

So you want to go to Canada, eh?

Joe Suhre & Peter Le

11/26/2014

Donc, vous voulez aller au Canada, eh?

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Why It Matters To Us

Cincinnati Business

Fifth Third plans to expand in Canada

Mar 3, 2014, 1:54pm EST



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Fifth Third Bank is looking north to find chances to grow. Way north, into Canada.

Fifth Third, Cincinnati's largest locally based bank, plans to double the size of its lone office north of the border, in Toronto. That location has about \$450 million (Canadian) in assets now. A Canadian dollar is worth about 90 cents in U.S. money, so that translates to about \$400 million in American dollars.

Mauro Spagnolo, who heads up Fifth Third's Canadian operations, told me by phone on Monday that number could double in the next few years. And the Canadian office has just five employees now. But Spagnolo plans to double that figure, too, within 18 months.

Fifth Third (Nasdaq: FITB) serves only business customers through its Canadian office, which opened eight years ago. I first



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Courtesy Fifth Third Bank

Mauro Spagnolo heads up Fifth Third's Canadian operations.

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Cincinnati Business

P&G Canada

- Has had manufacturing operation since 1915
 - Pampers Plant in Belleville, Ontario, now makes Always
 - Brockville, Ontario plant makes Tide and Bounce
-

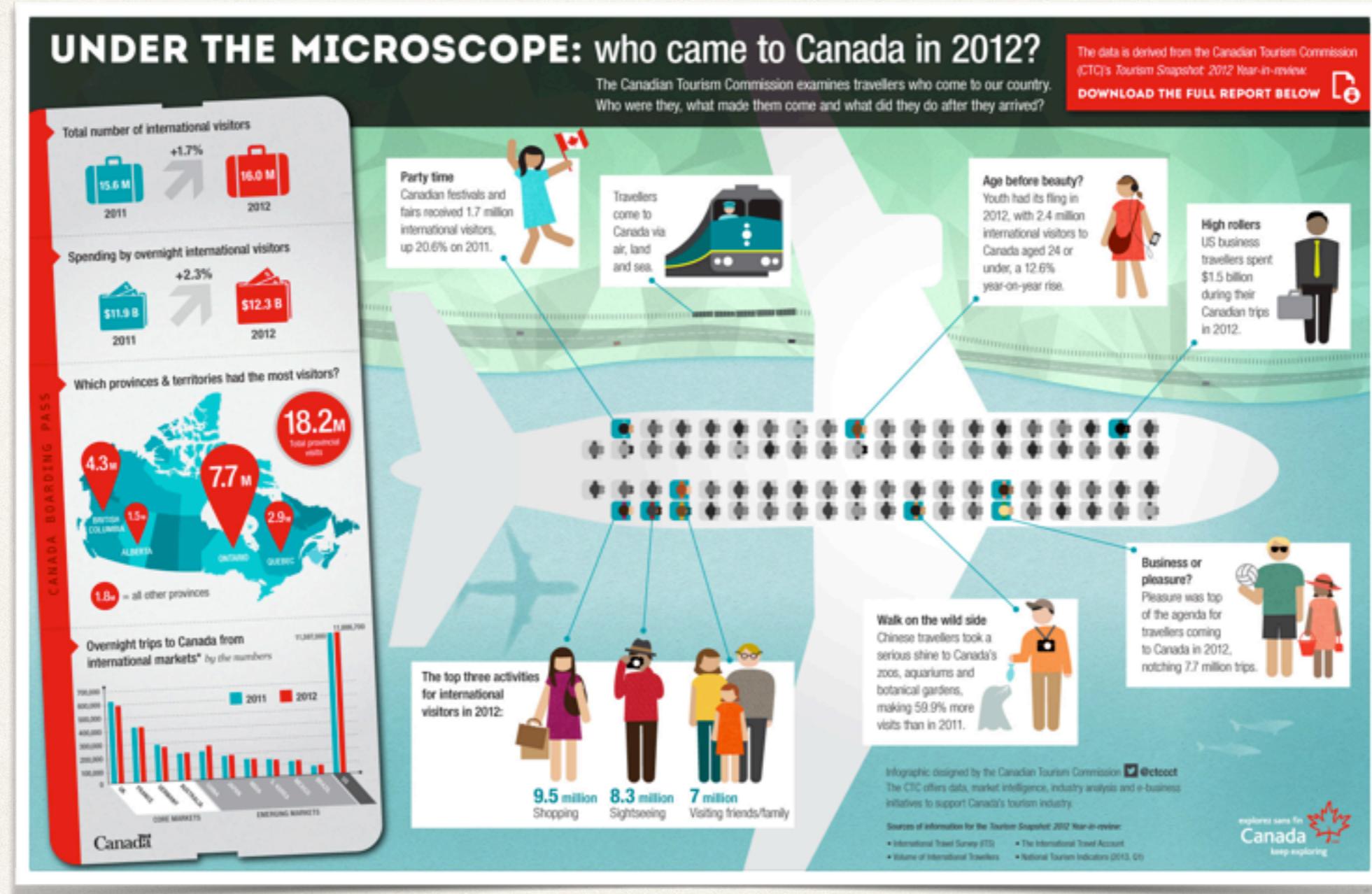
P&G Canada



Not Just P&G

- ✿ A&W
 - ✿ Cirque du Soleil
 - ✿ Ford Motor Co.,
of Canada
 - ✿ Intuit Canada
 - ✿ Labatt Brewing
Co
 - ✿ Lions Gate
Entertainment
 - ✿ Moosehead
 - ✿ Scott Paper
 - ✿ 1-800-Got-Junk
-

Not Just Business



Not Just Business

- 35 Million People Visit Canada Each Year
- In September 2014, 1,859,587 US Citizens entered Canada
- From 1/2014 to 9/2014 – 20,510,269 US Citizens entered Canada

What's that mean for us?

- 1) Any client charged with a criminal offense may have immigration issues if they plan to travel outside of the US
 - 2) Non-citizens may have issues related to naturalization, deportation, or exclusion from admission to the US
-

So you want to go to Canada, eh?

- ❖ a criminal conviction may result in being inadmissible to Canada
 - ❖ Criminally inadmissible individuals are not allowed to enter Canada without special authorization. That authorization comes from the Canadian Department of Immigration
 - ❖ People with a criminal history must verify their entry eligibility before traveling to Canada for business or pleasure.
-

Legal Basis For Criminal Inadmissibility

- ❖ Any offense committed outside of Canada that would be considered indictable if committed in Canada results in criminal inadmissibility.
