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LEGISLATIVE SUMMARY

Bill C-24:

An Act to amend the Citizenship Act and to make consequential amendments to other Acts

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

Legislative Summary of Bill C-24
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-24: AN ACT TO AMEND THE CITIZENSHIP ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-24, An Act to amend the Citizenship Act and to make consequential amendments to other Acts (short title: Strengthening Canadian Citizenship Act), was introduced in the House of Commons by the Minister of the Environment for the Minister of Citizenship and Immigration on 6 February 2014. The bill makes substantial changes to legislative provisions connected with Canadian citizenship in the areas of eligibility requirements, security and fraud, and application processing and review of decisions.

The current *Citizenship Act*[1] originally came into force in 1977. While there have been previous attempts at comprehensive amendment, none has been successful. Nevertheless, some of the provisions proposed before are found in the new legislation. Other provisions in the bill refine amendments enacted within the last six years. In addition, many changes in Bill C-24 align the *Citizenship Act* more closely with the *Immigration and Refugee Protection Act*[2] (IRPA), which brought about a complete overhaul of immigration law when it came into force in 2002.

1.1 Citizenship Legislation Over Time

Two major pieces of legislation have formed the basis for Canadian citizenship law: the 1947 *Canadian Citizenship Act* and the 1977 *Citizenship Act*.

1.1.1 The 1947 *Canadian Citizenship Act*

The *Canadian Citizenship Act* created the concept of Canadian citizenship as distinct from that of British subject. It also established that native-born Canadian citizens and naturalized[3] Canadian citizens "held equal status, were entitled to identical privileges, and were subject to the same duties and obligations."[4]

The *Canadian Citizenship Act* established the following criteria for naturalization:

- age 21 or older;
- a minimum five years of residence in Canada;
- good character;
- adequate knowledge of English or French or continuous residence in Canada for more than 20 years;
- adequate knowledge of the responsibilities and privileges of Canadian citizenship; and
- the intention to reside permanently in Canada or enter into or continue in the public service of Canada or a province.

Canadian citizenship could be lost on various grounds, including acquisition of another nationality and serving in the armed forces of a country at war with Canada, and, for naturalized Canadians only, residing outside Canada for more than six years for non-exempt purposes. Citizenship of naturalized Canadians could also be revoked for the following reasons:

- engaging with the enemy when Canada was at war;
- false representation or fraud;
- being ordinarily resident outside Canada for the specified period and failing to maintain a substantial connection to Canada; and
- being disloyal to His Majesty or convicted of treason.

1.1.2 The 1977 *Citizenship Act*

The *Canadian Citizenship Act* was replaced in 1977 by the *Citizenship Act*, which emphasized "improved access and equal treatment."[5] The requirements for naturalization were amended to make citizenship more accessible by:

- reducing the period of residency required in Canada to three years;
- allowing partial credit for residence in Canada prior to obtaining permanent resident status; and
- no longer requiring applicants to be of good character or to demonstrate their intent to reside here.

The 1977 Act also allowed Canadian citizens to hold dual citizenship and stipulated a single ground for revocation: citizenship obtained through fraud, false representation, or concealment of material circumstances (subsequently referred to as "fraud").

1.2 Previous Efforts to Reform the *Citizenship Act*

1.2.1 Enacted Amendments: Adoption and "Lost Canadians"

There have been numerous attempts to amend the *Citizenship Act* since 1977, with no comprehensive overhaul attaining Royal Assent. However, two significant changes were made in the last decade.

- In 2007, Bill C-14, An Act to amend the Citizenship Act (adoption), was enacted to provide that children adopted overseas could acquire Canadian citizenship by grant, rather than by first immigrating to Canada and then going through the naturalization process.[6]
- In 2008, Bill C-37, An Act to amend the Citizenship Act, received Royal Assent, and it came into force in April 2009.[7] The legislation granted Canadian citizenship to groups of people known as "lost Canadians": people who considered themselves Canadian citizens and wanted to be part of Canadian society but, for various legal reasons, were no longer Canadian citizens or had never obtained citizenship in the first place.

Bill C-37 also introduced a "first-generation cut-off rule" for passing on citizenship by descent to children born or adopted abroad. This change was intended to ensure that citizens had a real connection to Canada and that Canadian citizenship could not be passed on through endless generations living abroad.[8]

1.2.2 Proposed Amendments: Residency Requirement and Citizenship Grants

As mentioned above, some of the aspects of citizenship law reform proposed in Bill C-24 were proposed previously. This is the case for the residency requirement for naturalization, the decision-making process for citizenship grants, and certain prohibitions relating to granting citizenship.

The Government has tried on several occasions to amend the *Citizenship Act* so that the residency requirement for naturalization is clearly defined as physical presence in Canada. One bill introduced by the current government proposed changing the requirement from "three years of residence" to "1,095 days of physical presence" in Canada in the four-year period immediately preceding the citizenship application.[9] Other bills proposed a residency requirement of 1,095 days of physical presence within the six years preceding the citizenship application.[10]

Bill C-24 proposes that citizenship judges' involvement in determining applications be limited and then phased out completely. Citizenship judges would be responsible for presiding over ceremonies and administering the oath of citizenship. An earlier bill had gone so far as proposing to eliminate the position of citizenship judge altogether.[11]

Bill C-24 would significantly modify the list of situations under the *Citizenship Act* in which a person may not be granted citizenship. Like Bill C-24, other previous bills had prohibited granting citizenship to applicants who had committed certain offences overseas if they would have been indictable offences in Canada.[12]

1.3 Alignment with Immigration Legislation

In a number of areas, Bill C-24 contains provisions that mirror the policy and practice already in place with regard to immigration. For example, IRPA establishes that only authorized representatives may charge a fee for assisting with immigration applications; Bill C-24 establishes a similar framework for consultants assisting with citizenship applications. The *Immigration and Refugee Protection Regulations* provide that only complete applications, as defined, will be accepted for processing, and that incomplete ones will be returned. Bill C-24 establishes a similar requirement for complete citizenship applications.

Bill C-24 expands the government's authority to share information on immigration matters to include citizenship data. Finally, it mirrors immigration legislation by providing that foreign offences and convictions have implications for Canadian purposes.

2 DESCRIPTION AND ANALYSIS

The *Citizenship Act* is divided into eight parts, and all but the last part are amended by Bill C-24. A new part is also added. This Legislative Summary will follow the structure of the Act while highlighting primarily the more substantive changes.

2.1 PART I: THE RIGHT TO CITIZENSHIP (CLAUSES 2 TO 5)

Part I of the Act, entitled "The Right to Citizenship," establishes who, by birth, by grant, by adoption or by other mechanisms in the Act, is a Canadian citizen. There are significant modifications to this part to address the issue of "lost Canadians" and to apply more stringent requirements to those obtaining citizenship by grant.

2.1.1 CITIZENSHIP BY DESCENT

2.1.1.1 RETROACTIVE REFINEMENT OF THE FIRST GENERATION CUT-OFF RULE

Bill C-37 introduced a new rule precluding citizens from transmitting citizenship by descent to their children born or adopted abroad after one generation (section 3(3) of the Act). This is known as the "first generation cut-off rule."

An exception is provided for people who are born to or adopted by a Canadian parent working abroad in or with the Canadian Armed Forces, the federal public administration or the public service of a province, unless the parent is a locally engaged person (section 3(5)) (subsequently referred to as "serving Canada abroad").

In the current legislation, an exception is also made for people who are of the second or subsequent generation born abroad and who, on the coming into force of the rule, in the words of the provision, "are" citizens. These people did not lose their citizenship due to the first generation cut-off rule enacted by Bill C-37 (section 3(4)).

2.1.1.1.1 REPLACING THE PRESENT TENSE WITH THE PAST TENSE (CLAUSES 2(7) AND 2(10))

Bill C-24 refines the exception to the first generation cut-off rule in section 3(4) of the Act to clarify that the exception is for "a person who, on the coming into force of [the rule], *was* a citizen" [authors' emphasis] (clause 2(10)). The current wording uses the present tense: "*is* a citizen."

