



**Bill C-24 - Citizenship bill
Submission of the Canadian Council for Refugees**

26 March 2014

Introduction

Bill C-24, an Act to amend the Citizenship Act, was tabled in the House of Commons on 6 February 2014. It is described by the government as the first comprehensive reforms to the Citizenship Act since 1977.

The Canadian Council for Refugees agrees that the proposed changes are significant and deserve careful consideration. The following are our comments on the bill, which we believe should respect certain basic principles.

Principles

Citizenship rules are fundamental to who we are as a country. We believe it is crucial that the rules:

- a) Respect the principle that all citizens are equal.
- b) Embrace newcomers and encourage them to quickly become full participating members of our society.
- c) Recognize the barriers that some newcomers face to full participation, including the particular barriers faced by refugees who have suffered persecution and long years of deprivation.
- d) Respect the principle that citizenship is a status from which rights derive, and is thus similar to our status as human beings. It is not something that can be lost through bad behaviour.
- e) Be clear about who acquires or loses citizenship. Individuals should have access to a fair hearing before an independent decision-maker. Decisions should not be made on a discretionary basis by the Minister.

A. Longer periods of residence in Canada before applying

Bill C-24 would require applicants for citizenship to have lived 4 of the last 6 years in Canada, compared to 3 of last 4 years under the current law. Furthermore, applicants would no longer be able to count time in Canada before becoming a permanent resident. Bill C-24 also removes a judge's ability to be flexible when, for compelling reasons, an applicant does not meet the required number of days of physical presence, but in all other respects is a resident of Canada.

- Making people wait longer undermines Canada's stated commitment to integrate newcomers. Immigrants will have to wait longer before being able to participate fully in Canadian society and enjoying all rights of full membership. This weakens Canadian society.

- Becoming a citizen is particularly important for refugees who have no other country they can turn to. Until they are citizens, they have a sense of insecurity and face practical problems, such as difficulty travelling without a passport.
- Canada has a legal obligation under the Refugee Convention to speed up access to citizenship – the proposed increase in waiting period would contradict this obligation.
- The commitment to speed up processing of applications is welcome but cannot justify increasing the time required by law for a person to be in Canada.
- The required period of residence has been 3 years for over 30 years. Extending the time required now would send an unwelcoming message towards newcomers – that Canada does not appreciate their contributions and is not sure whether to accept them fully.
- Canada as a whole benefits from our new citizens who contribute economically, socially and culturally. They help us forge social and business ties internationally. We all lose if newcomers are forced to wait longer before they can become formally one of us.
- Eliminating any consideration of the time spent in Canada before becoming a permanent resident contradicts the stated goal of ensuring that applicants spend enough time in Canada to know the country. It will lengthen the time that many refugees have to wait before becoming citizens. It will also mean additional delays for Live-In Caregivers who spend years in Canada looking after our children and elders before they become permanent residents.
- Removing the authority for citizenship judges to determine ‘meaningful residency’ will be unfair for some applicants who have compelling reasons for being physically absent from Canada for some periods, while fully intending to reside in Canada. The impact will particularly be felt by refugees who will face a longer period of statelessness as a result of this amendment. It is good that the Act will continue to allow for a waiver from the physical requirement on compassionate grounds for minors (at s. 5(3)(b)(ii)) but this waiver should extend to adults also.
- As we mark the 100th anniversary of the Komagata Maru and the 75th anniversary of the SS St Louis, we are reminded of Canada’s history of shamefully racist immigration policies. Changes to the Citizenship Act need to work to undo the racist policies of the past by welcoming newcomers, bearing in mind that the majority of new immigrants and refugees today are people who 75 or 100 years ago would have been deliberately excluded from Canada.

RECOMMENDATION:

1. Keep the period of residence to 3 out of the last 4 years.
2. Keep the rule allowing applicants to count at least one year in Canada before becoming a Permanent Resident.
3. Allow citizenship judges to exercise some flexibility when an applicant does not meet the required number of days physically in Canada and has compelling reasons for having been absent certain days from Canada and can exhibit meaningful residency in Canada, particularly for applicants who are otherwise stateless.

