

ImmQuest

"Qui bene interrogat bene docet" "He who questions well teaches well"

Editors-in-chief: Cecil L. Rotenberg Q.C. and Mario D. Bellissimo; Associate Editor: Edward C. Corrigan

Changes to Canada's Citizenship Laws

Edward C. Corrigan

Bill C-37, which amended Canada's Citizenship Act, came into effect on April 17, 2009. The new law gives Canadian citizenship to certain people who lost it and to others who are recognized as citizens for the first time. Children of Canadian citizens born

Full story on page 2

Foreign Credential Recognition and Assessment: An Introduction (Part One)*

Lesleyanne Hawthorne

The scale of recent skilled migration to Canada¹

By 2005, 19.2% of the Canadian population was foreign-born, the world's highest proportion following Australia (24.6%). As early

* For the original 2007 publication of this article, see: Lesleyanne Hawthorne, "Foreign Credential Recognition and Assessment: An Introduction" (2007) Canadian Issues 1, published in the Spring Issue by the Association for Canadian Studies.

¹ The information in this section is derived from *Labour Market Outcomes for Migrant Professionals – Canada and Australia Compared*, Lesleyanne Hawthorne, Statistics Canada, 2007 (forthcoming), a study commissioned by Citizenship and Immigration Canada, Statistics Canada and Human Resources and Social Development Canada.

Full story on page 5

CARSWELL

INSIDE

Focus—Changing Times in the World of Immigration

- **Changes to Canada's
Citizenship Laws**1
— *Edward C. Corrigan*
- **Foreign Credential Recognition
and Assessment: An Introduction
(Part One)**1
— *Lesleyanne Hawthorne*
- **Should I Stay or ...
Baron v. Canada**9
— *Joshua Lang*
- **Case Tracker: Cases You
Should Know!**11
— *Mario D. Bellissimo*

Please send your questions to *ImmQuest* care of Mario D. Bellissimo at mdb@obr-immigration.com. If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency, send it along and we will ask on your behalf.

Changes to Canada's Citizenship Laws

continued from page 1

abroad, however, will lose their right to Canadian citizenship. According to the Citizenship and Immigration Canada (CIC) website, the new law protects the value of citizenship by limiting citizenship by descent to one generation outside Canada.

The new law stems, to a large extent, from Canadian government being forced to remove 15,000 Canadian citizens from Lebanon during the 2006 war. Many of these Canadians had returned to Lebanon to live permanently. At the time, Stephen Harper's government condemned these so-called 'citizens of convenience' who were accused of using Canadian citizenship as insurance against turmoil in their home countries. The new amended Citizenship law, according to Natalie Brender, writing in *The Globe and Mail*, was to ensure that only one generation of emigrant Canadians will gain such "conveniences" in the future.¹

Citizenship and Immigration Minister, Jason Kenney, has stated that there are an estimated 250,000 Canadian citizens living in Hong Kong and 50,000 or more in Lebanon. He objected to the current right of these citizens' great-grandchildren to become Canadian citizens and saw it as evidence of abuse of Canada's citizenship laws. Minister Kenney has also suggested there would be tighter enforcement of the existing rule that immigrants be able to speak an official language before being granted Canadian citizenship.²

Minister Kenney has also criticized "birth tourists" who come to Canada to have their children so they can acquire Canadian citizenship. Minister Kenney said his department is considering how to prevent such people from abusing Canada's generosity.³

Under the new amended Citizenship Act, citizenship is automatic and retroactive to the day the person was born or lost citizenship, depending on the situation. Individuals born to a Canadian parent, or born in Canada, will automatically have a right to

Canadian citizenship. Individuals, however, may have to apply for a certificate to prove their citizenship. Under the amended Act, individuals who were Canadian citizens when the law came into effect will keep their citizenship.

Between January 1, 1947, and February 14, 1977, the rules for retention of Canadian citizenship under Canada's laws were different from what they are under the current Citizenship Act. The rules applied to individuals who were born in the first or subsequent generations outside Canada. In most cases, the deadline for taking steps to retain citizenship was the 24th birthday.

After February 15, 1977, individuals were Canadian by birth if they were born outside Canada, as long as at least one of the parents was Canadian when they were born. If the Canadian parent was also born outside of Canada (which would make the individual a second or subsequent generation Canadian born abroad), they had to take steps to retain their Canadian citizenship before turning 28, otherwise they would lose their Canadian citizenship.

The New Law Restores Citizenship

Some individuals benefit from the new amended law and will become Canadian citizens, namely those who:

- became citizens when the first citizenship act took effect on January 1, 1947. This includes people born in Canada prior to 1947 and war brides. It also applies to other British subjects who had lived in Canada for at least five years before 1947, became citizens on January 1, 1947, and who then lost citizenship;
- were born in Canada or who became Canadian citizens on or after January 1, 1947, and who then lost their citizenship; and
- were born outside Canada, on or after January 1, 1947, in the first generation born abroad, to a Canadian citizen.

