



## LEGISLATIVE SUMMARY



***Bill C-37:  
An Act to amend the Citizenship Act and to make  
consequential amendments to another Act***

Publication No. 40-3-C37-E  
25 March 2011

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## ***Legislative Summary of Bill C-37***

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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.

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

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# LEGISLATIVE SUMMARY OF BILL C-37: AN ACT TO AMEND THE CITIZENSHIP ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO ANOTHER ACT\*

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## 1 BACKGROUND

Bill C-37, An Act to amend the Citizenship Act and to make consequential amendments to another Act (short title: Strengthening the Value of Canadian Citizenship Act), was introduced in the House of Commons on 10 June 2010. Addressing various aspects of Canadian citizenship, the bill:

- allows grandchildren of military and government workers to become citizens by descent;
- amends the residency requirement needed to obtain citizenship by way of grant;
- amends the procedures for revoking citizenship;
- regulates third-party representation in citizenship matters;
- includes foreign offences and sentences served outside Canada among the prohibitions to granting citizenship; and
- increases the penalties for citizenship fraud.

The bill also clarifies the first generation cut-off on citizenship by descent and allows certain persons who would be citizens but for the death of a parent to become citizens.

Some of the provisions included in Bill C-37 are similar to those included in previous attempts to reform Canada's citizenship legislation. For instance, the provision defining "residence" as physical presence in Canada was part of Bill C-16, introduced in 1999 during the 2<sup>nd</sup> Session of the 36<sup>th</sup> Parliament, and Bill C-18, introduced in 2002 during the 2<sup>nd</sup> Session of the 37<sup>th</sup> Parliament. Both of these bills were intended to replace the 1977 *Citizenship Act* but died on the *Order Paper*.

Other provisions in Bill C-37 follow directly from the amendments to provisions regarding Canadian citizenship recently brought about by Bill C-37 in the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament, though that bill focused primarily on "lost Canadians" – people who think of themselves as Canadians and who wish to participate in Canadian society, but either ceased to be citizens, or never were Canadian citizens in the first place, for various legal reasons.<sup>1</sup> It also introduced changes to citizenship by descent; this is further amended in the present Bill C-37.

Finally, Bill C-37 includes new concepts, such as the authority to regulate third-party representation in citizenship matters brought by Bill C-35, which received Royal Assent on 23 March 2011.<sup>2</sup> That bill amended the regulation of immigration consultants through the *Immigration and Refugee Protection Act*.<sup>3</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 GRANDCHILDREN OF MILITARY AND GOVERNMENT WORKERS MAY BE CITIZENS BY DESCENT (CLAUSES 2 AND 4)

Currently, Canadian parents born outside Canada who obtained citizenship through descent cannot pass on citizenship by descent to their children born abroad, as described in section 3(3) of the *Citizenship Act*.

An exception to this provision, section 3(5) of the Act, provides that children born or adopted abroad can obtain citizenship if one or both of their parents were, at the time of their birth or adoption, employed outside Canada in or with the Canadian armed forces, the federal public administration or the public service of a province (referred to in this paper as “military and government workers” and meaning persons other than those employed as locally engaged persons). The purpose of this provision is to allow current military and government workers to pass on citizenship by descent, even if they themselves were born abroad.

The effect of this clause is that these children are considered to be the first generation born abroad and cannot pass on citizenship by descent to a second generation born abroad.

Bill C-37 creates new sections 3(5)(b) and (c) and new section 5.1(5), which extend citizenship by descent to persons born or adopted abroad whose grandparents were military and government workers at the time of their parent’s birth or adoption. Persons born or adopted abroad whose grandparents were not employed as military and government workers would remain subject to the second-generation cut-off and would be unable to obtain citizenship by descent.

### 2.2 CITIZENSHIP OTHER THAN BY WAY OF GRANT (CLAUSE 2)

New section 3(5.1) further provides that persons who obtain citizenship through descent from parents who were born abroad to or adopted abroad by military or government worker parents shall be deemed to have obtained citizenship in a way other than the granting of the citizenship.

New section 3(6.1) provides that persons previously granted citizenship and whose parents ceased to be citizens (for reasons other than renunciation, revocation due to false representation/fraud, or failure to apply under a prior version of the Act) shall be deemed to have obtained their citizenship other than by way of grant.

New section 3(1.1) provides that people who would have obtained citizenship but for the death of a parent before they were born are deemed to be citizens by descent if they would have become citizens had their parents lived.

## 2.3 AMENDMENTS TO RESIDENCY REQUIREMENTS FOR CITIZENSHIP APPLICANTS (CLAUSE 3)

The *Citizenship Act* requires that a permanent resident meet a number of criteria in order to apply for citizenship, including a residency requirement. Section 5(1) of the Act provides that applicants must have accumulated at least three years of residence in Canada within the four years immediately before their application.

