



# MENTAL ILLNESS, CRIMINAL OFFENCES, & DEPORTATION

Tips for front-line workers



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## Tips for front-line workers

This publication is for front-line workers and advocates working with people who:

- are not Canadian citizens,
- have been charged with or convicted of a crime in Canada,
- have or may have a mental illness.

If someone is not a citizen of Canada, a criminal conviction could affect their immigration status.

Even a permanent resident who has lived in Canada for many years could lose their status and be deported with no right to come back.

Many people with mental illness come into conflict with the law. Often, there is a link between the illness and circumstances that lead to criminal charges.

In this publication, the term “mental illness” refers to a condition that affects how someone thinks, feels, or behaves and has a serious impact on their ability to function effectively. Symptoms can vary from mild to severe. Some examples of mental illness are depression, bipolar disorder, schizophrenia, anxiety disorder, and personality disorder.

Addiction is also considered a mental disorder. When it occurs in combination with any other mental illness, it is called a concurrent disorder.



### *Diversion*

Someone with a mental illness who is facing criminal charges may be eligible for “diversion”. This means they are referred to mental health services and supports and may not have to go through the criminal justice system. To find out if there are diversion programs in your community, visit the Mental Health Helpline website at [www.mentalhealthhelpline.ca](http://www.mentalhealthhelpline.ca), and search the Directory. You can also call the free health services information line at **1-866-531-2600**.

# UNDERSTANDING THE DEPORTATION PROCESS

## How a criminal conviction can lead to deportation

Anyone in Canada who is not a Canadian citizen is either a permanent resident or a foreign national.

A permanent resident (sometimes referred to as a “landed immigrant”) is an immigrant or refugee who has been granted the right to live permanently in Canada. A permanent resident will usually have a “Permanent Resident Card” or a “Record of Landing” as proof of status. Permanent residents can be removed from Canada for a variety of reasons set out in the Immigration and Refugee Protection Act.

A foreign national is anyone who is not a Canadian citizen or permanent resident—for example, a refugee claimant, a visitor, or a person who is here without any immigration status. A foreign national is at greater risk of removal than a permanent resident.



### *Citizenship*

Someone who becomes a Canadian citizen cannot be forced to leave Canada unless they said something that was not true or left out information when they applied for Canadian citizenship or permanent resident status.

When someone who is not a Canadian citizen is charged with a crime, the police pass this information on to the Canada Border Services Agency (CBSA). CBSA is responsible for enforcing immigration law. If the person is convicted, CBSA may prepare a report. The report may lead to a deportation order or an “admissibility hearing” before the Immigration Division of the Immigration and Refugee Board (IRB). The hearing can result in a deportation order.

A criminal charge or conviction can also affect someone’s eligibility to become a permanent resident or a Canadian citizen.

A person who is ordered deported may be able to appeal to the Immigration Appeal Division of the IRB (see [page 10](#) for more information about the IRB).

## Crimes that can lead to a deportation order

A **permanent resident** can be ordered deported if they are convicted of a “serious” crime. A crime is serious if:

- the maximum sentence someone *could* get is 10 or more years in prison, even if they get a shorter sentence or no time at all in prison, or
- the sentence that someone *does* get is more than six months in prison.

The time spent in prison before trial might also count as part of the sentence.

A **foreign national** can be ordered deported if convicted of a serious crime. A foreign national can also be deported for a less serious crime, or because of two convictions for even relatively minor crimes arising out of separate incidents.

# When deportation is possible

Here are two examples of when CBSA can take steps that can lead to the deportation of a permanent resident.

Jane has a history of addiction to drugs and alcohol. She has a criminal record because she was found in possession of illegal drugs on several occasions. Jane lives with an abusive partner. One night when they were drinking, he threatened her with a knife. She threw a coffee cup at him. He called the police who charged both of them with “assault with a weapon”. Jane went to court with a criminal lawyer. On her lawyer’s advice she pleaded guilty, was convicted, and received a suspended sentence. Neither Jane nor her lawyer considered the immigration consequences.