Some people had interpreted the use of the present tense to mean that the first generation cut-off rule did not apply to anyone who, at the coming into force of Bill C-37 – and because of it – had become a citizen by descent by virtue of his or her parent becoming a citizen by descent, retroactive to the parent's birth, under Bill C-37. The Federal Court did not accept this interpretation when it ruled on the matter in 2012.[13] It accepted the government's interpretation that citizenship could not be passed on to children in the second or subsequent generation born abroad when the first generation born abroad acquired citizenship through Bill C-37.

Bill C-24 makes similar amendments to the wording of the first generation cut-off rule in section 3(3) of the Act. In section 3(3)(*a*), the word "is" is changed to "was" and the word "are" is changed to "were" to clarify that, under the Act, a person born abroad is not a citizen by descent if, at the time of the person's birth, only one of the person's parents *was* a citizen and that parent *was* himself or herself a citizen by descent, or both of the person's parents *were* citizens by descent (clause 2(7)).

2.1.1.1.2 Non-Application of the First Generation Cut-Off Rule to People Who Are Already Citizens (Clause 2(7))

Bill C-24 amends the opening wording of the first generation cut-off rule in section 3(3) of the Act to list the specific provisions of section 3(1) of the Act under which a person may obtain citizenship by descent; current section 3(3) refers broadly to all the bases provided in section 3(1) upon which a person may have a right to citizenship.

The amendment clarifies to whom the first generation cut-off rule applies. It does not apply to people who obtained citizenship by descent under existing section 3(1)(*e*) (since that provision is no longer listed in amended section 3(3)). Under that provision, people who were entitled, immediately before 15 February 1977 (the date when the current *Citizenship Act* came into effect), to become Canadian citizens because they were born abroad to a Canadian parent (but whose births had not been registered), were automatically citizens. Since amended section 3(4) of the Act states that the first generation cut-off rule does not apply to a person who *was* a citizen on the coming into force of the rule, the first generation cut-off rule does not apply to the people who obtained citizenship by descent under section 3(1)(*e*).

2.1.1.1.3 Non-Application of the First Generation Cut-Off Rule to a Person Whose Grandparent Was Serving Canada Abroad When the Person's Parent Was Born (Clause 2(12))

When the first generation cut-off rule was enacted through Bill C-37, one of the exceptions was for persons born abroad to parents who were serving Canada abroad (section 3(5) of the Act). These children could obtain Canadian citizenship by descent even if they were the second or subsequent generation born abroad. However, they would be considered the first generation born abroad and therefore unable to pass on citizenship by descent to any future children of theirs that might be born abroad.

Bill C-24 addresses this issue by adding new section 3(5)(*b*), which states that the first generation cut-off rule does not apply to a person born to a parent, one or both of whose parents, at the time of that parent's birth, were employed serving Canada abroad.

2.1.1.1.4 Clarification of the First Generation Cut-Off Rule in the Context of Adoption (Clause 4(9))

In 2007, Bill C-14 streamlined the manner in which adopted children could become Canadian citizens without having to go through the immigration process. As a result, people adopted from abroad by Canadian citizens were treated similarly to biological children born abroad to Canadian citizens.

When Bill C-37 came into force after these amendments were enacted, it modified the adoption provisions to make them consistent with the new provisions regarding citizenship by descent. Notably, Bill C-37 made the first generation cut-off rule apply to people adopted from abroad by Canadian citizens in the same manner the rule applies to children born abroad to Canadian citizens.

However, the amendments that Bill C-37 made in the context of adoption were arguably unclear. Specifically, the first generation cut-off rule in section 3(3) of the Act referred to a person's "parents" at the time of adoption without specifying whether the biological parents or the adoptive parents were meant. The word "parents" without explanation was also used in the exception to the first generation cut-off rule provided in section 3(5) of the Act for children of Canadians serving abroad.

Bill C-24 clarifies the matter by adding new section 5.1(4) to the Act, which provides that the first generation cut-off rule applies to a person adopted from abroad by a Canadian parent in the same way that it applies to a person born abroad to a Canadian parent. New section 5.1(5) of the Act clarifies that an exception to the first generation cut-off rule is provided for a person adopted from abroad by a Canadian citizen who was serving Canada abroad at the time of the adoption. Additional wording in section 5.1(5) as well as in amended section 3(5) covers all the permutations to ensure the non-application of the first generation cut-off rule in a case where a grandparent was serving Canada abroad when a person's parent was born or adopted from abroad, regardless of whether the person or the parent, or both, were adopted.

2.1.1.2 Recognition of Citizenship by Descent Rather than Citizenship by Grant for Grandchildren of Canadians Serving Canada Abroad (Clauses 2(13) and 5)

The retroactive extension of the exception to the first generation cut-off rule to include grandchildren of persons serving abroad – discussed in section 2.1.1.1.3 of this Legislative Summary – will result in more people becoming Canadian citizens by operation of law. However, some may already be citizens if they have gone through the immigration process and received a grant of citizenship under the current Act or predecessor legislation. Bill C-24 adds new section 3(5.1), under which these people are deemed never to have been citizens by way of grant (clause 2(13)). Instead, they are regarded as citizens by descent and therefore not able to pass on citizenship to their children born abroad. Bill C-24 also adds to the Act new section 5.2, which has the same effect, but in the context of adoption (clause 5).

Bill C-24 provides an exception to section 3(5.1) in new section 3(5.2) (clause 2(13)). The exception applies to a person who lost his or her citizenship for failure to retain it under the citizenship retention provisions for those born abroad, which the Act required prior to the coming into force of Bill C-37.[14]

2.1.2 Amendments Related to the "Lost Canadians" Issue (Clauses 2 and 4)

2.1.2.1 Retroactive Amendments Related to the "Lost Canadians" Issue (Revisions to the Bill C-37 Amendments to the *Citizenship Act*)

As indicated above, the issue of "lost Canadians" was first addressed by Parliament in Bill C-37, which came into force on 17 April 2009. In its turn, Bill C-24 makes a number of amendments to the Act related to that issue that are deemed to have come into force on that date.

2.1.2.1.1 Provision of Citizenship to a Child Born Abroad to a "Lost Canadian" Parent Who Was Deceased When Bill C-37 Came into Force (Clause 2(4))

The amendments made by Bill C-37 restored Canadian citizenship to people who had once been citizens but who had lost citizenship for any reason other than the following three reasons:

- the person had renounced his or her Canadian citizenship;
- the person's Canadian citizenship was revoked for fraud; or
- the person is a second- or subsequent-generation Canadian born abroad since 15 February 1977 who lost citizenship because he or she failed to retain it by age 28 (section 3(1)(*f*) of the Act).

The amendments also filled in gaps in time when certain people – who had been citizens other than by way of grant – had ceased to be citizens for any reason other than those listed above, before regaining citizenship later under former or current citizenship legislation (sections 3(1)(*i*) and 3(1)(*j*) of the Act).

In addition, the amendments gave citizenship – retroactive to birth – to people who were born abroad before 15 February 1977 to a Canadian parent but who did not become citizens by descent (sections 3(1)(*g*) and 3(1)(*h*)). Citizenship by descent for people born abroad after 14 February 1977 to a Canadian parent was already recognized under the Act (section 3(1)(*b*)).

The amendments made by Bill C-37 affected more than one generation. For example, not only did some groups of "lost Canadians" have their citizenship restored (or the gaps in time, during which they did not have citizenship, filled in), but any of their children who were born abroad at a time when the parent was not recognized as a citizen also received citizenship, retroactive to birth, when Bill C-37 came into effect. This is because the parent became recognized as a citizen as of the time of the children's birth abroad. (Note that this generality is subject to the first generation cut-off rule.)

However, some people born abroad to "lost Canadians" did not become citizens by descent under Bill C-37. Specifically, if a "lost Canadian" parent of a person born abroad was deceased when Bill C-37 came into force, the parent's citizenship was not restored retroactively to cover the time of the person's birth. The result of such a

situation was that the person born abroad to the now-deceased lost Canadian did not become a citizen by descent when Bill C-37 came into effect.

