Submissions to the Standing Senate Committee on Social Affairs, Science, and Technology

Bill C-6: An Act to amend the Citizenship Act and to make consequential amendments to another Act

February 2017

I. INTRODUCTION

The Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC) is a not-for-profit community based organization which provides free legal services to the low income members of the Chinese, Vietnamese, Cambodian, and Laotian communities in the Greater Toronto Area, who face linguistic and other barriers in accessing the legal system.

Established in 1987, MTCSALC is mandated to provide free legal services, conduct public education activities, and engage in law reform advocacy in order to advance the interests and rights of our constituent communities. Over the years, MTCSALC has served tens of thousands of clients in various areas of law. About one-third of our caseload is in the area of immigration and citizenship law.

MTCSALC has appeared before the Standing Senate Committee on Social Affairs, Science, and Technology, as well as other Parliamentary and Senate Committees on numerous occasions to present on issues that affect immigrants, refugees and racialized communities.

MTCSALC thanks the Standing Senate Committee for granting it the opportunity to comment on Bill C-6: An Act to amend the Citizenship Act and to make consequential amendments to another Act.
II. THE EVOLUTION OF CANADIAN CITIZENSHIP

The *Citizenship Act* is one of the most important pieces of legislation in Canada. In essence, Citizenship defines who we are as a people and hence what Canada is as a nation.

For a very long time in the nation’s history, citizenship in Canada was tied to the country’s status as a British colony and as such, citizenship status was reserved primarily for those who were deemed to be British subjects. For Chinese Canadians, this view of citizenship systemically excluded and marginalized them from the rest of Canadian society.

Despite having sacrificed their lives and contributed hard labour in the most dangerous conditions to help build the Canadian Pacific Railway – an integral part of the nation building exercise – Chinese Canadians were barred from citizenship status for decades in Canada.

Chinese Canadians were treated as second class citizens since their initial arrival in Canada in the 1880s. Subject to the racist head tax and the *Chinese Exclusion Act*, Chinese Canadians were further disenfranchised by a series of federal as well as provincial laws which denied them the right to vote. Indeed, when the head tax was first introduced, the then Prime Minister of Canada, Sir John A Macdonald, had this to say to justify the racist laws:

> *When the Chinaman comes here he intends to return to his own country; he does not bring his family with him; he is a stranger, a sojourner in a strange land, for his own purposes for a while; he has no common interest with us . . . A Chinaman gives us his labour and gets his money, but that money does not fructify in Canada; he does not invest it here, but takes it with him and returns to China . . . he has no British instincts or British feelings or aspirations, and therefore ought not to have a vote. “*

Between the late 1880s and W.W. II., laws were enacted both federally and provincially to disqualify Chinese and other persons of Asian descent from voting. For instance, in 1901, Manitoba passed “An Act respecting Elections of Members of the Legislative Assembly” that disqualified people as voters if they failed tough residency requirements, unless they were able to pass a language test in selected European language. Section 17(e) of the Act disqualified “any person not a British subject by birth who has not resided in some portion of the Dominion of Canada for at least seven years…unless such person is able to read any selected portion of the ‘The Manitoba Act’ in one of the following languages, that is to say, English, French German, Icelandic of any Scandinavian language….”

The promulgation of the *Canadian Citizenship Act* on January 1, 1947 changed all that. For the first time, native born Canadians as well as those who immigrated to Canada who met the requirements of the 1947 Act would be recognized as citizens of Canada. The *Act*
reflected a change of values towards the idea that Canada was a country strengthened by its diversity and that those who wished to live and contribute to the country would be welcomed with open arms – ideas and values that Canadians today still hold dear.

For Chinese Canadians and for many others who had fought hard over the decades to be recognized as Canadians, citizenship is as much about equal respect as it is about identity and a sense of belonging to the society in which they live. It affirms that they too, regardless of their race or country of origin, have the right to call Canada their home.

To ensure that we do not repeat the same historical mistakes of injustice and exclusion, and to promote a sense of belonging among all Canadians, any change to Canada’s Citizenship Act must therefore be examined through the lens of equality and respect.

With citizenship, naturalized Canadians are given access to certain rights that non-citizens cannot claim. Arguably, the most important of these is the ability to vote and participate in the political process and government. Conversely, barring citizenship or implementing significant barriers to citizenship can have the effect of disenfranchising significant segments of the population.

