

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ALBERTA COURT OF APPEAL)**

BETWEEN:

HOANG ANH PHAM

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

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PART I – FACTS AND OVERVIEW

1. By the Order of Cromwell J., dated 27 December 2012, the Canadian Association of Refugee Lawyers (“CARL”) was granted leave to intervene in the within appeal.
2. CARL advances the following submissions. First, the immigration consequences of sentencing for criminal offences must be considered but not pre-determined as part of sentencing where the range of fit sentence triggers different potential consequences depending on the sentence ultimately imposed. Second, the function and powers of the Immigration Appeal Division (“IAD”) of the Immigration and Refugee Board (“IRB”) place it in the best position to determine whether, as a matter of immigration law and policy, a non-citizen should be deported from Canada for criminality. Third, loss of access to an IAD appeal is a significant consequence for non-citizens because there are no other effective avenues of redress in the immigration scheme for a permanent resident to review a deportation order. Fourth, the failure of defence counsel to inquire about the immigration status of an offender and to advise the offender and the Court about the IAD appeal bar threshold in and of itself provides a basis upon which an appeal court should adjust a sentence within the available range if doing so will preserve the right of access to an IAD appeal against deportation.
3. CARL takes no position on the facts before the Court.

PART II – POINTS IN ISSUE

4. CARL agrees that the points in issue are the ones identified by the Appellant and Respondent.

PART III – ARGUMENT

A) Immigration consequences must be considered, but not determined, upon criminal sentencing

5. Parliament has determined that the loss of access to an appeal before the IAD is an appropriate consequence in some but not all circumstances when a non-citizen commits a crime. It is the quantum of the sentence imposed that determines whether this right is lost or retained. This important right should not be lost due to inadvertence if other outcomes are

possible given the range of sentence that may be imposed. It is submitted that it is imperative that sentencing courts consider the immigration consequences of sentencing for non-citizens when the range of fit sentence spans the threshold beyond which access to an IAD appeal is statutorily barred. Far from undermining the provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (“*IRPA*”), it is submitted that by turning their minds to this important factor, judges passing sentences for criminal offences will ensure the provisions of *IRPA* operate as they were intended to.

6. This Honourable Court has recognized that the factual and legal implications of deportation vary from case to case.¹ In the criminal law context, deportation can be an important – sometimes, the most important – consequence of a finding of guilt and the sentence imposed. In *Padilla v. Kentucky*, the United States Supreme Court noted that it had “long recognized that deportation is a particularly severe ‘penalty’.”² Writing the opinion of the Court, Stevens J. stated:

The severity of deportation—“the equivalent of banishment or exile,” *Delgadillo v. Carmichael*, 332 U. S. 388, 390–391 (1947)—only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.³

7. The United States Supreme Court also recognized that while deportation is not, in a strict sense, a criminal sanction, it has become so closely linked to the criminal process when non-citizens are concerned that it cannot easily be separated from it.⁴

8. Deportation profoundly and permanently affects the individual concerned, his or her family and his or her wider employment and social contacts. Citizens never face the consequence of deportation for criminality but non-citizens do for some forms of criminality. For sentencing judges to draw no distinction between citizens and non-citizens in determining a fit and appropriate sentence when deportation is a potential consequence of the sentence imposed is to ignore the real impact of their decisions on the individual and on society. It is submitted that this is what Doherty J.A. had in mind in *R. v. Hamilton*, when he spoke of “the human face of the sentencing process” and the “future prospects of the offender”.⁵

¹ *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para. 46; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras. 12-18

² *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) at p. 8 (per Stevens J. for the majority, referencing *Fong Yue Ting v. United States*, 149 U. S. 698, 740 (1893))

³ *Padilla v. Kentucky*, *supra*, at p. 16, per Stevens J.

⁴ *Padilla v. Kentucky*, *supra*, at p. 8, per Stevens J.

⁵ *R. v. Hamilton* (2004), 186 C.C.C. (3d) 129 (Ont. C.A.) at para. 158.

