



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

ENF 7

Investigation and Arrests

ENF 7 Investigations and arrests

Most recent date of changes: 2003-05-05

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Listing by date:

Date: 2003-05-05

Section 25.3 - Removing a person from the PDP database.

A new section provides officers with details on the removal of PDP information from the CPIC-PDP database after the completion of an A44(1) report.

2003-01-03

Please note that various amendments have been made to the Investigations and Arrests manual (ENF 7). The following revisions include:

Section 4: A listing of the officers that have been authorized as having the authority and powers of a peace officer pursuant to A138(1) of IRPA is in **Appendix A**.

Section 9.4: Procedures to communicate adverse information of permanent residents to a citizenship office.

Section 12.7: Procedures after an officer is assaulted or obstructed during the course of their duties.

Section 12.8: The application of s.494 of the *Criminal Code* for citizen's arrest.

Section 12.9: Transitional provisions for warrants issued prior to June 28, 2002 for SIO determination.

Section 15.7: The warrant checklist for sending a warrant to the Immigration Warrant Response Centre (IWRC) is found in **Appendix B**.

Section 15.8 and 17.1: Clarification of the requirements for the completion of a Notice of Arrest (IMM 1285) in all cases where a person has been arrested with or without a warrant.

Section 16: New guidelines addressing the authority of peace officers to arrest and detain under IRPA when an immigration officer is unable to provide an "in person" response. Section 16 also establishes guidelines when CIC receives a call from a law enforcement agency during after-hours.

Section 24: Updated procedures for enforcement incident reporting.

Note: Wallet sized laminated Charter of Rights cards (IMM 5537B) have been revised and will be made available to the Regions as of February 2003.

1 The purpose of this chapter

This chapter focuses on an officer's responsibilities and authorities once there is information to believe that a permanent resident or a foreign national has violated the *Immigration and Refugee Protection Act*. In particular, this chapter describes how to investigate and arrest persons who are in Canada and do not comply with the requirements of the Act and Regulations. Officers engaging in investigations must recognize the necessary principles to identify, locate, apprehend and formally report permanent residents and foreign nationals.

Officers should become aware of all policies and procedures that will assist them to accurately complete the various stages of an investigation to its conclusion.

2 Program objectives

2.1 CIC objectives

The *Immigration and Refugee Protection Act* outlines the Canadian immigration policy objectives. These objectives as they relate to the activity of investigations are:

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

2.2 Officer objectives

The basic objectives of an officer engaging in investigations are:

- to determine violations pursuant to the Act and Regulations, by understanding the legislative and regulatory provisions, including the authorities as an immigration and peace officer;
- to take appropriate steps to plan and conduct an investigation;
- to promote the effective and efficient application of the Act and the immigration program through the development, liaison and maintenance of contacts;
- to provide technical service, guidance and training to law enforcement agencies, the courts, government and non-government agencies;
- to identify, collect, analyse and disseminate information from a variety of sources concerning security, illegal immigration, health risks, criminality, organized crime, rackets, terrorism, human or international rights violations (including war crimes), espionage and subversive organizations;
- to investigate, identify, locate and formally report permanent residents and foreign nationals who are in violation of the Act and Regulations;
- to arrest and detain permanent residents, protected persons and foreign nationals who are believed to be inadmissible, and who either pose a danger to the public, or would not likely appear for examination, admissibility hearing, removal from Canada, a proceeding that could lead to the making of a removal order or on identity grounds;
- to take appropriate action by gathering the necessary information, preparing and submitting a report, and assisting the hearings officer as required;
- to carry out an officer's duties safely and securely; and
- to act fairly, according to law and in good faith.

3 The Act and Regulations

With the exception of when a permanent resident or foreign national makes an application under the *Immigration and Refugee Protection Act*, the Act is silent on the actual activities of an investigation. The duties of an officer engaging in investigations are obtained from certain authorities that the Act provides to officers and the Minister’s delegate for arrest, detention, reporting and removal.

The Act confers certain powers related to enforcement activities on officers and the Immigration Division of the Immigration and Refugee Board, hereinafter, “the Board”. To determine whether a violation has been committed and to follow through with enforcement actions, officers must be aware of their responsibilities, authorities, and limits on their powers as peace officers while performing immigration duties.

The following are legislative and regulatory authorities contained within the *Immigration and Refugee Protection Act* that should assist officers when conducting an investigation.

For information about:	Refer to:
Immigration and Refugee (the Board)	A2(1)
Foreign national	A2(1)
Permanent resident	A2(1)
Protected person	A95(2)
Examination - where an application is made under the Act	A15(1)
Application under the Act – includes an application in writing, seeking to enter Canada or making a refugee protection claim	R28
Application under the Act- obligation to answer truthfully	A16(1)
Relevant evidence - when a foreign national makes an application under the Act - includes photographs, fingerprints and medical examination upon request.	A16(2)
Relevant evidence - when a permanent resident or a foreign national is arrested, detained or the subject of a removal order - includes photographs, fingerprints and other information to establish identity or compliance with the Act.	A16(3)
Report on inadmissibility	A44(1)
Arrest and detention with a warrant	A55(1)
Arrest and detention without a warrant	A55(2)(a)
Arrest and detention without a warrant for identity	A55(2)(b)
Authority as a peace officer	A138(1)
Seizure of transportation, document or other thing	A140(1)

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3.1 Forms

The forms required are shown in the following table.

Form title	Form number
Warrant for Arrest	IMM 0420B
Notice of Rights Conferred by the Vienna Convention	IMM 0689B
Notice of Arrest	IMM 1285B
Declaration	IMM 1392B
Request to Amend Immigration Record of Landing or Confirmation of Permanent Residence	IMM 1436B
Investigator Report	IMM 5040B
Property Receipt	IMM 5041B
Notice of Seizure	IMM 5079B
Section 44(1) and 55 Highlights Inland Cases	IMM 5084B

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Investigator's Notebook	IMM 5104B
Search	IMM 5242B
Enforcement Incident Report	IMM 5381E
Background Information Document	IMM 5417B
Request for Special Entry Warrant (telephone or other means)	IMM 5428E
Request for Special Entry Warrant (in writing)	IMM 5429E
Special Entry Warrant	IMM 5430E
Charter of Rights Card	IMM 5537B

4 Instruments and delegations

Pursuant to A6(1), the Minister of Citizenship and Immigration has designated specific persons as officers to carry out any purpose of any provision of IRPA and has specified the powers and duties of the officers so designated. In addition, A6(2) authorizes that anything that may be done by the Minister under the Act and Regulations may be done by a person that the Minister authorizes in writing. This is referred to as a delegation of authority.

The Designation/Delegation Authorities (Instruments) defines who has the authority to perform specific immigration functions. These instruments can be found in Chapter IL 3 at <http://www.ci.gc.ca/cicexplore/english/guides/immigration/il/il3/il3TOC.htm>

The instruments are to be read in conjunction with the Designated/Delegated Authority Module and the Regional, National or International Annexes in accordance with the physical location of the officer.

Officers authorized to have the authority and powers of a peace officer

See Appendix A for the list of officers authorized by the Director General of the Enforcement Branch, pursuant to A138(1) who have the authority and powers of a peace officer—including those set out in sections 487 to 492.2 of the *Criminal Code*—to enforce the *Immigration and Refugee Protection Act*, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.

5 Departmental policy

5.1 Policy on investigations

Immigration investigations should never be arbitrary. Investigations should be initiated on the basis of information and circumstances that would lead an officer to believe that there has been a violation of the Act and Regulations.

The Department's enforcement activities are both proactive, in preventing violations of the Act and Regulations, and reactive, in recognizing the constraints on a civilian organization with enforcement duties. Investigations must be based on:

- sound research and analysis;
- local objectives and strategies;
- the support of good intelligence, information and specialized contacts;
- excellent police liaison; and
- community awareness, understanding and support.

Overall, these actions, in turn, will help deter violations in the community.

5.2 Strategy and setting priorities

The officer must be able to determine how to use information to attain the overall objectives of the immigration program. For example, if "danger to public health" violations are a high priority, this should influence the priority that an officer places on information.

In planning an investigation strategy, managers must be aware of local and national trends. Through time, local and national trends will continuously change. Managers should develop quantitative measurement and analysis of problem areas in enforcement and control. These steps are directly related to a preventive and deterrent approach, and should help to identify areas of concern while increasing community awareness.

5.3 Authority as peace officers

Although officers are not defined as peace officers under the *Criminal Code*, subsection A138(1) provides that designated officers have the authority and powers of peace officers for the purpose of enforcing the provisions of the Act including arrest, detention and removal of persons from Canada. This provision is not limited and includes the powers and authority of a peace officer for the purposes of applying for search warrants set out in sections 487 to 492.2 of the *Criminal Code*. It should be noted that officers are not peace officers for the purpose of enforcing the *Criminal Code*.

Section 2 of the *Criminal Code* defines "peace officer" as "a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace for the service or execution of civil process." The true status of officers whose title is mentioned in section 129 of the *Criminal Code* and, hence the exact powers that they may exercise, depend upon judicial interpretations.

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Although the definition of a peace officer in the *Criminal Code* does not specifically mention immigration officers, there are a number of legal precedents in which the definition was interpreted to include public officials, such as immigration officials performing their duties. Convictions for assaulting a peace officer have been obtained in cases involving immigration officers. This does not mean that immigration officers are peace officers in the same capacity as police officers: that is, enforcers of the *Criminal Code*.

5.4 Community and police liaison

The underlying stance of the enforcement program is proactive. Managers should encourage an active role for CIC involvement in community law enforcement by promoting liaison with various community interest groups, police liaison, and by developing training and education programs to increase the awareness of the police, other government agencies and the public.

The Enforcement Branch has developed a Police Officer's Handbook that provides general guidance on immigration processes, procedures and references. This guide is intended for limited distribution and should be distributed to police officers only. During police liaison visits, officers should provide police agencies with copies of the handbook.

5.5 Police assistance

The assistance and co-operation that the department receives from the police is a function of the Department's comportment and attitude. An officer has an obligation to contribute to and maintain healthy working relationships with the various agencies.

An officer will not participate in police raids that are conducted solely for police reasons, except where an officer is asked to assist as a resource person if the police suspect that there may be immigration violations. Local managers are responsible for assessing the appropriateness of any immigration participation in police activities, and the possible consequences for the integrity of the immigration program.

An officer should help to maintain the Department's credibility with police forces. For example, when the police acknowledge immigration warrants, an officer should respond promptly and in a manner that recognizes the police efforts in locating persons of interest to Citizenship and Immigration Canada (CIC). Telephone instructions to the police officer may suffice in exceptional circumstances, but normally a personal response is more appropriate. A police officer has the authority as a peace officer under A142 has the authority to execute immigration warrants.

To take best advantage of available police support, officers must be familiar with the nature and level of services that the police in the local community are able to provide, and determine the procedures for using those services.

It is the Department's policy to co-operate with law enforcement agencies whenever possible, particularly when co-operation may in the longer term help in preventing serious crime. From time to time, an officer may be approached by officials of law enforcement agencies with a request to assist the agency in an investigation, such as a request for deferring enforcement action, authorization of an extension of status, or the issuance of a temporary resident permit so that the agency can continue surveillance or otherwise continue to obtain information from the person concerned. If an officer is approached, they must bring the request to the attention of the CIC office manager. An officer must not enter into private arrangements with police officials without the approval of their manager. Any assistance that an officer gives must be strictly in accordance with the Act.

Regional officials should inform the Director General, Enforcement Branch, of any case that may become publicly contentious.

5.6 Information on Previously Deported Persons on the CPIC database

The primary objective for entering information on Previously Deported Persons (PDP) into the Canadian Police Information Centre (CPIC) database is to enhance public safety and security by providing peace officers with the necessary information to form reasonable grounds that the person may be arrested without a warrant under A55(2)(a). The CPIC-PDP database will equip peace officers across Canada with information that a foreign national has been deported from Canada, has returned to Canada without the Authorization under A52(1) and, at the time of the person's removal, there were reasonable grounds to believe that the person is a danger to the public and/or is unlikely to appear.

After a name is queried in the CPIC database and it is a direct match to a person found in the PDP database, the information on the CPIC database will instruct law enforcement partners to contact the Immigration Warrant Response Centre (IWRC) for further assistance. For the purposes of arrests made without a warrant under IRPA, peace officers as defined by section 2 of the *Criminal Code* have the authority under A55(2)(a) to arrest and detain a foreign national without a warrant. For further information on the arrest and detention by peace officers under IPRA, see Section 16.

Information on individuals in the CPIC-PDP database originates from the FOSS-PDP database.

For more information on:

- persons added to the FOSS-PDP database (see section 17.1, ENF 11);
- persons added to the CPIC-PDP database (see section 17.2, ENF 11);
- the completion of the Previously Deported Persons (PDP) document in FOSS for persons deported prior to the implementation of the PDP (see section 17.3, ENF 11);
- removing a PDP record from the CPIC-PDP database (see Section 25.3).

5.7 Officer safety and security

Officers under the *Immigration and Refugee Protection Act* are entrusted with some duties performed by police officers, such as arrest and detention. These and other duties are potentially dangerous to the officer's personal safety. To minimize risks, officers must use the approved safety equipment that immigration management has provided.

An officer is not obliged to perform duties in a situation where there is a perception that a threat to personal safety exists. After conducting a risk assessment and an officer suspects that risk may arise from an investigation, a police officer should accompany the investigating officers. If police assistance will be delayed, officers should postpone the investigation until a time when a police officer is available. Officers should never place themselves in a position of danger and should disengage, as outlined in the use of force policy, in situations that could result in death or serious bodily harm to themselves or others. Officers have the discretion to withdraw from dangerous situations, and will not receive criticism for doing so.

In order to reduce risk, an officer must be well equipped. For example, an officer should be appropriately trained in investigative techniques such as pressure point control tactics, interviewing, questioning, search, arrest, and defusing confrontations.

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Officers who are experienced in resolving encounters with difficult persons develop greater confidence in their approach to situations. Officers who have an extensive knowledge of relevant legislation and are fully aware of approved procedures will have the advantage of added confidence in approaching the task at hand.

For more information, see:

- Section 5.8, Investigations by two or more officers
- Section 5.9, Mandatory equipment
- Section 5.10, Wearing and use of equipment

5.8 Investigations by two or more officers

Other than in a controlled environment, such as a jail or detention centre, officers should never carry out investigations without an accompanying partner. Officers are required to work in pairs or with a police officer. In some cases, arrangements must be made to ensure that a female officer is present. It may also be necessary to increase the number of investigators and set up a team when more than one person is to be arrested or where specific circumstances warrant.

5.9 Mandatory equipment

This policy applies to officers performing investigative duties. Unless existing regulations prohibit the wearing of this equipment, it is the policy of CIC that all officers wear all the mandatory protective and defensive equipment that is issued to them whenever they are undertaking an investigation.

An officer may only carry and use CIC-approved protective and defensive equipment if the officer has successfully completed a CIC-approved training course. The training course certifies an officer in self-defence principles for a 24-month period and the training course must be renewed on or before that 24-month period expires. If the officer does not receive their re-certification in the training course, the officer cannot perform the specific duties of their position in that they are no longer current in self-defence principles and are not eligible to carry their safety equipment.

5.10 Wearing and use of equipment

The mandatory equipment shall be worn and used in accordance with the *Canada Labour Code* Part II, Subsection 126(1) which reads that while at work, every employee shall:

- (a) use such safety materials, equipment, devices and clothing as are intended for the employee's protection and furnished to the employee by the employer as are prescribed;
- (b) follow prescribed procedures with respect to the safety and health of employees;
- (c) take all reasonable and necessary precautions to ensure the safety and health of the employee, the other employees and any person likely to be affected by the employee's acts or omissions;
- (d) comply with all instructions from the employer concerning the safety and health of employees.

5.11 Violent behaviour

At any time, an officer may be faced with a person whose behaviour is unstable, incoherent or violent. If the person is not under arrest or detention, an officer should isolate them from spectators

and then call for police assistance. Because an officer will not yet have arrested or detained the person, the officer should not conduct a search.

5.12 Use-of-force

Section 25 of *Criminal Code* offers certain protection to officers who are performing activities respecting the arrest, detention and removal from Canada of any person, provided the officers are acting in good faith and on reasonable grounds.

Officers who overstep their authority are open to civil or criminal proceedings against themselves or the department. The courts have consistently found immigration proceedings to be of a civil and not criminal nature, and expect a high standard of behaviour from immigration officers. As long as an officer is acting in good faith, has reasonable grounds for their actions and does not go beyond the limitations of legal authority, an officer will have the full support from management.

The purpose for providing officers with use-of-force response options is to protect the officer and members of the general public. The department has developed a use-of-force policy. The goal is to resolve all interactions without the use of force. If force must be used, officers shall use no more force than is reasonable and justified. For information on the use-of-force policy, refer to the Safety and Security Manual.

