Notice to TIFF Attendees: Watch Out for Canada's Immigration Laws

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As in previous years, the Toronto International Film Festival ("TIFF") is expected to receive thousands of visitors from around the World. However, many of these visitors are not aware that relatively minor offences can prevent them from entering Canada.

Who is at Risk?

Foreign nationals from countries whose citizens require a Temporary Resident Visa ("TRV") issued by a Canadian consular post will typically learn of their inadmissibility when they apply for their TRV, well in advance of their travel date. In addition, now that Canada has implemented an Electronic Travel Authorization ("eTA") system, visa-exempt international travelers who are travelling to Canada by air will also learn of their inadmissibility long before they board their flight.

Nevertheless, there are still many situations where a foreign national will not learn of their inadmissibility until they actually arrive in Canada. For example, United States citizens are both visa-exempt and eTA-exempt. Foreign nationals from visa-exempt countries are also eTA-exempt if they are entering Canada by land or sea. These international travelers will not be subjected to any screening by the Canadian Government until they actually arrive in Canada. As a result, they may not learn of their inadmissibility until it is too late to do anything about it.

The risk of being denied admission is particularly high for a person who has a United States conviction, since the Canada Border Services Agency ("CBSA") has access to the FBI's National Crime Information Center. As a result, CBSA will immediately know if a foreign traveler has a criminal conviction in the United States when he or she arrives in Canada.

Who is Barred?

Determining whether a particular offense results in inadmissibility to Canada is often a very complicated task. The foreign conviction must first be examined carefully and its Canadian equivalent must be identified.

If the equivalent offence in Canada would be considered indictable (roughly the equivalent of a felony in the U.S.) under Canadian federal law, it can result in a bar. In addition, having two or more foreign convictions not arising out of a single incident, which would be considered summary convictions (roughly the equivalent of a misdemeanor in the U.S.) under Canadian federal law, can also result in a bar.

To make this analysis even more complicated, many offences in Canada are considered hybrid offences. In other words, the Crown (i.e. Prosecutor) can elect to prosecute the offence as a summary conviction or an indictable offence. In such cases, for the purposes of Canadian immigration law, a foreign conviction will be deemed to be an indictable offence even though the Crown would have clearly prosecuted the offence as a summary conviction, if the offence had occurred in Canada.

As a result of this deeming provision, convictions for minor offences will often result in inadmissibility. For example, a single conviction for any one of the following minor offences will result in a bar to Canada: (1) impaired driving; (2) petty theft; (3) simple assault; (4) simple possession of a controlled substance (other than a single offence for simple possession of thirty grams or less of marijuana or one gram or less of hashish); or (5) mischief.

Canadian immigration laws also bar a foreign national who has committed an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under Canadian federal law. In other words, even if the foreign traveler was never actually convicted of the offense, if the Canadian Government has reason to believe that he or she committed the offence, the foreign traveler can still be barred from Canada.

For example, admitting to the commission of an offence, for which the foreign traveler was never charged, could result in a bar to Canada. The existence of pending charges can also result in a bar to Canada. In addition, where an initial offence has been reduced under a plea bargain to one that does not result in inadmissibility (e.g. impaired driving reduced to careless driving), this could still result in a bar if the Canadian Government believes that the foreign traveler actually committed the initial offence.

<u>What if you are Barred?</u>

In some cases, a foreign national may be entitled to a deemed rehabilitation [an automatic, permanent waiver of inadmissibility]. The following requirements must typically be satisfied:

1. Where the foreign national has committed or been convicted of only one offence that is equivalent to an indictable offence in Canada (having a maximum punishment of less than ten years of imprisonment), at least ten years must have elapsed since the date

that all terms and conditions of their sentence were completed (or where there was no conviction, the date that the offence was committed). The foreign national must also not have been convicted of any other offence (inside or outside of Canada) within the last ten years.

2. Where the foreign national is convicted of two or more offences that, if committed in Canada, would constitute summary convictions under Canadian federal law, at least five years must have elapsed since the date that all terms and conditions of their sentence have been completed. The foreign national must also not have been convicted of any other offence (inside or outside of Canada) within the last five years.

If deemed rehabilitation does not apply, it is also possible to seek a Temporary Resident Permit ("TRP") [a temporary waiver of inadmissibility] through a Canadian consular post. However, TRP applications can take months to adjudicate. Foreign nationals who are both visa-exempt and eTA exempt also have the option of requesting a TRP at the time of entry but this can be unpredictable.

Conclusion

In order to avoid any unpleasant surprises, international travelers should consider their potential inadmissibility well in advance of any travel to Canada. If they discover that they are barred from Canada, this should ensure that they have sufficient time to seek relief before their proposed travel date.