



THE CANADIAN
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March 6, 2023

Via email: CIMM@parl.gc.ca

Salma Zahid, M.P.
Chair, Standing Committee on Citizenship and Immigration
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Dear Salma Zahid:

Re: Bill S-245 – *Citizenship Act* amendments

I write on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to recommend improvements to Bill S-245, which seeks to retroactively restore citizenship to individuals who lost theirs under s. 8 of the *Citizenship Act*, as originally enacted by Parliament in 1977.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members practising all areas of citizenship and immigration law. CBA Section members deliver professional advice and representation to thousands of clients in Canada and abroad.

Recommendations

The CBA Section supports the Bill's objective of retroactively restoring citizenship for those who lost it between February 15, 1977 and April 17, 1981. We make two recommendations to ensure that the Bill meets this objective:

1. Amend Bill S-245 to clarify what date citizenship will be recognized for those who previously lost theirs under s. 8; and
2. Amend Bill S-245, or adopt a new bill, to rectify the differential treatment of individuals born outside of Canada between February 15, 1977 and August 14, 2004 on the basis of a grandparent's gender and marital status.

Section 8 and births between February 15, 1977 and April 17, 2009

Until 2009, the retention requirements under s. 8 applied to all individuals born between February 15, 1977, and April 17, 2009, who were born outside of Canada to Canadian citizen parents in the second or subsequent generation.¹ These requirements had to be met by the individual's 28th birthday.

On April 17, 2009, Parliament enacted Bill C-37,² repealing the s. 8 retention requirements and retroactively restoring citizenship to all persons who lost it. However, s. 8 retention requirements were only repealed for those who had not yet lost their citizenship.³ Anyone who lost it under s. 8 after failing to meet the requirements did not have it restored.⁴

The CBA Section supports eliminating the requirement to meet the retention requirements by age 28 and retroactively restoring citizenship to their date of birth. However, it is unclear if Bill S-245 will restore citizenship as of the date the Act comes into effect, or retroactively to the date citizenship was lost. We recommend that this be clarified.

This is important because it impacts the ability to pass on citizenship to subsequent generations.

Under s. 1(1) Bill S-245 would amend s. 3(1) of the *Citizenship Act* to add (g.1):

the person was born outside of Canada after February 14, 1977, and would be a citizen had he or she applied to retain his or her citizenship under section 8 before April 17, 2009

No further clarification is given. The legislation should indicate a date when the citizenship is acquired.

First Potential Charter Issue – Forgotten Canadians

The CBA Section recommends an amendment to Bill S-245 or a new bill to pre-empt a potential *Charter* challenge to s. 3(4) of the *Citizenship Act*. Section 3(4) states that anyone who was a Canadian citizen on April 16, 2009, would be a Canadian citizen today even if the current Act would not recognize their claim to Canadian citizenship.⁵

Section 3(4) of the *Citizenship Act* inadvertently treats people differently based on a grandparent's gender and marital status. Bill C-245 likely compounds the problem.

The problem can be found in two mechanisms, in effect between February 15, 1977 and August 4, 2004, to regulate Canadian citizenship of individuals born outside of Canada before February 15, 1977 to Canadian citizen parents.

¹ *Citizenship Act*, SC 1974-75-76, s. 4.

² House of Commons, Report of the Standing Committee on Citizenship and Immigration: *Reclaiming Citizenship for Lost Canadians: a Report on the Loss of Canadian Citizenship*, December 2007, pp.33-34.

³ Canada, Bill C-37, *An Act to amend the Citizenship Act*, 2nd session, 39th Parl. 2008, s. 6.

⁴ Canada, Immigration Refugees and Citizenship Canada, *Acquisition of citizenship*, July 2, 2015, [online](#).

⁵ *Citizenship Act*, RSC 1985, c C-29, s. 3(4).