9. It is submitted that the permanent and often devastating immigration consequences that flow from a potential sentence must be considered by a sentencing court, particularly when the range of appropriate sentence spans the statutory threshold that bars an immigration appeal. This does not mean that non-citizens *must* receive a lesser sentence than a citizen because of the impact of the sentence on their prospects for remaining in Canada, only that the status of the offender can have ramifications that bear on the overall impact of the sentence on that particular offender and, thus, the fitness of the sentence ultimately imposed. Indeed, it is submitted that there can be a disproportionate impact on permanent residents if the immigration consequences are not considered by sentencing courts in situations where the range of fit sentences spans the appeal bar threshold.⁶

10. Criminal courts must be alive and sensitive to the immigration consequences that flow to permanent residents from a criminal sentence that entails the loss of access to an important equitable procedure. This is a factor that goes to the determination of a fit sentence for the offender and the offence. That said, it is submitted that sentencing courts should not go further and judge for themselves whether the offender “deserves” to remain in Canada or to be deported when the range of sentence spans the statutory cut-off for access to the IAD. Where a choice is available between sentences that fall on either side of the statutory cut-off, it is submitted that the sentence that provides access to an IAD appeal should be imposed so that the tribunal Parliament created to assess the merits of deportation orders may do so.

B) Nature of the IAD appeal and the powers of the IAD

11. Pursuant to section 63(3) of *IRPA*, a permanent resident or a protected person has the right to appeal a removal order to the IAD based on a finding of inadmissibility, including inadmissibility for serious criminality pursuant to section 36(1)(a).⁷

⁶ The class of non-citizens who stand to lose access to an IAD appeal may expand significantly. Bill C-43, *The Faster Removal of Foreign Criminals Act*, was introduced in the House of Commons on June 20, 2012, and has passed Second Reading. Section 24 of this Bill proposes to amend section 64(2) of *IRPA* to the effect that permanent residents and protected persons will be barred from appealing to the IAD if they receive a sentence of six months or more. Jurisprudence under the current version of section 64(2) has established that the “sentence” for this purpose includes pre-sentence custody if it is clearly referenced by the sentencing judge as forming part of the punishment imposed.

⁷ For protected persons, if their IAD appeal is dismissed, or they are barred from appealing pursuant to section 64(2), they may not be deported unless a separate danger to the public finding is made against them pursuant to section 115(2)(a) of *IRPA* by a Minister’s Delegate. This is a paper review process by an administrative decision-maker of Citizenship and Immigration Canada. A stay of removal is in place until a danger opinion decision is made. This further process is in recognition of the principle of *non-refoulement*, and permits a

12. An appeal before the IAD provides a stay of removal, is dealt with by an independent tribunal and involves an oral hearing. All humanitarian and compassionate factors are considered by the independent IAD Board Member.

13. The IAD has expertise in hearing removal order appeals and balancing the relevant factors, including: the seriousness of the criminal conduct triggering criminal inadmissibility; the individual's criminal record; the possibility of rehabilitation, including past efforts and a future plan for rehabilitation; any addictions and/or mental health problems; family in Canada (in particular, children who would be directly affected by the removal of the permanent resident);⁸ the length of time in Canada; the degree of establishment here; foreign hardship that would occur with removal, including lack of family and other supports in their country of origin; the remorse the individual has exhibited for their criminal conduct, and so on.⁹ In short, IAD members are experts in applying immigration law and policy, which is what should determine whether a non-citizen may remain in Canada or not.

14. In *Canada (Minister of Citizenship and Immigration) v. Khosa*, this Honourable Court observed that "IAD members have considerable expertise in determining appeals under the IRPA."¹⁰ Moreover, the Court noted that Parliament entrusted this kind of balancing decision to the IAD, and not to the courts in the form of judicial review.¹¹ It is submitted that this same reasoning is also applicable in considering the appropriateness of sentencing judges making determinations about whether a permanent resident should be granted a "second chance" to remain in Canada, despite his or her criminality, in circumstances where a different outcomes are possible.

15. The remedial powers of the IAD are also important to bear in mind. If a stay of removal is granted, the tribunal has the power to impose significant conditions to help keep a permanent resident on the path of rehabilitation. Section 251 of the *Immigration and Refugee Protection Regulations* sets out mandatory conditions that must be part of any IAD stay. The

protected person to set out the risks they would face if returned to the country against which they have been found to face persecution, as balanced against their present and future danger to Canadian society.

