Comments on Bill C-18

By:

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Following the lead of organizations like the Canadian Council for Refugees and Ontario Council of Agencies Serving Immigrants, CASSA would like to present its position on the proposed Bill C-18, An Act respecting Canadian Citizenship. The new bill rightly affirms that all citizens, no matter how they became citizens, should have the same status, however, the proposed changes to the law and the prevailing experience of "some" Canadians remains contrary to both the letter and the spirit of the law.

There appear to be several instances of apparent inequity manifested in various provisions of the proposed Bill, for example, the stipulations with regards to the right to pass on citizenship to one's children. According to the proposed changes, a child born outside Canada to a second-generation Canadian citizen (i.e. to a mother also born outside Canada) does not have the right to citizenship and may even become stateless. This will apply even when the mother in question has lived in Canada all her life except at the time of her birth. However, a child born outside of Canada to a first-generation Canadian citizen (i.e. to a mother born in Canada) but who chooses to live most of her life outside Canada is faced with no such restrictions. This provision is unfair, inequitable and subjects second-generation Canadians to "differential" treatment purely because they were 'born' outside Canada. This also contravenes the declaration within the Bill that all citizens are equal no matter how they became citizens. Furthermore, this stipulation can have a significantly negative affect on the lives of naturalized Canadians, particularly their ability to accept rewarding employment outside of Canada.

We recommend that this provision should be amended to recognize that a child born outside Canada to an individual, whose application for citizenship has been accepted, should be considered a Canadian citizen under all circumstances.

The proposed changes to the Bill also set a cutoff age of 28 for acquiring Canadian citizenship, particularly for those Canadian kids who are born outside Canada to second-generation Canadians. This seems to be a totally arbitrary measure and allows no provision for appeal for those individuals who may have strong and valid reasons for not being able to apply for citizenship prior to the cutoff age.

Thus we recommend that this provision be amended by allowing for a process of appeal and by adding an exception to the Section 14 rule to the effect that citizenship would not be lost if the person would be stateless.

According to the provisions in Bill C-18, the Minister of Citizenship will now grant citizenship. This change moves the prerogative for granting citizenship away from the Citizenship Judge to the Minister of Citizenship. We believe that the Citizenship Judge is governed far more strictly by the rule of law than a politician and, therefore, is a better Judge of determining eligibility.

We recommend a restoration of the right to grant citizenship to a non-partisan independent body like the Citizenship Judge who should make the ruling based on law and not political vagaries.

This Bill also grants disturbingly broad powers to the Cabinet. For example, the Cabinet of the day can refuse citizenship, on the basis that a person has: "…demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society". Since these so-called democratic "principles and values" are not clearly defined either by law or public policy and there seems to be no clear consensus amongst the public on this issue other than the fact that every citizen has a right to be treated equally and fairly, this provision allows the act to be interpreted and implemented differently by different cabinets and thus create the conditions for abuse of power.

We recommend reasserting the non-partisan nature of any determining body and the democratic application of the rule of law for any determination of citizenship.

Most consistent problem in Bill C-18 seems to be an apparent disregard for due process meaning that some citizens, but not others, face the prospect of being unjustly deprived of their rights, for example, in the case of revocation of Citizenship. Two main issues are: a citizen can be subjected to revocation of his/her rights of citizenship by merely receiving "a summary of the grounds for the proposed order." Bill C-18 follows a new provision, modeled on *Immigration and Refugee Protection Act*, that would allow a Federal Court judge to revoke a former immigrant's citizenship without the citizen being permitted to see the evidence against him or her. Furthermore, a decision to revoke by the judge cannot be appealed or judicially reviewed. Second issue is that the bill allows using the criteria of violating "principles and values underlying a free and democratic society" to revoke citizenship. In the first instance, evidence may not be disclosed to the individual whose citizenship is revoked. In the second instance, citizenship can be denied to a person who has supposedly violated the "principles" criteria (instead of the provision of "public interest" as it was in previous bills). It is indeed ironic that this provision contravenes the very principles and values it claims to be using for revoking citizenship, namely, the fact that every citizen has a right to be treated equally and fairly.

Bill C-18 also proposes to give the Minister of Citizenship new powers to annul citizenship. Since the law also does not allow the disclosure of evidence leading to the annulment or a right to appeal, an individual who may have been accused falsely, according to the new law, will not even have the opportunity of providing an adequate defense. Placing such a critical decision outside the judicial process does not in any way ensure that justice will be served and that the rights of the individual will be protected. Furthermore, the bill does not say that the Minister must be convinced beyond a reasonable doubt that citizenship was illegitimately obtained. The Minister need only be "satisfied". This sets a low standard which permits the annulment of citizenship even in cases where there might be legitimate differences of opinion. It undermines the possibility of effective recourse in the courts, since the courts will generally be forced to defer to the Minister's decision about whether he is "satisfied".

We recommend restoration of the principles fairness and transparency. We further recommend amending the bill to provide for decisions on annulment to be made by an independent decision maker, with a right to a hearing with full due process rights, including the right to notice, to disclosure and to counsel.

Statelessness is a growing global problem. While Canada is a signatory to the 1961 Convention on the Reduction of Statelessness, it has not signed the 1954 Convention relating to the Status of Stateless Persons. Along with other concerned groups like the Canadian Council for Refugees and the Ontario Council of Agencies Serving Immigrants, we urge the Government of Canada to sign the 1954 convention, and to make the necessary changes to the proposed Citizenship Act to ensure that it conforms to the spirit and intent of the convention. We also recommend that in addition to eliminating those provisions that will lead to the creation of stateless persons, that a clause be added to the Act stating that the Act is to be interpreted in a manner consistent with the principle of reducing statelessness.