

What can happen if a permanent resident is convicted of a crime

This fact sheet is for people who work with permanent residents. It explains how being convicted of a crime in Canada can affect someone's status as a permanent resident. Throughout the fact sheet, "you" refers to permanent residents. This is meant to make it easier to pass the information on to those who need it.

If you are a permanent resident and are convicted of a crime in Canada:

- you could lose your permanent resident status,
- you could be deported, and
- you might not be able to come back.

And, a criminal charge or conviction can affect your eligibility to become a Canadian citizen.

If you become a Canadian citizen, you cannot be forced to leave Canada, unless you said something that was not true or left out information when you applied for Canadian citizenship or permanent resident status.

Many permanent residents apply for Canadian citizenship as soon as they meet the requirements.

Being charged with a crime

If you are charged with committing a crime, it is important to get legal advice as soon as possible. Tell your criminal lawyer that you are not a Canadian citizen and you are concerned about how a criminal conviction could affect your status in Canada.

If you are charged with a crime in Canada, you have a right to a trial in criminal court. If you speak French, you have the right to have your trial in French. At the trial, a lawyer for the government will try to prove that you are guilty beyond a reasonable doubt. If they cannot prove this, then the court will find you not guilty.

Before your trial begins, you will have to make decisions that may affect your permanent resident status. You will need legal advice about both criminal and immigration law. See pages 6 to 8 to find out [how to get legal help](#).

When people who are not Canadian citizens are charged with a criminal offence, the police pass this information on to the Canada Border Services Agency (CBSA). If you are convicted of certain offences, CBSA will take steps to enforce immigration laws against you.

Following your arrest, you may be released by the police. If the police do not release you, you will have a bail hearing with a judge. The judge will decide whether to release you or keep you in jail until your trial. Even if the police or the judge decides to release you, there may be immigration reasons for you to stay in detention. This is sometimes called an “immigration hold”.

There is more information on this topic in CLEO’s fact sheet called *Being arrested and detained for immigration reasons*. To order a copy or read it online, please see the information at the bottom of page 8.

Losing status because of a criminal conviction

No matter how long you have lived in Canada, if you are convicted of a “serious” crime, you could lose your permanent resident status and be deported.

You will not have to leave Canada because of a conviction if you get a pardon for the crime. See page 6 for [more information on pardons](#).

A crime is “serious” based on the maximum sentence that **could be given** or the sentence that **is given**. A crime is serious if:

- the maximum sentence you **could** get is 10 or more years in prison, even if you get a shorter sentence or no time at all in prison, or
- the sentence that you **do** get is more than six months in prison.

And, the time you spend in prison **before** your trial might also count as part of your sentence. To find out more about this, get legal advice.

There are many crimes for which you can get 10 years or more in prison. Here are some examples:

- assaulting someone and causing bodily harm,
- making or using a false document,
- stealing a credit card or using a stolen credit card, or
- possessing a weapon for a reason that is dangerous to the public peace.

Your immigration status can also be affected if you are:

- convicted of a criminal offence outside Canada, or
- suspected of criminal activity in or outside Canada.

The law is complicated and it is important to get legal advice if one of these situations might apply to you.

If you are ordered deported, you will not be able to return to Canada for any reason unless:

- you get authorization to return from Citizenship and Immigration Canada (CIC), which can be difficult to get, **and**
- you pay \$1,500 to cover the costs of your removal from Canada unless you paid for your own removal.

If you speak French, you have the right to communicate in French with immigration authorities, including CBSA and CIC. You have the right to proceedings in French at the Immigration and Refugee Board (IRB) and in Federal Court. You also have the right to have your criminal trial in French. Contact a lawyer or community legal clinic to find out more about your French language rights.

Criminal charges and refugees

If you are convicted of a serious crime but you were found to be a Convention refugee or a person in need of protection in Canada, then Canada will not send you back to the country in which you fear persecution or face risk. You could still lose your permanent resident status in Canada, but you will not be sent back.

However, Canadian immigration law does not give this protection to a person who:

- the Minister of Citizenship and Immigration has found to be a danger to the public, or
- is inadmissible for security reasons, violation of human or international rights, or organized criminality, and who the Minister has found should not be allowed to stay in Canada.

If you fear persecution or face risk in your country but you have never made a claim for refugee protection in Canada, you must make a claim before you have an admissibility hearing and are ordered deported from Canada. If you are convicted of a crime, you will have an admissibility hearing after the conviction. There is more

information about this in the section called *If a permanent resident is found guilty*, starting on page 4.

CLEO's publication called *Making a refugee claim* has more information about refugee claims. [To order a copy or read it online](#), please see the information at the bottom of page 8.