⁸In fact, consideration of the best interests of a child directly affected by the decision removal s a factor mandated in the legislation setting out the equitable jurisdiction of the IAD to allow an appeal of a deportation order, or grant a stay of the removal order: subsections 67(1)(c) and 68(1) of *IRPA*.

⁹*Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, endorsing *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 (QL)

¹⁰*Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, at para. 58.

¹¹*Khosa, supra*, at paras.62 and 66.

IAD also has the discretion to order further conditions, enhancing its function and ability to deal with permanent residents with criminal records who are appealing removal orders.

16. It is submitted that the approach of the Court of Appeal below usurps the role of this independent, administrative tribunal with a long history of expertise in considering immigration appeals of deportation orders. The ultimate determination of whether a non-citizen offender ought to be permitted to remain in Canada should be left to the expert tribunal expressly mandated by Parliament to make such determinations, where the imposition of a fit sentence can permit this.

C) No other forum for a permanent resident to have the deportation order addressed

17. In *Medovarski v. Canada (Citizenship and Immigration)*, this Honourable Court noted the system of checks and balances built into the deportation process under *IRPA*:

In keeping with these objectives [the prioritization of security interests], the *IRPA* creates a new scheme whereby persons sentenced to more than six months in prison are inadmissible: *IRPA*, s. 36(1)(a). If they have been sentenced to a prison term of more than two years then they are denied a right to appeal their removal order: *IRPA*, s. 64. Provisions allowing judicial review mitigate the finality of these provisions, as do appeals under humanitarian and compassionate grounds and pre-removal risk assessments....¹²

18. It is submitted, however, that in the present context, the alternative processes identified by the Court in *Medovarski* do not mitigate the loss of an IAD appeal. The judicial review process is illusory for a permanent resident found inadmissible pursuant to section 36(1)(a) of *IRPA* who is sentenced to a term of imprisonment of two years or more. If the sentence imposed does indeed entail inadmissibility pursuant to section 36(1)(a), there will be no grounds for judicial review of the inadmissibility finding or the deportation order that flows from it for permanent residents. Once a section 44 report of inadmissibility pursuant to section 36(1)(a) is referred to the Immigration Division of the IRB, the only questions to be addressed by that body are: 1) whether the individual is a permanent resident and not a Canadian citizen, 2) whether the individual was convicted of the particular offence and 3) whether she/he received the particular sentence as set out in the section 44 report. If the answers to these questions are “yes”, a deportation order must be issued. *IRPA* provides for

¹²*Medovarski v. Canada (Minister of Citizenship and Immigration)*, *supra*, at para. 11

no discretion and no further inquiry in the decision to issue a deportation order. Judicial review is therefore incapable of mitigating the loss of an appeal to an independent tribunal based on all the circumstances of the case.

19. Moreover, an application on humanitarian and compassionate grounds (“H&C application”) is not a viable option for permanent residents who have their immigration appeals barred by section 64(2) – the process is lengthy with average processing times now stated by Citizenship and Immigration Canada (“CIC”) to be 30-42 months.¹³ During that time period, the individual found inadmissible pursuant to section 36(1)(a) is no longer a permanent resident and is subject to removal “as soon as reasonably practicable”¹⁴. An H&C application provides no stay of removal. While an individual could apply for H&C relief pursuant to section 25 from outside of Canada, such an application is really of theoretical value only—the connection to Canada as their home is severed. Furthermore, the decision-maker for such an application is a CIC official, not an independent body, and there is no requirement for an oral interview.

20. While a *restricted* pre-removal risk assessment¹⁵ pursuant to section 112(3)(b) of *IRPA* is available to a permanent resident convicted of a serious criminality offence and sentenced to a term of imprisonment of two years or more, this determination is based solely on whether the person faces a risk to their life, cruel and unusual treatment or punishment, or a substantial risk of torture, as well as whether or not they pose a danger to the Canadian public. Other factors such as whether removal will cause severe hardship to an individual because of their length of residence in Canada and their establishment here, the best interests of children affected, and the lack of supports and family in the country of origin, have no place in the assessment.