The law also gives citizenship to some people who have never been citizens. This includes people who:

- were born outside Canada on or after January 1, 1947;
- are in the first generation born abroad; and
- were born to a Canadian citizen.

¹ Natalie Brender, "If we're going to talk citizenship, let's have a principled debate" *The Globe and Mail* (8 April 2009).

² *Ibid.*

³ *Ibid.*

Accordingly, some individuals who have never been Canadians, but who are part of the first generation born outside Canada to a Canadian parent, become Canadians under the new law. Their Canadian citizenship is retroactive to their date of birth.

Individuals who were Canadian citizens when the new law came into force will keep their citizenship. This includes individuals who were born second or subsequent generations outside Canada. Accordingly, the new citizenship law eliminates the need for those born before April 17, 2009 outside Canada in the second or subsequent generations to take special steps to retain their citizenship.

Anyone who was a Canadian citizen when the law came into force will keep their citizenship, regardless of the generation in which they were born, and regardless of whether they were ever issued a proof of citizenship. Such individuals can apply for a proof of citizenship for their children at any time, from inside or outside Canada.

Who Does Not Benefit

Some individuals, however, do not become Canadian citizens under the new law. This includes individuals who:

- did not become citizens when the first Citizenship Act took effect on January 1, 1947;
- were born in Canada but are not citizens because when they were born, one of their parents was a foreign diplomat and neither parent was a permanent resident or citizen of Canada;
- were born outside Canada to a Canadian parent, who are not already citizens or who lost their citizenship in the past, and who were born in the second or next generation abroad (this includes people who failed to retain citizenship);
- renounced their citizenship as adults with the Canadian government; or
- had their citizenship revoked by the government because it was obtained by fraud.

Under the old citizenship law, people who were born outside Canada on or after February 15, 1977, to a Canadian parent who was also born outside Canada, were required to apply to retain their citizenship before their 28th birthday. If these people turned 28 before April 17, 2009, and did not take steps to retain their cit-

izenship, their Canadian citizenship was not restored under the new law.

Creating Two-Tiered Citizenship

Under the old Canadian citizenship rules, it was possible for Canadians to pass on their citizenship to their children born outside Canada. These Canadian children born abroad could also pass on Canadian citizenship to their children. The new law limits, with a few exceptions, citizenship by descent to one generation born outside Canada. This means that children born to Canadian parents in the first generation outside Canada will only be Canadian at birth if:

- one parent was born in Canada, or
- one parent became a Canadian citizen by immigrating to Canada and was later granted citizenship (also called naturalization).

The new rules may also affect children adopted by Canadian parents outside Canada, depending on the way in which the child obtained, or will obtain, their Canadian citizenship.

Government Workers and Canadian Forces Personnel

All children born to a Canadian parent who is working outside the country for the Canadian federal or provincial governments, or serving in the Canadian Forces, will be Canadian, regardless of the generation in which they were born outside Canada.

The children of diplomatic or military personnel will, however, have limits on their ability to pass along Canadian citizenship to their own children if those children are born outside of Canada. They will be considered Canadians born outside Canada and will lose the right to automatically pass on Canadian citizenship to children born outside of Canada. This means that their children born outside Canada (the grandchildren of diplomatic or military personnel) will not be Canadian citizens unless:

- one Canadian parent is working outside the country for the Canadian federal and provincial governments, or serving in the Canadian military; or
- one parent was born or naturalized in Canada (naturalized means they immigrated to Canada and were later granted citizenship).

Note this exception does not apply to Canadians employed as locally-engaged staff.

The New Law Simplifies Citizenship Rules

Some aspects of Canada's citizenship rules are now simplified,

- restoring or giving Canadian citizenship to many who never had it or lost it due to previous laws;
- limiting Canadian citizenship to the first generation born to Canadian parents outside Canada; and
- allowing people adopted outside Canada by Canadian parents between January 1, 1947 and February 14, 1977 to apply for a grant of citizenship.

The previous citizenship law required individuals born in the second or subsequent generations outside Canada to submit an application to retain their citizenship, and to either live in Canada for one year or prove a substantial connection to Canada before their 28th birthday. If the individual did not do either of these things, they would lose their citizenship, sometimes without even knowing. The old citizenship law was criticized for being complicated, confusing, and leading to uncertainty for many people about their citizenship status. The amended citizenship law simplifies the rules by eliminating this requirement.

Impact of Limiting Citizenship to First Generation Born Abroad

The new rules limit the passing of Canadian citizenship of those individuals born abroad. The limitation affects the way individuals acquire Canadian citizenship outside Canada. It means that, in general, children born outside Canada on or after April 17, 2009, will only be Canadian at birth if they are born to a Canadian parent who was either born in Canada or became a Canadian citizen by immigrating to Canada as a permanent resident and subsequently being granted citizenship through naturalization. Children born to Canadian citizens born abroad, and not born in Canada, will lose their right to Canadian citizenship.

