the context that the offence occurred, would not likely result in a conviction in Canada.

In-Canada applicants should contact their embassy or consulate if they are having difficulty obtaining a copy of the foreign statute. If this is not possible, the officer should contact the visa office for assistance.

Overseas applicants can obtain foreign statutes from law libraries, the courthouse where the offence occurred, lawyers or local police authorities. An Internet search of the following Web sites may be of assistance in locating foreign statutes:

- <http://www.washlaw.edu/forint/forintmain.html> – Washburn University School of Law Library provides links to primary foreign and international legal resources.
- [http://www.unodc.org/pdf/crime/uncjin\\_links/uncjin\\_Links\\_%20010329.pdf](http://www.unodc.org/pdf/crime/uncjin_links/uncjin_Links_%20010329.pdf) – United Nations Crime Prevention and Criminal Justice Programme Network.
- <http://www.accesstolaw.org/default.asp> – Legal sources selected and annotated by Inner Temple Library that is most extensive in covering the U.K. and Commonwealth countries.
- <http://www.wings.buffalo.edu/law/bclc/resource.htm> – Buffalo Criminal Law Center provides access to criminal law material from both the United States and throughout the world, including criminal codes, criminal procedure codes and enforcement codes.
- <http://www.efc.ca> - Registration and membership are required for this site. The mandate of Electronic Frontier Canada (EFC) is to conduct research and promote public awareness in Canada regarding the application of the Canadian Charter of Rights and Freedoms to information technologies.
- <http://www.findlaw.com> – FindLaw is a search engine that provides sources for legal issues based on the country, subject, etc.

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### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **14 Procedure: Conversion of foreign monetary values for criminal equivalence**

Monetary values must be converted from foreign to Canadian currency so that criminal equivalence can be established for cases in which:

- an amount was affixed to the theft, fraud, or property crime;
- a fine was imposed or paid; or
- there is a value of restitution.

Further to the 1986 Federal Court of Appeal decision in *Kent Douglas Davis v. The Minister of Employment and Immigration*, the exchange rate in effect at the time of the commission of the offence should be used for conversion. The equivalent offence under the current Canadian statute should also be examined.

The Bank of Canada provides exchange rates back to 1990 at <http://www.bankofcanada.ca>

Statistics Canada provides exchange rates prior to 1990 at <http://www.statcan.ca/>

The Currency Site provides exchange rates at <http://www.oanda.com/convert/classic>

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### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **15 Procedure: Commission of act or omission**

A36(1)(c) and A36(2)(c) render inadmissible persons who have committed an act that occurred outside Canada which did not result in a conviction.

An "act" is something done, a completed action, something that happened, an event or circumstance.

An "omission" is a failure to do something, including the deliberate failure to act.

These provisions provide a means to prevent the admission of criminals who have not yet been convicted or who are fleeing prosecution. These provisions cannot be used in cases where a conviction has been registered and the officer is unable to find the appropriate evidence.

In determining whether the provisions should be applied, the following case elements must be established:

- reasonable grounds exist to believe that an act has taken place;
- the act occurred outside Canada; and
- the act is an offence under the laws of the country where it occurred, and the offence has a Canadian equivalent.

Pursuant to A33, the facts that constitute inadmissibility under A36 include facts arising from omissions for which there are reasonable grounds to believe they may have occurred, or are occurring.

**Note:** For commission of act provisions, refer to [ENF 2/OP 18](#).

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#### 16 Procedure: Calculation of the start date of the five-year or 10-year period

The following will assist in the calculation of the start date of the five-year or 10-year period:

**Act:** the date on which the act occurred.

**Conviction:** the date of the end of the sentence.

**Conviction and sentence *in absentia*:** not eligible for rehabilitation because the sentence has not been completed.

**Imprisonment without parole:** the date the term of imprisonment is completed.

**Parole:** the date on which parole ended.

**Probation:** is part of the sentence. Therefore, count from the end of the probation period.

**Supervised release:** the date is based on the termination date of the supervised release.

**Suspended driver's licence:** the period of suspension is included in the sentence. If there is imprisonment, the period of rehabilitation begins at the end of the completed sentence or at the end of the period of suspension, whichever is later.

**Suspended sentence:** the date of sentencing.

**Suspended sentence with fine:** the date on which the fine was paid, including any other costs, such as surcharges, court costs, restitution and compensation costs ordered by the Court. In the case of varying payment dates, the rehabilitation period starts on the date of the last payment.

