

Canada | Immigration | December 12, 2018



## **Changes to impaired driving law** Immigration consequences

Bill C-46, *An Act to Amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, will come into force on December 18, 2018. Bill C-46 is the companion legislation to Bill C-45, *The Cannabis Act*, which legalized the possession of marijuana for personal use in Canada.

**Immigration impact: More severe consequences for DUIs**

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Bill C-46 increases the maximum penalty in Canada to ten years imprisonment for a conviction for driving under the influence (DUI).

This has significant immigration impact, as a single DUI conviction will now automatically result in non-citizens being inadmissible to Canada under the *Immigration and Refugee Protection Act* (IRPA) for "serious criminality". This is the case regardless of whether the offence was committed inside or outside of Canada.

Until December 18, 2018, under the IRPA a person could be "deemed rehabilitated" if ten years had passed since all sentence requirements were completed. For those convicted of DUI offences after December 18, 2018, there is no presumption of deemed rehabilitation.

The process for formal rehabilitation or record suspension (if the conviction was from inside of Canada) requires the submission of extensive documentation and a lengthy processing time (currently over 6 months and anticipated to increase).

A Temporary Resident Permit (TRP) is also an option for travelers to Canada. It is a temporary waiver and is subject to the discretion of a consular or port of entry officer with authority to issue such document.

### **Who is affected?**

It is anticipated that these changes will not apply retrospectively and that officers will consider the Canadian law in place at the time of the offence. The Minister of Immigration, Refugees and Citizenship, The Honourable Ahmed Hussen, has confirmed that this is how immigration officials will interpret and apply the law. As such, individuals deemed rehabilitated for a DUI offence prior to December 18, 2018 will continue to be considered deemed rehabilitated for that offence.

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Those affected after December 18, 2018 include the following:

- **Foreign nationals** with a single DUI conviction seeking **temporary entry** into Canada, if the offence is committed after December 18, 2018, will be inadmissible.
- **Temporary residents** of Canada (such as work permit holders, their dependents or students) seeking to extend their stay in Canada with a DUI conviction, if the offence is committed after December 18, 2018, will be inadmissible.
- **Applicants for permanent residence** with a DUI conviction, if the offence is committed after December 18, 2018, will be inadmissible.
- **Permanent residents** with a DUI conviction committed after December 18, 2018 may face deportation.
- **Sponsored relatives** of Canadians or permanent residents to Canada whose cases are in process may lose their appeal rights if found to be inadmissible for a single DUI conviction.

Minister Hussen has indicated that he is committed to working with stakeholders to take appropriate action to mitigate the immigration consequences of Bills C-45 and C-46, and may exercise his ministerial discretion where warranted to address adverse consequences.

#### Recommendation

Although these are personal and confidential issues that most employers would not be privy to, there is a

potential business impact for any employees negatively affected.

Please contact Garson LLP if you require further information. We are also available to assist any individuals directly who may be concerned that they or their family members might be impacted.



Deloitte recently hosted a Fireside Chat where The Honourable Ahmed Hussen discussed Bill C-46 and other immigration topics that may affect Canadians and businesses operating in Canada.

Pictured here are Minister Hussen with some Garson LLP attendees: (L-R) Shaena Rowland, Minister Hussen, Suzanne de Lint, David Garson, Bryna Sadinsky, Laura Mohan, Clinton Green, and Mariana Brankovic.

## Contacts

### David Garson

Partner

[dgarson@ggilaw.com](mailto:dgarson@ggilaw.com)

+1 416 775 7131

### Suzanne de Lint

Partner

[sdelint@ggilaw.com](mailto:sdelint@ggilaw.com)

+1 416 813 2435

### Randy Hahn

Partner

[rahahn@ggilaw.com](mailto:rahahn@ggilaw.com)

+1 416 601 6414

### Jolene Otieno

Partner

[jotieno@ggilaw.com](mailto:jotieno@ggilaw.com)

+1 403 261 8103



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