If you have a "serious" criminal record or are considered a security risk, you will not be eligible to make a refugee claim. A "serious" criminal record means:

- you have been convicted of a serious crime in Canada and you were sentenced to at least two years in prison, or
- you were convicted, outside Canada, of a serious crime that would also be considered a crime in Canada and the Minister of Citizenship and Immigration has found that you are a danger to the public in Canada.

Even if you are found eligible to make a refugee claim, it is still possible for that decision to be changed if immigration authorities receive new information. For example, if you are convicted of a serious crime while waiting for your refugee hearing, you could lose your right to a hearing.

Once you have been ordered removed, it is too late to make a refugee claim. But you may be able to apply for a pre-removal risk assessment (PRRA). This is an assessment of the risk you would face if you were sent back to your country.

A successful PRRA application can mean that you are allowed to stay in Canada. However, the rules about PRRA

applications in cases involving criminality are complicated. It is important to get legal advice.

Some community legal clinics help people with PRRA applications. There is [more information about community legal clinics](#) on pages 7 and 8.

There is more information about PRRA in CLEO's publication called *Pre-Removal Risk Assessment (PRRA)*. [To order a copy or read it online](#), please see the information at the bottom of page 8.

If a permanent resident is found guilty

Sentencing

If you are found guilty of a criminal offence, after a trial or after you plead guilty, you will be sentenced. For some offences, the court can give you a discharge. This means that even though you are guilty, you are not being convicted. A discharge can be absolute or conditional.

Your permanent resident status will not be affected if you get an absolute discharge. The same is true if you get a conditional discharge and you obey all the conditions.

Any sentence other than a discharge means that you have been convicted. This is true even if you are not sent to prison.

There are many factors that a court considers in deciding what sentence to give you. Your criminal defence lawyer can make sure that the court hears all the relevant information before it decides. The

court can decide to give you a sentence that will **not** cause you to be deported.

If you are convicted, you may be able to appeal your conviction or your sentence. There are time limits, so get legal advice right away.

Admissibility hearing

If you are convicted, the Canada Border Services Agency (CBSA) can prepare a report and refer your case to the Immigration Division of the Immigration and Refugee Board (IRB). The Immigration Division will then hold a hearing to decide if you should be ordered deported and lose your status as a permanent resident. This is called an admissibility hearing.

At the admissibility hearing, the Immigration Division makes its decision based on whether the crime you were convicted of was “serious”. On page 2, we explain what this means. The Immigration Division does not consider anything else, such as the reasons you committed the crime or the effect that your removal would have on you or your family.

Appeal

In many cases, if the Immigration Division orders that you be removed from Canada, you can appeal to the Immigration Appeal Division of the IRB. But this is not possible if you were ordered deported because you were convicted of a serious crime for which you received a prison sentence of at least two years. Time you spent in prison before your trial might be included in calculating the two years. To find out if this applies to you, get legal advice.

At an appeal, the Immigration Appeal Division (IAD) can consider humanitarian and compassionate factors. The IAD must consider the best interests of any child who would be affected if you had to leave Canada. This includes your own children and other children with whom you have a relationship.

The IAD could also consider:

- how serious the crime was, including the impact on a victim,
- what sentence you received,
- what the circumstances were when you committed the crime,
- whether you have committed crimes before,
- whether you are sorry that you committed the crime,
- whether you have accepted responsibility for the harm caused by your crime, for example, by compensating a victim,
- whether you have received counselling or treatment for anger management or substance abuse,
- whether you can show that you are not likely to commit another crime,
- how long you have been in Canada, how old you were when you arrived, and how established you are in Canada, taking into account your education and work history, and your involvement in the community,
- whether you have family members in Canada, including any children born here, and the effect your removal would have on them,
- how much hardship you would face if you left Canada,

- what connection you have with the country of your birth or citizenship, and
- how much hardship you would face in the country of your birth or citizenship because of the human rights situation there or for other reasons.

If your appeal is successful, your removal order could be cancelled. However, it is more likely that you would get a “stay of removal” for a certain period of time, for example, three years.

Stay of removal

A stay of removal has many conditions that you are expected to obey, including a condition that you not commit any criminal offences. If you have been given a stay, make sure that you understand and obey all the conditions.

If you have been given a stay and you are then convicted of another serious crime, your stay is cancelled and you can be removed from Canada with no further right of appeal.

If you obey all the conditions of your stay, your removal order could be cancelled. Or, you might have to go back to the IAD for a review of your case. The IAD could then:

- cancel your removal order,
- extend the period of the stay, or
- end the stay, which would mean that you could be removed.

If you are deported from Canada, your dependent children who are not Canadian citizens may also have to leave.