**Suspended imprisonment:** the date of the end of the term of imprisonment that was suspended meaning the date the sentence would have ended had the sentence commenced immediately after the sentencing date. For example, in the case where the judge imposes a sentence of one month, but suspends the execution of the order for two years, the rehabilitation period would begin one month after sentencing.

**Suspension or probation longer than five years:** this could result in a situation where the person is eligible to apply for rehabilitation under the Act while still subject to the jurisdiction of a foreign court. Such applications can be submitted, but the Minister may refuse to grant rehabilitation until the applicant has complied with the terms of the suspended sentence or probation. As a second application with a second processing fee would be required, applicants in such circumstances should be advised to wait until they are no longer under the jurisdiction of the foreign court.

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#### 17 Procedure: Criminal profile description and rehabilitation factors

The following tables describe five different criminal profiles that may be useful in determining a recommendation for rehabilitation, and evaluating the risk of recidivism.

To determine the type of profile that best describes the applicant when assessing whether the applicant is rehabilitated, take into account the rehabilitation factors for each of the five types of profiles.

##### Criminal profile description

Description	Type of profile				
	1	2	3	4	5
Relatively stable lifestyle	X				
Offence generally motivated by an isolated event and may be viewed as a temporary lapse	X				
Unlikely to get involved in further criminal activity	X				
Minimal offence history	X	X			
Well established in the community	X	X			
History may include the following:					
• sexual offences;		X			
• drug or alcohol abuse;		X			
• serious emotional disturbance;		X			
• assault offences;		X			
• applicants deny or minimize their problems;		X			
• they require counselling or therapy to attain rehabilitation.		X			
Lack social and vocational skills			X		
Intellectual deficits may contribute to their problems			X		
Criminal behaviour may be a result of their inability to succeed, and a strong tendency to be led by more sophisticated associates			X		
Little foresight about the consequences of their behaviour; high element of impulsiveness and tendency			X		

not to learn from their mistakes					
Display a fair degree of comfort with a criminal lifestyle				X	
Pattern of long-term involvement with criminal activities				X	
Motivated by need to prove their ability to manipulate people and <i>beat the system</i>				X	
Crimes are generally motivated towards material gain				X	
Superficial guilt: tendency to deny or minimize personal problems and to assign blame for criminal activity to others or circumstances				X	
Rehabilitation is difficult: often require counselling/therapy.				X	
Numerous changes in residence and inability to provide consistent financial support					X
Instability in employment, family life and living situation; general lack of direction in their life and marital problems					X
Habitual involvement in drugs and/or alcohol					X
Serious emotional problems and negative self perceptions					X
Considerable number of arrests for summary offences					X
Inability to deal appropriately with personal problems may prevent them from acquiring and maintaining steady employment					X
Require substance-abuse counselling					X

Rehabilitation factors	Type of profile				
	1	2	3	4	5
Understanding of the offence	X	X	X	X	X
Responsibility taken for the offence	X	X	X	X	X
Contrition/evidence of remorse	X	X	X	X	X
Restitution to the victim, where applicable	X	X	X	X	X
No negative contact with the law	X	X	X	X	X
Psychological or drug/alcohol (substance abuse) counselling		X	X	X	X
Completed rehabilitation program: drug/alcohol/sexual abuse/assault		X	X	X	X
Life-skills training, and improved survival and social skills			X	X	X
Education/employment training			X	X	X
Stable employment pattern			X	X	X
New social groups			X	X	X
Involvement in non-manipulative relationships and pro-social activities				X	

Stable marriage/family life/living arrangement													X	X	X
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## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **18 Procedure: Requests for additional information from applicant**

Where additional information is requested from the applicant, a period of 30 to 60 days should be provided to permit the applicant to obtain the required information. The applicant should be advised that, if their response has not been received by that date, their application will be submitted to the decision-maker to render a decision on the basis of the information available.

In instances where additional information is received after the application has already been sent to CIC NHQ, the documentation should not be refused; it should be forwarded to NHQ. However, officers should explain to the applicant that there are no guarantees that the additional information will be considered.

If additional information from the applicant arrives too late for NHQ to consider it with the application, the letter of refusal should contain this explanation. If the applicant wishes to have the additional information considered, a new application would have to be submitted.

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#### **19 Procedure: Processing fee**

Prescribed fees for processing rehabilitation applications are in Schedule 1 of the *Fees Regulations*. Fees shall be collected and a receipt issued to the applicant after a properly completed application is received. There are no exemptions to the payment of this fee.

