CITIZENSHIP OF CANADA ACT

Strengthening the Value of our Citizenship

Rosaline Frith
Director General, Integration Branch, at Citizenship and Immigration Canada (CIC)

On October 31, 2002, Bill C-18, the Citizenship of Canada Act, was tabled in Parliament. This paper provides a sense of what led to the tabling of this Bill, an overview of its content, and some of the key changes from current legislation.

Context

Before 1947, Canada did not have its own citizenship legislation. There was no such thing in law as a Canadian citizen. Married women did not have full authority over their nationality status. They were classified along with minors, lunatics and idiots.[1] Three different pieces of British legislation applied.

The Second World War brought a sense of self-awareness that led Canada in 1947 to become the first Commonwealth country to enact its own citizenship legislation. All Canadian citizens were given the automatic right of entry to Canada. Residency requirements for citizenship were set out. Married women were given full authority for their nationality. Loss of citizenship was defined. And most importantly a provision for instruction in citizenship and citizenship ceremonies, including a revised oath came into effect.

The next citizenship legislation came into force in 1977. It further simplified the naturalization process and provided clearer and more equitable criteria for naturalization. Since 1999, three attempts have been made to modernize the 1977 *Citizenship Act*. Bills C-63 and C-16 reflected the consultations and polls on citizenship that had been ongoing since the 1980s. Both bills were thoroughly reviewed but died on the Order Paper before completing the legislative process.

Most recently, the 2002 Speech from the Throne reconfirmed the Government's commitment to modernize citizenship legislation, to reassert the rights and reinforce the responsibilities that go with being a Canadian citizen. Bill C-18 responds to that commitment and reflects the concerns raised throughout the legislative process.

Why modernize legislation

Our current legislation is over 25 years old. The time has come: to establish clear, fair and objective criteria for Canadian citizenship; to respond to inconsistent legal interpretations and ambiguity concerning the current legislation; to respond to decisions of Courts and the Human Rights Tribunal that some provisions are discriminatory or contrary to the *Charter*; and to streamline the processing of high volumes of applications.

For example, since 1978, the Federal Court of Appeal has made inconsistent rulings on appeals related to residence. In one exceptional case, a judge required only four days of physical presence in Canada whereas other judges have required a full three years of physical presence. This creates confusion and is patently unfair.

Another problem arises because the current Act does not allow the Minister to take quick and effective action against persons who have obtained citizenship through fraudulent means. The inability of the Government to take action against known war criminals and known criminals in general continues to attract media interest and public criticism.

Supreme and Federal Court as well as Human Rights Commission rulings have demonstrated that the 1977 Act is not in line with the Canadian *Charter of Rights and Freedoms* because it continues to discriminate against certain groups. For example, children adopted by Canadians abroad are treated differently than children born to Canadians abroad.

Processing citizenship applications is not as efficient as it should be under the current law. Right now an application is reviewed three times: first at the Case Processing Centre, second by a citizenship judge, and finally by an officer who is delegated the authority to grant citizenship. As well, no application can be rejected without the applicant personally appearing before a citizenship judge. This is required even when it is clear that a person is not eligible, perhaps because of recent criminal convictions that prohibit granting citizenship and the applicant readily admits those facts.

Many elements of the 1977 Citizenship Act work well and will not change

The proposed law will not make any changes to the rights and privileges that new citizens currently have, such as voting, participating in elections and having a Canadian passport. The proposed legislation will not affect the current application fees.

Children born in Canadian territory will still acquire citizenship automatically. And, children born in other countries to a Canadian parent will still have a right to acquire Canadian citizenship. However, the Bill proposes some changes to the restrictions that exist for the second and third generations of children born abroad. These are explained later in the paper.

There is no change in dual citizenship. Canadian citizens will still be able to be citizens of other countries. And most importantly, applicants will still have to demonstrate sufficient knowledge of Canada and of one of the two official languages before being granted citizenship. These are important requirements. These skills enable newcomers to integrate more quickly and successfully into Canadian society.

Key differences between this Bill and the current *Citizenship Act*

Each of the following proposed changes reflects responses to public concerns.