New section 3(1.1) remedies this by specifying that a person is a citizen by descent if the sole reason the person is not a citizen by descent under one of the other citizenship-by-descent provisions in the Act is that, when Bill C-37 came into force, the person's parent from whom he or she would have inherited citizenship was deceased and therefore unable to have his or her citizenship recognized at the time of the person's birth. Under clause 46(4) of Bill C-24, this new section 3(1.1) is deemed to have come into force when Bill C-37 came into force.

2.1.2.1.2 Recognition of Citizenship by Descent Rather than Citizenship by Grant for Children of "Lost Canadians" (Clause 2(14))

Whether a person is a Canadian citizen by way of grant (a naturalized Canadian) or a Canadian citizen by way of descent matters for the purposes of the first generation cut-off rule introduced by Bill C-37. This rule only applies for people who acquired their citizenship by descent. Accordingly, a person who was born abroad and who later immigrated to Canada and was granted Canadian citizenship is treated in the same manner as a person who was born in Canada. Such a person can pass Canadian citizenship down to his or her child born abroad. By contrast, a person who is a Canadian citizen by descent (i.e., a person born abroad to a parent who was a Canadian citizen at the time of the birth) cannot pass citizenship down to his or her child if the child is born abroad.

When Bill C-37 introduced the first generation cut-off rule, it also added new section 3(6) to the Act which states that a person who was a "lost Canadian" but regained citizenship by way of grant before Bill C-37 was enacted "is deemed … never to have been a citizen by way of grant." The effect of section 3(6) is to ensure that a person who was originally a citizen by descent – then lost citizenship and regained it by grant – cannot pass citizenship on to his or her child born outside Canada by claiming that he or she is a citizen by grant as opposed to a citizen by descent.

But section 3(6) did not apply uniformly to all people in similar circumstances regardless of the facts that led to that common situation. Specifically, it did not apply to a person:

- born outside Canada after 14 February 1977
- whose parent had been a Canadian citizen either because the parent was born in Canada or received a grant of citizenship, but who lost citizenship before the person was born, and regained citizenship when Bill C-37 came into force and
- who was granted Canadian citizenship under section 5 of the current *Citizenship Act*.

Such a person would have been a citizen by descent but for his or her parent's loss of Canadian citizenship. On that basis, under new section 3(6.1), the person is deemed never to have been a citizen by way of grant and therefore cannot pass on citizenship by descent to his or her child born aboard. Section 3(6.1) is considered to have come into effect when Bill C-37 came into effect.

2.1.2.1.3 Addition to the Categories of Retroactive Recognition of Citizenship (Clause 2(16))

In addition to restoring citizenship to many "lost Canadians," Bill C-37 made citizenship for those individuals retroactive to the time it had been lost. However, the new sections recognizing citizenship retroactively failed to address at least one scenario, described below. Accordingly, Bill C-24 adds new section 3(7)(*h*) to the Act providing that if the following circumstances apply, the citizenship of a person is retroactive to the person's birth:

- the person was born outside Canada after 14 February 1977;
- at the time of the person's birth, neither of the person's parents was recognized as a citizen;
- since Bill C-37 came into force, one or both of the person's parents has been recognized to have been a citizen when the person was born; and
- the person, since that time, has been recognized as a citizen by descent for the sole reason that one or both of the person's parents is now recognized to have been a citizen when the person was born.

2.1.2.2 Amendments That Come into Force in the Future and That Address Additional Groups of "Lost Canadians"

While Bill C-37 went a long way to restore Canadian citizenship to people who had lost their citizenship for reasons now regarded as antiquated or unfair, it did not help several different groups of people also known as "lost Canadians."[15] Bill C-24 represents a second step towards addressing the "lost Canadians" issue.

2.1.2.2.1 Citizenship for Classes of People Born Before 1 January 1947 (or 1 April 1949 in the Context of Newfoundland and Labrador) (Clauses 2(2) and 2(3))

As mentioned above, the concept of Canadian citizenship as we know it today came into existence on 1 January 1947 when the *Canadian Citizenship Act* (the predecessor to the current *Citizenship Act*) came into force. Prior to that time, people born in Canada or naturalized in Canada were referred to as British subjects. Also note that Newfoundland and Labrador did not join Canada until 1 April 1949. Accordingly, British subjects who were born or naturalized in Newfoundland and Labrador became Canadian citizens on that day.

Bill C-24 gives citizenship to people who were born before the *Canadian Citizenship Act* came into force and who belong to one of the classes described below (where it is called "new classes of citizenship"):

- people who were born or naturalized in Canada[16] (and therefore were British subjects) before 1 January 1947, but ceased to be British subjects and did not become Canadian citizens when the *Canadian Citizenship Act* came into force on 1 January 1947 (new section 3(1)(*k*) of the Act);

- people who, on 1 January 1947, were British subjects ordinarily resident in Canada although they were neither born nor naturalized in Canada, and who did not become Canadian citizens when the *Canadian Citizenship* Act came into force on 1 January 1947 (new section 3(1)(*m*) of the Act); and
- people who were born outside Canada and Newfoundland and Labrador before 1 January 1947:
  - to a parent described in one of the two groups listed above (sections 3(1)(k) or 3(1)(m) of the Act), and who did not become citizens when the Canadian Citizenship Act came into force on 1 January 1947 (new section 3(1)(o) of the Act); or
  - to a parent who became a citizen on 1 January 1947, and who did not also become citizens on that day (new section 3(1)(q) of the Act).

Bill C-24 also gives citizenship to people born before Newfoundland and Labrador joined Canada on 1 April 1949 and who belong to one of the following classes, which are analogous to those described above, but in the context of Newfoundland and Labrador:

- people who were born or naturalized in Newfoundland and Labrador (and therefore were British subjects) before 1 April 1949, but ceased to be British subjects and therefore did not become Canadian citizens when (or before) Newfoundland and Labrador joined Canada on 1 April 1949 (new section 3(1)(*l*) of the Act);
- people who, on 1 April 1949, were British subjects ordinarily resident in Newfoundland and Labrador although they were neither born nor naturalized in Newfoundland and Labrador, and who did not become citizens when (or before) Newfoundland and Labrador joined Canada on 1 April 1949 (new section 3(1)(*n*) of the Act); and
- people who were born outside Canada and Newfoundland and Labrador before 1 April 1949:
  - to a parent described in one of the two groups listed above (sections 3(1)(*l*) or 3(1)(*n*) of the Act), and who did not become citizens when (or before) Newfoundland and Labrador joined Canada on 1 April 1949 (new section 3(1)(*p*) of the Act); or
  - to a parent who became a citizen on 1 April 1949 because Newfoundland and Labrador joined with Canada, and who did not also become citizens on or before that day (new section 3(1)(*r*) of the Act).

2.1.2.2.2 Retroactivity of Citizenship Under New Classes (Clauses 2(17) and 2(18))

Clause 2(17) of Bill C-24 adds new sections 3(7)(*i*) to 3(7)(*m*) to the Act, making citizenship under the new classes retroactive to:

- the date of birth, in the case of a person who was born after 14 February 1977 and who is a citizen by descent;
- the date the *Canadian Citizenship Act* came into force – 1 January 1947 – in the case of a person who was born before 1 January 1947 and is a citizen either by descent or by virtue of the fact that he or she was born or naturalized in Canada before 1 January 1947 or was a British subject ordinarily resident in Canada on that date; and

- the date Newfoundland and Labrador joined Canada – 1 April 1949 – in the case of a person who was born before 1 April 1949 and is a citizen either by descent or by virtue of the fact that he or she was born or naturalized in Newfoundland and Labrador before 1 April 1949 or was a British subject ordinarily resident in Newfoundland and Labrador on that date.

Bill C-24, through amendments to section 3(8) of the Act, includes wording resembling that found in Bill C-37, clarifying that retroactivity of citizenship does not have the effect of conferring any rights, powers or privileges – or imposing any obligations, duties or liabilities – under any Act of Parliament other than the *Citizenship Act* or under any other law. In addition, Bill C-24 adds new wording to clarify that this limited effect of retroactive citizenship also applies for any other person who might have any of those rights, powers, privileges, obligations, duties and liabilities as a result of the first person becoming a citizen (clause 2(18)).