D) The failure of trial counsel to advert to immigration consequences

21. It is submitted that this Honourable Court should consider whether it is fair for the non-citizen offender to bear the costs of his or her counsel’s failure to advert to the immigration consequences of a particular criminal disposition. Given the seriousness of the collateral

¹³CIC Website, Processing Times: Permanent Residents- Other Applications, accessed January 8, 2013, <http://www.cic.gc.ca/english/information/times/perm-other.asp>

¹⁴ Subsections 46(1)(c), 48(1) and 48(2) of *IRPA*.

¹⁵That is to say, a pre-removal risk assessment that is based only on section 97 risk factors (not the section 96 Convention refugee definition) and including an assessment of the danger to the public that they may pose.

consequence – deportation – it is submitted that the failure to consider this outcome as a consequence of a potential sentence could provide grounds upon which to find ineffectiveness of counsel. It is submitted that even short of such a finding, counsel’s failure to advert to this consequence, to obtain instructions concerning it and to alert the sentencing court to it should, in and of itself, give an appellate court grounds to intervene to correct an injustice.¹⁶

22. Given the serious potential consequences of any sentence for a non-citizen, it is incumbent on defence counsel to ascertain the status of their clients. This is not an onerous task. A single question needs to be asked: Are you a Canadian citizen? If the answer is “No”, some basic follow-up questions must be asked: Are you a permanent resident? Are you a protected person? If the individual is not a Canadian citizen, and is either a permanent resident or protected person,¹⁷ a criminal conviction and sentence could have a very serious impact on their immigration status and their prospects for remaining in Canada.

23. It is imperative that defence counsel obtain fully-informed instructions from the client before proceeding with any form of negotiated resolution, be it a guilty plea or a joint submission on sentence. As the Nova Scotia Court of Appeal observed in *R. v. Riley*:

There can be little doubt that having important information before making any decision ensures that the decision maker is making a truly voluntary decision with complete knowledge of the relevant facts and the adverse consequences he or she is likely to face. The educational role of counsel is paramount in ensuring that an accused knows what it is he or she is giving up by pleading guilty. This includes not only the obvious consequences of the plea in terms of being a formal admission of the essential elements of the offence and waiving a variety of rights, including the right to a trial and to be presumed innocent. It also encompasses ensuring that the accused is aware of the likely ramifications in terms of the types of penalties and other orders the court may impose.¹⁸

24. It is submitted that the IAD appeal bar threshold for permanent residents and protected persons is a clear and straightforward statutory “bright line.” There is no excuse for defence counsel not to make the necessary inquiries of the client and to alert the client and the sentencing court to the potential consequences of one sentence versus another within the

¹⁶*R. v. G.D.B.*, 2000 SCC 22, [2000] 1 S.C.R. 520, at paras. 26-29, *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), U.S. Supreme Court, per Justice Stevens for the Court at pages 9-12, *Shirwa v. Canada (MEI)*, [1994] 2 F.C. 51

¹⁷ Foreign nationals and other categories of immigrants and refugees are also impacted by criminal convictions and sentences in other ways, however, when dealing with the right of appeal to the IAD and the bar to this appeal, only permanent residents and protected persons are impacted.

¹⁸ *R. v. Riley*, 2011 NSCA 52 at para. 32

available range. Other immigration ramifications of a particular disposition or sentence may not be as clear and it would be sound practice for criminal counsel to warn a non-citizen client of them and to advise that client to seek legal advice from an immigration law practitioner. In any case, the consequence faced by the Appellant here was clear, stark and easily ascertained.

25. Criminal counsel have a professional responsibility to understand that there are significant immigration consequences of sentencing decisions and, at minimum, should be aware of the immigration appeal bar threshold (at the present time, a sentence of two years or more, including any pre-sentence custody referred to by the sentencing judge as forming part of the sentence). Visiting the consequences of the failure of counsel to recognize or to raise these issues upon the offender him or herself is unjust.

