Submission on Bill C-18
Citizenship of Canada Act

NATIONAL CITIZENSHIP AND IMMIGRATION LAW SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

The Canadian Bar Association is a national association representing over 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Citizenship and Immigration Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved by the Executive Officers as a public statement by the National Citizenship and Immigration Law Section of the Canadian Bar Association.

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I. INTRODUCTION

The National Citizenship and Immigration Law Section of the Canadian Bar Association (the CBA Section) welcomes the opportunity to comment on Bill C-18, the *Citizenship of Canada Act*.

Bill C-18 is the third bill to introduce new citizenship legislation in the past four years. Bill C-63 was introduced in December 1998[1]. The CBA Section presented its submission to the Standing Committee on Citizenship and Immigration in March 1999.[2] The submission focussed on the proposed residency requirement for permanent residents seeking citizenship, and raised significant concerns with proposed processes for revocation or annulment of citizenship.

Bill C-16 was introduced in November 1999[3], incorporating many amendments consistent with the CBA Section's recommendations on Bill C-63. The CBA Section also provided written submissions on Bill C-16.[4] Bill C-18, now before this Committee, is much closer to Bill C-16 than to Bill C-63.

Bill C-18 is a significant departure from the current *Citizenship Act*. Notably there will no longer be determination role for citizenship judges. Instead,

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1 First Session, Thirty-sixth Parliament.

2 Canadian Bar Association, *Submission on Bill C-63 — Citizenship of Canada Act*, Ottawa, March 1999.

3 Second Session, Thirty-sixth Parliament.

4 Canadian Bar Association, Letter to House of Commons Standing Committee on Citizenship and Immigration re: *Bill C-16 — Citizenship of Canada Act*, Ottawa, April 4, 2000.

Citizenship Commissioners will have a ceremonial function. Decisions on obtaining or resuming citizenship will be the jurisdiction of the Minister. Decisions on revocation of citizenship will be in the jurisdiction of the Federal Court, or the Minister through the new annulment process.

This submission addresses the CBA Section's continuing concerns with provisions respecting obtaining of citizenship and loss of citizenship. Particularly, we have concerns with:

- new provisions for citizenship applications by children adopted by Canadian parents;
- new residency requirements for permanent residents seeking citizenship;
- revocation proceedings in Federal Court for misrepresentation;
- introduction of "secret evidence" proceedings in revocation proceedings; and
- the Minister's annulment authority.

II. RIGHT TO CITIZENSHIP

Bill C-18 provides for citizenship from birth in Canada, through birth abroad to a Canadian parent, and through a grant of citizenship to permanent residents meeting the requirements, mainly residence, in Canada. In addition there are new provisions for direct grant of citizenship to adopted children of Canadian citizens, continuation of provisions for citizenship to minor children of citizens, and discretionary grant of citizenship on special and unusual hardship grounds (through the Governor in Council).

Our comments on Part 1 of the proposed Act focus on the revised requirements for permanent residents to become citizens (the residency test), and on the new authority to grant citizenship to adopted children directly , without requiring permanent resident status being first acquired. We also comment on the restriction of transmission of citizenship to children born to Canadian parents

abroad, and the need for an authority for Minister's discretionary deeming of permanent resident status, for the purposes of the proposed Act.

1. Children Adopted by Canadians — section 9

Section 9 of the proposed Act would allow Canadian citizens to apply directly for citizenship for their adopted child. All children adopted since 1977 would be eligible for application. This is a positive amendment to Bill C-16, which only covered persons adopted after the new legislation came into force.

Under the current law, adopting parents in Canada first sponsor the adopted child for immigration to Canada, as a permanent resident. An officer assesses the validity of the adoption, considering whether a genuine parent-child relationship is created and the adoption is not being used for convenience only to facilitate immigration. Upon successfully obtaining permanent resident status the child can apply for citizenship as the minor child of Canadian parents, or later in their own right after reaching the age of 18. If the permanent resident application is refused, the sponsoring parents have a right of appeal to the Immigration Appeal Division (IAD), in fact and law.

Under Bill C-18, citizens may directly apply for citizenship of their adopted child, and the same considerations are examined as in a permanent resident application. This eliminates the permanent resident step and puts the adopted child closer to the status of a natural child. The CBA Section commends these objectives, but has concerns with the process, which is not described in the Bill.

