Lost Canadians: Two Small Categories in Need of Better Remedies

A submission to the Senate Committee on Social Affairs, Science and Technology, regarding Bill C – 6; written on February 25, 2017, by Bill Janzen, 3830 Albion Rd, Ottawa, ON, K1T 1A8, tel. 613-737-3694, janzenw@sympatico.ca

Thank you for this opportunity to make this submission. To introduce myself I would note that I spent most of my career as the director of the Ottawa Office of Mennonite Central Committee (MCC). MCC is the international relief, development, and peace agency of Mennonite churches. It works in more than 50 countries. Now, in retirement, I still do volunteer work with MCC.

Over the years a small part of my work related to the descendants of the 6000 conservative Mennonites who moved from Canada to Mexico in the 1920s and 1940s to avoid assimilation; specifically, I assisted those of their descendants who wanted to return to Canada, a move many were able to make because of Canada’s immigration and citizenship laws. In 2009 Canada’s “citizenship door” narrowed with the introduction of the first-generation-born-abroad principle. This means that people born outside of Canada have Canadian citizenship only if they have a Canadian born parent. We did not object to this principle but there are two ‘left over’ problems from the earlier era that need a better resolution.

I. The Lost/Retention Cases: A Legacy of the Former Section 8

A. The Problem

The Act that came into force on February 15, 1977 provided that certain people born outside of Canada, of Canadian ancestry, might still have a claim to Canadian citizenship but section 8 of that Act required that some of these people – not nearly all of them - would have to go through a retention process before turning 28 if they wished to remain Canadian citizens. They had to go through this retention process even if they had moved back to Canada and lived here since childhood. People in this category started turning 28 after February 15, 2005.

We never objected to this retention requirement. It was reasonable. But the notification of the people affected by it was profoundly inadequate. Fortunately, the amendments of April 17, 2009 abolished the retention provision but only for people who were not yet 28 on that day. Such people simply remained Canadian citizens. Those who had already turned 28 in the time between February 15, 2005 and April 17, 2009, were not helped. Their citizenship had expired when they turned 28 if they had not gone through the retention process. Most had not gone through that process for the simple reason that they did not know about it; what little information they might have received about it was confusing and even misleading.

So what happened with the people who had turned 28 in this four year window from February 15, 2005 to April 17, 2009 and whose citizenship had expired? In fact many of them continued as before, using their certificates that looked as if they were permanentl valid. But when problems arose there were two avenues for addressing them. One avenue used by some who have spouses who can sponsor them, is that of applying for Permanent Resident status, just like foreigners with no prior Canadian connections do. After receiving Permanent Resident status they apply for resumption of citizenship. But this is costly, takes a long time and for a part of the process people do not have the right to work. A number of such people, given that they were
citizens until age 28, are incredulous at the idea of having to go through the process of becoming a Permanent Resident as if they were total foreigners. A somewhat better avenue opened in 2009 when the government agreed to consider resumption of citizenship applications from such people under the discretionary power in section 5(4). This section authorizes the government to grant citizenship to people in situations of “special and unusual hardship.” Since 2009 I have submitted nearly 200 such resumption applications; most have been approved though some are still “in the pipeline”. The officials who review these cases are excellent ‘public servants’ but the 5(4) method is fraught with difficulties and uncertainties. That is why we are asking for “a global solution”.

B. Reasons for a Global Solution

What are the difficulties and uncertainties with the 5(4) process? One is that it is very labour intensive for all parties including government officials and the people. It requires applicants to provide extensive documentation about their life histories - where they have lived, and where they went to school, and where they worked, and who their siblings are, and where the siblings have lived and when, etc. And there is a risk because, when people submit such an application they have to send in their original citizenship certificates. They will not get these back if their applications are refused, meaning that they will then have nothing. In light of this risk, some people decide not to apply and, instead, to just hold on to the certificates they have because they can still use these certificates to get driver’s licences and health cards since there is no indication on the cards that they have expired. Another obstacle is the governmental fee of $530.00, not to mention the cost of a consultant.

As noted above, some people are astounded that they, having long carried a certificate of citizenship that appears to be permanently valid, should now have to go through such a process. Adding to their incredulity is the inequity that results from the retention requirement. To illustrate, one person told me: “it just makes no sense that my sister, who turned 28 just before February 15, 2005, and my brother, who turned 28 just after April 16, 2009, remain citizens automatically for their whole lives, even though they are not living in Canada, while I, despite having lived here for 20 years as a tax paying citizen, have to go through this complex process to again become a citizen.” A global solution would make it easier for such people to ‘regularize’ their status.