- ❖ There's also an important distinction between criminality and serious criminality. Serious criminality affects a person's ability to be deemed rehabilitated and affects the government processing fees required for criminal rehabilitation applications.

Legal Basis For Criminal Inadmissibility

- ❖ Canadian Immigration and Refugee Protection Act – IRPA.
- ❖ Section 36 is the relevant section regarding admissibility.

Legal Basis For Criminal Inadmissibility

- ❖ A permanent resident or a foreign national is inadmissible on grounds of serious criminality for:
 - ❖ Having been convicted in Canada for an offense under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years
 - ❖ Having been convicted of an offense outside Canada that if committed in Canada would constitute an offense under an act of Parliament punishable by maximum term of imprisonment of at least 10 years; or
 - ❖ Committing an act outside Canada that is an offense in the place where it was committed and that if committed in Canada would constitute an offense under an act of Parliament punishable by maximum term of imprisonment of at least 10 years

Legal Basis For Criminal Inadmissibility

- ❖ A permanent resident or a foreign national is inadmissible on grounds of criminality for:
 - ❖ Having been convicted outside Canada of an offense that if committed in Canada would constitute an indictable offense under an act of Parliament or of two offenses not arising out of a single occurrence that if committed in Canada would constitute offenses under an act of Parliament
 - ❖ Committing an act outside Canada that is an offense in the place where it was committed and that if committed in Canada would constitute an indictable offense under an Act of Parliament; or
 - ❖ Committed on entering Canada an offense under an act of Parliament prescribed by regulations

Is The Client Admissible to Canada?

- ❖ It's a four step process:
- ❖ Step one: what is the individuals Canadian immigration status?
- ❖ Step two: what is the equivalent of the offense in Canada?
- ❖ Step three: is it a conviction?
- ❖ Step four: when did the individual complete their sentence?

Is The Client Admissible to Canada?

- ❖ Step one: what is the individuals Canadian immigration status?
 - ❖ Are they a permanent resident
 - ❖ Are they a foreign national

Is The Client Admissible to Canada?

- ❖ Step two: what is the equivalent of the offense in Canada?
 - ❖ Summary v. Indictable
 - ❖ s. 5 of the Interpretation Act: any offense where the crown can proceed by summary or indictable offense (hybrid), shall be presumed to be an indictable offense.
 - ❖ Bottom line: almost every offense is considered to be an indictable offense since most offenses are hybrid

Is The Client Admissible to Canada?