What happens when the officer refuses the application for citizenship for the adopted child? It appears that the refusal is subject only to judicial review in Federal Court, rather than full appeal on the legal issues to the IAD. Would the parents have been better off to have applied for permanent resident status for their adopted child, so they could appeal any refusal to the IAD? The IAD has developed substantial experience and precedence over the course of decades. The

parents may be heard and may present evidence before an independent decision maker with jurisdiction to decide the case on its legal merits, including the validity of an officer's assessment to the "parent-child relationship" and "best interests of the child".

The proposed law is not sensible if it provides an inferior review process and disadvantages citizen parents in the event of a refusal of the application for citizenship.

We have concern, too, with the requirement that the officer consider whether the adoption is in the best interests of the child, and whether the adoption is in accordance with the laws of the country of residence of the adopting citizen, in addition to the proper legal requirement of the adoption being in accordance with the laws of the place where the adoption took place.

These requirements are also in the *Immigration and Refugee Protection Act* (IRPA), and are defined in s.117 of the *Immigration and Refugee Protection Regulations* (IRPR) to include an officer being satisfied of:

- a home study by competent authorities;
- free and informed consent from the child's parents;
- creation of a genuine parent-child relationship;
- adoption in accordance with the laws of place where adoption took place;
- adoption in accordance of laws of sponsor's place of residence and, if Canada, a letter of no objection from the province of the child's intended destination; and
- compliance with the Hague Convention, where applicable.

We anticipate similar regulations under the proposed *Citizenship of Canada Act*.

This layering of requirements involving multiple jurisdictions creates a number of problems. While we appreciate the desire to protect against child trafficking and

adoptions of convenience, the complexity of adoption requirements for immigration processing and the requirements of compliance and consent from multiple parties creates a minefield for officers and parents alike.

For example, Ontario's *Intercountry Adoption Act* requires adopting parents to have a home study and to obtain the Director's approval **before** leaving Canada to complete any foreign adoption. Parents seeking provincial support **after** completing the legal adoption are refused, preventing completion of the requirements for a "no objection" letter under Regulation s. 117 . In Manitoba, the Director has a positive obligation, **after** the adoption, to provide supporting documentation for finalization. British Columbia has no provincial role unless the child is being brought into the province for adoption, if the Hague Convention does not apply, or if the adopting parents are relatives. Since home studies in B.C. are generally tied to the provincial involvement requirements, there is an impediment to obtaining a home study in these circumstances.

Given the inconsistency of provincial statutes, a federal requirement for provincial involvement is prejudicial to adopting parents who enter into a legal adoption with best intentions. Inconsistent laws and requirements create a bureaucratic barrier to what should be straight forward assessments of whether the adoption is legally valid (that is only a matter of law in the country of adoption), and whether the adoption is for immigration purposes only and not with the intent of creating a parent-child relationship.

RECOMMENDATIONS:

1. **Parents who are Canadian citizens should have a right to IAD review of refusals of applications for citizenship for an adopted child, as in the case of refused immigration applications by adopted children under IRPA. This can be accomplished by either:**
    i) **amending IRPA to expand the jurisdiction of the**

IAD to include review of refusals to grant citizenship to adopted children of citizens (this is preferable); or

ii) amending Bill C-18 to deem that a refusal of citizenship under section 9 is a refusal an immigration visa, entitling the parent to a sponsor appeal under IRPA.

2. When a permanent resident or citizen successfully sponsors an adopted child for permanent resident status, and the permanent resident or the adopted child later apply for citizenship, issues of validity of the adoption already determined in the immigration application should not be revisited in the citizenship application.

3. The requirement for the adoption to be in accordance with laws of the country of residence of the adopting citizen, and the requirement that an officer determine the "best interests of a child" should not be implemented without consistent and workable criteria for obtaining of provincial letters of no objection, and approval of federal officers.

4. Determination of an application for citizenship by a Canadian adopting parent should involve both overseas and inland officers. The current practice in permanent resident applications by adopted children is for only overseas officers to be involved. The overseas officer does not usually have any contact with the adopting parents in Canada, leading to inappropriate refusals.

2. Residency Test

The current *Citizenship Act* and Bill C-18 both require permanent residents to accumulate three years of residence in Canada to be eligible for citizenship application.

However, the proposed Act requires that this residence be measured strictly by physical presence in Canada. Under the current Act, the Federal Court permits flexibility by accepting that the permanent resident need not be physically present in Canada for the whole three year period to accumulate at least three years of residence in Canada. Bill C-18 removes this flexibility by requiring physical presence with only narrow exceptions, namely accompanying a citizen spouse or partner employed overseas in the public government or military service.

