

FACTSHEET

Canada – Deportation Law

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The aim of this fact sheet is to provide an insight into Canadian deportation laws. It is not intended to replace professional legal advice, so people who need further explanation on certain points of the legislation or of the system itself should seek advice from a lawyer.

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1 Introduction

Non-Canadian citizens can be deported if they are convicted of an offence which is punishable by ten years in prison or for which they have received a prison sentence of at least six months. They can also be deported if they are suspected of being involved in organised criminal activity or, if they are not a permanent resident and they have been convicted of an indictable offence.

The procedure is governed by the new Immigration and Refugee Protection Act (IRPA). A great deal of discretion is given to immigration officers who make the initial decision on whether to report an individual for deportation. If they decide to do so, the case is passed on to an Immigration Manager who is deemed to be acting on behalf of the Immigration Minister. S/he then decides whether to proceed to a deportation hearing.

This hearing is before Adjudication Division of the Immigration and Refugee Board. A right of appeal exists for permanent residents only. However, they lose this right if they have been sentenced to more than two years imprisonment or are deemed a 'danger to the public'.

Any appeal is heard by the Immigration Appeal Division of the Immigration and Refugee Board. They will review the law and facts of the case and they have an equitable jurisdiction to refuse deportation.

The Immigration and Refugee Protection Act came into force on 28th June 2002. It now governs criminal deportation procedure in Canada. However, the process is also governed by international law and the Canadian Charter of Rights and Freedoms.

2 The Immigration and Refugee Protection Act

2.1 Inadmissibility

Under the Immigration and Refugee Protection Act (IRPA), a person who is not a Canadian citizen can be deported if they are proved to be 'inadmissible' (i.e. they no longer have a right to stay in Canada) on various grounds. In respect of criminal deportation, the relevant law is as follows:

Under the s.36 (1) IRPA, a permanent resident or a foreign national is inadmissible on the grounds of serious criminality for:

"having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or an offence... for which a term of imprisonment of more than six months has been imposed."

S.36 (2) IRPA states that a foreign national (who is not a permanent resident) is inadmissible on grounds of criminality for:

"having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence."

Finally under s.37(1) IRPA, a permanent representative or foreign national can also be inadmissible on the grounds of organised criminality for:

(i) being a member of an organisation that is believed, on reasonable grounds, to be or have been engaged in activity that is part of a pattern of criminal activity planned or organised by a number of persons acting in concert in furtherance of the commission of an offence punishable under a Act of Parliament by way of indictment or....an offence outside Canada that, if committed in Canada would constitute such an offence, or engaging in activity that is part of such a pattern or;

(ii) engaging in the context of transnational crime, in activities such as people smuggling, trafficking in people or money laundering

However, under s.37(2), this will not apply if the Minister is satisfied that the person's presence in Canada would not be detrimental to the national interest.

2.2 Loss of Status and Removal

2.2.1 Report on Admissibility

The deportation procedure begins under s. 44 IRPA when an immigration officer becomes aware of relevant criminal charges or conviction. If the person in question is not in custody, then the officer has the power to issue an arrest warrant under s.55. The officer may gain the necessary information about inadmissibility from a police officer or by the routine monitoring of court records. If s/he believes a person is liable to deportation, s/he may prepare a report, setting out the facts, to go to an Immigration Manager who is acting under delegated authority on behalf of the Immigration Minister. The new Act says MAY rather than SHALL, so there is actually no obligation to file a report.

Section 53 IRPA grants authority for the making of regulations to govern the exercise of these, and other, discretionary powers. Nothing in the IRPA regulations, however, addresses this discretion. Some lawyers believe that, in practice, immigration officers will continue to act the way they did under the old law which compelled them to produce such a report.

2.2.2 Admissibility hearing by the Adjudication Division

If a report is filed, it goes to the Immigration Manager who decides whether or not to request a hearing on the case. Under s.44(2), if the Manager believes the report is well founded, s/he may refer the matter on for a hearing. Any hearing will take place before the Adjudication Division of the Immigration and Refugee Board. The Adjudication Member receives a report and a 'direction', which is essentially a notice of the allegation and the Immigration Manager's request for a hearing. All other evidence will be produced at the hearing. If the Adjudication Member decides that the report is well founded then a deportation order is made. The order should be enforced immediately, unless stayed pending appeal (s.50).

2.2.3 Right of Appeal

Under s.63 (3), permanent residents have a right of appeal to the Immigration Appeal Division of the Immigration and Refugee Board. They will review the law and facts of the case and they have an equitable jurisdiction to refuse deportation. The Minister of Immigration may also appeal under s.63(5).

It should be noted, however, that if a person is not a permanent resident, there are no grounds for appeal and an immigration officer may just order the deportation him/herself.

