



Requiring Permanent Residency Status in Hiring is Discriminatory

The Ontario Court of Appeal has found that requiring a potential employee have “permanent residence” status is discrimination based on citizenship, in violation of the *Human Rights Code*. This decision upholds the HRTO’s initial 2018 decision in *Imperial Oil Limited v. Haseeb* and reverses the Divisional Court which held that there can be no finding of direct discrimination based on a requirement that an employee be permanently resident in Canada.

a) Background Facts

The prospective employee Muhammad Haseeb, an international student in mechanical engineering at McGill University, was eligible to obtain a three-year Postgraduate Work Permit (PGWP) permitting him to work anywhere in Canada upon graduation and to apply for permanent residency after one (1) year of full-time employment. He applied for a position as a Project Engineer with Imperial Oil Limited. As part of the application process, the employer required all prospective employees be eligible to work permanently in Canada to ensure that when hired and trained, they would be able to remain with the company long-term.

Haseeb, who believed that his lack of permanent residency would prevent him from securing employment, falsely stated that he had such status. He was offered a position upon proof of eligibility to work in Canada “on a permanent basis”. He was unable to provide the required proof and his job offer was rescinded. Haseeb filed a complaint with the HRTO arguing that Imperial Oil had violated the Code on the basis of citizenship.

b) HRTO Decision

The [HRTO](#) found that the employer’s “permanence requirement” was a factor in its decision not to hire Haseeb, and this constituted discrimination in employment because of citizenship contrary the Code. The employer’s policy of requiring job applicants to disclose whether they were citizens or permanent residents of Canada was also found to be discriminatory.

In essence, the Tribunal found that “permanent residence” was intrinsically included within the ground of “citizenship” and Imperial Oil’s actions constituted “direct discrimination”. Imperial Oil had not established that Haseeb’s dishonesty was the sole reason for withdrawing the job offer. Even if it was a factor in Imperial’s withdrawal of the job offer, the tribunal found that



Haseeb's citizenship status was also a factor, and thus the decision was tainted by discrimination on the basis of citizenship. Haseeb was awarded \$15,000 as compensation for injury to dignity, feelings and self-respect and Imperial Oil's practice changed to only require perspective employees provide proof of eligibility to work in Canada.

c) Divisional Court

On Judicial Review, the [Divisional Court](#) reversed the Tribunal. The Court indicated that the HRTO's decision extended the "citizenship" ground in a way that was not justified or sustainable:

There is not enough on which to base a finding that "citizenship" as a ground of discrimination includes as a second and separate criterion, "permanent residence", the breach of which can sustain a claim of direct discrimination. The analysis undertaken does not represent an internally coherent and rational chain of analysis that can be followed and understood as justifying this finding. The foundation for the finding is not transparent or intelligible.

There is little, if any, substantive explanation or justification for the acceptance of what becomes, in essence, a further ground for discrimination... (at paras 68-69)

The Court held that there can be no finding of direct discrimination based on a requirement that an employee be permanently resident in Canada. Permanent residence was not a ground identified in the Ontario *Human Rights Code*, therefore there could be no *prima facie* case demonstrating direct discrimination resulting from such a requirement.

d) Court of Appeal

The Court of Appeal has now [restored](#) the Tribunal's order, finding that the Divisional court incorrectly applied the reasonableness standard of review when overturning the HRTO:

In the context of the appellant's circumstances – that by the anticipated commencement of work he would be permitted to work full-time, anywhere in Canada, for any employer, for a period of three years under the PGWP program – **the tribunal's finding that Imperial's requirement that only Canadian citizens and permanent residents**



were eligible for the position was discrimination on the basis of citizenship was reasonable. Imperial's policy denied eligibility for the position only to non-Canadian citizens. The fact that Imperial excepted one class of non-Canadian citizens (permanent residents) did not insulate its policy from being discrimination on the basis of citizenship. Policies that discriminate on the basis of a prohibited ground are not saved on the basis that they only partially discriminate. As that policy applied to PGWP-holders, who are eligible to work without restriction in Canada for up to three years, it constituted discrimination on the basis of citizenship. The tribunal's finding that Imperial had not established any defence was also reasonable (at para 35).

e) Takeaways

As Canada prepares to [welcome thousands of immigrants](#) to the country in the coming years, employers should ensure that their application process takes into account the Court of Appeal's finding that in certain circumstances, permanent residence is subsumed under the "citizenship" ground of discrimination in the Code. Any requirement that applicants disclose their residence status or provide proof that they are able to work in Canada "on a permanent basis" will likely be considered discrimination under the Code.

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