During psychotic episodes Joe has uttered threats against bus drivers and store clerks thinking that they intended to harm him. Because of these incidents, he has a criminal record. Joe sometimes goes off his medication because of its side-effects. During a psychotic episode, he entered his neighbour’s apartment and took some food from her refrigerator. He was there when she came home from work. She called the police and he was charged with “being unlawfully in a dwelling house”, arrested, and detained. Joe pleaded guilty without a lawyer. He was convicted and sentenced to time served.

## Appealing a deportation order

In many cases, a permanent resident who has been ordered deported will have a right to appeal this decision to the Immigration Appeal Division (IAD) of the IRB.



### *No right to appeal*

There is no right to appeal if the order to deport a permanent resident is based on a conviction for a serious crime that resulted in a prison sentence of at least two years. And, in most cases, a foreign national has no right to appeal.

It is important to get legal help with an appeal to the IAD (see [page 15](#)).

At an appeal hearing, the IAD can consider humanitarian and compassionate factors. The IAD must also consider the best interests of any child who could be directly affected by the deportation. For example, this could include a person's own child, born in Canada or elsewhere, or a child in Canada with whom they have a close relationship.

The IAD can also consider:

- how serious the crime was, its impact on a victim, and the sentence received,
- how long ago the crime was committed, under what circumstances, and whether the person has a history of criminal activity,
- whether the person has taken responsibility for any harm caused by the crime (for example, by expressing remorse or compensating a victim),
- whether the person is participating in counselling or treatment for mental illness or substance abuse, and can show that they are unlikely to commit another crime,
- how long the person has been in Canada and their age at the time of arrival, degree of establishment in Canada, education, work history, and involvement in the community,
- whether the person has family members in Canada and the effect the deportation would have on them,

- how much hardship the person would face if they were forced to leave Canada (for example, hardship due to a lack of access to medical treatment and other supports such as family, or the risk of victimization, in the country of origin), and
- how strong a connection the person has with their country of origin.

If an appeal is successful, the IAD usually grants a “stay of removal” for a certain period of time, for example, three years. A “stay” means the deportation order is temporarily suspended. A stay of removal has many terms and conditions, including a condition to report regularly to CBSA and not to commit any criminal offences.

 ***Deportation following a stay of removal***

Someone who gets a stay could still be deported if they do not comply with all the conditions. And if they are convicted of another serious crime, the stay is automatically cancelled. The person can then be removed from Canada with no further right to appeal.

# HOW FRONT-LINE WORKERS CAN HELP

## Talking to clients about the risks

Ask your clients if they are Canadian citizens. Make sure that permanent residents know the difference between citizenship and permanent residence. Explain that without Canadian citizenship they risk being deported from Canada if they have criminal convictions. You can:

- Discuss the advantages of becoming a Canadian citizen and help them apply for citizenship if they qualify. To find out who is eligible to apply and to download application packages, visit the Citizenship and Immigration Canada website at [www.cic.gc.ca](http://www.cic.gc.ca).
- Ask your clients whether they have any criminal convictions. Encourage those with criminal records to find out whether they are eligible to apply for a pardon. For information about pardons, visit the Parole Board of Canada website at [www.pbc-clcc.gc.ca](http://www.pbc-clcc.gc.ca).

## Helping clients find legal advice and representation

A person who is facing criminal charges needs a criminal lawyer. Someone who is not a Canadian citizen should also get legal advice about immigration law before the criminal trial begins. And anyone who is facing immigration proceedings because of a criminal record needs an immigration lawyer. There may be steps they can take to remain in Canada, but they may need to act quickly. You can:

- tell them about their right to a lawyer,
- explain the importance of legal help, and
- help them find legal advice and representation (see [page 15](#)).

# Working with a lawyer

You may be familiar with the mental health system and have training or experience working with people with mental illness. You may know about services and supports that can help your client. Your expertise can help a lawyer understand your client's wishes and concerns and present their case more effectively.

With your client's consent, you can provide their lawyer with relevant information, such as your client's:

- symptoms and preferred communication style,
- support network and past treatment experience, and
- current needs and challenges.

You can help a client who is facing criminal charges by making sure their criminal lawyer knows the client's immigration status.