Purpose Clause

A new provision in the Bill sets out the principle objectives of the Act:

- to define who is a Canadian citizen and who may become one;
- to encourage the acquisition of citizenship by all who qualify;
- to protect the integrity of Canadian citizenship;
- to reaffirm that all citizens, no matter how they became citizens, have the same status;
- to require strong attachment to Canada for the acquisition of citizenship;
- to heighten the awareness of citizens that the acquisition of citizenship is a significant event worthy of celebration; and
- to promote respect for the principles and values underlying a free and democratic society.

Residence defined as physical presence

Under the current act, close to 30,000 people a year become citizens without spending at least 3 years in Canada. This Bill requires that people be physically present in Canada for a full 3 years in order to be eligible for citizenship and to demonstrate their attachment to Canada. Other countries, such as the United Kingdom (UK), Australia and the United States (US) have comparable requirements.

Administrative process

The Bill streamlines and simplifies the decision-making process for granting citizenship. It eliminates unnecessary steps. For example, the Bill proposes that decisions can be made at the earliest possible stage. An officer who identifies an applicant as one who admits to having recent criminal convictions can advise that person right away that they are not eligible for citizenship.

Prohibitions

There is little incentive under the current Act for the RCMP and the Courts to pursue charges. Bill C-18 allows for maximum punishment levels that are significantly higher than the present law. It also recognizes offences committed by government officials and not just the general public. It allows for actions to be taken when the offence occurred outside of Canada.

Power to Annul or Refuse Citizenship

Under the current Act, the Minister cannot take quick and effective action when it is clear that someone has acquired citizenship fraudulently. This Bill gives the Minister authority to pursue a simple process to annul a person's status. This power would only be exercised in limited circumstances, in cases where there is clear-cut fraud involving criminality or false identity. In these situations, citizenship should not have been granted at all.

Another important provision in this Bill provides for refusal of citizenship. In exceptional cases where all criteria for citizenship are met but the person has demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society, the Governor-in-Council may deny citizenship for a period of 5 years. Although this decision is not subject to appeal, the person retains their permanent resident status and can apply again at the end of the restriction.

Fully-judicial Revocation Process

Revocation under the Bill goes from ultimately being a Governor-in-Council power to a fully judicial process. This responds to the perception that the process is not sufficiently transparent. The Federal Court revocation judgment may be appealed to the Federal Court of Appeal and with leave to the Supreme Court. In addition, the Bill proposes an expedited removal process for war criminals and terrorists, as well as a special procedure to protect information when needed.

Finally the Bill provides additional protection for the children of parents who are the subject of a revocation order by ensuring that the children will not cease to be citizens.

The time has come: to establish clear, fair and objective criteria for Canadian citizenship; to respond to inconsistent legal interpretations and ambiguity concerning the current legislation; to respond to decisions of Courts and the Human Rights Tribunal that some provisions are discriminatory or contrary to the *Charter*; and to streamline the processing of high volumes of applications.

Derivative Citizenship

Today, in most cases, Canadians living outside Canada can pass their citizenship on to their children over many generations. Under the Bill, children who are the second generation of their families born abroad must accumulate, before age 28, 3 years of physical presence in Canada in the 6 years before applying to retain citizenship. This is 2 years more of physical presence than in the current act.

People who are the third generation of their families born overseas will not have automatic access to citizenship. However, the Bill allows them to become Canadian if they would otherwise be stateless. This type of provision is not unusual. Other countries such as the UK, Australia and the US place restrictions on acquiring citizenship by descent or through registration abroad.

Adoption

One of the key underpinnings of Bill C-18 is the objective to lessen the distinction between natural-born and adopted children. The issue is one of principle and equity: a foreign child adopted by a Canadian citizen should enjoy the same rights and privileges as a child born outside Canada to a Canadian. The Bill is also in line with *the Immigration and Refugee Protection Act* in dealing with adoptions of persons over 18 years old who were in a genuine parent-child relationship before turning 18 and at the time of the adoption.

The inability of the Government to take action against known war criminals and known criminals in general continues to attract media interest and public criticism.