Statelessness

Under the amended law, it is possible that some individuals born to a Canadian parent outside Canada in the second or subsequent

generations may not acquire citizenship from either of their parents or the country of their birth because of the laws of that country. Many countries do not grant citizenship by virtue of birth. Many countries only pass citizenship through the father. The mother's rights to pass on citizenship is lost in those cases. As a result, some individuals may not acquire any right of citizenship and will be stateless.

If they intend to live in Canada, individuals who are stateless may be eligible to be sponsored in the family class for permanent residence by their parents. As such, they would come to Canada as permanent residents. Under the amended law, for those children under 18 who become permanent residents of Canada, Canadian citizen parents can immediately apply for a grant of citizenship on their children's behalf. These children are not subject to the regular three-year residency requirement.

To be allowed to sponsor their children, parents must be residing in Canada or prove that they will be residing in Canada at the time of obtaining Permanent Residence. However, Citizenship and Immigration Canada acknowledges that in some instances, the new citizenship law may have a negative impact on Canadian families with strong ties to Canada who are residing temporarily overseas and who are unable to meet the sponsorship requirements. Although these families intend to return and reside in Canada when their work term or contract is complete, they may not be in a position to return immediately when their children become permanent residents.

The inability to meet this requirement to sponsor may pose particular difficulties in cases where their children are stateless, or where the children's citizenship seriously limits a family's ability to travel freely. Under these circumstances, it is advised that parents apply to sponsor their children under the Family Class and request humanitarian and compassionate consideration.

The new amended Act also contains a special provision for stateless individuals to help them to obtain Canadian citizenship. To be eligible to obtain citizenship under the stateless provision, a person born outside Canada on or after April 17, 2009, must meet the following criteria:

- have a birth parent who was a Canadian citizen at the time of the person's birth;
- be less than 23 years of age;

- have resided in Canada for at least three years during the four years immediately before the date of application;
- have always been stateless; and
- have not been convicted of a security, organized crime, or terrorism-related offence.

The provision on statelessness in the amended Citizenship Act mirrors the minimum obligations established by the *Convention on the Reduction of Statelessness*, to which Canada is a party.

There is, however, a serious problem with this stateless provision. Stateless individuals cannot normally get a passport. The lack of nationality and lack of a passport will present extreme difficulty in traveling and entering Canada and living there for three years before acquiring Canadian Citizenship. Does this provision mean that Canada is going to provide a travel document or a passport of convenience to these stateless individuals so that they can travel to Canada? Unless this problem is addressed, the stateless provision in the amended Act is of limited and perhaps no value.

Citizenship laws are complex, confusing and sometimes conflict. The problem of statelessness is huge; there are an estimated 15 million people in the world who are stateless.

These amendments to Canada's citizenship law will benefit some individuals but have important implications for Canadians living abroad. The changes will have a serious impact on Canadians born abroad and will in effect create two classes of Canadian citizens.

For More Information

Citizenship and Immigration Canada information about the changes: <http://www.cic.gc.ca/english/citizenship/rules-citizenship.asp>

Text of Bill C-37:

http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=39&Ses=2&Mode=1&Pub=Bill&Doc=C-37_4

Canadian Council for Refugees submission on Bill C-37:

<http://www.ccrweb.ca/documents/c-37.pdf>

Senate Committee Report on Bill C-37:

<http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/soci-e/rep-e/rep11apr08-e.htm>

Proposed regulations, Canada Gazette, 13 December 2008, (contains an account of the implications of the changes):

<http://canadagazette.gc.ca/part1/2008/20081213/html/regle1-e.html#k101>

Information from the United Nations about statelessness:

<http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3b8265c7a>

Convention on the Reduction of Statelessness:

http://www.unhchr.ch/html/menu3/b/o_reduce.htm

Edward C. Corrigan is a lawyer certified as a Specialist in Citizenship and Immigration Law and Immigration and Refugee Protection by the Law Society of Upper Canada in London, Ontario, Canada. He can be reached at corriganlaw@edcorrigan.ca or at (519) 439-4015.

Foreign Credential Recognition and Assessment

continued from page 1

as the 2001 Census, the nation included 3,374,057 degree-qualified² immigrants and 3,801,118 with post secondary diplomas or certificates (see Table 1). Between 1996 and 2001, newly arriving immigrants were more than twice as likely as the Canadian-born to be degree-qualified (37% compared to 15%). While male immigrants to Canada were much more highly educated than females (41% with degrees compared to 33%), both far exceeded the credential norm for the domestic workforce (15% of males and 16% of females respectively). As Kustec et al. show in this volume, credential recognition matters disproportionately to such skilled immigrants. Within the past decade, 1.2 million immigrants have reached Canada with the intention to work. Of the one-third who hold professional qualifications, at least 50% target fields requiring some type of training or formal credential. While just 15% of Canadian work in regulated occupations, this proportion rises to 34% when we look at the landed immigrants who arrived by 1996 and 2005 and for whom "intended occupation" is known."

2 "Degree-qualified" refers to all immigrants who hold university degree level qualifications, as recorded by the Census or Citizenship and Immigration Canada's landings data.