2.1.2.2.3 Citizenship Under New Classes Despite the Death of a Parent (Clause 2(5))

Bill C-24 adds new sections 3(1.2) to 3(1.4) to the Act, ensuring that a person born outside Canada and Newfoundland and Labrador and who is otherwise entitled to be a citizen by descent under one of the new classes of citizenship is not deprived of citizenship by descent for the sole reason that the person's parent, from whom he or she would have inherited citizenship, died before becoming a citizen either when the *Canadian Citizenship Act* came into force on 1 January 1947, when Newfoundland and Labrador joined Canada on 1 April 1949, or under Bill C-24, as the case may be.

2.1.2.2.4 Exceptions That Apply to the New Classes of Citizenship (Clauses 2(6) and 2(19))

In clause 2(6), Bill C-24 adds new sections 3(2.1) to 3(2.4) to the Act, providing that a person is not a citizen under one of the new classes of citizenship – and a person is not a citizen by descent by virtue of one of the new classes of citizenship – if the person:

- made a declaration of alienage (renounced his or her status as a British subject), had his or her status as a British subject revoked, or ceased to be a British subject as the consequence of the revocation of another person's status as a British subject (for example, the person's parent), before the *Canadian Citizenship Act* came into force on 1 January 1947 (or before Newfoundland and Labrador joined Canada on 1 April 1949, in the case of a person from Newfoundland and Labrador); or
- became a citizen by way of grant[17] on or after 1 January 1947 (or 1 April 1949, in the case of a person from Newfoundland and Labrador), but later renounced his or her citizenship or had his or her citizenship revoked for fraud.

2.1.2.2.5 Application of the First Generation Cut-Off Rule to the New Classes of Citizenship (Clauses 2(8) and 2(11))

Bill C-24 amends section 3(3) of the Act to extend the application of the first generation cut-off rule to the new classes of citizenship (clause 2(8)). In other words, the amendments ensure that citizenship by descent under the new classes is only available to the first generation born abroad.

However, a transitional provision (clause 2(11); new section 3(4.1)) ensures that people who were already citizens when the first generation cut-off rule was extended, as described above, will not cease to be citizens. At the same time, the first generation cut-off rule applies to people who were not already citizens by descent but would have been thanks to the new classes of citizenship, since such citizenship is retroactive.

2.1.2.2.6 Recognition of Citizenship by Descent Rather than Citizenship by Grant for Children of "Lost Canadians" (Clauses 2(15) and 2(19))

Under new section 3(6.2) of the Act, a person who became a citizen by way of grant[18] but would otherwise have become a citizen under one of the new classes of citizenship – or would have become a citizen by descent because the person's parent becomes a citizen under one of the new classes – is deemed never to have been a citizen by way of grant (clause 2(15)). As described in section 2.1.2.1.2 of this Legislative Summary, this deeming has the effect of preventing such a person from passing on citizenship by descent after the first generation born abroad by claiming that he or she should be considered a naturalized Canadian rather than a Canadian by descent. However, Bill C-24 lists sections of the Act for the purposes of which a person in the situation described above *is* deemed to be a citizen by way of grant (clause 2(19)). These sections of the Act relate to renunciation and revocation of citizenship.

New section 3(6.3) of the Act states that if a person is a citizen under two of the new classes of citizenship, then the person is deemed to be a citizen only under the class that relates to citizenship by descent. For example, a person might qualify as a citizen under two of the new classes of citizenship because the person was both naturalized to Canada before 1 January 1947 and born abroad to a parent who becomes a citizen under one of the new classes of citizenship. Such a person is deemed a citizen by descent only, with the result that the person cannot pass on citizenship by descent to his or her children born abroad.

2.1.2.2.7 New Classes of Citizenship in the Context of Adoption (Clause 4)

Bill C-24 amends section 5.1 of the Act to clarify how the new classes of citizenship apply in the context of adoption. Under clause 46(2) of the bill, these amendments to section 5.1 of the Act come into force on the same day as the sections setting out the new classes of citizenship.

Clause 4(2) of Bill C-24 amends section 5.1(1) of the Act to provide an entitlement to citizenship for a person who, while a minor child, was adopted:

- before 1 January 1947 by a person who became a citizen on that day; or
- before 1 April 1949 by a person who became a citizen on that day because Newfoundland and Labrador joined Canada.

This entitlement is subject to the conditions for adoption, as amended by Bill C-24, being met.[19]

Bill C-24 amends section 5.1(2) of the Act to provide an entitlement to citizenship for an adopted person in the same position as one described above, except that the person was at least 18 years of age at the time of the adoption and the conditions relevant to this type of adoption were met (clauses 4(5) and 4(6)).

2.1.2.2.7.1 Application of the First Generation Cut-Off Rule in the Context of Adoption and the New Classes of Citizenship (Clauses 4(10) and 4(11))

Bill C-24 extends the first generation cut-off rule in the context of adoption – in section 5.1(4) of the Act – to apply to the new classes of citizenship (clause 4(10)). In other words, a person adopted from abroad by a Canadian citizen is not entitled to become a Canadian citizen under section 5.1 if, at the time of the adoption, one of the adoptive parents was a Canadian citizen, and that parent was a citizen by descent under any of the existing or new classes of citizenship, or both of the adoptive parents were citizens by descent under any of those classes.

Because Canadian citizenship technically did not exist before the *Canadian Citizenship Act* came into force on 1 January 1947 (and it was not available for people in Newfoundland and Labrador until 1 April 1949), Bill C-24 adds new sections 5.1(4)(*a.1*) and 5.1(4)(*a.2*) to the Act, which apply the first generation cut-off rule in the context of an adoption that took place in Canada before 1 January 1947, or in Newfoundland and Labrador before 1 April 1949. In these cases, the status of one or both of the parents as a citizen by descent on either 1 January 1947 or 1 April 1949, as the case may be, and not the time of adoption is relevant for the purposes of applying the first generation cut-off rule.

Finally, Bill C-24 adds new section 5.1(6) to the Act to address the circumstances of a person adopted before 1 April 1949 whose one adoptive parent was a citizen by descent (or would become a citizen by descent on 1 January 1947) and the other was not yet a citizen, but would become a citizen – other than by descent – on 1 April 1949 by virtue of Newfoundland and Labrador joining Canada (clause 4(11)). In such a case, the first generation cut-off rule does not apply.

2.1.3 Grant of Citizenship (Clause 3)

Bill C-24 makes significant modifications to section 5 of the *Citizenship Act* by amending existing requirements to become a naturalized Canadian and adding new ones. The bill also establishes an accelerated path to citizenship for permanent residents in the Canadian Armed Forces.

2.1.3.1 General Requirements for Naturalization (Clause 3)

The residency requirement for citizenship by way of grant, or naturalization, is amended to emphasize attachment to Canada. The meaning of “residence” is defined as actual physical presence in Canada and is calculated in days. New section 5(1)(*c*)(i) specifies that the total required number of days of physical presence in Canada is 1,460 in six years and new section 5(1)(*c*)(ii) requires a minimum of 183 days of physical presence per calendar year in four of the six years preceding the application for citizenship.

While time spent in Canada as anything other than a permanent resident no longer counts towards the residency period, time residing outside Canada with a Canadian citizen spouse or common-law partner employed in or with the Canadian Armed Forces, the federal public administration or the public service of a province or being so employed as a permanent resident does count toward the period of physical presence (new sections 5(1.01) and 5(1.02)). New section 21 indicates that persons under a probation order, on parole or in any penitentiary cannot count that time as physical presence in Canada for citizenship application purposes (clause 17).

Permanent residents applying for naturalization must meet a new requirement: they must identify whether they have any obligations under the *Income Tax Act*, and if so must file income tax returns for four of the six years preceding the application for citizenship (new section 5(1)(*c*)(iii)).

Bill C-24 also adds the requirement that permanent residents seeking citizenship intend to reside in Canada once citizenship is granted (new section 5(1)(*c.1*)), a stipulation contained in the 1947 *Canadian Citizenship Act*. Permanent residents can fulfill this criterion when abroad through the employment of their spouse, common-law partner or parent – or their own employment – in service to Canada as defined in new sections 5(1.01) and 5(1.02). New section 5(1.1) provides that the permanent resident's intention must be continuous from the date of his or her application until he or she has taken the oath of citizenship.