- ❖ Step two: what is the equivalent of the offense in Canada?
 - ❖ Summary Offense
 - ❖ generally composed of a provincial court or justice of the peace
 - ❖ defendant may appear personally or by counsel or agent
 - ❖ punishment does not exceed six-months or a \$2,000 fine
 - ❖ Sounds a lot like an Ohio misdemeanor

Is The Client Admissible to Canada?

- ❖ Step two: what is the equivalent of the offense in Canada?
 - ❖ Indictable offenses where the maximum sentence is less than 10 years vs. offenses where the maximum sentence is 10 years or more
 - ❖ 10 years or more: Fraud, thefts over \$5,000, anything involving injury or death, trafficking in narcotics

Offence description	Criminal Code Section	S/H/I	Minimum penalty	Discharge available	Maximum Penalty (S)	Maximum Penalty (I)
Dangerous Driving (no injury)	249(1)	H		yes	6 mos./\$5,000 fine	5 yrs.
Dangerous Driving (injury occurs)	249(3)	I		yes		10 yrs.
Flee Police	249.1	H		yes	6 mos./\$5,000 fine	5 yrs.
Flee Police (injury caused by dangerous driving)	249.1(4)(a)	I				14 yrs.
Flee Police (death caused by dangerous driving)	249.1(4)(b)	I				life imprisonment
Fail to Stop at Scene of Accident	252	H		yes	6 mos./\$5,000 fine	5 yrs.
Fail to Stop at Scene of Accident (knowing person hurt in accident)	252	I		yes		10 yrs.
Fail to Stop at Scene of Accident (knowing person killed in accident)	252	I				life imprisonment
Driving or Care or Control while Impaired or Over 80 mgs.	253	H	\$1,000 fine for first offence; 30 days for second; 120 days for third	Curative discharge available in some provinces (not Ont.)	18 mos./\$5,000 fine	5 yrs.
Refuse or fail to provide a breath or blood sample	254(5)	H	\$1,000 fine for first offence; 30 days for second; 120 days for third		18 mos./\$5,000 fine	5 yrs.
Refuse or fail to comply with demand intended to determine whether ability to operate motor vehicle impaired by drug	254(5)	H	\$1,000 fine for first offence; 30 days for second; 120 days for third		18 mos./\$5,000 fine	5 yrs.
Impaired Driving Causing Bodily Harm	255(2)	I		yes		10 yrs.
Driving Over 80 mgs. Causing Bodily Harm	255(2.1)	I		yes		10 yrs.
Refuse or fail to provide breath sample knowing operation of motor vehicle caused accident resulting in bodily harm	255(2.2)	I		yes		10 yrs.
Refuse or fail to comply with demand intended to determine whether ability to operate motor vehicle impaired by drug knowing operation of motor vehicle caused accident resulting in bodily harm	255(2.2)	I		yes		10 yrs.
Impaired Driving Causing Death	255(3)	I				life imprisonment
Driving Over 80 mgs. Causing Death	255(3.1)	I				life imprisonment
Refuse or fail to provide breath sample knowing operation of motor vehicle caused accident resulting in death	255(3.2)	I				life imprisonment
Refuse or fail to comply with demand intended to determine whether ability to operate motor vehicle impaired by drug knowing operation of motor vehicle caused accident resulting in death	255(3.2)	I				life imprisonment
Drive Disqualified	259(4)	H		yes	6 mos./\$5,000 fine	2 yrs.