Bill C-18 allows residency to be accumulated over six years, rather than the current period of four years. The Bill also continues a limited half-day credit for residence in Canada before obtaining permanent resident status. Both provisions are in accord with CBA Section recommendations on Bill C-63.

Notwithstanding these amendments, the CBA Section is concerned that Bill C-18 provides insufficient flexibility in assessing residency. In our submission on Bill C-63 we recommended that residency for citizenship eligibility not be limited to counting days of physical presence in Canada. We noted that flexibility in assessing residency is historically well established under the current law, consistent with the approach in other jurisdictions, and consistent with good policy objectives underlying citizenship and immigrant selection.

We expect the Minister's response to be that the six-year timeframe for acquiring residence is adequate to accommodate most situations of temporary absence, and we agree. But the lack of flexibility will prevent citizenship being acquired in other deserving cases with significant evidence of attachment and commitment to Canada. For example:

- an accompanying spouse or partner of any Canadian citizen employed abroad, unless the citizen is in public or military service;
- a multinational executive employed by a Canadian company, whose only home and office is in Canada, whose family is in Canada, with no connection to the country of location other than their employment, who must travel and reside outside of Canada;
- a student with parents and siblings in Canada, with ten years' residence in Canada, absent for four years pursuing studies in a foreign university;
- a permanent resident temporarily transferred abroad to a subsidiary office of a Canadian employer.

These cases illustrate situations where there may be considerable attachment or commitment to Canada, notwithstanding failure to meet the strict residency requirements. Canadian immigrants may be best suited to represent Canadian companies abroad because of their language skills, experience and business contacts in their place of former residence. Business persons abroad can enhance Canadian trade and business interests in the global market place.

We agree with the policy objectives of ensuring that applicants appreciate the obligations and rights of citizenship, and that they have sufficient connection with Canada to have confidence in this appreciation. We are not satisfied that this requires strict compliance with a physical presence test. We suggest that the physical presence test is rooted mainly in a desire to have a simple test that is easily administered.

In our submission on Bill C-63, we recommended that the residence requirement recognize an "ordinarily resident test" or compelling circumstances test, in addition to strict physical presence. The core of the recommendation is the need for more flexibility. That flexibility can be provided by adopting "deemed residence", in the same manner as IRPA, for employees of Canadian companies

or for spouses or partners of Canadians abroad. Alternatively the proposed Act could provide for discretionary recognition of residence in similar situations.

RECOMMENDATION:

1. **Permanent residents abroad for employment by a Canadian employer, and spouses or partners accompanying Canadian citizens abroad, should be deemed as being resident in Canada, in the same manner as section 28 of IRPA. Deemed residence may be capped to require a minimum actual presence in Canada in addition to the deemed residence.**

2. **The Minister should be authorized to exempt applicants from strict compliance with the residency requirements in compelling cases, or where the applicant is ordinarily resident in Canada, for example students temporarily abroad with family and a history of residence in Canada. This test may be limited to those who have been ordinarily resident as permanent residents for five years.**

   Consistency of determinations could be achieved through directive guidelines.

3. **Section 8 of Bill C-18 should be clarified to confirm that a permanent resident who is a minor child of a Canadian citizen when they apply for citizenship continues to be entitled to citizenship if they reach the age of majority before the application is processed. This principle of lock-in is intended by the proposed legislation.**

3. Children born abroad to Canadian citizens — sections 5(1), 5(3) and 14)

As a general rule, citizenship is transmitted by birth from a Canadian parent to their child, regardless of where the child is born[5]. Bill C-18 significantly terminates the chain of citizenship passed through births abroad. Under s. 5(3), citizenship will not pass beyond the second generation of children born abroad, regardless of connection to Canada or residence history of the parent. Under the current law the chain is endless, so long as the births of successive generations of children occur while the parents maintain their own citizenship.

Under section 14 of Bill C-18, second generation children may not retain their citizenship. Their citizenship is automatically lost if they do not establish residence in Canada for three years out of six immediately before applying for retention of citizenship, before the age of 28. The current residency requirement is one year, or demonstration of a "substantial connection to Canada".

We question why it is necessary to require an application by a second generation child to retain citizenship. Second generation children born abroad would be aware of their citizenship by birth, but few would be aware of automatic loss provisions. The three year residency requirement immediately before application is arbitrary. A second generation child could live in Canada for two decades and then be absent for studies or work abroad. Their absence rather than the decades of residence in Canada will confirm their loss of citizenship.

If transmission of citizenship by birth abroad is to be terminated at the second generation, why not simply let the second generation child retain their citizenship as any other citizen?