26. The United States Supreme Court has addressed this issue in *Padilla v. Kentucky*. In that case, defence counsel had failed to advise his client (a non-citizen who had resided lawfully as a permanent resident in the United States for forty years) of the immigration consequences of a conviction for drug charges to which the client pleaded guilty, and in fact reassured his client that he did not need to worry about his immigration status since he had been in the United States so long. The immigration consequence of a conviction for the drug charges was that his deportation was “practically inevitable”.¹⁹ While of course writing about conditions in the United States, it is submitted that the following observation applies with equal force to Canada: “These changes to our immigration law have dramatically raised the stakes of a noncitizen’s criminal conviction. The importance of accurate legal advice for noncitizens accused of crimes has never been more important.”²⁰

27. That Court found that when an immigration consequence of a criminal disposition is “clear and straightforward” there is the consequent duty on criminal counsel to advise the client about it and that the failure to do so constituted ineffective assistance.²¹ The Court was concerned with the implications of counsel’s failure to advert to the immigration consequences for a guilty plea. It is submitted that the Court’s reasoning applies at least equal force when, as in the case at bar, it is the sentence rather than the conviction that is challenged.

¹⁹ *Padilla v. Kentucky, supra*, at p. 6, per Stevens J.

²⁰ *Padilla v. Kentucky, supra*, at page 6, per Stevens J.

²¹ *Padilla v. Kentucky, supra* at pages 9-12, per Stevens J.

28. Clients understandably and necessarily trust their lawyers to advise them on all the implications of the charge they are facing and any sentence that may be imposed. This advice is especially important and material if a potential sentence is part of a joint submission or a negotiated plea. Counsel must make themselves aware of the statutory cut-off for appeals to the IAD, must consider the consequences of a sentence falling on one side of that cut-off as opposed to the other, must advise their clients accordingly, and must alert the sentencing court to these consequences. Where counsel has failed to do so, neither their client nor the court received the assistance they are entitled to. It falls to the appellate court to correct such an injustice when it occurs.

29. It is submitted that the statutory bar to an IAD appeal is so important and so easily ascertained that the failure of defence counsel to provide advice and obtain instructions concerning it or to draw the sentencing court's attention to it in circumstances where the range of available sentence spans the bar should always be found to satisfy the performance component of the test for ineffective assistance of counsel. Whether in a given case the prejudice component is also satisfied depends on the circumstances and the materiality of this factor to the outcome.

30. In the case of an appeal against sentence, it is submitted that the prejudice component should be found to be satisfied if there is a reasonable possibility that the client would have given different instructions if proper legal advice had been given, or if there is a reasonable possibility that a different sentence would have been imposed if counsel had drawn the immigration consequences of different dispositions to the sentencing court's attention. Whether couched in terms of ineffective assistance of counsel or not, it is submitted that this test is easily squared with the appellate court's authority under section 687 of the *Criminal Code*, R.S.C. 1985, c. C-46. Even if the sentence is not demonstrably unfit, appellate intervention will be warranted if the sentencing court failed to consider a relevant factor. For all the reasons set out above, the immigration consequences of particular sentencing dispositions is a relevant factor, at least in cases where different consequences flow from different potential dispositions.

31. Academic and judicial commentators²² have noted that the *Padilla* decision has had a positive impact on the plea bargaining process, with all participants in the trial process

²² See: Judge Robert Pratt, *The Implications of Padilla v. Kentucky on Practice in United States District Courts*, Saint Louis University Public Law Review, Vol. 31, No. 1 (2011): 169-181, Professor Gabriel J. Chin, *Making*

becoming more cognizant of the duty, in the interests of justice, to look to the immigration consequences which flow from criminal convictions and sentences. Guidance from this Honourable Court concerning how this issue should be approached in Canada would assist all actors in the process – defence counsel, prosecutors and criminal sentencing Judges – in minimizing instances of injustice flowing from a failure on the part of counsel or the court to consider these implications. Not only would the right of an individual to competent legal representation be furthered, judicial resources would be better utilized if appeals based on the failure to consider the immigration consequences of a conviction or sentence can be kept to a minimum.

PART IV – COSTS

32. CARL seeks no costs and respectfully request that none be awarded against it.

PART V - ORDER REQUESTED

33. CARL requests leave to make oral argument at the hearing of this appeal. CARL makes no submissions as to the outcome of the appeal but respectfully requests that it be determined in light of the foregoing submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 11th day of January, 2013.