## *Reasonable and realistic conditions*

Your client's lawyer may plan to ask the court to include conditions in a conditional discharge, suspended sentence, or release order (bail). Work with the lawyer to ensure that court-ordered conditions are reasonable and realistic for your client.

You may be able to help your client's immigration lawyer by providing information about the availability and adequacy of social supports and mental health services in Canada and in the client's country of origin. One source of information is the World Health Organization's website at [www.who.int](http://www.who.int).

You may also be able to help get documentation from experts such as medical professionals and academics. You can ask your client's lawyer what kind of information would be useful and offer to help get it.

You can also help connect your client to treatment and community supports. There is information about community mental health and addiction services and supports at the ConnexOntario website at [www.connexontario.ca](http://www.connexontario.ca).

In Toronto, you can find information about services for people without secure immigration status in the *Toronto Community Resource Guide for Non-Status Immigrants* on the Social Planning Toronto website at [www.socialplanningtoronto.org](http://www.socialplanningtoronto.org). For information about mental health services, see *Navigating Mental Health Services in Toronto* on the Community Resource Connections of Toronto website at [www.crct.org](http://www.crct.org).

## Helping a client at the Immigration and Refugee Board

With your client’s consent, you may be able to help them through processes at the Immigration and Refugee Board (IRB). The IRB is an independent tribunal with the following divisions:

- the Immigration Division (ID) conducts admissibility hearings and detention reviews,
- the Immigration Appeal Division (IAD) hears appeals, including appeals of deportation orders,
- the Refugee Protection Division (RPD) decides refugee claims made by people in Canada, and
- the Refugee Appeal Division (RAD) is a new division being created to hear appeals from RPD decisions.

### **Accommodations for “vulnerable persons”**

A person whose ability to present their case is severely impaired or who has great difficulty with processes at the IRB, can ask for “procedural accommodations” under the *Guideline on Vulnerable Persons*.



### *Vulnerable persons and mental illness*

Someone with mental illness might be a vulnerable person.

Any reasonable measure that helps a vulnerable person in the hearing or with other IRB processes can be a procedural accommodation. Examples include allowing a support person to participate in a hearing or creating a more informal setting for a hearing. Requests under the Guideline may be based on medical evidence or observations of a person's behaviour.

If your client has a lawyer, you can suggest helpful procedural accommodations. If your client does not have a lawyer, you can:

- inform the IRB about your client's mental health concerns, and
- explain how your client's illness may affect their ability to present their case.

For more information about the *Guideline on Vulnerable Persons*, go to the IRB website at [www.irb.gc.ca](http://www.irb.gc.ca).

### **Appointment of a Designated Representative**

The IRB must appoint a "designated representative" for someone who is unable to appreciate the nature of the proceedings. The designated representative's role is to help that person understand the process and make decisions in their best interests. For example, the designated representative should help them retain and instruct counsel.

The designated representative can be a family member or someone else who knows the person. If no one suitable is available, the IRB will appoint a professional, often a lawyer or law student. The IRB does not require a designated representative to have training or expertise in mental illness.

If your client has a lawyer, you can:

- offer to act as the designated representative, or
- recommend a mental health professional, preferably one who knows your client, to act as the designated representative.

If your client does not have a lawyer, you can:

- ask the IRB to appoint a designated representative, and
- offer to act as the designated representative or work collaboratively with whoever is appointed.

For more information about the appointment of designated representatives at the IRB, go to the IRB website at

[www.irb.gc.ca](http://www.irb.gc.ca).

## Getting a psychiatric assessment and developing a treatment plan

A client who is appealing a deportation order must persuade the Immigration Appeal Division that they should be allowed to remain in Canada. An expert opinion about their mental illness and a comprehensive treatment plan can be crucial to a successful appeal.

With your client's consent, you can help their lawyer develop a treatment plan and collect medical evidence. You can:

- act as a liaison between the lawyer and mental health professionals,
- request medical reports from mental health professionals,
- help coordinate the development and implementation of a treatment plan,
- suggest and facilitate referrals to programs that meet your client's needs, and
- suggest realistic and appropriate terms and conditions for a stay of removal.

# Helping a client who is detained

People who are not Canadian citizens can be arrested and detained by the Canada Border Services Agency (CBSA) for various reasons. They may be detained because they are considered a danger to the public or a “flight risk” (unlikely to show up for hearing dates).