Commissioners

Under the proposed Bill, citizenship judges have a new role and title. They become Citizenship Commissioners. Commissioners' appointment criteria are defined in the Bill to make sure that they are people of high caliber and have been recognised for valuable civic contribution. The main role of the new commissioners will be to preside at ceremonies (at least 2,000 per year) and otherwise promote active citizenship. They will also be expected to advise the Minister on citizenship issues.

Oath of Citizenship

Another major change is the new citizenship oath which reflects our country's contemporary values. The new oath is concise and easier for citizens to recite. As with the current oath, new citizens will continue to pledge allegiance to the Queen and promise to fulfill the obligations of Canadian citizenship. However, the proposed legislation provides that they will additionally pledge loyalty to Canada and will promise to respect our country's rights and freedoms, laws, and democratic values.

Transitional Provisions

Under the current legislation, transitional provisions allow individuals born abroad between 1947 and 1977, one of whose parents was Canadian at the time of birth, to obtain citizenship without having to meet the usual requirements. These provisions, which were first established in 1977 for a period of two years, have continually been extended.

Under the Bill, a new transitional mechanism will provide for a facilitated grant of citizenship to persons born to a Canadian parent between 1947 and 1977, who never before acquired citizenship. In order to treat adopted children on an equal footing, the facilitated grant will also apply to any person adopted as a child by a Canadian between 1947 and 1977. These new measures seek to remedy the injustices of the old *Canadian Citizenship Act* of 1947 in regard to children of Canadian citizens who have never been able to obtain citizenship because of the marital status of their parents at the time of birth.

By allowing a period of three years to persons born outside Canada to a Canadian parent, they will enable new classes of persons to avail themselves of citizenship. The 3-year period will also provide the persons concerned with a reasonable opportunity to apply for citizenship, without perpetuating the inequities of the past.

Clear policies will guide the treatment of cases during the transition period. All cases before a citizenship judge at Proclamation will be so completed and new cases that have lagged in the system will be given consideration for the processing delays should that have an impact on the final decision. The main issue for transition will be residency time in Canada.

The new *Citizenship of Canada* Act will enable the government to achieve some very significant objectives:

First, it will establish clear, fair and objective residency criteria to obtain Canadian citizenship;

Second, it will provide new measures to ensure that only those who have the right to Canadian citizenship will receive it. The Bill will allow the Minister to take quick effective action against persons engaged in fraudulent behaviour or criminal activities to acquire citizenship;

Third, it will modernize the application process. Under this Bill, citizenship will be assessed administratively on the basis of clear and consistent criteria and tests;

Fourth, it will ensure children adopted abroad by Canadians will be treated fairly and equitably. This bill will help us to treat these children as much as possible like those born to Canadians; and

Lastly, the proposed Act will do more than clarify and address issues in the current law. It will ensure that the new Act reflects what Canadians believe citizenship should mean, promote respect for our country's rights and freedoms, and, above all, celebrate what it means to be a citizen of Canada.

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Faulkner text – footnotes

1. By the noun "public" I mean in English what the ancient Romans referred to in their noun "publicum"—that is to say, an aggregation of human beings who never actually see each other face to face but are nonetheless expected to try to make decisions in common that could transform them into a community.
2. Cosmos and History. The myth of the eternal return Willard R. Trask, trans. (New York: Harper Torchbooks, Harper & Row, 1959)
3. New Haven : Yale University Press, 1952.
4. For a lucid summary and application of Gerbner's views see James Shanahan & Michael Morgan, Television and its Viewers. Cultivation theory & research (Cambridge, UK: Cambridge University Press, 1999).
5. Television and its Viewers, p. 219.
6. Citizens and Nation: an essay on history, communication, and Canada (Toronto : University of Toronto Press, 2000).
7. See the argument in Thomas Luckmann, The Invisible Religion: the problem of religion in modern society (New York, Macmillan, 1967).

