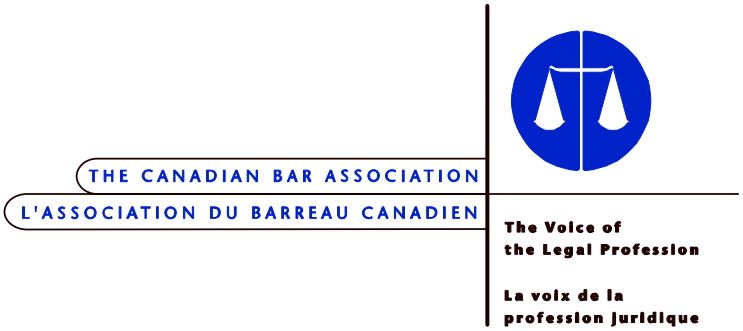

Bill C-14 – *Citizenship Act* Amendments (adoption)

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JUNE 2006

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TABLE OF CONTENTS

Bill C-14 – *Citizenship Act* Amendments (adoption)

PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Citizenship and Immigration Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Citizenship and Immigration Law Section of the Canadian Bar Association.

Bill C-14 – *Citizenship Act* Amendments (adoption)

I. INTRODUCTION

The National Citizenship and Immigration Law Section of the Canadian Bar Association (CBA Section) welcomes the opportunity to comment on Bill C-14, amending the *Citizenship Act* provisions dealing with adoption.

The intent of the Bill is to reunite Canadian families as expeditiously as possible following the adoption by Canadian parents of a child from a foreign country. This result is achieved by granting citizenship to adopted children upon the finalization of their adoption, thereby eliminating the extra process of applying for permanent residence for the adopted child. The Bill thus reduces the disparity between natural and adopted children, and recognizes that adoption, whether entered into in Canada or in the country of the child's residence, has the effect of severing the parental ties of the child's birth parents and creating a legal relationship between the Canadian parent and foreign child.

The CBA Section supports the Bill's intention to streamline the system by having foreign children adopted by Canadian parents acquire the same status as natural born children of Canadians. Steps need to be taken to correct the difference in the treatment between adopted children and natural born children in the *Citizenship Act*. The Bill is not in keeping with the legislative safeguards in the *Immigration and Refugee Protection Act*[1] and *Immigration and Refugee Protection Regulations*[2] protecting the interests of foreign children adopted by Canadian parents, including compliance with the *Hague Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption* (the Hague Convention on Adoption). Further, the Bill does not account for procedural changes that will be required in

1 S.C. 2001, c.27 (*IPRA*).

2 SOR/2002-227 (the *Regulations*).

the overseas visa posts where immigration officers will be charged with granting citizenship to foreign adopted children.

II. CURRENT LAW

The *Citizenship Act*[3] and *Citizenship Regulations, 1993*[4] govern who is a Canadian citizen and upon whom Canadian citizenship may be granted. Section 3(1)(b) of the *Citizenship Act* specifies that a child born outside of Canada to a Canadian parent is a citizen, but a child adopted by a Canadian parent does not become a citizen by virtue of the adoption alone. This section reads as follows:

> 3. (1) Subject to this Act, a person is a citizen if
>
> (b) the person was born outside Canada after February 14, 1977 and at the time of his birth one of his parents, other than a parent who adopted him, was a citizen;

Currently, in order to have an adopted child granted citizenship, Canadian adoptive parents must first sponsor their adopted child's application for permanent residence as a member of the family class. Once the child becomes a permanent resident of Canada, the Canadian adoptive parent can then apply for citizenship for their child pursuant to section 5(2)(a) of the *Citizenship Act*.

III. SHORTFALLS IN THE PROPOSED BILL

A. Non-Compliance with *IRPA* and Regulations

The contents of Bill C-14 were originally drafted many years ago, when the governing legislation with respect to immigration was the *Immigration Act* and *Regulations*, the legislation that preceded the current *Immigration and Refugee Protection Act (IRPA)* and *Regulations*. As such, it was drafted on the basis of the wording in the *Immigration Act*, which is now out of date. There are substantive differences between the wording of the proposed Bill and sections of the *Immigration Act* upon which it is based, and the current legislation that governs international adoptions.

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3 S.C. 1974-75-76, c. 108, s. 1.

4 SOR/93-246.

IRPA and the *Regulations* expanded the definition of the 'family class,' to include a child whom the sponsor intends to adopt in Canada (*Regulations,* paragraph 117(1)(g)). Subsection 117(2) of the *Regulations* makes it clear that an adoption will have the effect of making a foreign national a member of the family class only if that adoption was in the best interests of the child within the meaning of the Hague Convention on Adoption. Subsection 117(3) of the *Regulations* further particularizes the 'best interests of the child' with respect to adoption. One of the requirements is a statement from the child's province/territory of intended destination indicating approval of the adoption.[5] Bill C-14 does not reflect these legislative requirements and makes no mention of compliance with the Hague Convention on Adoption.

Assessing whether an adoption is in the best interests of the child has the legitimate purpose of protecting against child trafficking and adoptions of convenience. We recognize the authority for adoption is within provincial/territorial jurisdiction and cannot be transferred or in any way infringed upon by federal legislation. The rights and interests of the provinces and territories must be respected in any federal legislation that deals with subject matter that is intended to be within the purview of the provinces and territories. That being said, in our 2002 submission on Bill C-18*, Citizenship of Canada Act*, we discuss how layering requirements involving multiple jurisdictions creates problems.

