BRIEF FROM THE BARREAU DU QUÉBEC

Bill C-6 – An Act to Amend the Citizenship Act and to make consequential amendments to another Act

Presented to the Senate Committee on Social Affairs, Science and Technology

14 February 2017
To ensure the protection of the public, the Barreau du Québec (Quebec Bar) oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

The Quebec Bar would like to thank the members of its Immigration and Citizenship Law Advisory Committee:

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Introduction

On 25 February 2016, the Minister of Immigration, Refugees and Citizenship, the Honourable John McCallum, tabled in the House of Commons Bill C-6, An Act to Amend the Citizenship Act and to make consequential amendments to another Act (the bill).

The bill amends the Citizenship Act,\(^1\) notably to repeal the grounds for revoking Canadian citizenship that are related to national security and the requirement that an applicant intend to reside in Canada if granted citizenship.

The bill also proposes to reduce the number of days a person must be physically present in Canada before applying for citizenship, and allows applicants to include the number of days they were physically present in Canada before becoming a permanent resident in the calculation of their physical presence.

In addition, the bill provides for limiting to applicants aged 18–54 the requirement to prove knowledge of Canada and one of its official languages.

Furthermore, the bill allows the Minister to seize documents if there are reasonable grounds to believe that they were fraudulently or improperly obtained or used, or could be fraudulently or improperly used.

Finally, the bill makes consequential amendments to the Immigration and Refugee Protection Act.\(^2\)

The Quebec Bar is very interested in this bill and wishes to share its comments.

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2. S.C. 2001, c. 27.
1. **Repeal of the Strengthening Canadian Citizenship Act**

Through this bill, the government is seeking to repeal, almost entirely, the provisions of the *Strengthening Canadian Citizenship Act*.³

In 2014, during the study of Bill C-24,⁴ which led to the adoption of the *Strengthening Canadian Citizenship Act*, the Quebec Bar vigorously criticized the proposed amendments,⁵ particularly the rigid criteria imposed on applicants for citizenship, the discretion given to the Minister to revoke citizenship, the failure to respect the right to be heard and the different treatment that applied to people with dual citizenship.

The Quebec Bar therefore applauds the government’s initiative in making corrections to the *Citizenship Act*.

However, the Bar has some specific comments with regard to the procedural guarantees associated with revoking citizenship, the opportunity for minors to apply for citizenship and the concept of mother or father provided for in section 3(1)(b) of the *Citizenship Act*.

2. **Revocation of citizenship and procedural guarantees**

Loss of citizenship is provided for in particular where a person has engaged in false representation or fraud or has knowingly concealed material circumstances.⁶ While the person whose citizenship is being revoked may submit written comments, the holding of a hearing is optional and falls within the Minister’s discretion.⁷

The Minister’s decision on whether a hearing will be held is therefore based on regulatory factors. These factors are: the existence of evidence that raises a serious issue of the person’s credibility; the person’s inability to provide written submissions; or the fact that the ground for revocation is related to a conviction and sentence imposed outside Canada for an offence that, if committed in Canada, would constitute a terrorism offence as defined in section 2 of the *Criminal Code*.⁸

The fact remains that most of the criteria are unclear and that the Minister’s entire decision-making process appears to lack transparency.

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⁵ Quebec Bar, *Projet de loi C-24 – Loi renforçant la citoyenneté canadienne*, 3 June 2014.
⁶ *Citizenship Act*, Section 10(1).
⁷ Ibid., Section 10(4).
⁸ *Citizenship Regulations*, SOR/93-246.
In addition, we are dealing with significant discretion for the Minister who revokes citizenship, without any protection for citizens’ procedural guarantees, thereby precluding the right to a fair hearing before an independent tribunal. The revocation of citizenship is a serious step, particularly since the Act does not differentiate between fraud and good-faith omission to provide insignificant information, and does not provide for consideration of humanitarian grounds. The Bar believes that the Act must systematically provide for the holding of a hearing before an independent tribunal. It is important to ensure minimum procedural guarantees, such as the right to be heard and access to a just and fair trial, before taking this extreme step.

In the opinion of the Bar, this is a minimum requirement given that there is no possibility of appeal. Note, however, that there could be a judicial review of the Minister's decision, but only with leave of the Federal Court, and the criteria for intervention are very limited.

It is surprising to see this lack of regulation surrounding a process that could have such serious consequences for people. In Canada, any person charged with an offence has the right to a fair hearing. Let us not forget that these hearings may have serious consequences for the rights and freedoms of the accused person (imprisonment, orders, etc.) It is therefore logical that the accused have the right to be heard and to have a fair trial.

Similarly, revocation of citizenship can have very serious repercussions for the rights of the individual in question (loss of legal protections, removal, etc.) and indirectly, on that person’s family. The Bar believes that in view of the severity of these repercussions, the Act should provide reasonable guarantees that the individual affected can be heard by an impartial tribunal.

### 3. Applications for citizenship from minors

Currently, people under the age of 18 may apply for citizenship only if one parent is a Canadian citizen or if a legal representative, which in this case means the parent or guardian appointed by the Court, is applying for citizenship. The bill does not propose changes regarding access to citizenship for minors whose situation does not fall into one of these categories.

