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January 3, 2024

Via email: soci@sen.parl.gc.ca

Senator Ratna Omidvar
Chair, Standing Committee
Social Affairs, Science and Technology
The Senate of Canada
Ottawa ON K1A 0A4

Dear Senator Omidvar:

Re: Bill S-235 proposed amendment to the *Citizenship Act* and the *Immigration and Refugee Protection Act*

We write on behalf of the Family Law Section, the Child and Youth Law Section and the Immigration Law Section of the Canadian Bar Association (CBA Sections) in support of Bill C-235, *An Act to amend the Citizenship Act and the Immigration and Refugee Protection Act*. We also make suggestions for improvement.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The Family Law Section addresses substantive and practice issues in family law and promotes the fair, effective and efficient resolution of family matters. The Child and Youth Law Section coordinates activities, provides advice and responds to law, policy and legal research developments on matters affecting children in Canada. The Immigration Law Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The CBA Sections believe Bill S-235 is important because it ensures migrant and refugee children taken into the State's care temporarily or permanently for their protection are not left without status or a clear path to Canadian citizenship when they transition out of care. Migrant and refugee children who age-out of care without citizenship and who are predominantly racialized,¹ become financially and socially vulnerable youth, facing immediate hurdles accessing fundamental services, including health care and

¹ [Ontario Human Rights Commission, "Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare" \(Feb 2018\)](#), at 4; Ontario Association of Children's Aid Societies, ["One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians, Practice Framework Part 1: Research Report" \(Sep 2016\)](#) at 22; UN Committee on the Rights of the Child, Concluding Observations on the combined 5th and 6th periodic reports of Canada (23 June 2022), [CRC/C/CAN/CO/5-6](#), at para. 31(b).

education. Beyond the challenges faced by all youth who age-out of State care,² non-citizen youth are particularly vulnerable.

Some provinces have taken preliminary steps to address this age-related concern by amending policy under their child welfare laws to raise awareness and to authorize workers to assist children in care to apply for citizenship.³ This is unfortunately not a sufficient solution, as child welfare workers are not adequately trained to help a child apply for citizenship, and do not have the capacity to assist with necessary paperwork and follow-up due to their caseload.

Bill S-235's impact on vulnerable children

The CBA Sections endorse the comments of the Honourable Senator Oh to the Senate at the second reading of this Bill on June 1, 2023, which outline the importance of this legislation.⁴

The majority of recent immigrants are racialized.⁵ It is well-documented that Black children and their families are overrepresented in the child welfare system.⁶ Since Black children face disproportionate admission into alternative care, those who were not citizens at the time of their involvement with the child welfare system are also more likely to be disproportionately affected by the failure of the State acting as “parent” to obtain Canadian citizenship on their behalf.

Young persons in the child welfare system are particularly vulnerable to “crossing over” into the criminal justice system. In many cases, youth begin to incur criminal charges for incidents occurring while living in group home settings, outside of the care of their families.⁷ Again, due to systemic discrimination, racialized children are more likely to face more serious charges, more administrative charges related to breaches of release terms, and more time in pre-trial detention.⁸ For youth who lack citizenship, involvement with the criminal justice system increases the risk of deportation as these young people age out of care.

Canada's domestic and international obligations

The *Charter of Rights and Freedoms* and human rights legislation protect against discrimination and unequal treatment under the law. Deporting young people who were formerly in the child welfare system is also contrary to Canada's international obligations under the *UN Convention on the Rights of the Child* (UNCRC). The UNCRC prioritizes the best interests of the child in all actions which concern them and

² Report from [The Youth Leaving Care Hearings](#) (2012)

³ The Nova Scotia Department of Community Services changed its policy in May 2018 to require a social worker to note a child's citizenship when a child comes into State care. Workers must reassess the child's immigration situation at least every 90 days. Social workers were also given authority to apply for Canadian citizenship on a child's behalf. See, CBC News “Abdoul Abdi's case changes N.S. policies on children in care”, [online. Regulations](#) under the Ontario *Child, Youth and Family Services Act, 2017*, in effect on July 1, 2023, require children's aid societies make inquiries about a child's immigration or citizenship status and to take any steps with respect to the child's status having regard to the child's best interests. This must occur within 90 days following the non-citizen child's admission into care (s. 48.5).

⁴ Debates of Senate, 1st Session, 44th Parliament, Volume 153, Issue 129, Thursday, June 1, 2023, [online](#).

⁵ Statistics Canada, “Visible minority by immigrant status and period of immigration: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts” (2021 Census), [online](#).

⁶ [Ontario Human Rights Commission, “Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” \(Feb 2018\)](#), at 4; Ontario Association of Children's Aid Societies, “[One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians. Practice Framework Part 1: Research Report](#)” (Sep 2016) at 22; UN Committee on the Rights of the Child, Concluding Observations on the combined 5th and 6th periodic reports of Canada (23 June 2022), [CRC/C/CAN/CO/5-6](#), at para. 31(b)

⁷ Judy Finlay et al., “[Cross-Over Youth Project: Navigating Quicksand](#)” (Sep 2019) at 74 & 76

⁸ Judy Finlay et al., “[Cross-Over Youth Project: Navigating Quicksand](#)” (Sep 2019) at 77

requires the State to take all appropriate legislative and administrative measures to ensure the protection and care necessary for the child's well-being (Article 3).⁹

Considering the impact of Bill S-235 on children's UNCRC rights is also consistent with the federal government's recent launch of a Child Rights Impact Assessment (CRIA)¹⁰ tool to assist public officials to consider the impacts of a new law, policy, program or other initiative on children. Adopting the use of CRIs improves outcomes for children by ensuring government measures fully consider children's rights and interests.

