Legislative Summary **LS-528E**

BILL C-14: AN ACT TO AMEND THE CITIZENSHIP ACT (ADOPTION)

Elizabeth Kuruvila
Law and Government Division

29 May 2006
Revised 24 September 2007

Library of Parliament

Bibliothèque du Parlement

Parliamentary Information and Research Service

LEGISLATIVE HISTORY OF BILL C-14

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	15 May 2006	First Reading:	5 June 2007
Second Reading:	13 June 2006	Second Reading:	19 June 2007
Committee Report:	2 October 2006	Committee Report:	21 June 2007
Report Stage:	1 June 2007	Report Stage:	
Third Reading:	1 June 2007	Third Reading:	21 June 2007

Royal Assent: 22 June 2007

Statutes of Canada 2007, c.24

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

BACKGROUND 1

DESCRIPTION AND ANALYSIS 3

A. Citizenship to Adopted Minors 4

B. Citizenship to Adopted Children at Least 18 Years of Age 4

C. Adoptions Under Quebec Law 4

COMMENTARY 5

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-14: AN ACT TO AMEND THE CITIZENSHIP ACT (ADOPTION)*

On 15 May 2006, the International Day of Families, the Minister of Citizenship and Immigration introduced Bill C-14, An Act to amend the Citizenship Act (adoption), in Parliament. The bill allows for the granting of citizenship to non-Canadian children adopted abroad by Canadian parents, without requiring that such children first become permanent residents.

BACKGROUND

Under the existing law, a Canadian parent who adopts a non-Canadian child from abroad must first apply to sponsor the child for permanent residence under the *Immigration and Refugee Protection Act*(1) (IRPA). In order to obtain citizenship, the adopted child, if a minor, must first become a permanent resident under the IRPA.(2) A child who is at least 18 years of age must, in addition to being a permanent resident, meet the residency requirement and other requirements of the *Citizenship Act*(3) before becoming eligible for Canadian citizenship.(4) The

---

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

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

(2) Section 5(2)(*a*) of the *Citizenship Act* reads:

> (2) The Minister shall grant citizenship to any person who
>
> (*a*) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and is the minor child of a citizen if an application for citizenship is made to the Minister by a person authorized by regulation to make the application on behalf of the minor child …

(3) R.S.C. 1985, c. C-29.

(4) Section 5(1) of the *Citizenship Act* reads:

> (1) The Minister shall grant citizenship to any person who
>
> (*a*) makes application for citizenship;
>
> (*b*) is eighteen years of age or over;

procedure to become a permanent resident is time-consuming and involves significant processing fees. As it now stands, Canadian citizens who adopt children outside of Canada may face a lengthy process before their children can attain citizenship. In contrast, children who are born abroad to Canadians are automatically citizens.(5) Under the existing law, adopted children are also subject to the prohibitions related to criminal activities under the *Citizenship Act*, while biological children are not subject to such prohibitions.(6)

As a result of the existing law, adopted children are treated differently from biological children born abroad to Canadian citizens. The Federal Court has indicated that distinctions in the law based on "adoptive parentage" violate the equality rights provisions in section 15 of the *Canadian Charter of Rights and Freedoms*.(7) Under the existing law, moreover, children adopted by Canadian parents who are living abroad and who wish to continue doing so cannot become permanent residents and, therefore, cannot become Canadian citizens.(8)

(cont'd)

> (*c*) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:
>
> > (i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and
> >
> > (ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;
>
> (*d*) has an adequate knowledge of one of the official languages of Canada;
>
> (*e*) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and
>
> (*f*) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

(5) Section 3(1)(*b*) of the *Citizenship Act* reads:

> 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 …

(6) According to section 22 of the *Citizenship Act*, a person shall not be granted citizenship under section 5 in certain circumstances. For instance, if the person is on probation or parole, or is in jail, or if the person is charged with certain offences or is on trial for certain offences, citizenship is denied.

(7) *Minister of Citizenship and Immigration* v. *Dular*, [1998] 2 F.C. 81.

(8) In 2001, however, the Department of Citizenship and Immigration established a special interim measure under section 5(4) of the *Citizenship Act* to grant citizenship to such children.

In its report *Updating Canada's Citizenship Laws: It's Time* (October 2005), the House of Commons Standing Committee on Citizenship and Immigration recommended that

> Children adopted by Canadian citizens should be entitled to Canadian citizenship without first obtaining permanent resident status or meeting a residency requirement, provided it is a *bona fide* adoption and the requirements of the Hague Convention on Intercountry Adoption(9) are met.