The term “residence” is not defined in the *Citizenship Act* and has consequently been interpreted by the judiciary. The less stringent interpretation of the term “residency” allows for persons with an established home in Canada to continue to be resident in Canada even if they leave for a temporary purpose such as business, vacation or pursuing a course of study, as long as the degree to which the person settles in Canada is strong enough to constitute residency. This means that their mode of living, social relations, interests and conveniences must have become centralized in Canada.<sup>4</sup>

Bill C-37 amends section 5(1)(c) of the Act to change the requirement for “three years of residence” in Canada to “1,095 days of physical presence” in Canada in the four-year period immediately preceding the citizenship application. This amendment eliminates any judicial and administrative discretion regarding the calculation of a term of residency regardless of the degree of establishment in Canada. Instead, this amendment will require a strict counting of days of physical presence in Canada in order for a permanent resident to become a citizen.

## 2.4 AMENDMENT TO REVOCATION OF CITIZENSHIP PROCEDURES (CLAUSES 6 AND 8)

### 2.4.1 REVOCATION RESULTING FROM FALSE REPRESENTATION (CLAUSE 6)

Under new section 10(3) individuals may be deemed to have obtained or resumed citizenship by false representation, fraud, or knowingly concealing material facts if they obtained their permanent residence by one of those means. Currently, only obtaining citizenship through fraudulent means is included in the Act.

### 2.4.2 NEW CITIZENSHIP REVOCATION PROCESS (CLAUSE 8)

Sections 7 to 10 of the *Citizenship Act* provide that citizens shall not cease to be citizens unless they (a) chose to renounce their citizenship or (b) the Governor in Council finds that they obtained, resumed, retained, or renounced their citizenship through fraud, false representation or knowingly concealing material facts, or (c) if they obtained citizenship through permanent residence obtained by fraud, false misrepresentation or knowingly concealing material facts.

Section 18 of the Act sets out the current procedures for revocation of citizenship. First, the minister must give notice to the person concerned. Within 30 days, the person may request that the case be referred to Federal Court. In the absence of a request, the minister may make a report to the Governor in Council, who may then order the revocation of citizenship effective as of the date fixed in the order.

Currently, if the case is referred to the Federal Court, the court may decide if the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances. The decision of the Federal Court is final, and no appeal from the decision is available (section 18(3) of the *Citizenship Act*).

Clause 8 of Bill C-37 repeals section 18 and replaces the procedure for revocation of citizenship.

Specifically, Bill C-37 amends section 10 of the Act to provide that the minister must now commence an action in court in order to obtain a declaration that someone obtained, retained, renounced, or resumed their citizenship by fraud, by false misrepresentation, or by knowingly concealing material circumstances. As with all final judgments of the Federal Court, the decision is appealable to the Federal Court of Appeal (section 27(1)(a) of the *Federal Courts Act*).

### 2.4.3 REVOCATION ON THE BASIS OF INADMISSIBILITY (CLAUSE 6)

The status of individuals following the revocation of Canadian citizenship depends on their immigration status prior to obtaining citizenship. Section 46(2) of the *Immigration and Refugee Protection Act* provides that if they were Canadian permanent residents before they obtained citizenship, they will become permanent residents unless the revocation of their citizenship was based on a misrepresentation used to obtain permanent resident status (section 10(2) of the *Citizenship Act*).

Bill C-37 further amends section 10.1 to provide that the minister of Public Safety and Emergency Preparedness may instruct the minister of Citizenship, Immigration and Multiculturalism to seek a declaration from the court that the person is inadmissible on grounds of security, violating human or international rights, serious criminality, or organized criminality. If a declaration that the individual is inadmissible under new section 10.1 is sought, the minister of Public Safety and Emergency Preparedness becomes a party to the action commenced before the court. The court may then make a declaration that the individual obtained, retained, renounced or resumed his or her citizenship by fraud, false misrepresentation or by knowingly concealing material circumstances. If the court denies the declaration sought under section 10, a declaration of inadmissibility under section 10.1 cannot be considered.

New section 10.1(5) outlines the procedure for an inadmissibility declaration following a declaration under section 10(1). The court is instructed to assess the facts that are alleged in support of an inadmissibility declaration on the basis of “reasonable grounds to believe”<sup>5</sup> they have occurred or are occurring.