For example, Ontario's *Intercountry Adoption Act* requires adopting parents to have a home study and to obtain the Director's approval **before** leaving Canada to complete any foreign adoption. Parents seeking provincial support **after** completing the legal adoption are refused, preventing completion of the requirements for a 'no objection' letter under section 117 of the *Regulations*. In Manitoba, the Director has a positive obligation **after** the adoption, to provide supporting documentation for finalization. British Columbia's involvement in international adoptions is limited to incidents where the child is being adopted in British Columbia, if the Hague Convention does not apply to the adoption, or where the adoptive parents are related to the child they intend to adopt.

5 Paragraphs 117(3)(e) and (g), and subsection 117(7) of the *Regulations*.

Notwithstanding the above-noted problems inherent in the sections of the *IRPA* and *Regulations* with respect to adoptions and the involvement of the provinces and territories, there should be conformity between legislative requirements that govern the same act – reuniting Canadian parents with their adopted children. A lack of consistency between *IRPA* and the *Regulations* and the proposed amendments to the *Citizenship Act* can lead to unequal treatment between parents who choose to sponsor their adopted child through *IRPA* and those who choose to apply for citizenship for their adopted child under the *Citizenship Act*. Such a discrepancy of treatment is unacceptable and must be addressed in the proposed *Citizenship Act.* We assume that, if Bill C-14 is passed in its current form, regulations will be passed to further particularize the factors to be considered under section 5.1. There should be the opportunity for further study to ensure that the regulations achieve conformity with *IRPA* and the *Regulations.*

Further, given the differences in provincial/territorial legislation and policy with respect to adoptions, implementing regulations to govern the admission of adoptive children to Canada by the federal government could result in different treatment of Canadian parents and their adopted children depending on the province or territory of residence. To avoid this potential pitfall, we recommend that consultations with the provinces and territories be undertaken in developing any regulations associated with this Bill. Section 5(2) of *IRPA* provides for this consultative approach and we recommend that similar requirements be included under the *Citizenship Act*.

RECOMMENDATION:

The CBA Section recommends that a provision similar to subsection 5(2) of *IRPA* be included in Bill C-14 to ensure that any regulations implemented under Bill C-14 be brought before the appropriate Committee of Parliament for further consultations and discussions to ensure consistency with *IRPA* and the *Regulations*, and with provincial/territorial legislation concerning adoptions.

B. Loss of Appeal Rights for Sponsors

Canadian adoptive parents who sponsor their adopted child's application for permanent residence as a member of the family class have a right to appeal a refusal to issue a visa to

the child. The appeal is made to the Immigration Appeal Division of the Immigration and Refugee Board (IAD) and is a hearing *de novo*. Bill C-14 would eliminate the need to sponsor the adopted child's application for permanent residence, with the effect of removing the parent's right to appeal a refusal to grant the child status.

Under Bill C-14, the application is for a grant of citizenship to the adopted child. If this application is refused, the Canadian sponsor's only resort is to apply for judicial review of the decision to refuse to grant citizenship to the Federal Court of Canada. This is a lengthy and often costly means of litigating a refusal, and does not constitute a hearing *de novo* but rather is merely a review of the decision of the officer. If successful, the child's application for citizenship would be sent back to a different officer for reconsideration overseas.

Parents who want to preserve their right of appeal may choose both to sponsor their adopted child through the family class sponsorship as well as to apply for citizenship directly to the visa post overseas. Removing a right of appeal will likely have the effect of doubling the applications submitted by Canadian parents so as to ensure that their rights and their child's rights to come to Canada are protected. This is a waste of resources for the processing overseas visa posts; as well, it creates an unnecessary financial burden on parents.

RECOMMENDATION:

The CBA Section recommends that parents have a right of appeal from a decision to refuse to grant citizenship to adopted children. This may be accomplished by either:

(i) amending *IRPA* to expand the jurisdiction of the IAD to include review of refusals to grant citizenship to adopted children of citizens (this is the preferred amendment); or alternatively

(ii) amending Bill C-14 to state that a refusal of citizenship under section 5.1 is deemed a refusal of an immigration visa, entitling a parent to a sponsor appeal under *IRPA.*

C. Increased Time Spent in Adopted Child's Home Country

Applications for citizenship for adopted children will be new to overseas visa officers and will undoubtedly require much communication with the Citizenship Case Processing Centre in Sydney, Nova Scotia. This change is likely to cause delays in the reunion of families in Canada. Clear procedures and guidelines must be prepared to help officers in overseas visa posts assume this role.

RECOMMENDATION:

The CBA Section recommends that Citizenship and Immigration Canada develop clear procedures and guidelines and provide training for visa officers making citizenship determinations, and publish anticipated processing times for these applications.

IV. CONCLUSION

The proposed Bill C-14 amending the *Citizenship Act* embodies the principle that foreign children adopted by Canadian citizens should be eligible for citizenship by virtue of their adoption, without having to go through the process of becoming immigrants before applying for citizenship. This is a much needed and highly anticipated change. However, since the preparation of this proposed Bill, the legislation governing membership in the family class for adopted children has changed to reflect the role of the province/territory of destination of the adopted child, the importance of complying with the Hague Convention on Adoption, and to ensure that the adoption is not entered into for the primary purpose of obtaining status in Canada and to insure it is in the best interests of the child. The Bill should provide that any regulations that further particularize the factors to be considered for a grant of citizenship are subject to study by the relevant Parliamentary Committee. This will ensure there is consistency with the current criteria for the recognition of foreign adoptions for the purposes of permanent residency under *IRPA* and the *Regulations,* and also with provincial/territorial legislation concerning adoptions. There should be clear guidelines and instruction for visa officers applying these criteria. As well, the Bill should preserve the rights that Canadian parents currently have to appeal a decision to refuse their child status in Canada.