III. POSITIVE ASPECTS OF BILL C-6

We commend the Federal Government for the many positive changes included in Bill C-6, which repeal many of the troubling provisions of the previous Government’s Bill C-24 – a bill which effectively made citizenship harder to obtain and easier to revoke.

Specifically, we support the provisions in Bill C-6 which:

- Resets the language and knowledge requirements so that they apply only to applicants aged 18-54 instead of those aged 14-64 as required by Bill C-24;
- Repeals the controversial ‘intent to reside’ provision, which raised the spectre of violating Charter protected mobility rights;
- Reinstates a half-day credit up to one year that a citizenship applicant has already spent in Canada prior to becoming a PR, and thereby reducing barriers for marginalized groups such as temporary foreign workers, live-in caregivers, and refugees to naturalize and become full citizens of Canada;
- Introduces a ‘three in five’ year physical residency requirement to replace the previous ‘four in six’ year requirement;
- Repeals provisions in Bill C-24 which allow the Government to strip certain Canadians of citizenship for action deemed contrary to national interest (e.g.
terrorism, high treason, spying, membership in armed forces engaged in armed conflict with Canada, etc.);

- Introduces an obligation for the Minister to take into consideration measures to reasonably accommodate disabled person applying for citizenship; and

- Allows the Minister explicit discretion to grant citizenship in cases of statelessness or of special and unusual hardship.

We support these important changes and believe that they will go a long way in ensuring that the amended Citizenship Act promotes values of inclusion, equal respect, and belonging, particularly to those groups that have been excluded and marginalized by previous immigration and citizenship regimes.

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IV. CONCERNS ABOUT BILL C-6

While Bill C-6 goes a long way in fulfilling the current government’s campaign promises to make the citizenship process fairer and more equitable, there still exist serious concerns with the current citizenship framework. In particular, we are concerned that Bill C6 fall shorts of meeting the Government’s stated promises by:

- Maintaining Bill C-24’s added requirement to seek leave for judicial review of a decision to refuse a citizenship application;

- Maintaining Bill C-24’s elimination of a full court hearing for revocation of citizenship by false representation, fraud, or knowingly concealing material circumstances – thus empowering a sole immigration officer to make this important decision without right of appeal;

- Lack of flexibility associated with strict application of a physical residency test; and

- Maintaining Bill C-24’s expansion of citizenship prohibitions to people with foreign criminal charges and/or convictions.

While not addressed in the Bill itself, the Government has also failed to address other systemic barriers to citizenship by:

- Maintaining the inaccessible application process with an exorbitantly high application fees and excessive processing time; and

- Maintaining the previous government’s overly strict language and knowledge test.

The following highlights some of the key concerns that MTCSALC has with respect to Bill C-6.
A. **Needlessly Strict and Duplicative Language and Knowledge Requirements**

As stated above, we commend the Government for resetting the language and knowledge requirements so that they apply only to applicants aged 18-54 instead of those aged 14-64 as required by Bill C-24. This is a welcome change that will benefit many clients of our Clinic and will expedite their pathway to citizenship.

The previous Federal Government changed various parts of the language and knowledge requirement for citizenship through Bill C-24 to make it more onerous for applicants - particularly members of certain racialized communities who do not speak English or French as their first language, such as the Chinese-Canadian and Southeast Asian communities - from successfully naturalizing.

One change in particular that was implemented was the requirement that an applicant demonstrate, at the front end of the application, proof of adequate language skill. Adequacy of language is deemed to have been achieved when an applicant has obtained a score of CLB 4 or higher in listening and speaking, or an equivalent proof of language skill. Unless this language proof is provided at the front end, IRCC will not process the application.

We submit that this requirement of front-end language testing is unduly harsh towards communities like the Chinese and Southeast Asian communities and will result in a significant number of disenfranchised Canadian PRs of racialized communities where English or French is not their mother tongue.

The overarching rationale for imposing more stringent language requirements for naturalizing was to ensure that citizenship applicants had good English or French skills and therefore were better positioned to join the Canadian mainstream and to avoid situations of vulnerability.

Unfortunately, these requirements often create the exact opposite effect of their stated intentions. Since one must have already been a permanent resident of Canada for a good many years before being eligible to apply for citizenship, the Canadian PRs affected by this language requirement are already here in the first place and are not going anywhere. It only means that those PRs, who have not had the good fortune of having high levels of education or free time to learn English or French, will be unable to naturalize and become full members of Canadian society until they grow old and fall into the age exception.