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5 Bill C-18, s.5(1)(b).

RECOMMENDATION:

1. **Delete s.14, providing for automatic loss of citizenship by second generation children born abroad.**

2. **Alternatively, a second generation citizen by birth should be permitted to show substantial connection to Canada, as an alternative to the residency requirement before application for retention, prior to the age of 28 years.**

4. Discretionary grant by Minister of permanent resident status

Section 2(2)(b) of the current *Citizenship Act* has long given authority to deem a person who has lived in Canada for a long time to be a permanent resident, notwithstanding that they were not lawfully admitted as such, thus permitting acquisition of Canadian citizenship. This authority is used rarely but in deserving circumstances.

Take, for example, a woman who came to Canada 60 years ago, married a Canadian, and has resided since without ever acquiring permanent resident status. She applies for citizenship in her old age to qualify for old age benefits after being widowed. Without a deeming provision, she is unable to acquire citizenship because she does not have permanent resident status and is incapable of qualifying. In such situations, citizenship officials, with the concurrence of immigration officials, have relied on s. 2(2)(b) to deem the person to have been lawfully admitted to Canada for permanent residence, and eligible for grant of citizenship.

The residency requirement in Bill C-18 has eliminated the language of s.2(2)(b). No provision in the Bill allows the Minister to deem permanent resident status. Section 10, which requires a direction from the Governor in Council in cases of special and unusual hardship", may apply. This provision also exists under the

current Act, but is unduly procedural and limited. The deeming authority in s. 2(2)(b) is more efficient and accessible.

Section 10 in Bill C-63 clearly and simply continued authority for the Minister to deem permanent resident status. This provision should be in Bill C-18.

RECOMMENDATION:

1. **Bill C-18 should authorize the Minister to deem a person to be or have become a permanent resident, for the purposes of the Act:**

   The Minister may, for the purposes of this Act, deem a person who is in Canada and who has resided in Canada for at least 10 years to be or to have become a permanent resident as of the day the Minister specifies.

III. LOSS OF CITIZENSHIP

Revocation or annulment of citizenship are amongst the most serious penalties that the state may invoke against its citizens. The consequence for the citizen is immediate loss of all rights of citizenship, and can include direct or indirect loss of any status whatsoever and removal from Canada. These consequences are obviously severe and require strict adherence to due process, procedural fairness, and appropriate appeal rights.

Bill C-63 was criticized for its broad administrative non-judicial and generally unappealable processes for loss of citizenship. We are pleased that Bill C-18 continues and refines amendments introduced in Bill C-16, addressing some of the most egregious flaws of C-63. However, the loss of citizenship provisions are still considerably expanded from the current Act, and there continues to be

grounds for concern regarding criteria and process for loss of citizenship for misrepresentation, the Minister's authority to annul citizenship, the expanded s.28 "other prohibitions" against citizenship, and the new provisions for facilitating Federal Court proceedings without disclosure of evidence or information to the citizen concerned. We strongly recommend further amendment in each of these areas.

1. Misrepresentation proceedings in Federal Court — section 16

Under the current Act and Bill C-18:

- persons who engage in misrepresentation (including false representation, fraud or knowingly concealing material facts) to obtain, retain, renounce or resume their citizenship can have their citizenship (or renunciation) revoked;
- a Federal Court proceeding determines the factual issue of misrepresentation; and
- misrepresentation in obtaining permanent resident status is deemed to be misrepresentation in a subsequent citizenship application.

We are concerned with the inconsistent lack of mechanism for considering humanitarian and compassionate considerations, and with the new authority to apply permanent resident inadmissibility grounds against conduct committed as a citizen.

Humanitarian and Compassionate considerations

When the Federal Court determines that there has been misrepresentation in obtaining citizenship, the result is that citizenship is revoked. If the misrepresentation was in obtaining permanent resident status, then permanent resident status is lost as well (s. 67). The person concerned ceases to be a citizen or a permanent resident, and they are removable from Canada.

In our submission on Bill C-63, we noted the inconsistency between enforcement proceedings against permanent residents for misrepresentation leading to obtaining that status, before obtaining citizenship, and enforcement proceedings for the same misrepresentation taken against the same person after they become a citizen. When enforcement action is taken against a permanent resident for misrepresentation, there is a right of appeal to the IAD and consideration of humanitarian and compassionate considerations, before the removal order becomes enforceable. This is appropriate. But when the same misrepresentation in obtaining permanent resident status is taken against a citizen under the *Citizenship Act*, there is a complete loss of all status without any review of humanitarian circumstances.