The Criminal Code deals with the legal levels of force that peace officers may use in the normal course of their duties. Subsection 25.(1) of the *Criminal Code* indicates that everyone who is required or authorized by law to do anything in the administration or enforcement of the law

- as a private person,
- as a peace officer or public officer,
- in aid of a peace officer or public officer, or
- by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Under subsection 25.(3) of the *Criminal Code*, subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

Under subsection 25.(4) of the *Criminal Code*, a peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested if,

- the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- the offence for which the person is to be arrested is one for which that person may be arrested without a warrant;
- the person to be arrested takes flight to avoid arrest;
- the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- the flight cannot be prevented by reasonable means in a less violent manner.

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Under section 26 of the *Criminal Code*, everyone who is authorized by law to use force is criminally responsible for any excessive use of force according to the nature and quality of the act that constitutes the excess.

Although the *Criminal Code* permits officers to carry firearms, the Department's policy is that under no circumstances are officers to be in possession of firearms while on duty.

5.13 Special Entry Warrants

For more information, see:

- Section 5.14, Authority to issue Special Entry Warrants
- Section 5.15, Policy on forcible entry
- Section 5.16, Life span of Special Entry Warrants
- Section 5.17, Clarification of "dwelling house"

5.14 Authority to issue Special Entry Warrants

In the case of *R.v.Feeney*, the Supreme Court of Canada decision has impacted arrests made under the *Immigration and Refugee Protection Act*. Resulting from this decision, sections 529 to 529.5 of the *Criminal Code* have been amended to give jurisdiction to judges and justices of the peace to issue an arrest warrant containing an authorization allowing peace officers to enter a dwelling house to arrest a person named in the warrant. It allows for the authority to issue a separate warrant to enter a described dwelling house to execute a previously existing arrest warrant. Before entering the dwelling house described in the authorization or warrant, a peace officer must have reasonable grounds to believe, see Section 6, that the individual to be arrested is in the dwelling house.

It is expected that officers will use a Special Entry Warrant in cases of necessity. The authority to issue Special Entry Warrants and the requirements when executing these have been incorporated into the *Immigration and Refugee Protection Act* by section 34.1 of the *Interpretation Act*. The same officials who presently have the authority to issue arrest warrants pursuant to the *Immigration and Refugee Protection Act* have the legal authority to issue Special Entry Warrants. However, for reasons of operational policy, only officers who are managers or supervisors can issue a Special Entry Warrant.

Where a supervisor or manager cannot be reached and, where an Immigration Arrest Warrant already exists, officers may apply to a justice of the peace directly, have an RCMP or other police officer apply to a justice of the peace on behalf of an officer for the issuance of a Special Entry Warrant. Pursuant to subsection 529.1(a) of the *Criminal Code*, judges and justices of the peace have the authority to issue Special Entry Warrants where a warrant for the individual's arrest made under any Act of Parliament, including the *Immigration and Refugee Protection Act*.

At no time can the supervisor or manager who issued a Special Entry Warrant be involved in the search for or the arrest of the individual to whom the warrant relates.

For more information on the procedures on the use of Special Entry Warrants, see:

- Section 18.2, Special Entry Warrants (no permission to enter a dwelling house)
- Section 18.3, General procedures for issuing Special Entry Warrants
- Section 18.4, Issuing a Special Entry Warrant in writing (in person)
- Section 18.5, Requesting a Special Entry Warrant by telephone or other electronic means

- Section 18.6, Reporting requirements after issuing a Special Entry Warrant

5.15 Policy on forcible entry

It is the Department's policy that officers are not to use forcible entry, see Section 6, to gain entry into private premises to make an arrest. Where an officer executing a warrant at a dwelling house does not have permission from an adult occupant in ostensible control of the premises to enter, the officer may choose to continue surveillance of the premises until such time as a Special Entry Warrant can be obtained, if considered necessary.

In cases where forced entry is deemed necessary, officers must obtain police assistance. Often the mere presence of a uniformed police officer will be enough to gain entry into a dwelling house. In cases of forcible entry, it is preferred that the police action the entry on the officer's behalf.

5.16 Life span of Special Entry Warrants

Unlike warrants for the arrest of an individual, which are valid until formally cancelled or executed, Special Entry Warrants do **not** have indefinite validity. Special Entry Warrants should be made valid for a reasonable period of time, depending on the facts and circumstances of the case. The supervisor or manager who is the decision-maker must specify an expiry date on the Special Entry Warrant (no more than 14 days). It is expected that the life span of most Special Entry Warrants will be 24 to 48 hours in duration.

The supervisor or manager who is the decision-maker is expected to monitor the execution and expiry of Special Entry Warrants.

5.17 Clarification of "Dwelling House"

Section 2 of the *Criminal Code* defines "dwelling house" as the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes:

- a building within the curtilage of a dwelling house that is connected to it by a doorway or a covered and enclosed passageway; and
- a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

The courts have interpreted "dwelling house" to include a motel unit, a mobile home or an occupied tent. A patio was interpreted to be an extension of the dwelling house. However, an office used primarily for business purposes even if it is slept in from time to time is not a "dwelling house."

It has also been interpreted that where a vessel, whether operating as a business or for pleasure, has been designed to be used as a permanent or temporary residence; is being used as a permanent or temporary residence; and has been designed to be mobile, a Special Entry Warrant is required, whether the boat is docked or at sea.

5.18 Pursuit across the Canada-U.S. border

Pursuing a person across the Canada-U.S. international boundary by law enforcement officers of either country is a contravention of international law. When pursuit occurs or potentially could occur into US territory, officers must withdraw and contact the nearest USINS border point and provide the necessary information.

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An officer should report any incidents to their manager who will forward the report to the Director General, Enforcement Branch, who will inform the Department of Foreign Affairs and International Trade (DFAIT) of the situation.

5.19 Notebook security

An officer's notebook contains personal and sensitive data. Officers must give it the same security as other departmental information such as immigration files. Managers must retain completed notebooks in the same secure fashion as files and for the same period of time as required by CICs file-retention policy. In some cases, managers may need to retain notebooks for an extended period because of lengthy court cases or notes concerning a continuing case file.

Officers leaving the Department must turn in all completed or partially completed notebooks. This procedure applies to all employees.

Managers and supervisors are responsible for reviewing officers' notebooks continually, every 3 months. The manager or supervisor conducting the review should note the time, date, review period and their initials on the line following the officer's last entry.

6 Definitions

Authorization to return to Canada (ARC)	Written authorization by an officer, or in other prescribed circumstances, to allow a person to return to Canada after their removal order has been enforced.
Foreign national	A person who is not a Canadian citizen or permanent resident, and includes a stateless person.
Investigation	A series of procedures that have the common intent of gathering information to enforce the Act and Regulations. It is a precondition to the Act's provisions for arrest, detention, report writing, removal and prosecution.
Permanent resident	A person who has acquired permanent resident status and has not subsequently lost that status under A46.
Previously Deported Person (PDP)	A person who has been deported from Canada and is prohibited from returning to Canada without written authorization from an officer under A52(1).
Reasonable grounds to believe	A set of facts and circumstances that would satisfy an ordinarily cautious and prudent person, and which are more than mere suspicion.
Forcible entry	Entry into private premises notwithstanding the lack of permission to enter given by an adult occupant.

7 Procedure: Overview of general investigations procedures

Investigations involve some of the most complex activities that an officer performs. Officers are constantly on public display, working with the intricacies of various Acts of Parliament and common-law jurisprudence, and with the strictest possible respect for human rights and freedoms. Officers are frequently called on to make decisions quickly and independently, in a professional and courteous manner, while maintaining the safety of themselves, the person being investigated and the general public.

The following are general procedures that should assist officers when conducting an immigration investigation:



8 Procedure: Information sources

In an investigation, it is essential to have a variety of information sources. When a permanent resident or foreign national makes an application under A15(1), they are obligated under A16(1) to tell the truth on their application and provide any documents pertinent to their application, including a visa and other documents that are reasonably required. In addition to these requirements, and specific to foreign nationals, they are obligated to submit photographs and fingerprints when requested by the officer.

For all other investigations, the *Immigration and Refugee Protection Act* is silent on the actual activities of an investigation.

In some cases, the person concerned may confess during an interview. In others, the officer may be able to determine that a violation has occurred simply through the examination of the file or other supporting documents associated to the case.

There are standard procedures that can assist an officer to locate a permanent resident or foreign national who has violated the Act. These procedures include:

- examining information such as applications, files and complaints;
- using investigative sources such as computer systems, telephone directories and other Canadian and foreign government departments;
- liaison with the community, police, court services, correctional services; and
- contacting the person's co-workers, neighbours, friends, relatives, employers, and former employers by telephone or personal visits.

An officer should have a good knowledge of other related legislation such as the *Access to Information Act* that will assist officers in deciding what type of information is accessible. An officer should also have a basic understanding of cross-cultural practices because of the varied customs, beliefs and lifestyles that may be encountered. Sound judgement and analysis will determine the value of contacts. When information is received, it should be input into the National Case Management System (NCMS), recording the type of investigation, the priority and the assigned officer.

For further information on gathering information see the *Investigator's Guide*, chapter II.

9 Procedure: Validating information

9.1 Determining citizenship

During an investigation, officers should have evidentiary information on the file to determine whether or not a person is a Canadian citizen.

For further information on the procedures for determining Canadian citizenship, see ENF 4, Section 9.

9.2 Verifying permanent resident status

In order to verify or determine the status of permanent residents, officers should conduct a Field Operations Support System (FOSS), and where appropriate an NCMS search. The officers are encouraged to contact the Query Response Centre (QRC) at national headquarters if information requires clarification or to obtain evidence for a proceeding before the Board. For procedures to verify permanent resident status, refer to ENF 4, Section 11.

9.3 Enforcement Information Index lookouts (EII) on FOSS for Interpol cases

In order to confirm the identity of a person, whenever there is an Enforcement Information Index Lookout (EII) hit on FOSS, the officer should conduct a CPIC database check and contact Interpol by following the instructions in the Remarks section of the EII lookout. The CPIC database will show the reason the person is wanted and indicate "Interpol's interest," and the information therein must not be divulged to the person.

Interpol will confirm the warrant to the caller and will be required to supply further information on the person including fingerprints and photographs. Interpol Ottawa's hours of business are from 6:00 a.m. to 2:00 a.m. Monday through Friday and 6:00 a.m. to 4 p.m. on Saturday and Sunday. After hours calls are answered by the RCMP Operation Centre who will contact a duty officer.

The downloading of these cases into FOSS has resulted in the creation of new FOSS client identifier numbers. Therefore, it is imperative that officers ensure that the person before them is the same person identified in the EII lookout. Once the officer is satisfied of the identity of the person, the officer must assess admissibility requirements under the Act and Regulations and take the appropriate action.

Regular FOSS maintenance procedures apply when officers encounter cases of multiple FOSS client identifier numbers for the same person. If it is determined that the subject is a Canadian citizen, the EII lookout should be removed. An e-mail report of removed EII cases as well as positive FOSS EII hits shall be sent to Nat-Organized-Crime@8603BCO@cina.

9.4 Communicating adverse information about a permanent resident to a Citizenship office

Permanent residents are eligible to apply for Citizenship after three years of continuous residence in Canada. Once Citizenship is granted, it is difficult to revoke. If an officer has information that might affect a permanent resident's eligibility to become a Canadian citizen, it is the officer's responsibility to advise the appropriate Citizenship office.

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Citizenship is required to know when **not** to proceed with application processing because there are outstanding enforcement issues that need to be resolved. Some examples:

- A permanent resident arrives at a port of entry with a letter scheduling them for a Citizenship test. During the secondary examination, an officer discovers that the person has had long absences from Canada. This information might mean that the person does not meet residency requirements for Citizenship.
- A permanent resident becomes the subject of an Immigration investigation.
- An officer intends to write an A44(1) report against a permanent resident.
- A permanent resident is charged with an offence that, if convicted, may result in their removal from Canada.
- A mail seizure discovers Citizenship applications completed by individuals outside Canada, addressed to contacts inside Canada when it gives the impression that the applicant does not meet the residency requirements.

Officers should first query CRS (Citizenship Registration System), if available, to determine whether the permanent resident has an application for Citizenship in process. The officer should then determine where the application is located, either at CPC Sydney or at the local Citizenship office. If the application is at the local Citizenship office, the officer must immediately advise the local office to suspend processing until the enforcement issue is resolved. If the case is extremely urgent (for example, individual is about to take Citizenship oath within the next day or so), officers should contact the local office by telephone.

- For all cases, whether a permanent resident has a Citizenship application in progress or not, officers should create an NCB in FOSS when it is determined that the information should be flagged to Citizenship.

If an officer wants to ensure there is no further processing on a Citizenship application until the enforcement issue is resolved, they should contact CPC Sydney or the local Citizenship office by email. In addition, the officer should enter an NCB in FOSS and include the following information in the remarks screen:

- the title: "CITALERT-HOLD PROCESSING";
- a brief description of the enforcement concern;
- the file number;
- the office location; and
- the name of officer entering the NCB.

If an officer wants to simply inform Citizenship of information that is of interest to them, but does not consider it necessary to suspend the processing of a Citizenship application the officer should enter an NCB in FOSS and include the following information in the remarks screen:

- the title: "CITALERT-FOR INFO ONLY";
- a brief description of the problem;
- the file number;
- the office location; and
- the name of officer

10 Procedure: Prioritizing information

Regional Headquarters, managers and supervisors of local CIC offices are responsible for establishing investigative goals and priorities, see Section 5.2.

When establishing a list of priorities, cases should be based on the following factors:

- the seriousness of the alleged violation: for example, the sections of the Act involving security and serious criminality are more serious than a simple overstay;
- the source of information: with experience, an officer will be able to distinguish reliable sources from unreliable ones. Investigations involve developing reliable contacts and the use of other reputable sources such as other CIC offices, police agencies, government departments and agencies;
- the quality of information: an officer may receive excellent information that will assist in the conduct of speedy investigations of violations. If the information is paramount in value, the quality of information may influence an officer to devote more time to pursue further evidence of the case.

After priorities have been established and recognized, officers should respond:

- to information through the conduct of an examination when a permanent resident or foreign national is making an application under A15;
- to information which is received to any allegations of inadmissibility provisions of the Act; and
- to any additional information from other sources that is brought to their attention (i.e., outstanding immigration warrant), or encountered through the officers' efforts.

11 Procedure: Risk assessment

Risk assessments are part of a problem-solving strategy and should be done in light of the safety of the person being investigated, the public, enforcement partners and officers. Risk assessments should be ongoing throughout the progress of the investigation. Officers must recognize that there are general stages of data collection in determining the degree of risk associated with a particular investigation. Although not all of the following stages apply to every investigation, officers should conduct a risk assessment when:

- planning the investigation at the office prior to the initial contact with the person;
- en route to the location;
- upon arrival at the location;
- during the approach of the location; and
- during the contact interview including upon entry, while inside and upon exit of the location.

Since situations evolve, officers should continually assess the level of risk. The behaviours that officers may respond to and situational circumstances may change. The reasonableness of the option selected, therefore, may change at any point of the investigation. When conducting a risk assessment, officers should review the case file and consider individual factors. The following list is not exhaustive, but rather is reflective of the primary sources that contribute to a risk assessment. These factors include:

- identifying the physical environment where the investigation will be conducted;
- establishing the time and date of contact;
- assessing the background information of the person being investigated;
- considering the seriousness of the allegation;
- identifying resources that may be required. See the policy on Investigations by two or more officers, in Section 5.8;
- identifying the necessary equipment that may be required; and
- assessing the feasibility or practicality of the investigation.

Officers should input into NCMS that a risk assessment has been conducted.

12 Procedure: Police assistance

During the normal course of investigative work, an officer may require help from one or more police organizations, depending on the location of the CIC office and the jurisdiction of a situation. The jurisdiction of the various police forces varies according to the legislation for which they are responsible, such as customs officers, fisheries officers, military and railway police. An officer will most often liaise with the RCMP, provincial and municipal police. For information on the policy of police assistance, see Section 5.5.

12.1 The Royal Canadian Mounted Police (RCMP)

As Canada's federal police organization, the RCMP operates in all provinces to enforce federal statutes for which it has policing responsibility. Some of the statutes relating to immigration and enforced by the RCMP are the *Immigration and Refugee Protection Act*, the *Controlled Drugs and Substances Act*, the *Customs Act*, the *Excise Act* and the *Food and Drugs Act*. An RCMP officer has the powers of a peace officer and of a customs officer for the whole of Canada. The RCMP is the only police force with such authority.

The RCMP provides provincial and municipal police services to eight provinces, Nunavut, Yukon and the Northwest Territories.

