




FW Travel to Canada after a conviction:
Foreign Worker Canada 



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FW Is My Client Admissible?
Foreign Worker Canada 

PART I: AVOIDING INADMISSIBILITY

- Step 1:** What is the immigration status of the applicant?
- Step 2:** Was the applicant convicted of anything?
- Step 3:** Is this offence a crime in Canada?
The case of marijuana under Canadian law

PART II: OVERCOMING INADMISSIBILITY: REMEDIES

- Step 1:** How long ago was the offence? When was the sentence completed?
The new status of DUI offences in Canada
- Step 2:** How many convictions are on the applicant's record?
Deemed Rehabilitation
- Step 3:** How severe is this offence in Canada?
Temporary Resident Permits (TRPs) & Criminal Rehabilitation

FW Part I: Step 1:
Foreign Worker Canada What is the legal basis for
Criminal Inadmissibility? 

- Canadian immigration law does not distinguish between misdemeanor and felony offences. Any offence committed outside of Canada that would be considered indictable if committed in Canada results in criminal inadmissibility.
- There is also an important distinction between criminality and serious criminality, as a serious criminality designation affects a person's ability to be deemed rehabilitated and affects the government processing fees required for Criminal Rehabilitation applications.

As outlined in Section 36 of the IRPA:

A permanent resident or a foreign national is inadmissible on 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 of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed,
- having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or
- committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

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A permanent resident or a foreign national is inadmissible on grounds of criminality for:

- having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;
- committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or
- committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

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Part I: Step 2
Is it a conviction? YES!

- If any of the following terms are used, the offence is a conviction for Canadian immigration purposes:
 - Deferral of sentence
 - Nolo Contendre
 - Convicted of several counts


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Part I: Step 2
Is it a conviction? NO!

- If any of the following terms are used, the offence is NOT a conviction for Canadian immigration purposes:
 - Acquittal contemplating dismissal
 - Deferral of prosecution
 - Deferral of judgment
 - Deferral of conviction
 - Nolle prosequi
 - Expunged
- Pending charges & a new service for you to offer

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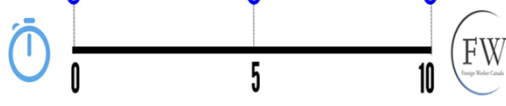
Part II: Step 1:
How long ago was the offence?
Overcoming Inadmissibility



0 Years Since Completion of Sentence
If you were convicted of a crime that leads to criminal inadmissibility, from the date the sentence was completed until five years have passed a Temporary Resident Permit is the only option for travel to Canada.

5 Years Since Completion of Sentence
If 5 years have passed since the completion of your sentence, you are eligible to apply to Criminal Rehabilitation, a way to permanently resolve your criminal inadmissibility and wipe your slate clean.


10 Years Since Completion of Sentence
If 10 years have passed since the completion of the sentence, you may be "deemed rehabilitated" and your inadmissibility may be resolved. This only applies if one single non-serious offence was committed.



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Part 2: Step 2:
Deemed Rehabilitation



Here is why it is important how many **CONVICTIONS** are on your clients's record

Individuals with **ONE** conviction on their record who have completed their sentence more than 10 years ago are deemed rehabilitated by the passage of time


EXCEPT: Deemed rehabilitation only applies if the single offence was not equivalent to a **serious offence** under Canadian law. Individuals who have been convicted of one offence that carries a maximum sentence, in Canada, of 10 years or more.

Deemed rehabilitation does apply, however, if an individual has 2 offences on their record that are considered to be very **minor offences**.

- If you have been deemed rehabilitated, you do not need do anything in particular to enter Canada, but we always recommend getting a Legal Opinion Letter to explain why the individual is not inadmissible to Canada.

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Part 2: Step 3: Remedies
Temporary Resident Permit



If five years or less have passed since the entirety of the sentence for the conviction was completed, criminal inadmissibility can be overcome temporarily by obtaining a **Temporary Resident Permit (TRP)**.

1. Temporary Resident Permit (TRP)


- Less than 5 years have passed since the completion of their sentence

OR

- More than 5 years have passed since the completion of their sentence but they have not gone through criminal rehabilitation

AND

- They have a "significant" reason to enter Canada: work, family & emergencies



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Part 2: Step 3: Remedies Temporary Resident Permit




Individuals are encouraged to apply for TRPs WELL IN ADVANCE

- Processing times average several months
- For NON-U.S citizens (greencard holders, visa holders or visitors) they MUST apply through a consulate if they are planning on flying as an eTA is required and an eTA will always be refused online where there is prior criminality.
- An eTA is not required for anyone crossing the Canadian border by car - so NON-U.S citizens will either have to travel by car or wait for a consulate approval
- Average waiting time for application of fee waiver: 4-6 months



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Criminal Rehabilitation CONTINUED




For Criminal Rehabilitation to be granted, an applicant must demonstrate that they are at in a stable position where there is no risk of them committing another crime. When considering whether an individual is rehabilitated the visa officer will consider the following rehabilitation factors:

Nature of the Offence	•Was the offense that was committed serious or non-serious?
Time	•How long ago was the last offence committed by the applicant?
Number of Offences	•How many offences are on the applicant's criminal record? •Was the applicant a first-time offender?
Risk of Reoffending	•What is the likelihood that the applicant will reoffend?
Preventing Reoffending	•How has the applicant changed their life to ensure that they will not reoffend? •Can the applicant demonstrate evidence of a stable lifestyle?

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Legal Opinion Letter



- The letter explains why under Canadian immigration law the individual is not inadmissible.
It explains in detail why the individual is not inadmissible to Canada and is supported with relevant statutes of Canadian Law.
- Legal Opinion Letters are also offered to Deemed Rehabilitated individuals to assert their rehabilitation.
The letter explains what the individual was convicted of, why they are deemed rehabilitated and explains the supporting Canadian laws.
- Legal Opinion letters can also be used for an individual in the process of being convicted.
If the individual knows they have imminent travel to Canada, it can be used to attempt to plead the charges down to something that would not cause Canadian inadmissibility.

 **Why hire a Canadian Immigration Lawyer?**
S. 91 IRPA

- No person shall represent or advise a foreign national for consideration unless they have been authorized
- Who can represent someone for consideration?
 - a lawyer or notary in good standing in a Canadian province
 - a paralegal in good standing in Canada
 - A recognized immigration consultant: a member of the ICCRC (Immigration Consultants of Canada Regulatory Council)
- What happens to someone representing a foreign national for consideration without authorization? Penalties and fines!
- Indictable offence: \$100,000 fine and/or 2 years in prison
- Summary conviction: max \$20,000 fine and/or 6 months in prison
- *All applicants are required to disclose when they pay someone to assist them with an application. Only Canadian lawyers are authorized as paid representatives in Canadian immigration applications (ie: Rehab & TRP)*