It should be noted that historically many new immigrants to Canada worked in areas that did not require them to communicate at a high level of fluently in English or French, but these immigrants still paid taxes, volunteered, raised children, and contributed to our social fabric as long term members of Canadian society.

Even today, many immigrants and refugees who are on the lower end of the socioeconomic strata must work long hours in order to support their families and do not have the luxury of time or resources to improve their language skills to a high level. They
may only have just enough language skill to get by living and working in Canada. We submit that these circumstances do not make these individuals any less Canadian.

Immigrant women in particular are adversely affected by the strict language and knowledge test as they are more likely than men to have come to Canada as sponsored spouses (without having to meet any education or language requirements), and have fewer opportunities generally to upgrade their language skills due to family and childcare responsibilities.

Therefore, we submit that ‘adequate knowledge’ of English or French as required by the Citizenship Act should not require upfront documentary evidence of language skill. Instead, where documentary evidence cannot be provided, the Act and its attended Regulations should allow for citizenship officers or judges to interview the applicant to determine whether he or she has the requisite language skill – exactly the system which was in place prior to the changes made by the previous Federal Government.

Indeed, if the Government has the sense of resetting the age of exemption back to 18 to 55, then it must know that language requirement is a barrier to citizenship for some PRs. Given that is the case, it should take the logical step of reducing the language requirement to facilitate more PRs to become naturalized.

Furthermore, we respectfully submit that Bill C-24’s requirement that the written knowledge test be taken in one of Canada’s official languages be repealed. As the CBA Immigration Law Section noted in its submissions on Bill C-24, this requirement essentially “amounts to a second language test and is not necessarily an accurate assessment of an applicant’s knowledge of Canada. Language competency required to pass a knowledge test is significantly different than that required to live and work in Canada.” CBA’s concern has not been addressed by Bill C-6.

Historically, before Bill C-24, language requirements in the Citizenship Act have always focused on practical listening and speaking skills. Requiring all applicants to pass a written test in English or French not only results in a second language test, but sets up reading comprehension and written skills as barriers for naturalization – language skill areas that had historically not been deemed as necessary for citizenship applications. If these additional language barriers had been in force historically, it would be likely that a great many people who are currently Canadian citizens – including many in the Chinese and Southeast Asian communities - would never have been able to naturalize before falling into the old age exception.

**Recommendation 1:** Eliminate the policy of requiring upfront written proof of language. Amend the Bill to explicitly allow citizenship officers and judges to determine whether the language requirement is satisfied through oral hearing/interview.

**Recommendation 2:** Repeal requirement that the applicant take the knowledge test in one of the official languages of Canada.
B. Waiver for Individuals with Low Literacy and other Special Needs

We commend the Government for taking steps to provide reasonable accommodation for people with disability, and to give the Minister discretion to grant citizenship in cases of “special and unusual hardship” or “to reward services of an exceptional value to Canada”.

Notwithstanding these new provisions, many of the clients served by our Clinic will still find the door of citizenship shut on them because their circumstances will not be considered “special” enough to warrant the positive exercise of Ministerial discretion.

Many of MTCSALC’s low income clients – especially those who came as refugees or sponsored immigrants – were allowed to enter Canada not because they possess a certain level of skills or educational level. They are here, in part due to Canada’s obligations under the international law to accept and grant asylum to refugees, and to fulfill our country’s stated objective of promoting family reunification for Canadian citizens and permanent residents.

Once here, these individuals contribute to Canadian society in the way they know how – by helping to raise their family, and by working in factories, restaurants or other industries where proficiency in English or French is not a requirement. Many have low literacy level even in their own native language. To many, the only way they can become Canadian citizens is to wait until they reach age 55, when the exemption kicks in. Coincidentally, many of those who find themselves in this situation tend to be low income, women, and racialized.

If citizenship is about promoting a sense of belonging and duty to Canada, then it should not matter if the individual happens to be fluent in a language other than the two official languages of Canada, or if the person is too illiterate to pass the citizenship test.

By acknowledging that there is a duty to accommodate a particular class of marginalized population, i.e. people with disabilities, the Government is essentially acknowledging that there is more to Canadian citizenship than knowing how to speak English or French and how to respond appropriately to citizenship test questions.

