HOUSE OF COMMONS
CANADA

UPDATING CANADA'S CITIZENSHIP LAWS: ISSUES TO BE ADDRESSED

REPORT OF THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

Hon. Andrew Telegdi, P.C., M.P.
Chair

November 2004

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THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

THIRD REPORT

In accordance with its permanent mandate under Standing Order 108(2), your Committee has conducted a study “Updating Canada’s Citizenship Laws: Issues to be Addressed” and reports its findings:

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INTRODUCTION

Citizenship is an acknowledgment by the state of membership in the Canadian community. It represents a sharing of sovereignty and a social contract between individuals and the larger political unit. Practical benefits flow from this status, such as the right to vote, the right to enter or remain in Canada, and the right to travel abroad with a Canadian passport. But citizenship is also highly symbolic. It is an expression of common values, a shared history and collective aspirations.

Prior to 1947 and the introduction of Canada's first *Citizenship Act*, there was legally no such thing as Canadian citizenship. Both native-born and naturalized citizens were considered British subjects. Canada was the first Commonwealth member to establish a citizenship status that was distinct from the "mother country." The 1947 legislation clearly played an important role in the development of Canada's national identity.

Thirty years later, the current *Citizenship Act* came into force. Intended to modernize the citizenship regime, the legislation removed special treatment for British nationals, established citizenship as a right, rather than a privilege, for qualified applicants, and encouraged naturalization by removing or lowering barriers to citizenship.

Canada has changed since 1977 and there is widespread recognition that it is time that our citizenship legislation was again revised. There have already been attempts to update and strengthen Canada's *Citizenship Act*. Only 10 years after it came into force, the Progressive Conservative government of Brian Mulroney signalled its desire to bring in amendments and released a discussion paper entitled *Proud to be Canadian*. Public input was received, but no legislative action was taken. The Liberal government elected in 1993 announced its intention to revise Canada's citizenship laws and asked for this Committee's advice. In June 1994, the report *Canadian Citizenship: A Sense of Belonging* was tabled in the House of Commons.

A series of bills followed, none of which were passed. Bill C-63, introduced in the first session of the 36th Parliament, died on the Order Paper. Its successor, Bill C-16, was introduced in the second session of that same Parliament and passed third reading stage in the House of Commons in May 2000. However, it died on the Senate *Order Paper* when the election was called. Bill C-18, *An Act respecting Canadian citizenship*, was introduced in the second session of the 37th Parliament and this Committee held hearings across the country and received extensive and thoughtful input from numerous groups and individuals. Clause-by-clause consideration was begun by the Committee but not completed and the legislation again died when Parliament was prorogued in late 2003.

The government has again signalled its intention to introduce new citizenship legislation and has asked this Committee to provide advice and guidance before the new bill is drafted. To this end, the Committee passed a motion on 28 October 2004 providing that the evidence and documentation presented to the Committee during the 36th Parliament and the second Session of the 37th Parliament in relation to our study of citizenship legislation be deemed received by the Committee in this session. We have reviewed this material and identified what we believe to be the key issues that must be addressed in any future legislation.

The Minister has indicated that new citizenship legislation will be tabled in the very near future, most likely in February 2005. Given the upcoming Christmas break of the House of Commons and other commitments arising from the Committee's mandate, we had little time available for this review. As the Minister has also informed us that the bill will be referred to the Committee after first reading, we have decided to simply set out the key concerns that the new legislation must tackle. We have avoided delving into precise legislative recommendations, with one exception: our recommendation to remedy the situation of the so-called "Lost Canadians."

THE ISSUES

In the course of the Committee's study of Bills C-63, C-16 and C-18, we received submissions on all aspects of the proposed legislation, as well as the value that citizenship holds for Canadians. The Committee has identified the following issues as being of particular importance, but realizes that other concerns may arise following the introduction of a new citizenship bill.

