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Bill C-24, Strengthening Canadian Citizenship Act

**NATIONAL IMMIGRATION LAW SECTION
CANADIAN BAR ASSOCIATION**

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PREFACE

The Canadian Bar Association is a national association representing 37,500 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 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 as a public statement of the National Immigration Law Section of the Canadian Bar Association.

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Bill C-24, *Strengthening Canadian Citizenship Act*

EXECUTIVE SUMMARY

The Canadian Bar Association's National Immigration Law Section (CBA Section) appreciates the opportunity to comment on Bill C-24, *Strengthening Canadian Citizenship Act* which was introduced in February 2014.

The CBA Section supports the Government of Canada's objective of clarifying the test for residency and commends the retroactive restoration of citizenship to additional "lost Canadians." However, we have serious concerns about other aspects of the Bill and recommend significant changes. Our most significant concerns relate to the lack of flexibility by reducing residency to a physical residence test, requiring applicants to demonstrate intent to reside in Canada if granted citizenship and the expansion of grounds to revoke citizenship.

1. Grants of Citizenship (Section 5)

The CBA supports clarifying the meaning of "residence" under the *Citizenship Act* (the Act). However, the Bill achieves clarity at the expense of the flexibility required to address the circumstances of those who have a strong attachment to Canada but are unable to satisfy the proposed physical presence requirement.

Physical residence: 1460 days in six years

Defining "residence" exclusively as physical residence gives absolutely no flexibility for many deserving potential citizens. The exceptions to the physical residence requirement are narrow and limited to those who intend to be employed outside Canada by the Canadian Armed Forces, the federal public administration, or the public service of a province, or who intend to reside with a spouse or parent who is so employed.

This inflexibility risks undermining Canada's goal of attracting the best and brightest immigrants. However, we recognize that clear rules are beneficial to the adjudication of citizenship applications. Therefore, we recommend that the test in Citizenship and Immigration Canada's Operational Manual Citizenship Policy – 5 (Residence)(CP-5), setting out allowable exceptions to physical residence, be incorporated into the test for residency.

Permitting qualitative decision-making by independent citizenship judges, who could take into account the factors in CP-5, is appropriate in the context of citizenship.

Although our preference is to adopt the residency test in CP-5, other alternatives to Bill C-24's residency test would mitigate its stringency:

- Maintain the current definition and exceptions but reduce the requirement to the equivalent of three out of six years;
- Maintain the residency requirement in Bill C-24, but add flexibility by allowing applicants to benefit from a limited number of days abroad if they satisfy the definitions in paragraphs 28(a)(ii) - (v) of the *Immigration and Refugee Protection Act* (IRPA). The limit on days abroad could be one year; or
- Empower the Minister to recognize "residency" on a discretionary basis for deserving situations, by expanding the criteria and scope of special grants under section 5(4) of the Act.

We further recommend that Bill C-24 be clarified to specify that a day of physical residence includes any time spent physically in Canada in a calendar day.

Physically present in Canada 183 days during each of the 4 calendar years within six years

A requirement that an applicant be physically present in Canada for at least 183 days in each of four calendar years that are fully or partially within the six years immediately before the date of application will significantly complicate the calculation of eligibility. The CBA Section recommends that it be eliminated.

Requirement to file a tax return

Embedding income tax requirements in citizenship legislation raise significant concerns, given the complexity of the *Income Tax Act* and the serious consequences for misrepresentation. The requirement may force applicants to delay filing applications for citizenship, which could affect their eligibility. We recommend that this requirement be eliminated.

Intent to reside in Canada if granted citizenship

The CBA Section opposes requiring applicants to demonstrate an intent to reside in Canada if granted citizenship. First, by creating two tiers of citizenship – natural born Canadians who could travel and live abroad without restriction and naturalized Canadians who would risk losing their status if they were ever to leave Canada – the proposed requirement is likely unconstitutional. Second, the intent requirement will result in a significant drain on CIC

resources for both assessment and enforcement, and will not clarify or simplify the criteria or processing of citizenship, contrary to the Bill's objective.