As such, we call on the Government to expand the duty to accommodate beyond the limited groups of persons with disabilities, in order to make Canadian citizenship fully accessible regardless of one’s background and upbringing. **Recommendation 3: Extend the Ministerial discretion to grant citizenship by waiving the language and knowledge requirements for individuals who, due to their socio-economic and/or other conditions will not be able to pass the requirements.**

C. Disproportionate Fee Increases for Citizenship Applicants

In the past few years, we have seen citizenship processing fees skyrocket, without any justification. For example, as recently as February 2014, the processing fee was $100.
Now, as of the time of writing, the processing fee has jumped to $530 – an over 500% increase over the course of just a few years.

The Federal Government at the time justified the change by suggesting taxpayers should not bear the burden of the administration of citizenship processing. However, it should be noted that permanent residents are taxpayers too. Besides, the Canadian Government should encourage more immigrants to take up Canadian citizenship and not set up artificial barriers making it more difficult for permanent residents to become naturalized.

In terms of budget transparency, there has been no evidence offered to suggest that the additional fees collected have gone back into funding the administration of citizenship applications and not to the general coffer of the Federal Government.

Most importantly however, this change has priced citizenship out of reach for a significant portion of the population. Consider that the price tag for citizenship applications for a family of four (with two minor children) is altogether some $1,600, when including the $100 right of citizenship fee. This does not take into account additional costs such as third-party language testing that is required for certain applicants under the current citizenship regime.

Not all Canadians have the discretionary income to come up with $1,600 easily. The current fee structure has the effect of excluding and thus disenfranchising low-income Canadians. And because marginalized groups such as women, people of colour and people with disabilities are overrepresented among low-income Canadians, they disproportionately bear the burden of these administrative fee hikes.

**Recommendation 4:** Reverse the fee increase for citizenship processing to pre-2014 levels.

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**D. Right of Appeal to the Federal Court**

Prior to the changes brought upon by the previous Federal Government, the *Citizenship Act* allowed for an automatic right of appeal (by way of judicial review) to the Federal Court for essentially all citizenship decisions. This was an extremely important check to ensure that all citizenship decisions are made in accordance with the law through the function of judicial oversight.

Bill C-24 replaced this automatic right with a far more limited application for judicial review with leave from the Court – a feature that is maintained by Bill C6.

This regressive change not only limits access for many applicants seeking to challenge a negative decision, but more importantly, it reduces judicial oversight of unreasonable decisions made by the Minister or citizenship judges.
It is of extreme importance that there is proper judicial scrutiny of all citizenship decisions to ensure that they are legally sound and that discretion is being exercised in a reasonable and proper fashion.

Recommendation 5: Reinstate previous Citizenship Act provisions which allow for an appeal as of right to the Federal Court for review of citizenship refusals.

E. Elimination of Full Court Hearings for Routine Revocation Cases

Bill C-24 had the effect of the fundamentally altering the process of citizenship revocation, streamlining it so that there is less judicial oversight. Previously, the citizenship revocation process generally involved three steps: the Minister, the Federal Court, and the Governor in Council. Bill C-24 took out the Federal Court and GIC steps entirely for fraud and misrepresentation cases – which would presumably constitute essentially all of the revocation cases after Bill C-6.

For these revocation cases, the decision making power is now entirely vested with a single citizenship officer with formal hearing in front of an independent tribunal or court. Considering the consequences of revocation and significance of the interests involved for the individual (stripping of citizenship, permanent residency, and potentially deportation) it is absolutely critical that a formal hearing in front of a Federal Court judge is instituted. Again, these were the procedural safeguards that governed the citizenship revocation process prior to the changes brought on by Bill C-24.

Recommendation 6: Return the citizenship revocation process to the pre-Bill C-24 system.

F. Lack of Flexibility in Physical Residency Test

While the proposed Bill C-6 changes the period of residency required for citizenship, it keeps the provision in Bill C-24 requiring ‘residency’ to strictly mean physical residency within Canada. The rationale for this change was to clarify the meaning of ‘residence’ under the Citizenship Act, as different tests had been used by decision makers in the jurisprudence, leading to a certain level of confusion and uncertainty.

We support the idea of clarifying this test within the legislation. However, an unduly strict physical residency requirement without room for flexibility will unfairly leave many applicants without recourse in myriad circumstances including caring for ill family members abroad.

Therefore, we recommend that a ‘deemed residency’ test be incorporated into the legislation based on the factors outlined by the Federal Court in Koo (Re), [1992] FCJ No 1107, 59 FTR 27 – factors which had been adopted in the previous CIC Operational Manual Citizenship Policy – 5 (Residence) (CP-5). The factors cited by Koo in
determining whether there should be deemed residency for citizenship purposes (in cases where physical residency is not met) include the following questions:

1. Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?