Applicants who are unable or unwilling to pay the processing fee immediately should be advised to return when they are able or prepared to do so as an application cannot be accepted without it. Applications that do not include the fee or include an incorrect amount should be returned to the applicant with an explanation that the application cannot be processed until the full fee is paid.

**Note:** See *IR 5, Cost Recovery*, for detailed information on fees.

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **20 Procedure: Submission of rehabilitation application**

The rehabilitation submission must include the following:

- offence and sentence imposed;
- conversion into Canadian funds of amount of fine imposed;
- date and place of occurrence;
- date and place of conviction;
- circumstances leading to the commission of the offence;
- motives for the offence;
- details on how the offence was perpetrated;
- degree of violence involved, including the use of weapons;
- degree of harm done to the victim, physical and/or psychological;
- level of cooperation with authorities following arrest;
- applicant's acceptance of responsibility for the offence and any evidence of remorse or restitution to the victim;
- explanation from applicant, if version inconsistent with official record;
- response from the applicant in reply to information obtained or issues raised by the officer; and
- recommendations from the recommending and reviewing officers.

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#### **21 Procedure: Officer's recommendation at POE, CIC & visa office**

Based on the available documentation, the information provided by the applicant during an interview, the overall comportment of the applicant, and guidance provided in this chapter, the officer can formulate a recommendation on rehabilitation. If doubt exists that the applicant has been rehabilitated, the officer should propose a negative recommendation.

If the applicant has not provided all additional documentation requested by the officer, the recommendation must be based on the available information. Regardless of the recommendation of the reviewing officer, all supporting documents and the application form must be submitted to the appropriate decision-maker.

In cases where the interviewing and reviewing officers have differing recommendations, they can review and assess the case against the rehabilitation factors outlined in this chapter and complete part C of the IMM 1444E.

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Implementing the decision

## **ENF 14 / OP 19 Criminal Rehabilitation**

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## **22 Procedure: Implementing the decision**

### **22.1 Rendering and recording the decision**

Case Review, Case Management Branch (BCM), will review the application for accuracy and completeness and complete its own rehabilitation assessment. If BCM is making a positive recommendation, the rehabilitation submission and the recommendation are forwarded to the Minister of C&I for a decision on whether to grant rehabilitation to the applicant. If the recommendation is negative, BCM will forward the rehabilitation assessment and any other documents not previously disclosed to the responsible office for disclosure to the applicant. This will be done with a disclosure letter for negative rehabilitation cases. The applicant will have 15 days from the date of receipt of the disclosure letter to make any final representations or arguments in writing or to submit any information or evidence that was either not available at the time of the application, or has since arisen. The responsible office then forwards the additional submissions, without additional comments, to BCM.

The BCM analyst then forwards the complete rehabilitation package consisting of the rehabilitation submission, BCM assessment and recommendation and any final representations submitted by the applicant to the Minister, without additional comments.

After the Minister has rendered a decision on the rehabilitation application, BCM will forward the Minister's decision by e-mail or fax to the responsible office, which will then advise the applicant.

Part D of the [IMM 1444E](#) must be completed, signed and dated by the originating office, and it will then be the official record of decision on file.

### **22.2 Advising the client of a positive decision**

If the decision is positive, the applicant should be advised by letter and provided with instructions on how to proceed with their application for admission.

Applicants for temporary entry should be given an approval letter for presentation at Canadian ports of entry.

See sample letters in [Appendix D](#) and [Appendix E](#).

If an application for rehabilitation is accepted, the processing of the application for admission until the final decision is received is suspended, even if the matter appears straightforward.

### **22.3 Advising the client of a negative decision**

If the decision is negative, the applicant remains inadmissible and should be advised by letter that the application for admission has been refused. There is no requirement for reasons to be given.

If the rehabilitation period has not elapsed, the officer will calculate the expiry date and advise the applicant when a new application can be submitted. The application for admission should not be held in abeyance until compliance with eligibility requirements.

See sample letters in [Appendix C](#) and [Appendix E](#).



