



THE CANADIAN
BAR ASSOCIATION

COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

QUICK TIPS

The Canadian Bar Association's *Collateral Consequences of Criminal Convictions* report offers lawyers speaking to sentence some potential implications of a finding of guilt, beyond incarceration. Each chapter ends with a list of 'Counsel Considerations'. This *Quick Tips* brochure summarizes those lists for easy reference – as with the report, **it does not provide legal advice**, but flags issues for counsel's further exploration.

COUNSEL CONSIDERATIONS

DEPORTATION AND CITIZENSHIP ISSUES

- Consider client participation in programs or community service to mitigate exposure.
- Time in custody calculation applies to each individual offence, not the global sentence.
- Pre-sentence custody expressly credited toward sentence is considered in the total sentence for inadmissibility.
- Any distinction between conditional/custodial sentences is currently unsettled.
- If considering a non-conviction sentence, consider any future international travel plans. Consult counsel in the relevant country about inadmissibility.
- Consider obtaining a written opinion from an immigration lawyer to use during pre-trial resolution discussions or sentencing.
- Suspended sentences are treated as convictions like sentences under six months.
- Peace bonds and discharges do not result in inadmissibility, but that will be the result for convictions for offences with a ten year maximum punishment, custodial or conditional (see above) sentences of six months or more, a plea or agreed statement of facts linking an accused to a criminal organization (*IRPA* s. 37) or an admission under s. 36(2)(d) (also for ss. 34, 35, 40 or any admission to an offence under the *IRPA*).

REGISTRIES, RECORDS, PARDONS

Victim Surcharges

- As of October 24, 2013, these surcharges cannot be waived. Is 'working off' the surcharge available? Otherwise expect \$100

(summary) and \$200 (indictable) for each offence.

- Pardons/record suspensions are impossible if the surcharge is outstanding, and the waiting period only starts after fines and surcharges are paid.
- If a fine is imposed, the surcharge will be 30%. Ask for a reduced fine if your client is impoverished.
- Fines are unavailable if the judge imposes an absolute or conditional discharge – the full \$100 /\$200 must be paid.
- Check your legislation for time allowed to pay.

Court-Ordered Fines

- The judge must:
 - Inquire about ability to pay.
 - Provide reasonable time to pay.
 - Discuss any possible extensions or fine option programs (just some jurisdictions).
- Address these issues in your submissions.
- Review finances with client – is community service available instead of a (non-mandatory) fine?
- If unpaid, the judge could refuse to renew or restrict licenses, permits or other civil options. Before incarceration for non-payment, a hearing will consider if failure to pay is willful.

Court-Ordered Restitution

- A sentencing judge must consider ability to pay (though less important than for court orders to pay fines). Address this in your submissions.
- Review finances with your client, particularly if part of a probation or conditional sentence order. Is community service instead of restitution an option?
- Before incarceration for non-payment, a hearing will consider if failure to pay is willful.

- Pardon/record suspensions are unavailable until restitution is paid and the waiting period only starts to run then.

DNA Orders

- Check the *Criminal Code* to determine if a primary or secondary offence. Decide then about arguing the issue.

Pardons and Record Suspensions

- Fee is \$631. See Parole Board of Canada website for Guide, forms and Policy Manual section 14.
- Consider the court order to determine applicable provisions, and note differences between discharges and convictions.
- Advise the client in writing of the wait to apply for a pardon/record suspension.
- Advise also that things may change if the client reoffends. Sometimes, an earlier pardon/record suspension will be automatically vacated with a new finding of guilt.
- A Canadian pardon/record suspension does not bind other countries; they can decide about admitting any Canadian.
- Consider a record suspension for a client previously found inadmissible to Canada for criminality.

Photographs and Fingerprints

- May be kept even when charges were withdrawn or there was an acquittal. Clients may need to apply for materials to be destroyed. Ask the police force that took the fingerprints and photographs for policies, procedures and costs.
- Police files are not destroyed with a pardon, and some background checks will disclose their past investigations.
- Crown elections to proceed summarily may make no difference; young people are treated as adults in this regard.

Sex Offender Registries

- How long is your client subject to the designation?
- Clarify reporting obligations and consider if a section 161 order accompanies the designation.
- Discuss with client if any exceptions to blanket prohibitions should be sought.

CIVIL DISABILITIES

- How will your client's relationship with children be affected? Consider curfew restrictions and parenting time, attendance at extracurricular or school activities.
- Will no-contact provisions impact participation in decision-making about children, or access visits?
- How will your client's ability to attend family court be affected? Include an 'except for attending family court/ or discussing parenting arrangements' exception to 'no contact' orders if appropriate.
- Inform probation officers about the family situation of the accused.
- Will the offence disqualify your client from voting or full participation in society?
- How will the offence limit future employment or professional prospects?

NON-CONVICTIONS

- If encountering barriers to employment or travel where no previous criminal record of convictions, consider inappropriate release of non-conviction information.

PRISON CONSIDERATIONS

- Consider categorization of offence, and earliest possible release date for federal/provincial/territorial custody.
- Consider the most likely institutions and their reputations.
- Consider your client (personal vulnerability, street toughness, mental or physical illness, FASD, literacy) and each scenario, access to programming.
- If you believe federal institutions have more programming, check the reality.
- How long will classification take? Where will your client be held pending classification?
- Consider family ties, proximity to home, visiting rules and facilities at each institution.
- Remember there are fewer options for women.
- Consider aboriginality on the possibility of parole and time incarcerated.

Also consider:

- Counseling or community service to encourage non-convictions, lesser offences or more favorable sentences.
- Ordering transcript of the guilty plea or Reasons for Judgment especially if from a different day than sentencing, to ensure your comments are noted.
- Asking for the first half of the plea to go to CSC (s 732.2) to provide more information.
- Speaking to what the judge may send to CSC to avoid inaccurate or incredible information from becoming part of the 'facts'.

- Providing an Agreed Statement of Facts to address other omissions or one-sided information, and include comments from the Crown or judge confirming other facts.
- Providing written confirmation of personal details to avoid inappropriate job training or remedial education.
- Supplying prescriptions or medical information for health care personnel.



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