Further, under s.64, if the permanent resident receives a sentence of more than two years or is deemed a 'danger to the public' then s/he will have no right of appeal. Thus, if an immigration officer reports a permanent resident to an adjudicator as inadmissible on this basis, the permanent resident automatically faces deportation regardless of any extenuating factors.

Surprisingly, this draconian legislation has withstood challenges under the Canadian Charter of Rights because it was considered that a process for case by case consideration of deportation orders still exists, as does the potential for input from the deportee.

If an appeal takes place, then a record of the Adjudication Hearing is sent to the Appeal Board and disclosure takes place between the Minister's counsel and the appellant.

In coming to a decision, the Appeal Board must take into consideration all the circumstances of the case, and any humanitarian or compassionate grounds, as well as the equitable jurisdiction which may entitle it to allow the individual to remain in Canada. This is a very broad discretion but the Federal Court has provided some guidance. Circumstances that will be considered at these hearings have been enumerated in a case called *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] and include:

- The seriousness of the offence;
- The possibility of rehabilitation;
- The length of time spent in Canada and the degree to which the person is established here;
- Any family in Canada and the dislocation to the family that deportation would cause;
- The support available to the person, not only within the family but within the community; and,
- The degree of hardship that would be caused to the person by return to the country of nationality.

It is considered extremely important for the appellant to demonstrate to the Board that they are successfully rehabilitated, if they have completed their sentence. This can be done with evidence, for example, from their prison, a social worker or employer.

Under s.67(1) for the Board to allow an appeal, it must be satisfied that:

- a) the decision appealed is wrong in law or fact or mixed law and fact
- b) a principle of natural justice has not been observed or
- c) taking into account the best interest of a child directly affected by the decision, sufficient humanitarian and compassionate grounds warrant special relief in light of all the circumstances of the case.

If the Board allows the appeal, it can set aside the decision and substitute its own determination.

2.2.4 Judicial review

An application for Judicial Review can be made to the Federal Court. An application for leave must first be made. The decision of an immigration officer or Board can be challenged. The Minister of immigration may also appeal a decision in this way.

However, the Court's concerns are procedural. They will only consider whether due process rules were complied with in the appellant's case, e.g. that the hearing was fair and in accordance with the law. They will not consider the merits of an individual case.

An application for Judicial Review cannot be made until any right of appeal has been exhausted (s.72(2)).

3 International law standards

Obligations most often arise in international law when countries sign treaties agreeing to act, or not to act, in a certain way.

International human rights treaties contain obligations that must be taken into account when reviewing or implementing any law, policies and practices relating to deportation. However, unless made a part of national law by the national Parliament, these treaties do not provide rights on which legal action can be based.

Canada is a party to the following international human rights treaties and so must be guided by their provisions:

3.1 The International Covenant on Civil and Political Rights (ICCPR)

This contains a series of rights that governments must respect and protect within their territory. Article 2 states that the Convention applies to all individuals present lawfully within the territory and subject to its jurisdiction. A13 deals with the process of expulsion. It provides rights of due process (fair procedure) and review.

3.2 The UN Convention Against Torture

Article 3 confirms that not deport etc if there are substantial grounds for believing the person would be in danger of torture.

3.3 The UN Convention on the Rights of the Child

Article 3 states that in all cases concerning children, the best interests of the child should be a primary consideration. Article 9(4) confirms that if the child is separated from its parents because of deportation etc, the state has a duty to provide information about the parent's whereabouts unless doing so would be detrimental to the child's well-being.

3.4 The UN Convention on Refugees

Under Article 32, a refugee should not be expelled unless there is a risk to national security or public order. Under A33, refugees cannot be returned to countries where their life or freedom may be threatened because of race, religion, political beliefs etc, unless they are convicted of a particularly serious crime constituting a danger to the community.

3.5 The UN Convention on the Reduction of Statelessness 1961

Article 8(1) states that a state should not deprive a person of their nationality if doing so would render them stateless.

4 Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is a fundamental part of the Canadian Constitution and the rights protected within it are capable of being argued in court proceedings.

The IRPA stresses the importance of compliance with the Canadian Charter and with international human rights instruments.

The Canadian Charter provides for equality before the law for everyone in s.15 and for the right to a fair trial under s.11.

5 Where to go for help

It is essential to get proper legal advice if you are facing criminal prosecution in Canada, or have already been convicted of an offence. Your lawyer should be able to advise you of the likelihood of deportation and how you can challenge it.

If you require legal advice and assistance on this issue, then you can contact the Canadian Bar Association or the Federation of Canadian Law Societies whose addresses are listed below. They should be able to point you in the right direction by giving you information about lawyers, local to you, who have expertise in this area.

In addition, you may be able to obtain useful information about procedure from your local British consulate or from the Canadian Immigration Department.

