

## **Debunking Permanent Residency Myths**

***(Please note that this and all other articles written in this column 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 lawyer or a paralegal licensed by the Law Society of Upper Canada or other relevant provincial law society, to discuss your particular situation.)***

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. Rather, a permanent resident is required to meet the residency requirement 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.

In any event, 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 and who do not meet any of the four ways to satisfy residency while they are outside of Canada, will have to apply for a travel document with 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.

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. That is, because IRPA's definition of "serious criminality" which could render a permanent resident inadmissible to Canada includes conviction for any and all crimes which carry a penalty of "at least ten years or for which a term of imprisonment of at least six months was imposed", even the most mindless acts of criminality may lead to criminal inadmissibility. If one's crime is punishable by "imprisonment not exceeding ten years" even though the actual sentence imposed is a conditional discharge or one month of community service, this is still caught within the serious criminality ground for inadmissibility because "not exceeding ten years" is caught within a penalty of "at least ten years". Hence, it is extremely important that any permanent resident who is being advised to enter a guilty plea for a lesser penalty should also be made aware of the potential effects of such plea to his or her immigration status.

The above situations are just a few examples meant to illustrate that permanent residence is not really permanent as some might think. The government may take steps to revoke one's permanent residency whenever residency obligation, misrepresentation or criminality issues arise.

It is clearly important not to become complacent and neglect to meet the obligations that come with the privilege of permanent residency in Canada. Some may think that applying for citizenship at the earliest opportunity will negate these risks. However, one's naturalized citizenship status could also be revoked for misrepresentation and serious criminality issues. So in the end, it does not really matter if one is a permanent resident or a citizen - if one adopts a policy of always making full disclosure of relevant facts and of leading clean and upright lives - neither Canadian permanent residency or citizenship will be imperiled.

*The author is a lawyer in Canada practicing exclusively in the areas of immigration and refugee law. She may be reached at [deanna@santoslaw.ca](mailto:deanna@santoslaw.ca).*