While permanent residents are currently required to have an adequate knowledge of the English or French language (section 5(1)(*d*)) and to have "adequate knowledge of Canada and of the responsibilities and privileges of citizenship" (section 5(1)(*e*)),[20] according to policy, people aged 55 and over do not have to be tested for their knowledge in these areas. Bill C-24 extends the application of the requirements to permanent residents between the ages of 55 and 64 (new sections 5(1)(*d*) and 5(1)(*e*)) and to minors aged 14 years and up (new sections 5(2)(*c*) and 5(2)(*d*)). These requirements can be waived on the basis of humanitarian and compassionate grounds (new section 5(3)(*a*)).

The bill also amends the Act to emphasize that the knowledge of Canada must be demonstrated by the applicant in the official language of his or her choice, presumably without the assistance of an interpreter (new sections 5(1)(*e*) and 5(2)(*d*)).[21]

The final revision to the naturalization requirements is that a permanent resident must have fulfilled all conditions relating to his or her status as a permanent resident (new section 5(1)(*c*)).[22]

2.1.3.2 Exception: Service in the Canadian Armed Forces (Clause 3(3))

Being a Canadian citizen is a requirement for membership in the Canadian Armed Forces. However, when a special need exists, permanent residents can enrol.[23] Under Bill C-24, permanent residents who receive an honourable release from the Canadian Armed Forces and who seek citizenship have particular residency requirements. For example, new section 5(1.2) (clause 3(3)) provides that the

section 5(1)(*c*) residency requirement does not apply if the permanent resident completed three years of service. This clause comes into force upon Royal Assent of the bill.

Clause 3(4) will come into force at a later date by order of the Governor in Council. It will replace the section in clause 3(3) adding the requirements of having no unfulfilled conditions and of having met any applicable requirement under the *Income Tax Act*. Under clause 3(4), the permanent resident member of the Canadian Armed Forces must, in addition, have completed three years of service during the six years immediately before applying for citizenship.

2.1.3.3 Discretionary Grant (Clause 3(7))

New section 5(4) specifies that the Minister, rather than the Governor in Council, may, at his or her discretion, grant citizenship to any person to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada.

2.2 Part II: Loss of Citizenship (Clauses 7 and 8)

Part II of the Act provides for renunciation, a voluntary loss of Canadian citizenship, and revocation, whereby a Canadian citizen loses his or her citizenship through the operation of specific provisions in the Act. Significant changes in Bill C-24 expand the grounds for revocation and introduce new procedures for it that place more responsibility with the Minister than is found in the current Act.

2.2.1 Renunciation (Clause 7)

Renunciation is the act of voluntarily relinquishing citizenship. The current Act prohibits the renunciation of citizenship by persons who are the subject of a declaration by the Governor in Council pursuant to section 20, related to national security or organized crime (section 9(1)(*b*)), or to false representations (section 10(1)(*b*)).

Bill C-24 adds new sections 9(2.1) and 9(2.2) to clarify that an application for renunciation will be suspended or cannot be made if the Canadian citizen is the subject of an action under the new revocation proceedings.

2.2.2 Revocation (Clause 8)

Clause 8 establishes a new revocation regime that includes new grounds for and new procedures and consequences of revocation.

In current section 10 of the Act, the only ground for revocation of citizenship is fraud in either citizenship applications or permanent resident applications. The current procedure involves the Minister, the Governor in Council and, if revocation is contested, the Federal Court (section 18). If, at the conclusion of these procedures, fraud is established, the person ceases to be a Canadian citizen (section 10(1)(*a*)) and becomes a permanent resident, unless the permanent residence application was in itself fraudulent.

New sections 10(1) and 10.1(1) establish new procedures for revoking citizenship on the basis of fraud, which no longer require the involvement of the Governor in Council. If the Minister is satisfied on a balance of probabilities that a person has obtained, retained, renounced or resumed his or her citizenship by fraud, the Minister may revoke the person's citizenship. Under new section 10(3), upon receiving notice from the Minister, the individual has the opportunity to make written representations. Regulations will indicate the factors that determine whether the Minister must hold a hearing under new section 10(4) (see clause 24(5), new section 27(1)(*j.2*)). The Minister's final decision must be in writing (new section 10(5)).

Bill C-24 provides that revocation decisions on the grounds of fraudulent information pertaining to security matters will be made by the Federal Court. New section 10.1(1) establishes that when the Minister has reasonable grounds to believe that fraud has occurred in relation to a fact that involves the limited grounds of inadmissibility found in section 34 (security, espionage, terrorism), section 35 (violating human or international rights, war crimes) or section 37 (organized criminality) of IRPA, he or she must seek a declaration from the Federal Court for revocation. New section 10.5 makes the Minister of Public Safety and Emergency Preparedness a party to the action if he or she wishes the court to declare that the person is inadmissible to Canada at the same time. This streamlines the process: a single judgment is issued with respect to the two declarations (new section 10.5(6)), and has the effect of bringing a deportation order into force right away.

2.2.2.1 New Grounds of Revocation (Clause 8)

Bill C-24 introduces new grounds of revocation for convictions related to security and for serving as a member of an armed force in an armed conflict against Canada.

The new ground for revocation for convictions related to security is subject to an administrative process. In new section 10(2), the Minister may revoke a person's citizenship if the person is convicted of the following offences that occur before or after the coming into force of this section:

- treason or high treason under section 47 of the *Criminal Code* (new sections 10(2)(*a*) and 10(2)(*e*));[24]
- a terrorism offence as defined in section 2 of the *Criminal Code*. This section includes offences such as financing or participating in a terrorist group (including leaving Canada to participate), facilitating an activity, giving instructions or harbouring someone likely to commit a terrorist activity (new sections 10(2)(*b*) and 10(2)(*f*));[25]
- aiding the enemy, in battle or as a prisoner of war (new section 10(2)(*c*));
- espionage (new section 10(2)(*d*)); or
- communicating safeguarded or operational information (new sections 10(2)(*g*) and 10(2)(*h*)).[26]

The new ground for revocation for serving as a member of an armed force in an armed conflict against Canada is subject to a judicial revocation process. When the Minister has reasonable grounds to believe that a person has taken up arms in an armed

conflict against Canada, he or she must seek a declaration from the Federal Court that the person so served (new section 10.1(2)). That declaration has the effect of revoking citizenship (new section 10.1(3)).

The consequence of revocation under the new grounds in new sections 10(2) and 10.1(2) is to render the person a foreign national,[27] rather than a permanent resident (new section 10.3). The revocation proceeding may not render an individual stateless (new section 10.4(1)), and an individual who claims that he or she would be rendered stateless must prove, on a balance of probabilities, that he or she is not a citizen of another country of which the Minister has reasonable grounds to believe the person is a citizen.

2.3 Part III: Resumption of Citizenship (Clause 9)

Under the current Act, a person that the Governor in Council declares to be a security threat or who is under a removal order may not resume citizenship for two years (sections 11(1)(*b*) and 11(1)(*c*)). New section 11(1)(*b*) precludes those who have lost their citizenship following the newly expanded revocation grounds from resuming citizenship, and increases the effect of the Governor in Council declaration to 10 years (new section 20(3)).

Otherwise, the major changes to resumption of citizenship mirror the modified requirements for citizenship by grant. According to clause 9(2), an individual wishing to resume Canadian citizenship must have no unfulfilled conditions as a permanent resident, have been physically present in Canada for at least 365 days during the two years preceding the application, and have met any requirements under the *Income Tax Act* during that time. Finally, the applicant must have the intention, if granted citizenship, to continue to reside in Canada or reside outside Canada under the specified exemptions for employment (new sections 11(1)(*d*) and 11(1)(*e*)).

For permanent residents in the Canadian Armed Forces, the residency requirement for resumption of citizenship is satisfied in clause 9(3) if six months of service is completed in the year immediately before the application is made. This clause will come into force upon Royal Assent of the bill.

Clause 9(4), which will come into effect will come into force at a later date by order of the Governor in Council, will replace the sections introduced in clause 9(3) and add the requirements of having no unfulfilled conditions and of having filed income tax returns. Permanent residents in the Canadian Armed Forces must also have completed six months of service during the two years that immediately precede the application for resumption of citizenship.