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1. Source: Valerie Knowles, Forging our Legacy, Canadian Citizenship and Immigration, 1900-1977, published by Citizenship and Immigration Canada, 2000

Giroux text – références

1. Voir les travaux de T.H MARSHALL, « Citizenship and Social Class » dans (1963) Sociology at the Crossroads and Other Essays, Londres, Heinemenn, p.67 - 127. Pour une critique, voir M. BULMER et A. M. REES, Citizenship today : The contemporary Relvance of T.H. Marshall, Bristol, University of California Press,1996. Voir aussi M. COUTU, «Introduction : droits fondamentaux et citoyenneté » dans M. COUTU, P. BOSSET, C. GENDRREAU, D. VILLENEUVE (dir),Droits fondamentaux et citoyenneté, Une citoyenneté fragmentée, limitée ou illusoire ? , Montréal, éditions Thémis, 2000, p. 1 - 20.
2. Voir P. GUIBENTIF, « Approaching the Production of Law through Habermas' Concept of Communicative Action" (1994) 20 Philosophy and Social Criticism, 45-70. à la p. 59.
3. Voir D. LEYDET, « Patriotisme constitutionnel et identité nationale » tel que cité dans M. COUTU, « Citoyenneté et légitimité. Le patriotisme constitutionnel comme fondement de la référence identitaire », à la p. 637.
4. En se situant ici dans une perspective sociologique et non juridique.
5. Voir G. BOURQUE et J. DUCHASTEL, L'identité fragmentée. Nations et citoyenneté dans les débats constitutionnels canadiens, Montréal, Fides, 1996.
6. cf. A.C. CAIRNS, "The Fragmentation of Canadian Citizenship", dans Alan C. Cairns, Reconfigurations. Canadian Citizenship and Constitutional Change, Toronto, McClelland & Stewart, 1995, pp. 157-185).
7. C. TAYLOR, »Convergences et divergences des valeurs entre le Québec et le Canada» dans C. TAYLOR, Rapprocher les solitudes. Écrits sur le fédéralisme et le nationalisme au Canada, Québec, Presses de l'université Laval, 1992, p.179.
8. I. M. YOUNG, «Polity and Group Difference: A Critique of the Ideal of Universal Citizenship» dans C. SUNSTEIN (dir.), Feminism & Political Theory, Chicago, University of Chicago Press, 1989, p.117.
9. F. AUDIGIER, «Concept de base et compétences-clés de l'éducation à la citoyenneté démocratique : une première synthèse », Séminaire Concept de base et compétences clés, Conseil de l'Europe, document DECS/CIT (98) 7, 1997. à la p. 7.
10. M. COUTU, «Introduction : droits fondamentaux et citoyenneté », dans M. COUTU , P. BOSSET, C. GENDREAU et D. VILLENEUVE (dir.), Droits fondamentaux et citoyenneté. Une citoyenneté fragmentée, limitée ou illusoire ? Montréal, éditions Thémis, 2000.
11. Voir W. KYMLICKA et W. NORMAN, «Return of the Citizens : A survey of Recent Work on Citizenship Theory», (1994) 104 Ethics 352.
12. M. LABELLE et D. SALÉE, «La citoyenneté en question : l'État canadien face à l'immigration et à la diversité nationale et culturelle», (1999) 31 Sociologie et Sociétés 125, à la p. 141.

Rummens text – bibliography

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Duncan text – footnotes

1. There is no conceptual reason to limit ourselves to two communities or to dual citizenship. Multiple citizenships are quite conceivable and multiple transnational communities exist in the form of well-established diaspora, such as the Jewish diaspora.
2. "I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen." (From the Citizenship Act)
3. Some of which, one must acknowledge, have more value than others.
4. Citizenship regimes afford governments the ability to deport non-citizens for certain criminal acts. Deportation is a good deal more difficult, although not impossible, for naturalized immigrants.
5. One might argue that the reaction of some governments to the September 11, 2001 attack on New York and Washington have brought at least a partial return to a much differentiated society, differentiated along citizenship lines in part. There is some evidence for this, but I would suggest that this is a temporary anomaly whose impact will diminish in turn in the face of the relentless features of globalization.
6. Of course, an important aspect of shared citizenship is to seek greater assurance of the equality of opportunity, of freedom from discrimination, of freedom from deep poverty, etc.
7. Note the current concerns of some European countries of maintaining their national identities in the face of the increasingly multicultural nature of their populations. Note, too, that Canadian policy requires new citizens to have a minimum proficiency in one of Canada's official languages