Offence description	Controlled Drugs and Substances Act Section	S/H/I	Minimum penalty	Discharge available	Maximum Penalty (S)	Maximum Penalty (I)
Possession of marijuana (up to 30 gms.) or hashish (up to 1 gm.)	4(1)	S		yes	6 mos./\$1,000 fine	
Possession of marijuana or hashish	4(1)	H		yes	6 mos./\$1,000 - 1st offence; 1 yr./\$2,000 - subsequent offence	5 yrs. less a day
Possession of cocaine or heroin	4(1)	H		yes	6 mos./\$1,000 - 1st offence; 1 yr./\$2,000 - subsequent offence	7 yrs.
Possession of amphetamines, LSD, mescaline, or psilocybin	4(1)	H		yes	6 mos./\$1,000 - 1st offence; 1 yr./\$2,000 - subsequent offence	3 yrs.
Trafficking in marijuana or hashish or possession for the purpose of trafficking (up to 3 kgs.)	5	I		yes		5 yrs. less a day
Trafficking in marijuana or hashish or possession for the purpose of trafficking (over 3 kgs.)	5	I	1 yr. if you commit the offence (a) for a criminal organization; (b) use or threaten violence in its commission (c) carry, use or threaten to use a weapon in its commission, or (d) within the previous 10 years, you were convicted of a designated substance offence*; 2 yrs. if you commit the offence (a) in or near a school or any other public place usually frequented by minors (b) at a prison, or (c) with the assistance or involvement of a minor			life imprisonment
Trafficking in cocaine or heroin or possession for the purpose of trafficking	5	I	same minimums as noted above			life imprisonment
Trafficking in amphetamines, LSD, mescaline, or psilocybin or possession for the purpose of trafficking	5	H		yes	18 mos./\$5,000 fine	10 yrs.
Trafficking in barbituates or anabolic steroids or possession for the purpose of trafficking	5	H		yes	1 yr./\$5,000 fine	3 yrs.
Importing, exporting marijuana or hashish, or up to one kg. of heroin or cocaine	6	I	1 yr. if you commit the offence (a) for trafficking; (b) you abuse a position of trust or authority while committing the offence, or (c) you have access to an area that is restricted to authorized persons and use that access to commit the offence			life imprisonment
Importing, exporting heroin or cocaine (more than one kg.)	6	I	2 yrs.			life imprisonment
Importing, exporting amphetamines, LSD, mescaline, or psilocybin	6	H		yes	18 mos./\$5,000 fine	10 yrs.
Cultivation of marijuana	7	I	(i) 6 mos. if there are between 6-200 plants and the production is for trafficking; (ii) 9 mos. for between 6-200 plants, the production is for trafficking and any of the following apply: (a) <i>you use real property that belongs to a third party to commit the offence</i> ; (b) <i>the production could endanger the security, health or safety of minors at or close to the offence location</i> , (c) <i>the production constitutes a potential public safety hazard in a residential area, or</i> (d) <i>you set or place a trap, device or other thing that is likely to cause death or bodily harm to another person in or close to the offence location, or permit such a trap, device or other thing to remain or be placed in that location or area</i> (iii) 1 yr. for between 201-500 plants; (iv) 18 months for between 201-500 plants and any of the factors (a through d, in italics, above) apply; (v) 2 yrs. for more than 500 plants, or (vi) 3 yrs. for more than 500 plants if any of the factors (a through d, in italics, above) apply	no longer available (since November 6, 2012)**		14 yrs.**
Production of hashish	7	I	1 yr. if the production is for trafficking; 18 months if the production is for trafficking and any of the four factors (a through d, in italics) noted above under cultivation of marijuana apply			life imprisonment

Is The Client Admissible to Canada?

- ❖ Important Points So Far

- ❖ Criminal Inadmissibility

- ❖ Convicted of:

- ❖ An offense outside of Canada

- ❖ That is an: Indictable Offense or Hybrid Offense - most offenses are one of those two

- ❖ Makes matters worse if it a 'serious crime' (10 yrs or more)

- ❖ Two or more summary offenses

Is The Client Admissible to Canada?

- ❖ Step two: what is the equivalent of the offense in Canada?
 - ❖ Indictable Offense
 - ❖ Basically all of them, except taking a motor vehicle without consent...or being with a hooker.

Is The Client Admissible to Canada?

- ✿ Step three: is it a conviction?
- ✿ Step four: when was the sentence completed?
- ✿ fines / probation / community service / etc.

Overcoming Inadmissibility

There are three time frames:

- ❖ 0-5 years since completion of sentence
- ❖ 5 years but less than 10 years
- ❖ 10 years or more since completion of sentence

Overcoming Inadmissibility

- ❖ 0-5 years since completion of sentence
- ❖ If the client is 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

Overcoming Inadmissibility

- ❖ 5 years since completion of sentence
- ❖ If 5 years have passed since the completion of the sentence, the client is eligible to apply for Criminal Rehabilitation. **Criminal Rehabilitation** is a way to permanently resolve criminal inadmissibility and wipe the slate clean, so to speak.

Overcoming Inadmissibility

- ❖ 10 years since completion of sentence
 - ❖ If 10 years have passed, you may be ‘deemed’ rehabilitated. This only applies if one single non-serious offense was committed.
 - ❖ What is a ‘non-serious’ offense? Maximum sentence is less than 10 years.