A more basic reason why the government should create a global solution relates to its responsibility for the problem in the first place, specifically its failure to notify the affected people and, what is worse, giving out misleading information. When this law came into force, on February 15, 1977, the government issued certificates of citizenship to people in this category that looked in every way as if they were permanently valid, just like other people’s certificates. There was no expiry notice on them. This was seriously misleading. It is the root of the problem. Admittedly, fairly soon the government began to enclose a ‘notice letter’ when it sent certificates to people in this category to say that the recipient needed to take certain steps before turning 28. But this letter was not enclosed at the beginning and when it was enclosed its wording was not clear. Also, for some time the intended recipient’s name did not appear on this ‘notice letter,’ thus creating uncertainty in families where several people received certificates at the same time, with some being under section 8 and others not. Further, since many of the people were children at the time they received these letters, they often got lost.
Then, in the 1980s and 1990s when my colleagues and I asked officials how we should advise our people about this provision, what application forms they should use to apply for retention, etc., the response we received was that we need not do anything because they hoped to have this provision abolished before anyone turned 28 under it, that is, before February 15, 2005. In fact, the government took steps to abolish this section in a Bill introduced into the House of Commons in late 1998. Unfortunately, that bill died on the order paper. If the officials in those years had prepared application forms and guides to enable people to go through the retention process, it would have made all the difference.

Then, several years before 2005, when the section was still not abolished, I worked hard to ‘spread the word’ urging people to check with local CIC offices well before their 28th birthdays so as to go through the retention process. Among other things, I placed announcements in newspapers in communities where the affected people live. A good number of people then did go to local CIC offices. But again and again and again the front-line officials told them that they knew of no such law, that it was simply not possible for people to suddenly cease to be citizens in such a way, that ‘once a citizen, always a citizen’ except if there was a formal revocation process. Front line CIC officials simply did not know about the loss/retention provision. And people’s certificates looked in every way as if they were permanently valid.

The problem of notifying people in this category remains unresolved. Even today, if such people call the Citizenship toll free number (1-888-242-2100), they will be given the same assurances, namely that if they have a certificate of citizenship then they must be citizens and need not worry. The government has no list of people who are in this category. It is only when an individual file is examined that it can be determined if the person is in this category. And if such people apply for a Canadian passport then they have to answer a question about whether they are “naturalized”. In fact, people in this category are not naturalized; they obtained their citizenship on a “derivative” basis, not by naturalization. But most ordinary people do not know about the legal meaning of the term “naturalization.” As a result, some of them while having every intent to be honest, give a false answer to this question and end up receiving a passport, as if they were citizens when in fact they are not.

People who ceased to be citizens due to the former section 8 will keep coming forward for many years into the future, even if not in large numbers. They will carry certificates of citizenship that look as if they are valid but then something will happen and they will be told that technically they have not been citizens since turning 28. How many are there? Those who received citizenship certificates but turned 28 in that four year window are probably under 1000. Some of these are living outside of Canada and would not submit applications even if a global solution made them eligible. But for others a global solution would be of immeasurable value! For the government to now provide such a solution would be ‘doing the right thing’.

**Recommendation:** A ‘global solution’ would result if section 3(1)(f)(iii) were deleted from the Act. This section, which was in the package of 2009 amendments, reads: “3(1) Subject to this Act, a person is a citizen if,....(f) before the coming into force of this paragraph, the person ceased to be a citizen for any reason other than the following reasons and did not subsequently become a citizen:... (iii) the person failed to make an application to retain his or her citizenship under section 8 as it read before the coming into force of this paragraph or did make such an application that subsequently was not approved;”
II. The “Issued in Error” Cases: A Legacy of the Pre-1947 Born-in-Wedlock Requirement

A. The Problem

A resolution of this problem would require a change in administrative policy, not an amendment to the Act. I would ask the Committee to make a recommendation urging the Minister to make the desired policy change.

The problem comes up when people who were born in Mexico but may have been living in Canada for a long time, - always with certificates of Canadian citizenship, - lose those certificates, for example if their purse gets stolen, and if such people then apply for new certificates. That leads officials to dig into their files where they sometimes discover that the applicant’s claim to citizenship rests on the claim of an ancestor who was born in Mexico in the 1930s and that, in turn, that ancestor’s claim rests on an assumption of being born in-wedlock which was then a requirement. Canadian officials then contact Mexican officials and ask them to confirm that that ancestor’s parents had a prior legal marriage. When Mexican officials, upon checking their records, do not find evidence that that ancestor’s parents had a prior legal marriage then they inform Canadian officials and Canadian officials then inform the applicant that they have never been citizens, that their certificates were issued in error. Canadian officials do not claim that these persons knowingly submitted false documents. Nor is it claimed that the person’s ancestor did so. What appears more likely is that decades ago when Canadian officials issued certificates to some of those parents or grandparents they did not ask for proof of being born in-wedlock, at least not the kind of proof that they require in more recent decades.

The problem is rooted in the requirement of the 1947 Act that people born outside of Canada, before that Act came into force had to be born of a legal marriage in order to derive Canadian citizenship from their father. (People born before 1947 could not derive citizenship from their mother.) Virtually all of the Mennonites born in Mexico in those years were born of parents who had a church wedding. Unfortunately, the people did not know that in Mexican law, church weddings do not have legal standing. Even Canadian officials were not familiar with all the legal aspects, including those of international law, and how compliance with them should be shown.

