

## Effect of Expungement for Canada

In reviewing a rehabilitation application that includes an expungement or other permanent relief mechanism, it is recommended that a thorough review be conducted to determine whether the relief issued by the individual state equates to the conditions of a record suspension in Canada.

Canada (Minister of Citizenship and Immigration) v. Saini [2001] F.C.J. No. 1577 is the leading case in relation to the recognition of foreign pardons under Canadian law. In the Federal Court of Appeal's decision, a 3 pronged test was established to determine whether Canadian law will recognize a foreign pardon:

1. The foreign legal system as a whole must be similar to the Canadian one;
2. The content, aim and effect of the foreign law in question must be similar to Canadian law; and
3. No other valid reason exist that would compel Canadian authorities not to recognize the effect of the foreign law.

### Foreign vs. Canadian Systems

With regards to the first part of the test, the United States has been found to possess legal traditions that reflect Canada's system. A previous legal opinion states that "there is a strong resemblance in the structure (separation of the executive, legislative, and judicial powers of state), history (found on democratic principles), philosophy (recognition of the rule of law and presumption of innocence) and operation (fair and independent judicial system) of the Canadian and US systems."

### Content, Aim and Effect of the Foreign Law

In Canada, a record suspension is issued by The Parole Board of Canada (PBC). The aim of a Canadian Record Suspension is to eliminate the adverse effects and future disqualifications of a conviction for those who have demonstrated themselves to be rehabilitated.

### Recognition of the Effect of the Foreign Law:

The third and final step is to determine whether there is some valid basis not to recognize the effect of the foreign pardon. As the Court explicitly recognized in Saini, the gravity of the offence can and should be considered when deciding whether or not to give effect to a foreign pardon. The application of the third branch of the Saini test therefore involves a measure of discretion in its application and requires an examination of the particular facts of each case. Therefore, provided that there is no reason not to recognize the foreign expungement in the circumstances, the expungement should be considered equivalent to a Canadian record suspension

