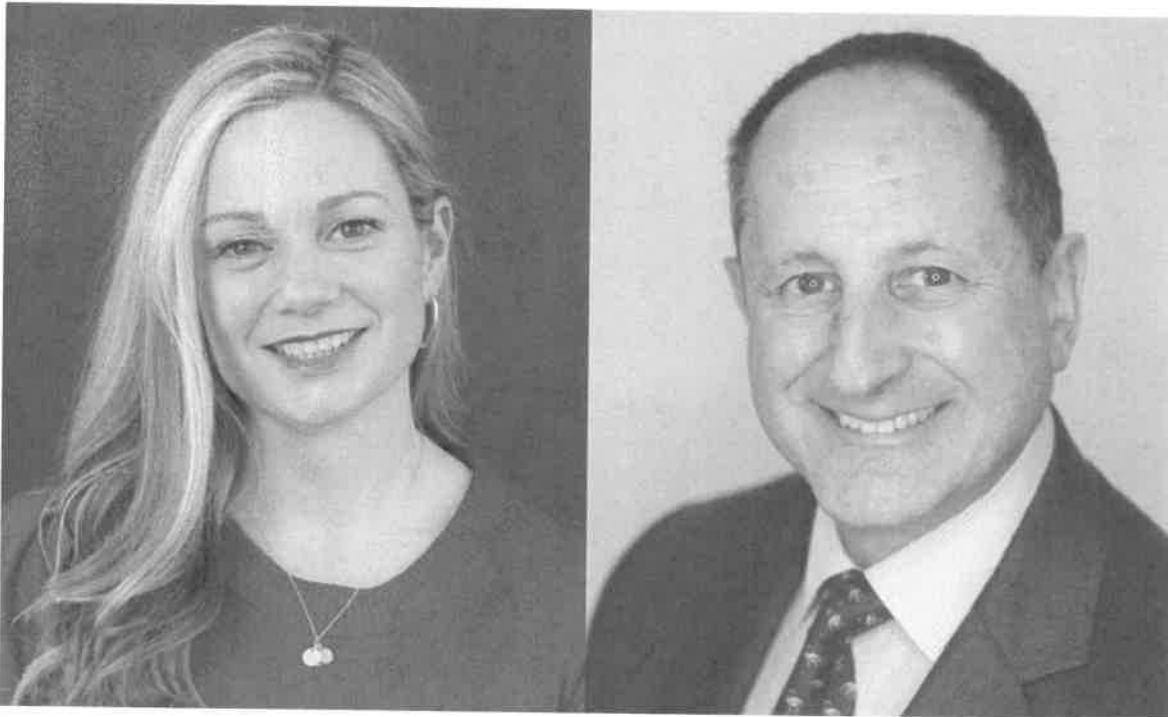


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Human Rights Tribunal extended protected ground of citizenship to include permanent residency: Court

Divisional Court's decision leaves door open for similar challenges in the future, says lawyer



Janine Liberatore, Sergio Karas

BY [Aidan Macnab](#) / 11 Jun 2021 / [Share](#)

In ruling a prospective employee was discriminated against by a company's requirement of permanent Canadian work eligibility, the Human Rights Tribunal of Ontario "unjustifiably" extended the protected ground of citizenship in a way which is "not sustainable under the applicable standard of review," the Divisional Court has found.

In the Ontario Human Rights Code, citizenship is one of 17 protected grounds. The Code prohibits discrimination on the basis of any of the protected grounds in employment, housing, services, unions and vocational associations and contracts. In *Imperial Oil Ltd. v. Haseeb*, Muhammad Haseeb argued successfully at the HRTO that when the company rescinded his job offer because he was in Canada on an international student visa and did not have permanent residency, Imperial Oil was discriminating against him based on his citizenship status.

The HRTO's decision was among the most notable of 2019, says Janine Liberatore, a labour and employment lawyer and founding partner of Hunter Liberatore Law LLP. Based on the ruling, Employers were revising hiring policies to remove any requirement of permanent eligibility to work in Canada, she says.

In its decision on *Imperial Oil Ltd. v. Haseeb*, the Divisional Court panel was split. The majority found that permanent residence status cannot be "incorporated as a separate foundation for a finding of direct discrimination attached to the ground of 'citizenship.'"

"In my view, the court correctly distinguishes the concepts of permanent residency and Canadian citizenship," says Sergio Karas, certified specialist in citizenship and immigration law at Karas Immigration Law PC, in Toronto.

"The majority in the judgment clarifies that the concept of residency may be included in being a citizen. But being a permanent resident in Canada is not equivalent to being a citizen."

Justices Thomas Lederer and Graeme Mew granted the application for judicial review and quashed the HRTO's decision. Viewing their findings inevitable based on the facts of the case, they opted not to remit the matter back to the tribunal.

In dissent, Justice Harriet Sachs said she would have dismissed the application because the HRTO's findings were reasonable. The policy only impacted non-citizens, and the fact it accepted one class of non-citizens – permanent residents – did not save it. Also, the HRTO reasonably found that in s. 16 of

the Human Rights Code, "the concept of 'citizenship' includes discrimination on the basis of citizenship or permanent residence status," said Justice Sachs.

The decision leaves the door open for similar challenges in the future, says Liberatore.

"If someone comes at it from a different direction, then I think that it may be found to be indirect discrimination," she says.

The court's majority disagreed with the HRTO's finding that the permanent residency requirement was direct discrimination, but they recognized that such a requirement could manifest as a requirement for citizenship, which would amount to indirect or constructive discrimination, says Liberatore. For a finding of indirect or constructive discrimination, it would need to have been demonstrated that the requirement has or has the potential to have a differential impact on a group of non-citizens, because they are non-citizens, she says.

"We can certainly anticipate that this is going to be an issue that comes before the tribunal again... If employers revised their policies to remove any permanent-residency requirement, it may not be beneficial to put it back in."

The case highlights a common misconception held by international students, that obtaining permanent residency in Canada is automatic upon graduating from a Canadian university and obtaining a work permit, says Karas.

An international student who applies for permanent residency must meet the requirements related to physical presence in Canada, education, work experience and must prove they are not ineligible because of a criminal conviction or medical disorder, he says.

"The process of obtaining residency is not automatic for international students. That's a very serious misconception and I think this case highlights that difference."

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