Applying for a pardon

If you are convicted, it is a good idea to apply for a pardon as soon as you can. If you have a pardon, you cannot lose your permanent resident status or be removed from Canada for having committed that crime.

You apply to the National Parole Board for a pardon. There is a waiting period before you can apply. You will have to wait either three or five years depending on your conviction. Applications can be made in English or in French.

The waiting period begins when you have completed your sentence. If you were fined, you must have paid the fine in full.

If you were sentenced to time in prison, you must have served the complete sentence, including any time you had to serve in the community after leaving prison. If you were placed on probation, the period of probation must have ended.

For more information about pardons and to get an application form, you can go to the National Parole Board's web site at www.npb-cnlc.gc.ca. Or you can call the Parole Board at **1-800-874-2652**.

Getting legal help

Legal aid certificates

If you have been charged with a criminal offence and do not have the money to pay for a lawyer, you may be able to get a legal aid certificate. A certificate will pay all or part of your lawyer's fees. Legal Aid Ontario gives certificates to people who will probably get a jail sentence if they are convicted.

If you want to appeal a criminal conviction or sentence, Legal Aid will give a certificate only if you have a good case.

Legal aid offices have lists of lawyers who you can contact if you qualify for a certificate. You can usually find the legal aid office nearest you by looking under "Legal Aid" in your phone book. You can also check Legal Aid Ontario's web site at www.legalaid.on.ca or phone them:

Toll-free outside Toronto ... **1-800-668-8258**
In Toronto **416-979-1446**
Toll-free TTY **1-866-641-8867**
TTY in Toronto.....**416-598-8867**

You have the right to have a lawyer or other legal counsel at an admissibility hearing or, if you are being held for immigration reasons, at a detention review. If you know a lawyer who is willing to represent you at your detention review and you have a good case, you might be able to get a certificate. Legal Aid Ontario does not usually give certificates for admissibility hearings.

If you are detained and you want to apply for a legal aid certificate, ask to see an applications officer from Legal Aid Ontario. In most jails and detention centres, you apply for a legal aid certificate by having a video interview.

You can also find out how to get a certificate by calling the local legal aid office or community information centre.

You may also be able to get a legal aid certificate to appeal a removal order to the IAD.

Refugee Law Office

The Refugee Law Office can represent people at detention reviews in the Toronto area at the Immigration Holding Centre, the Toronto West Detention Centre, and the Vanier Centre for Women, and in Lindsay at the Central East Correctional Centre.

To qualify for this service, you must be financially eligible for legal aid but you do not need to apply for a legal aid certificate. And, you do not have to be a refugee claimant.

If you have questions about immigration detention, you can contact the Refugee Law Office at **416-977-8111** or by calling **1-800-668-8258**. They accept collect calls from detention centres.

The Refugee Law Office may also be able to help you appeal a removal order to the IAD. For this service, you need a legal aid certificate.

Criminal Law Offices

If you have been charged with a criminal offence, you may also be able to get help at one of the three Criminal Law Offices (CLO) funded by Legal Aid Ontario.

Lawyers at a CLO can take your case if you have a legal aid certificate. They may also be able to take your case if you qualify financially for legal aid but cannot get a

certificate because you are not likely to get a jail sentence if you are convicted.

You must live or have been charged in the area served by the CLO. There is a CLO in Brampton, Barrie, and Ottawa.

Brampton Criminal Law Office

201 County Court Blvd., Ste. 401
905-874-0147
1-866-296-0646 (toll free)

Barrie Criminal Law Office

85 Bayfield St., Ste. 204
(705) 719-0289
1-866-296-0648 (toll free)

Ottawa Criminal Law Office

200 Elgin St., Ste. 204
613-233-0239
1-866-296-0647 (toll free)

Community legal clinics and Student Legal Aid Service Societies

Community legal clinics give free legal help to people with low incomes. This includes giving advice, making referrals, and sometimes representing people.

Most clinics do not give advice on criminal matters, or represent people facing criminal charges, but they can often refer you to a criminal lawyer. Some community legal clinics give advice on immigration problems or can refer you to an immigration lawyer. And some community legal clinics help people in detention.

Every law school in Ontario has a Student Legal Aid Service Society. Law students who are supervised by lawyers give legal advice and can sometimes represent people in criminal or immigration matters.

You can usually find the community legal clinic or Student Legal Aid Service Society nearest you by looking under “Legal Aid” or “Lawyers” in your phone book. You can also check Legal Aid Ontario’s web site at <www.legalaid.on.ca> or phone them:

Toll-free outside Toronto ... **1-800-668-8258**
In Toronto **416-979-1446**
Toll-free TTY **1-866-641-8867**
TTY in Toronto.....**416-598-8867**

This publication contains general information for people in Ontario. It is not a substitute for getting legal advice about your particular situation.

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