

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

This fact sheet explains how being convicted of a crime in Canada can affect someone's status as a permanent resident.

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.

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

If you become a citizen, you cannot be forced to leave Canada, unless you got your Canadian citizenship or permanent resident status by not telling the truth.

## If you are 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 lawyer that you are not a Canadian citizen and you are concerned about the effect a criminal conviction could have on your status in Canada.

Before your criminal trial, 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 5 to 7](#) 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, CBSA will take steps to enforce immigration laws against you.

If you are detained by the police, you will have a bail hearing with a judge who will decide whether to release you or keep you in jail until your trial. Even if the judge says you can be released, there may be immigration reasons for you to stay in detention.

There is more information on this topic in our fact sheet called “Being arrested and detained for immigration reasons”. To order a copy or to look at it online, see the bottom of [page 8](#) for CLEO’s contact information.

## Losing your 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 5](#) 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 6 months in prison.

And, the time you spend in prison **before** your trial might also count as part of your sentence.

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.

## If you are a refugee

If you are convicted of a serious crime but you were given refugee protection in Canada, then Canada will not send you back to the country in which you fear persecution. 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

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who the Minister has found should not be allowed to stay in Canada.

If you have never made a claim for refugee protection in Canada and you fear persecution in your country, you must make a claim before you have an admissibility hearing and you 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 below called *If you are found guilty*.

Our publication called “Making a refugee claim” has more information about refugee claims. To order a copy or to look at it online, see the bottom of page 8 for CLEO’s contact information.

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 2 years in prison, or
- you were convicted of a serious crime outside 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. For more information on community legal clinics, see *Getting legal help* on [pages 5 to 7](#).

For more information about PRRA, see our publication called “Pre-Removal Risk Assessment (PRRA)”. To order a copy or to look at it online, see the bottom of [page 8](#) for CLEO’s contact information.

## If you are 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 an absolute or a conditional discharge. A discharge means that even though you are guilty, you are not being convicted.

If you get an absolute discharge, your permanent resident status will not be affected. If you get a conditional discharge and you obey all the conditions, your permanent resident status will also not be affected.

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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.

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

### **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 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”. It 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 most 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 2 years.

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.

The IAD could also consider:

- how serious the crime was,
- 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 received counselling or treatment for anger management or substance abuse,
- how likely it is that you will 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

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removal” for a certain period of time, for example, 3 years.

## Stay of removal

A stay of removal has conditions that you are expected to obey, including conditions requiring you not to commit any criminal offences.

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 the 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 gotten 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 3 or 5 years depending on your conviction.

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-cnrc.gc.ca](http://www.npb-cnrc.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. But you will only get a certificate if you are likely to spend time in jail if convicted. Legal aid certificates will pay all or part of your lawyer’s fees.

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 call Legal Aid Ontario at 1-800-668-8258 or 416-979-1446. Or, you can visit their web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

You have the right to have a lawyer or other legal counsel at an admissibility hearing or a detention review. But Legal Aid Ontario does not usually give certificates for admissibility hearings or detention reviews. If you know a lawyer

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who is willing to represent you and you have a good case, you might be able to get a certificate.

If you are detained and you want to apply for legal aid, ask to see an applications officer from Legal Aid Ontario.

In the Toronto area, an applications officer visits most jails and detention centres on a regular basis. Outside the Toronto area, you can find out how to get help by calling the local legal aid office or community information centre. In some jails, you can apply for legal aid by having a video interview.

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 Correctional 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 **1-800-668-8258** or **416-977-8111**. 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 unlikely to get a jail sentence if 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

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charges, but they can often refer you to a criminal lawyer. Some community legal clinics give advice on immigration problems or they 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 provide

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" in your phone book. You can also call Legal Aid Ontario at **1-800-668-8258** or **416-979-1446**. Or, you can visit their web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

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**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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This fact sheet is part of CLEO's Immigration and Refugee series. CLEO has free publications on other legal topics as well.

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