SUBMISSION ON GENERAL DESCRIPTION AND SUMMARY OF PROVISIONS: CITIZENSHIP OF CANADA REGULATIONS ("DRAFT PROPOSED REGULATIONS SUMMARY")

INTRODUCTION

The National Citizenship and Immigration Law Section of the Canadian Bar Association (the CBA Section) is pleased to comment on Citizenship and Immigration Canada's Draft Proposed Regulations Summary (the Summary). Unfortunately, the Summary does not provide much detail and many concerns raised by the CBA Section in its submission on Bill C-18, *Citizenship of Canada Act*[1] (the C-18 submission) have not been addressed.

In this response the CBA Section will address the key areas of concern that should be properly addressed in regulations under the *Citizenship of Canada Act*: residency; use of secret evidence in citizenship revocation proceedings; language requirements; adoption; ministerial review; stateless persons; and missing documentation. References are made to specific items in the C-18 submission, which gives a more detailed discussion of these matters. A copy of the C-18 submission is attached for ease of reference.

1. RESIDENCY

There are no regulations concerning the extension of residency requirements.

RECOMMENDATIONS:

- Businesspersons abroad for employment with a Canadian employer should be deemed resident in Canada, as should spouses or partners accompanying Canadian citizens abroad, in the same manner as IRPA s.28. Deemed residence may be capped, to require a minimum physical presence in Canada in addition to the deemed residence.

- The Minister should have authority to exempt applicants from strict compliance with the residency requirements in compelling or ordinary resident cases, such as students temporarily abroad, with family and a history of residence in Canada. This test may be limited to those ordinarily resident as permanent residents for five years.

For further discussion please see II. 2 – Residency Test (page 3 in the C-18 submission).

[1] Canadian Bar Association, Submission on Bill C-18 – *Citizenship of Canada Act*, November 2002.

2. MISREPRESENTATION PROCEEDINGS IN FEDERAL COURT, BY CERTIFICATE

Section 17 of the *Citizenship of Canada Act* introduces the use of secret evidence against citizens in revocation proceedings. While these provisions already apply in IRPA against permanent residents or foreign nationals, it is significant that they are now introduced against citizens.

The CBA Section opposes the introduction of a "secret evidence" process in citizenship revocation proceedings. We recommended in the C-18 submission that:

> The Review Committee with the same meaning as in the *Canadian Security Intelligence Service Act*, have the mandate for investigating the reasonableness of evidence or information underlying a s.17 certificate alleging inadmissibility for terrorism, security or organized crime, rendered with respect to a citizen. Subsections 39(2) and (3) and sections 43, 44 and 48 to 51 of the *Canadian Security Intelligence Services Act* apply with modifications as necessary. Evidence or information found to be reasonable and probative by the Review Committee would be referred to the Federal Court for consideration in the s.17 proceedings.[2]

Further, we recommended that appeal from a s.17 decision of loss of status be available in the same manner as appeal from a s.16 decision – to the Federal Court of Appeal.

RECOMMENDATIONS:

- In the absence of amendment to the Act, and implementation of the protection of information provisions, the regulations should provide that the protection of information provisions in s.17 are applicable only to the determination of terrorism, security or organized crime inadmissibility, and not to the initial determination of loss of citizenship for misrepresentation.

For further discussion, please see III.2 – Misrepresentation proceedings (page 16 in the C-18 submission).

3. SECTION 21 (MINISTER RECOMMENDING PERSON NOT BE GRANTED CITIZENSHIP) SECTION 22 (ORDER OF GOVERNOR IN COUNCIL)

If the Minister believes that "a person has demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society", he or she may submit a report to the Governor in Council. The Governor in Council may order that grant of citizenship be prohibited.

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[2] Ibid, page 16.

The Minister must send a person notice 30 days before submitting the report. The notice must include a summary of the grounds and the person has 30 days to respond with written submissions. The order is valid for five years.

The CBA Section opposes the introduction of political authority to prohibit citizenship [s. 21]. It also opposes the denial of any review or appeal [s.21(3)]. In our view, there should be no political authority to deny citizenship on vague grounds, especially without right of appeal or review. The current *Citizenship Act* and s. 23 of Bill C-18 both give authority to the Governor in Council to refuse citizenship to persons who pose security or organized crime threats, through a report of the Security Committee under *CSIS Act*. This is sufficient and there is no reasonable justification for a further unappealable political authority to prohibit citizenship.

In our view, sections 21 and 22 should be deleted from Bill C-18. However, if s. 21 is enacted, in whole or in part, we recommend the following provisions for the regulations:

RECOMMENDATIONS:

With respect to s. 21(1):

- The regulations need to provide strong, limited guidance and clarification of the scope of "flagrant and serious disregard for the principles and value underlying a free and demographic society". Without limitation, this could include environmental activists, persons espousing political or hate philosophies, persons engaged in support of political regimes and the like. We have a difficult time defining a suitable dividing line for appropriate circumstances, which speaks to the need to give more thought as to its appropriateness.

- The notice should require actual, not deemed, notice to the person concerned. The time for a response should start when the actual notice is received by the person concerned. Even if the wording in Bill C-18 could be read to be actual notice, it is not clear, and should be clarified.

- The response period should be a minimum of 60 days, and longer upon approval of application for extension by the person concerned.