Knowledge of official languages

The CBA Section opposes the requirement that an applicant must take the knowledge test in one of Canada's official languages. This amounts to a second language test. It will not necessarily be an accurate assessment of an applicant's knowledge of Canada, nor an assurance that those who become Canadian citizens have a greater connection to Canada.

Authority to grant citizenship

Under the current Act, independent citizenship judges exercise much of the authority in determining who will be granted citizenship. Bill C-24 would make the process of granting citizenship primarily a departmental one, delegating authority to individual officers. The existing system should be maintained. Decisions about who is entitled to become a Canadian citizen should be exercised by independent decision-makers. The CBA Section does, however, agree that the proposed transition from cabinet to ministerial decision-making on special grants of citizenship will make the process more efficient.

2. Revocation of citizenship

Bill C-24 would expand the scope of those subject to citizenship revocation to include all those born in Canada presumed able to claim citizenship in another state through one of their parents. It would also significantly expand the grounds on which citizenship may be revoked.

The revocation process will primarily be a paper one, where the Minister gives notice of intent to revoke, the person responds and a decision is made by the Minister. The Minister may hold a hearing in some instances, and in limited circumstances there will continue to be a hearing before a Federal Court judge. There is no longer any recourse to the Governor in Council, who may take into account equitable considerations after a finding that revocation is warranted due to a breach of the Act.

The CBA Section has serious concerns with these changes.

Dual nationals – exile

Fundamentally changing the concept of citizenship to permit those born here to be excluded because they have committed an offence and may have a claim to citizenship in another state, is of very serious concern to the CBA Section. It appears to impose exile as an additional form of

punishment. It introduces levels of citizenship rights for the first time in Canada. It is unfair and discriminatory.

The CBA Section supports Canada's tradition of allowing dual citizenship. This tradition is undermined if dual citizens face the prospect of banishment.

Section 10.4 states that the law would not authorize any "decision, action or declaration that conflicts with any international human rights instrument regarding statelessness to which Canada is signatory". The reference to undefined international treaties results in uncertainty, particularly for citizens with dual nationality by marriage or descent who have not taken active steps to confirm or document their second nationality.

Individuals should have adequate notice of the consequences of their actions. If Parliament sets a precedent allowing for retrospective banishment, citizens are unable to determine with certainty what conduct may place them at risk. The use of banishment as a punishment and its retrospective application are unacceptable and likely unconstitutional.

Expanded grounds for revocation

The proposed grounds for revoking citizenship are broad. The rationale for the list of offences subject to revocation appears to be connected to loyalty to Canada or certain Canadian ideals. However, it is not clear why the loyalty of dual nationals should be put into question more than that of other Canadians. Once the precedent is established for banishing dual nationals, other forms of conduct may be added to the list.

One offence that would permit the Minister to revoke citizenship, under proposed s. 10(2)(b), is a terrorism offence under the *Criminal Code* or the Canadian equivalent for an offence committed outside of Canada, for which the citizen received at least a five-year sentence. In many countries, allegations of terrorism are used to punish political opponents, facilitated by low thresholds for convictions and harsh sentences. An analysis of whether the conviction is the equivalent of a terrorism offence in Canada is complex, and would be at the discretion of an individual officer.

Section 10.1 (2) makes membership in “an armed force of a country or as a member of an organized armed group and that country or group was engaged in an armed conflict with Canada” a ground for revoking citizenship. The wording is problematic. For example, it would not necessarily require knowledge of the nature of the group with which the person has associated. “Armed conflict with Canada” is not defined and it is unclear when it would apply. It is also unclear whether membership includes those conscripted and those not on active duty.

The CBA Section recommends deleting s. 10(2)(b) and s. 10.1(2). Alternatively, “or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section” should be deleted from s. 10(2)(b) and “armed conflict with Canada” and membership in an “organized armed group” should be more clearly defined in s. 10.1(2).