The Committee also recommended that when a citizenship application for an adopted child is refused, an appeal on facts and law should be permitted in the Federal Court.

There have been previous legislative attempts to address the problem of granting citizenship to adopted children. For instance, in the 38th Parliament, the government introduced Bill C-76, An Act to Amend the Citizenship Act (Adoption). The bill died on the *Order Paper* when Parliament was dissolved in the fall of 2005. Bill C-18, An Act respecting Canadian citizenship, was introduced in the 2nd Session of the 37th Parliament and referred to the Committee after second reading. However, it was not passed due to the prorogation of Parliament. Prior to that, Bill C-16, which was passed by the House of Commons on 30 May 2000, died on the Senate *Order Paper*.

DESCRIPTION AND ANALYSIS

Bill C-14 consists of only four clauses. Clause 1 amends section 3 of the *Citizenship Act* so that adopted children who attain citizenship without first obtaining permanent resident status are Canadian citizens. Clause 2 applies to adopted children who are minors and also to those who are at least 18 years of age; it amends section 5 of the *Citizenship Act* and provides that, subject to certain conditions, the Minister shall grant citizenship to children who are adopted abroad after 14 February 1977. Clause 2 also has a special provision for adoptions that are under the jurisdiction of Quebec.

---

(9) *The Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption* was concluded on 29 May 1993 in the Hague and came into force on 1 May 1995.

A. Citizenship to Minors

Subject to the regulations and upon application, the Minister shall grant citizenship to a minor child adopted by a Canadian provided the adoption:

- was in the best interests of the child;
- created a genuine relationship of parent and child;
- was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen; and
- was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

The bill enables the Governor in Council to make regulations providing for the factors to be considered in determining whether these requirements have been met. **Such regulations, when proposed, must be laid before both houses of Parliament and be referred to the appropriate committees.**

B. Citizenship to Adopted Children at Least 18 Years of Age

As discussed earlier, Bill C-14 grants a right of citizenship to a person at least 18 years of age who is adopted abroad by a Canadian citizen, subject to certain conditions. In such cases, there must have been a genuine parent and child relationship before the person attained 18 years of age as well as at the time of the adoption. The bill also requires that the last two requirements of a minor adoption be fulfilled (see section A, above).

C. Adoptions Under Quebec Law

In cases where the adopting parent is subject to Quebec law governing adoptions, the Quebec authority responsible for international adoptions will have to confirm in writing that the adoption complies with Quebec law. This provision recognizes the unique adoption provisions of Quebec's *Civil Code*. Quebec is the only province that does not finalize an adoption until the child is actually in Canada and residing with the adoptive parents. An adoption that is under the jurisdiction of Quebec is considered final only when it is approved by the Court.

This provision allows citizenship to be granted to children adopted abroad before the adoption is officially approved by the Court of Quebec. Without it, adoptive parents from Quebec and their adopted child would not have been able to benefit from the other new citizenship provisions contained in the bill.

COMMENTARY

Much of the media coverage relating to Bill C-14 and the adoption provisions of predecessor bills appears to be positive. In commenting on the same provisions in Bill C-18, however, the National Citizenship and Immigration Section of the Canadian Bar Association raised some concerns about the lack of an appeal provision for adoptive parents. The Association stated that "[t]he proposed law is not sensible if it provides an inferior review process and disadvantages citizen parents in the event of a refusal of the application for citizenship." The Association contended that a refusal of a citizenship application (under Bill C-18) "is subject only to judicial review in Federal Court, rather than full appeal on the legal issues to the IAD [Immigration Appeal Division]."(10)

Under the existing law, when an application for citizenship is refused, the parent may apply for judicial review at the Federal Court and is limited to the grounds set out in the *Federal Courts Act*.(11) This situation is not changed by Bill C-14. In contrast, when an application for permanent residence is refused, the parent may have recourse to the Immigration Appeal Division and the case may be reviewed on both facts and law.

---

(10) Canadian Bar Association, Submission to the Standing Committee on Citizenship and Immigration on Bill C-18, November 2002.

(11) R.S.C. 1985, c. F-7. Judicial review of a negative citizenship decision is limited, by section 18.1(4) of the *Federal Courts Act*, to instances where the decision-maker:

> a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
>
> b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
>
> c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
>
> d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
>
> e) acted, or failed to act, by reason of fraud or perjured evidence; or
>
> f) acted in any other way that was contrary to law.