It is illogical that a person whose misrepresentation is found out after years of residence and acquisition of citizenship be in a less favourable position than one whose misrepresentation is discovered during their permanent resident status.

Bill C-18 removes the prohibition against any appeal of a Federal Court finding of misrepresentation, but any appeal to the Federal Court of Appeal or the Supreme Court of Canada is strictly on the factual and legal finding of misrepresentation and does not consider any humanitarian or compassionate circumstances. It is more logical and efficient to provide for a proper review of humanitarian circumstances than to provide layers of appeal on the factual issue of misrepresentation.

The press release accompanying the introduction of Bill C-18 states:

> The Minister can consider humanitarian factors before undertaking revocation procedures or at any stage in the process, including during the removal process.[6]

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[6] Citizenship and Immigration Canada, *News Release 2002-38 — Backgrounder on Citizenship Bill*, October 31, 2002.

However, nothing in the proposed law provides for this process. There is no forum and no application process for consideration of the citizen's circumstances. Permanent residents do not look to the Minister for consideration of humanitarian factors. After all, the Minister prosecutes them for loss of status. Permanent residents look to the IAD, an independent tribunal, in open hearing. So should citizens facing loss of all status and removal from Canada for precisely the same misrepresentation.

The right to equal consideration of humanitarian circumstances is easily accomplished by providing that citizens who lose citizenship through a determination of misrepresentation in obtaining permanent resident status shall be deemed to be permanent residents inadmissible for misrepresentation and under a removal order for the purposes of s.63 of the IRPA. This would provide these former citizens access to IAD review of their circumstances. The appeal on equitable grounds should be available only to persons found to inadmissible for misrepresentation in the obtaining permanent resident status, NOT those inadmissible on grounds of security, violating human or international rights, or organized criminality. Persons inadmissible on these serious grounds would not have access to the IAD (as neither do permanent residents under IRPA) and would have only the possibility of legal appeal on the factual issue of misrepresentation to the Federal Court of Appeal and Supreme Court of Canada.

RECOMMENDATION:

1. **Where citizenship is revoked for obtaining permanent resident status through misrepresentation, there should be a review of all circumstances by the IAD, in the same manner as permanent residents found to be inadmissible on the same grounds. This review should not be available to a citizen found to be inadmissible on grounds of terrorism, security or organized crime.**

2. **Alternatively, the right of Ministerial review of humanitarian and compassionate circumstances should be entrenched in Bill C-18, with stay of removal until final determination of the review.**

Court consideration of security, violation of human or international rights or organized crime inadmissibility — sections 16(4) and 17(2)

A significant change in Bill C-18 is the ability of the Minister to ask the Federal Court, in revocation for misrepresentation proceedings, to consider whether the citizen is also inadmissible for terrorism, war crimes or organized crime, as though the person were a permanent resident under IRPA — see section 16(4).

The benefit of this is represented as an accelerated process, without need for initiating a second hearing in another tribunal.

Our concern is that a citizen's conduct, as a citizen, can be used against them as a non-citizen in revocation proceedings. This is permitted only after the Court has found that the person obtained citizenship through misrepresentation, but nevertheless we regard this as a significant assault on well-established principles of certainty of status and equal treatment of citizens. This issue is also relevant to the Minister's new power of annulment of citizenship. We are concerned that this authority brings us closer to creating a lesser citizenship for permanent residents, susceptible to revocation for conduct as a citizen.

2. Misrepresentation proceedings by certificate — section 17

Section 17, a new provision, introduces the use of secret evidence against citizens in revocation proceedings. These provisions are already in IRPA for application against permanent residents or foreign nationals. It is significant that these provisions are now to be used against citizens.

If the Minister and Solicitor General sign a section 17 certificate alleging misrepresentation and security, rights or organized crime inadmissibility, then the

Federal Court proceeding involves a different scheme for consideration of secret evidence:

- The judge receives information in private, outside of hearing.
- At the request of the Minister or Solicitor General, the judge shall hear their information or evidence in the absence of the citizen or the person concerned.
- The judge determines, in private, the summary of evidence to be provided to the person concerned.
- The citizen concerned and their counsel receive only a summary of evidence or information, which may not refer to evidence or information being considered by the judge in determining the misrepresentation or the allegation of inadmissibility. Evidence or information that is "injurious to national security or to the safety of any person" is not disclosed to the citizen or counsel, but is considered by the judge.
- The citizen and counsel does not have an opportunity to cross-examine the sources of information, only to respond to the summary of the evidence.

