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No or conditional access to permanent status

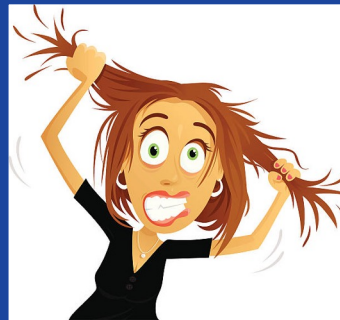
Infringement on the Rule of Law/(im)migrant workers' right to access justice

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Restricted access to permanent status: Infringement on the Rule of Law/access to justice

Introduction

Canadian immigration law (and sociology of immigration law...)



Credit: Mergez

Restricted access to permanent status: Infringement on the Rule of Law/access to justice

1. The Constitutional Right to Access Justice

□ ss. 7-14 CC

□ s. 96 C.A.1867



[T]here cannot be a Rule of law without access, otherwise the Rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice... In the context of legislation which effectively denies people the right to take their cases to court, concerns about the maintenance of the Rule of law are not abstract or theoretical... If people cannot bring legitimate issues to court, the ... maintenance of positive laws will be hampered, as laws will not be given effect.*

** Trial Lawyers Association (SCC 2014), paras 38-40*

Restricted access to permanent status: Infringement on the Rule of Law/access to justice

2. No or conditional access to permanent status: Infringement on right to access justice

2.1. Permanent legal status (PS) vs permanent residency

2.2. No access to PS: Exclusion = infringement on access to justice

2.3. Conditional access to PS: Indirect exclusion + infringement on access to justice

3. Worker PS/deportation policies compatible with Canadian constitutional protections

3.1. Access+ to PS

3.2. No PS/worker deportation policies justifiable in a free and democratic society?



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

2.1. Permanent legal status (vs permanent residency)

- Permanent legal status (PS) vs Permanent resident status (PR)
- (Im)migrant workers employment regimes - variation on access to PS



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

➤ (Im)migrant workers employment regimes - variation on access to permanent status

A. under permanent legal status (PS)

B. under worker/worker spouse status with access to PS upon arrival (WS-PS)

C. under worker/worker spouse status with no access to PS upon arrival (WS)

D. under undocumented/irregular status with access to a regularization procedure (IS-PS)

N.B. Ex: immigrant workers employed within the Toronto construction industry

E. under undocumented/irregular status with no access to a regularization procedure (IS)

N.B. Growing numbers since every day individuals under WS face obstacles to status renewal

N.B. Compassionate and humanitarian grounds: rejection 98,5%?



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

C. No/conditional access to PS upon arrival in Canada

- Admissions of workers with **no access to PS**
 - *explicit (indirect) exclusions*
 - employment in occupations requiring a lower level of skills
 - SAWP workers
 - domestic employees of foreign representatives

- Admissions of workers with **conditional access** to PS
 - implicit exclusions
 - employer sponsorship
 - months of employment
 - language proficiency
 - health
 - level of earnings
 - skill level
 - type of occupation
 - fees
 - time deadlines
 - etc.



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

2.2. No access to permanent status in Canada

➤ Infringement on the right to access justice

- Threat of state sanction (fear) - worker status inapplicability
- Threat of state sanction (fear) - worker status premature revocation
- Threat of state sanction (fear) - worker status non-renewal
- Threat of state sanction (fear) - worker deportation
- Worker status inapplicability
- **Worker status revocation**
- **Worker deportation**



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

2.3. Conditional access to permanent status in Canada

➤ Partial exclusion: worker status revocation/deportation for lack of fulfillment of a

- **Employer sponsorship** requirement
- **Employment** requirement
- **Funds-based requirement**
 - **levels of earnings**
 - **proxies for levels of earnings**
 - **skill level**
 - **type of occupation**
 - **level of education**
 - **official language proficiency**
 - **payment of a fee**
- **Health** requirement
- **Other possible requirement:**
 - **Time-limits** on access
 - **Family member health record**
 - **Family member criminality record**
 - **Family member language proficiency**



2.3. Conditional access to permanent status in Canada

➤ additional infringement on the right to access justice

- **Employer sponsorship** requirement
- **Employment** requirement
- **Funds-based** requirement
 - **levels of earnings**
 - **type of occupation**
 - **official language proficiency**
 - **payment of a fee**
- **Health** requirement
- **Time-limits** on access



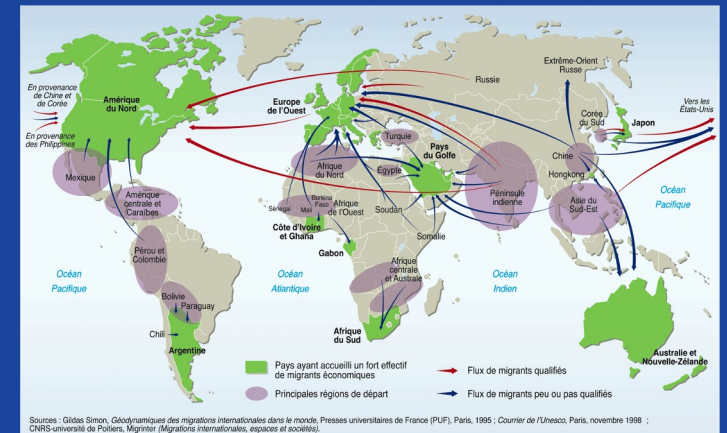
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3. Worker PS/deportation policies compatible with Canadian constitutional protections

3.1. Acces+ to PS... + other circle migration incentives

➤ Other circle migration incentives:

- Easy permanent status renunciation procedure
- Access to unemployment insurance from abroad
- Access to worker compensation benefits from abroad
- Access to pension benefits from abroad
- Tax incentives
- Subsidized return transportation tickets
- Etc.



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

3. Worker PS/deportation policies compatible with Canadian constitutional protections

3.1. PS upon arrival + other circle migration incentives

➤ No obstacle to the right to access justice? Automatic permanent status upon arrival:

- No employer sponsorship
- No employment requirement
- No level of earnings
- No level of education
- No level of language proficiency
- No type of occupation
- No skill level
- No health requirement
- No link with family member issues
- No time limit



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

3. Worker PS/deportation policies compatible with Canadian constitutional protections

3.2. No PS/worker deportation policies justifiable in a free and democratic society?

➤ Current requirements?

- Employer-based requirements?
- Health-based requirements?

➤ Access to justice, liberty & security, democracy

- “Serious criminality” exclusion?



Restricted access to permanent status: Infringement on the Rule of Law/access to justice

**N.B. (Im)migrant worker employment regimes:
infringement on constitutional protections**

- Workers' access to PS/deportation policies: **infringement on access to justice and the Rule of Law, liberty & security, Canada's democratic structure**
- Other federal policies

For more details, see the **associated paper** in the materials provided to all participants.

Thank you