2. Where are the applicant's immediate family and dependants (and extended family) resident?

3. Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

4. What is the extent of the physical absences? If an applicant is only a few days short of the 1,095-day total it is easier to find deemed residence than if those absences are extensive.

5. Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted temporary employment abroad?

6. What is the quality of the connection with Canada: is it more substantial than that which exists with any other country?

Incorporation of the core elements of the *Koo* test into the *Citizenship Act* will allow for clarity in decision making with respect to which residency test should be applied. At the same time, it will mitigate the inflexibility of the physical residency test and allow for naturalization in cases where it is just under the circumstances to do so, particularly in cases where the applicant can clearly show that Canada is the place where he or she “regularly, normally or customarily” lives.

As such, we ask the Standing Senate Committee to make the following recommendation to amend the Bill:

**Recommendation 7:** Augment the physical residency test with a ‘deemed residency’ test – which will allow the counting of residency for citizenship purposes where the applicant can demonstrate that Canada is the place where he or she ‘regularly, normally or customarily lives’.

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**G. Expansion of Bars to Citizenship for Foreign Charges/Convictions**

Another disconcerting change implemented by Bill C-24 of which the proposed Bill C-6 is silent on is the expansion of bars to citizenship for foreign criminality found in Section 22(1).
As a preliminary matter, we question the rationale that undergirds the trend of more closely linking the criminal justice regime with the immigration and citizenship regime, or the idea of ‘crimmigration’.

Canada has a well-defined and well-established criminal justice system which is informed not only by the Criminal Code, but also decades of jurisprudence. Implementing additional immigration and citizenship penalties for individuals who have been charged or convicted is inherently dangerous as it leads effectively to **double jeopardy** – in that the individual is punished once by the criminal justice system and then a second time by revoking their immigration or citizenship status. This type of system offends the principle of proportionality in sentencing, a principle that is enshrined and protected in our criminal justice system.

In addition, because immigration and refugee law is regarded as a branch of administrative law, there are less procedural protections for unreasonable decisions and judicial oversight is largely restricted to judicial review instead of appeal as of right.

In our view, wherever possible, the immigration system should not operate to enhance penalties already imposed by the criminal justice system.

The inherent danger of the ‘crimmigration’ system is further exacerbated when penalties, such as bars to citizenship, are extended to foreign criminal charges and convictions. There are many countries around the world where the rule of law is underdeveloped or completely inadequate, or where individuals are charged and convicted for purely political reasons.

Extending the citizenship bar to foreign charges can, for example, result in barring citizenship for a Canadian journalist who is being charged abroad for investigating corruption issues and denied the right to a fair trial.

It is therefore undesirable and unnecessary for Canada to extend citizenship bars to foreign criminality. Extradition laws already exist on the books to effectively dissuade individuals from attempting use Canada as a safe haven in order to avoid punishment for crimes committed on foreign soil.

**Recommendation 8:** Repeal the extension of bars to citizenship for foreign criminality.

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**V. IMPLICATIONS FOR OUR NATION**

Our immigration and citizenship policy is not simply about our economy. It is also about nation building and identity. It is about the very core of our country as well as who gets to have a say in how our government functions.
Like the Chinese who came to build the railway and were denied the right to citizenship and the right to vote, Bill C-24 created a whole new class of sojourners – individuals who are brought in to work and contribute for the benefit of Canadian society, but are not given the chance to call Canada their home. Bill C-6 has come part way in reversing these barriers, but more needs to be done.

It is part of the fundamental values embraced by most Canadians that we build an inclusive society based on the principles of equality, justice and the Rule of Law, which we strive to reach by ensuring every person in Canada has an equal access to the most fundamental right, i.e., the right to become a full fledged member of Canadian society.

Denying immigrants this right signals that they are not welcome in Canada.

It is in the interests of Canada that we encourage and allow more immigrants to become citizens. People who cannot become citizens will not see Canada as their home, and will have second thoughts as to whether they should put down roots in this country. Both they and Canada will lose out in the end.

As a nation, we have an important choice to make. Bill C-6 is the vehicle in which we make this choice. We can choose to move forward to build a more inclusive, just and equal society by making citizenship more accessible to all immigrants, or we can choose to move backward to the era of exclusion and discrimination by denying people the right to call Canada their home. We hope that this Standing Senate Committee will make the right choice.