The CBA Section opposed these provisions in IRPA and opposes them now in Bill C-18, particularly as applied against citizens. National security interest is a legitimate concern that requires appropriate protections. This must be balanced against the legitimate expectation of a fair and open hearing, and the entitlement of the citizen to know the case against them.

Investigation of reasonableness of the evidence

Before IRPA came into force, the Review Committee under the *Canadian Security Intelligence Service Act* investigated security allegations against permanent residents, pursuant to that Act. The Review Committee had authority to summon and enforce the appearance of persons, to compel them to give evidence on oath, and produce documents and other things, to administer oaths, and to receive evidence. The Review Committee acted as an independent examiner of both the reasonableness of the evidence and the opinion of threat to

security. The Review Committee investigation of the evidence was as much a procedural protection to the person concerned as it was a determination of inadmissibility.

Under Bill C-18, there is no role for the Review Committee, and the Federal Court judge does not have the mandate or process to investigate the sources of evidence. The Court's role is narrowed to determining which evidence shall be withheld from the citizen and counsel, and whether the evidence supports a finding of inadmissibility.

The ability for an investigative review of the reasonableness of the evidence, in the sense of its reliability and probity, should be restored in Bill C-18.

Use of Secret Evidence to Determine Misrepresentation or Inadmissibility

Citizens are entitled to a transparent and fair hearing for revocation of citizenship involving an allegation of misrepresentation.

We understand concerns with evidence in the determination of inadmissibility, but it is not appropriate for a citizen to face secret evidence in the allegation of misrepresentation. In our view, provisions to protect information must be limited to the determination of inadmissibility on grounds of terrorism, security and organized crime.

Right of Appeal

Under section 17(9), a Court decision on misrepresentation or inadmissibility in a "secret evidence" proceeding is final, unappealable and not subject to judicial review.

The nature of the proceedings, with determinations made on the basis of evidence withheld from the citizen concerned, requires the possibility of review by a higher court. Concerns with protection of security or safety interests in the course of

appeal or review processes may be met by detention of persons as necessary in the national interest and by court order.

RECOMMENDATION:

1. **A Review Committee, as defined in the *Canadian Security Intelligence Service Act*, should have the mandate to investigate the reasonableness of evidence or information underlying a s.17 certificate alleging inadmissibility for terrorism, security or organized crime, against a citizen. Provisions equivalent to subsections 39(2) and (3) and sections 43, 44, and 48 to 51 of the CSIS Act should apply. Evidence or information found to be reasonable and probative by the Review Committee would be referred to the Federal Court for consideration in the s.17 proceedings.**

2. **The "protection of information" provisions in s.17 should be applicable only to the determination of terrorism, security or organized crime inadmissibility, and NOT to the initial determination of loss of citizenship for misrepresentation.**

3. **Sections 16 and 17 should grant consistent entitlement to appeal with leave by the Federal Court of Appeal and the Supreme Court of Canada.**

3. Minister's authority to annul citizenship — section 18

The Minister's authority to annul citizenship is not in the current *Citizenship Act*.

The Minister (or a delegated officer) may administratively declare, without independent hearing or judicial determination, that citizenship is void if the

Minister (or delegated officer) is satisfied that citizenship has been acquired by using a false identity, or in contravention of the s.28 prohibitions against obtaining citizenship. The Minister's authority applies also to retaining, renouncing, renunciation and resumption of citizenship. The Minister can exercise this authority anytime up to five years after the acquisition of citizenship.

The annulment voids the acquisition, etcetera, of citizenship and the person is not eligible to reapply for a period of five years.

Is the Minister's authority too broad? Few will disagree that false identity is a misrepresentation that should undo citizenship. However, the prohibitions in s.28 have been significantly expanded. In our view, annulment for any breach of prohibition is not appropriate. (See, for example, the discussion below on prohibition for charges or convictions abroad).

Is the process fair? The Minister is required to give only 30 days' notice to the person concerned, and may annul unilaterally 30 days after the notice is sent.

What is the effect of annulment on citizens or permanent residents whose status was derived from the person whose citizenship is annulled?

RECOMMENDATION:

1. **The notice provisions in subsections 21(2) and (3) should require actual, not deemed, notice to the person concerned, and the time frame for response should be from the date of actual notice.**

2. **The response period for the person concerned should be extended from 30 to 60 days. Particularly in the case of charges or convictions abroad, the individual must have**

adequate time to acquire appropriate documents for proper examination of the equivalency issue.