2.4 Part IV: Evidence of Citizenship (Clause 10)

Bill C-24 changes the title of Part IV of the Act from “Certificate of Citizenship” to “Evidence of Citizenship” and brings in the use of electronic systems.

2.4.1 Evidence of Citizenship (Clause 10)

New section 12(1) provides that a person may apply for ministerial determination that he or she is a citizen. This determination may be made using an electronic system. This section also provides that, subject to regulations, the Minister shall issue a certificate of citizenship (new section 12(1)(*a*)) or provide the person with other means to establish proof of citizenship (new section 12(1)(*b*)). When a person has acquired citizenship by way of grant, through adoption or upon resumption of citizenship, the Minister shall also either issue a certificate of citizenship or provide the person with other means to establish proof of citizenship (new section 12(2)(*a*) and (*b*)).

Until now, the certificate of citizenship and the pocket-size citizenship card (phased out)[28] have been used as primary documents in establishing proof of Canadian citizenship. This provision opens the possibility that other means of establishing proof of citizenship may be preferred in the future.

2.5 Part V: Procedure (Clauses 11 to 19)

Several changes in Part V bring the Act in line with procedures in immigration law. In addition, they limit the role of citizenship judges in the processing of applications and make significant changes to citizenship grant and oath prohibitions.

2.5.1 Application Processing (Clause 11)

Clause 11 stipulates that only complete applications will be accepted for processing (new section 13). Processing of an application can be suspended pending the result of inquiries regarding admissibility issues, declarations from the Governor in Council related to national security, or prohibitions related to criminality (new section 13.1). Finally, the Minister may treat an application as abandoned if an applicant does not provide additional information that has been requested (new section 13.2(1)(*a*)), or fails to appear, without reasonable excuse, to take his or her oath of citizenship (new section 13.2(1)(*b*)).[29]

2.5.2 Obligation to Answer Truthfully (Clause 13)

Clause 13 introduces new section 15 and the obligation to answer truthfully all questions related to the application (very similar to section 16 of IRPA). This obligation is stated just before the provisions regarding the review of an application for possible threats to the security of Canada (which has the same meaning as in the *Canadian Security Intelligence Act*) that result in a declaration made by the Governor in Council under new section 20 (described in section 2.5.3 of this Legislative Summary).

2.5.3 The Governor in Council's Declaration (Clause 16)

Existing section 20 provides that after following the prescribed process, the Governor in Council may issue a declaration that there are reasonable grounds to believe that an applicant will engage in activities that constitute a threat to the security of Canada or that the person is part of a planned and organized criminal activity. Bill C-24 amends section 20 to enlarge the scope of this declaration to include activities in which the person "has engaged, is engaging or may engage."

The declaration of the Governor in Council has the effect of preventing the granting of citizenship under section 5 or section 11 (resumption), the administration of the oath of citizenship, and the issuance of a certificate of renunciation. New section 20(3) increases the duration of the declaration from two years to 10.

2.5.4 Representation (Clause 18)

Subject to certain exceptions, new section 21.1 makes it an offence to knowingly represent or advise (or offer to represent or advise) a person for consideration in connection with a proceeding or application under the Act. This section is very similar to section 91 of IRPA.

2.5.5 Prohibition (Clause 19)

The current Act lists a number of situations where a person is prohibited from being granted citizenship or taking the oath of citizenship. In clause 19, Bill C-24 amends the prohibitions in the following ways.

It amends the prohibitions related to fraud by:

- adding offences related to representation for consideration (new section 22(1)(*b*));
- increasing the period during which those convicted of offences related to representation or documents are prohibited from obtaining citizenship from three years to four years (new section 22(2)(*a*)); and
- adding a new prohibition on granting citizenship to those who misrepresent a matter which could induce an error in the administration of the Act; this prohibition has effect for five years (new sections 22(1)(*e.1*) and 22(1)(*e.2*)).

Further, the period during which a person may not be granted citizenship if his or her previous citizenship was revoked for fraud is increased from five to 10 years (new section 22(1)(*f*)).

Bill C-24 also adds new prohibitions against granting citizenship and taking the oath of citizenship that are related to offences committed outside Canada:

- The person
  - is serving a sentence outside Canada for an offence committed outside Canada that, if committed in Canada, would have constituted an offence (new section 22(1)(a.1)) or is serving a sentence outside Canada for a federal offence (new section 22(1)(a.2)); or
  - is charged with, on trial for, subject to or a party to an appeal relating to an offence committed outside Canada that, if committed in Canada, would have constituted an offence (new section 22(1)(*b.1*)); in such a case, the Minister may waive to the prohibition on compassionate grounds (section 22(1.1)).
- Four years have not passed since the person was convicted of an offence outside Canada that, if committed in Canada, would constitute an indictable offence (new section 22(3)).

Finally, Bill C-24 adds new prohibitions against granting citizenship or taking the oath of citizenship that are related to security, which have permanent effect:

- The person's citizenship was revoked by the Minister for security-related convictions or by the Federal Court for serving in armed forces engaged in conflict with Canada (new section 22(1)(*g*)).
- The person, while a permanent resident, was convicted of offences related to treason, terrorism, aiding the enemy, espionage or communication of safeguarded or operational material or served as a member of an armed force or group engaged in armed conflict against Canada (new section 22(4)). New section 22(5) provides a waiver for this prohibition if the Minister considers that exceptional circumstances warrant it.

Finally, a person is prohibited from taking the oath of citizenship if he or she never met or no longer meets the requirements for a grant of citizenship under the Act (new section 22(6)).

2.5.6 Role of Citizenship Judges (Clause 12)

Clause 12 sets out new section 14, which establishes a more limited role for citizenship judges in processing citizenship applications. The Minister will refer an application to a citizenship judge only if he or she is not satisfied that the residency requirements are met.

Currently, when a judge is unable to approve an application for a grant, renunciation or resumption of citizenship, he or she must consider whether to recommend to the Minister an exercise of discretion on the basis of humanitarian and compassionate grounds or to alleviate cases of special hardship (existing section 15(1)). The authority to make that recommendation is removed by Bill C-24. The role of the citizenship judge in the processing of applications will disappear altogether through the operation of the sunset provision in clause 27 (explained in section 2.7.3 of this Legislative Summary).

2.6 New Part V.1: Judicial Review (Clause 20)

Clause 20 requires the filing of an application to the Federal Court for leave for judicial review of any decision related to the Act. The right to judicial review under existing section 14(5) is abolished by clause 12(3) of the bill, and this right is also removed from the *Federal Courts Act* (clause 41 repeals section 21 of that Act). Furthermore, an appeal can only be made to the Federal Court of Appeal if the Federal Court has identified (or "certified") a "serious question of general importance" (new section 22.2(*d*)).

2.7 PART VI: ADMINISTRATION (CLAUSES 21 TO 27)

2.7.1 ADDITIONAL INFORMATION (CLAUSE 22)

Clause 22 provides that the Minister may require an applicant to provide additional information relevant to his or her application either in person before the Minister or before a citizenship judge, or "by any means of telecommunication" (new section 23.1).

2.7.2 INFORMATION SHARING (CLAUSE 24)

Bill C-24 provides the Governor in Council with authority to make regulations pertaining to the collection, retention, use, disclosure and disposal of information (new section 27(1)(*k.1*)). New sections 27(1)(*k.2*) to 27(1)(*k.4*) provide for the disclosure of information for purposes of national security or the conduct of international affairs, to identify an individual in the administration of a federal law or law of another country and for the purposes of cooperation between the Government of Canada and the government of a province.

2.7.3 THE SUNSET CLAUSE AND CITIZENSHIP JUDGES (CLAUSE 27)

As discussed above, Bill C-24 amends the role of citizenship judges in the processing of applications (clause 12, replacing section 14). However, new section 28.1(1) indicates that section 14 will expire five years after new section 22.1(3) comes into force. New section 22.1(3) states that the Minister may apply to the Federal Court for judicial review in relation to a decision made by a citizenship judge (clause 20). Before the expiry of each five-year period, the Minister has the authority to extend the application of section 14 for another five years (new section 28.1(2)).