B. New powers to strip citizenship from dual citizens in cases of “treason” or “terrorism”

- Treating dual citizens differently is discriminatory and violates the fundamental principle that all citizens are equal. Citizens should not face different consequences for committing the same crimes. Creating separate rules for dual citizens creates a two-tiered citizenship, with lesser rights for some citizens.
- Creating a second class citizenship that is insecure will cause a loss of a sense of belonging to society for those affected, even though the vast majority of dual citizens are not at risk of actually having their citizenship stripped.
- It is wrong to use citizenship rules to punish people for wrong-doing. The criminal system is the proper way to deal with crimes. Stripping citizenship is a form of banishment – an outdated practice that is unacceptable in the modern age. Citizenship is a fundamental right and is not something that is earned by good behaviour.
- We know from recent history that people can be wrongly accused of terrorism and subjected to unfair trials. Maher Arar was able to clear his name only after he returned to Canada and won a public inquiry into his case. A citizen who was unfairly convicted abroad and stripped of Canadian citizenship might never have a chance to return to Canada and plead their case in a Canadian court.
- The current predicament of Canadian journalist Mohamed Fahmy in Egypt is a further reminder of how “terrorism” charges can be abused. An Al-Jazeera journalist, Mr Fahmy is facing terrorism-related charges. Although the process is internationally condemned as unjust, a conviction in such a case could, according to the Bill, lead to loss of Canadian citizenship.
- It is not always clear whether a person has another citizenship. The proposed amendment allows Canadian citizenship to be stripped if the Minister has “reasonable grounds to believe” that the person has another citizenship. This could result in people becoming stateless because, contrary to the Minister’s belief, they do not in fact have citizenship in another country.
- These new powers are largely symbolic – it is unlikely many people would be affected. The message being sent however is very strong: the changes say that Canadians are not all equal, and that the loyalty of some citizens is in question. This negative message particularly affects certain Canadians, notably Muslims and Arabs, who have been unfairly and persistently associated with terrorism.

RECOMMENDATION:

4. Delete new proposed powers to strip citizenship. Amend the bill to include a provision explicitly stating that citizenship cannot be stripped, except if it was acquired through intentional misrepresentation. In no case should a citizen be stripped of their status without access to a fair hearing before an independent decision-maker.

C. Increased barriers to citizenship

There is an increase in fees (doubled from \$200 to \$400, and in effect as of 6 February 2014). In addition, language and knowledge test requirements are extended to more applicants (those aged 14-64 years, currently those aged 18-54 years).

- Citizenship is becoming much harder to get. There have already been extra obstacles introduced in the last few years (new requirements regarding language competence, the onerous Residence Questionnaire imposed on some applicants and long processing delays.) Now new barriers are being added. The barriers will particularly affect refugees who have suffered persecution and long years of deprivation. The additional fees may represent a significant burden, especially for refugees and others who are over-represented among the working poor and those in chronic low-income circumstances.
- Older refugees may be able to learn enough English or French to function but may nonetheless have difficulty passing the legislated language test (which in some cases they have to pay for). The test is particularly difficult for people with little formal education and limited literacy.
- Canada has a legal obligation to facilitate access to citizenship for refugees: “The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.” (Convention relating to the Status of Refugees, Article 34).
- It is right to encourage and support older permanent residents in learning one of the official languages and acquiring knowledge about Canada, but it is a mistake to make success in these objectives a condition of citizenship, given the greater difficulties many face in learning and passing tests at older ages. Given that the elderly are in some cases quite vulnerable members of our society, we should be facilitating access to citizenship for those aged 55 up, so that they have secure status and extra rights of citizenship before they become elderly.
- The rationale of extending the test requirements to applicants aged 14-18 is not clear. Youth at this age will be in high school, and must have been in Canadian schools for the past several years. If they do not speak English or French, or know about Canada, the fault surely lies with our schools. Furthermore, with respect to language testing it is not known what proof of language ability will be accepted. The proofs currently accepted will not work for youth: completion of high school or government-funded language classes. Since there is no standardized documentation across school boards throughout Canada it is not clear how easy it would be to have a proof readily available to applicants in this age bracket. The fear is that adolescents will face significant administrative hurdles to prove their language ability (or face the cost of an approved language test - \$175 + tax or more – a cost that may be beyond the capacity of the family). By adding additional requirements for youth aged 14-18 we risk producing a new category of youth who have spent most of their formative years in Canada but are denied citizenship, and thus the possibility of participating fully in society.
- The law currently allows for knowledge and language tests to be waived on compassionate grounds, but access to this discretionary exemption has recently become more difficult in

practice because of changes in procedures. Measures in Bill C-24 (in its current form) will make access to consideration for waivers more important (given that larger numbers of applicants are subject to the requirements). On the other hand, proposed new wording suggests applicants may not necessarily appear before the citizenship judge who might consider those compassionate grounds. Under Bill C-24, s.14 states: “If an application is accepted for processing and later referred to a citizenship judge because the Minister is not satisfied that the applicant meets the requirements”...the citizenship judge “shall”, within 60 days of it being referred, consider the application. We are concerned that the use of the word “if” may mean that some applications will not be referred to a citizenship judge (for example applicants who have not passed the knowledge test or provided proof of language).

RECOMMENDATION:

5. Keep language and knowledge test requirements to the existing age group (18-54 years).
6. Amend the Bill to specify that the language testing be at the end of the application process, rather than at the beginning (given long processing times).
7. Reinforce and clarify the provisions allowing waiving of knowledge and language tests. Currently it says “The Minister may, in his discretion, waive on compassionate grounds...” This should be changed to “The Minister shall, where compassion and human rights obligations direct, waive ...”.
8. Amend the Bill to clarify the right of an applicant to be heard by a citizenship judge.
9. Introduce a process by which applicants, including social assistance recipients, can seek a waiver from the citizenship fees, on the ground that no one should be excluded from democratic civic participation because of inability to pay.