1. Residency Requirement for Grant of Citizenship

The current *Citizenship Act* requires a three-year period of residency before a permanent resident can be naturalized as a citizen. However, the term "residency" is not defined. As a result, judicial decisions with conflicting interpretations have complicated the application of the law. An early decision of the Federal Court held that actual physical presence in Canada was not necessary in order to fulfil the legislative requirement.[1] The judge in that case determined that all that was necessary was that the applicant show a significant attachment to Canada throughout the period, even if physically absent. Attachment could be established by indicators such as residential real estate holdings, accounts in Canadian banks, investments, club memberships, provincial driving licences, and so on. As a result, some applicants have been granted Canadian citizenship even though their actual time in Canada amounted to only a few months or less. Other decisions of the Federal Court have applied a different standard.

[1] *Re Papadogiorgakis*, [1978] 2 F.C. 208.

Bill C-18 would have clarified the residency requirement by defining residence as actual physical presence in Canada. It would also have required an accumulated three years (1,095 days) of residence within the previous six years.

Some witnesses argued that it is impractical for many people with business and family commitments outside of the country to be physically present for the period of time required. Greater flexibility was suggested and some pointed to section 28 of the *Immigration and Refugee Protection Act* as a possible guide. That Act's residency requirement will be met if the person is:

- physically present in Canada;
- outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent;
- outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province;
- outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province; or
- referred to in regulations providing for other means of compliance.

An exception to the physical residency requirement is currently made for the foreign spouses of Canadian citizens working abroad with the Canadian armed forces, the federal public service, or the public service of a province. Bill C-18 would have expanded this to common-law (including same-sex) partners.

The Committee believes that these concerns must be addressed in future legislation. A clarification of what constitutes "residency" would be welcomed. However, given the realities of life in an increasingly global society, means of compliance other than physical presence should be considered and the provisions of the *Immigration and Refugee Protection Act* would be an appropriate point of reference.

We also note the submissions of witnesses with respect to refugees who have been granted permanent residence in Canada following what is often a very lengthy determination process at the Immigration and Refugee Board. The witnesses suggested that credit be given to citizenship applicants for the time spent in Canada prior to the determination of their refugee claim. It was argued that their time in the country during that period is not qualitatively different than their time in

the country after being accepted as permanent residents. Future legislation should take this issue into account.

2. Knowledge Requirements for Grant of Citizenship

The *Citizenship Act* requires that an applicant for citizenship demonstrate an "adequate knowledge of one of the official languages of Canada" and an "adequate knowledge of Canada and of the responsibilities and privileges of citizenship." Applicants are required to pass an exam, although the Minister has the discretion to waive the requirements on compassionate grounds and has done so for various groups, such as people over 60 years of age.

Many witnesses referred to the lack of a definition for the term "adequate knowledge" and suggested that the legislation should be more precise. It was also argued that, for greater clarity, specific waivers could be included in the Act; that is, the legislation could identify particular groups — for example, the elderly, refugees or others suffering from post-traumatic stress, or those with learning disabilities — as being exempt from the adequate knowledge requirements. The Committee believes that these recommendations should be reflected in future citizenship legislation.

3. Loss of Citizenship — Second Generation Born Abroad

There is provision in the *Citizenship Act* for the loss of derivative citizenship for people who were born outside Canada after 1977 and who are citizens because one of their parents has derivative citizenship (i.e., the parent was also born abroad to a Canadian citizen). A "second generation born abroad" Canadian will lose their citizenship when they turn 28 unless they make an application to retain it, have registered as a citizen, and have either lived in Canada for at least one year prior to the application or can establish that they have a substantial connection to Canada.

Witnesses expressed two main concerns about this provision: first, that the automatic loss of citizenship in any situation is problematic and could in some cases result in a person being rendered stateless; and, secondly, there is no notice provision and most people in this situation will likely be unaware of the legislative requirements.

These concerns must be addressed. Statelessness cannot be permitted to result from any legislated process. The Committee is also concerned about the apparent arbitrariness of the "cut-off" date. The suggestion of some witnesses that an appeal process should be available merits consideration.

