

# Permanent Residents and Criminal Inadmissibility

Recent changes to the law mean that more permanent residents who have committed a crime will face deportation from Canada without any right of appeal. This document gives very basic information on what these changes mean and who might be affected.

## What happened?

In June 2013, Parliament passed Bill C-43, the “Faster Removal of Foreign Criminals Act”. Bill C-43 bars access to the Immigration Appeal Division (IAD) for many more permanent residents who have committed a crime.

## What is at stake?

Under the new rules, permanent residents will be deported to their country of origin without access to any appeal if they:

- > Are sentenced in Canada to prison for 6 months or more for a crime, or
- > Commit certain types of crimes abroad, no matter what sentence received.

## If a permanent resident is charged with a crime:

Make sure their lawyer considers the immigration consequences. Sometimes criminal lawyers give advice that may be good for a citizen, but has disastrous immigration consequences for a non-citizen.

It is also important to have an immigration lawyer who understands criminality issues. The first step in the immigration process is a letter saying that a report will be written – it is crucial to go immediately to a good lawyer in order to respond to that letter.

## Examples of affected persons:

- > A permanent resident is convicted of a drug related offence and sentenced to one year imprisonment under the new mandatory minimum sentence rules. Since the sentence is more than six months, he faces deportation without any opportunity to appeal the decision.
- > A 19 year old permanent resident uses a fake ID to try to get into a bar in the United States. She admits this to a Canadian immigration officer. Using a false document is a crime punishable in Canada by up to 10 years imprisonment – she is therefore inadmissible on grounds of serious criminality. Even though she was not charged or convicted in the US, she could face deportation from Canada without any opportunity to appeal the decision.

## Why an appeal matters

The appeal is the only stage where permanent residents can raise humanitarian factors for why they should not be deported, such as:

- > They came to Canada as a child and have lived all their life in this country;
- > They have young children who would be affected if their parent is deported.

## What you can do:

Encourage permanent residents to apply for citizenship as soon as they are eligible, for themselves and for their children. Citizens cannot be deported.

## Understanding criminality and loss of permanent residence

A permanent resident loses their permanent residence status and faces deportation from Canada if they become inadmissible on grounds of **serious criminality**. Depending on the circumstances, even people who came to Canada as refugees may be deported.

**Serious criminality** is defined as:

- > Having been convicted in Canada of a crime for which you **could** be given a sentence of 10 years or more, or you **were** given a sentence of six months or more;
- > Having been convicted of, or having committed a crime, outside Canada that, if it had been committed in Canada, **could** get you a sentence of 10 years or more.

### The process

- > An officer of Canada Border Services Agency writes a letter (known as a “fairness letter”) to the person saying that the person meets the definition of serious criminality and a report will be written. The person can make submissions (preferably with the help of a lawyer)
- > Unless the officer decides not to proceed (based on submissions made), the officer writes a report.
- > The Immigration Division of the Immigration and Refugee Board decides whether the person is inadmissible. The decision is only about the facts – does the person meet the definition of serious criminality? The Immigration Division cannot consider humanitarian factors.
- > The permanent resident can appeal the deportation to the Immigration Appeal Division of the Immigration and Refugee Board only if the person isn't barred.

**Since June 2013, permanent residents cannot appeal if they:**

- > are sentenced in Canada to imprisonment for six months or more.
- > are convicted of, or are believed to have committed, a crime outside Canada with maximum sentence in Canada of 10 years or more, whatever the actual sentence.

### Appeal

In cases where the permanent resident can appeal, the Immigration Appeal Division (IAD) of the Immigration and Refugee Board can consider humanitarian and compassionate factors and the best interests of the child. The IAD can allow the appeal, reject the appeal or stay the removal. Staying the removal means that the IAD gives the person a chance to prove they are rehabilitated. The person must respect the conditions set out (such as following a drug abuse treatment program) and commit no more crimes, otherwise they face removal from Canada.

In deciding whether to allow, reject or stay the appeal, the IAD considers:

- > How serious the crime was;
- > Whether the person can be rehabilitated;
- > How long the person has lived in Canada and how settled they are here;
- > The difficulties for the person's family in Canada if the person is removed;
- > Whether there is support available for the person;
- > What hardships they would face in returning to the country of origin;
- > Any other relevant factor.



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