1. Registration under s. 3(1)(e):⁶
 - a. which was available to those who qualified for citizenship by descent under s. 5(1)(b) of the former Act. Specifically those who at the time of their birth had parents who were either:
 - i. married, and their father was a Canadian citizen; or
 - ii. unmarried, and their mother was a Canadian citizen.
 - b. The effective date of citizenship was the applicant's date of birth.
2. A grant of Canadian citizenship under s. 5(2)(b)⁷
 - a. which was available to those who did not qualify under s. 5(1)(b) of the former Act because at the time of their birth their parents were either:
 - i. married and only their mother was a Canadian citizen; or
 - ii. unmarried and only their father was a Canadian citizen.
 - b. The effective date of citizenship was the date the application was approved.

This impacted children born from this generation. Whether they are Canadian citizens at birth depends on which of the two processes are used. Between February 15, 1977 and August 4, 2004, a person born outside of Canada would be a Canadian citizen if one or both of their parents were Canadian.

1. For those whose citizenship was approved under s. 3(1)(e) all their children would be Canadian citizens at birth – subject to the s. 8 retention requirements. Those who remained Canadian citizens until April 16, 2009 would benefit from the s. 3(4) transition clause.
2. But for those who were approved under s. 5(2) only their children born after the date of the approval would have been Canadian citizens at birth and those who were still Canadian citizens on April 16, 2009 would have benefitted from the transition clause under s. 3(4).

This is how s. 3(4) inadvertently treats people differently based on a grandparent's gender and marital status. Whether to apply under s. 5(2) or s. 3(1)(e) was determined at birth by the applicant's parent's gender and marital status. If the application was approved after the applicant had children, the applicant's children would be Canadian citizens only if the application was made under s. 3(1)(e).

Under Bill C-37, those granted Canadian citizenship under s. 5(2) had their grant retroactively cancelled under s. 3(1)(h),⁸ and were then deemed to be Canadian citizens from birth under s. 3(1)(g).⁹ But their children are still not Canadian citizens because they are explicitly excluded by the first-generation limitation under s. 3(3)(a).¹⁰

Under Bill S-245, children of applicants under s. 3(1)(e) would no longer be subject to the retention requirements under s. 8. Thus, even if they lost their citizenship, all children of s. 3(1)(e) claimants

⁶ *Ibid* s. 3(1)(e) and *supra* note 3.

⁷ *supra* note 1, s. 5(2)(b); and *supra* note 3.

⁸ *supra* note 4, s. 3(1)(h).

⁹ *Ibid* s. 3(1)(g).

¹⁰ *Ibid* s. 3(3)(a).

would now be Canadian citizens. But children of s. 5(2) grants born before the grant was approved would still not be Canadian citizens.

The CBA Section recommends further amendments to the *Citizenship Act* to eliminate this differential treatment by allowing all children of s. 5(2) grants to also be Canadian citizens.

Second Potential Charter Issue – Second Generation Born Abroad

In this era of globalization, many people born abroad who have ties to Canada may not qualify for Canadian citizenship as their lives do not always follow arbitrary lines, such as those created by the first-generation limit.

Parliament may wish to consider changes to the *Citizenship Act*, to permit those born in second and subsequent generations to also become Canadian citizens. The constraints of the first-generation limitation to *jus sanguinis*, are discussed in *Citizenship law is too rigid for those abroad with family ties to Canada* a 2020 article by CBA member Amandeep S. Hayer.¹¹

We thank the Parliamentary Committee for this opportunity to share our recommendations on Bill S-245. The CBA Section would be pleased to further discuss these recommendations.

Yours truly,

(original letter signed by Véronique Morissette for Lisa Middlemiss)

Lisa Middlemiss
Chair, CBA Immigration Law Section

¹¹ Amandeep S. Hayer, *Citizenship law is too rigid for those abroad with family ties to Canada*
<https://www.cba.org/Sections/Immigration-Law/Articles/2020/Citizenship-law-is-too-rigid-for-those-abroad-with>