4. Loss of Citizenship — Revocation

One of the most contentious issues addressed in the course of the Committee's hearings was the process relating to the revocation of citizenship for naturalized citizens. Bill C-18 contained three proposed revocation processes: one that may be referred to as "standard" revocation; a second that involved a security certificate due to the sensitivity of evidence relating to allegations that the person had violated human or international rights or was involved in organized crime; and, a third administrative process referred to as annulment.

i) Revocation for false representation, fraud or knowingly concealing material circumstances

The current *Citizenship Act* provides that the Governor in Council may make an order that a person ceases to be a citizen where the person obtained citizenship or permanent residence by false representation, fraud, or by knowingly concealing material circumstances. The order can only be made following a report of the Minister of Citizenship and Immigration. The Act sets out the procedure the Minister must follow, beginning with notice to the individual. The person may request that the Minister refer the case to the Federal Court. If referred, a judge of the Court must agree that, on a balance of probabilities, the person improperly obtained citizenship before the Minister may make a report to Cabinet.

Bill C-18 would have revised the revocation process by removing the involvement of the Governor in Council and significantly streamlining the removal process. However, it did not propose to change the actions that could ground a revocation application, i.e., false representation, fraud or knowingly concealing material circumstances.

Most witnesses were supportive of moving the revocation power from Cabinet to the courts. They argued that important questions of fact and law must be determined in the normal judicial process, free from political interference. There was, however, significant debate regarding the standard of proof, with many arguing that the civil standard currently applied in Federal Court citizenship hearings does not adequately protect citizens.

The Committee believes that future citizenship legislation should specify the requisite standard of proof in revocation proceedings and urges the government to take into account the extremely serious ramifications that flow from a revocation order. We note that our country's worst criminals benefit from a presumption of innocence and the requirement that the state prove an offence beyond a reasonable doubt. There can be no question that a loss of citizenship engages section 7 of the *Canadian Charter of Rights and Freedoms* and the yet-to-be-introduced citizenship bill must adequately address this important issue.

The Committee also reiterates that any process under Canada's citizenship legislation should not result in a person being rendered stateless.

The proposed consolidation of revocation and deportation processes in Bill C-18 was also discussed. Currently, if a person's citizenship is revoked, a second process must be commenced in the Immigration Division of the Immigration and Refugee Board for a declaration that they are inadmissible to Canada. Bill C-18 would have permitted the Minister to seek a second judgment from the Federal Court regarding inadmissibility after a ruling that the person's citizenship was revoked. While the bill provided that the technical rules of evidence would apply to the revocation hearing, the judge could receive any evidence considered credible or trustworthy for the purpose of the inadmissibility hearing.

Many witnesses were supportive of streamlining the removal process, but the Committee hopes that the government will be able to allay the concerns surrounding evidentiary standards in removal proceedings.

ii) Revocation through the Security Certificate Process

Bill C-18 would have also created a special revocation process for those accused of terrorism, war crimes or organized crime. The proposal would have allowed for the use of protected information in these cases when a judge determined that disclosure could be injurious to national security or to the safety of any person. The subject of the revocation proceeding would be given only a summary of the evidence, with the judge excluding any information deemed to be sensitive. This procedure mirrored the provisions in sections 76-81 of the *Immigration and Refugee Protection Act* relating to the protection of information on security grounds. As in "standard" revocation proceedings, it was anticipated that the revocation decision would be made on the balance of probabilities. However, no appeal or judicial review would be permitted.

The witnesses who addressed this process objected to it most strenuously, arguing that it violates the most basic tenets of due process. The Committee understands that court challenges have been attempted in the immigration context. While the security certificate process has been upheld thus far, other cases are still pending.

The Committee finds the security certificate process troubling. We note that there will soon be a Parliamentary review of Canada's anti-terrorism legislation. The Minister of Justice has suggested that this should involve an expansive evaluation, including not only the *Anti-terrorism Act*, but other similar legislation relating to the protection of sensitive information. Pending the results of this review, the Committee believes it would not be appropriate to include a security certificate process in our *Citizenship Act*.

The Committee realizes there may be a need in some instances to protect certain sources, including information provided in confidence by foreign governments. However, we note that the provisions of the *Canada Evidence Act* already permit the government to protect sensitive information in any proceeding through the issuance of a prohibition certificate.

iii) Annulment

In addition to the mechanisms for revoking citizenship, Bill C-18 would have given the Minister a new power to issue an annulment order. Such an order would have had the effect of voiding any acquisition, retention, renunciation or resumption of citizenship. A limited period of applicability was provided in the bill — the power would have to be exercised within five years of the original citizenship decision — and the person would be given notice regarding the proposed order, after which he or she could make representations to the Minister. There would not have been a formal hearing and no appeal of an annulment order would have been permitted. Although such a decision could be judicially reviewed by the Federal Court, the grounds of review would be considerably narrower than if an appeal were allowed.

Many witnesses suggested that annulment would create "probationary citizens" and argued that it should be deleted. Others argued for greater due process guarantees, such as an independent decision-maker and a right of appeal.

The Committee appreciates the concerns expressed by witnesses and questions the need for an administrative process of annulment. The government has expressed its intention to move to a fully judicial revocation process in an effort to remove the perception of unfairness inherent in the current system. It therefore seems anomalous that it would seek to create an administrative revocation power from which no appeal would be permitted.

5. Transitional Provisions

A new citizenship bill will of course have to address the issue of processes that are currently underway under the existing legislation. Should they be discontinued and proceedings commenced under the new legislation, if appropriate? In Bill C-18, the government had proposed a transitional provision that would have allowed pending revocation proceedings to continue under the current Act if some evidence had been received or a decision already rendered by the Federal Court.

Some witnesses objected to maintaining proceedings under the current legislation. They argued that if Parliament, in responding to the perception that the current practice is unfair, sees fit to switch to a fully judicial process, it would be

illogical to maintain pending proceedings. Some likened the proposal to abolishing capital punishment but allowing the execution of a person whose trial had already begun or who was on death row at the time the law changed.

The Committee shares the concern expressed by witnesses about maintaining ongoing citizenship revocation proceedings when a new Act comes into force. New citizenship legislation would obviously be intended to improve upon the existing system. It may therefore be appropriate that individuals engaged in revocation proceedings when the new law takes effect be given the choice of proceeding under the new legislation or under the 1977 *Citizenship Act*.

6. Restoration of Citizenship: The "Lost Canadians"

Another issue that has garnered much attention involves citizens who were born in Canada and lost their status when they were minors because their "responsible parent" took the citizenship of another country. These are the so-called "Lost Canadians."

From 1947, when Canada's first *Citizenship Act* came into effect, to February 1977, when the current legislation repealed the former, dual citizenship was not recognized. This was not unusual for the time and, indeed, many countries today still do not permit their citizens to hold a second nationality. However, the Committee heard extensive evidence of the hardship this provision has wrought and the strange anomalies that have been created as a result of section 18(1) of the 1947 Act. It read:

> Where the responsible parent of a minor child ceases to be a Canadian citizen under section sixteen [acquisition of another nationality] or section seventeen [renunciation where dual nationality] of this Act, the child shall thereupon cease to be a Canadian citizen if he is or thereupon becomes, under the law of any other country, a national or citizen of that country.

A "responsible parent" was defined in the legislation as the father if the child was born in wedlock, or the mother if the child was born out of wedlock or if the mother was widowed or had legal custody of the child by court order. Thus, a Canadian-born child who automatically received another citizenship through his father would have lost his Canadian status even though his mother remained Canadian and may have wanted her child to remain Canadian as well. Temporal issues give rise to another apparent anomaly. A Canadian-born child whose father took another citizenship on 15 February 1977 would have kept his Canadian status, but if his father had been naturalized in another country just one day earlier, the child would have lost the citizenship of his birth country.

The incongruities do not end there. The Committee notes that the former Act required foreign-born children of Canadian mothers to undergo security checks and

swear an oath before being granted citizenship, while foreign-born children of Canadian fathers were granted citizenship merely by applying. This was held to violate the equality provision of section 15 of the *Canadian Charter of Rights and Freedoms* by the Supreme Court of Canada.[2] As a result, children born abroad to Canadian mothers now have an automatic right of citizenship, whereas children born in Canada to Canadian mothers may have lost their Canadian citizenship if the father took another nationality between 1947 and 1977. It is indeed odd that in a family that emigrated, the Canadian-born children would lose their Canadian citizenship if their father took another nationality within the relevant time frame, while the children born to a Canadian parent abroad would not.

Currently, a person who lost their Canadian citizenship as result of section 18(1) of the 1947 Act must become a permanent resident and must reside in Canada for one year immediately before making a citizenship application. While the residency requirement to resume citizenship is shorter than that for "first-time" citizens, until recently there was still the requirement that the applicant obtain permanent residence in the usual manner i.e., they had to apply under an existing immigration category, such as the skilled worker point system or a family class sponsorship. However, in May 2003, then Minister Denis Coderre announced that people who ceased to be citizens as minors would no longer have to meet the normal selection criteria; they would be automatically eligible for permanent resident status, although they would be subject to other admissibility requirements, such as public health, criminality, security checks and a financial test. Thus, the new policy permits these individuals to be accepted as permanent residents as long as they can support themselves and are not inadmissible for criminal or security reasons. They are exempt from the medical inadmissibility requirement related to an excessive demand on the health-care system, but do have to pay the usual processing and landing fees of $1,475 per adult.

Some of the "Lost Canadians" criticize this policy as not going far enough. They resent the fact that they have to apply for permanent residence when they feel that they *are* citizens and that their birthright has been unfairly taken from them. They also suggest it is impractical for many to meet a residency requirement given family and employment commitments. While Bill C-18 would have modified the residency obligation to allow some flexibility in the time available to meet the requirement — it was proposed that the applicant would only have to be physically present in Canada for 365 days out of the two years preceding the application — the Committee's witnesses clearly objected to the permanent residence prerequisite in principle and, for them, fine-tuning that process is not a satisfactory response.

Potentially, tens of thousands of people lost their citizenship when emigrating with their parents between 1947 and 1977. If these individuals are given an

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2 *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358.

unqualified right to return to Canada as citizens, the possibility exists that thousands of people who have not paid taxes in Canada could avail themselves of Canadian social services and health benefits. The question of restrictions with respect to the character of those applying to resume their citizenship has also been debated, with some arguing that relaxing the current requirements could mean that convicted criminals would be eligible to resume their Canadian citizenship. The Committee notes, however, that private members' bills intended to address the "Lost Canadians" situation would not have overridden national security concerns. Bill S-2 from this parliamentary session, for example, would not change the fact that anyone applying for resumption of citizenship could be refused if the federal Cabinet determines that there are reasonable grounds to believe they will engage in activity that is a threat to the security of Canada or is part of a pattern of organized criminal activity.

In any event, Canadian citizens today may leave the country and freely return as citizens at any point in the future, regardless of whether they have ever paid taxes in Canada or have been convicted of crimes in the interim. There is an arbitrary line — 15 February 1977 — which the Committee finds troubling.

The Committee recommends that any person born in Canada who lost their Canadian citizenship as a child because their parent acquired the nationality of another country should be eligible to resume their citizenship without first becoming a permanent resident and without having to meet a residency requirement.

7. Denial of Citizenship by Governor in Council

Clause 21 of Bill C-18 contained a contentious provision that would have authorized the Cabinet to deny citizenship to an applicant when "there are reasonable grounds to believe that a person has demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society." The stated purpose for this provision was to deny citizenship to people who publicly promote ethnic hatred or who are known to have committed horrible crimes abroad for which they have never been convicted.

But what are the principles and values this public interest provision would entail? In the case of *R.* v. *Oakes*,[3] former Chief Justice Dickson made reference to the values underlying a free and democratic society in his analysis of section 1 of the *Canadian Charter of Rights and Freedoms*. At page 136 of the *Oakes* decision, Dickson C.J. stated:

> The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect

[3] [1986] 1 S.C.R. 103.

> for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.

These specific values are presented as examples, and thus cannot be said to form an exhaustive list. What else might be included? Others attempts have been made to define the principles that underlie our society. For example, in his work with the Citizens' Commission, Keith Spicer identified the following as core Canadian values: equality and fairness; respect for minorities; consultation and dialogue; accommodation and tolerance; compassion and generosity; respect for Canada's natural beauty; and respect for Canada's world image of peace, freedom and non-violent change.[4] Could these values be invoked to deny citizenship?

Noted constitutional scholar Peter Hogg states that the reference to a "free and democratic society" is too vague to provide much assistance in assessing legislative objectives in the course of an analysis of section 1. He notes that the Courts have accepted numerous grounds for limiting Charter rights as being consistent with Canadian democratic values.[5] Arguably then, in the context of this clause from Bill C-18, what would constitute grounds for denying citizenship is equally unclear. Citizenship and Immigration Canada has indicated that the provision could be used to target hate mongers, as one example, but it clearly could be used for other situations not yet identified. According to some witnesses who appeared before the Committee, this could be problematic. As one witness stated:

> In this area, it is better to be specific, rather than general. A limitation on the freedom of expression can withstand a *Charter* challenge only if there is minimal impairment of the right. The problem prompting the provision in the bill, that is to say hate speech, should be mentioned specifically.

The Committee is not convinced that the power of Cabinet to deny citizenship on vaguely worded grounds to otherwise qualified applicants is necessary or appropriate. We also share the concerns of witnesses regarding the proposal in Bill C-18 that there be no right of appeal or judicial review of a Governor in Council denial of citizenship.

8. Prohibitions

Currently, the prohibitions under which a grant of citizenship can be denied relate mainly to criminal activity in Canada or abroad, or unresolved immigration matters. Bill C-18 would have expanded the list somewhat. Indictable offences

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4 Keith Spicer, "Values in Search of a Nation," in Robert K. Earle and John D. Wirth, eds., *Identities in North America: The Search for Community*, Stanford University Press, Stanford, 1995, p. 13-28.

5 Peter W. Hogg, *Constitutional Law of Canada*, Carswell, Scarborough, 1997, Vol. 2, p. 35-5.

committed outside Canada would be taken into account and treated in the same way as those committed in Canada. The prohibition relating to offences abroad would have applied to the entire criminal process: being charged with, on trial for, and requesting appeals and reviews of such offences. A new prohibition proposed in Bill C-18 would have seen a one-year delay in the grant of citizenship where the person had been convicted of two or more summary conviction offences. The bill also would have precluded citizenship for anyone under a removal order, or subject to an inquiry under the *Immigration and Refugee Protection Act* that could lead to removal or the loss of permanent residence status.

It was the issue of criminal charges and convictions outside of Canada that witnesses found most problematic. Many of the world's judicial systems are not on par with Canada's and witnesses urged the Committee to recognize the criminalization of political activities in some countries. The fact that Bill C-18 would have made an outstanding foreign charge a permanent bar to obtaining citizenship was also criticized as unreasonable.

The Committee shares the concerns expressed by witnesses relating to foreign convictions and outstanding foreign charges that render applicants ineligible for citizenship. The government should consider establishing a process to address such charges to ensure that they are not abusive or the result of an unfair judicial process.

9. The Role of Citizenship Officials (Judges or Commissioners)

Under the current Act, citizenship judges are responsible for making decisions on citizenship applications, presiding over citizenship ceremonies and administering the oath of citizenship to new citizens. They are appointed by the Governor in Council and are considered at arms-length from the department.

Bill C-18 would have eliminated citizenship judges. Their substantive duties would have been taken over by the public service, acting under the delegated authority of the Minister. Their ceremonial duties would have been taken over by full-time or part-time citizenship commissioners, appointed by the Governor in Council.

In essence, it was proposed that the decision-making powers regarding citizenship grants would be dealt with administratively by department employees. Citizenship and Immigration Canada officials argued that this would create a more efficient system, particularly if changes clarifying citizenship requirements, such as residency and knowledge requirements, removed much of the discretionary nature of such decisions.

The Committee expects that future citizenship legislation will address the concern expressed by witnesses that where there is discretion involved in the grant of citizenship relating to questions of residency and adequate knowledge, it should be exercised by a person who is independent of the department. When we speak of such discretion, however, it should be clear that the Committee is not referring to cases involving ineligibility due to criminality or national security concerns. We have suggested that the government consider establishing a process to assess foreign charges and convictions, but do not believe that there should otherwise be discretion in the grant of citizenship when criminal and security prohibitions are apparent.

10. Oath of Citizenship

The current oath of citizenship is as follows:

> 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.

Bill C-18 had proposed changing the oath to:

> From this day forward, I pledge my loyalty and allegiance to Canada and Her Majesty Elizabeth the Second, Queen of Canada. I promise to respect our country's rights and freedoms, to uphold our democratic values, to faithfully observe our laws and fulfil my duties and obligations as a Canadian citizen.

The Committee received various recommendations regarding the oath. Some argued that specific reference should be made to the *Canadian Charter of Rights and Freedoms*. Some suggested that reference to the Queen should be deleted. Witness opinion was divided, but it is clear to the Committee that the content of the oath is an important and contentious issue.

The Committee is not prepared to attempt its own draft of the oath of citizenship at this time, but expects that the government will take into account witness suggestions when crafting a statement that embodies our rights and responsibilities as citizens of Canada. We recognize the importance of involving the public in this process and when citizenship legislation is referred to the Committee later in this Parliamentary session, we intend to call upon Canadians to specifically address this issue.

11. Adoption

Canadian citizens who adopt children outside of Canada can face a lengthy process in bringing their children into the country. In contrast, children born to Canadian citizens abroad are automatically citizens. Currently, a foreign-born child adopted by a Canadian must first obtain permanent residence status. After meeting residency and other *Citizenship Act* requirements, they would be able to apply to become naturalized Canadians. The immigration process can be time-consuming, requires the child to undergo medical screening and involves significant processing fees.

Bill C-18 would have allowed a foreign child adopted by a Canadian citizen to be granted citizenship without any permanent residence prerequisite. To respect the *Hague Convention on Intercountry Adoption*, the proposed legislation would have required a foreign adoption to meet specific criteria. The adoption would have to:

- be in the best interests of the child;
- create a genuine relationship of parent and child;
- be in accordance with the laws where the adoption took place and the laws of the country of residence of the adopting citizen; and,
- not be intended to circumvent immigration or citizenship law.

These provisions were also proposed in Bill C-18's predecessor, Bill C-16, which the House of Commons Standing Committee on Citizenship and Immigration studied and amended, and which was passed by the House of Commons on 30 May 2000. What was new in Bill C-18, however, was a clause that would have allowed for adoptions to take place after a person turned 18 years of age, so long as a genuine parent-child relationship existed prior to the child turning 18. This could have served a small number of applicants where a relationship had existed for many years — for example, foster children — but a legal adoption was only undertaken later in the adoptee's life.

In the course of the Committee's examination of Bill C-18, some witnesses expressed reservations regarding the proposal. One of the concerns expressed was that refusal of a citizenship application for an adopted child would only be subject to a judicial review in Federal Court. Refusal of a sponsorship application for permanent residence, on the other hand, can in many cases be appealed on humanitarian grounds to the Immigration Appeal Division of the Immigration and Refugee Board. Some suggested that it would be illogical to have an inferior review process for citizenship applications involving adoption than for immigration applications involving adoption.

Most witnesses did, however, agree that the proposal was a step in the right direction and would be beneficial for adoptees and their families.

The Committee recommends that consideration be given to the issue raised by witnesses in respect of appeal rights for Canadians who adopt abroad.

12. Delays in Processing

Committee members are well aware of the delays involved in processing citizenship applications. Indeed, one would be hard-pressed to find a Member of Parliament whose constituency office has not had to grapple with this issue on behalf of applicants who can face a wait of a year or more in obtaining their citizenship. The Committee realizes that delays can result from a myriad of factors and that a significant issue is a lack of departmental resources.