Lack of hearing, equitable considerations

Bill C-24 eliminates the right to a Federal Court hearing for those subject to revocation of citizenship, except in limited circumstances. In all other cases, the Minister will make the decision without being required to hold a formal hearing. The CBA Section believes that for a matter as serious as the revocation of citizenship, a formal hearing before an independent and impartial decision-maker must be maintained.

Another aspect of concern is the absence of consideration of equitable factors. Neither the Minister nor the Federal Court would be able to do so. The involvement of the Governor in Council, which can consider these factors under the Act, would be eliminated.

This stands in stark contrast to the procedural protections given to permanent residents in similar circumstances. The CBA Section is of the view that given the importance of citizenship, a statutory tribunal like the Immigration Appeal Division ought to have jurisdiction to consider not only the validity of the decision to terminate citizenship if ministerial revocation is maintained, but also whether there exist humanitarian and compassionate factors to warrant retention of permanent residence if not citizenship.

Apparent anomaly

The purpose of proposed s. 10.1(4) is unclear and we recommend that it be deleted to ensure that citizenship revocation remains rare and undertaken only in circumstances where it can be demonstrated that but for the misrepresentation, citizenship would not have been granted.

3. Section 13.1 Suspension of Proceeding

The CBA Section opposes the introduction of a section 13.1 that permits the Minister to suspend citizenship applications and other proceedings while additional information or evidence is gathered. This would permit the government to delay processing citizenship applications indefinitely.

4. Elimination of the Right of Appeal

Under the current Act, there is no appeal to the Federal Court of Appeal from a Federal Court citizenship appeal. This has led to lack of clarity in the law on basic citizenship questions, with the application of different tests by different judges of the Court. Unfortunately, Bill C-24's solution is to replace the Federal Court appeal with a system of judicial review. The Federal Court's ability to overturn administrative decisions on judicial review is very limited and requires a prior successful application for leave to apply for judicial review. Appeal and review mechanisms relating to citizenship should be robust. The CBA Section recommends maintaining the existing system and adding an appeal to the Federal Court of Appeal.

5. Authorized Representatives

The CBA Section supports the government's commitment to changes that protect the public from unscrupulous or incompetent advisors and representatives. If non-lawyers are permitted to practice citizenship law, they should be properly regulated. Any regulation of non-lawyers in citizenship law should be synchronized with the regulation of immigration consultants, by tying the designation of a body under the proposed s. 21.1(5) to the designation of a body under s. 91(5) of IRPA.

The CBA Section also recommends that Bill C-24 be amended to define "students-at-law" as those designated as articulated students or students-at-law by provincial or territorial law societies and to explicitly permit them to act as authorized representatives.

Last, we oppose allowing any entity similar to visa application centres overseas (VACs) to provide legal advice or representation related to citizenship. Therefore, we recommend that s. 21.1(4) be deleted.

6. Bars to Citizenship

The CBA Section has concerns about the expansion of bars to citizenship in Bill C-24, specifically the bar for foreign criminality that is much broader than for the same conduct in Canada. If foreign criminality is of a serious nature, proceedings available under IRPA can address it before the Immigration and Refugee Board, and s. 22(4) barring citizenship for these individuals appears unnecessary.

7. Citizenship by Birth

Principles of legislative drafting

Bill C-24 uses excessive cross-referencing within the Act and to previous citizenship legislation to the point of near incoherence. Plain language drafting is in the interest of all parties.

Citizenship by birth or under the 1946 *Citizenship Act*

We support Bill C-24's retroactive recognition of many "lost Canadians" who were excluded from citizenship when the 1946 *Citizenship Act* came into force.

Exceptions to section 3(1) citizenship rights

Bill C-24 provides additional exceptions to those who have the right of citizenship under s. 3(1) of the Act, including individuals who lost their status as a British subject or citizen as a result of another person's renunciation or revocation of their status (ss. 3 (2.1)(a) and (2.2)). While we take no position on the matter, we question the rationale for extending the exclusions to these individuals.

First generation limitation

We support the retroactive recognition of citizenship under proposed s. 3(7) for those "lost Canadians" who were unjustifiably excluded by the 2009 amendments to the Act through the broad first generation limitation for those born outside of Canada.