**Note:** *If the case merits exceptional consideration, refer to [IP 1](#) or [OP 20](#) for a temporary resident permit.*

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **23 Procedure: Entering rehabilitation requests into FOSS/NCMS**

To enter rehabilitation requests into FOSS/NCMS, officers should proceed as follows:

- enter all requests for rehabilitation originating in Canada in the WIP (Work in Process) screen;
- indicate whether the application was approved or refused, and the date of the decision;
- in the case of a foreign national, create an NCB to facilitate future visits:
  - "16 – DEEMED REHAB A36(2)", or
  - "17- REHAB GRANTED A36(1)"

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **24 Procedure: Should applicant be considered under the *Young Offenders Act***

Young offender applicants must be considered in a manner consistent with Canada's *Young Offenders Act* when determining criminal equivalency.

If the applicant was treated as a young offender in a foreign jurisdiction that has young offender provisions, and no conviction was recorded, the applicant is deemed not to have a conviction. However, if the applicant was transferred to adult court, the applicant does have a conviction.

If a young offender system is in place in another country where the age of majority differs from that in Canada, it is necessary to determine whether the offence, if committed in Canada, would be transferable to adult court. If not, the applicant should be processed as a young offender.

When the foreign jurisdiction does not have young offender provisions, the officer must examine the circumstances of the offence to determine whether the applicant would have been dealt with in juvenile or adult court in Canada. In order to make this evaluation, the following questions must be addressed:

**Has the person committed an offence that would have been prosecuted under the *Young Offenders Act* in Canada? Section 553 of the *Criminal Code* includes the following offences:**

- theft;
- fraud;
- possession of stolen goods;
- bookmaking;
- driving while disqualified;
- mischief, where value of property does not exceed \$5,000.

**Are there factors, as outlined in subsection 16(1) of the *Young Offenders Act*, under which a youth court would consider whether the trial should be transferred to adult court:**

- person is 14 years of age or older;
- offence is indictable, and not listed in section 553 of the *Criminal Code*;
- an application for transfer to adult court has been made;
- offender is not described in 16(1.01) of the *Young Offenders Act*, i.e., persons 16 or 17 years of age who have been charged with murder, attempted murder, manslaughter, and aggravated sexual assault.

**If the conditions in subsection 16(1) of the *Young Offenders Act* are met, are the circumstances of the offence such that the case would have been transferred to adult court? Subsection 16(2) of the *Young***

**Offenders Act outlines the following factors to consider when deciding whether the trial of a young offender should be transferred to adult court:**

- circumstances and seriousness of the offence;
- character, age, and maturity of the offender;
- availability of treatment or correctional resources;
- any previous convictions.

**Note:** In 2003, the Youth Criminal Justice Act (YCJA) replaced the Young Offenders Act. The YCJA and the Criminal Code are accessible on the Department of Justice Web site: <http://www.canada.justice.gc.ca>

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## ENF 14 / OP 19 Criminal Rehabilitation

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#### 25 Procedure: Pardons for convictions in Canada

Persons who are described in A36(1)(a) or A36(2)(a), based on a criminal conviction for an offence under an Act of Parliament or a Regulation made under an Act of Parliament, are not eligible to apply for rehabilitation but may apply to the National Parole Board for a pardon.

Application guides and additional information can be obtained from:

Clemency and Investigations Division  
National Parole Board  
410 Laurier Avenue West  
Ottawa, Ontario K1A 0R1  
Telephone: 1-800-874-2652 (Canada and U.S.A. only)  
Fax: 613-941-4981  
Web site: <http://www.npb-cnlc.gc.ca>

For an application for a pardon to be considered, the following period of time must have elapsed after the expiration of any sentence, term of imprisonment, or period of probation, and the payment of a fine, surcharge, restitution, or compensation order imposed:

- five years for an offence prosecuted by indictment, or a service offence within the meaning of the *Criminal Records Act*, paragraph 4(a)(ii). The National Parole Board may grant a pardon if it is satisfied that the applicant, during the five-year period, has been of good conduct and not been convicted of an offence under an Act of Parliament or a Regulation made under an Act of Parliament;
- three years for an offence punishable on summary conviction, or a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in paragraph 4(b)(ii) of the *Criminal Records Act*. The National Parole Board may issue a pardon if the applicant, during the three-year period, has not been convicted of an offence under an Act of Parliament or a Regulation made under an Act of Parliament.

A person who has been granted a pardon will be given a letter, signed by the Chairperson of the National Parole Board, that lists the conviction(s) for which the pardon was granted, and is proof that a pardon was granted. A pardon is evidence that the Board is satisfied that the applicant has been of good conduct and that the conviction for which the pardon was granted or issued should no longer reflect adversely on the applicant.

