



HOUSE OF COMMONS
CANADA

**REVIEW OF THE SUBJECT-MATTER OF BILL C-37,
AN ACT TO AMEND THE CITIZENSHIP ACT,
ENACTED IN SECOND SESSION OF THE 39TH
PARLIAMENT**

**Report of the Standing Committee on
Citizenship and Immigration**

**David Tilson, MP
Chair**

JUNE 2009

40th PARLIAMENT, 2nd SESSION



The Speaker of the House hereby grants permission to reproduce this document, in whole or in part for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

If this document contains excerpts or the full text of briefs presented to the Committee, permission to reproduce these briefs, in whole or in part, must be obtained from their authors.

Also available on the Parliamentary Internet Parlementaire: <http://www.parl.gc.ca>

Available from Communication Canada — Publishing, Ottawa, Canada K1A 0S9

**REVIEW OF THE SUBJECT-MATTER OF BILL C-37,
AN ACT TO AMEND THE CITIZENSHIP ACT,
ENACTED IN SECOND SESSION OF THE 39TH
PARLIAMENT**

**Report of the Standing Committee on
Citizenship and Immigration**

**David Tilson, MP
Chair**

JUNE 2009

40th PARLIAMENT, 2nd SESSION

STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

CHAIR

David Tilson

VICE-CHAIRS

Hon. Maurizio Bevilacqua
Thierry St-Cyr

MEMBERS

Paul Calandra

Rick Dykstra

Hon. Jim Karygiannis

Pascal-Pierre Paillé

Alice Wong

Olivia Chow

Nina Grewal

Alexandra Mendes

Devinder Shory

OTHER MEMBER OF PARLIAMENT WHO PARTICIPATED

Hon. Marlene Jennings

CLERK OF THE COMMITTEE

Andrew Bartholomew Chaplin

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Sandra Elgersma

Daniel Thompson

THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

ELEVENTH REPORT

Pursuant to its mandate under Standing Order 108(2), your Committee has conducted a review of the subject-matter of Bill C-37, *An Act to amend the Citizenship Act*, enacted in Second Session of the 39th Parliament.

TABLE OF CONTENTS

INTRODUCTION.....	2
LOST CANADIANS.....	2
CHILDREN ADOPTED ABROAD	3
SECOND-GENERATION CHILDREN BORN ABROAD.....	4
CONCLUSION	5
LIST OF RECOMMENDATIONS.....	7
ANNEX A : LIST OF WITNESSES	9
ANNEX B : LIST OF BRIEFS	11
REQUEST FOR GOVERNMENT RESPONSE	13
SUPPLEMENTARY OPINION OF THE CONSERVATIVE MEMBERS	15

INTRODUCTION

Significant changes to Canadian citizenship were made when Bill C-37 came into force in April 2009. First and foremost, Bill C-37 brought resolution to many so-called “lost Canadians” – people who thought they were Canadian, but who were not, for a variety of technical reasons. The bill also replaced the retention provision for children born abroad to Canadian parents with a cut-off limiting citizenship by descent to the first generation born abroad.

The House of Commons Standing Committee on Citizenship and Immigration has a long-standing interest in citizenship issues. It has issued numerous reports over the years and made an important contribution in the development of Bill C-37. Thus it seems appropriate that the Committee return to this subject, review the implementation of Bill C-37, and assess what more needs to be done.

LOST CANADIANS

Bill C-37 sought to resolve the problem of 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 never were in the first place.¹ In many cases, they learned that they were not Canadian citizens when they applied for a certificate of Canadian citizenship or another document.

As a result of Bill C-37, a good many Canadians had their citizenship reinstated. A witness stated that Bill C-37 was an excellent bill that allowed hundreds of people to regain their citizenship.² Bill C-37 did not however retroactively grant or reinstate citizenship to all those who had lost it.³ The Minister of Citizenship and Immigration of the day, Diane Finley, stated that the bill would resolve 95% of cases of persons who had lost their citizenship and that the remaining cases would be resolved individually using the discretionary powers provided under subsection 5(4) of the *Citizenship Act*.⁴ Officials from Citizenship and Immigration Canada stated that, for those cases, the citizenship officers consider the applicant’s place of residence, the duration of their residence in Canada and their reasonable belief that they were Canadian citizens. Moreover, citizenship officers evaluate whether not granting them citizenship would

1 For instance, a person born abroad before 1977 could acquire Canadian citizenship through paternal descent if that person was born in wedlock, and through maternal descent if born out of wedlock. This anachronistic rule had the effect of denying Canadian citizenship to children born in wedlock to Canadian mothers and foreign fathers, and to children born out of wedlock to Canadian fathers and foreign mothers.

