

Inadmissibility: The Intersection of Immigration and Criminal Justice Law

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Immigration

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Criminal proceedings can have an immigration impact on anyone, regardless of their status in Canada. Some of these consequences can be far more detrimental than the actual criminal conviction and sentence. These can include deportation, virtually permanent exile, ineligibility for citizenship, inability to sponsor family members and inadmissibility to other countries. Nevertheless, Immigration lawyers frequently see cases where criminal lawyers appear to have failed to consider the immigration consequences of a plea, conviction or sentence. What might appear to be a good result for the client could in fact have a devastating impact. The purpose of this presentation is to assist criminal lawyers in being alive to relevant immigration issues and to know when to consult with an immigration lawyer when representing clients and to assist immigration lawyers in advising their clients and their criminal lawyer colleagues.

Below is a summary of potential effects, depending on the individual's status.

Canadian Citizens

1. A Canadian Charge, Conviction or Conditional Discharge could result in permanent inadmissibility to the USA:

- The United States bars anyone who has been convicted, and, in some cases, where they are believed to have committed, a *Crime Involving Moral Turpitude* (CIMT).
- There is no formal definition of a CIMT. It depends upon the nature and seriousness of the offence. For example, common assault is not a CIMT (with some exceptions) while aggravated assault and assault with a weapon are CIMTs.
- A conviction or conditional discharge for a CIMT will result in inadmissibility.
- If the client obtains an absolute discharge, they will likely not be inadmissible.
- In some cases (eg. narcotics), an immigration officer's reasonable belief could result in a finding of inadmissibility. This can occur as a result of a charge, police report or admission by the individual (eg. "I once smoked pot").
- Inadmissibility is permanent. Entry to the US requires a *Waiver of Inadmissibility* which takes 6 to 9 months to process and is valid for 1 to 5 years.

2. A Conviction Could Result in Inability to Sponsor a Family Member's Application for Permanent Residence:

- An individual is ineligible to act as a sponsor in an immigration application if s/he is detained in any penitentiary, jail, reformatory, or prison at any point from the day the application is filed until the day a decision is made – *IRPR s. 133(1)(d)*