JOHN NORRIS

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PART VI – TABLE OF AUTHORITIES

CASES	CITED AT PARAGRAPH(S)
<i>Canada (Minister of Citizenship and Immigration) v. Khosa</i> , [2009] 1 S.C.R. 339	14
<i>Charkaoui v. Canada (Citizenship and Immigration)</i> , 2007 SCC 9	6
<i>Chieu v. Canada (Minister of Citizenship and Immigration)</i> , [2002] 1 S.C.R. 84	13
<i>R. v. G.D.B.</i> , [2000] 1 S.C.R. 520	21
<i>R. v. Hamilton</i> (2004), 186 C.C.C. (3d) 129 (Ont. C.A.)	8
<i>R. v. Riley</i> , 2011 NSCA 52	23
<i>Medovarski v. Canada (Minister of Citizenship and Immigration)</i> , 2005 SCC 51	6, 17, 18
<i>Padilla v. Kentucky</i> , 130 S. Ct. 1473 (2010), United States Supreme Court	6, 7, 21, 26, 27, 31
<i>Ribic v. Canada (Minister of Employment and Immigration)</i> , [1985] I.A.B.D. No. 4 (QL)	13
<i>Shirwa v. Canada (Minister of Employment and Immigration)</i> , [1994] 2 F.C. 51(T.D.)	21

SECONDARY SOURCES	CITED AT PARAGRAPH(S)
Gabriel J. Chin, “Making Padilla Practical: Defense Counsel and Collateral Consequences at Guilty Plea” (2011), Vol. 54, No. 3 Howard Law Journal 675	31
Alec C. Ewald, “Deportation, Effective Counsel, and Collateral Sanctions: Padilla v. Kentucky (2010)” (2011) Vol. 32, No. 2 The Justice System Journal 235	31
Robert Pratt, “The Implications of Padilla v. Kentucky on Practice in United States District Courts”, (2011) Vol. 31, No. 1 Saint Louis University Public Law Review 169	31

PART VII – STATUTES

<p>Immigration and Refugee Protection Act, S.C. 2001, c. 27</p> <p>Sections 36(1), 46(1), 48, 63(3), 64(1)-(2), 66, 67(1), 68 (1)-(4), 69(1), 112(1), 112(3)(b)</p> <p>Serious criminality</p> <p>36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for</p> <p>(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;</p> <p>(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or</p> <p>(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.</p> <p>...</p> <p>Loss of Status</p> <p>Permanent resident</p> <p>46. (1) A person loses permanent resident status</p> <p>(a) when they become a Canadian citizen;</p> <p>(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;</p>	<p>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</p> <p>Les sections 36(1), 46(1), 48, 63(3), 64(1)-(2), 66, 67(1), 68(1)-(4), 69(1), 112(1), 112(3)(b)</p> <p>Grande criminalité</p> <p>36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :</p> <p>a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;</p> <p>b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p>c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.</p> <p>...</p> <p>Perte du statut</p> <p>Résident permanent</p> <p>46. (1) Emportent perte du statut de résident permanent les faits suivants :</p> <p>a) l'obtention de la citoyenneté canadienne;</p> <p>b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;</p>
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<p>(c) when a removal order made against them comes into force; or</p> <p>(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection.</p> <p>Enforceable removal order</p> <p>48. (1) A removal order is enforceable if it has come into force and is not stayed.</p> <p>Effect</p> <p>(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.</p> <p>Right to appeal — removal order</p> <p>63 (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.</p> <p>No appeal for inadmissibility</p> <p>64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.</p> <p>Serious criminality</p> <p>(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years.</p> <p>Disposition</p>	<p>c) la prise d'effet de la mesure de renvoi;</p> <p>d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection.</p> <p>Mesure de renvoi</p> <p>48. (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.</p> <p>Conséquence</p> <p>(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent.</p> <p>Droit d'appel : mesure de renvoi</p> <p>63 (3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.</p> <p>Restriction du droit d'appel</p> <p>64. (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.</p> <p>Grande criminalité</p> <p>(2) L'interdiction de territoire pour grande criminalité vise l'infraction punie au Canada par un emprisonnement d'au moins deux ans.</p> <p>Décision</p> <p>66. Il est statué sur l'appel comme il suit :</p>
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66. After considering the appeal of a decision, the Immigration Appeal Division shall

- (a) allow the appeal in accordance with section 67;
- (b) stay the removal order in accordance with section 68; or
- (c) dismiss the appeal in accordance with section 69.