2 Don Chapman, Lost Canadian Organization, *Evidence*, Meeting No. 22, June 11, 2009, 0930.

3 In general, C-37 does not apply to various groups of lost Canadians who were born or naturalized in Canada, prior to 1947. It does not apply to Canadians of the second or subsequent generations who were born abroad after February 14, 1977, and lost their Canadian citizenship because they did not ask to keep it and did not register as citizens before the age of 28. Finally, it does not apply to persons who have a citizenship card that was issued by “error”. See in this regard, Penny Becklumb, *Bill C-37: An Act to Amend the Citizenship Act*, LS-591F, Parliamentary Information and Research Service, Library of Parliament, Ottawa, January 2008, p. 14. Available at: <http://lpintrabp.parl.gc.ca/lopimages2/prbpubs/l3921000/392c37-f.asp>.

4 Citizenship and Immigration Canada, *Legislation to restore citizenship to lost Canadians*, December 10, 2007 (<http://www.cic.gc.ca/english/departement/media/releases/2007/2007-12-10.asp>, consulted on June 12, 2009).

create special or unusual hardship.⁵ Since 2007, 184 cases of lost Canadians have received the Governor in Council's approval for citizenship to be granted pursuant to the minister's discretionary power.⁶

Witnesses stated that the government had not fully utilized its discretionary powers to resolve the cases left outstanding as a result of Bill C-37.⁷ According to Don Chapman, there are still 71 cases outstanding. Some witnesses also told the Committee that they had been disregarded by the government since their Canadian citizenship had still not been reinstated.⁸

In its report entitled *Reclaiming Citizenship for Canadians: A Report on the Loss of Canadian Citizenship*, the Committee recommended that the government resolve the cases of all lost Canadians.⁹ The Committee is of the opinion that the Minister of Citizenship, Immigration and Multiculturalism can resolve these cases using subsection 5(4) of the *Citizenship Act* which, despite the other provisions of the Act, gives the Minister the power to grant citizenship under specific circumstances.¹⁰ While the Committee recognizes that such cases must be considered carefully, it is of the opinion that the decision-making process must be accelerated.

Recommendation 1

The Committee recommends that the Minister of Citizenship, Immigration and Multiculturalism, pursuant to subsection 5(4) of the *Citizenship Act* which authorizes him to grant citizenship, ensure that the consideration of cases that were not resolved by the implementation of Bill C-37 be completed as quickly as possible.

CHILDREN ADOPTED ABROAD

In 2007, Bill C-14 became law, allowing Canadian parents who adopt overseas to apply for a direct grant of citizenship for their children. This option allows the parents to obtain citizenship for their foreign adopted child without going through the naturalization process. However, the ability of adopted children to pass on their Canadian citizenship was subsequently amended by Bill C-37. Foreign adopted children who received Canadian citizenship by direct grant are treated the same as the first generation born abroad to Canadian parents. Neither can pass on Canadian citizenship to subsequent generations born abroad.

5 Citizenship and Immigration Canada, *CP4: Grants*, 2007-03-20, p. 4.

6 Andrew Griffith, Department of Citizenship and Immigration, *Evidence*, Meeting No. 23, June 16, 2009, 0905.

7 Don Chapman, Lost Canadian Organization, *Evidence*, Meeting No. 22, June 11, 2009, 0935.

8 In this regard see Jacqueline Scott, as an individual, *Evidence*, Meeting No. 22, June 11, 2009, 0920; Marcel Gélinas, as an individual, *Evidence*, Meeting No. 22, June 11, 2009, 0945.