- The disclosure requirement is insufficient. The person should be entitled to complete disclosure of the evidence relied upon by the Minister.

- There should be a statutory requirement that the Minister consider submissions of the applicant before reporting, and that the person's submissions be included in the report.

With respect to s. 22:

- Where the ground of report is security or organized criminality pursuant to the inadmissibility provisions of the Act, the determination of prohibition should be done through s.23, not by Cabinet.

- Section 22(3) of the Act should be deleted or amended to include a right of review or appeal to Federal Court of the reasonableness of the order of the prohibition. The use of summary evidence and the lack of open process demands access to review by a higher court.

- The period of prohibition should be reduced from five years to two years.

4. LANGUAGE REQUIREMENTS

The language requirements are too onerous. Bill C-18 requires the applicant to have "adequate knowledge" of one official language. In our view, speaking, understanding and reading should be sufficient. However, the Summary also requires writing ability. The applicant must demonstrate the ability to "convey...in writing basic information or answers to questions." It also requires the applicant to be able to write to "…convey messages using short sentences; and know basic grammatical structures and tenses…" We also have concerns with the sufficiency and consistency of such testing.

RECOMMENDATION:

- The ability to communicate orally and understand what is being said or written in English or French should be sufficient for citizenship. An applicant should not be denied citizenship due to a lack of ability to write well.

5. CHILDREN ADOPTED BY CANADIANS

There are no regulations concerning the process of review of refusals of citizenship through adoption.

RECOMMENDATIONS:

- Citizen parents should have the same right to have the Immigration Appeal Division review refusals of applications for citizenship for their adopted child, as in the case of refused immigration applications by adopted children under IRPA. This can be accomplished in one of two ways:

    a. Preferably, by expanding the jurisdiction of the Immigration Appeal Division to include review of refusals to grant citizenship to the adopted children of citizens, through the IRPA.

b. By amending the *Citizenship of Canada Act* to provide that a refusal of citizenship under s. 9 is deemed to be a refusal of an immigration visa, entitling the parent to a sponsor's appeal under the IRPA.

The interaction between reviews of adoptions for citizenship purposes, and review of adoption for residence purposes needs to be clarified. Further, the role of inland officers in a citizenship application by an adopted child needs to be established.

RECOMMENDATIONS:

- Issues surrounding validity of adoption already determined in the immigration application should not be revisited in the citizenship application. This defeats the intention that an adopted child be closer in status to a natural child, and amounts to a re-litigation of matters already determined.

- The determination of an application for citizenship by a Canadian adopting parent should involve both overseas officers and inland officers. Permanent resident applications regarding adopted children are determined solely by overseas officers. The overseas officers do not usually have contact with the adopting parents in Canada. This often leads to inappropriate refusals.

- The regulations should clarify that permanent resident minor children of a citizen at the time their application for citizenship is submitted continue to be entitled to citizenship even if they reach the age of 18 before processing the application.

For further discussion, please see II.1 – Children Adopted by Canadians (page 3 in C-18 submission).

6. MINISTERIAL REVIEW (S. 29)

The Summary provides that an applicant for Ministerial review "will still have a right to seek judicial review should the initial decision not be overturned." This should be clarified to provide that, where the applicant seeks Ministerial review, the Minister's refusal to overturn triggers the limitation period for filing for judicial review.

RECOMMENDATIONS:

- The time for filing a Federal Court appeal should run from the Ministerial decision and not from the initial refusal.

- No fee should be charged for Ministerial review. Cost recovery should be at the citizenship application stage if funding is required for the Ministerial review process.

- Important personal documents, such as passports, should be retained by CIC only for reasonable periods, and returned immediately after they are no longer needed. This period should not exceed four weeks, and applicants should be advised of any delay forthwith, along with a justification for continued possession.

7. STATELESS PERSONS

The Summary proposed that applications for stateless persons include, *inter alia*, evidence that the applicant has always been stateless;"

This could be difficult to prove, and is questionably unnecessary – citizenship could be arbitrarily revoked, which would render an innocent individual unable to benefit from these provisions.

RECOMMENDATIONS:

- Applicants should be allowed to provide the best evidence available that they have always been stateless, including a sworn affidavit in the absence of any independent evidence.

- The provision should apply to individuals whose nationality has been revoked through no fault of their own.

8. MISSING DOCUMENTATION

The Summary provides that an applicant who fails to submit the necessary documentation will be sent up to two notices asking for the required information. If the applicant does not respond, the application will be considered abandoned. Similar two-notice provisions apply to testing, "personal appearance", and oath taking.

RECOMMENDATION:

- CIC should be required to contact both the applicant and his or her representative, to ensure that every effort is made to convey such dates to the applicant.

OTHER ISSUES THAT SHOULD BE COVERED IN REGULATIONS

- Birth of Children to Citizens Abroad — see II.3. Children Born Abroad to Canadian Citizens (page 10 in the C-18 submission)

- Discretionary Deeming of Permanent Resident Status — see II.4. Discretionary Deeming Of Permanent Resident Status (page 11 in the C-18 submission)

- Misrepresentation Proceedings in Federal Court — see III.1. Misrepresentation proceedings in Federal Court (page 13 in the C-18 submission)

- Minister's authority to annul citizenship — see III.3. Minister's authority to annul citizenship (page 19 in the C-18 submission).