Appeal allowed

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

- (a) the decision appealed is wrong in law or fact or mixed law and fact;
- (b) a principle of natural justice has not been observed; or
- (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Removal order stayed

68. (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Effect

(2) Where the Immigration Appeal Division stays the removal order

- (a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;
- (b) all conditions imposed by the Immigration Division are cancelled;

a) il y fait droit conformément à l'article 67;

b) il est sursis à la mesure de renvoi conformément à l'article 68;

c) il est rejeté conformément à l'article 69.

Fondement de l'appel

67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

b) il y a eu manquement à un principe de justice naturelle;

c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

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68. (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Effet

(2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande.

<p>(c) it may vary or cancel any non-prescribed condition imposed under paragraph (a); and</p> <p>(d) it may cancel the stay, on application or on its own initiative.</p> <p>Reconsideration</p> <p>(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.</p> <p>Termination and cancellation</p> <p>(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.</p> <p>Dismissal</p> <p>69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any.</p> <p>Application for protection</p> <p>112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).</p> <p>...</p> <p>Restriction</p> <p>(3) Refugee protection may not result from an application for protection if the person</p> <p>...</p> <p>(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of</p>	<p>Suivi</p> <p>(3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section.</p> <p>Classement et annulation</p> <p>(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.</p> <p>Rejet de l'appel</p> <p>69. (1) L'appel est rejeté s'il n'y est pas fait droit ou si le sursis n'est pas prononcé.</p> <p>Demande de protection</p> <p>112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).</p> <p>...</p> <p>Restriction</p> <p>(3) L'asile ne peut être conféré au demandeur dans les cas suivants :</p> <p>...</p> <p>b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité</p>
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<p>at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;</p> <p>...</p> <p>Immigration and Refugee Protection Regulations, SOR/2002-27</p> <p>Section 251</p> <p>Conditions</p> <p>251. If the Immigration Appeal Division stays a removal order under paragraph 66(b) of the Act, that Division shall impose the following conditions on the person against whom the order was made:</p> <p>(a) to inform the Department and the Immigration Appeal Division in writing in advance of any change in the person's address;</p> <p>(b) to provide a copy of their passport or travel document to the Department or, if they do not hold a passport or travel document, to complete an application for a passport or a travel document and to provide the application to the Department;</p> <p>(c) to apply for an extension of the validity period of any passport or travel document before it expires, and to provide a copy of the extended passport or document to the Department;</p> <p>(d) to not commit any criminal offences;</p> <p>(e) if they are charged with a criminal offence, to immediately report that fact in writing to the Department; and</p> <p>(f) if they are convicted of a criminal offence, to immediately report that fact in writing to the Department and the Division.</p>	<p>à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p>Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)</p> <p>La section 251</p> <p>Conditions</p> <p>251. Si la Section d'appel de l'immigration sursoit à une mesure de renvoi au titre de l'alinéa 66b) de la Loi, elle impose les conditions suivantes à l'intéressé :</p> <p>a) informer le ministère et la Section d'appel de l'immigration par écrit et au préalable de tout changement d'adresse;</p> <p>b) fournir une copie de son passeport ou titre de voyage au ministère ou, à défaut, remplir une demande de passeport ou de titre de voyage et la fournir au ministère;</p> <p>c) demander la prolongation de la validité de tout passeport ou titre de voyage avant qu'il ne vienne à expiration, et en fournir subséquemment copie au ministère;</p> <p>d) ne pas commettre d'infraction criminelle;</p> <p>e) signaler au ministère, par écrit et sans délai, toute accusation criminelle portée contre lui;</p> <p>f) signaler au ministère et à la Section d'appel de l'immigration, par écrit et sans délai, toute condamnation au pénal prononcée contre lui.</p>
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