9 House of Commons, Standing Committee on Citizenship and Immigration, *Reclaiming Citizenship for Canadians: A Report on the Loss of Canadian Citizenship*, 2nd Report, 2nd Session, 39th Parliament, December 2007 (<http://cmtc.parl.gc.ca/Content/HOC/committee/392/cimm/reports/rp3159522/cimmrp02/cimmrp02-e.pdf>).

10 *Citizenship Act*, R.S.C. 1985, c. C-29, 5(4).

Parents may also choose to obtain citizenship by naturalization for their foreign adopted children. Adopted children who obtain citizenship through this route are treated the same as immigrants to Canada, with respect to the C-37 amendments. They can pass on their Canadian citizenship to their own children born abroad.

The Committee heard the concerns of individuals and groups affected by these new measures. They argue that the new rules discriminate against adopted children and create two classes of citizens: those who can pass on their citizenship and those who cannot.¹¹ In this regard, the concerns raised by the interested groups coincide with those pertaining to second-generation children born abroad (see below). The affected groups stressed the fact that, although born abroad, adopted children come to Canada at a very early age, grow up in Canada and often have brothers and sisters who were born in Canada and can pass on their citizenship by descent.

As a result of these factors, a number of adoptive parents do not utilize the mechanism established by Bill C-14 and prefer to sponsor the adopted child as a permanent resident.¹² The Committee is of the opinion that adopted children should not be treated differently from children born in Canada.

Recommendation 2

The Committee recommends that the Government of Canada grant children adopted abroad by Canadian parents ordinarily residing in Canada the same legal status as children born in Canada.

SECOND-GENERATION CHILDREN BORN ABROAD

Bill C-37 changed the way citizenship by descent can be passed on to children of Canadian parents born abroad. Under the new subsection 3(3) of the *Citizenship Act*, citizens may not pass on citizenship to their children of the second or subsequent generation who are born abroad. An exception is for persons born to a Canadian parent who is working abroad as part of or with the Canadian armed forces, for the federal government or for a provincial government, except if the parent was hired locally (subsection 3(5)). The government maintains that this provision is intended to ensure that Canadian citizenship is not passed on indefinitely to persons with no ties to Canada.

Witnesses told the Committee, however, that this provision of Bill C-37 is too blunt and does not take into consideration all the ties that parents may have with Canada. A witness pointed out for instance that a Canadian can contribute to Canada's economic or cultural

11 Dorinda Cavanaugh, Terre des hommes – pour les enfants et Terre des hommes Ontario, *Evidence*, Meeting No. 22, June 11, 2009, 1000; Sandra Forbes, Children's Bridge, *Evidence*, Meeting No. 22, June 11, 2009, 1010; Sarah Pedersen, Adoption Council of Canada, *Evidence*, Meeting No. 22, June 11, 2009, 1015; Andrew Bilski, as an individual, *Evidence*, Meeting No. 22, June 11, 2009, 1020.

12 Sandra Forbes, Children's Bridge, *Evidence*, Meeting No. 22, June 11, 2009, 1010.

development, even while living abroad.¹³ Some witnesses also argued that this provision is discriminatory since it creates difficulties for women. A witness stated that, in order to pass on her citizenship to her unborn child, a Canadian woman who was born abroad and who is working abroad may chose to quit her job so the child can be born in Canada.¹⁴

Finally, some witnesses pointed out that by cutting off the transmission of citizenship by descent for second-generation children, the government created a situation where some children born abroad to Canadian parents could be stateless.¹⁵ Some countries do not automatically grant citizenship to children born within their borders to foreign parents. Although a number of countries have a mechanism to grant citizenship to children born within their borders who would otherwise be stateless, the risk of statelessness should not be overlooked given the complexity of citizenship laws.¹⁶ In this regard, the Department can issue a one-way document to enable a stateless child to enter Canada.¹⁷ The child can then, pursuant to a provision in Bill C-37, obtain citizenship after residing in Canada for at least three years.¹⁸

Despite the negative consequences, some witnesses recognized that the government must ensure that citizenship is not passed on indefinitely to persons with few or no ties to Canada.¹⁹ The Committee considers that it is in Canada's interest for the government to ensure that citizenship is not passed on to "citizens of convenience". It maintains, however, that the method established in Bill C-37 does not provide for an adequate assessment of a person's real ties to Canada. We are of the opinion that the parents' attachment to Canada can be measured by the amount of time they resided in Canada before their child was born.