## *Limited access to treatment*

Someone who is detained might not be able to access the community-based treatment and supports they need. They could be held in a provincial jail where there is limited access to treatment.

If your client is detained, with their consent you can:

- work with their lawyer to find community mental health services and supports for your client as alternatives to detention,
- try to connect them with an Assertive Community Treatment (ACT) team to help them get released,
- communicate with the detention facility staff to make sure your client’s health needs are being met, and
- advocate for your client’s transfer to a forensic hospital or a correctional treatment centre if their mental health is deteriorating and release is unlikely.

For more information about detention, see the CLEO fact sheet, *Being arrested and detained for immigration reasons*. See the [back cover](#) to find out how to order it or view it online.

# Helping a client comply with conditions

A client who is released from immigration detention, or has been given a stay of removal following an appeal, will have to comply with conditions. The conditions will be set out in the release order or stay.



### *Failure to comply*

A client who fails to comply could be detained or deported.

You can help a client who has been ordered to comply with conditions by keeping in touch with them. You can:

- help make sure any changes of address or contact information are communicated to immigration officials,
- help keep track of appointments with lawyers, social workers, and other professionals, and
- work collaboratively with their family and other support networks to keep your client from breaching conditions.

# FINDING LEGAL HELP

## Legal Aid Ontario

Low income people may be able to get help through Legal Aid Ontario (LAO). For more information, visit their website at [www.legalaid.on.ca](http://www.legalaid.on.ca) or call them at:

- Toll-free **1-800-668-8258**
- Toll-free TTY **1-866-641-8867**
- Toronto area **416-979-1446**
- Toronto area TTY **416-598-8867**

Criminal duty counsel are located in the courthouses. They can give criminal law advice and some assistance to people who appear in court without a lawyer. Duty counsel can refer people to the legal aid certificate program. A certificate will pay for a lawyer to represent someone. There are financial eligibility requirements for some types of duty counsel assistance and to get a legal aid certificate.

LAO rarely gives certificates for immigration admissibility hearings. Sometimes they give certificates to people who want to appeal a deportation order to the IAD.

Someone who has been detained for immigration reasons may be able to get assistance from the Refugee Law Office of LAO. The person must be financially eligible for legal aid, but they do not need to apply for a legal aid certificate. It is not necessary to be a refugee claimant.

To contact the Refugee Law Office, call **416-977-8111** or **1-800-668-8258**. They accept collect calls from detention centres.

The Refugee Law Office may also be able to help with an appeal of a deportation order. This service requires a legal aid certificate.

# Community legal clinics and student legal aid services societies

Community legal clinics give free legal help to people with low incomes. This includes giving advice, making referrals, and representing people. Most community legal clinics can make referrals to an immigration lawyer and some give advice and represent people with immigration problems.

Every law school in Ontario has a student legal aid services society. Law students who are supervised by lawyers give legal advice and can sometimes represent people in immigration matters.

You do not need a legal aid certificate to get help from a community legal clinic or student legal aid society.

To find the nearest community legal clinic or student legal aid society, go to the LAO website at [www.legalaid.on.ca](http://www.legalaid.on.ca). Click on “Contact LAO” then “Community legal clinics” or “Student Legal Aid Services Societies”. Or you can call LAO using the phone numbers listed on [page 15](#).

You can also look at CLEO’s booklet called *Getting Legal Help: A Directory of Community Legal Clinics in Ontario*. See the [back cover](#) to find out how to order it or view it online.



This publication contains general legal information for people in Ontario. It is not a substitute for getting legal advice about a particular situation.

**CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario)** and **Schizophrenia Society of Ontario (SSO)** worked in partnership to develop and produce this publication.

For more detailed information on this topic and to learn about recommendations to address the issues, see the discussion paper *Double Jeopardy: Deportation of the Criminalized Mentally Ill* published by SSO. SSO has other publications as well. For more information and to view their publications online, visit their website at [www.schizophrenia.on.ca](http://www.schizophrenia.on.ca) or call 1-800-449-6367 (in Toronto: 416-449-6830).

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