A pardon, unless subsequently revoked or has ceased to have effect, requires the judicial record of the conviction to be kept separate and apart from other criminal records and removes any disqualification to which the person is subject by reason of the conviction, by virtue of the provisions of any Regulation or Act of Parliament. Pardons are not necessarily final and can cease to have effect by operation of law or through revocation by the National Parole Board.

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **26 Procedure: Pardon and criminal rehabilitation both required**

Persons who have committed criminal acts or have been convicted of criminal offences both in Canada **and** abroad, and are described under one of A36(1)(a), A36(1)(b) or A36(1)(c) **and** one of A36(2)(a), A36(2)(b) or A36(2)(c) require an approval of rehabilitation **and** a pardon to overcome their criminal inadmissibility.

The application for rehabilitation should not be submitted until after a pardon has been obtained from the National Parole Board. The only exception is for a client who has one single summary conviction in Canada; in this case, the application for rehabilitation can proceed if the person provides evidence that an application for a pardon was submitted to the National Parole Board.

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **27 Procedure: Pardons outside Canada**

The effect of a foreign pardon does not necessarily render the person admissible to Canada.

The following factors must be taken into account:

- if the country's legal system is based on similar foundations and values as Canada's, the foreign legislation must be examined to determine whether the effect of the pardon is to erase a conviction or merely recognize that rehabilitation has taken place. In the latter case, the applicant is inadmissible and an application for rehabilitation should proceed;
- in the vast majority of cases, the applicant should be able to produce a copy of the pardon;
- the UK *Rehabilitation of Offenders Act* automatically pardons eligible individuals without the person having to apply, if the person has been sentenced to a term of imprisonment of less than 30 months;
- Canadian courts are not bound by a pardon in which there is an absence of evidence as to the motivating considerations that led to the grant of a pardon by another state jurisdiction;
- the nature of the offence of hijacking provides a solid rationale to depart from the principle that a pardon granted by another jurisdiction, whose laws are based on a foundation similar to Canada's, should be recognized in Canada.

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## ENF 14 / OP 19 Criminal Rehabilitation

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#### 28 Procedure: Roles and responsibilities in individual rehabilitation process

Role	Responsibility
Applicant	<ul style="list-style-type: none"> <li>• completes parts A and B of the <u>IMM 1444E</u>; signs and dates it;</li> <li>• provides copies or originals of all documents (and translations if documents are not in English or French);</li> <li>• attends interview(s) and provides other documents as requested; and</li> <li>• submits the application and full processing fee to the appropriate immigration office.</li> </ul>
Delegated decision-maker (local offices, visa offices)	<ul style="list-style-type: none"> <li>• conducts review of application and documents;</li> <li>• analyzes relevant factors essential for the approval or refusal of the application;</li> <li>• renders a decision;</li> <li>• completes part C of the IMM 1444E;</li> <li>• provides guidance to officers on complex or difficult cases.</li> </ul>
CIC National Headquarters (NHQ)	<ul style="list-style-type: none"> <li>• reviews application and documents;</li> <li>• analyzes relevant factors essential for the approval or refusal of application, and prepares recommendation;</li> <li>• submits case to Minister with all documentation, including applicant's submissions;</li> <li>• forwards Minister's decision to the office/visa office that processed the application;</li> <li>• provides assistance and clarification with respect to criminal rehabilitation or equivalencies; and</li> <li>• provides guidance to officers on complex or difficult cases.</li> </ul>

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **Appendix A Sample letter to visa applicant enclosing Application for Criminal Rehabilitation form**

##### **Letter to visa applicant enclosing Application for Criminal Rehabilitation form**

Dear Sir/Madam:

This is in reference to your application for admission to Canada. Based on the information that you have provided, it appears that you are criminally inadmissible to Canada.

The *Immigration and Refugee Protection Act* contains provisions that provide for the rehabilitation of persons who have committed criminal offences outside Canada. In order to be eligible to be considered for rehabilitation, at least five years must have elapsed since the completion of any sentence imposed or the payment of a fine.

If you wish to be considered for rehabilitation, you must complete the enclosed Application for Rehabilitation form. Please ensure that you follow the enclosed instructions carefully and provide all the documentation and the required processing fee. If your application form is not complete, it will be returned to you.

Your application for admission to Canada will be held in abeyance for a period of 60 days pending receipt of your application. If we do not receive complete documentation and the processing fee from you by **(enter date)**, we will assume that you do not intend to apply for rehabilitation under Canada's *Immigration and Refugee Protection Act*. Your application for admission will be decided based on information available at that time.