New section 10.1(5)(c) provides that the court may hear any evidence it considers credible and trustworthy in the circumstances and that the court is not bound by any legal or technical rules of evidence. This proposed procedure mirrors the evidentiary procedures in place under Division IX of the *Immigration and Refugee Protection Act*. Specifically, sections 83(1)(a) and (h) provide that the court has a measure of flexibility in determining what can be admitted into evidence in matters relating to inadmissibility on grounds of security, violating human or international rights, serious criminality, or organized criminality.



New section 10.2 provides that, despite section 27(1)(c) of the *Federal Courts Act*, no appeal may be made from an interlocutory decision in the court of an action referred to in subsection 10(1). Note that final judgments remain appealable under section 27(1)(a) of the *Federal Courts Act*.

New section 10.1(3) provides that a declaration that a person is inadmissible constitutes a removal order that is immediately in force against the person under the *Immigration and Refugee Protection Act*.

## 2.5 REGULATING THIRD-PARTY REPRESENTATION IN CITIZENSHIP MATTERS (CLAUSE 10)

Bill C-37 creates new section 21.1 which provides that a person commits an offence if that person knowingly represents or advises another person “for consideration” (or offers to do so) in connection with a proceeding or application under the *Citizenship Act*. An exception exists for members of a bar of a province, the *Chambre des notaires du Québec*, students-at-law, or a body designated under new section 21.1(5).

New section 21.1(5) provides that the minister may designate by regulation a body whose members in good standing may represent or offer to advise a person for consideration in connection with a proceeding or application under the *Citizenship Act*. New section 21.1(4) provides that a person acting on behalf of an agency authorized to provide those services may offer to assist a person with a proceeding under the Act so long as the person is acting in accordance with the agreement or understanding.

New section 21.1(6) provides that the Governor in Council may require the body designated under new section 21.1(5) to provide any information as set out in the regulations in order to assist the minister in evaluating whether the designated body governs its members in a manner that is in the public interest, or for any other purpose related to preserving the integrity and policies and programs for which the minister of Citizenship, Immigration and Multiculturalism is responsible under this Act.<sup>6</sup>

New sections 27(1)(a.1) and 27(1)(h.1) govern the new regulatory powers of the minister and the content of any resulting regulations.

### 2.5.1 PENALTIES (CLAUSE 15)

New section 29.1 creates a penalty for providing or offering to provide unauthorized citizenship advice for consideration. An unauthorized person who knowingly represents or advises or offers to do so in connection with a proceeding or application under the *Citizenship Act* is in violation of section 21.1(1). If convicted on indictment, that person would be liable for a maximum fine of \$50,000 and/or for a maximum term of imprisonment of two years. If the person were found liable on summary conviction, the penalty would be a maximum fine of \$10,000 and/or imprisonment for a maximum term of six months.

In addition, Bill C-37 creates two new offences of misrepresentation and of counselling misrepresentation (new section 29.2). The new offence of counselling misrepresentation provides that every person who knowingly does or who attempts to counsel, induce, aid or abet any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the *Citizenship Act* commits an offence. It is important to note that this new offence is not restricted to persons providing or offering to provide citizenship advice for consideration without permission, but instead applies to any person counselling misrepresentation whether or not they are providing or offering to provide advice for consideration. The penalties for counselling misrepresentation could include a fine of up to \$100,000 and/or a term of imprisonment of up to five years (new section 29.2(3)).

## 2.6 PROHIBITIONS FOR A GRANT OF CITIZENSHIP: FOREIGN OFFENCES AND SENTENCES SERVED OUTSIDE CANADA (CLAUSE 11)

Section 22(1)(a) of the *Citizenship Act* currently provides that a person cannot be granted citizenship or take the oath of citizenship while he or she is a paroled inmate or an inmate of any penitentiary, jail, reformatory or prison, or is subject to a probation order pursuant to any enactment in force in Canada. Section 22(1)(b) of the Act provides that a person cannot be granted citizenship or take an oath of citizenship while the person is charged with, on trial for, or a party to an appeal relating to an offence under the *Citizenship Act* or an indictable offence.

Bill C-37 amends section 22(1)(a) by creating new sections 22(1)(a.1) and (a.2). These sections prevent the granting of citizenship or the taking of an oath of citizenship while an individual is serving a sentence outside Canada for an offence committed outside Canada that would constitute an offence in Canada had it been committed in this country.

Bill C-37 also adds section 22(1)(b.1) to the *Citizenship Act*. The new section provides that a person cannot be granted citizenship or take an oath of citizenship while that person is charged with or is on trial for an offence committed outside Canada that, if committed in Canada, would constitute an indictable offence, other than an offence designated as a contravention under the *Contraventions Act*. This also applies if the person is subject to or is a party to an appeal relating to such an offence. New section 22(1.1) provides that the minister may use his or her discretion to waive, on compassionate grounds, an application of section 22(1)(b.1).