3. **Authority to annul citizenship on the basis of foreign charges or convictions should be limited to specific offences, to eliminate unnecessary consideration of lesser offences. Two possible limits would be:**
a.offences would affect permanent resident status, i.e. those with a potential penalty of ten years or more under the *Criminal Code*); or
b.charges or convictions for particular serious offences, such as assault causing bodily harm, assault with a weapon, manslaughter, murder, and theft over $5000.

4. **Bill C-18 should explicitly provide that an annulment order affects only the person whose citizenship was obtained directly through false identity or directly in contravention to s.28 prohibitions.**

5. **The Minister's authority to annul should be limited to two years following obtaining of citizenship.**

4. Section 28 Prohibitions

Section 28 lists circumstances that, while existing, prevent a person from obtaining citizenship. The Minister may also annul citizenship, when it has been obtained in contravention of one of the section 28 prohibitions.

The s. 28 prohibitions have been expanded and clarified to include:

- persons detained or incarcerated, including conditional sentences under s.742.1 of the *Criminal Code*;

- persons convicted in the previous three years of an indictable offence in Canada or an equivalent offence abroad;
- persons charged with an indictable offence in Canada, or an equivalent offence abroad;
- persons subject to immigration enforcement proceedings potentially affecting their status, which are not yet finally determined.

These prohibitions are generally reasonable. However, prohibitions relating to charges outside Canada may be problematic. While a conviction abroad will be prohibition against citizenship for three years, an unresolved charge is forever a prohibition.

Each countries has its own particular laws and judicial system. Crimes in one country may not be a crime in another. Whether an offence in one country is equivalent to one under Canadian law is a legal question that may be difficult to resolve, and should not be solely by an administrative process.

More problematic is whether an outstanding charge should prevent an individual from obtaining citizenship until the outstanding charge is resolved. For example, the charge could arise in a country with a wholly inadequate judicial system, where the fairness of trial and independence of judiciary is suspect, or where sentencing is harsh to the point of being persecution, rather than prosecution. Charges are not convictions, and Canada recognizes a presumption of innocence. It is one thing to be charged with murder in a country such as Germany. It is quite another to be charged in Saudi Arabia with terrorism for possessing dynamite used in the workplace, and facing a trial conducted in secret with the prospect of a death penalty. It is not appropriate for a charge arising in dubious circumstances in a jurisdiction of dubious fairness to prevent an individual from obtaining citizenship until resolved.

RECOMMENDATION:

1. **Only charges equivalent to indictable offences in Canada, carrying a potential penalty of ten years or more, should be a prohibition against citizenship. This is the same threshold under IRPA for possible loss of permanent resident status.**

2. **A mechanism should be added to Bill C-18, to allow unresolved charges to not be a prohibition, in appropriate cases. For instance, it could provide that when an applicant discloses an unresolved charge abroad, the matter is referred to CIC for evaluation. If CIC does not decide to use the charge to pursue loss of permanent resident status proceedings, or where the proceedings do not result in loss of permanent resident status, then the charges should no longer be a bar to citizenship. The proceeding would be a hearing under IRPA, an appropriate means of resolving whether the charges are for an equivalent offence. CIC should have a fixed period of six months following referral to proceed with enforcement proceedings.**

IV. SUMMARY OF RECOMMENDATIONS

Right to Citizenship

1. Parents who are Canadian citizens should have a right to IAD review of refusals of applications for citizenship for an adopted child, as in the case of refused immigration applications by adopted children under IRPA. This can be accomplished by either:
   i) amending IRPA to expand the jurisdiction of the IAD to include review of refusals to grant citizenship to adopted children of citizens (this is preferable); or

ii) amending Bill C-18 to deem that a refusal of citizenship under section 9 is a refusal an immigration visa, entitling the parent to a sponsor appeal under IRPA.

2. When a permanent resident or citizen successfully sponsors an adopted child for permanent resident status, and the permanent resident or the adopted child later apply for citizenship, issues of validity of the adoption already determined in the immigration application should not be revisited in the citizenship application.

3. The requirement for the adoption to be in accordance with laws of the country of residence of the adopting citizen, and the requirement that an officer determine the "best interests of a child" should not be implemented without consistent and workable criteria for obtaining of provincial letters of no objection, and approval of federal officers.

4. Determination of an application for citizenship by a Canadian adopting parent should involve both overseas and inland officers. The current practice in permanent resident applications by adopted children is for only overseas officers to be involved. The overseas officer does not usually have any contact with the adopting parents in Canada, leading to inappropriate refusals.