Recommendations

Having regard to Canada's legal and moral obligations to children and youth, including non-citizen young people who have spent time in State care and who have multiple, heightened vulnerabilities as a result, we ask the Senate to consider the following amendments:

a. Plain language approach to legislation

Redraft the wording of the proposed amendment to the *Citizenship Act* in plain language. This *Act* will impact young people, and those who may not have learned English as their first language. A plain language approach is consistent with Justice Canada's *Guide to Fostering the Readability of Legislative Texts*,¹¹ and a people-centered approach to justice¹² and will help everyone understand what the legislation says, and how to access the protection.

b. UNCRC

Incorporate the UNCRC the *Citizenship Act*. This can be done in a manner similar to s. 3(3)(f) of the *Immigration and Refugee Act* (IRPA) which requires that the *Act* be construed and applied in a manner consistent with international human rights instruments to which Canada is a party.

c. Pathway to citizenship for all children who have spent any period of their childhood in the child welfare system

Given the particular vulnerabilities of children (and their family members) in contact with the child welfare system, the pathway to citizenship should not be limited to children ordinarily resident in Canada for 365 days prior to their transition from care but include all children who have spent a specified period of their childhood in the child welfare system.

⁹ The UNCRC also requires governments:

- to protect against discrimination of any kind irrespective of the child or their guardian's race, national origin, birth or other status (Article 2)
- to ensure the maximum survival and development of the child (Article 6)
- to protect the child's right to preserve their identity and to acquire a nationality (Articles 7 & 8)
- to facilitate the child's right to be heard in all matters affecting them (Article 12)
- to render appropriate assistance to legal guardians (e.g. child welfare agencies) in discharging their responsibilities for the upbringing and development of the child (Article 18)
- to ensure that a child temporarily or permanently deprived of their family environment receives special assistance and protection (Article 20)
- to ensure that refugee and asylum-seeking children receive appropriate protection and assistance (Article 22)
- to ensure that a mentally or physically disabled child receives the necessary assistance to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in their community (Article 23). Children in care often face intersecting vulnerabilities, including special needs arising from traumatic experiences of abuse or neglect
- to recognize the child's right to the enjoyment of the highest attainable standard of health; to education, including accessible higher education on the basis of capacity by every appropriate means; to social security; and to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Articles 24, 26, 27 & 28)

¹⁰ Child's Rights Impact Assessment (CRIA): [online](#).

¹¹ Justice Canada, published 2021-08-06, [online](#).

¹² Justice Canada, published 2021-09-01, [online](#).

d. Amendments should fall under s. 5 of the *Citizenship Act*

Given that the amendments are intended to address the granting of citizenship to children transitioning out of care, they should likely fall under s. 5, rather than s. 3(1) of the *Citizenship Act*.

e. Clarification of non-removal for children transitioning out of care

The CBA Sections understand that a primary focus of Bill S-235 is to protect non-citizen youth transitioning out of care against removal from Canada. As worded, however, the proposed amendment to s. 48 of IRPA appears to limit the non-enforcement of a removal order to those persons to whom s. 3(1.5) of the *Citizenship Act* applies, i.e. persons who would lose the citizenship of another country by acquiring Canadian citizenship and who have not consented to that loss of citizenship. Clearer wording is necessary to ensure that all non-citizen youth transitioning out of care benefit from non-removal.

f. Reference to a minor

Section 2(1) of the *Citizenship Act* defines a minor as “a person who has not attained the age of eighteen years.”

The intent of the amendments is to provide a pathway to citizenship for children in the child welfare system under provincial or territorial child protection legislation. Identifying a child as a person who has not attained the age of eighteen years will exclude a child who does not age out of care until they are nineteen years of age, the age of majority in several provinces and territories. In Nova Scotia, for example, a child may be the subject of a permanent care order under the *Children and Family Services Act* up to the age of nineteen years.¹³

We recommend extending the definition of a minor under the *Act* to include a person up to the age of nineteen years. This is the highest age of majority for youth in the child protection system in British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Yukon.¹⁴

A Minister or institution responsible for a child who is ageing out of care must plan for the child’s adulthood. If this planning does not occur until after the designated age in the *Act* because the child lives in a province or territory where they may be in care until the age of nineteen, it is foreseeable that this older child will be excluded from the benefit of this amendment.

g. Clarification of s. 1(1)(i)(C) of the Bill

To ensure that children who reside with siblings or other kin for their protection under agreements with child welfare agencies are not excluded from the intended pathway to citizenship, change the word from “relative” to “parent” at s. s. 1(1)(i)(C) of the *Citizenship Act*.¹⁵

The CBA Sections appreciate this opportunity to comment on Bill S-235. We trust our comments are helpful and would be pleased to offer further clarification.

Yours truly,

(original letter signed by Julie Terrien for Shelley Hounsell Gray, K.C., Caterina E. Tempesta and Gabriela Ramo)

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¹³ S.3(e) "child" means a person under nineteen years of age; S.N.S. 1990, c. 5,

¹⁴ “Putting Children’s Interest First - Federal-Provincial-Territorial Consultations on Custody and Access and Child Support” Justice Canada, 2022-12-28, [online](#).

¹⁵ For example, in Ontario, a young person who cannot live with a parent due to protection concerns may reside with an adult sibling or other relative under a Voluntary Youth Services Agreement with a Society. Non-citizen youth in these citizenship should not be precluded from eligibility for citizenship because there were residing with a “relative”.