Overcoming Inadmissibility

- ❖ Let's get a TRP!
- ❖ Less than 5 years have passed since the completion of their sentence, or
- ❖ More than 5 years have passes since completion of their sentence but they haven't gone through 'criminal rehabilitation' and,
- ❖ They have a 'significant' reason to enter Canada. Work, family, emergencies can all be considered 'significant'.

Overcoming Inadmissibility

- ✿ I feel much better now. Let's get rehabilitated!
- ✿ ‘criminal rehabilitation’- the process by which the government forgives you.
- ✿ Eligible for crimes committed *outside* of Canada
- ✿ Inside crimes are handled by the Parole Board of Canada and are called ‘records of suspension’ - they used to be called pardons.

Overcoming Inadmissibility

- ❖ I feel much better now. Let's get rehabilitated!
- ❖ Three criteria for 'criminal rehabilitation'
 - ❖ Committed an act outside of Canada that would constitute an offense under a Federal statute
 - ❖ Been convicted of, or admitted to committing the act
 - ❖ Five years have passed since all sentences have been completed - this includes jail, fines being paid, and parole / probation.

Overcoming Inadmissibility

- ❖ I feel much better now. Let's get rehabilitated!
- ❖ Applicant has to demonstrate
 - ❖ They're in a stable position where there is no risk of them committing another crime
- ❖ Factors considered by VISA OFFICER

Overcoming Inadmissibility

- ❖ Nature of the Offense
- ❖ Time
- ❖ Number of Offenses
- ❖ Risk of Reoffending
- ❖ Preventing Reoffending

Overcoming Inadmissibility

- ❖ Nature of the Offense
- ❖ Was the offense that was committed a serious or non-serious offense?

Overcoming Inadmissibility

- ❖ Time
- ❖ How long ago was the last offense committed by the applicant?

Overcoming Inadmissibility

- ❖ Number of Offenses
- ❖ How many offenses are on the applicant's criminal record?
- ❖ Was the applicant a first-time offender?

Overcoming Inadmissibility

- ❖ Risk of Reoffending
- ❖ What is the likelihood that the applicant will reoffend?

Overcoming Inadmissibility

- ❖ 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?

Applying for TRP or Criminal Rehab.

- ❖ TRP
- ❖ Port of Entry / Border: on the spot decision, but shorter validity
- ❖ Visa Office / Consulate: 12-18 month processing time, but longer validity

Applying for TRP or Criminal Rehab.

- ❖ TRP/Criminal Rehabilitation
- ❖ Applied for at a Canadian Consulate located in the USA.
- ❖ There are 14 consulate offices
- ❖ Only LA and New York process TRPs and Criminal Rehabilitation applications
- ❖ Can ONLY apply for rehabilitation at the consulate

Applying for TRP or Criminal Rehab.

- ❖ Deemed Rehabilitated
- ❖ One conviction
- ❖ More than 10 years since sentence completed
- ❖ EXCEPT: it only applies if the single offense was not the equivalent of a ‘serious offense’. What’s a serious offense? 10 years or more.

Applying for TRP or Criminal Rehab.

- ✿ Deemed Rehabilitated
- ✿ Does apply if client has 2 offenses on their record that are considered to be **very minor** offenses.
- ✿ What does that mean? I don't really know.

Applying for TRP or Criminal Rehab.

- ❖ Deemed Rehabilitated
- ❖ Recommended to obtain a legal opinion letter to explain why the individual is not inadmissible to Canada.

Legal Opinion Letter

- ❖ Explains under Canadian Immigration Law
- ❖ why the individual is not inadmissible
- ❖ supported by relevant statutes
- ❖ can also be used in US in attempt to negotiate amended charges to something that would not result in Canadian inadmissibility.

DUI

Canadian
Spelling

- * Section 253 of Canada's Criminal Code "Operation While Impaired" reads:

253.(1) Everyone commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of motor vehicle, vessel, aircraft or railway equipment, whether in motion or not,

- (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
- (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred milliliters of blood

DUI

- ❖ Section 253 of Canada’s Criminal Code “Operation While Impaired” SOUNDS LIKE:
- ❖ OVI
- ❖ Physical Control

That's OK - just make it a reckless op

- ❖ Dangerous operation of motor vehicles, s. 249 of the Canadian Criminal Code:

249.(1) Everyone commits an offense who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated in the amount of traffic that at the time is or might reasonably be expected to be at that place;

That's OK - just make it a reckless op

4511.20 (A) No person shall operate a vehicle, trackless trolley, or streetcar on any street or highway in willful or wanton disregard of the safety of persons or property.