D. Second generation born abroad

We welcome the measures to address the unfair exclusions from citizenship that have been allowed to go on for decades (“lost Canadians” – pre-1947 cases). However we regret that there are no measures to address the unfair situations created by the 2009 amendments. By denying citizenship to the second generation born abroad, Canada is creating a new set of “lost Canadians” and making some children born to Canadians stateless.

RECOMMENDATION:

10. Restore right to citizenship for second generation born abroad (pre-2009 rules). In the alternative, at least provide right of citizenship for those would be otherwise be stateless.

E. Access to citizenship for youth under 18 without parents

Currently youth under 18 can only apply for citizenship if their parent is a citizen or is applying for citizenship along with them. This leaves some youth without access to citizenship, apart from on an exceptional discretionary basis. This situation affects, for example, some youth in care – for whom the State has a particular responsibility to provide secure status. We are concerned that

some youth in care are reaching the age of majority without obtaining citizenship, even though they meet the residency requirements.

In addition, there are many children who come to Canada with their de facto family but who have no parent or legal guardian. Among refugee families such situations are not uncommon as children who have been orphaned in conflict may be taken in by other adults. There may have been an adoption overseas which is not recognized under Canada's laws. Depending on their age and the province they are living in, they may have no legal guardian.

In the case of refugee youth in particular, they may be stateless. Under the Convention on the Rights of the Child, Canada has an obligation to protect the child's "right to acquire a nationality", and this obligation is underlined "where the child would otherwise be stateless" (Article 7).

There is nothing in the bill to address the current discrimination in the Act on the basis of age. The bill needs to ensure the equitable access of such minors to citizenship. Further, s.4(3) of the bill adds a new requirement that an adoption not have occurred "in a manner that circumvented the legal requirements for international adoptions". This may actually impose a new additional barrier to obtaining citizenship for those children.

RECOMMENDATION:

11. Provide for a right to apply for citizenship for youth under 18 who meet the other requirements but do not have a parent or legal guardian in Canada.

F. Requirement of intention to reside in Canada.

Bill C-24 includes a requirement that applicants for citizenship have an intention to reside in Canada. The intended purpose of this new requirement may be quite limited, but it is open to interpretation. The CCR is concerned that it will lead to applicants for citizenship and new citizens to have anxieties and fears.

According to s 3(2) of the Bill, the person's intention must be continuous from the date of application until taking the oath of citizenship, a period of 24-36 months according to current processing times, as published by Citizenship and Immigration Canada. For example, applicants may fear travelling outside Canada while their application is in process, or even for some time afterward, for fear of being accused of misrepresentation. People may have to make difficult choices about whether to pursue career-enhancing studies or work abroad, or to accompany a spouse, or spend time with a sick relative abroad.

The introduction of a requirement of intent to reside also creates two classes of citizens: some with a recognized right to work, study or live where they choose, and others who are expected to remain in Canada.

RECOMMENDATION:

12. Delete this new provision.

G. Leave for judicial review

The Bill adds a requirement to seek leave for judicial review of a decision to refuse a citizenship application (s. 20 of Bill, adding s.22.1 to the Act). If adopted, this provision will mean that more people won't get their cases heard by the court, without receiving any explanation (the Federal Court does not provide any reasons when it denies leave). In addition, the requirement will impose an additional cost, as applicants must hire a lawyer to do the leave application.

RECOMMENDATION:

13. Delete this new provision (i.e. continue to allow applications to the Federal Court for judicial review without a leave requirement).

H. Completed applications

The CCR is concerned that it has become more difficult for applicants to even begin the formal process of becoming a citizenship. A high percentage (40%) of applications are returned as incomplete. The administrative process can thus represent a barrier to some applicants, particularly to some of the most vulnerable individuals, with health issues, disabilities or limited literacy. These applicants may be deserving of compassionate waivers, but if their application is simply returned as incomplete, they don't even get to the stage where the humanitarian factors could be considered.

The Bill seems to move further in this direction, by proposing to enshrine in the Act the requirement that an application be complete and include all supporting evidence and fees before it can be processed. (Section 11 of the Bill, amending s. 13 of the Act).

It is not clear what the purpose of this amendment is. It raises concerns that it will reinforce the difficulties for applicants who require humanitarian waivers. For example, how can an applicant who cannot meet the language requirements be considered for humanitarian waiver if their application is not accepted for processing because it lacks the required supporting evidence of their language skills?

I. Regulation of consultants

S. 18 of the Bill adds a new section to the Act (s.21.1) that regulates persons assisting with citizenship applications who take money from applicants. The intention is presumably to protect applicants from unscrupulous or incompetent individuals who provide poor services. While this is indeed a worthwhile objective, the CCR is concerned that the net might be cast too wide and the result might be that it becomes more difficult for low-income applicants to receive support in completing their applications. This concern is heightened by experience with a similar provision in the *Immigration and Refugee Protection Act* which has been interpreted to mean that universities cannot assist their international students in any way with their immigration files, unless they employ a lawyer or a registered consultant, because the students pay fees to the university.