The Quebec Bar believes it would be appropriate to allow children under 18 who meet other legal criteria to apply for and have access to citizenship, particularly children who have been entrusted to a provincial agency such as a child and youth protection centre. These agencies should be entitled to apply for citizenship on behalf of children, as is currently the case for asylum and permanent residence applications.

In fact, child and youth protection centres can present such applications without having to obtain guardianship of the child.

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9 [Citizenship Act, Section 10(3).](#) This involves judicial review of the Minister’s decision.
10 Ibid., Section 22.1.
12 [Citizenship Act, Section 5(2).](#)
In Quebec, the director of youth protection can intervene when the security or development of a child is considered to be in danger, i.e., if the child is abandoned, neglected, subjected to psychological ill-treatment, or sexual or physical abuse, or if the child has serious behavioural disturbances. The child is then placed in the care of a child and youth protection centre. In most cases, however, the parents are still present and active in the life of their child. But let us consider the case of a child who has been abandoned and for whom it is impossible to obtain legal guardianship. In some cases, it is the child who has made accusations of abuse, and the legal guardians fail or refuse to take action to help the child obtain Canadian citizenship.

The current requirements do not allow these vulnerable children who have been rejected by their families to apply for citizenship. They must therefore wait until they are 18 to apply. This penalizes them by placing them in a precarious position.

Note that in the case of a minor, the current law gives the Minister discretion to waive certain requirements on compassionate grounds, including the requirement relating to age, after having reviewed the person’s particular circumstances. However, these applications can be difficult to prepare and waivers are not easily obtained, particularly when it is necessary to prove exceptional circumstances. Moreover, such applications take three to four years to process. This mechanism is therefore not a solution and does not meet the interests of children.

4. Concept of mother or father provided for in section 3(1)(b) of the Citizenship Act

We also draw the Committee’s attention to the particular situation resulting from the application of section 3(1)(b) of the Citizenship Act. This section provides that a person is a Canadian citizen if that 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.”

In Canada (Citizenship and Immigration) v. Kandola, the Federal Court of Appeal said that a genetic or gestational link is required in order for a person to be considered a parent for purposes of conferring citizenship on a child born outside Canada.

In that specific case, a child was born in India to a mother who did not have Canadian citizenship and a father who was Canadian. However, both parents were infertile and the child was conceived through sperm and egg donations.

The Court reached the conclusion that the child was not a citizen because the concept of “father” or “mother” in the Citizenship Act requires that the child be genetically linked to the parents or that there be a gestational link. Thus, a child must be the genetic son or daughter of a Canadian father (genetic link) or have been carried by a Canadian mother (gestational link).

We believe that the gestational or genetic criterion for establishing the citizenship of a child born outside Canada is wrong, and we urge Parliament to correct this situation. The notion of

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13 Youth Protection Act, RLRQ, c. P-34, article 38.
14 Citizenship Act, Section 5(3)(b).
15 2014 FAC 85.
“parental project” should be used to determine the citizenship of a child born outside Canada. There should also be considerable deference in the *Citizenship Act* to parenting as it is established by applicable provincial laws. The Quebec Bar therefore endorses the dissenting opinion of Justice Mainville in the Kandola judgment:

If the genetic interpretation of parent is to prevail, this means that a Canadian provider of genetic material to a sperm bank could confer Canadian citizenship on all children born from his genetic contribution, including the children of foreigners with no connection to Canada, while the children of Canadian citizens residing abroad and born from sperm donated by a foreigner would be denied citizenship. In my view, Parliament could never have intended such a result.

Rather, in my view, Parliament intended to use the legal concept of parent in paragraph 3(1)(b). In this way, derivative Canadian citizenship is conferred to a child born to a Canadian parent following a fertilization technique, and this irrespective of the nationality of the genetic donors. On the other hand, derivative citizenship is not conferred to a child born to foreigners following a fertilization technique which uses genetic material from a Canadian citizen, since in such circumstances the genetic contributor is not deemed in law to be a parent.16 (Underlining added)

In view of this judgment from the Federal Court of Appeal, a clarification of the law is needed to guarantee citizenship to children born abroad whose parents are Canadian but have no genetic or gestational link to them. The Quebec Bar believes this measure would allow citizenship applications from children born outside Canada to be handled more fairly and logically. It would also ensure fair and non-discriminatory treatment for same-sex couples.

**Conclusion**

The Quebec Bar welcomes this bill. It provides for repealing almost all of the measures found in the 2014 *Strengthening Canadian Citizenship Act*, which the Bar believes violated human rights and freedoms.

However, some situations remain problematic. The Bar is asking Parliament to go even further. We believe it is important to mandate the holding of a hearing before an independent tribunal when dealing with a revocation of citizenship. Moreover, we believe that minors should be able to apply for citizenship without their parents or legal representatives having to do it for them. Finally, the concept of “parent” under the *Citizenship Act* should include parents without a genetic or gestational link to the child born outside Canada to the extent that they participated in the development of a parental project.

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16 Canada (Citizenship and Immigration) v. Kandola, 2014 FAC 85, paragraphs 109 and 110.
The mission of the Quebec Bar is to protect the public. We believe that this bill is consistent with that mission, although we do feel that further amendments to the Citizenship Act are required to better protect vulnerable persons such as children.