In 1984, the Canada Employment and Immigration Commission and the RCMP signed a Memorandum of Understanding on Investigations and Prosecutions conducted under the Act. Without restricting CIC investigations, the RCMP may investigate and prosecute offences listed in A117 to A131 without the prior concurrence of the department, as long as consultations take place as soon as possible when it appears that unfavourable public reaction will develop, or when it appears that an immigration employee may have committed an offence under the Act. In cases of media interest, the RCMP regional officer in charge of the immigration and passport section consults a regionally designated officer.

The RCMP must notify immigration authorities about all immigration investigations and prosecutions that the RCMP commences. The *Privacy Act* allows an RCMP officer conducting an immigration investigation access to immigration case files and to copies of official documents from immigration records. The RCMP and immigration authorities may agree to joint action in investigating organized violations of the Act. Immigration authorities must refer offences under the Act to the RCMP for investigation and possible prosecution.

The RCMP will help immigration officials in their dealings with violent and dangerous persons during an investigation, arrest or removal. In addition, they will obtain for immigration authorities Canadian and foreign (but not U.S.) criminal records, and information for an officer's assessment of the inadmissibility of persons.

An officer may establish direct contact with members of United States courts or police agencies. If an officer requires criminal documents on a person in Canada, and the officer is aware of the location in the USA where the person was convicted, the officer should directly contact the police agency concerned. All information exchanged must be lawful and in accordance with the *Privacy Act* and the *Access to Information Act*.

12.2 Provincial police

Ontario and Québec are the only two provinces in Canada that have their own provincial forces: the Ontario Provincial Police and the Sûreté du Québec. Both forces are responsible for enforcing the federal and provincial statutes in their respective provinces, and municipal by-laws where the provincial force is contracted to provide municipal police services.

12.3 Municipal police

Each city and town is responsible for maintaining law and order within its jurisdiction, and for providing and maintaining an adequate police force in accordance with the needs of the community. Larger communities usually have municipal police, and new or smaller communities may rely on contracts with the provincial police or the RCMP.

12.4 Canadian Police Information Centre (CPIC) database

The Canadian Police Information Centre (CPIC) database provides information concerning persons under an immigration warrant and includes warrants issued against foreign nationals who have been previously deported from Canada.

The CPIC database stores a variety of valuable information of interest to enforcement agencies in Canada. It can provide an officer with data on the location of subjects, immigration warrants, assessments of danger and character profiles. For information on the CPIC policy refer to ENF 13, Section 5.

12.5 Liaison with the RCMP and CSIS on queries related to criminals

An officer may be required to obtain information in a country other than the United States. An officer may want to confirm, for example, the presence abroad of a person wanted in Canada or to ascertain the existence of, or obtain a copy of a criminal record. If so, an officer should send their query to the responsible office outside Canada as referred to in Appendix A of IC 1. If available, an officer should also send the Fingerprint System (FPS) numbers.

12.6 When police assistance may be required

Officers often depend on various police agencies for certain types of assistance. Below is a list of instances, among others, where police assistance is commonly used:

- to provide security in a geographical area by their presence or regular patrols;
- to participate in investigations;
- to assist in dangerous situations, such as those in which assaults or any other potentially violent incidents may occur;
- to provide protection in case of disturbances such as demonstrations;
- to lay charges under the *Immigration and Refugee Protection Act*;
- to provide assistance to escorts;

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- to provide fingerprinting and photographic expertise;
- to provide Canadian Police Information Centre (CPIC) information where it is not available in CIC offices;
- to provide lab analysis of suspected fraudulent passports and other documents;
- to refer cases of convictions under federal statutes to the department; and
- to transport detainees to detention centres or jails when necessary.

12.7 Assault or obstruction of an officer during the course of their duties

If an immigration officer is assaulted or obstructed during the course of their duties, the incident should be reported to the police as soon as possible. If a charge is to be laid, it should be pursuant to section 270(1) of the *Criminal Code*. If an officer is obstructed (i.e., third party prevents the removal of a person from Canada), charges could also be brought by the police under A129(1)(d) for committing the offence of obstruction.

Whenever the Crown is contemplating laying charges that raise questions regarding an officer's status as a peace officer, regions are encouraged to contact the Director of Investigations and Removals, NHQ, who will ensure that designated counsel from Legal Services communicates directly with the Crown to provide assistance.

12.8 Citizen's arrest under section 494 of the *Criminal Code*

If an officer is in a situation where circumstances warrant the arrest of a person for committing an indictable offence (i.e., assault of a peace officer (s. 270(1) C.C.) or obstruction (A129(1)(d), IRPA)), they may make a citizen's arrest under subsection 494(1) of the *Criminal Code* and the officer would have to present the person "forthwith" to a peace officer as required by subsection 494(3) of the *Criminal Code*.

Because there is a strict requirement to arrest and detain only within statutory authority, care has to be taken to limit arrest to situations where there is reasonable connection between the incident and the performance of immigration enforcement duties.

12.9 Transitional procedures for immigration offences

In cases where the RCMP have laid charges under the offence provisions of the *Immigration Act*, 1976 and the Courts have not made a decision on the case, the police cannot re-lay charges under the offence provisions of the *Immigration and Refugee Protection Act*. The charges that were laid under the *Immigration Act* are still valid and should be continued as these are governed by the transitional provisions of A190.

13 Procedure: Interviewing

Interviewing is a basic investigative technique for getting necessary information about a possible offender, either from the person directly or from a third person. Officers must be able to interview quickly and efficiently, often under difficult conditions, such as in public, in a private residence, or at a place of employment.

13.1 When a person makes an application under the Act

When in Canada, A16(1) requires that a person who makes an application answer truthfully all questions put to them for the purpose of examination. An application is defined under R28 as a process where a person:

- submits an application in writing;
- seeks to enter Canada at a port of entry; or
- makes a claim for refugee protection.

For the purposes of inland examinations, where an officer believes that further information is required for the processing of the application or refugee protection claim, the person is obligated under A16(1) to:

- answer truthfully all questions put to them for the purpose of the examination; and
- produce a visa, all relevant evidence and documents that the officer reasonably requires.

Note: Under A16(2) the term "relevant evidence" when applied to foreign nationals includes photographs, fingerprints and other information that may be used to establish their identity or compliance with the Act.

13.2 When an application is not made under the Act

Unless a permanent resident or foreign national is making an application under A16(1), the person is otherwise not required to answer questions.

An officer cannot arrest a person solely to answer questions. Refusing to answer questions is not in itself reasonable grounds for arrest. An officer must never attempt to secure answers to questions by a promise of favours or through threats or coercion. However, A55(2) provides:

55.(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under A44(2); or

(b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

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In cases where a permanent resident or a foreign national has been arrested, detained or is the subject of a removal order, an officer may require under A16(3) any evidence including photographs, fingerprints and other information that may be used to establish their identity or compliance with the Act.

13.3 Interviewing techniques

One of the many ways an officer can gather information is by interviewing. Interviewing is a formal process of interaction and communication between one person and another or several others. Interviews can be broken into three categories:

- fact finding;
- information; and
- motivating or counselling.

When deciding on a questioning strategy for an interview, officers should always keep in mind the desired outcome and maintain direction of the interview at all times. An officer should plan the actual phrases to use when posing questions, and the way to ask them, including the tone voice and body language. How an officer asks a question and the types of questions that are asked can create the climate for the interview. The way an officer elicits information will generate different responses from the individual.

The best interview results are often obtained by using an appropriate mix of various types of questions. Examples of different types of interview questions and statements include:

Types of Question or Statement	Question Example
Closed	Do you have a passport?
Open-ended	Why didn't you leave Canada when your temporary resident permit expired?
Leading	You knew that you were not allowed to work in Canada, didn't you?
Rephrasing	You were advised to report to an immigration office.
Recapping	So far you've stated that...
Clarifying	I'm not sure I understand...

In assessing the person's response, an officer should become familiar with various signs or body language and what they can mean: the way the person sits, stands, holds their hands, and so on. Officers should use body language as an investigative tool and a guide for further questioning.

13.4 Questioning on private premises

Officers often receive information concerning a person who has allegedly violated the Act and who is residing at a particular address. Generally, there is insufficient additional information, such as the person's correct name, status and background, for issuing a warrant.

If an officer wants to question a person on private premises to clarify the status of the alleged violator:

- they can only enter the premises by consent of the occupant; and
- if the occupant asks an officer to leave, an officer must do so.

If an officer does not leave the private residence as requested, the officer's presence becomes a trespass.

13.5 Counselling to leave Canada

There appears to be nothing unlawful in an officer advising a person who is in breach of the Act that the person may leave Canada before referring a report to the Immigration Division for an admissibility hearing.

Once a report has been referred for admissibility hearing, however, an officer may be in contravention of A129 if the officer counsels a person to leave Canada and thereby elude the said hearing. If the person indicates a wish to leave voluntarily, and if the report does not involve serious grounds for removal, the officer should not object if the person arranges departure. Once an admissibility hearing has been scheduled and the file has been forwarded to the Hearings Unit, an officer should discuss with the hearings officer whether the person can leave Canada prior to the hearing.

14 Procedure: Taking notes

14.1 Notes to file

Officers are often involved in incidents that may result in an admissibility hearing, court proceedings or general assistance to police officers. It is imperative that officers justify and support allegations by thorough and accurate notes that are placed on the file.

It is permissible to attach a separate page of notes to file as long as the notes clearly indicate:

- the date of the notes;
- the background information of the person concerned;
- the physical location of the interview;
- name of the interpreter, if applicable;
- the start and finish times of the interview;
- page numbers (i.e., 1 of 4, 2 of 4);
- officer's initials on each page; and
- the designated title of the officer.

Officer's notes are a valuable tool to the hearings officer because they may be entered as evidence at an admissibility hearing, tribunal or court proceeding. Poor quality or unsigned notes give the defence counsel the opportunity to cast doubt in court on the notes, or documents. Doubts can be cast on who created the notes, when and where. The officer should note on the file what attempts they made to obtain evidence, so that the hearings officer is aware that they may have to further pursue subject material.

Note-taking is a craft that should be honed as precise and accurate notes will expedite casework.

14.2 General rules for note-taking

An officer should observe the following general rules for taking notes:

- the content of notes depends on the circumstances. Notes should be clear, concise, legible, understandable, accurate, complete and sequential;
- notes should be unbiased and provide a detailed account of the events officers have witnessed or received;
- the recommended sequence for recording notes should be in chronological order;
- all notes should be factual without inferences or evaluative statements. If an opinion is stated, the opinion should be labelled as an opinion;
- the information should be recorded in the same manner (with names, for example, last name, first given name, second given name);
- notes should contain only information that relates to work. Personal information must be avoided to prevent embarrassment or explanation;

- notes should be made at the time of the observations, or as soon after as possible. The courts have held that the maximum time afterwards is 24 hours;
- if notes involve a statement or record in a question-and-answer interview, the witness or the person directly involved should sign the statement or interview notes;
- small diagrams are permissible provided that they are clear;
- notes may include abbreviations, but the abbreviations should be defined and consistent to avoid confusion;
- sections of the *Immigration and Refugee Protection Act* or *Criminal Code* may be used. If legislative references are used, the provisions must be accurate;
- as a guide, the officer should ask the “who, what, where, when, why and how” questions to ensure that everything has been captured in the notes; and
- notes that are of importance to a particular case should be input into the notes section of NCMS.

14.3 Officer notebook

An immigration officer's notebook, IMM 5104B, is an essential investigation tool and will be used to refresh an officer's memory at a later date. Common examples include preparing accurate detailed reports or forming a basis for testimony if an officer is called on to testify at an admissibility hearing or in court. As a representative of the department, an officer must use the notebook appropriately. This in turn will promote a professional and credible image. In particular, the format for preparing notes in the officer notebook should be consistent and comply with the following procedures:

- be consistent in note-taking: that is, always start each day the same way (for example: time, day, date, and weather conditions);
- all notes should be made in the officer's own handwriting and in pen. Officers should use only one type of pen, preferably black. If an officer keeps switching pens, someone could assume that an officer made additions long after the fact;
- always relate information to its source: for example, weather: 6 degrees C (newspaper);
- try to leave large spaces between writings;
- ensure the notes of each case are separate to avoid confusion;
- keep all pages intact and refrain from amendments with correction fluid, eraser or scribbling out mistakes. If an error is made, the officers are advised to draw a line through it then write their initial at the end of it;
- notebook content is a reflection of the circumstances. Notes could simply include the date, day, time, weather, time on duty, occurrences throughout the course of the day and the time off duty; and
- rule off the last line after each day.

Note: Officer safety is paramount. Note-taking during certain situations is not always possible. Officers should recognize that note-taking should occur at an appropriate time and place.

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The Enforcement Branch has developed the notebook, and it is consistent with the format preferred by the courts. The notebook also contains reference material in the back to assist officers during the course of their duties.

The following are situations in which officers may use their notebook:

- at an admissibility hearing;
- testimony in court;
- to record the specific details of an A55 arrest;
- on escort officer duties;
- when a person eludes examination at a POE;
- when a person makes false or misleading statements;
- as a witness to an offence;
- providing assistance to other departments;
- assisting Canada Customs Revenue Agency (CCRA) officers in search and seizure proceedings;
- when a person assaults a peace officer;
- when a person commits other offences;
- testimony in the U.S. under the *Mutual Legal Assistance in Criminal Matters Act*; and
- responding to complaints.

The officer's notebook is divided into three sections:

- **Cover:** this section contains essential data that may be required during legal proceedings. An officer should always complete this data before making a first entry. For obvious reasons an officer cannot note the last entry date until the notebook is full or returned for storage.
- **Blank pages:** this section consists of 100 numbered pages for note taking. Each page has a left margin where an officer should note appropriate times and a page number in the bottom right. Do not exceed this number of entries.
- **Reference pages:** this section contains the following information:
 - signal codes for two-way radio usage;
 - frequently used telephone numbers;
 - phonetic alphabet;
 - *Canadian Charter of Rights and Freedoms*;
 - *Vienna Convention*;
 - caution and secondary caution to charged person;
 - description of person;
 - height-weight conversion tables;
 - conversion tables for social insurance numbers (SIN);
 - reportable sections of the Act;
 - immigration offences and punishment;

- arrest and detention; and
- arrest without warrant.

14.4 Note format in the officer notebook

The RCMP has suggested the “Rough Note-Complete Note” (RN-CN) format. This format allows an officer to make factual notes at the time and later write a detailed synopsis of the events. An officer should place the RN and CN abbreviations in the left margin to indicate the format clearly.

The general format is equally acceptable. A number of enforcement agencies use this format, which is basically a detailed factual synopsis of events. An officer should remember to be consistent in the format chosen. The *Investigator's Guide* includes samples of both formats.

14.5 Using the officer notebook at an admissibility hearing, court or other legal proceeding

In court or at an admissibility hearing, an officer may be asked to present their personal account of the events before, during and after an occurrence. Because it is virtually impossible for an officer to remember every detail accurately, the judge or member of the Board should have no objection to officers refreshing their memory from notes that they made at the time of the occurrence. Introducing a notebook into a courtroom procedure is a privilege and, as a common courtesy, before an officer consults their notes a permission for this should be sought from the judge or member of the Board. An officer could ask, for example:

“Your Honour or Mr./Madam Member, may I refresh my memory from notes that I made at the time of the incident or arrest or occurrence?”

Once an officer uses the notebook, the notes can be introduced as an exhibit and examined by the defence lawyer. The defence lawyer will be attempting to identify irrelevant material that can discredit an officer's testimony or credibility.

Even if an officer does not use their notebook, a judge can request that an officer produce it. The judge decides whether to accept the officer's notes as evidence. An officer should always refresh their memory before testifying.

For testimony, an officer should be aware of the following points:

- counsel often asks what the weather conditions were at the time of the occurrence to test an officer's powers of recall;
- it is permissible for an officer to give their assessment of a situation supported by observations (for example: Your Honour, or Mr./Madame Member of the Board, in my opinion he appeared to be intoxicated by alcohol or a drug. This is based on the following observations I made at the time ...);
- collaboration to a certain extent between officers when they complete their final notes is perfectly acceptable. This avoids explaining under cross-examination any needless discrepancies between notebooks. An officer must not collaborate with other officers to alter facts or the sequence of events, because defence counsel may suggest that an officer collaborated to provide a single version of events; and
- the courts have determined that an officer's notebook is a record of control of a government department and is subject to the same exemptions as other government files under the *Access to Information Act*. In addition, the notebook contains personal information within the meaning of the *Privacy Act*. Only the pages with information on the case can be produced or viewed in

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court. To avoid the defence counsel attempting to flip through irrelevant pages, an officer should use paper clips. An officer could then say:

“Your Honour, or Mr./Madam Member of the Board, I have marked the pages relevant to this case. The other pages clipped together contain information pertaining to other cases unrelated to this one, and are protected under the *Privacy Act* and the *Access to Information Act*.”

When an officer enters information in an officer’s notebook, the officer should remember that a request under the *Access to Information Act* to gain access to an individual’s case file might also include an officer’s notebook. The possibility that information in an officer’s notebook may be disclosed should not discourage an officer from maintaining accurate, candid notes. If an officer follows all the general rules for note-taking, see Section 14.2, an officer should not be concerned if the contents of an officer’s notebook are released. Some information might be protected and not accessible, and access can be granted only to information concerning the individual making the request.

