

The Immigration Consequences: What a Criminal Court Needs to Know

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INTRODUCTION

Lawyers working in the criminal courts tend to make arguments not based on adequate evidence where the issue involves a subject outside of familiar criminal law. This often occurs in bail and sentencing hearings or other proceedings in which there is typically no *vive voce* evidence before the judge. The following tips aim to help you consider what you need to present to the Court in cases which carry possible immigration consequences.

CLIENT IDENTITY

As a lawyer, you have a professional obligation to verify your client's identity. In almost every case, this can be done with a piece of government-issued photo identification. Add to your list of basic questions confirmation of whether your client is a Canadian citizen. If he or she is not, you know you will have some extra work on your hands.

LEGAL STATUS

Determine your client's legal status in Canada. Surprisingly, many non-citizens may not know what their legal status is in Canada. A foreign national who is in Canada illegally is likely to have attracted the attention of the law enforcement agency. The agency often contacts the Canada Border Services Agency. If so, there will be a concurrent immigration investigation.

FIRST CONSIDERATIONS

For your non-citizen client, especially permanent residents or those seeking to gain that status, you need to understand the immigration consequences. Familiarize yourself with the Immigration and Refugee Protection Act, especially s. 36. As soon as you have Crown disclosure and your client's instructions, consider speaking to an immigration lawyer even before discussing resolution outcomes with Crown counsel. Consider whether your client faces a mandatory minimum sentence or a sentence of "more than six months' imprisonment." Consider whether your client can plead to a lesser or alternative offence to avoid a negative immigration consequence.

CASE CATEGORIES

The most drastic consequence a client can face is a finding of inadmissibility and the jeopardy of removal from Canada. In ordinary language, this means deportation to the country of origin. This may not be meaningful to a foreign national who does not intend to remain in or return to Canada. For a permanent resident, the consequences are significant. Cases you will see fall into three categories which I call: