Legislative Summary **LS-442E**

BILL C-18: THE CITIZENSHIP OF CANADA ACT

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1 November 2002

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LEGISLATIVE HISTORY OF BILL C-18

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	31 October 2002	First Reading:	
Second Reading:	8 November 2002	Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

Bill C-18, An Act respecting Canadian citizenship, received second reading in the House of Commons on 8 November 2002. The bill is intended to:

- modernize outdated parts of the citizenship law;
- strengthen and clarify some provisions that have been contentious;
- replace current procedures with a new administrative structure;
- introduce some additional powers to deny citizenship;
- introduce measures to emphasize the importance of citizenship; and
- repeal and replace the current *Citizenship Act*.

The bill is very similar to Bill C-63, introduced in the first session of the 36th Parliament, and Bill C-16, introduced in the second session of the 36th Parliament. Bill C-16 had been considered and amended by the Standing Committee on Citizenship and Immigration, and passed third reading in the House of Commons on 30 May 2000. It did not complete Committee stage in the Senate before the election call and died on the *Order Paper*. The few substantive differences between Bill C-16 and Bill C-18 are summarized in the Appendix of this Legislative Summary.

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

Prior to 1947 and the introduction of the first *Canadian Citizenship Act*, there was legally no such thing as Canadian citizenship. Both native-born and naturalized citizens were British subjects. In 1977, the current *Citizenship Act* came into force, making extensive changes to the law. Citizenship became more widely available, because the Act, for example, reduced the required period of residency from five to three years as well as removed the special treatment for British nationals and the remaining discrimination between men and women.(1) The 1977 Act also provided that Canadians could hold dual citizenship, reversing the previous situation in which Canadian citizenship was lost upon the acquisition of the citizenship of another country. Although minor amendments have been made to Canada's citizenship law over the years, Bill C-16 represents the first major overhaul since 1977.

The changes have been a long time coming. In early 1987, the government announced plans to bring in amendments to the Act, and issued a discussion paper entitled *Proud to Be Canadian* which outlined a number of issues and options for change and called for public comment. No further significant parliamentary action was taken at that time, however.

The Liberal government elected in 1993 announced its intention to overhaul the Act, and asked for the advice of the Standing Committee on Citizenship and Immigration. The resulting Committee report, *Canadian Citizenship: A Sense of Belonging*, was presented to the House of Commons in June 1994. It raised a number of issues now addressed in Bill C-18, as well as some others that have not been included.

DESCRIPTION

Bill C-18 contains many features that are identical or very similar to the existing provisions in the law. The description of the bill in this section will therefore concentrate on proposed provisions that differ from those in the current Act.

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(1) There remained a question of discrimination that was settled by the Supreme Court of Canada in 1997. Before 1977, children born abroad of women who were Canadian citizens would not have qualified for citizenship; under the current Act, such children are required by the Act to make an application for citizenship and undergo a criminal and security check. In contrast, children born abroad before 1977 to a Canadian father need only register their births. In early 1997, the Supreme Court held this provision to be discriminatory and in violation of section 15 of the *Canadian Charter of Rights and Freedoms*. See *Benner* v. *Canada,* [1997] 1 S.C.R. 358.

A. Interpretation (Clause 2)

Three provisions in the interpretation section of the bill are of interest. To begin with, the term "common-law partner," which appears in later sections of the Act for the first time, is defined. Clause 2(1) refers to a person cohabitating with an individual in a conjugal relationship, having so cohabitated for at least one year. This is in line with other federal statutes, particularly the *Modernization of Benefits and Obligations Act*.(2)

Clause 2(2)(b) deals with Indians who are registered under the *Indian Act*, but who are not citizens. The bill proposes that such individuals who choose to become citizens (likely to be few in number) will on registration be deemed to be permanent residents, thereby allowing them to begin the naturalization process.

Another provision of note is clause 2(2)(c), under which a person is said to reside in Canada on any day when he or she is physically present in Canada and not subject to a probation order, on parole or incarcerated. The implications of this provision will be discussed in more detail below.

B. Purpose (Clause 3)

For the first time, the purpose of the legislation is clearly outlined. Such a clause was absent in Bill C-18's predecessors. Clause 3 provides that the legislation is intended to:

- define who is a citizen and how citizenship may be acquired;
- encourage the acquisition of citizenship and promote respect for Canadian principles and values;
- protect the integrity of citizenship and reaffirm that all citizens have equal status; and
- require a strong attachment to Canada for the acquisition of citizenship.

(2) This Act was passed following the 1999 Supreme Court of Canada decision *M.* v. *H.* and ensures that common-law relationships (both opposite and same sex) are treated equally under federal law.

C. The Right to Citizenship (Clauses 4-12; Clause 14)

1. Birth on Canadian Soil

Bill C-18 continues the current rule that children born in Canada are Canadian citizens at birth (clause 5(1)(a)). The only exceptions (as now) apply to the children of foreign diplomats and their employees (clause 5(2)).

2. Derivative Citizenship

Currently, any person born abroad of a Canadian parent is automatically a citizen. This concept is often called derivative citizenship. Second and subsequent generations born abroad are also automatically citizens, but they lose their citizenship unless, by age 28, they have registered and have either lived in Canada for one year immediately prior to the application or have established a substantial connection to Canada. The bill limits the possibility of automatic citizenship to the second generation born abroad, and places more onerous requirements on such individuals seeking to retain citizenship past the age of 28 (clause 5(3)). Clause 14 specifies that such a person must apply to retain citizenship and must have resided in Canada for at least 1,095 days (a total of three years) during the six years before the application. As will be discussed below, actual physical presence is required during the three-year period. This is the same residency requirement placed on all permanent residents wishing to become citizens.

To mitigate the statelessness that would befall the third generation born abroad, clause 11 provides that citizenship will be granted, upon application, to a person under 28 years of age who has never acquired (or did not have the right to acquire) any country's citizenship but who has been born abroad to a parent who was a Canadian citizen. To qualify, the person will be required to have spent at least three years of the preceding six in Canada, and must not have been convicted of an offence against national security. What such an offence might be is not specified, and there is no such specific category of offence in either the *Canadian Security Intelligence Service Act* or the *Criminal Code*.

3. Citizenship by Naturalization

a. Residency

Bill C-18 introduces a number of changes to the requirements for attaining citizenship other than by birth. One of the most important of these adds precision to the residency requirement by defining "residence" as physical presence in Canada (clause 2(2)(c)).

Applicants are required to accumulate three years (1,095 days) of actual physical presence within the six years preceding the citizenship application. The credit for time spent in the country before becoming a permanent resident will continue, provided the person has legal status. Exception to the physical residency requirement is 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, as is the case in the current law. Bill C-18 extends this exception to common-law partners (clause 7(3)).

The objective residency requirement stated in Bill C-18 – actual physical presence for a total of three years (1,095 days) within the specified period – ends the considerable uncertainty in the current law. Although the Act currently requires a three-year period of residency, that word is not defined. As a result, judicial decisions with radically differing interpretations of the residency requirement have seriously complicated the law. The very year after the current Act came into effect in 1977, a case decided by the Federal Court held that actual physical presence in Canada was not necessary in order to fulfil the requirements.(3) What was needed, the judge held, was that the applicant show a significant attachment to Canada throughout the period, even if physically absent. This could be established by such indicators as a retained residence (although not essential), accounts in Canadian banks, investments, club memberships, provincial driving licences, and so on. The result, in its extreme form, has been that some applicants have been granted Canadian citizenship even though their total time actually in the country amounted to mere days or a few months.

However, other judges of the Federal Court disagreed strongly with that approach and were unwilling to excuse lengthy absences from the country. The contradictory caselaw that developed around this issue led to unpredictability and uncertainty in the law and, in the view of some, seriously compromised the residency requirement as well as the value of Canadian citizenship in the process. The 1994 report of the Standing Committee recommended that the definition of residency in the Act should require a meaningful degree of physical presence.

b. Knowledge of an Official Language and of Canada

Bill C-18 continues the requirement for applicants to demonstrate an adequate knowledge of an official language (clause 7(1)(c)). Applicants also continue to be required to demonstrate that they have an adequate knowledge of Canada and the responsibilities and

(3) *Re Papadogiorgakis*, [1978] 2 F.C. 208.

privileges of citizenship (clause 7(1)(d)), and are not precluded from using an interpreter for this purpose. Lest either requirement prove too onerous for certain individuals (perhaps the aged or house-bound), the Minister continues to have the power to waive the language requirements on compassionate grounds. (Both tests are currently waived for people over age 60, and this may continue to be the case.)

4. Children Adopted Abroad

New provisions govern the citizenship rules for Canadian citizens' children adopted abroad (clause 9). Under the current law, children adopted abroad are required to become permanent residents before proceeding to citizenship. This has several implications. First, it means that adopted children are treated differently from biological children born abroad to Canadian citizens. The Federal Court had indicated that distinctions in the law based on "adoptive parentage" violate the equality rights provisions in section 15 of the *Canadian Charter of Rights and Freedoms*.(4) Second, it means that children adopted by Canadian parents who are living abroad and who wish to continue doing so cannot become permanent residents and, therefore, cannot become Canadian citizens.

For all adoptions that took place after 14 February 1977, Bill C-18 provides that:

- a minor adopted abroad in accordance with the laws of the countries of both the child and the parents will become a Canadian citizen upon application;
- the adoption must have been in the best interests of the child;
- the adoption must have created a genuine relationship of parent and child; and
- the adoption cannot have been undertaken in order to circumvent any requirements for admission to Canada or for citizenship.

During discussion in Committee in the course of its study of Bill C-63, and subsequently in the press, questions were raised as to the scope and meaning of the provision requiring an adoption to have been in the best interests of the child. Departmental officials explained it as a way of meeting the concerns of the provinces, which were said to centre on medical examinations, solely for information purposes for parents. Officials stated that the additional criterion would permit broader and more complete regulation of the

(4) *Minister of Citizenship and Immigration* v. *Dular*, [1998] 2 F.C. 81.

adoption/citizenship process, including the power to require medical examinations and home studies.

Bill C-18 also includes a provision that was not in its predecessors regarding persons adopted as adults (clause 9(2)). The bill grants a right of citizenship to someone over 18 years of age who is adopted by a Canadian citizen provided the adoptive parent acted as the individual's parent before he or she was 18. The adoption must also meet the other criteria listed above.

D. Loss of Citizenship (Clauses 13-18)

1. Derivative Citizenship

The loss of derivative citizenship (clause 14) has been discussed in the previous section.

2. Renunciation

As in the current law, Bill C-18 sets out the circumstances under which a person can renounce Canadian citizenship (clause 15). The criteria are very similar. A renunciation will be permitted only if the person is a citizen elsewhere (or will become one upon renunciation), is not a minor or suffering from a mental disability that prevents him or her from understanding the significance of renouncing citizenship, and resides outside of Canada.

3. Revocation

The Minister is permitted to commence an action for revocation of citizenship in Federal Court if it is alleged that citizenship was obtained by false representation, by fraud or by knowingly concealing material circumstances (clause 16).[5] There will be a presumption that a person who obtained permanent residence by such means also acquired citizenship illegally (clause 16(3)). There is no clause prohibiting an appeal from any decision of the Federal Court – Trial Division.[6]

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(5) Currently, the Governor in Council must initiate the revocation proceedings following a report by the Minister.

(6) In Bill C-16, clause 17(3) would have provided that any decision of the Federal Court – Trial Division was final and not subject to appeal.

The Minister, when applying for a revocation of citizenship, may also request that the person be declared inadmissible on security grounds, for violating human or international rights, or for organized criminality (clause 16(4)). This new provision mirrors inadmissibility provisions in the recently enacted *Immigration and Refugee Protection Act (IRPA)*. A judgment that a person is inadmissible on these grounds becomes a removal order under the *IRPA* without the need for further hearings (clause 16(5)). This streamlining of the process should significantly accelerate these types of removals. It should also be noted that clause 16(6) provides that the Court would first determine, in accordance with its regular practice, whether the person concerned improperly obtained citizenship. If the Court determines that citizenship should be revoked, when assessing whether the person is inadmissible on security grounds, for violating human or international rights, or for organized criminality, the Court is not be bound by any technical or legal rules of evidence. It is permitted to receive and base a decision on any evidence it considers credible or trustworthy.

Clause 17 of the bill sets out in detail the process for those accused of terrorism, war crimes or organized crime. It allows for the use of protected information in these cases when the judge determines that disclosure could be injurious to national security or to the safety of any person (clause 17(4)(b)). The person who is subject to the revocation proceeding will be given a summary of the evidence but the judge will exclude any sensitive information (clause 17(4)(h)). This clause mirrors the provisions in sections 76-81 of the *IRPA* relating to protection of information on security grounds. The revocation decision will be made on the balance of probabilities and will be final; that is, it cannot be appealed or judicially reviewed (clause 17(9)).

If citizenship is revoked pursuant to clause 16 or 17, the *IRPA* provides that the person loses permanent resident status as well[7] and is inadmissible to Canada for misrepresentation.[8]

4. Annulment Orders

In addition to the existing mechanism for revoking citizenship described above, Bill C-18 gives the Minister a new power to issue an annulment order (clause 18). This order

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(7) This provision can be found at section 46(2) of the *IRPA*, which would be amended by clause 67 of Bill C-18 as a consequence of the changes to the citizenship laws proposed in the bill.

(8) This provision can be found at section 40(1)(d) of the *IRPA*, which would be amended by clause 66 of Bill C-18 as a consequence of the changes to the citizenship laws proposed in the bill.

can declare that any obtention, retention, renunciation or resumption of citizenship is void. The power must be exercised within five years of the original citizenship decision, and applies in any case where the person has used a false identity, or was originally ineligible to be granted citizenship for any of the reasons in clause 28. That clause sets out numerous grounds of ineligibility for citizenship, including: criminality, implication as a war criminal, certain *IRPA* infractions, and security concerns. The person must be given notice regarding the proposed order, after which he or she may make representations to the Minister. The Minister must inform affected persons that the order has been made, and advise them of their right to apply for judicial review.

The procedure for annulment may be contrasted with the revocation procedure. In a revocation case, the Court itself has to be satisfied that the person obtained citizenship by false representation, by fraud, or by knowingly concealing material circumstances. To do this, the Court holds a full hearing.

One of the grounds for making the proposed annulment order, the use of a false identity, could easily be comprised in the criteria for revocation – false representation, fraud, or concealing material circumstances. In the case of an annulment order, however, no appeal is permitted. Although the decision of the Minister may be reviewed in the course of a judicial review by the Federal Court, the grounds of review will be considerably narrower than if an appeal were allowed, and a full hearing will not be held.

E. Restoration of Citizenship (Clauses 19-20)

Bill C-18 continues the current provisions for restoring citizenship, with only a few modifications. Currently, individuals who lose their citizenship must first be admitted for permanent residence, and may apply for citizenship after spending the year immediately before the application in Canada. The bill instead requires individuals in this position to reside in Canada for at least 365 days in the two years immediately preceding the application (clause 19). Again, the important change is that the new definition of residence requires actual physical presence.

The spouses and common-law partners of Canadian citizens working abroad for the Canadian armed forces, the federal public service, or the public service of a province will not be penalized because of their non-residence (clause 19(2)).

F. Prohibitions (Clauses 21-28)

1. Denial of Citizenship Based on a Disregard for Canadian Principles and Values

Bill C-18 introduces a new power to permit the Governor in Council, upon a report from the Minister, to deny a person citizenship where there are reasonable grounds to believe that the person has demonstrated a "flagrant and serious disregard for the principles and values underlying a free and democratic society" (clause 21).(9) The power is not only new but also represents a conceptual change from the current law, under which citizenship is a right, not a privilege, providing that objective criteria have been fulfilled. The new provision might be used, for example, to deny citizenship to an individual known to distribute hate literature but who otherwise fulfilled the criteria.

In order to trigger this section, the Minister must provide the person concerned with a summary of the contents of the proposed report to the Governor in Council. The person then has 30 days in which to respond in writing to the Minister. If the Minister proceeds with the report, and the Governor in Council agrees, the latter will order citizenship to be denied. The decision of the Cabinet is not subject to appeal or review by any court, and is valid for five years. The order is conclusive proof of the matters stated in it.(10)

2. Denial of Citizenship on National Security Grounds (Clauses 23-27)

Bill C-18 retains the existing procedures for denying citizenship on national security grounds, with a few changes. As now, the process is triggered by a report by the Minister to the Security Intelligence Review Committee stating that there are reasonable grounds to believe that the person has engaged or will engage in an activity that is a threat to the security of Canada, or an activity related to organized crime.

Within 10 days of the report to the Review Committee, the person concerned will be informed of it and the possible consequences. The Committee will investigate, using procedures set out in the *Canadian Security Intelligence Service Act*; as soon as practicable, the

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(9) In Bill C-16, a similar clause had provided for a denial of citizenship when it was not "in the public interest." The new wording in Bill C-18 is intended to provide greater clarity.

(10) It should be noted that, in principle, there is no such thing as an absolute discretion to make a decision. Even in the face of a "privative" clause stating that no review by any court would be possible, the courts could decide to intervene in the case of a serious breach of the principles of fairness during the process of denying citizenship.

Committee will send the person concerned a summary of the information available to it. In a new provision, the Review Committee is required to have regard to whether the information can be disclosed without injury to national security or to the safety of persons (clause 23(5)). When it has completed its investigation, the Review Committee will report its conclusion to the Governor in Council and to the person concerned, although not necessarily at the same time.

If for any reason the Review Committee finds itself unable to act (for example, if there might be a perception of bias), the amendments to the Act made in 1997 will be continued. They provide that a retired judge will assume the investigation and report to the Governor in Council (clauses 24-26).(11)

If the Governor in Council declares that the person is a security risk, the application for citizenship will be rejected. A new provision specifies that such a declaration is final and not subject to appeal or review by any court.(12) The bill increases the duration of a declaration from two years to five (clause 27).

3. Denial of Citizenship on Other Grounds (Clause 28)

Bill C-18 expands somewhat the list of prohibitions relating to the granting of citizenship. Indictable offences committed outside Canada are now taken into account and treated in the same way as those committed in Canada. The prohibition regarding offences committed elsewhere extends to the whole process: being charged with, on trial for, and requesting appeals and reviews of such offences (clause 28(c)). Being convicted of an indictable offence committed abroad (even if the foreign offence has been pardoned) will add at least three years to the time needed to attain citizenship. For the first time, being convicted of two or more summary conviction offences will be considered, and will delay citizenship for one year.

Also new is a prohibition relating to those convicted under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, which include the offences of genocide, war crimes and crimes against humanity, as well as the inchoate offences (conspiracy, attempt, counselling or being an accessory after the fact) in respect of these crimes.

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(11) Before the appointment is made, the Prime Minister would have to consult with the Opposition Leaders in the Senate and House of Commons, as well as the leader of every other officially recognized party: clause 24(1).

(12) As noted in footnote (10), such a privative clause might not be successful in precluding judicial review by the courts in an appropriate case.

The bill also precludes citizenship for anyone under a removal order, or subject to an inquiry under the *IRPA* that could lead to removal or the loss of permanent residence status. Clause 28 also includes as prohibitions the procedures previously discussed, such as the revocation, annulment, public interest, and public security processes.

G. Administration (Clauses 29-46)

1. Citizenship Commissioners

Bill C-18 introduces major changes in the way citizenship applications are dealt with. The current citizenship judges, headed by a chief judge, will be replaced and their substantive duties taken over by public sector workers, acting under the delegated authority of the Minister (clause 44). Their ceremonial duties will be taken over by full-time or part-time Citizenship Commissioners, who will be appointed by the Governor in Council, during pleasure, for terms of up to five years (clause 31). The positions will be remunerated. A Senior Citizenship Commissioner may be designated to oversee the Commissioners and coordinate their activities.

In order to be appointed, Citizenship Commissioners must "have demonstrated an understanding of the values of good citizenship and be recognized for their valuable civic contribution" (clause 31(6)). Their duties will be to:

- preside at citizenship ceremonies;
- promote citizenship;
- provide the Minister, on request, with advice on citizenship applications, the exercise of the Minister's discretion, and how best to evaluate citizenship applicants' knowledge of an official language and of the rights and responsibilities of citizenship. (Note: it is not clear how the advisory side of the Commissioners' mandate would be accomplished, nor why the Commissioners would be particularly well-suited to provide such advice); and
- carry out any directions of the Minister (clause 31(7)).

Bill C-18 emphasizes the importance of the citizenship ceremony in heightening new citizens' awareness of the responsibilities and privileges of citizenship, and it directs Citizenship Commissioners regarding both the purpose and content of the citizenship ceremony (clause 33). Among other duties, Commissioners will be required to:

- underline the importance of the ceremony as a milestone in the new citizens' lives;

- ensure that the oath was taken with dignity and solemnity; and

- encourage citizens to give expression to their civic pride, including respect for the law, the importance of voting and participating in public affairs, and respect and understanding between Canadians.

2. Certificates (Clauses 35-38)

The rules regarding the issuance, surrender, cancellation and return of citizenship certificates in these clauses can be found in the current statute or regulations. The bill consolidates these provisions.

3. Offences (Clauses 39-42)

Bill C-18 modifies one offence provision in the existing law, adds a new one to cover citizenship officials, and updates the penalties:

- the offence of trafficking in certificates is modified by the addition of the words "whether or not for profit" (clause 39(2)(d));

- citizenship officials who falsify documents or statements, participate in a bribe, or contravene any part of the Act or of the regulations are guilty of an offence (clause 40 (1)(a) and (b));

- individuals who bribe (or try to bribe) an official, or impede a citizenship official or who, not being citizenship officials, pretende to be so, are guilty of an offence (clause 40(1)(c-e));

- all offences are either indictable or summary conviction offences at the election of the Crown;[13]

- the penalties upon conviction on indictment are raised to a fine of $10,000 (currently $5,000) or imprisonment for a term of not more than five years (currently three years), or to both; and

- the three-year limitation period for summary conviction offences begins to run when the Minister becomes aware of the matter, not, as now, when the alleged offence takes place.

4. Regulations (Clause 43)

The bill widens the power of the Governor in Council to make regulations in a number of areas, including:

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(13) Previously, some offences (those contained in clause 39(2)) had been punishable only on summary conviction. The exception to the rule that all offences would be dual (or "hybrid" offences) would be the general offence provision in clause 39(5) whereby contraventions of the Act for which no punishment is specified would be summary conviction offences only.

- the evidence required for applications, including medical evidence to establish parentage;
- who can make an application on behalf of a minor;
- waivers of fees;
- the factors for determining *bona fide* adoptions and defining what constitutes a relationship of parent and child; and
- the powers of the Registrar of Canadian Citizenship, an official who will be appointed by the Minister (clause 44(2)).

5. Delegation of Minister's Powers (Clause 44)

It is interesting that the mechanism for assessing and approving citizenship applications, and governing all of the other administrative work relating to citizenship, is not readily apparent from Bill C-18. As noted above, the current administrative duties performed by citizenship judges will be taken over by public sector workers and, possibly to some extent, Citizenship Commissioners. (Indeed, this has already happened to the extent permitted under the current Act.) All their decisions will be taken in the name of the Minister who, by virtue of clause 29, will have the legal duty to examine all applications under the Act and to inform rejected applicants of that fact and of the availability of judicial review in the Federal Court. All of those decisions can be, and will be, delegated. Clause 30 also provides that the Minister may reverse any decision refusing citizenship that appeared to contain a "material error."[14] This permits reversal of faulty decisions without forcing an applicant to proceed to Federal Court.

Clause 44(3) specifies that only a Canadian citizen may:

- be appointed as a Registrar of Citizenship;
- determine a person's status as a citizen; or
- make a decision on an application to obtain, retain, renounce or resume citizenship.

6. Disclosure (Clause 45)

A new provision will permit the name of a new citizen to be disclosed, unless the person objects, to the Speakers of both Houses, thereby allowing the Parliamentarians representing the area where the new citizen resides to offer congratulations.

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(14) The term "material defect" had been used in Bill C-16.

H. Status of Certain Persons in Canada (Clauses 47-54)

These provisions, which are virtually identical in substance to those in the current law, deal with:

- the status of British subjects, and citizens of the Commonwealth and Ireland;
- the power of a province to restrict the holding of property by non-citizens and the limitations on that power; and
- the equality of citizens and non-citizens in the courts.

I. Transitional Provisions, Consequential Amendments, Conditional Amendment (Clauses 55-73); Repeal and Coming into Force (Clauses 74 and 75)

Clause 55 specifies what will happen to pending applications should Bill C-18 be passed and come into force. All proceedings relating to an application will be dealt with under the new Act, with the exception of any applications that have reached a citizenship judge. However, the new provisions regarding denial of citizenship where the person has serious disregard for the principles and values underlying a free and democratic society, and the national security provisions of clauses 23-27, *will* apply. The existing powers of citizenship judges in these cases will continue as if the current Act were still in force. Until the current Act is repealed, clause 55(5) allows new citizens to use either the current oath of citizenship or the one set out in the schedule to Bill C-18.

Under clause 57, citizenship judges automatically become Citizenship Commissioners, with the same term of office.

Clause 58 provides a three-year period during which individuals who were born outside of Canada to a Canadian parent between 1947 and early 1977, and who are not currently Canadian citizens, may acquire citizenship upon application. Adopted children are also covered. Once such individuals acquire citizenship, their children can also gain citizenship if they establish a substantial connection with Canada. Similarly, *their* children may also be granted citizenship, again if they establish a substantial connection with Canada.

These provisions respond to many of the concerns raised by the Mennonite Central Committee Canada in testimony to the Standing Committee on Citizenship and Immigration during its examination of Bill C-63. The Mennonites pointed out that many members of their community had moved to Latin America beginning in the 1920s. Life had

often proved difficult there, however, and some of their descendants had moved back to Canada. The citizenship status of these descendants in Canada depended on an interpretation of several sections of the current Act whose provisions would have been dropped by Bill C-63. The Mennonite Committee requested that the new law contain measures to facilitate the acquisition of Canadian citizenship for those in their community who still wished to return to this country, or who had already done so. In response, Bill C-16, and now Bill C-18, provide a window of three years for such individuals to regularize their status, but say explicitly that the special treatment will end after that period.

A number of other individuals, besides the Mennonites, will also be able to benefit from the provisions of clause 58 and be granted citizenship. This will address some human rights inconsistencies created by the citizenship legislation in effect from 1947 to 1977.

Upon the coming into force of Bill C-18, the current *Citizenship Act* will be repealed (clause 74).

J. The Oath of Citizenship (Schedule)

Taking the oath of citizenship is a mandatory part of the citizenship process. The current oath 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 replaces that by the following:

> 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.

It should be noted that removing the words "Her Heirs and Successors" does not imply that pledging allegiance to the British Crown ends with the death of the current Queen. Section 35 of the *Interpretation Act* states that, in every enactment, the phrases "Her Majesty," "His Majesty," "the Queen," "the King," or "the Crown" mean the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth. Thus, upon her death, the reference to Queen Elizabeth will automatically be read as a reference to the succeeding monarch.

COMMENTARY

The Standing Committee on Citizenship and Immigration reviewed both Bill C-63 and Bill C-16, and many of the comments made then are applicable to Bill C-18. A number of witnesses before the Committee noted that the procedure for evaluating citizenship applications would be changed to an administrative system, from one where the citizenship judge enjoys a measure of independence. Some questioned that change, particularly when it was coupled with the removal of trials *de novo* in the Federal Court and their replacement with more limited judicial review.

Questions were raised about the proposed new power of the Minister to annul citizenship granted in cases where a false identity had been used or the person had been ineligible. Concerns centred on the sufficiency of the process governing annulments. Witnesses also questioned the vagueness of the new power of Cabinet, acting on a report of the Minister, to deny citizenship in the public interest. Although the language of Bill C-18 changes the wording (clause 21), such concerns may remain.

Some witnesses questioned the need to have Citizenship Commissioners at all, while others felt that these were important and asked for their role to be defined more precisely.

A few groups felt that the proposed oath was inadequate, for a variety of reasons.

As noted earlier, Bill C-18, like its precursors, does not change the rule that birth on Canadian soil confers Canadian citizenship. One of the groups that addressed this issue in committee opposed maintaining the *status quo*, but the others supported its retention. In committee, the Minister and officials maintained that the policy would remain the same in the absence of data showing that it gave rise to a significant problem.

More extensive commentary on other contentious aspects of the bill appears below.

A. Changes to the Residency Requirement

As noted above, the current residency rules for citizenship are fraught with difficulties. In the absence of a definition of “resident,” the rules are inconsistently applied by judges; outcomes are therefore unpredictable, with citizenship having been granted in some cases to virtual strangers to the country. Bill C-18 clarifies and simplifies the requirements: actual

physical presence in the country is necessary for a total of three out of the six years prior to the citizenship application.

As originally tabled, Bill C-63 had proposed that applicants be required to meet the physical residency test within five years. These provisions were strongly criticized in committee. Noting that, in a global economy, business people have to move around, immigration lawyers and representatives of ethno-cultural groups stated that the proposed rules would act as a disincentive for business people considering immigration to Canada and would be unfair to others forced to spend considerable time outside the country for other reasons. On the other hand, it may be pointed out that, even if individuals who need to travel extensively cannot qualify for citizenship at a certain point in their working lives, they can still maintain their permanent resident status.(15) They are hardly "locked in" to Canada, as one critic was reported as saying. It remains to be seen whether these critics will be satisfied by the proposal for a six-year period of time, within which three years of physical presence are required.

The Committee received a more practical criticism, i.e., the proposed system will not work because there is currently no objective or independent way of proving a person's physical presence in Canada. Fraud in this regard is not difficult because Canada does not keep records of who enters or exits the country. Although officials can ask an applicant for citizenship to provide whatever documentation might assist in proving physical presence, at the end of the day the government must rely on the honesty of applicants. In Committee, departmental officials acknowledged the difficulties but maintained that fraud could be minimized through the development of profiles, quality assurance, and the use of a variety of documents.

B. Children Adopted Abroad

As noted above, children adopted abroad may become Canadian citizens upon application, without having to first become permanent residents. All witnesses who addressed this issue supported it in general, although some questioned the requirement that adoptions completed abroad would have to conform to the laws of the country of the child and the parents.

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(15) It should be noted, however, that there are residency requirements for maintaining permanent residence. Section 28 of the *IRPA* requires residency for at least 730 days in any five-year period, with certain exceptions.

Officials said that they were responding to both the spirit and the letter of international conventions on inter-country adoptions.

Witnesses questioned what procedures would be used for assessing whether children adopted abroad meet the requirements, i.e., whether:

- the adoption was in the best interests of the child;
- there is a genuine relationship of parent and child;
- all adoption laws have been complied with; and
- the adoption was not intended to circumvent Canadian immigration or citizenship law.

Currently, visa officers make these kinds of decisions in assessing the application for permanent residence of an adopted child sponsored as a member of the family class. Departmental officials have stated that this practice would continue.

If a visa officer refuses an application (a common occurrence), the sponsor currently has a right to appeal to the Appeal Division of the Immigration and Refugee Board. The Board considers all aspects of the case, including any humanitarian or compassionate factors that may exist. Witnesses pointed out that because there would be no application for permanent residence, there would be no sponsor; therefore, no appeal to the Immigration and Refugee Board would be possible. Parents could apply for judicial review to the Federal Court, but the grounds would be significantly narrower and the procedures more formal than under the existing system. Thus, it would appear that parents would be *worse off* in cases of rejection under the proposed system than in cases of rejection under the current system. Some witnesses suggested that parents refused citizenship for their adopted children should be able to appeal to the Board; however, officials pointed out that the Immigration and Refugee Board handles only matters that arise under the *IRPA*.

It should be noted that the adoption provisions in Bill C-18 apply only to children whose adoptions were completed abroad. They do not apply to children sponsored to Canada for the purpose of adoption in this country. These children must still become permanent residents before being admitted to Canada. Members of the Committee pointed out that in Quebec no international adoption is complete before the child arrives in Canada and the adoption is approved by a tribunal. At the time that Bill C-16 was under consideration, it appeared that negotiations between the federal government and Quebec had broken down, but they have since resumed.

From 1996 to 2001 inclusive, almost 13,500 children who had been adopted abroad or were to be adopted in Canada were landed.(16) Of these, most had been adopted abroad. Still, in that period, more than 1,000 children, representing 8% of the total, came to Canada before the adoption was finalized.(17) These children will be unaffected by Bill C-18 and must still become permanent residents.

C. Revocation Procedures

In Committee testimony and at Report Stage of Bill C-16 in the House of Commons, questions were raised regarding the adequacy of the procedures for revocation of citizenship. Witnesses before the Committee and some Members in the House pointed out that the lack of an appeal from cases decided by the Trial Division of the Federal Court left no way to settle the opposing views of different judges on points of law. Questions were raised about whether the ultimate decision on revocation should be left with the executive (i.e., the Governor in Council), or whether it should be moved to the courts. Amendments to accomplish those ends, however, were defeated in both Committee and the House of Commons. Bill C-18 addresses both these concerns. Clause 16 provides that a Federal Court will make the revocation order – not the Governor in Council – and an appeal is available, except when the clause 17 procedure is invoked (see page 8 of this Legislative Summary).

SENATE CONSIDERATION

Following second reading in the Senate, Bill C-16 was studied in depth by the Senate Standing Committee on Legal and Constitutional Affairs. The Senators expressed concerns about many provisions of the bill, focusing in particular on the provisions that would allow the Governor in Council to refuse citizenship in the public interest, the procedures for

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(16) Information received from Citizenship and Immigration Canada.

(17) That figure is slightly skewed by higher percentages in 1992 and 1993; typically, either 6% or 7% of the total are children coming to Canada to be adopted.

revocation and annulment of citizenship, the oath, and the lack of any statement about the meaning and value of Canadian citizenship. This last point may be considered to have been addressed with the "Purpose" sections (clause 3) of Bill C-18. The Committee's study of the bill was still in progress when the election was called in October 2000 and the 36th Parliament ended; thus, it died on the *Order Paper*, as had its predecessor, Bill C-63.

APPENDIX 1

Bill C-16 vs. Bill C-18
Key Differences[1]

Last Citizenship Bill: C-16	New Citizenship Bill: C-18
Adoption • Adopted person has to be a minor at the time of adoption to be granted citizenship under this clause.	*Adoption* • New clause allows for adoptions that takes place after a person turns 18 years of age, but requires that a genuine parent-child relationship exist prior to the child turning 18.
Annulment • Clause 18(3) stated that the Minister must send a notice to a person when he intends to annul their citizenship.	*Annulment* • Clause 18(3) is amended to ensure that the notice must contain a summary of the grounds alleged against the person and which form the basis for annulling citizenship.
Consultation with Senate • When appointing a retired judge to perform the functions of the Security Intelligence Review Committee (SIRC), the Governor in Council consults with the Prime Minister, the Leader of the Official Opposition and the leader of any party having at least 12 members in the House. (clause 24(1))	*Consultation with Senate* • The consultation process will include the Leader of the Opposition in the Senate. (clause 24(1))
National Security • The conclusion of the Security Intelligence Review Committee's report should be released to the person concerned "when it is convenient to do so." (clause 23(6))	*National Security* • The conclusion of the SIRC report should be released "as soon as practicable." (clause 23(6))
Public Interest • A new discretionary power allowed the Governor in Council to refuse citizenship in the "public interest." (clause 21(1))	*Principles of a Free and Democratic Society* • This clause has been newly worded and clearer parameters have been set out, so that the Governor in Council can refuse citizenship when a person has demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society. (clause 21(1))

(1) Source: Provided by CIC officials to the Committee analysts.

Last Citizenship Bill: C-16	New Citizenship Bill: C-18
Spouse • Clauses referring to "spouse" were not included in C-16, but were part of the Modernizing Benefits and Obligations bill.	*Spouse* • Clauses 2(1) and 6(2), to include common law partners as well as spouses, are re-integrated into the bill to ensure consistency with the *Modernizing Benefits and Obligations Act*.
Time spent in jail or on parole • Clause 2(2)(c)(ii) defined that periods of time spent in Canada when subject to a probation order, on parole or confined in a penitentiary, jail, reformatory or prison do not count toward meeting the residency requirement. • The parallel clause 28(a) said that a person could not be granted citizenship or takes the oath of citizenship if he or she is subject to a probation order, on parole or confined in a penitentiary, jail, reformatory or prison.	*Time spent in jail or on parole* • Clauses 2(2)(c)(ii) and 28(a) remain the same, but also include conditional and intermittent sentences.
Transition for Canadians Born Abroad • Children born abroad and subject to loss of citizenship will begin to lose citizenship in 2005. These children would lose citizenship if they do not reside in Canada for three years and apply to retain it.	*Transition for Canadians Born Abroad* • Under the bill, those subject to loss who turn 28 in 2005 would have to come to Canada by 2002 instead of by 2004 (as they would under the current law). A transitional provision has been added to the bill for those who are 22 years or older when the bill comes into force. This group would not be able to meet our policy objective of acquiring 1,095 days (three years) of residence in the six years before applying. Under the transitional provision, they will have an option to acquire one year of residence in the year before applying instead.

Last Citizenship Bill: C-16	New Citizenship Bill: C-18
Revocation • Minister sends a notice indicating the Government's intention to revoke citizenship and outlining the grounds. The person then has 30 days to ask that his or her case be referred to the Federal Court, Trial Division. If that happens, the Federal Court, Trial Division will review the case to determine if the person acquired citizenship by fraud, misrepresentation or knowingly concealing material circumstances. If the court finds that citizenship was obtained by fraud or if the case is not referred to court, the Minister can submit a report to the Governor in Council. The Governor in Council then decides whether to revoke citizenship.	*Revocation* • The Minister initiates revocation proceedings at the Federal Court, Trial Division. It is a fully judicial process including expedited removal where war crimes, terrorism or organized crime is involved. Cases will start in the Federal Court, and appeal will be available to either party. For rare cases involving protected information, the bill will propose a special procedure modelled on immigration legislation, not allowing an appeal.
War Crimes • Citizenship cannot be granted and the oath cannot be taken if a person is charged with war crimes offences under the *Criminal Code* of Canada. (clauses 28(f) & (g))	*War Crimes* • The provision is identical except that the war crimes offences referred to are now in the recently passed *Crimes Against Humanity and War Crimes Act*. (clauses 28(f) & (g))