The Committee understands that legislation in and of itself will not address the issue of processing delays. It is hoped, however, that a client-centred approach to the citizenship application process — involving improved processing times and more information for applicants about when they will get a response — will be an important consideration when drafting the new legislation.

GUIDING PRINCIPLES

Due to time constraints, the Committee has not been able to embark on a full review and discussion of the overarching principles that should form the foundation of a new *Citizenship Act*. However, we will attempt to list some of the principles suggested by witnesses that should be taken into account when the legislation is being drafted. As with the oath of citizenship, the Committee believes that when a citizenship bill is tabled by the government, there should be further public involvement in delineating the essential elements of Canadian citizenship.

The Committee refers to the government the following general principles, which we feel may be expressed in the form of a Preamble in the upcoming legislation:

- There must be equal treatment of Canadian-born and naturalized citizens;
- There should be no “probationary” citizenship status;
- The legislation should enhance English and French as the official languages of Canada;

- Citizenship should be seen as a right for those who qualify, rather than a privilege;

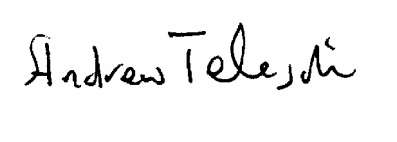
- No one should be deprived of Canadian citizenship if doing so would render them stateless;

- All determinations under the Act should be made by an independent decision-maker in a judicial process free from political influence; and,

- Rights come with citizenship, but also responsibilities.

Copies of the relevant Minutes of Proceedings (*Meeting Nos. 7, 8 9 and 11*) are tabled.

Respectfully submitted,



Hon. Andrew Telegdi, M.P.
Chair

MINUTES OF PROCEEDINGS

Thursday, November 25, 2004
(*Meeting No. 11*)

The Standing Committee on Citizenship and Immigration met *in camera* at 9:15 a.m. this day, in Room 209 West Block, the Chair, Andrew Telegdi, presiding.

Members of the Committee present: David A. Anderson, Roger Clavet, Meili Faille, Hedy Fry, Bill Siksay, Andrew Telegdi and Lui Temelkovski.

Acting Members present: David Tilson for Inky Mark.

In attendance: *Library of Parliament*: Benjamin Dolin, Analyst.

Pursuant to Standing Order 108(2), the Committee resumed its study on Citizenship Issues.

The Committee resumed consideration of a draft report.

At 9:18 a.m., the sitting was suspended.

At 9:19 a.m., the sitting resumed in public.

On motion of Roger Clavet, it was agreed, — That the Standing Committee on Citizenship and Immigration congratulates Benjamin Dolin on: the quality of his report, the pertinence of the summary and the relevance of the report's content and the accuracy of various points of view expressed.

At 9:22 a.m., the sitting was suspended.

At 9:23 a.m., the sitting resumed *in camera*.

It was agreed, — That the title of the report be: "Updating Canada's Citizenship Laws: issues to be addressed."

It was agreed, — That the Chair, Clerk and Analyst be authorized to make such grammatical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That the draft report, as amended, be concurred in and that the Chairman be instructed to present it to the House.

Pursuant to Standing Order 81(5), the Committee resumed consideration of the Supplementary Estimates (A) 2004-2005: Votes 1a, 5a and 10a under the Department of

Citizenship and Immigration Canada referred to the Committee on Thursday, November 4, 2004.

It was agreed, — That Vote 1a carry.

It was agreed, — That Vote 5a carry.

It was agreed, — That Vote 10a carry.

ORDERED, — That the Chair report Votes 1a, 5a and 10a under Department of Citizenship and Immigration to the House.

The Committee proceeded to the consideration of matters related to Committee business.

It was agreed, — That the Chair be authorized to plan and finalize the budgets and itineraries for the Committee's travel in February and/or March 2005, and to present the said budget or budgets to the Subcommittee on budgets of the Liaison Committee and that the required staff accompany the Committee when it travels from place to place inside Canada, and that the Chair be authorized to seek an Order of Reference from the House of Commons for the Committee's travel.

At 11:00 a.m., the Committee adjourned to the call of the Chair.

William Farrell
Clerk of the Committee