B. The Practical Effects

At present I am working on several such cases. I will recount that of JW, a man who was born in Mexico in 1966 and came to Canada at age two. He had a Registration of Birth Abroad Certificate which, legally, was a certificate of Canadian citizenship. Some years ago he lost that certificate so he applied for a new certificate of Canadian citizenship. After waiting several years a Citizenship official wrote that it could not be confirmed that his father, PW, born in Mexico in 1935, had been born in-wedlock and that therefore he, PW, should never have been issued a certificate of citizenship, and further, that JW was therefore now also deemed never to have been a citizen. In my work on this case I submitted an application for a grant of citizenship and asked that it be approved on the basis of the discretionary power in section 5(4). I am optimistic that it will be approved. But the question that I would ask the Committee to consider is this: is it necessary for current officials to look behind the decisions made by their predecessors decades ago to see if they met the born-in-wedlock criterion in ways that are now deemed important?
There are far-reaching ramifications. For JW the uncertainty about his status is causing considerable anxiety. Might this ‘close doors’ for him and make him ineligible for certain benefits, perhaps even his pension, or complicate other things? Should he now, when he goes to renew his driver’s licence or health card, for example, say that no, contrary to what he long believed, he has never been a citizen; what kind of questions would that lead to and how could he explain the story without leaving the impression that he must have done something wrong? Or worse, what if he is hospitalized and it is then discovered that since he has never been a citizen he is therefore not eligible for health coverage.

Consider also that JW has ten siblings. Their claim to citizenship has now also been found invalid even though they have long had certificates. Everyone of them should send in the kind of application I am sending in for JW. But the complications reach even further. Since the problem lies in the fact that JW’s grandparents did not have a legal marriage before JW’s father, PW, was born we need to bring PW’s eight siblings into the picture. They are in the same situation as PW of having been born out of wedlock. And each of those siblings has a number of children, these being cousins of JW. All of these cousins are in the same legal situation as JW, which is that technically they have never been citizens even though they may have had citizenship certificates for decades. Surely it has to be asked: does this make any sense? A further dimension is that thanks to a court decision a few years ago, officials cannot inform people that they are not citizens until they have given them an opportunity to present counter evidence. Obviously, the court wanted to bring in an element of procedural fairness but it is a game. It is extremely unlikely that anyone will find counter evidence. I am currently working on the case of a man whose 82 year-old grandfather, living in a nursing home in Canada, will be deemed never to have been a citizen, despite having lived here for decades, always with a certificate of citizenship.

The Senate Committee should know that unless there is a change in policy this situation will continue. Even after 2050 there might well be instances where say, an older woman who has lived in Canada since childhood loses a purse containing her certificate and then applies for a new one and then, after waiting for two years, is told, “sorry, because Mexican officials have been unable to confirm that your grandfather, born in the 1930s in Mexico, was born in wedlock we must now declare that you never were a Canadian citizen.” Consider the anxiety that such a person would feel: Will I be deported? Will I have to pay back what social ‘benefits’ I have received? It is overwhelming! And what for?? What does the government of Canada gain by continuing with this policy of looking into those old born-in-wedlock questions?

It is important to remember, in these “issued in error” situations, that the people’s certificates of citizenship and those of their ancestors were not produced by a counterfeit printing business in some dark alley. They were issued by the government of Canada. And the government would not have issued them if the applicants had not provided all the documents that officials requested. In that sense the “error” in the phrase “issued in error” was made by Canadian officials. The Canadian government should accept responsibility for that.

It should also be noted that this “issued in error” problem was not addressed by the changes in Canada’s citizenship law that came into force in June 2015. Those changes removed the born-in-wedlock requirement for people born before 1947, just as the changes of April 17, 2009 had removed them for people born after 1947. But the 2015 change only means that now people born abroad before 1947 can get certificates of citizenship if they have a Canadian born parent,
regardless of whether they were born in wedlock; they cannot now pass any citizenship rights on to their children or grandchildren, because of the first-generation-born-abroad principle adopted in 2009.

Our problem is different. It remains unaddressed. It involves people like JW who were born long after 1947, who have had certificates of citizenship for years and who received them on the basis of an ancestor born before 1947 who, it was believed, had been born in wedlock and who, under earlier laws, could pass on certain citizenship rights, but who, it has now been found, was not born in wedlock and who, therefore, cannot serve as a basis for their citizenship claims. This problem is still waiting to be addressed.

**Recommendation:** A remedial policy could read as follows: Persons who were born abroad and who received certificates of Canadian citizenship on the assumption that an ancestor born abroad before 1947 was born in-wedlock, but where that assumption cannot now be confirmed, shall be deemed to be Canadian citizens if there is no ground for suspecting that such individuals knowingly misrepresented relevant information and if there are no security concerns about them.

As noted above, I am not complaining about the officials who work on the individual applications that I bring in. They are exemplary public servants! At a personal level I am very grateful to them. My plea is for solutions that do not require such individual submissions. Over the years a good number of those officials have told me, ‘yes, there ought to be a better way.’ Favourable action on the part of the Committee could bring that about.

Thank you.