

Request to OMC - Functional Guidance Form

Formulaire de demande d'orientation fonctionnelle – Demande à la DGGOCⁱ

When complete send to/ Quand envoi complet à: OMC-GOC-Immigration@cic.gc.ca

Date : Select date/Choisir la date

A- To be completed by the requester/À remplir par l'auteur de la demande.

Office / Bureau : Winnipeg IRCC	Email Address/Adresse de courriel : Silvia.Graca@cic.gc.ca
Region/ Région Choose Region/Choisir la région : Western	
Context/Contexte : Lapsed records and international pardons	
Category / Catégorie : Other/Autre	
Background /Recherche préliminaire : Rehab Manual and Public Website	
Urgent Request/Demande urgente : <input type="checkbox"/>	Urgent Response Needed By/Réponse urgente nécessaire d'ici le : Select date/Choisir la date
Reason for Urgent Request/Raison pour laquelle la demande est urgente : Provide details (ie. Presentation; Litigation etc)/Fournir des détails (c.-à-d. présentation, litige, etc.)	
<u>Question</u>	
<p>Functional Guidance on Rehabilitation Applications International Pardons and Lapsed Records</p> <p>We have come across some inconsistencies on how individuals are dealt with by our department when they have received (1) international pardons and when their offences have been (2) spent and we would like to receive guidance on how to proceed in these situations moving forward.</p> <p>1 <u>In the case of international pardons:</u> During training we were taught to equate pardons to pardons in Canada (now called record suspensions). However in a recent case we found that an individual who received a pardon in New Zealand was advised that he was not inadmissible and that he did not need to seek an admissibility assessment:</p> <p><u>New Zealand example</u> - In this case a national of New Zealand applying for permanent residence was convicted of 2 separate offences of driving under the influence in March and April 2008. The officer initially refused the application because of the criminal inadmissibility but later reopened the case and approved it stating that in consultation with OMC and visa office, there was no need to assess inadmissibility because cases deemed to be spent in New Zealand are also deemed spent by Canada and there is no need to seek an admissibility assessment.</p> <p>I have attached the visa office website information that was used to approve this case and here are instructions on the new visa office website which directs clients to the regular process of dealing with criminality http://www.canadainternational.gc.ca/australia-australie/visa.aspx?lang=eng once you click this link scroll down and click</p>	

“Inadmissibility”. But once you drill down into the different sections, it again directs clients to check with the visa office that serves the specific country or region where they live for specific instructions:

If you received a **record suspension or a discharge for your conviction in another country**, check with the visa office that serves the country or region where you live. It will tell you if the pardon is valid in Canada.

PR application:

s.19(1)

New Zealand Clean Slate Scheme Information: <https://www.justice.govt.nz/criminal-records/clean-slate/>

2. In the case of spent records: Our website directs clients to obtain criminal records from their corresponding country and here are some observations on three different countries:

UK– We have been advised by the visa office in London that they no longer consider spent offenses in the UK as equal to a pardon in Canada since the rehabilitation period in the UK is less than 10 years which is what is now required for a record suspension in Canada. However lapsed records do not show up on criminal records check and we only see them if the client volunteers this information to us.

German Example – Similar to above, criminal convictions drop off the record after a certain period of time to facilitate a person’s resocialization in the country. Depending on the seriousness of the offence, records are removed from the police certificates after 5, 10, 15 or 20 years. We also do not request a criminal record check that includes lapsed records and if clients don’t volunteer this information to us we do not know records exist.

South Korea – Also has a policy similar to the countries named above with the exception that our website asks clients from this country to include lapsed records. This is likely the reason we have a disproportionate number of South Korean cases in the rehabilitation queue.

Questions:

1. Should all countries be advised to seek an admissibility assessment from IRCC even if they were pardoned in another country or are there exceptions to this rule such as in New Zealand?
2. Should our criminal records check instructions on the public website state that “expunged” or “lapsed” records must be included in the criminal record check for all countries and not just South Korea?

Supervisor / Superviseur : Marina Marchand

B- To be completed by OMC advisors/à remplir par les conseillers de la DGGOC.