14.6 Statutory declarations

Officers should use the IMM 1392B standard form for making or receiving a solemn declaration. A statutory declaration can be used as part of the note-taking process and can be placed and used as evidence at a court proceeding or at the Immigration and Refugee Board. There are different types of statutory declarations that are available to an officer that may be used to accompany the file notes when gathering case evidence. The three types of statutory declarations include:

- Narrative summary statutory declaration: This format consists of a declaration by the officer recounting the facts that are known to them. The facts may have come to the officer’s attention as a result of a conversation that the officer has heard or read. The narrative declaration would also include statements of facts pertaining to actions taken or observed by the officer. The weakness in this format, however, is that it is selective and might be based upon hearsay.
- Question and answer statutory declaration: This format is simply a record of an interview in which all the questions and answers are carefully recorded. This declaration reproduces the exact conversation and provides for the most reliable, objective version of an interview.
- Admission statutory declaration: This format consists of a statement from the person being interviewed. It is an objective statement of fact because it is not subject to interpretation and recording of errors by the officers. This is, however, the least effective format unless the person makes the statement in the presence and with the assistance of counsel.

When officers are completing a statutory declaration, the document should contain the following elements:

- the identification of the declarant;
- concise and accurate statement of the facts:
 - include only facts relating to the case;
 - do not express opinions;
 - do not draw conclusions;
 - avoid legal or technical terms;
- the date of the declaration; and
- the signatures of the declarant and the person receiving the declaration.

15 Procedure: Arrests

Under A138(1), an officer has the authority and powers of a peace officer to enforce the Act, including the arrest, detention or removal from Canada of any person. The power to arrest and detain is a serious matter that results in a person being deprived of their liberty under section 7 of the *Charter of Rights and Freedoms*. Accordingly, arrests must be made with reasonable cause. Arrests should only be an option when officers have explored other alternatives and have found them to be inappropriate.

15.1 Officer responsibilities for arrests under the *Criminal Code*

When an officer arrests someone, the officer is individually responsible for observing the following procedures outlined in subsection 29 of the *Criminal Code*:

- Subsection 29.(1) states that it is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.
- Subsection 29.(2) states that it is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of:
 - (a) the process or warrant under which he makes the arrest; or
 - (b) the reason for the arrest.
- Subsection 29.(3) states that failure to comply with subsections 29.(1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

Although subsection 29.(3) of the *Criminal Code* protects an officer in instances of non-compliance with subsections 29.(1) and 29.(2), the department expects an officer to comply with subsections 29.(1) and 29.(2) whenever possible.

15.2 False arrest

Subsection 28.(1) of the *Criminal Code* provides that a person is protected from criminal responsibility in the arrest of a wrong person if the officer:

- is authorized to execute the warrant to arrest;
- on reasonable grounds; and
- acts in good faith that the person they arrest is the person named on the warrant.

Subsection 28.(2) further clarifies that:

- (2) Where a person is authorized to execute a warrant to arrest,
 - (a) every one who, being called on to assist him, believes that the person in whose arrest he is called on to assist is the person named in the warrant, and
 - (b) every keeper of a prison who is required to receive and detain a person who he believes has been arrested under the warrant,
 - is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

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Under subsection 37.(1) of the *Criminal Code*, everyone is justified in using force to defend himself, herself or anyone under their protection from assault, if they use no more force than is necessary to prevent the assault or the repetition of it.

In other words, an officer must have reasonable grounds to justify any use of force when performing their duties, and they should keep force to a minimum. As long as officers are able to justify their actions in accordance with the provisions of the *Criminal Code*, these actions will be supported.

While the *Criminal Code* confers protection from criminal charges should false arrest occur, an officer may nevertheless be open to civil suit. An officer must take every possible precaution to prevent such an occurrence.

15.3 Arrests with a warrant

Under A55(1), an officer may issue a warrant for the arrest and detention of a permanent resident, protected person or a foreign national who the officer has reasonable grounds to believe (see Section 6), is:

- inadmissible under any provision of the Act and either:
 - poses a danger to the public, (see ENF 20, Section 5.6); or
 - is unlikely to appear, (see ENF 20, Section 5.7), for an examination, an admissibility hearing or removal from Canada.

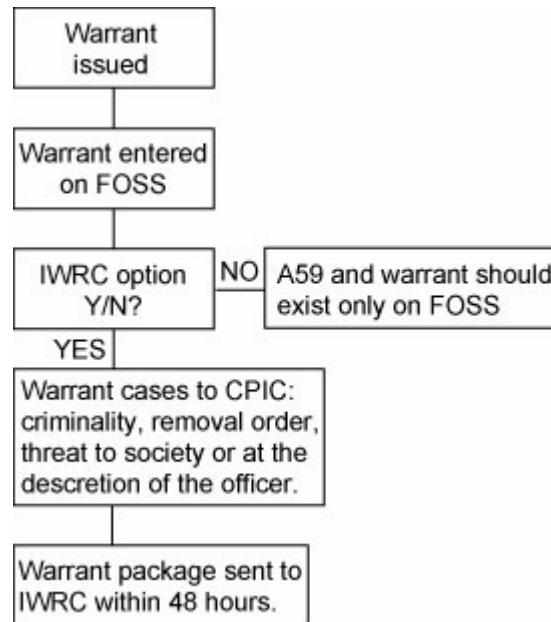
If these grounds and reasons exist, an officer may issue a warrant for the arrest and detention of a foreign national or permanent resident by completing the IMM 0420B.

Note: IRPA does not provide the authority for an officer to issue a warrant against a person for a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2) where there are reasonable grounds to believe the person would be unlikely to appear for this process.

For warrants issued prior to June 28, 2002 for SIO Determinations:

The transitional provisions of IRPA (R325) provide that a warrant for arrest and detention made under the *Immigration Act, 1976* is a warrant for arrest and detention under IRPA. All warrants, including those for SIO determination, that were issued under the *Immigration Act, 1976* should be executed for the reason of that warrant.

Warrant Flow Chart



15.4 Completing Form IMM 0420B (Warrant for Arrest)

When a warrant for arrest IMM 0420B is issued, it must be completed on the nationally approved bilingual form that conforms to the legally approved format and text. The following procedures must be followed to accurately complete the manual IMM 0420B warrant for arrest:

- the FOSS identification number must appear outside the legal text;
- print the family name and given name of the individual as it appears on FOSS/NCMS “Warrant for Arrest” screen. If FOSS has truncated the individual’s name because of length, print the individual’s complete family name and given name;
- do not enter aliases, file numbers, identity numbers, birth date or other information in this field. Aliases must be entered in FOSS on the “Personal Details” screen. IWRC will transfer aliases from the FOSS “Personal Details” screen onto the CPIC database;
- check-off the option box on the IMM 0420B indicating the reason for the warrant;
- the authorized officer’s signature should appear in the signature block; and
- the authorized officer’s title as delegated in the Instruments must be clearly recorded on the face of the IMM 0420B.

If a mistake is made while completing the IMM 0420B, draw a line through the error, initial and date it. Do not use correction fluid.

15.5 Entering warrants into FOSS

The Immigration Warrant Response Centre (IWRC) relies on information on the FOSS “Warrant for Arrest screen” to make entries into the CPIC database. It is essential for officers to complete FOSS

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information fields correctly. The information entered in FOSS must appear in either English or French. CPIC policy prohibits information on a single entry to be a combination of both official languages. The fact that a warrant has been issued should also be input into NCMS.

There are 3 sections on the "Warrant for Arrest" screen in FOSS:

- Warrant entry:
 - this section must be completed by the officer at the same time the warrant is issued.
 - this section captures information about the individual and the warrant issued. Experience has shown that details about the individual's physical appearance (e.g., height, weight, scars, tattoos) can be crucial for enforcement officers to properly identify the individual at the time of the arrest.
 - use the FOSS "Personal Details" screen to enter aliases.
 - if the warrant is to be entered into the CPIC database, the information field "IWRC" must be marked "Y" (YES).
- File transfer:

The IWRC will return the cancelled or executed warrant to the office where the individual's file has been transferred (if on or after the date of its cancellation/execution). If this section is blank, the IWRC will return the original warrant to the office that actioned the warrant.

- Final warrant action:

This section is to be completed by the officer when the warrant is executed or cancelled, ENF 13, Section 7.7.

Note: It is recommended that files be reviewed before entering immigration warrant data on FOSS/NCMS. When it is discovered that warrant information is incorrect and requires amendments to any of the physical descriptors of the person or changes to the tombstone data, refer to ENF 13, Section 7.7.

15.6 Transferring warrants onto the CPIC database

To ensure the integrity of the data being transferred to the CPIC database, the IWRC inputs and monitors the information contained in immigration warrant records being transferred to the CPIC database. Warrant packages must be sent to the IWRC. For information when a warrant should be entered onto the CPIC database, refer to section 5.4, ENF13.

If a warrant is to be entered onto the CPIC database, the "IWRC Y/N" field of the FOSS screen must be filled with a "Y." This informs the IWRC that the warrant is destined to the CPIC database and enables the transfer to take place once the mandatory documentation is received and verified at the IWRC. If "N" is selected, the warrant is not transferred to the CPIC database.

Note: When the IWRC field has been left blank, the default is "Y."

When A55(1) warrants are issued with respect to persons currently serving a sentence in an institution and are under an immigration hold pursuant to A59, these warrants are not to be entered onto the CPIC database. If officers are not actively looking for these individuals, it is vital that the officer entering the warrant onto FOSS ensures that an "N" is entered in the A59 field. This ensures that these warrants are not accidentally sent to CPIC and will avoid any jurisdictional conflicts with any other laws of Canada. In exceptional cases, when there is a need to activate a warrant for the purposes of A59, officers may notify CPIC by entering "Y" in the IWRC field and sending the original documentation to the IWRC.

If an existing warrant is to be transferred to the CPIC database, the "N" in the IWRC field must be changed to "Y" to enable the transfer to take place. This can be done via the FOSS maintenance function.

15.7 Sending warrant packages to the IWRC

In addition to the original immigration warrant, the mandatory documentation is the essential data required by the IWRC before a warrant can be transferred to the CPIC database. A listing of this documentation can be found in Appendix B. When completing a warrant package, accuracy of information is paramount.

All warrant packages must be forwarded to the IWRC within 48 hours through a secure, timely and reliable courier or mail service. Please note that the majority of warrant package information is designated as Protected "B." Some information may also be classified as Secret. This information must be appropriately safeguarded.

Warrant packages are to be mailed to:
Immigration Warrant Response Centre
Citizenship and Immigration Canada
JETN, 9th Floor, Section A
300 Slater Street
Ottawa, Ontario
K1A 1L1

The external envelope should be devoid of all markings other than the IWRC address and must bear a return address and a telephone number. Government standards for the shipping of classified information must be followed.

Courier or mail services must provide proof of mailing and, on request, record of transit/delivery for any items delivered via their service. Since the warrant package contains original documents, which may not be replaceable, proof of mailing and records of transit/delivery should be requested for all items. Further, it is imperative to trace documentation lost en route to the IWRC immediately.

15.8 Executing or cancelling an immigration warrant

Once an officer has confirmed with the IWRC the validity and identity of the person subject to the warrant, they may execute the warrant if the officer is satisfied that the person is described in the warrant or cancel the warrant if the warrant does not have any validity. When a warrant has been executed or cancelled, the appropriate action should be input into NCMS.

Section 3 of the Warrant FOSS screen is the final warrant action that must be completed by the officer when the warrant is executed or cancelled. To cancel or execute a warrant, officers should follow these steps:

- from the main menu, go to the full document entry screen in FOSS (FD);

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- enter the FOSS-generated warrant document number in the existing document field (ED) in the identify document field;
- complete section 3 of the warrant screen and add any remarks.

Note: After a warrant has been executed and the person is arrested under A55(1), a Notice of Arrest must be completed either manually (IMM 1285B) or through FOSS using the Full Document Entry (FDE) screen. The action should also be recorded in NCMS.

The existence of a warrant does not allow an officer any discretion on arresting a person named in a warrant. An officer must arrest and detain the person unless the grounds for the warrant have ceased to exist, such as a loss of jurisdiction or change in circumstances. A warrant can be cancelled in situations where the person is no longer being requested to appear for an examination, an admissibility hearing or for removal. In those cases where the grounds for the warrant have ceased to exist, the officers should seek to have the warrant cancelled from the CPIC database.

When an immigration warrant becomes invalid, it must be immediately removed from the CPIC database using the FOSS FDE module. This action removes the warrant from the CPIC database but retains the warrant information on FOSS/NCMS. The IWRC will forward the warrant file together with a document transit and receipt form stamped with the cancellation date to the CIC office conducting the action.

Whenever a warrant is cancelled for a principal applicant, the same should be done for any dependants included in the application, as long as criminality is not involved. When a case is decided favourably, the responsibility for cancelling the warrant is on the officer.

Note: Officers must exercise caution when merging client IDs when there exists an active warrant. The client ID in which the active warrant is associated must continue to exist.

15.9 Referral of warrant cases from CPC Vegreville

Warrants should be executed pursuant to A55(1) when the person is still wanted for examination, an admissibility hearing or removal from Canada. In all CPC Vegreville cases, whether the person is a permanent resident or a foreign national, for which there is an outstanding warrant, CPC Vegreville must refer the case to an inland CIC to make a decision on the case.

15.10 Arrests without a warrant

Before an officer makes an arrest without a warrant under A55(2), they must have reasonable grounds to believe, see Section 6, that a foreign national (other than a protected person, see A95(2)) is:

- inadmissible, (see ENF 1) under any provision of the Act and is either:
 - a danger to the public, (see ENF 20, section 5.6); or

- unlikely to appear, (see ENF 20, Section 5.7), for an examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister, pursuant to A44(2); or
- when an officer is not satisfied of the identity, see ENF 20, Section 5.8, of a foreign national in the course of any procedure under the Act.

It is important to note that under A55(2), permanent residents and protected persons may not be arrested without a warrant. When officers arrest without a warrant under A55(2), a Notice of Arrest must be completed either manually (IMM 1285B) or through FOSS using the Full Document Entry (FDE) screen. The action should also be recorded in NCMS.

15.11 Arrest of a person named in a security certificate (with or without a warrant)

An officer may be contacted by Case Management Branch at NHQ to arrest and detain a permanent resident or a foreign national who has been named in an A77(1) security certificate. When a security certificate has been issued against a permanent resident or foreign national, they may be arrested and detained under A82(1) of the Act.

The CIC Minister and the Solicitor General may issue a warrant for the arrest and detention of a permanent resident under A82(1) who is named in a security certificate if they have reasonable grounds to believe that the permanent resident is a danger to national security, to any person or is unlikely to appear for a proceeding or removal.

In the case of a foreign national named in a security certificate, under A77(1) that person can be detained pursuant to A82(2) without a warrant on the basis of the security certificate.

The following are procedures that should assist officers in executing the arrest of a person named in a security certificate:

- when a warrant is required against a permanent resident, the warrant is signed by the Solicitor General and the Minister of Citizenship and Immigration Canada;
- the Case Management Branch at NHQ will coordinate with the appropriate regional enforcement team for the arrest and detention of the permanent resident or foreign national named in the security certificate;
- in the case of a permanent resident, the officer will receive a copy of the warrant for the arrest and security certificate. Officers will receive only the security certificate for foreign nationals;
- at the time of arrest, the permanent resident must be provided with the warrant and the foreign national must be provided with a copy of the security certificate. In each case, the permanent resident or foreign national must be informed of the reason for their arrest, given their notice of rights under the *Vienna Convention* using the form IMM 0689B and their rights to counsel;
- after the arrest, the regional enforcement team must advise the Case Management Branch at NHQ of the arrest and detention, input the Notice of Arrest (NOA) into FOSS/NCMS; and
- Case Management Branch at NHQ will be responsible for all other information that will be input into FOSS/NCMS.

15.12 Arrest of minors

Officers must exercise caution if minors, under the age of 18, have been or will be arrested or detained under the Act. Regardless of the age of the person arrested, a Notice of Arrest is required

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for all arrests under A55(1) and (2). For further information on the arrest or detention of minors, refer to ENF 20, Section 5.10.

16 Procedure: Arrest and detention by peace officers under IRPA

Peace officers may come into contact with persons of immigration interest during the regular course of their policing duties. In situations where an immigration officer is not in the physical presence of the person being arrested, it is the peace officer that may exercise their designated authority to arrest and detain under A55(2)(a) of the *Immigration and Refugee Protection Act*.

Peace officers as defined by the *Criminal Code* have the authority to arrest and detain under IRPA only for the purposes of A55(1) and A55(2)(a). As always, peace officers can arrest under section 495 of the *Criminal Code*, but with the exception of RCMP in designated areas, there is no authority under IRPA for peace officers to arrest and detain for identity under A55(2)(b) .