2.8 PART VII: OFFENCES (CLAUSES 28, 29 AND 30)

Clause 28 adds new section 29, defining "documents of citizenship" to take into account new sections 12(1)(*b*) and 12(2)(*b*) that provide for means of proving citizenship other than with a certificate of citizenship or naturalization.

While there has been little change to offences related to citizenship documents, the associated penalties are more severe. For example, under the existing Act, it is a summary conviction offence to use another person's certificate (existing section 29(2)(*b*)), knowingly permit the use of one's certificate by someone else (existing section 29(2)(*c*)) or have documents in one's possession for the purpose of trafficking (existing section 29(2)(*d*)). The punishment for these offences is a maximum fine of $1,000 or a maximum term of imprisonment of one year, or both. For similar offences, new section 29(2) renders a person guilty of an indictable offence and liable to a term in prison of up to five years. The maximum term of imprisonment for persons who unlawfully provide, alter or counterfeit documents, as well as those who traffic in documents of citizenship, is increased from three years to 14 years.

Clause 29 adds new section 29.1, which establishes offences and penalties – including substantial fines (up to $20,000 for a summary conviction and up to $100,000 for conviction on indictment), imprisonment (maximum six months on summary conviction; maximum two years on indictment), or both – for those who offer advice in contravention of new section 21.1(1).

For those counselling misrepresentation or those knowingly making false representations, new section 29.2 provides for substantial fines (up to $50,000 for a summary conviction and up to $100,000 for conviction on indictment), imprisonment (maximum two years for a summary conviction; maximum five years for conviction on indictment), or both.

Clause 30 extends the limitation period for instituting proceedings from three years to 10 years (section 31).

2.9 Coming into Force of Bill C-24 (Clause 46)

Bill C-24 provides that certain clauses will be deemed upon Royal Assent to have come into force retroactively, some will come into force upon Royal Assent and others will come into force on a day to be fixed by order of the Governor in Council.

2.9.1 Coming into Force as of 17 April 2009 (Clause 46(4))

The clauses that will be deemed as coming into force as of 17 April 2009 deal primarily with the issue of “lost Canadians.”

2.9.2 Coming into Force on Day of Royal Assent

The following provisions come into force upon Royal Assent:

- the extension of the exception to the first generation cut-off to include children and adopted children of grandparents who served Canada abroad (clauses 2(13) and 5);
- provisions relating to the accelerated path to citizenship by grant or resumption of citizenship for a permanent resident serving in the Canadian Armed Forces (clauses 3(3) and 9(3));
- ministerial discretion to grant citizenship (clause 3(7)); and
- all transitional provisions.

2.9.3 Coming into Force on a Day Fixed by Order of the Governor in Council

2.9.3.1 Clause 46(1)

Clause 46(1) stipulates that the following provisions come into force on a day to be fixed by order of the Governor in Council:

- clause 11, establishing the new processing procedures;

- clauses 12(1) and 12(3), covering the changes to the citizenship judge's role in the processing of citizenship files, and clause 27, setting out the way in which, over time, the citizenship judge's role will be eliminated;
- clause 13, adding a new obligation for a citizenship applicant to answer truthfully, and clause 22, allowing the Minister to ask for additional evidence from a citizenship applicant;
- clause 20, the new part of the Act relating to judicial review, and clause 41, confirming through a change in the *Federal Courts Act* that there is no automatic right to judicial review; and
- clause 16(2), affirming that a person subject to a declaration by the Governor in Council may not appeal this declaration or have it judicially reviewed.

2.9.3.2 Clause 46(2) – Not a Day Before Clause 46(1)

Most of the provisions in Bill C-24 – as specified in clause 46(2) – come into force on a day to be fixed by order of the Governor in Council that will follow the coming into force of the provisions listed in clause 46(1). This means that the changes contained in clause 46(1) provisions – some of which, for example, set the framework for the new procedures for application processing and rules regarding judicial review – will be in place before subsequent changes contained in clause 46(2) provisions – such as the new requirements for naturalization and revocation – can be implemented.

2.9.3.3 Clause 46(3)

The following two clauses given in clause 46(3) come into force on a day to be fixed by order of the Governor in Council:

- clause 24(1), repealing a section that indicates that the Governor in Council prescribes the manner in which applications were to be made; and
- clause 26, indicating the various types of regulations the Minister may make.

3 COMMENTARY

Citizenship issues have been debated repeatedly in the last 20 years in Parliament and elsewhere. As a result, a wealth of position papers, historical debates, testimony before parliamentary committees, and committee reports suggest possible arguments that may arise in relation to the current provisions. At the same time, countries around the world, including those with a statutory framework similar to Canada's, have been changing their citizenship laws to respond to modern phenomena such as terrorism and birth tourism. These international debates are also illuminating for consideration of the current bill.

3.1 Naturalization Requirements

Due to the inconsistent interpretation by the courts of "residence" in the 1977 *Citizenship Act*, stakeholders have welcomed the clarity brought by Bill C-24, through amendments specifying that residence means physical presence in Canada. However,

the concern has been raised in the past and again in response to Bill C-24 that such a requirement would impede successful business people from becoming Canadian citizens, as they are regularly outside of Canada for extended periods.[30]

To address this potential problem, two solutions have been proposed. One is that the relevant provision mirror the exemptions to physical presence required to maintain permanent residency status under IRPA.[31] These exemptions differ from those in Bill C-24, in that they include accompanying a Canadian citizen spouse or parent, and employment by a Canadian business overseas. IRPA also provides for the possibility of regulations establishing other means of compliance.[32]

A second proposed solution is to maintain the discretion available under the current provision, but charge a higher processing fee for applicants who choose to have a discretionary definition of residence, such as "strength of ties to Canada," applied.[33]

Others disagree that requiring periods of physical presence for naturalization would be a detriment. One parliamentary committee report claimed that such a requirement would not be a "death knell" for economic immigration, though it might cause a delay for some immigrants in acquiring citizenship. This seemed an acceptable trade-off to the committee members, for the report concluded that "residency is not a mathematical exercise. Residency is an experience, a Canadian experience, for which there can be no substitute."[34]

Some stakeholders have also expressed concern over returning to the requirement for naturalized Canadians to "intend to reside" in Canada. They suggest that the requirement is unreasonable and places an unfair burden on these new Canadians that is not expected of the native-born. Further, they argue that the possibility of this requirement being used to revoke citizenship for misrepresentation should a naturalized Canadian move abroad creates uncertainty for naturalized Canadians and may constrain their choices.[35]

Following its study of the bill, the Standing Senate Committee on Social Affairs, Science and Technology issued an observation, which is not legally binding. The Committee suggested that the Minister should consider creating a procedure for reducing or waiving fees for low income permanent residents who are applying to become citizens. Under the current *Citizenship Act*, the Minister may only waive on compassionate grounds the requirement for adults to take a language test and a knowledge test. In the case of minors, the Minister may waive the requirement for these two tests and the requirement respecting length of residence and age. Minors and anyone who, by reason of a mental disability, cannot understand the significance of the intention to reside or of taking the oath of citizenship can also be exempted from these requirements. In addition, the Minister has the discretion to grant citizenship to alleviate a case of special and unusual hardship. The significant increase in citizenship application fees took place in January 2014 following an amendment to the *Citizenship Regulations*.

3.2 Citizenship Revocation

Bill C-24 introduces new grounds for revoking citizenship and changes the process for doing so. Both aspects of change have garnered attention.

The provision in Bill C-24 allowing citizenship revocation for matters of national security draws Canadian lawmakers more fully into an on-going international debate. Several peer countries have made or considered similar legislative reforms recently. In the United Kingdom, for example, previous reforms that were part of the government's terrorism response allowed for citizenship to be revoked from dual nationals if "conducive to the public good."

Some of the concerns that arose in the U.K. debate may also be raised in Canada. Specifically, U.K. politicians worried about "exporting the problem" by sending the individual whose citizenship has been revoked to another country, "perhaps to one less willing or less able to bring a prosecution."[36] They were also concerned that, due to the prohibition on making people stateless through revocation, dual citizens would be subject to unequal treatment.

