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## Can Inadmissibility to Canada be Overcome? The Temporary Resident Permit Explained

By Warren Creates and Jacqueline Bonisteel

Unless your name is Lord Black of Crossharbour, a determination that you are inadmissible to Canada is not easily overcome. Where the Canadian authorities find a permanent resident or foreign national inadmissible, that person must leave Canada, and will not be permitted to return for any purpose. Inadmissibility is most often triggered by a criminal conviction, or a finding that one's health condition will cause excessive demand on social services or a danger to public safety. Inadmissibility can also be based on a perceived security threat to Canada, misrepresentation, a finding of involvement in human rights violations abroad or organized crime, or a determination that adequate arrangements for financial support have not been made.

When a finding of inadmissibility is made, the options for challenging that decision are limited, and most carry low prospects of success. In cases of criminal convictions, it may eventually be possible to end the inadmissibility by way of rehabilitation. However, rehabilitation is not available in all cases and, even where it is, a significant period of time (either five or ten years) must pass before the rehabilitation provision (s. 36(3)(c) of the *Immigration and Refugee Protection Act ("IRPA")*) can be triggered.

A more immediate solution is available in exceptional cases: the Temporary Resident Permit (TRP). Pursuant to s. 24 of the *IRPA*, a TRP allows an inadmissible person to enter Canada for a limited period of time where "justified in the circumstances". Exceptional circumstances justifying the issuance of a TRP might include attendance of a family event like a birth or funeral, the need to spend time with immediate family in Canada, participation in a sporting or cultural event, or an important business visit. A TRP can be issued for a period of one day to three years.

In high-profile cases where Canada is likely to benefit from the presence of an inadmissible person, the prospects of success are much higher. For example, where a famous musician is planning to tour Canada but is inadmissible due to an impaired driving conviction, a TRP is likely to be issued for the duration of the tour to allow the musician to play, and to allow Canada to reap the economic and cultural benefits of the performances. The recent controversial case of newspaper magnate and convicted felon Conrad Black is also revealing: in just weeks, Lord Black was granted a one-year, multiple-entry TRP on the basis that his family home is in Toronto and his wife and children are Canadian citizens. The TRP was granted despite the fact that Lord Black was still in prison in the U.S.—an "extraordinarily rare" occurrence.<sup>1</sup>

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<sup>1</sup> Steven Chase, "Just how special is Lord Black's residency permit?" *The Globe and Mail* (2 May 2012) <<http://www.theglobeandmail.com/news/politics/just-how-special-is-lord-blacks-residency-permit/article4105216/>>.



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Where a case is not so high-profile, obtaining a TRP tends to be more difficult. Officers will be cautious in granting a TRP not only because of the potential risk to Canadians posed by inadmissible persons, but also because members of the permit holder class have access to significant privileges, such as the ability to apply for a work or study permit inland, and access to health and social services. As well, when a TRP holder is in Canada and was not inadmissible on the grounds of serious criminality, organized crime, security, or the violation of human or international rights, that person will automatically become entitled to permanent residence after a prescribed period. These are significant rights that Canada will be very guarded in granting to persons previously found ineligible to enter the country.

To make a TRP application compelling, it is essential to convince the officer that the applicant poses no danger to the Canadian public, and will not be reliant on Canadian social services. Supporting documentation such as recent medical records, letters of support, and proof of a lack of recent criminal activity can be put forward. An application is also more likely to succeed where there is a credible reason for the visit to Canada. A TRP requested for a limited duration tied to a specific event is likely to be looked upon more favourably than one requested for a longer duration and a vague purpose.

Officers are afforded significant discretion in evaluating a TRP application. Still, the officer considering the application is required to act fairly, to account for all relevant factors, and to properly weigh those factors before rendering a decision. For instance, where a TRP is sought to overcome criminal inadmissibility, the officer is directed to consider the seriousness of the offence, and to undertake an assessment of the risk of further criminal activity. If this duty to act fairly is breached, the decision may be overturned by the Federal Court on judicial review. The application will then be sent back for re-determination by a different officer. There are case law precedents where a refusal to extend a TRP has been overturned on judicial review because the officer failed to provide adequate reasons, or provided reasons that were so unreasonable so as to constitute an error of law.<sup>2</sup>

Nonetheless, in the context of officer discretion, overcoming a negative decision will be difficult, and applicants are advised to consult an experienced immigration lawyer before submitting a TRP application or embarking on a challenge to a negative TRP decision. Our Immigration Law Group specializes in this area. We can assist you in exploring your legal options where you or a family member has been found inadmissible, and can also help ensure that an application for a TRP has the strongest possible chance of success.

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<sup>2</sup> See, for example, *Beyer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 823 (CanLII); *Figueroa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1339 (CanLII).