Recommendation 3

The Committee calls upon the Government of Canada to allow the transmission of citizenship by descent to children born abroad to a Canadian parent, provided that the Canadian parent resided in Canada for a specific period of time, as established through legislation, before the child was born.

CONCLUSION

The acquisition and transmission of citizenship are fundamental issues for any state. The recommendations made in this report are intended to resolve specific issues raised in the implementation of Bill C-37. In this sense they are short-term solutions. Having addressed the issue of lost Canadians, the Committee wishes to ensure that similar situations do not arise again. To this end, it is of the opinion that the fundamental principles of citizenship should be reviewed in order to address the following questions: should Canadian citizenship be awarded on the basis

13 Allan Nichols, Canadian Expat Association, *Evidence*, Meeting No. 22, June 11, 2009, 1050.

14 *Ibid.*, 1040.

15 Naeem Noorani, Canadian Immigrant Magazine, *Evidence*, Meeting No. 22, June 11, 2009, 0915.

16 Canadian Council for Refugees, *Canadian Citizenship – Effect of the Changes*, Brief, June 12, 2009.

17 Andrew Griffith, Department of Citizenship and Immigration, *Evidence*, Meeting No. 23, June 16, 2009, 0905.

18 *Citizenship Act*, R.S.C. 1985, c. C-29, 5(5).

19 Naeem Noorani, Canadian Immigrant Magazine, *Evidence*, Meeting No. 22, June 11, 2009, 0915.

of different criteria? How can a person's ties with Canada be evaluated? Should place of birth always take precedence over other criteria, such as residence in Canada? The Committee considers that it is time to examine these questions and wishes to make them the subject of a future study.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Minister of Citizenship, Immigration and Multiculturalism, pursuant to subsection 5(4) of the *Citizenship Act* which authorizes him to grant citizenship, ensure that the consideration of cases that were not resolved by the implementation of Bill C-37 be completed as quickly as possible.

Recommendation 2

The Committee recommends that the Government of Canada grant children adopted abroad by Canadian parents ordinarily residing in Canada the same legal status as children born in Canada.

Recommendation 3

The Committee calls upon the Government of Canada to allow the transmission of citizenship by descent to children born abroad to a Canadian parent, provided that the Canadian parent resided in Canada for a specific period of time, as established through legislation, before the child was born.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>As individuals</p> <p>Andrew Bilski Marcel Gélinas Ken Neal Jacqueline Scott</p> <p>Adoption Council of Canada Sarah Pedersen, Acting Executive Director</p> <p>Canadian Expat Association Allan Nichols, Executive Director Concerned Group Representative</p> <p>Canadian Immigrant Magazine Naeem (Nick) Noorani, Founder/Publisher</p> <p>Children's Bridge Foundation Sandra Forbes, Executive Director</p> <p>Lost Canadian Organization Don Chapman</p> <p>Terre des hommes - Pour les enfants et Terre des hommes Ontario Dorinda Cavanaugh, Director</p>	<p>2009/06/11</p>	<p>22</p>
<p>Department of Citizenship and Immigration</p> <p>Nicole Girard, Director Legislation and Program Policy, Citizenship and Multiculturalism Branch</p> <p>Andrew Griffith, Director General Citizenship and Multiculturalism Branch</p> <p>Rick Stewart, Associate Assistant Deputy Minister Operations</p>	<p>2009/06/16</p>	<p>23</p>

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Arch (Archie) Ford

Canadian Council for Refugees

Canadian Immigrant Magazine

Children's Bridge Foundation

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings *N^{os}22, 23 and 24*) is tabled.

Respectfully submitted,

David Tilson, MP
Chair

**Dissenting View of the Conservative Members of the Standing Committee on
Citizenship and Immigration to the Study relating to Bill C-37**

The Conservative members of the committee do not believe that recommendation #3 is an improvement on the current situation, as such we oppose it.

The Conservative members of the committee would like to point out that Canadian parents of a stateless child can sponsor their child to receive a one-way travel document to Canada from any embassy overseas, and immediately after sponsor that child for permanent residence, without observing any waiting period. As such we question the inclusion of the final phrase of the second paragraph on page 5.