6 Useful addresses and websites

Please note, if calling from outside of Canada you will need to prefix all telephone numbers with the international dialling code for Canada, which is 001. For example, to contact the Canadian Bar Association (telephone number 613 237 2925) from the UK you should dial 001 613 237 2925. None of the freephone numbers will work if calling from outside of Canada, and in some may only be valid from certain states in Canada.

6.1 Canadian Government

Department of Justice

Department of Justice Canada
284 Wellington Street
Ottawa, Ontario
Canada K1A 0H8
Tel: 613 957 4222
Textphone: 613 9924556
Fax: 613 954 0811
Website: www.justice.gc.ca/en

Correctional Service of Canada

Website: www.csc-scc.gc.ca

Immigration and Citizenry Department

Freephone: 1 888 242 2100
Website: www.cic.gc.ca/english/index.html

6.2 Bar Associations and Law Federations

Canadian Bar Association

500 - 865 Carling Avenue
Ottawa, Ontario, K1S 5S8
Tel: 613 237 2925 or 613 237 1988
Freephone: 1 800 267 8860
Fax: 613 237 0185
E-mail: info@cba.org
www.cba.org

Criminal Lawyers Association

296 Jarvis St, Unit 7
Toronto, Ontario
M5B 2C5
Tel: 416 214 9875
Fax: 416 968 6818
Email: anthony@criminallawyers.ca
www.criminallawyers.ca

Law Society of Alberta

500, 919 11th Ave. SW
Calgary, Alberta T2R 1P3
Tel: 403 229 4700
Freephone: 1 800 661 9003
Fax: 403 228 1728
www.lawsocietyalberta.com

Law Society of British Columbia

845 Cambie St.
Vancouver, BC V6B 4Z9
Tel: 604 669 2533
Freephone: 1 800 903 5300
Fax: 604 669 5232
Textphone: 604 443 5700
www.lawsociety.bc.ca

Law Society of Manitoba

219 Kennedy St.
Winnipeg, Manitoba, R3C 1S8
Tel: 204 942 5571
Fax: 204 956 0624
Email: admin@lawsociety.mb.ca
www.lawsociety.mb.ca

Law Society of Nunavut

P.O. Box 149
Iqaluit, NU
X0A 0H0
Tel: 867 979 2330
Fax: 867 979 2333
Email: lawsoc@nunanet.com
www.lawsociety.nu.ca

Law Society of Newfoundland

PO Box 1028
St. John's, Newfoundland, A1C 5M3
Tel: 709 722 4740
Fax: 709 722 8902
www.lawsociety.nf.ca

Law Society of New Brunswick

1133 Regent St. Suite 206
Fredericton, NB E3B 3Z2
Tel: 506 458 8540
Fax: 506 451 1421
Email: general@lawsociety-barreau.nb.ca
www.lawsociety.nb.ca

Law Society of the Northwest Territories

Main Floor, 5004 - 50th Avenue
P.O. Box 1298, Yellowknife, NT,
X1A 2N9
Tel: 867 873 3828
Fax: 867 873 6344
Email: lawsocnt@lawsociety.nt.ca
www.lawsociety.nt.ca

Nova Scotia Barristers' Society

Centennial Building
1101-1645 Granville St
Halifax, NS B3J 1X3
Tel: 902 422 1491
Fax: 902 429 4869
Email: info@nsbs.org
www.nsbs.ns.ca

Law Society of Upper Canada

Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N6
Tel: 416 947 3300
Freephone: 1 800 668 7380
Freephone lawyer referral service:
1 800 268 8326
Fax: 416 947 5263
www.lsuc.on.ca

Law Society of Prince Edward Island

P.O. Box 128
49 Water St.
Charlottetown, PE C1A 7K2
Tel: 902 566 1666
Fax: 902 368 7557
www.lspei.pe.ca

Chambre des notaries du Quebec

800 Place-Victoria, suite 700

P.O. Box 162

Montreal, PQ H4Z 1L8

Tel: 514 879 1793

Toll free: 1 800 668 2473

Fax: 514 879 1923

Email: information@cdnq.orgwww.cdnq.org/en**Law Society of Saskatchewan**

1100-2500 Victoria Ave.

Regina, SK S4P 3X2

Tel: 306-569-8242

Fax: 306-352-2989

Freephone lawyer referral service:

1 800 667 9886

Email: reception@lawsociety.sk.cawww.lawsociety.sk.ca**Law Society of Yukon**

Suite 202 – 302 Steele St.

Whitehorse, YT Y1A 2C5

Tel: 867 668 4231

Fax: 867 667 7556

Email: lsy@yknet.yk.cawww.lawsocietyyukon.com**Federation of Law Societies of Canada**

Constitution Square

360 Albert Street, Suite 1700

Ottawa, Ontario

K1R 7X7

Tel: 613 236 7272

Fax: 613 236 7233

Email: info@flsc.cawww.flsc.ca

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