Bill C-37 creates section 22(3) which provides that, despite anything else in the *Citizenship Act*, a person cannot be granted citizenship or take the oath of citizenship if the person has been convicted of an offence outside of Canada that, if committed in Canada, would constitute an indictable offence. This is the case, regardless of whether the person was pardoned or otherwise granted amnesty for the offence if he or she was convicted during the three years immediately before the person's application and until the date he or she would otherwise take the oath of citizenship.

## 2.7 INCREASED PENALTIES FOR CITIZENSHIP FRAUD (CLAUSES 14 AND 15)

Section 29(2) of the *Citizenship Act* currently provides that a person is guilty of an offence and liable on summary conviction to a fine of up to \$1,000 and/or to imprisonment for a term of up to one year if he or she:

- for any purposes under the Act makes any false representation, commits fraud or knowingly conceals any material circumstances (section 29(2)(a));
- obtains or uses a certificate of citizenship, naturalization or renunciation in order to impersonate another person or knowingly allows his or her certificate to be used by another person in order to impersonate himself or herself (sections 29(2)(b) and (c)); or
- traffics in certificates or has in his or her possession certificates for the purpose of trafficking (section 29(2)(d)).

Bill C-37 replaces section 29(2)(d) with a new section that provides that a person may have committed an indictable offence and may be liable to imprisonment for a term of up to five years if the person possesses a certificate that he or she knows has been unlawfully issued, altered, or counterfeited. Bill C-37 also increases to five years the maximum term of imprisonment for all other offences under section 29(2).

Section 29(3) of the *Citizenship Act* currently provides that a person is guilty of an indictable offence and liable to a maximum fine of \$5,000 and/or to imprisonment for a maximum term of three years if he or she:

- without lawful authority issues or alters a certificate (section 29(3)(a));
- counterfeits a certificate (section 29(3)(b)); or
- uses, acts on or causes or attempts to cause any person to use or act on a certificate knowing it to have been unlawfully issued or altered or to have been counterfeited (section 29(3)(c)).

Bill C-37 adds the offence of trafficking in certificates or possessing certificates for the purpose of trafficking to new section 29(3)(d). The penalties for offences under section 29(3) are also increased, and offenders found guilty would be liable to a maximum term of imprisonment of 14 years.

The new offence of misrepresentation in section 29.2(2) provides that anyone who knowingly does the following commits an offence:

- makes any false representation, commits fraud or conceals any material circumstances for any purpose under the *Citizenship Act*;
- communicates directly or indirectly, by any means, false or misleading information or declarations with the intent to induce a person to make or deter a person from making an application to become a citizen, to obtain a certificate of citizenship or to renounce citizenship; or
- refuses to answer a question put to him or her at an interview or a proceeding held under the *Citizenship Act*.

These new offences of misrepresentation are punishable by indictment or summary conviction. If guilty of an indictable offence the person may be liable to a maximum fine of \$100,000 and/or to imprisonment for a maximum term of five years. If guilty by an offence punishable on summary conviction the person may be liable to a fine of up to \$50,000 and/or to imprisonment for up to two years.

## 2.8 LIMITATION PERIOD FOR OFFENCES UNDER THE *CITIZENSHIP ACT* (CLAUSE 16)

Bill C-37 extends the limitation period for proceedings for an offence punishable on summary conviction under the Act or the regulations. Such proceedings must be instituted within five rather than three years of the commission of the offence.

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## NOTES

- \* This paper was prepared with the generous assistance of Daphne Keevil Harrold, formerly of the Library of Parliament, and of Sandra Elgersma.
- 1. There are at least four distinct legal groups of “lost Canadians.” The details of the manner in which the members of each group lost citizenship are discussed in Penny Becklumb, [Legislative Summary of Bill C-37: An Act to amend the Citizenship Act](#), Publication no. LS-591E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2008.
- 2. [An Act to Amend the Immigration and Refugee Protection Act](#), S.C. 2011, c. 8.
- 3. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.
- 4. See [Canada \(Citizenship and Immigration\) v. Zhou](#), 2008 FC 939, for the various definitions of residency established by the judiciary.
- 5. The legal concept of “reasonable grounds to believe” is discussed in [Thanaratnam v. Canada \(Minister of Citizenship and Immigration\)](#), 2005 FCA 122.
- 6. These measures should be read in conjunction with amendments to the *Immigration and Refugee Protection Act* made under [An Act to Amend the Immigration and Refugee Protection Act](#), S.C. 2011, c. 8, which was Bill C-35 in the 3<sup>rd</sup> Session of the 40<sup>th</sup> Parliament.