That's OK - just make it a reckless op

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What Makes You Inadmissible?

DUI:

- ❖ Driving or Care or Control while Impaired or Over 80 mgs.
- ❖ Falls under Section 253 of the Canadian Criminal Code
- ❖ Hybrid Offense
- ❖ Minimum penalty: \$1,000 fine for first offence; 30 days for second; 120 days for third
- ❖ Maximum Penalty: 18 mos. / \$5,000 fine if summary offense; 5 yrs. if indicted

What Makes You Inadmissible?

Dangerous Driving:

- ❖ Dangerous Driving (no injury)
- ❖ 249(1) of the Canadian Criminal Code
- ❖ Hybrid offense
- ❖ Minimum penalty: none
- ❖ Maximum if summary offense: 6 mos. / \$5,000 fine
- ❖ If Indicted: 5 yrs.

What Do You Do?

- ❖ Try and get the shortest probation time possible
- ❖ Pay off the fines as quickly as possible
- ❖ Expungement (in KY)
- ❖ Have a certified copy of the client's file
- ❖ My experience - reckless op is better...but not guaranteed.

Non-US Citizen

GROUNDS OF INADMISSIBILITY UNDER INA §212(a), 8 U.S.C.
§§1182(a) – CLASSES OF PERSONS INELIGIBLE FOR VISAS
AND ADMISSION

Non-US Citizen

GROUNDS OF INADMISSIBILITY UNDER INA §212(a), 8 U.S.C. §§1182(a) – CLASSES OF PERSONS INELIGIBLE FOR VISAS AND ADMISSION

- Department of Homeland Security (DHS) policy guidance instructs that “a significant record of alcohol-related driving incidents” could result in a finding of health-related inadmissibility.

Aggravated Felony

An aggravated felony under INA §101(a)(43) includes any crimes of violence (COV) as defined in 18 U.S.C. §16 (not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension) is at least one year.

Aggravated Felony

Section 16 defines a COV as: §16(a) “any offense that has as an element the use or attempted use or threatened use of physical force against the person or property of another,” or §16(b) “any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

Aggravated Felony

An offense will not be a COV if conviction does not require a *mens rea* or if a person may be convicted simply on a showing of negligence or less than intentional conduct. *Leocal v. Ashcroft*, 543 U.S. 1 (2004)

Crimes Involving Moral Turpitude

Generally, violations of regulatory laws are not crimes involving moral turpitude (CIMTs). Simple DUI is not a CIMT, but aggravated DUI is a CIMT.

Crimes Involving Moral Turpitude

Aggravated drunk driving offense which includes driving drunk with knowledge of an invalid license is a crime involving moral turpitude (CIMT). *See Marmolejo-Campos v. Gonzales*, 558 F.3d 903 (9th Cir. 2009). *See also, Matter of Loez-Meza*, 22 I&N Dec. 1188 (BIA 1999) (aggravated DUI offense occurs where person commits DUI while knowingly driving on a suspended, cancelled, or revoked license, or while under a restricted license owing to prior DUI).

Application for Naturalization

Court cases recognize that a single DWI conviction is usually insufficient to preclude a finding of “good moral character.”

Application for Naturalization

- See, e.g., *Rangel v. Barrows*, No. 07 Civ. 279 (RAS), 2008 WL 4441974, at *3 (E.D. Tex. Sept. 25, 2008) (“[A] single DWI conviction is insufficient to preclude an applicant from establishing good moral character.”);
- *Ragoonianan v. USCIS*, No. 07 Civ. 3461 (PAM), 2007 WL 4465208, at *4 (D. Minn. Dec. 18, 2007) (“[A] single DWI conviction, standing alone, does not statutorily bar a naturalization applicant from establishing good moral character when he has been candid about the conviction.”);
- *Yaqub v. Gonzales*, No. 05 Civ. 170 (TSH), 2006 WL 1582440, *5 (S.D. Ohio June 6, 2006) (holding that two DUI convictions do not preclude finding of good moral character, especially where applicant is “forthright”);
- *Puciaty v. Dep’t of Justice*, 125 F. Supp. 2d 1035, 1039 (D. Haw. 2000) (holding that two DUI arrests do not preclude finding of good moral character).

Application for Naturalization

8 CFR 316.10 also bars someone from being considered of good moral character if they are a habitual drunkard. That might be inferred from the record.

Summary

- Aggravated Felony
- Crimes Involving Moral Turpitude
- Application for Naturalization

DUI and Immigration

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