The instruments of designation/delegation provide that for A55(2)(a) any peace officer as defined by the *Criminal Code* may arrest and detain without a warrant. Specifically, A55(2)(a) states that:

An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).

For the purposes of these guidelines a:

- **CIC officer** includes immigration officers designated for the purposes of arrest and detention under A55(1) or A55(2) of the *Immigration and Refugee Protection Act* (i.e., enforcement officer at a POE, enforcement officer, IWRC dispatch officer, senior immigration officer, etc.);
- **Local CIC enforcement officer** includes immigration officers who are involved with investigations and removals (i.e., enforcement officer, after hours duty officer, investigator, etc); and
- **Peace officer** includes officers defined under section 2 of the *Criminal Code* (for example, a municipal or provincial police officer, an RCMP officer, a First Nations constable, etc.).

In order to protect the health and safety of Canadians and to maintain the security of Canadian society, it is important that the working relationships between CIC and law enforcement partners are maintained by ensuring that:

- adequate training is provided to various law enforcement agencies at all levels (i.e., federal, provincial and municipal);
- peace officers making arrests under IRPA are made aware of their authority under IRPA to arrest and detain;
- CIC officers provide assistance for warrant and non-warrant cases including providing guidance to peace officers when establishing the grounds and reasons for an arrest under A55(2)(a);
- local CIC enforcement officers make every reasonable attempt to provide immediate response to appear at the arresting agency;
- local CIC enforcement officers communicate feedback to the peace officer making the arrest and provide guidance to any questions that the peace officer may have; and
- local CIC enforcement officers communicate the next course of action that is to be taken by CIC.

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16.1 Arrest and detention with a warrant by a peace officer

In cases where an immigration warrant exists under A55(1), peace officers may be notified through the Canadian Police Information Centre (CPIC) to contact the Immigration Warrant Response Centre (IWRC). The peace officer that receives the immigration warrant has the authority under A142 and A143 to execute the warrant for the arrest and detention of the person named on the warrant.

Responsibilities of IWRC officers

After being contacted by a peace officer, the IWRC officer will provide personal details and background information to confirm that the person who is in the presence of the peace officer matches the person named on the immigration warrant. The decision to confirm the validity of the warrant remains with the IWRC officer.

The IWRC is a centralized information centre that must respond to the peace officer to provide assistance for the execution of the warrant by:

- providing fingerprints and photographs (when available);
- providing a copy of the warrant when it has been confirmed by the peace officer that it matches the person named on the warrant;
- notifying the CIC office in the jurisdiction of arrest; and
- contacting the appropriate CIC enforcement officer or the after hours enforcement officer to provide a response to the peace officer.

Responsibilities of the local CIC enforcement officer

- In situations where the peace officer has executed an immigration warrant, the local CIC enforcement officer must establish contact with the arrested person at the detention facility or police station and is required to:
- complete a Notice of Arrest (IMM 1285B) indicating the arresting agency, reasons and grounds for the arrest including the completion of the warrant field indicating “Y” that the person was arrested with a warrant; and
- execute the warrant on FOSS.

For further information on the procedures following arrest, refer to Section 16.3, Procedures following arrest and detention.

16.2 Arrest and Detention without a warrant by a peace officer

Peace officers as defined in the *Criminal Code* have the authority to arrest and detain foreign nationals under A55(2)(a). This will normally occur when a local CIC enforcement officer is unable to provide an “in person” response to a situation encountered by a peace officer. For example, a peace officer pulls over a vehicle during a traffic violation and encounters a foreign national who is suspected of being inadmissible to Canada. Due to time constraints of a situation or the remoteness of a physical location, availability of a local CIC enforcement officer may sometimes be limited.

Establishing effective lines of communication

Regional and local training to law enforcement partners should promote effective working relationships and establish CIC contact points. Law enforcement partners should be provided with copies of the *Police Officer's Handbook* and should be advised of the business and after hours contact numbers for the local CIC enforcement offices. For example, an after hours work arrangement may include calls being diverted to a 24-hour port of entry or to the IWRC.

To ensure effective and open lines of communication, local CIC enforcement offices are responsible to provide the business and after hours contact numbers, including any alternative after hours arrangements to the office that is providing after hours support. In addition, contact numbers for the after hours enforcement officer should also be provided either to the appropriate CIC office or law enforcement agency.

In recognition of the variables encountered during any potential arrest situation, the following communication channels have been established as guidelines to standardize the lines of communication between CIC and law enforcement partners. These guidelines may vary depending on regional and local operations. Officers requiring clarification on their regional or local operations should seek guidance from their supervisor or manager.

1. Assistance to peace officers - regular business hours

During regular business hours, peace officers should contact their local CIC enforcement office. When a local CIC enforcement officer is contacted by a peace officer they should take appropriate action by providing assistance either in person or by telephone.

In cases where the local CIC enforcement officer responds "in person" and an arrest under IRPA is required, the local CIC enforcement officer has the authority to arrest and detain under A55(1), A55(2)(a) and A55(2)(b).

However, in situations when the local CIC enforcement officer is unable to respond in person, they should provide assistance to the peace officer to make an informed decision whether or not to arrest under A55(2)(a). In circumstances where the peace officer decides not to arrest and it is clear that an arrest is required, the local CIC enforcement officer may issue a warrant under A55(1) if the grounds and reasons exist. For further information on the procedures for providing assistance to peace officers when an "in person" response cannot be provided, refer to section 16.2, part 3 Assistance to peace officer when an "in person" response cannot be provided to a peace officer.

2. Assistance to peace officers - after hours

There are three points of contact available to peace officers after regular business hours. These include:

- an on-call local CIC enforcement officer;
- a 24-hour port of entry; or
- an IWRC dispatch officer.

In situations when after hours calls are diverted to an alternative location other than the local CIC office, the CIC officer receiving the call from the peace officer should assess whether a local CIC enforcement officer should be contacted.

Normally, contact to a local CIC enforcement officer is not required when the person has lawful status in Canada or it is clear that the person does not require further enforcement action. The immediate attention of a local CIC enforcement officer may not be required where there is information to believe that the person is **not inadmissible** and is determined to be:

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- a Canadian citizen, permanent resident or Indian registered under the *Indian Act*;
- a protected person;
- a permanent resident or a foreign national that is the subject of a removal order that is not in force or is stayed (i.e., a person awaiting a decision by the Refugee Protection Division or a PRRA officer, a person approved for permanent residence, etc.);
- a foreign national who has been lawfully admitted as a student, worker or temporary resident and is still in status; or
- any other person that does not require further attention by CIC.

In circumstances where a person's legal status in Canada is not ascertained or the person could potentially be the subject to an arrest and detention under IRPA or the *Criminal Code*, the CIC officer receiving the call is required to immediately contact a local CIC enforcement officer. It is important for the CIC officer to be aware of the circumstances and urgency of a response, since this information must be relayed to the local CIC enforcement officer. In recognition that there will be many scenarios treated as urgent, in all cases CIC officers must advise the peace officer that they will contact a local CIC enforcement officer who will provide assistance either in person or by telephone.

The CIC officer that is speaking with the peace officer must make every attempt to establish contact with a local CIC enforcement officer. If the local CIC enforcement officer does not respond, a second attempt must be made. The final point of contact would be to the office supervisor or manager. It is important that the peace officer is made aware of how the response will be received and any delays that are being experienced.

For the procedures on providing guidance when contact to a local CIC enforcement officer cannot be established, refer to section 16.2, part 3, scenario B (below).

3. Assistance to peace officers when an “in person” response cannot be provided to a peace officer

There are two scenarios where an “in person” response cannot be provided to a peace officer.

Scenario A)

If a local CIC enforcement officer cannot provide “in person” assistance, they can either provide guidance over the telephone to assist the peace officer to make an informed decision to arrest under A55(2)(a) or issue a warrant in circumstances under A55(1). If a warrant is issued, the peace officer can execute the warrant under A142 and A143.

Scenario B)

When a peace officer contacts an IWRC dispatch officer or POE officer directly, that officer should receive the case details to assess whether an arrest is required. If there is the possibility of arrest, they are required to dispatch a local enforcement officer to provide a response to the peace officer.

If contact with the local CIC enforcement officer is not established, the IWRC dispatch officer or POE officer should provide assistance to the peace officer for them to make an informed decision whether or not to arrest and detain under A55(2)(a). The local CIC enforcement officer must be advised at

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the first reasonable opportunity of their contact with the peace officer and made aware of the circumstances of the case, including any action taken by the peace officer.

Note: CIC officers who cannot respond “in person” and can only provide assistance over the telephone, cannot order a peace officer to arrest without a warrant.

Since some peace officers may not be aware of their authority to arrest under A55(2)(a), the CIC officer should provide guidance to the peace officer as follows:

- Reaffirm that peace officers have the designated authority under A55(2)(a) to arrest and detain without a warrant under the *Immigration and Refugee Protection Act*.
- Ensure the person is a **foreign national** and is not a Canadian citizen, permanent resident, registered Indian or protected person. Status in Canada may be established by the documentation in the possession of the peace officer and also through queries in FOSS, NCMS, CRS, CPIC, NCIC, CAIPS or CATS.
- Provide information that will allow the peace officer to assess whether there are reasonable grounds to believe that the person is **inadmissible** under any provision of the *Immigration and Refugee Protection Act* and/or Regulations.
- Provide guidance to assist the peace officer in forming reasonable *grounds* to believe that the person is a **danger to the public** or **is unlikely to appear for an immigration matter**. The CIC officer can provide guidance on forming arrest grounds but cannot decide these grounds for the peace officer. For references on establishing the grounds for danger to the public, see ENF 20, Section 5.6 and for establishing grounds for unlikely to appear, see ENF 20, Section 5.7.
- Determine the reason for the arrest. Reasons may include that the person is unlikely to appear for an **examination, admissibility hearing, for removal, or for a proceeding that could lead to the making of a removal order under A44(2)**. Based on the specifics of the case and through FOSS/NCMS queries, the CIC officer will be able to provide guidance to the peace officer on the reasons for the arrest.
- Request that the arresting peace officer ensure that their arrest notes are made available to the local CIC enforcement officer upon their arrival at the police station or detention facility. The notes of the peace officer should be used by the local enforcement officer for the completion of the Notice of Arrest.
- Input information into FOSS, NCMS or CATS, as appropriate, to include details provided by the peace officer.

In both scenarios A and B, if a peace officer has made a decision to arrest under A55(2)(a) and requires a detention order (IMM 0421B) for the person to be admitted into a federal, provincial or territorial detention facility, the responding immigration officer can complete and fax an **unsigned** Detention Order. The peace officer must be advised to sign the detention order prior to the person's admission to the detention facility. Peace officers have the designated authority to sign detention orders when they were the arresting officer.

16.3 Procedures following arrest and detention

When an arrest is made by a peace officer under A55(1) and A55(2)(a), the CIC officer or local CIC enforcement officer must advise the peace officer to provide section 10 Charter rights and transport the arrested person to the police station or a detention facility. If not already established, a local CIC

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enforcement officer should be dispatched to attend the police station or detention facility on a priority basis.

Whenever an arrest is made, the local CIC enforcement officer who arrives at the police station or detention facility is responsible for completing a Notice of Arrest (IMM 1285B) on behalf of the peace officer by using their notes taken during the arrest. These notes and circumstances of the situation should indicate the reasons and grounds for the arrest. In the absence of peace officer notes, the local CIC enforcement officer should verbally consult with the peace officer on the arrest details. The IMM 1285B is a record of the arrest that documents the time, date, place, arresting agency, grounds and reasons for the arrest. During the completion of the Notice of Arrest, the local CIC enforcement officer should:

- request the arrest notes from the peace officer upon arrival at the police station or detention facility;
- advise the person of their rights under section 10 of the Charter of Rights and Freedoms as well as their rights under the Vienna Convention (IMM 0689B). The IMM 0689B must be completed accordingly and notification to the person's country representative be given, if appropriate;
- complete the required fields and the remarks of the notice of arrest including the grounds and reason for the arrest. The remarks should include the arresting peace officer's name, badge number, police agency and detachment; and
- ensure that the notice of arrest is inputted into FOSS/NCMS.

Following a peace officer's arrest, a local CIC enforcement officer then has the discretion to:

- prepare a report under A44(1) and release with conditions under A56;
- prepare a report under A44(1) and continue detention;
- not write an A44(1) report and issue an Authority to Release from Detention (IMM 5023B).

For further information on detention and release procedures, refer to ENF 20.

The local CIC enforcement officer should also advise the arresting peace officer of the follow-up action that has been taken.

16.4 Procedures when an arrest is not made

If a peace officer decides that arrest and detention should not occur under A55(2)(a), the CIC officer speaking with the peace officer over the telephone should record any relevant information that may be of interest to CIC for later follow-up.

Depending on the particulars of the situation, the information received may be relayed to the local CIC enforcement office for their information and possible action. If there is any chance that the information could be used for immigration purposes, a watch-for NCB (code 01) should be inputted into FOSS. The NCB should include the person's name, date of birth, place of birth, physical description, identity documents, address, associated persons, vehicle information, circumstances of the case, and any other information received from the peace officer. Also, the CIC officer should enter the peace officer's name, badge number, police agency, police division and telephone number where the peace officer can be reached.

16.5 Seizure authorities of a peace officer under IRPA

Whether an arrest is made or not made, peace officers also have the designated authority under A140 to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds that:

- it was fraudulently or improperly used; or
- seizure is necessary to prevent its fraudulent or improper use; or
- seizure is necessary to carry out any purpose under IRPA (i.e., examination, admissibility hearing, removal).

Peace officers should be made aware of their designated authority to seize under A140 and be provided with guidance on when such authority should be exercised. For example, this authority may be exercised when the person is in possession of foreign identity documents (i.e., passport, birth certificate, national identification card, etc.) that may be useful for an immigration process such as a claim for refugee protection or later removal from Canada.

When a peace officer exercises their authority to seize they should provide a handwritten receipt of the seizure and contact the local CIC. It is the responsibility of the local CIC enforcement officer to obtain the seized documents without delay from the peace officer and to decide whether the case requires further investigation. The local CIC enforcement officer will also create a general NCB (code 12) in FOSS entering the details of the seizure.

For further information on the procedures for seizure under IRPA, refer to ENF 12, Section 10 and ENF 12, Section 11.

17 Procedure: Making an arrest

Arrest is the act of depriving a person of their freedom. There is no way to predict the reaction of an individual faced with arrest. For further information on planning a safe arrest, see the *Investigator's Guide*, chapters I and III.

In cases where a warrant has been issued, section 29 of the *Criminal Code* obligates the arresting officer to have a copy of the warrant with them and show a copy of the warrant if a request is made to see it. A police officer or peace officer has the authority to execute an immigration warrant under A142 through the direction of an officer.

Prior to the actual arrest, officers should contact the IWRC to:

- verify the validity of the warrant;
- obtain a copy of the warrant;
- any other available information such as fingerprints and photographs.

This should assist officers to verify the identity of the person subject to the warrant.

The mere words, "you are under arrest", are sufficient to constitute an arrest in law, if the person acquiesces. In the absence of the person's acquiescence or understanding, an officer must actually touch the person. Officers when making an arrest should use the following wording:

"I am arresting you because (briefly describe the reason for the arrest). It is my duty to inform you that you have the right to retain and instruct counsel without delay. If you cannot afford counsel, legal counsel access to free legal aid may be available to you. Do you understand?"

An officer must clearly document on the file the reasons for arrest, because they may be called upon at any time to justify the grounds on which the decision to arrest was based.

In order to effect a valid arrest under the Act, the arresting officer must take these steps:

- identify oneself as an immigration officer;
- display the officer's badge and identity card to the person being arrested;
- tell the person that they are under arrest, the reasons for the arrest and their rights to counsel;
- in the absence of acquiescence or where the person does not understand, the officer must actually touch the person. In the case of a language barrier, the person should be taken to the nearest CIC office and an interpreter located;
- inform the person of their right to contact their embassy or a representative in their country's consulate in accordance with their rights under the Vienna Convention, see Section 17.3 , IMM 0689B; and
- search the person, see Section 20.1.

17.1 Entering a notice of arrest in FOSS

The IMM 1285B, Notice of Arrest (NOA), is a document which formally records the arrest and the reasons for the arrest of a person under the *Immigration and Refugee Protection Act*. After any any arrest has been made under A55(1) or A55(2), an NOA must be entered immediately into the FOSS/ NCMS database. The purpose of the NOA is to maintain accurate details and of arrests made under

IPRA such as the arrest time, date, place, reasons, grounds and arresting officer. The NOA can be entered into FOSS in two ways:

- where the NOA, IMM 1285B was manually completed, the information must be entered in the status entry field referring to the protected document number in the upper right-hand corner of the document; or
- if a manual NOA IMM 1285B was not issued, an officer can initiate the printing of a Notice of Arrest using the Full Document Entry (FDE) screen under the NA option (notice of arrest).