Tracking #/N° de suivi : IM-2014-XXXX	
Division : Choose division/Choisir la division	Advisor / Conseiller(ère) :
Answer approved by / Réponse approuvée par :	
Consulted/Personnes consultées :	
<u>Answer/Réponse</u>	
<p>Thank you for consulting with the Integrity Risk Guidance Branch. We apologise for the lengthy response and a lot of background information however, in order to provide you with the best functional guidance possible, we wanted to review the process, step by step and used the following information to complete our analysis.</p> <p>In order for the officer to complete a fulsome review, the applicant's information on the charge, the arrest, the conviction and the disposition will also need to be provided for the analysis.</p> <p>As stated in <i>Saini v. Canada (M.C.I.)</i>, [2002] 1 F.C. 200 (C.A.), the convicted person must establish that three elements are met before a foreign discharge or pardon may be recognized:</p> <ol style="list-style-type: none"> 1) The foreign legal system as a whole must be similar to that of Canada; 2) The aim, content and effect of the specific foreign law must be similar to Canadian law, and; 3) There must be no valid reason not to recognize the effect of the foreign law. <p>Given that all three elements must be established, it is sufficient to demonstrate that one of them cannot be established to show that the foreign discharge or pardon should not be recognized under Canadian law. The fact sheet regarding record suspensions, available online at: https://www.canada.ca/en/parole-board/corporate/publications-and-forms/fact-sheets/applying-for-a-record-suspension-information-you-should-know.html, explains the aim, content and effect of the Canadian law in this matter.</p> <p><u>In the case of international pardons:</u> From the case law, we can conclude that or find then that where another country, whose legal system is based on similar foundations and values as ours, has enacted legislation which reflects goals and objectives analogous to those encompassed within our own system, that that law may be accorded respect and recognized for the purposes of Canadian immigration law objectives. The final step is to determine whether there is some valid basis not to recognize the effect of the foreign relief. As recognized in <i>Saini</i>, the gravity of the offence can and should be considered when deciding whether or not to give effect to a foreign pardon. In addition, the final test of <i>Saini</i> involves a measure of discretion and requires an examination of the particular facts of each case.</p> <p><u>In the case of spent records:</u></p> <p>We do recommend that applicants obtain criminal records from their corresponding country when making an application. Even when the foreign spent conviction is similar to a Canadian pardon in aim and effect it is the content of the Foreign statutes that differs in that the relief scheme is automatic rather than like Canada's where one needs to apply. The intent is similar as it intends to restore a person's respect/law abiding position in society where there past mistakes/record would no longer be considered due to their reformed life style. It is our understanding that since the record is completely erased it would not necessarily be disclosed unless probed or prompted since spent records would be sufficiently similar to the Canadian statutes and the deemed rehabilitated process.</p>	

1. Should all countries be advised to seek an admissibility assessment from IRCC even if they were pardoned in another country or are there exceptions to this rule such as in New Zealand?

There has been previous legal opinions that can be found in The Canadian Legal Information Institute <https://www.canlii.org/en/ca/scc/index.html> on the spent convictions methods in the UK, New Zealand and Australia, were found to be equivalent to a Canadian "pardon" record suspension notwithstanding the lack of discretion or application process. Therefore, despite the difference in content, these are exceptions to the rule. The admissibility assessment should be the exception and not the rule. Requesting that all countries seek admissibility assessments from the IRCC could potentially create backlogs of assessments and place additional pressures on processing applications.

2. Should our criminal records check instructions on the public website state that "expunged" or "lapsed" records must be included in the criminal record check for all countries and not just South Korea?

In a recent legal opinion: An "expungement" procedure erases a person's conviction(s) (whether serious or non-serious) so that it is as if the crimes he or she was convicted of never actually occurred. If someone has had his or her offences expunged by a court of law by a process that is evaluated and deemed to be equivalent to the expungement process in Canada, then that person is no longer criminally inadmissible to Canada. Therefore, at this time, we are not prepared to say that all criminal records checks state that expunged or lapsed records should be included in the criminal record check for all countries.

We trust that all this information will be useful to you.

Status/État :	Closed/Fermé 	Instructions to be updated/Instructions à mettre à jour 
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ⁱ Please do not paste reference emails into the body of this form. You may attach emails or additional documentation to your query email.
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