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1. Permanent residents abroad for employment by a Canadian employer, and spouses or partners accompanying Canadian citizens abroad, should be deemed as being resident in Canada, in the same manner as section 28 of IRPA. Deemed residence may be capped to require a minimum actual presence in Canada in addition to the deemed residence.

2. The Minister should be authorized to exempt applicants from strict compliance with the residency requirements in compelling cases, or where the applicant is ordinarily resident in Canada, for example students temporarily abroad with family and a history of residence in Canada. This test may be limited to those who have been ordinarily resident as permanent residents for five years.

   Consistency of determinations could be achieved through directive guidelines.

3. Section 8 of Bill C-18 should be clarified to confirm that a permanent resident who is a minor child of a Canadian citizen when they apply for citizenship continues to be entitled to citizenship if they reach the age of majority before the application is processed. This principle of lock-in is intended by the proposed legislation.

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1. Delete s.14, providing for automatic loss of citizenship by second generation children born abroad.

2. Alternatively, a second generation citizen by birth should be permitted to show substantial connection to Canada, as an alternative to the residency requirement before application for retention, prior to the age of 28 years.

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1. Bill C-18 should authorize the Minister to deem a person to be or have become a permanent resident, for the purposes of the Act:

   The Minister may, for the purposes of this Act, deem a person who is in Canada and who has resided in Canada for at least 10 years to be or to have become a permanent resident as of the day the Minister specifies.

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Loss of Citizenship

1. Where citizenship is revoked for obtaining permanent resident status through misrepresentation, there should be a review of all circumstances by the IAD, in the same manner as permanent residents found to be inadmissible on the same grounds. This review should not be available to a citizen found to be inadmissible on grounds of terrorism, security or organized crime.

2. Alternatively, the right of Ministerial review of humanitarian and compassionate circumstances should be entrenched in Bill C-18, with stay of removal until final determination of the review.

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1. A Review Committee, as defined in the *Canadian Security Intelligence Service Act*, should have the mandate to investigate the reasonableness of evidence or information underlying a s.17 certificate alleging inadmissibility for terrorism, security or organized crime, against a citizen. Provisions equivalent to subsections 39(2) and (3) and sections 43, 44, and 48 to 51 of the CSIS Act should apply. Evidence or information found to be reasonable and probative by the Review Committee would be referred to the Federal Court for consideration in the s.17 proceedings.

2. The "protection of information" provisions in s.17 should be applicable only to the determination of terrorism, security or organized crime inadmissibility, and NOT to the initial determination of loss of citizenship for misrepresentation.

3. Sections 16 and 17 should grant consistent entitlement to appeal with leave by the Federal Court of Appeal and the Supreme Court of Canada.

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1. The notice provisions in subsections 21(2) and (3) should require actual, not deemed, notice to the person concerned, and the time frame for response should be from the date of actual notice.

2. The response period for the person concerned should be extended from 30 to 60 days. Particularly in the case of charges or convictions abroad, the individual must have adequate time to acquire appropriate documents for proper examination of the equivalency issue.

3. Authority to annul citizenship on the basis of foreign charges or convictions should be limited to specific offences, to eliminate unnecessary consideration of lesser offences. Two possible limits would be:
   a. offences would affect permanent resident status, i.e. those with a potential penalty of ten years or more under the *Criminal Code*); or
   b. charges or convictions for particular serious offences, such as assault causing bodily harm, assault with a weapon, manslaughter, murder, and theft over $5000.

4. Bill C-18 should explicitly provide that an annulment order affects only the person whose citizenship was obtained directly through false identity or directly in contravention to s.28 prohibitions.

5. The Minister's authority to annul should be limited to two years following obtaining of citizenship.

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1. Only charges equivalent to indictable offences in Canada, carrying a potential penalty of ten years or more, should be a prohibition against citizenship. This is the same threshold under IRPA for possible loss of permanent resident status.

2. A mechanism should be added to Bill C-18, to allow unresolved charges to not be a prohibition, in appropriate cases. For instance, it could provide that when an applicant discloses an unresolved charge abroad, the matter is referred to CIC for evaluation. If CIC does not decide to use the charge to pursue loss of permanent resident status proceedings, or where the proceedings do not result in loss of permanent resident status, then the charges should no longer be a bar to citizenship. The proceeding would be a hearing under IRPA, an appropriate means of resolving whether the charges are for an equivalent offence. CIC should have a fixed period of six months following referral to proceed with enforcement proceedings.