In both cases, it is imperative that officers indicate in the warrant field whether or not the person was arrested with or without a warrant. Remarks should also be entered into the "Remarks" screen to record the grounds and reasons for why the person is a danger to the public or is unlikely to appear for an examination, admissibility hearing, removal, a proceeding that may lead to the making of a removal order under A44(2) or for identity.

In the event that the person cannot be dealt with by the intended process, the officer should clearly mark the documents and file that corresponds to the purpose of the arrest (i.e. examination, admissibility hearing, removal, or a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2). Depending on the processes following an arrest and where a manual IMM 1285B was not completed, officers may want to place a FOSS printout of the Notice of Arrest on the file to physically record the details of the arrest.

A report under A44 may be required following a Notice of Arrest if inadmissibility grounds exist.

17.2 Obligations under the *Canadian Charter of Rights and Freedoms* toward persons being arrested

The *Canadian Charter of Rights and Freedoms* applies to persons arrested or detained under the Act. The obligations of officers informing the person being arrested of their *Charter* rights apply equally to arrests with and without a warrant. Section 10 of the *Charter* imposes the following duties on officers effecting arrests and ordering the detention of permanent residents and foreign nationals pursuant to the *Immigration and Refugee Protection Act*:

- the officer must promptly inform the arrested or detained person of the reasons for the arrest or detention. If language is a barrier, an interpreter must be used. A relative, or acquaintance of the person, who is able to translate for them, can act as an interpreter in this situation;
- if the arrest and detention are pursuant to a warrant issued under A55(1), a copy of the warrant may be provided to the arrested person in fulfilment of the obligation to inform the person of the reasons for the arrest. If a copy of the warrant is provided to a person who is unable to read it, the officers must either read it to them or, if language is a barrier, have the warrant translated to the person;
- after an arrest or detention, an officer must not question the arrested person or otherwise attempt to elicit evidence from the person until they have been informed of their right to counsel and given a reasonable opportunity to retain and instruct counsel. This does not preclude questioning the person prior to arrest in order to obtain sufficient information to decide whether or not an arrest is warranted (for example, to confirm the person's identity and status in Canada, etc.);
- the officer must inform the person of the right to retain and instruct counsel without delay and provide the person with specific information about any legal advice services on immigration matters available to the person at no cost and about how to access such services. The nature of the information provided depends on the actual services available at the time of the arrest in a jurisdiction. If applicable, the officer must inform the person of the fact that legal aid and/or the

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services of duty counsel are currently available, and provide information as to how the person can access these services;

If such services are not available in the jurisdiction, the person is to be provided with the telephone book listing of lawyers and/or a 1-800 telephone number for regular legal aid services. Legal advice can only be provided by a member in good standing of a provincial law society (e.g., a lawyer) or a law student under the direction of a lawyer (e.g., student legal aid clinics). The number of telephone calls to lawyers that the person may make is left to the good judgment of the officer involved;

- where the person chooses to exercise the right to counsel, the officer must provide the arrested person with a reasonable opportunity to exercise the right, taking into account any physical constraints. This includes the duty to offer the arrested or detained person the use of a telephone, in an effort to seek legal counsel. If counsel is present, the officer must allow counsel to provide advice to their client in private; and
- the department is not responsible for the expenses and payments of counsel.

17.3 Notice of rights conferred by the *Vienna Convention*

Under the notice of rights conferred by the *Vienna Convention*, persons arrested or detained under the *Immigration and Refugee Protection Act* have the right to have the nearest representative of the government of his or her country of nationality informed of the arrest and detention.

Form IMM 0689B serves to advise and record the notice of rights under the *Vienna Convention*, as well as the exercise of those rights.

If the arrested or detained person cannot read the form or refuses to sign the form, the arresting officer must verbally inform the person that they have the right to contact a representative of the embassy or consulate of their country of nationality, in accordance with the rights of arrested person under the notice of rights conferred by the *Vienna Convention*. The officer is to record the fact that the person was verbally advised of their notice of rights conferred by the *Vienna Convention* rights on the face of the IMM 0689B.

It is important that an officer take the time to explain what is happening to the person in a manner that they fully understand. The officer must use terms that the person understands to explain the violations under the Act. If language is a barrier, an officer must take the person to the nearest CIC office and find an interpreter if one is not immediately available.

If the arrested or detained person wishes to have their government informed of their arrest and detention, the IMM 0689B should reflect this decision. The officer must inform their government representative, unless the person indicates a desire to contact their representative on their own initiative or informs the officer that their government representative need not be advised.

The officer is to record on the IMM 0689B, the date, time, and name of the government representative so informed. Any unsuccessful attempts to contact a government representative pursuant to the notice of rights conferred by the *Vienna Convention* should also be recorded on the person's file. An officer should complete this form and give it to the person concerned at the time of detention, or as soon as practicable.

17.4 Detention after the arrest

At the conclusion of an arrest, whether it is with or without a warrant, an officer must decide whether to detain the person. For procedures to follow when a person is detained, refer to ENF 20, Section 8.

18 Procedure: Arresting a person in private premises

An officer may enter private premises to perform an arrest if the occupant grants consent. The courts have ruled that there is no unrestricted right for a peace officer to enter a private dwelling in search of a fugitive.

In civil matters such as arrests under the Act, it has not been established whether an officer has the legal authority to enter if the door is barred. If the door is not barred, an officer may enter, but if the dwelling is that of a third party and the person being sought is not present, then an officer may be found guilty of trespass. If there is any doubt about the legality of entering a house if the door is barred, it is recommended that an officer not enter.

It is the Department's policy that an officer must not force entry, see Section 5.15, into private premises to make an arrest. As well as the legal risk involved, the possibility exists that forced entry may be met with physical resistance. In the event that an officer is exercising a warrant, that they are certain that the person subject to the warrant is inside, and entry is denied, the officer should contact the police for assistance. In some instances the presence of a uniformed police officer may help an officer to get permission from the occupants to open the door.

18.1 Arresting a person where permission to enter a dwelling house is granted

Where an officer has made a proper announcement of their identity and purpose, and has received permission to enter from an adult occupant in ostensible control of that dwelling house, the officer may execute an arrest warrant in the premises *without* obtaining a Special Entry Warrant. In such cases, the officer may also arrest without a warrant the occupant or any other person in the dwelling house if grounds to arrest without a warrant under section A55(2) of the *Immigration and Refugee Protection Act* come to light when the officer is in the dwelling house.

18.2 Special Entry Warrants (no permission to enter a dwelling house)

A Special Entry Warrant is required in **all** cases where an officer has not been given permission by an adult occupant in control of a dwelling house to enter to effect an arrest.

Where there is a valid and subsisting warrant for an individual's arrest, issued pursuant to A55(1) and information or evidence indicates that the individual may be located in a specific dwelling house, a Special Entry Warrant may be obtained from a manager or supervisor, see Section 5.14.

In order to grant a Special Entry Warrant, the issuing officer must be satisfied by information on oath that the individual is subject to a valid immigration arrest warrant and that there are reasonable grounds to believe that the individual is or will be found in the described dwelling house. Special Entry Warrants are distinct from A55(1) Arrest Warrants and can be issued in person or by telephone or other electronic means.

In cases involving forcible entry, see Section 6, into a dwelling house, in addition to obtaining police assistance, officers are required to possess:

- a Special Entry Warrant describing a specific dwelling house;
- a warrant for arrest IMM 0420B; and
- reasonable grounds to believe, see Section 6, that the individual to be arrested is actually in the described dwelling house.

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Before entry is forced into the described dwelling house to effect an arrest, prior announcement is required, unless authorization permitting otherwise has been given pursuant to subsections 529.4(1) and (2) of the *Criminal Code*.

18.3 General procedures for issuing Special Entry Warrants

The following are general principals that are common to the issuance of Special Entry Warrants issued through a written, telephone or electronic request:

- A Special Entry Warrant to enter a specific dwelling house can only be issued if there exists a valid and subsisting A55(1) immigration warrant for the arrest of the individual sought.
- The request for the Special Entry Warrant can be made in person by an officer by way of a formal request in writing, or via telephone or other electronic means.
- The request for the Special Entry Warrant to enter the dwelling house must also be made under oath, commissioned by a manager, supervisor, or their delegate. If made by telephone or other electronic means, the oath of the requesting officer must be administered by the supervisor or manager who will decide whether or not to issue the warrant. A141 provides for the authority to administer oaths and to take and receive evidence under oath on any matter arising out of the Act.
- The person who issues the Special Entry Warrant to enter the dwelling house must be a manager or a supervisor, or in their absence, the officer designated to act on their behalf.

18.4 Issuing a Special Entry Warrant in writing (in person)

The following procedures must be met when requesting a Special Entry Warrant to a supervisor or manager in writing:

- The officer must request a Special Entry Warrant in writing in the “Request for a Special Entry Warrant” form, IMM 5429E and include:
 - a valid and subsisting A55(1) warrant for arrest (IMM 0420B);
 - the address or accurate description of the dwelling house; and
 - reasonable grounds to believe, see Section 6, that the person is or will be present in that dwelling house.
- The requesting officer must sign the completed IMM 5429E and a decision-maker (supervisor or manager) must commission the completed form.
- The supervisor or manager may issue a Special Entry Warrant where they are satisfied that:
 - the completed “Request for a Special Entry Warrant” contains the information described in paragraph 1, above;
 - the information discloses that there exists a valid and existing warrant for arrest of the individual sought, issued pursuant to the Act; and
 - the information discloses reasonable grounds to believe, see Section 6, that the individual sought is or will be present in the described dwelling house.
- The supervisor or manager who is the decision-maker must require that the Special Entry Warrant be executed within a specified time period, see Section 5.16. The expiration date must be recorded on the Special Entry Warrant.

- Where the supervisor or manager, who is the decision-maker, issues the Special Entry Warrant on the basis of a request in writing, they shall:
 - Complete and sign the “Special Entry Warrant” form IMM 5430E; and
 - Note on the form, the time, date, and place of issuance. The decision-maker must place a copy of the Special Entry Warrant on the individual’s file and give the other copies to the requesting officer.
- An officer executing a Special Entry Warrant shall, before entering the dwelling house specified in the Warrant or as soon as practicable thereafter, give one of the copies of the warrant to any adult present and in ostensible control of the dwelling-house.

18.5 Requesting a Special Entry Warrant by telephone or other electronic means

The following procedures must be met when requesting a Special Entry Warrant to a supervisor or manager by telephone or other electronic means, (i.e.: facsimile, e-mail):

- The requesting officer must first complete and sign a “Request for a Special Entry Warrant” form IMM 5428E at their location. The information on the request form must be given *verbatim* to the supervisor or manager who is the decision-maker.
- An accurate record of the requesting officer’s identity, their oath, the information given under oath, and the time and date of the request must be made by the supervisor or manager who makes the decision regarding whether or not to issue the warrant.
- The supervisor or manager, who is the decision-maker completing another “Request for a Special Entry Warrant” IMM 5428E at the same time as the requesting officer makes the request for the Special Entry Warrant by telephone or other electronic means. The information submitted by telephone is to be certified by the decision-maker as to time, date, and contents, and placed on the file of the individual who is the subject of the request.
- The information submitted under oath via telephone or other electronic means by the requesting officer is to include:
 - a statement of circumstances that make it impractical to appear personally to obtain the Special Entry Warrant;
 - a statement that the individual sought is subject to a valid and subsisting warrant for arrest, issued pursuant to A55(1);
 - a statement setting out the address or other accurate description of the dwelling house in which the officer believes the individual is or will be present; and
 - a statement of the officer’s reasonable grounds to believe, see Section 6, that the individual is or will be present at the described dwelling house.
- The supervisor or manager, who is the decision maker, may issue a Special Entry Warrant IMM 5430E where they are satisfied that:
 - the request, submitted by telephone or other electronic means, contains the information described in paragraph 3, above;
 - the information discloses reasonable grounds for dispensing with a request submitted personally and in writing;
 - the information discloses that there is a valid and existing warrant for arrest, issued pursuant to the Act, of the individual sought; and

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- the information discloses reasonable grounds to believe that the individual sought is or will be present in the described dwelling house.
- The supervisor or manager, who is the decision-maker, will require that the Special Entry Warrant be executed within a specified period of time, see Section 5.16. The expiration date will be recorded on the Special Entry Warrant.
- Where the decision-maker issues the Special Entry Warrant by telephone or other electronic means, the following shall be done:
 - complete and sign the Special Entry Warrant IMM 5430E;
 - note on the form the time, date, and place of issuance; and
 - place the Special Entry Warrant on the file.
- At the same time as the Special Entry Warrant is issued by telephone or other electronic means, the requesting officer shall complete and sign a duplicate copy of the Special Entry Warrant (IMM 5430E), noting on its face the name of the supervisor or manager who is the decision-maker, the time, date, and place of issuance.
- An officer executing a Special Entry Warrant issued by telephone or other electronic means shall, before entering the dwelling house specified in the warrant or as soon as practicable thereafter, give a copy of the warrant to any adult present and in ostensible control of the dwelling house.

18.6 Reporting requirements after issuing a Special Entry Warrant

It is not required that Special Entry Warrants be entered into FOSS. However, since these warrants are restricted to cases of forcible entry (where permission from an adult occupant in ostensible control of the premises is not granted), it is imperative that when a Special Entry Warrant is executed, a written report of the circumstances of the execution be made by the responsible officer. This report is to be placed on the person's file and a copy must be sent to:

Director, Investigations and Removals
Enforcement Branch
Citizenship and Immigration Canada
300 Slater Street,
JETN, 8th Floor
Ottawa, Ontario
K1A 1L1

For information purposes, officers should input the issuance and execution of a Special Entry Warrant into NCMS.

19 Procedure: Restraining devices

For information on the use of restraining devices, see chapter 3 of the *Investigator's Guide*.

20 Procedure: Searching

Section 8 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right to be secure against unreasonable search or seizure.

The test for reasonableness is whether an officer has reasonable grounds to believe, see Section 6, that there is a threat to the security of the person, of the officer or of any other person. An example of a threat to security is a situation in which you believe that the person is hiding an item that could be used to injure himself or herself or others, or which could be used to assist an escape.

20.1 Searching arrested and detained persons

The necessity for searches and an officer's right to search have long been recognized and supported by the courts, and are now well-entrenched in common law. Pursuant to A138(1), immigration officers have the authority and power of peace officers to enforce any provisions of the Act, including any of its provisions with respect to the arrest, detention, removal of any person from Canada.

The courts have ruled that as a peace officer an officer may search an arrested person, and remove from that person any items within three categories:

- anything with which a person might injure himself or herself or others;
- any weapon or implement that might assist in the person's escape, and
- anything that can be considered as evidence in the violation for which the person has been arrested.

Note: The search applies to anything in possession or within the immediate surroundings of the arrested person.

Three conditions must be satisfied in order for the search of the arrested person to be valid. Pursuant to the common-law powers of search and seizure, the:

- arrest must be lawful;
- search must be conducted as incidental to a lawful arrest; and
- search must be carried out in a reasonable manner.

20.2 General rules for searches

An officer should conduct a search when they arrest or detain a person. Officers must remove the person from spectators and conduct the search in a secure area. In addition, persons of the same sex should conduct searches. For general rules on conducting searches, see ENF 12, Section 7.10.

For general rules on search procedures see ENF 12, Section 7. Types of searches include:

- Voluntary searches; ENF 12, Section 7.6
- Preliminary searches; ENF 12, section 7.6

- Full examination searches; ENF 12, section 7.6
- Frisk search; ENF 12, Section 7.7
- Disrobement search; ENF 12, section 7.7 and
- Search incidental to arrest; ENF 12, Section 7.8.

When a search is conducted, officers must complete the “Personal Search” form IMM 5242B. For procedures on completing the “Personal Search” form, see ENF 12, Section 7.11.

20.3 Searching Canadian citizens

For further information on searching Canadian Citizens, see ENF 12, Section 7.5.

20.4 Searching a private residence

The Act does not give an officer the authority to search private premises to obtain evidence. Illegal search is tantamount to trespass and may result in court actions and/or damages being awarded to the injured party.

An officer may search for evidence of an offence if the RCMP first gets a search warrant. The Act specifically states, under A138(1), that an officer is classified as being a peace officer under sections 487 to 492.2 of the *Criminal Code*. These sections deal exclusively with search warrants and authorize an officer to swear off a warrant and bring the warrant to a judge or justice of the peace for sign-off. For further information on officers obtaining a search warrant by the judge or justice of the peace, refer to ENF 12, Section 8.6.

The courts would find it improper for an officer to get a search warrant under the guise of searching for evidence of an immigration offence, if the intention was to search for illegal aliens or evidence for an admissibility hearing or examination.

20.5 Securing a travel document on private premises

If a person under arrest asks the officer to enter private premises to secure a travel document, and the person cannot attend the residence, the officer should get the written consent of the person concerned to enter the premises and to secure the specific document.