In Canada, a 2005 report of a parliamentary committee considered "citizenship revocation for cause" and rejected this approach, arguing instead that "future conduct should be addressed through Canada's criminal justice system."[37] The same argument has been raised in response to Bill C-24, with some commentators arguing against citizenship revocation as punishment[38] and others commenting that Canada should not send "our problem citizens" to other countries.[39]

Others have written in favour of the revocation provision, saying that it "identifies the class of crimes that constitute a fundamental breach of loyalty to the country: treason, terrorism and armed conflict against Canada" – crimes for which, according to these commentators, citizenship revocation is an appropriate response.[40]

With regard to the process for revoking citizenship, the 2005 parliamentary committee report suggested that the current process was perceived as "unduly political" because the final decision lay with the Governor in Council.[41] Instead, committee members envisaged an exclusively judicial process.

Bill C-24 proposes a judicial process for those whose citizenship is revoked in certain cases, streamlined to include a deportation decision where warranted. However, for other cases considered "routine" by the department, the Minister, rather than the Governor in Council, has the final authority on citizenship revocation. Lawyers have expressed concern about diminished due process rights in this approach,[42] while the Government suggests that this streamlining will be less costly and more efficient.[43]

NOTES

1. *Citizenship Act*, R.S.C., 1985, c. C-29.
2. *Immigration and Refugee Protection Act* [IRPA], S.C. 2001, c. 27.

3. Naturalization is the legal process by which a non-citizen of a particular country may acquire citizenship for that country. This also known as citizenship acquisition by grant. Both terms are used in this Legislative Summary.

4. Department of the Secretary of State of Canada, *Citizenship '87: Proud to be Canadian*, Minister of Supply and Services Canada, 1987, p. 7.

5. Ibid., p. 8.

6. *An Act to amend the Citizenship Act (adoption)*, S.C. 2007, c. 24.

7. *An Act to amend the Citizenship Act*, S.C. 2008, c. 14.

8. House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, Meeting 61, 1st Session, 39th Parliament, 29 May 2007, 1535 (The Honourable Diane Finley, Minister of Citizenship and Immigration).

9. Bill C-37: An Act to amend the Citizenship Act and make consequential amendments to another Act, 3rd Session, 40th Parliament.

10. Bill C-16: An Act respecting Canadian citizenship, 2nd Session, 36th Parliament, c. 6(1)(*b*); and Bill C-18: An Act respecting Canadian citizenship, 2nd Session, 37th Parliament, c. 7(1)(*b*).

11. Bill C-49: An Act to authorize remedial and disciplinary measures in relation to members of certain administrative tribunals, to reorganize and dissolve certain federal agencies and to make consequential amendments to other Acts, 2nd Session, 35th Parliament, cc. 86 and 87.

12. Bill C-16, c. 28(*c*); and Bill C-18, c. 28(*c*).

13. See *Kinsel v. Canada (Citizenship and Immigration)*, 2012 FC 1515.

14. Loss of citizenship was possible under the current Act – until it was amended by Bill C-37 in 2009 and therefore before the first generation cut-off rule was enacted – because second- and subsequent-generation Canadians born abroad would cease to be citizens on attaining the age of 28 if they had not, before that time, applied to retain citizenship, and registered as a citizen and either resided in Canada for a period of at least one year immediately preceding the date of application or established a substantial connection with Canada.

15. See Penny Becklumb, *Legislative Summary of Bill C-37: An Act to amend the Citizenship Act*, Publication no. 591-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 9 January 2008 (revised 20 February 2014), commentary section and footnotes 29–31.

16. Note that in the context of the new classes of citizenship, "Canada" refers to Canada as it existed immediately before its union with Newfoundland and Labrador on 1 April 1949 (new section 3(1.01) of the Act).

17. In this context, "by way of grant" means by way of grant under the *Citizenship Act* or under prior legislation, by way of acquisition under the *Citizenship Act* or by way of resumption under prior legislation (clause 2(19); new section 3(9) of the Act).

18. Ibid.

19. The adoption must have been in the best interests of the child, created a genuine relationship of parent and child, been 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 not been entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship (s. 5.1(1)). Clause 4(3) of Bill C-24 adds a new condition in section 5.1(1)(*c.1*) of the Act: "did not occur in a manner that circumvented the legal requirements for international adoptions."

20. Since 1 November 2012, the regulations require that proof of language proficiency, established by a third party, be submitted with the application. See *Regulations Amending the Citizenship Regulations*, SOR/2012-178.

21. Citizenship and Immigration Canada [CIC], *Strengthening Canadian Citizenship Act: A comparative view*.

22. IRPA, ss. 27(2) and 32(*d*).

23. National Defence and the Canadian Forces, *Queen's Regulations and Orders for the Canadian Forces*, Volume I, "Chapter 6: Enrolments and Re-Engagement," section 6.01, "Qualifications for Enrolment":

> (1) In order to be eligible for enrolment in the Canadian Forces as an officer or non-commissioned member, a person must:
>
> > (*a*) be a Canadian citizen, except that the Chief of the Defence Staff or such officer as he may designate may authorize the enrolment of a citizen of another country if he is satisfied that a special need exists and that the national interest would not be prejudiced thereby.

24. New section 10(2)(*e*) refers to the *National Defence Act* in addition to section 47 of the *Criminal Code*.

25. New section 10(2)(*f*) refers to section 2(1) of the *National Defence Act*, which in turn refers to the *Criminal Code* definition of "terrorism offence."

26. New section 10(2)(*h*) refers to the *National Defence Act* and to sections 16 and 17 of the *Security of Information Act*.

27. Under IRPA, a foreign national can remain in Canada only if he or she has a valid status, such as a temporary resident visa (IRPA, s. 11) or temporary resident permit (IRPA, s. 24).

28. CIC, *Notice – Changes to the citizenship certificate*, 9 April 2013; and CIC, *Notice – New Citizenship Certificate*, 26 January 2012.

29. CIC, *Notice – Speeding up citizenship decisions by clearing dormant cases*, 5 September 2013:

> Some examples of reasonable cause for missing a scheduled test or interview include:
>
> - being away to care for a dying parent;
> - inability to appear as a result of health constraints following an illness or accident; or
> - waiting for the arrival of documents requested from a third-party (requests for additional information only).

30. For example, House of Commons, Standing Committee on Citizenship and Immigration, *Canadian Citizenship: A Sense of Belonging*, Second Report, 1st Session, 35th Parliament, June 1994, p. 11; and Don Devoretz and Yuen Pau Woo, "Ottawa's new citizenship rules are perverse," *Toronto Star*, 18 February 2014.

31. House of Commons, Standing Committee on Citizenship and Immigration, *Updating Canada's Citizenship Laws: It's Time*, Twelfth Report, 1st Session, 38th Parliament, October 2005, p. 11.

32. IRPA, s. 28.

33. Tobi Cohen, "Experts raise concerns about citizenship rules," *PostMedia News*, 27 January 2014.

34. House of Commons, Standing Committee on Citizenship and Immigration (1994), p. 12.

35. Lorne Waldman and Audrey Macklin, "Feds' citizenship reforms a serious threat to rights," *Toronto Star*, 11 February 2014.

36. United Kingdom, House of Lords, *Hansard*, 9 October 2002, Column 273.

37. House of Commons, Standing Committee on Citizenship and Immigration, *Citizenship Revocation: A Question of Due Process and Respecting Charter Rights*, Tenth Report, 1st Session, 38th Parliament, June 2005, p. 3.

38. See, for example, the Ontario Council of Agencies Serving Immigrants, *OCASI Comments on Proposed Citizenship Changes*, 7 February 2014.

39. Chris Selley, "Actually, my citizenship is a right," *National Post*, 11 February 2014.

40. Sheryl Saperia, "The case for revoking citizenship," *National Post*, 24 February 2014.

41. House of Commons, Standing Committee on Citizenship and Immigration (June 2005), p. 2.

42. Joe Friesen, "Ottawa proposes sweeping new citizenship rules to crack down on fraud, better define national identity," *Globe and Mail*, 6 February 2014; and Waldman and Macklin (2014).

43. CIC, *Graphic: Strengthening Canadian Citizenship – Streamlining Citizenship Revocations*, 6 February 2014.