

## **Faster Removal of Permanent Residents?**

A recent controversial bill introduced in Parliament is called the “Faster Removal of Foreign Criminals Act”. If one were to rely solely on the bill’s title, it seems that only non-Canadians and permanent residents will be affected by the proposed changes. However, a closer review of the bill’s contents will reveal that even permanent residents are included in the definition of “foreign criminals”. If anything, this bill reminds us that “permanent residence” in Canada is not so permanent after all.

Canada’s immigration laws underwent a major overhaul when the Immigration and Refugee Protection Act (IRPA) was enacted in June 2002. Nearly ten years hence, several misconceptions still abound regarding the requirements and guidelines for maintaining one’s permanent resident status.

When permanent resident (PR) cards were created, many thought that as long as they possess valid PR cards, their status as permanent residents will be safe. This is not necessarily true. Conversely, the lack of a valid PR card will not necessarily negate one’s permanent resident status. As a general rule, permanent residents are required to meet the residency obligation of 730 days within the last five-year period to maintain their PR status.

Under IRPA, the residency obligation may be satisfied in any of the following ways:

1. physical presence in Canada;
2. if outside Canada accompanying a Canadian citizen spouse or common-law partner or is a child accompanying a parent
3. if outside Canada and employed full-time by a Canadian business or in the public service of Canada or a province
4. if an accompanying spouse, common-law partner or child of a permanent resident who is employed full-time by a Canadian business or is in the public service of Canada or a province.

Although the residency requirement has become less stringent than the former six-months-for-every-year rule, there are other areas where physical presence may still be important for permanent residents. One of these areas is that of maintaining provincial health insurance coverage in Ontario which requires physical presence in Canada for at least 153 days (approximately five months) every year.

Still, there are some recurring situations where permanent residents learn too late that their “permanent resident” status in Canada is not so “permanent” after all.

For instance, those whose PR cards have expired, who do not satisfy the residency requirement and are outside of Canada, will have to apply for a travel document from the nearest Canadian

embassy or visa office to be able to return to Canada. For those who have failed to comply with the residency obligation, this raises a problem as not only will the request for a travel document be denied, but that the permanent resident status will be revoked. This revocation of PR status can be appealed to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board. Aside from questions of law and possible denial of natural justice, the IAD also has jurisdiction to consider humanitarian and compassionate grounds in light of all the circumstances of the case. However, the chances of succeeding on appeal will depend on the evidence presented and the presiding board member's weighing of all factors involved.

Another matter that could spell doom for one's permanent resident status is that of misrepresentation. If it is found out that there was any misrepresentation of a material fact made in one's application for permanent resident status, this can be used as a ground to initiate inadmissibility proceedings and may eventually lead to removal from Canada. Some common examples of misrepresentation involve falsified marital status or undisclosed criminal records.

Unfortunately, even seemingly "minor" criminal offences may mean the end of one's permanent resident status in Canada. At present, IRPA's definition of "serious criminality" which could render a permanent resident inadmissible to Canada includes conviction for crimes which carry a penalty of "at least ten years OR for which a term of imprisonment of at least six months was imposed". Thus, even the most mindless criminal acts may lead to criminal inadmissibility if the crimes involved happen to be punishable by at least 10 years although the actual sentence imposed is much lighter.

If the "Faster Removal of Foreign Criminals Act" is passed in its current form, permanent residents who are convicted of crimes in Canada for which "a term of imprisonment of at least six months" (currently "two years" under IRPA) is imposed, will lose their right to appeal their removal order with the IAD. It is also proposed that those who are convicted or committed an act outside Canada which is punishable by a maximum sentence of at least 10 years in Canada, will also lose their right of appeal with the IAD.

The above situations are meant to illustrate that permanent residence in Canada is not as permanent as some might think. Clearly, the Canadian government may take steps to revoke one's permanent residency whenever certain conditions are not met or based on relevant legal or public policy considerations.

***(Please note that the above information are for legal information purposes only and not intended to provide specific legal advice. If you have related concerns, it is strongly advised that you consult with a legal professional to discuss your particular situation.)***

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