The written consent is valid only to enter that person's dwelling and not someone else's. To avoid possible allegations of theft, an officer should enter the dwelling with another officer. Where feasible, officers should encourage the landlord or owner of the premises to remain present.

21 Procedure: Seizure

The same authorities for seizure at the port of entry govern the seizure of material items in Canada. For detailed procedures on seizure, refer to ENF 12, Section 10. A140(1) authorizes an officer to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds, see Section 6, one of the following:

- that the means of transportation, document or other thing has been fraudulently or improperly obtained or used;
- that seizure is necessary to prevent its fraudulent or improper use;
- that the seizure is necessary to carry out the purposes of the Act.

21.1 When to seize documents

For information on when to seize documents, see ENF 12, Section 10.

21.2 Documents seized by other agencies

Travel documents of persons who face criminal charges are often held by local police forces. When investigating individuals for allegations under the Act, officers should liaise with the local police to determine if a travel document is being held on their files. If so, the local police should be informed of the interest in having the document available locally for potential use, should it become necessary to remove an individual from Canada.

Every effort should be made to check FOSS/NCMS to see whether there is any indication of the existence of an original or photocopy of a travel document that might have been obtained during the person's previous contact with the department. If, for example, the FOSS client history shows that an application for an employment authorization was made, the officer should contact CPC Vegreville to request a photocopy of the travel document submitted.

21.3 Background information document

During an investigation, officers can assist the removals officer by initiating the "Background Information Document", IMM 5417B. The Background Information Document collects certain key information most frequently requested by foreign passport issuing authorities. It also contains a space for the signature and photograph of the person concerned. In cases:

- where no passport, travel or identity document is available at the time of arrest and/or writing the A44 report and where an officer has issued an administrative removal order, a Background Information Document, should be completed and signed by the person; or
- where a passport or travel document application for the person's country of citizenship is readily available, it should be used instead of the Background Information Document.

Any applications for a passport, travel or identity document will not be submitted to foreign missions for processing until the person is considered to be removal-ready, see ENF 10.

21.4 Protecting evidence

An officer may be required to testify in court or at an admissibility hearing that a material item collected as evidence has remained unchanged since it came into their possession. In other words, that the continuity of evidence has been maintained. For further information on procedures to ensure the continuity of evidence, see ENF 12, Section 11.2.

21.5 Disposing of fraudulent documents

Officers should forward all known or suspected fraudulent or counterfeited document to Intelligence and Interdiction at national headquarters. For further instructions on the procedures for disposing of fraudulent documents, refer to ENF 12, Section 11.13.

21.6 Returning seized documents

Officers should return seized documents to the owner or the proper issuing authority either:

- upon the person's removal from Canada; or
- when a decision is made to allow the person to remain in Canada.

R257(3) requires that, if a seized document is not returned, it shall be retained for as long as is necessary for the administration or enforcement of Canadian laws, after which it is governed by the applicable laws relating to the disposal of public archives.

Before retiring a file, an officer should return other documents (such as Social Insurance Number cards) to the issuing authority with a memorandum outlining how they came into Immigration's possession.

An officer must always provide the holder with a receipt, form IMM 5079B, for a seized document and a Property Receipt, form IMM 5041B. For further information, refer to ENF 12, Section 11.12.

22 Procedure: Fingerprinting and photographing

22.1 Person makes an application under the Act

When a permanent resident or a foreign national makes an application, they are obligated under A16(1) to answer all questions truthfully and to produce all relevant evidence and documents that the officer reasonably requires.

In the case of a foreign national, for the purposes of the application examination, relevant evidence pursuant to A16(2) includes photographic or fingerprint evidence and may include a request from the officer that the foreign national submit to a medical examination. An examination includes where a person makes an application under the Act. In accordance with R28, a person makes an application when they:

- submit an application in writing;
- seek to enter Canada;
- seek to enter through Canada as provided by section 35; or
- make a claim for refugee protection.

22.2 Person has been arrested, detained or the subject of a removal order

Section A16(3) gives authority to an officer to take fingerprints and photographs of a permanent resident and a foreign national who has been:

- arrested;
- detained; or
- is the subject to a removal order.

22.3 An officer may require fingerprints, photographs or other relevant information in order to establish their identity or ensure compliance with the Act. Taking a set of fingerprints

For information and procedures on taking a set of fingerprints, refer to ENF 12, Section 12.2.

22.4 Use of fingerprint forms

Although an officer may use any police force to take fingerprints or photographs, fingerprints or photographs must be submitted to the RCMP to determine the person's identity.

The following forms are used by Citizenship and Immigration for the purpose of fingerprinting:

- **C-216C Fingerprint Form:** This form is *green* in color. The C-216C fingerprint form is used for *civil* purposes such as visas, security checks, and applications for permanent residence.

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- **C-216 Fingerprint Form:** This form is *brown* in color. The C-216 is used for *criminal* purposes such as fingerprinting persons suspected of having a criminal record or charges under the Immigration and Refugee Protection Act.

Note: The C-216 Fingerprint Form will no longer be used for refugee claimants.

- **C-216R Fingerprint Form:** This form is *blue* in color. The C-216R will only be used for *refugee* claimants. Any C-216R fingerprint form received by the RCMP will be processed as Refugee applicants.

For the procedures on the completion of the fingerprint forms and the addresses for forwarding fingerprints forms, refer to ENF 12, Section 12.3.

23 Procedure: Detention

For detailed instructions of policies and procedures on Detention, refer to chapter ENF 20, Detention. When a person has been detained or released, detention tracking information should be entered into NCMS immediately.

24 Procedure: Enforcement incident reporting requirements

Officers have diverse and frequent contact with the public. Some of these contacts will involve elements of confrontation and stress. Whereas most of these situations will be diffused through verbal intervention, there may be cases where it is necessary to control a situation through the use of force.

The Enforcement Incident Report form (IMM 5381E) has been designed to provide officers with a form to report incidents, which will provide the Department with information on the types and frequency of these incidents. These reporting procedures are vital to the ongoing evaluation of officer safety and security. They also help maintain public confidence in the integrity of the Department, and will assist officers in responding to close scrutiny of their behaviour in individual cases. It will enable CIC to make important decisions regarding the safety and security of staff, ongoing training needs, and recognition of exemplary performance in difficult situations.

Officers' notes will be the basis for IMM 5381E. Note-taking is mandatory for Enforcement Officers and note books should include all elements of an investigation. Port of entry officers who do not use note books should complete the IMM 5381E as soon as possible to ensure an accurate account of the facts. The IMM 5381E and officer note books are court defensible, therefore complete and accurate note-taking is essential.

24.1 Requirements For Completing Enforcement Incident Reports

Officers are required to submit a completed IMM 5381E to their CIC supervisor in the situation identified in sections A to F. **It is the duty and the responsibility of an employee to complete an IMM 5381E under the conditions described and the time lines detailed. Failure to complete the report may be treated as a disciplinary offence. Managers are to consult with Human Resources in such cases.** (Refer to Chapter 3, Use of Force and Disengagement Guide, section II "Requirement to Report Incidents" and section III, "Completion of the Enforcement Incident Report"). Officers should exercise good judgment in reporting events that may not meet the strict definition of an incident but may nevertheless lead to complaint or potential controversy to which the Department must respond.

The manager or supervisor should be consulted if the officer is not able to complete IMM 5381E within the specified time frames. The manager or supervisor will be able to make a decision of whether the employee is authorized to work overtime to complete the report or to be assigned that responsibility upon reporting for the following shift.

All contract employees are also required to complete the IMM 5381E within the time specified at section 24.3 and submit it to the appropriate CIC supervisor.

A. Use or Display of Defensive Devices

Officers have been trained to use CIC-approved defensive devices (OC spray and the collapsible baton). When these devices are used, it is quite likely that some form of skin irritation, bruising, soft or connective tissue damage, or bone fracture may occur (see section B). Any time an officer finds it necessary to use approved defensive devices, the officer shall, as soon as possible, contact a supervisor and advise the supervisor of the nature of the incident. As soon as possible thereafter, and before they finish their shift for that day, they must complete an IMM 5381E.

There may be instances when officers will draw their self-defense equipment as a safeguard but do not display it to a client. This action will not normally require the writing of a report, unless the officer

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determines that the situation warrants documentation. If, however, display of the defensive baton resulted in the subject complying with the officer's commands, a report is required. The best practice to adopt is, when in doubt, report.

B. Injury to the officer, client, or member of the public requiring medical attention

If the officer, a client or a member of the public is injured, it is important that medical attention be provided as soon possible. The officer must do everything they can to facilitate emergency medical response if required, and notify their supervisor immediately. Their supervisor is ultimately responsible for ensuring that appropriate medical attention is provided. It is recommended that all officers who are PPCT trained also be trained in basic first-response first-aid.

Officers must complete an IMM 5381E in all cases where an injury requiring medical attention occurs. The IMM 5381E must be completed before they finish their shift for that day, or in the event that they are the injured party, as soon as appropriate considering the circumstances. When in doubt, they complete a report.

Where a hazardous occurrence involves a CIC employee, the supervisor should also complete a Hazardous Occurrence Investigation Report (form number: Lab Trav 1070) which can be found on CIC explore at: http://www.ci.gc.ca/cicexplore/english/org/bhd/ohs_sst/forms.htm

Whenever the employee received medical services or cannot report to work the next working day as a result of the incident, the supervisor will complete and process a Workers Compensation Report which will be forwarded to Human Resources Development Canada as required.

Note: *For additional information, the Human Resources Advisor should be consulted*

C. Physical Resistance

Whenever the officer encounters physical resistance in the performance of their duties, whether it occurs during an arrest, while conducting an interview, examination or attending to other related duties, the officer must submit a completed IMM 5381E to their supervisor. Physical resistance is considered to be any form of bodily contact or non-verbal threat, which is intimidating, harmful, or meant to interfere with the performance of their duties. Occurrences of this nature should be reported regardless of whether or not the officer personally felt threatened by the level of resistance.

Passive Resistance is the lowest level of physical resistance. The subject resists control through passive physical actions. At this level, the offender never makes any attempt to defeat the physical contact of the officer.

Other levels of resistance include non-assaultive physical resistance (where the subject tries to interfere with the officer's control, but doesn't attempt to hurt them), assaultive physical aggression and serious bodily harm. When the officer encounters physical resistance that is greater than passive, they must notify their supervisor as soon as practicable under the circumstances, and complete an IMM 5381E by the end of their shift. Greater than passive resistance includes persons who have escaped or attempted to escape CIC custody.

When passive resistance is encountered the officer must complete an IMM 5381E within 72 hours. However, other factors may lead the officer to make a report sooner (i.e. the involvement of media, organized protests, other controversial aspects). The officer must use good judgment in bringing these matters to the attention of their supervisor.

D. Lost, Stolen or Damaged equipment

Once it is known equipment is lost, stolen or damaged, the occurrence must be reported immediately to the officer's supervisor or manager and the IMM 5381E report completed within 24 hours. Officers should refer to Chapter 3, "Incident, Occurrence and Complaints Report for Enforcement," in the "Use of Force and Disengagement Guide (SS)" which details what information must be reported.

E. Elements not specified (refers to potentially hazardous situations and/or situations that may result in a complaint or potential controversy)

The officer must complete an IMM 5381E whenever they encounter a potentially hazardous situation that does not fit into one of the above categories, or a situation that may result in a complaint or potential controversy to which the department must respond. Whenever the officer identifies an occurrence of this nature, their supervisor should be notified as soon as reasonably practical and the IMM 5381E completed within 72 hours. Officers will have to use judgment to determine when a report of this nature is appropriate, but remember, when in doubt, report.

F. Overseas Incidents

Should an incident occur while officers are performing escort duties outside of Canada, officers shall contact their supervisor or manager as soon as possible and advise them of the nature of the event. An IMM 5381E must be completed within 24 hours or as soon as reasonably practicable upon their return. Officers who are performing escort duties overseas carry their notebooks with them in order to take notes should an incident occur. Officers may not be in a position to make an immediate written report. In such cases, it is essential that the officer responsible for the interview has a written record of the information of the incident. Officers should refer to ENF 10, Section 29, Procedure: Actions to be taken upon escape or attempted escape, should a person under their control escape or attempt to escape.

24.2 Responsibilities of supervisors and managers regarding reviewing and reporting incidents to NHQ.

Upon completion, the officer must submit the IMM 5381E to their supervisor. The supervisor will review the report and carry out the following actions:

- Determine if the action taken by the officer is consistent with CIC policy and training;
- Identify complications that may result from the incident;
- Determine what further actions need to be taken;
- Sign and date the IMM 5381E;
- Forward the IMM 5381E to the manager for further review, if required;
- Maintain the Enforcement Incident Report on a separate IMM 5381E file (it may be required for future representations, access requests, etc.), and;
- Forward the IMM 5381E to the Director of Investigation and Removals, Enforcement Branch, NHQ, fax: (613) 954-5238 and the Director of Ports and Borders Management, Enforcement Branch, NHQ, fax: (613) 954-2381.

Supervisors and regions are required to report the number and types of incidents to NHQ on a quarterly basis using form IMM 5383B.

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Where applicable, the Hazardous Occurrence Investigation Report (Lab/Trav 1070) must be completed, signed, dated and submitted to the local Joint Occupational Health and Safety Committee for review and comments.

Once reviewed by the local Joint Occupational Health and Safety Committee, a copy is forwarded to the appropriate Regional Human Resources Advisor.

The IMM 5381E will provide a database for determining:

- Type of resistance encountered;
- Future training needs;
- Type of equipment required; and
- Future use for Officer Safety and Disengagement Policy/Use of Force and Disengagement Policy.

Regional Directors General or Regional Managers of Enforcement and/or Ports of Entry may further review an incident to determine if the actions were consistent with CIC policy and training. If an investigation is warranted, managers will inform the regional staff relations advisor of the incident. The manager will review the incident in consultation with the regional staff relations advisor to determine the need for and extent of an administrative investigation. (The departmental policy on internal investigations and CIC's Code of Conduct will provide further information.)

Investigations and Removals and the Ports and Borders Directorate will compile a yearly report to the Director General of Enforcement Branch. This report will provide an analysis of the data and a summary of the incidents. This information will be used by the Department to validate current training practices, identify future training needs, influence policy and assist decisions regarding equipment.

24.3 Time frames for the completion of enforcement incident reports

The writing of an IMM 5381E report is mandatory in certain cases. The chart below indicates what types of incidents must be reported and the required time frames. The manager or supervisor should be consulted if the officer is not able to complete the IMM 5381E within the specified time frames. The manager or supervisor will be able to make a decision of whether the employee is authorized to work overtime to complete the report or to be assigned that responsibility upon reporting for the following shift.

Type of incident	Supervisor notification	Written report
Use or display of defensive devices	Immediate	By the end of the shift
Injury requiring medical attention	Immediate	By the end of the shift
Physical Resistance (Greater than passive)	As soon as reasonably practicable	By the end of the shift
Physical Resistance (Passive or other)	As appropriate considering the circumstances	Within 72 hours

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Lost, stolen or damaged equipment	Immediate	Within 24 hours
Elements not specified	As soon as reasonably practicable	Within 72 hours
Overseas incident	As soon as reasonably practicable	Within 24 hours

25 Procedure: Report writing

25.1 Inadmissibility Provisions under the Act

For information on inadmissibility provisions and evidentiary requirements for specific allegations under the Act, refer to ENF 1 and ENF 2/OP 18.

25.2 Investigator report

Officers should gather information collected throughout their investigation and record the information on the IMM 5040B, Investigator Report in order to provide a case synopsis of each investigation. This form should reflect any background information of the person as well as the occurrences that take place or have taken place in the course of the investigation. The Investigator's Report should assist officers when preparing an inadmissibility report under A44(1) and can also be used as evidence at an admissibility hearing.

25.3 Preparing an A44(1) report

When an officer has determined that a permanent resident or foreign national is inadmissible under the Act, they may prepare a report that shall be transmitted to the Minister's Delegate, see Section 4, Instruments and Delegations for representatives who may receive a report under A44(2). For instructions on A44(1) report writing procedures and guidelines, refer to ENF 5.

Removing a person from the Previously Deported Persons (PDP) database

The previous deport (PREV.DEP) flag in FOSS will be automatically disabled and will electronically remove the information from the CPIC-PDP database only after:

- an officer completes an ARC screen in FOSS or CAIPS and an Authorization to Return to Canada under A52(1) has been granted; or
- a subsequent A44(1) report has been printed final in FOSS.

By removing such persons from the CPIC-PDP database, CPIC will provide peace officers with accurate information and ensure that the reasons for an arrest remain valid. The removal of CPIC records will provide a safeguard against the possibility of wrongful arrest and the unnecessary use of valuable law enforcement resources.

