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The Misrepresentation Trap

Some people are surprised to learn that even a seemingly 'innocent' act of misrepresentation in the immigration context can lead to a five-year bar from reapplying to enter or remain in Canada.

In Canadian immigration law, misrepresentation is defined as "directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act." The "Act", for those who may not be aware, refers to the main source of Canada's immigration law and policy, the *Immigration and Refugee Protection Act* (IRPA).

The words, "directly or indirectly," in the above definition imply that misrepresentation may be committed by the applicant, permanent resident or by other people. Direct misrepresentation is quite self-explanatory in that it commonly refers to a deliberate act of lying in one's immigration application. There may also be room for legal interpretation as to whether the fact/s withheld is "material" or relates to a "relevant matter" that could lead to an error in the administration of Canada's immigration laws. To avoid any possibility of being charged with misrepresentation therefore, it is best to make a full disclosure of all relevant facts and to never assume that the immigration or visa officer will not dig deeper into the applicant's circumstances.

However, it is often the "indirect" type of misrepresentation which remains largely misunderstood, that catches many people unaware and can lead to an unduly harsh application of Canada's immigration laws.

For instance, indirect misrepresentation could mean that the unscrupulous act of representatives or agents may prejudice an applicant regardless of the latter's absolute lack of knowledge about the misrepresentation committed. The real culprits on the other hand, often avoid punishment due to the power imbalance (financial or political) which discourages victims from pursuing the often protracted, complex and expensive judicial or administrative options of seeking redress.

Under the previous caregiver programs, many caregivers who were "released upon arrival" were charged with misrepresentation when port of entry officers realized that they did not have genuine employers in Canada. This occurred when placement agencies or other third parties paid Canadians or permanent residents to sign employment contracts and labour market applications (even if they had no real intention to hire caregivers), to meet the "job offer" requirement in caregiver work permit applications.

Although under the recent changes to the caregiver pilot programs, the IRCC will not anymore issue employer-specific (but only occupation-specific) work permits, a genuine job offer from a prospective Canadian employer is still required. It is hoped therefore that adequate measures will be put in place to ensure that the job offers will indeed be genuine so that the "released upon arrival" or similar *modus operandi* will not again lead to misrepresentation charges against hapless caregivers. Despite the fact that the issuance of occupation-specific work permits will make it much easier for caregivers to switch employers once they are already in Canada, it is still possible that opportunistic agents or employers will continue to exploit prospective caregivers seeking to obtain work permits and eventual permanent residency under the new pilot programs.

Another way by which some people may be unknowingly caught in the "misrepresentation" trap is when earlier on in their original immigration applications, consultants or representatives advise the applicants (or do so on their own without even notifying the applicant) to remove the names of other dependents or family members or falsely declare their marital status to supposedly avoid delays or complications in the applications. All might seem well initially and the permanent resident visas are granted, until the permanent resident decides to sponsor the undisclosed family member/s and the immigration officer reviewing the file realizes the previous non-disclosure. Since these types of misrepresentation are deemed "material", these could lead to inadmissibility proceedings against the permanent resident aside from the refusal of the sponsorship application under section 117(9)(d) of the *Immigration and Refugee Protection Regulations*.

Hence, to avoid being caught in the "misrepresentation" trap, applicants must be very wary of representatives or consultants who advise prospective immigrants to lie in their applications, to manipulate or misdeclare facts and/or submit falsified documentation. If they are advising these to simplify your application and perhaps avoid further work or losing your business altogether, then they are not truly representing your best interests.

For caregivers and other temporary foreign workers, they should be well-advised to ensure that the employment contracts that they are signing are genuine and with terms that are in accordance with Canadian labour standards. The prospective caregivers or temporary foreign worker should be able to communicate with their prospective employers directly to ensure that they are aware of the potentially long processing times, and are nonetheless intending to hire them upon the issuance of the work visa. Only then can the caregiver be better assured that the immigration officer will issue the work permit upon arrival at the border, after having been convinced of the worker's as well as the employer's genuine intentions.

There is clearly a fundamental injustice in a system which perpetrates further victimization (e.g. caregivers being deported due to indirect misrepresentation) and impunity for those directly responsible (e.g. the agents who facilitated the fake employment contracts, encouraged or committed the misrepresentation). Therefore, the government must be equally vigilant in prosecuting and discouraging these unscrupulous practices which take advantage of the applicants' earnest desire to work in or immigrate to Canada.

Immigration officers often justify their strict enforcement actions as simply meant towards "preserving the integrity of Canada's immigration system." I am not sure that this objective is truly met if their actions are focused on punishing the victims while the culpable ones remain scot-free and still able to victimize more applicants. This becomes even more problematic for those dealing with ghost consultants, or those based overseas and are thus beyond the reach of Canada's domestic legal system. If these exploitative practices will be allowed to flourish, even the integrity of Canada's immigration system may itself fall into its own misrepresentation trap.

This article is meant for information purposes only and not as legal advice. Each case is unique and is best discussed in detail with a qualified, experienced and trusted immigration legal professional to increase the chances of success.

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