Yours sincerely,

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Application for criminal rehabilitation incomplete

## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **Appendix B Sample letter: Application for criminal rehabilitation incomplete**

##### **Application for criminal rehabilitation incomplete**

Dear Sir/Madam:

This is in reference to your application for criminal rehabilitation recently received at this office.

We cannot proceed with your application because all the documentation that we require has not been provided. Specifically, we require (**enter list of documents**). Therefore, we have returned your application form with supporting documentation and the cost recovery fee.

We will hold your application for admission to Canada in abeyance for an additional 30 days pending receipt of the complete application. If we do not hear from you by (**enter date**), we will assume that you do not wish to pursue your application for rehabilitation, and a decision on your application for admission to Canada will be based on information available at that time.

Yours sincerely,

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## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **Appendix C Sample letter: Ineligible applicant**

##### **Ineligible applicant**

Dear Sir/Madam:

This is in response to your application for criminal rehabilitation under Canada's *Immigration and Refugee Protection Act*. We have reviewed your application and the documents that you have provided. You are inadmissible to Canada under (**enter section of the Act**) of the *Immigration and Refugee Protection Act* which reads:

**(Quote section of the Act.)**

Unfortunately you are not eligible to be considered for rehabilitation because, based on the documentation you have provided, five years have not elapsed since the completion of your sentence. You will have completed this five-year waiting period on (**enter date**). You may wish to submit a new application at that time.

**(Add admission/visa refusal letter, if appropriate.)**

Yours sincerely,

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## **ENF 14 / OP 19 Criminal Rehabilitation**

### **DISTRIBUTION LIMITED TO CIC AND THE CBSA**

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#### **Appendix D Sample letter: Approval of application for criminal rehabilitation - permanent resident**

##### **Approval of application for criminal rehabilitation - permanent resident**

Dear Sir/Madam:

This is in reply to your application for criminal rehabilitation under Canada's *Immigration and Refugee Protection Act*.

I am pleased to inform you that your application has been approved.

The effect of this decision is that you are no longer described in (enter section of the Act) of the Immigration and Refugee Protection Act because of **(enter one of the following)** your conviction in **(enter place of conviction)** for the offence of **(enter name of offence)** on **(enter date of offence)**.

or

the offence of **(enter name of offence)** that you committed in **(enter place of offence)** on **(enter date of offence)**. Please note that the approval of your application for rehabilitation does not exempt you from any other requirements of the *Immigration and Refugee Protection Act* or its Regulations.

Yours sincerely,

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **Appendix E Sample letter: Approval of application for criminal rehabilitation - foreign national**

##### **Approval of application for criminal rehabilitation – foreign national**

Dear Sir/Madam:

This is in reply to your application for criminal rehabilitation under Canada's *Immigration and Refugee Protection Act*.

I am pleased to inform you that your application has been approved.

The effect of this decision is that you are no longer described in **(enter section of Act)** of the *Immigration and Refugee Protection Act* because of **(enter one of the following)**

your conviction in **(enter place of conviction)** for the offence of **(enter name of offence)** on **(enter date of offence)**.

or

the offence of **(enter name of offence)** that you committed in **(enter place of offence)** on **(enter date of offence)**.

As this is the only document that will be issued establishing your rehabilitation under the *Immigration and Refugee Protection Act*, I urge you to guard it safely and to carry a photocopy with you whenever you travel to Canada.

Please note that approval of this application for rehabilitation does not exempt you from any other requirements of the *Immigration and Refugee Protection Act* or Regulations.

Yours sincerely,

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## **ENF 14 / OP 19 Criminal Rehabilitation**

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#### **Appendix F Sample letter: Refusal of application for criminal rehabilitation- permanent resident/foreign national**

##### **Refusal of application for criminal rehabilitation- permanent resident/foreign national**

Dear Sir/Madam:

This is in reply to your application for criminal rehabilitation under Canada's *Immigration and Refugee Protection Act*.

Your application and supporting documentation have been thoroughly and sympathetically reviewed. Unfortunately, the (Minister) or (Manager/Program Manager who has the delegated authority to approve rehabilitation) is not satisfied that you are rehabilitated.

The effect of this decision is that you remain inadmissible to enter Canada because you are a person described in (**enter section of the Act**) of the *Immigration and Refugee Protection Act* which reads:

**(Quote section of the Act.)**

**(Add admission/visa refusal letter if appropriate.)**

Yours sincerely,

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