Officers should carefully consider whether the PDP information should remain on the CPIC database in the exercise of their discretion when writing an A44(1) report. It must be recognized that the only way to disable the PREV.DEP flag and remove a previous deportee from the CPIC-PDP database is by writing an A44(1) report.

Appropriate grounds, in addition to any other reason(s) for inadmissibility, would be A41(a) for A52(1) (see ENF 5, Section 8).

Note: If an A44(1) report has to be deleted from FOSS in order to correct an error (e.g., the A44(1) report was completed against the wrong client ID), it is important that officers double-check

to ensure that they have not disabled an existing PREV.DEP flag that needs to be restored. Where the PREV.DEP flag has been disabled in error, an e-mail should be sent to the IWRC immediately with a full explanation of what occurred and requesting the flag be re-enabled.

25.4 Report requirements

To successfully complete an accurate A44(1) report, each report should include specific information. For further information on report requirements refer to ENF 5.

25.5 Narrative memorandum

For all A44(1) cases involving permanent residents, an officer should include with the report a detailed memorandum addressed to the Director or Director General, Immigration or the CIC office manager, as applicable.

The first part of the narrative memorandum is a factual statement, not personal opinion, including:

- the person's identity, with name, aliases, date and place of birth, citizenship, and admission particulars;
- details on the violations, and a parole or release date if the person is serving a sentence; and
- background information, including (as applicable) the person's employment, marital status, financial standing, degree of establishment, family outside Canada, details of passports and travel documents, and the status in Canada of the person's spouse and children.

The second part of the memorandum includes the officer's opinions and recommendations, such as:

- opinions on the person's family relationships, degree of establishment and reasons for contravening the Act;
- a recommendation, with a rationale; and
- reasons for any delay in submitting the report.

If the officer recommends an admissibility hearing, it is necessary that the officer attach these documents (in duplicate) to the memorandum:

- certified true copies of all relevant immigration documents, and other certificates and affidavits that can be obtained from the records manager of the Query Response Centre at national headquarters, if applicable;
- originals or certified true copies of other documents relevant to the case, such as a birth certificate, marriage certificate, and a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- if required, "Request to Amend Immigration Record of Landing" form, IMM 1436B;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1); and
- proof of a search of citizenship records. (ENF 4, Section 9)

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When sending certificates of conviction, officers are reminded to ensure that the conviction (as opposed to the original charge) meets the requirements of the subsection under which they are being reported under A44(1).

For reports under A44(1) in Canada, complete and submit the relevant form, "Section 27(1) Highlights/Sections 103(2) and 27(2) Highlights" A44(1) Highlights form IMM 5084B.

25.6 Reporting persons who exhibit violent behaviour

In cases where a person exhibits violent or unstable behaviour, there are specific procedures that an officer must follow when completing an A44(1) report:

- Clearly document on case files any difficulties encountered with the person, and any available history of the person's behaviour. This will assist the hearings officer, who must be aware of inherent risks in arranging a safe admissibility hearing setting.
- Do not bring such a person to the CIC office if an officer can make alternative arrangements at detention centres or other institutions.

Appropriate enforcement action may include arrest with a warrant under section A55(1) or arrest without a warrant under section A55(2) if the grounds for arrest exist. If an officer decides to arrest, the officer must also decide whether to proceed without police assistance. The officer should assess the surrounding conditions and the person's behaviour before determining if assistance is required.

25.7 Reporting procedures for unaccompanied minors

When officers are considering a report on an unaccompanied child under 18 years of age, and enforcement action may be taken against the reportable minor, they must refer the case to the manager who will forward the report to the Regional Director General or Director of Immigration for a review of all the circumstances. For procedures for reporting unaccompanied minors, refer to ENF 5.

25.8 Young offenders

Under the *Young Offenders Act*, a young person is a person who is, or in the absence of evidence to the contrary, appears to be 12 years of age or more but less than 18 years of age. For report procedures and equivalencies of offenders under foreign jurisprudence, refer to ENF 5 Report Writing.

25.9 Determining if an offence is within the *Contraventions Act*

For instructions on determining whether an offence is within the *Contraventions Act*, refer to ENF 2/OP 18.

26 Procedure: Notification to the Support System for Intelligence (SSI)

Where a person makes a refugee claim in Canada, is a stowaway or deserter of a ship, the officer in Canada must notify the Support System for Intelligence (SSI). The SSI will automatically notify the Administration Fee System (AFS) who then faxes a transportation company of their transportation liability.

In cases where a person has been previously reported to the Support System for Intelligence and has subsequently eluded examination, officers should amend the "Comments" section of the SSI report.

27 Procedure: Diplomats, consular officers and representatives or officials of a foreign country, of the United Nations and of international organizations

Because an officer may be called on to determine whether to write a report concerning a diplomat, consular officer, representative or official of a foreign country, of the United Nations or of an international organization, or a member of that latter family or staff, they should be aware of the special circumstances of those persons status in Canada. For background information on:

- First entry to Canada; ENF 4, Section 13
- Visa requirements; ENF 4, section 13
- Diplomats, consular officers, representatives, officials (and their family members) accredited to Canada; FW 1
- Foreign government officials not accredited to Canada; FW 1
- Private servants of foreign representatives; FW 1
- Locally engaged staff of diplomatic and consular missions; FW 1
- Dependants of foreign representatives in Canada; FW 1

27.1 Violations of the Act and Regulations

If an accredited member of a foreign mission violates the Act or its regulations, an officer must consider both the Act's provisions for immigration-related procedures and international conventions such as the *Vienna Convention*. It is the Department's policy not to refer a person to an admissibility hearing as long as the person is an accredited member of a foreign mission.

If a family member works without an employment authorization, a A44(1) report may be written. The family member should not be directed to an admissibility hearing as the authorization to remain in Canada is issued by the Department of Foreign Affairs and International Trade.

Where circumstances warrant such action, an accredited person may be declared *persona non grata*, or the sending state may be requested to recall the person concerned or terminate their functions with the mission. If the person's accreditation is cancelled, an admissibility hearing action may be conducted for violations that may have occurred before or after the period of accreditation of the person concerned. An officer should decide cases individually, in consultation with the Office of Protocol of the Department of External Affairs and International Trade.

An officer should address questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada to the:

Office of Protocol
External Affairs and International Trade Canada
Ottawa, Ontario
K1A 0G2

In the case of emergency of documentation verification, officers can contact the Documentation Officer at the Office of Protocol, tel: (613) 992-6429 or after hours at (613) 996-8885.

27.2 Forwarding information to national headquarters

In consultation with the Department of External Affairs and International Trade, national headquarters will deal with cases where it is determined that there have been violations of the Act or its Regulations involving persons accredited to foreign missions, and cases involving persons who are employed by foreign missions but who have not been properly accredited.

An officer should take the following actions:

- address an A44(1) report (if appropriate), with a memorandum from the CIC office manager outlining the circumstances of the case, to:
Director, Case Review Immigration
Case Management Branch
Citizenship and Immigration Canada
300 Slater Street, JETN 6th Floor
Ottawa, Ontario
K1A 1L1
or via email at Nat-Case-Review@8602BCM@CINA; and
- report any infractions to the attention of the Office of Protocol, Diplomatic Corps Services by fax at (613) 943-1075.

28 Procedure: Testifying

At some stage in an officer's career they can expect to testify in court, at an admissibility hearing, or possibly at some other tribunal.

In criminal trials, an officer may be subpoenaed to appear in court to testify. This may include testifying at a *voir dire*, which is like a trial within a trial, held to ensure that statements taken by persons in authority, including officers, are given freely without the use of force or threat. When officers are being subpoenaed by a police officer, they should ask what evidence will be required. If the police officer wants an officer to bring the immigration case file, they should tell the officer that the file will be subpoenaed as well.

Criminal trials and immigration inquiries often take place several months after the actual arrest or reporting of the person concerned. Well before testifying, an officer should ask the crown attorney or hearings officer what is expected of an officer, so that they know which notebooks and documents to use. Before testifying, an officer should review the notes and case file, keeping in mind the salient points that the Crown attorney or hearings officer wants to cover.

28.1 Format for presenting evidence

In court or at an admissibility hearing, each witness gives evidence in three stages:

- examination by the side calling the witness, which can be the hearings officer, the crown attorney, or the defence counsel;
- cross-examination by the other side used to:
 - weaken, qualify or destroy the evidence given by the witness;
 - make one's own case using the testimony of the other side's witness; or
 - test or attack the credibility of the witness; and
- re-examination by the side that originally called the witness used to resolve any ambiguity or point that became confused as a result of cross-examination.

28.2 Conduct of officers as witnesses

When officers are called as a witness in a court, admissibility hearing or other tribunal, they should comply with the following guidelines:

- They should dress conservatively, following the dress guidelines in the *Investigator's Guide*;
- They should conduct themselves in a business-like manner when they are waiting to testify, and when they are in court or in an admissibility hearing room;
- They should be pleasant, courteous and impartial;
- When being called as a witness, they will take an oath or affirmation. Normally, officers will be asked to state their occupation, their present job position, the number of years they have spent in that position, and their work location;
- When asked a question, officers should be sure that they understand it before answering. Officers should only answer what is asked and avoid volunteering information. If an officer can answer a question with a simple "Yes" or "No," then that is the answer that should be given;

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- They should do not give opinions;
- They should give testimony slowly and clearly, so that everyone in the court or at the admissibility hearing room can hear it;
- Officers should follow the procedures for consulting their notes, see Section 14.5.
- When defence counsel asks an officer a question, the officer should not answer immediately. The officer should give the crown attorney or the hearings officer time to object if need be. This doesn't mean that an officer should look at the crown attorney or the hearings officer whenever defence counsel asks a question; merely pause slightly before starting to answer;
- When an officer is unsure of a fact, or if the officer does not have any further information, the officer should state just that. If the officer makes a mistake or error, they should correct it without hesitation. If an officer tries to defend a slight error or slip, their entire testimony could be discredited;
- If an officer is asked to relate a series of events, such as what took place during the course of a call, they should recount the events simply and in chronological order;
- Defence counsel may be provocative during cross-examination. An officer's best response is simply to state the facts, remain calm, and control their temper. If officers allow themselves to get angry or agitated, they are more likely to contradict themselves;
- Counsel in a courtroom may get very close to officers to intimidate them. The officers' best response is to stand their ground and avoid the natural tendency to pull backwards;
- Officers should always address their remarks to the judge, jury or member of an admissibility hearing, even if counsel tries to get an officer to address their remarks to someone else;
- When officers are leaving the witness box or chair, they should remain impassive and not demonstrate relief or despair. Any expression of emotion could subtly influence the decision of a jury, judge or member of an admissibility hearing.

29 Procedure: Handling alleged war criminals

An officer might receive information that a foreign national, permanent resident or refugee protection claimant is a war criminal. For information about:

- how to identify war criminals, refer to ENF 18, War Crimes and Crimes Against Humanity;
- establishing inadmissibility, refer to ENF 1, Inadmissibility;
- determining eligibility of a refugee protection claimant, refer to ENF 18, War Crimes and Crimes Against Humanity;
- reporting an alleged war criminal, refer to ENF 18, War Crimes and Crimes Against Humanity; or
- intervention procedures, refer to ENF 24, Ministerial Interventions.

30 Procedure: Requesting the Minister's opinion

Information may come to the attention of an officer during an investigation that could warrant the collection of information to initiate a Minister's opinion under the Act. A Minister's opinion can be issued in two circumstances against a:

- refugee protection claimant where they have been convicted outside of Canada of an offence punishable by at least 10 years imprisonment as described in A101(2)(b). If a Minister's opinion is issued for danger to the public in conjunction with serious criminality outside of Canada, the claim for refugee protection will be ineligible to be referred to the Refugee Protection Division (RPD) under A101(1)(f); or
- protected person or a person who is recognized as a Convention Refugee by another country and is inadmissible on grounds of serious criminality as described in A115(2)(a). If a Minister's opinion is issued for danger to the public in conjunction with serious criminality, this person will not be eligible for non-refoulement provisions in A115(1) and would be subject to removal to their country of persecution.

For further information on procedures for requesting a Minister's opinion, refer to ENF 28, Section 7.2.

31 Procedure: Intervention, cessation and vacation

An officer may have to deal with information on intervention, cessation and vacation procedures to protect the integrity of the Canadian refugee protection system.

31.1 Preliminary investigation procedures

During the process of a refugee protection hearing or after a person has been conferred refugee protection status, information may come to an officer's attention that could initiate investigation for an intervention, cessation and vacation hearing. After this information is brought to the attention of the hearings officer, the latter decides if the evidence should be brought to the attention of the Immigration and Refugee Board.

In some cases, an officer may receive information that could impact the decision of the Refugee Protection Division. If an officer becomes aware of new information of any inadmissibility under sections A34 to A37 or where there is information indicating a contradiction in any document or statement of the refugee, officers should:

- conduct an interview with supporting notes, Section 14.2, and prepare a statutory declaration, see Section 14.6, recording information or identifying documents received;
- seize any relevant documents under A140(1) that could be used as evidence;
- create a general information Non-Computer Based entry (NCB) in FOSS and update the National Case Management System (NCMS) to indicate that the case is under investigation and the reasons for the investigation (i.e., allegations that may give rise to intervention, cessation or vacation proceedings exist and the case is under investigation);
- contact the hearings officer to discuss the case details;
- at the request of the hearings officer, a further investigation may be necessary to collect additional evidence;
- the file is returned to the appropriate CIC office for further investigation; and
- after the investigation is complete, the file and the supporting documentation should be transferred to the hearings officer with a memorandum outlining an overview of the case details.

31.2 Intervention

During a refugee protection hearing, a hearings officer may intervene in exclusion and cessation cases. For information on the intervention process, refer to ENF 24, Section 5.

31.3 Cessation of refugee protection status

The Convention recognizes that in certain circumstances a person who has been previously determined to be a Convention refugee will no longer be in need of protection. For information on circumstances when a person ceases to be a Convention refugee, refer to ENF 24, Section 5 on Cessation.

31.4 Vacation of refugee protection status

An officer should bring to the attention of a hearings officer information that may establish that grounds to vacate a person's refugee status exist. The principle behind the vacation provision under A109(1) is to nullify the refugee protection status to persons whose claims were based on fraud or misrepresentation. For information on vacation proceedings before the Refugee Protection Division refer to ENF 24, Section 5.

Specific to vacation proceedings, the officer should keep the following principles in mind:

- the strongest type of evidence relating to fraud or misrepresentation will usually deal with issues such as identity, nationality and country of residence, indicating that the claim is a complete fabrication rather than being based on a few incorrect details; and
- misrepresenting or withholding material facts relating to a refugee protection claim could have been exercised by the claimant or by another person.

32 Procedure: Information exchange with other parties

Government departments and agencies may collect personal information only when it relates directly to a program or activity of the CIC organization. The information has to be collected from the individual, whenever possible and the individual must be informed of the purpose for which it is being collected at the time that it is collected. Personal information about an individual can only be disclosed to someone else with that individual's consent, or when one or more of the criteria set out in the *Privacy Act* are met. Under paragraph 8(2)(a) of the *Privacy Act*, personal information may legally be disclosed if the information is supplied to accomplish the purpose for which the information was originally collected, or for a use consistent with that purpose. This is commonly referred to as the consistent-use provision. If an officer has any doubts about requests for personal information, consult a regional privacy coordinator or public-rights officer.

33 Procedure: Legality of actions

If an officer has questions concerning the legality of their actions during investigation and arrest procedures, the officer should contact their manager or supervisor who can then make a request for assistance from the Department of Justice.

Appendix A Authorization to have the authority and powers of a peace officer

Domestic regions

Assistant Manager

Assistant Director

Case Presenting Officer

Citizenship and Immigration Officer

Citizenship and Immigration Counsellor

Counterfeit Officer

Deputy Director

Deputy Director, PIA

Director

Director of Citizenship and Immigration Centre

Director, Operations

Director of Programs

Duty Manager, PIA

Director General, Atlantic

Director General, BC/Yukon

Director General, Ontario

Director General, Prairies and Northern Territories

Director General, Quebec

Enforcement Detention Officer

Enforcement Officer

Enforcement Officer - POE

Expertise Officer

Expulsion Officer

Hearings Officer

Immigration Advisor

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Immigration Counsellor
Immigration Examination Officer
Immigration Investigator
Immigration Officer
Intelligence Analyst
Intelligence Officer
Intelligence Liaison Officer
Investigator

Local Intelligence Officer

Manager
Manager Detention Operations
Manager of Programs

Operations Co-ordinator
Operations Manager

Program Co-ordinator
Program Specialist
Provincial Manager
Pre-Removal Risk Assessment Officer;

Regional Intelligence Officer
Regional Manager
Resident Officer (IDC)

Senior Hearings Advisor
Senior Immigration Examining Officer
Site Manager
Supervisor, Enforcement
Supervisor, Inland
Supervisor, POE

Zone Manager

Appendix B Document checklist for submission to IWRC

[Link here](#)