

ABOUT US

At BorderLaw® we are, first and foremost, immigration law experts. Our exclusive focus means that we are able to provide expert advice and comprehensive services in an increasingly complex area of law.

PERSONAL SERVICES

When you contact us, you deal with a qualified and experienced lawyer who will take the time to identify and address your specific immigration issues.

FLEXIBILITY

We can help with a specific immigration problem or develop your business immigration plan. We provide services on a fixed fee basis or bill hourly, in US or Canadian currency, as per our clients' request.

REFERRALS

We value referral relationships. Because of our restricted practice area, we regularly assist Canadian, US & international law firms. We work hard to support you and your clients.

ACCOUNTABILITY

Qualified and licensed in Canada and the US, at Borderlaw® we adhere to stringent regulatory requirements applicable to practice, accounting and ethical conduct, in both countries.

BEREZOWSKI'S BORDERLAW®

*** UPDATE ***

To: Berezowski Business Immigration Law Clients
From: Nan Berezowski, Barrister & Solicitor
Date: January 17, 2019
Re: Canada's Impaired Driving Laws - "Tough Love" without the "Love"

Every week I receive at least a couple of calls from prospective clients that relate to impaired driving charges and the consequences for entry to Canada. People are often surprised to learn how seriously Canadian authorities treat impaired driving. Moreover, with the legalization of Cannabis in Canada, there have been changes to the impaired driving law that have increased the consequences of impaired driving generally and they have a particularly severe impact in the immigration context.

The enactment of Bill C-46 on December 18, 2018 significantly changed Canada's impaired driving legislation and related offences under the *Criminal Code*. In turn, the immigration consequences of the new regime have particularly harsh consequences for permanent residents who have committed or been convicted of an impaired driving offence but also for foreign nationals who wish to enter Canada temporarily for work, business or pleasure.

The Canadian *Criminal Code* was amended to impose significantly tougher sentences for impaired driving offences. The maximum penalty for a conviction for an impaired driving offence increased from five years to ten years of imprisonment. This change is significant because a conviction for an impaired driving offence will now render both permanent residents and foreign nationals inadmissible to Canada on grounds of "serious criminality" pursuant to 36(1) of the *Immigration and Refugee Protection Act*. Previously impaired driving was considered under the lesser "criminality" provisions.

Going forward, impaired driving abroad could subject a permanent resident to permanent residency status proceedings and a deportation order, regardless of the sentence imposed by a foreign court. Similarly, a conviction for impaired driving in Canada, regardless of the sentence imposed, could cause a permanent resident to be issued a deportation order and lose his or her status as a permanent resident.

The amendments also have significant impact on foreign nationals entering Canada temporarily as they will no longer be eligible for 'Deemed Rehabilitation' under section 36(3)(c) of the *Immigration and Refugee Protection Act*. "Deemed Rehabilitation" is a grace provision that allows certain foreign nationals convicted outside of Canada to be deemed no longer inadmissible to Canada once ten years from the date of completion of their sentence have passed and they have met other conditions of the *Act*. As of December 18, 2018, the only options available to a foreign national convicted of an impaired driving offence abroad are an Application for Criminal Rehabilitation, or to seek temporary relief by making an application for a Temporary Resident Permit (TRP) to overcome inadmissibility

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The principal lawyer at Berezowski Business Immigration Law, I am an internationally recognized Canadian lawyer (Ontario) and a licensed US Attorney-at-Law (New York) who has been featured in Who's Who Corporate Immigration for over a decade.

I have practiced Canadian business immigration law exclusively since 1995. A dual licensed lawyer, I also understand the interplay of US/Canada immigration and regularly assist law firms, individual and companies with cross-border and US consular matters – acting as their 'eyes and ears' in Canada and at the border. After spending the first half of my career on Toronto's Bay Street, in 2006 I decided to provide a more personalized legal service and opened Berezowski Business Immigration Law.

Today I lead a boutique immigration law office that focuses exclusively on the immigration challenges of the people we help.

to Canada based on “*serious criminality*”. This is true even if the offence was isolated and many years have passed.

In addition, the delegated government authority required to adjudicate inadmissibility due to impaired driving is now higher under the *Immigration and Refugee Protection Act (IRPA)*. As a consequence, most officers, including most Canada Border Services Agency officers, no longer have the authority to issue a TRP to a foreign national for an impaired driving offence but rather must refer the matter to a Superintendent.

The Minister of Immigration, Refugees and Citizenship Canada, Ahmed Hussein, has been clear that the Government of Canada's intention is to send a strong message that impaired driving is unacceptable. However, he has also recognized the disproportionate consequences for non-Canadians. In a letter to the Canadian Bar Association, the Minister confirmed that in assessing ‘serious criminality’, officers will take into consideration the Canadian law in place at the time of the commission of the offence consistent with the Supreme Court of Canada's decision in *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50. It follows therefore that an offence of impaired driving that was considered “criminality” as opposed to ‘serious criminality’ because it occurred before the new penalties came into force should continue to be treated under the *IRPA*'s “criminality” regime.

The Minister also clarified that a foreign national who was previously determined “Deemed Rehabilitated” for an impaired driving offence outside Canada before the amendments came into force should not need to reapply for relief to overcome inadmissibility for that same offence. Unfortunately, it is not clear how this will play out at the Port of Entry because of the difficulty in obtaining proof of one's “Deemed Rehabilitated” status. Similarly, permanent residents with pre-December 18, 2018 impaired driving offences should not be affected by the new law.

Subject to any unlikely changes to Canada's immigration law or policy that mitigate the harsh immigration consequences resulting from the enactment of Bill C-46, foreign nationals who are convicted in Canada of impaired driving offences on or after December 18, 2018, may have to contend with both the severe penalties for impaired driving offences in Canada and the harsh immigration consequences. For foreign nationals who commit or are convicted of such offenses outside Canada, overcoming inadmissibility will be a challenge. Moreover, because the delegated authority to oversee inadmissibility based on “serious criminality” is limited to the superintendent level, with the reclassification of impaired driving offences, we can expect increased demand on already strained government resources and this will likely result in slower adjudications.

Nan Berezowski (BA, LL.B, LL.M) compiled this Update with the latest available information for the general information of Berezowski Business Immigration Law clients and other interested parties. This Update is not comprehensive and should not be relied upon without appropriate legal advice.