Service abroad exception to first generation limitation

Section 3(3) of the Act denies citizenship to the second and subsequent generations born outside Canada to a parent who was a citizen at the time of birth. We support exempting the children of members of the Canadian Armed Forces or federal or provincial government employees for the first generation limitation, but question whether an exemption should extend to their grandchildren.

Statelessness

Bill C-24 maintains the risk of statelessness for some persons, since many countries restrict granting citizenship to a child born there of foreign national parents. The CBA Section recommends that Bill C-24 be drafted to fulfill Canada's international obligations to prevent statelessness.

Conclusion

We support Bill C-24's objectives of streamlining and simplifying the citizenship process, and commend the government's recognition of the citizenship of "lost Canadians." We do not support Bill C-24's stringent requirements for physical residency and demonstrating an intent to reside in Canada. We also do not support expanding the grounds to revoke citizenship and to bar citizenship.

Our recommended modifications to Bill C-24 will ensure a system that is ultimately fairer, easier to administer, and one that more efficiently uses public resources while providing the necessary safeguards to maintain the integrity of the Canadian citizenship process.

Bill C-24, *Strengthening Canadian Citizenship Act*

I. INTRODUCTION

The National Immigration Law Section of the Canadian Bar Association (the CBA Section) welcomes the opportunity to comment on Bill C-24, the *Strengthening Canadian Citizenship Act*, introduced in February 2014.

The CBA Section supports the Government of Canada's objective of clarifying the test for residency and commends the retroactive restoration of citizenship to additional "lost Canadians." However, we have serious concerns about other aspects of the Bill and recommend significant changes. Our most significant concerns relate to the lack of flexibility by reducing residency to a physical residence test, requiring applicants to demonstrate an intent to reside in Canada if granted citizenship and the expansion of grounds to revoke citizenship.

Citizenship is precious. It represents full inclusion in civil society and participation in deliberations over how we should live as Canadians. Those fully integrated into Canadian society should not be unfairly denied this privilege through bright line tests that do not reasonably account for individual circumstances. Conversely, Canadians should not be subject to proceedings to remove their status as citizens except in the most exceptional circumstances, and in a fair manner that respects Canada's Constitution and international obligations.

II. GRANTS OF CITIZENSHIP (SECTION 5)

The CBA supports clarifying the meaning of "residence" under the *Citizenship Act* (the Act). This would give applicants greater certainty and result in shorter processing times, fewer demands on Citizenship and Immigration Canada (CIC) resources, and a reduction in the volume of litigation. However, the Bill has achieved clarity at the expense of the flexibility required to address the circumstances of those who have a strong attachment to Canada but are unable to satisfy the proposed physical presence requirement.

A. Physical Residence: 1460 days in six years

The proposed change in s. 5(1)(c) to define “residence” as physical residence achieves both clarity and certainty, but lacks flexibility to recognize many deserving potential citizens. The exceptions to the physical residence requirement are narrow, and limited to those applicants who intend to:

- (a) be employed outside of Canada with the Canadian Armed Forces, the federal public administration, the public service of a province, otherwise than as a locally engaged person; or
- (b) reside with his or her spouse or common-law partner or parent, who is a Canadian citizen or permanent resident and is employed outside of Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person.

In previous submissions,¹ the CBA Section has recommended that residence under the Act not be limited to physical presence in Canada, as this risks undermining Canada’s goal of attracting the best and brightest immigrants. However, clear rules are beneficial to the adjudication of citizenship applications. In large part, current problems with residency determinations are not due to any particular definition of residency. Rather, there are competing definitions of residency in the Federal Court, and the Federal Court of Appeal is unable to clarify the matter (discussed below). We agree that this degree of uncertainty in the law should not continue.

A strict physical presence test at the four-in-six year level may prevent many individuals with considerable establishment in and commitment to Canada from ever becoming citizens. For example, recent immigrants may be best suited to represent Canadian businesses abroad due to their skills and connections to their countries of origin. Canadian businesses stand to lose these people as assets in international trade if appointments abroad will jeopardize or delay future citizenship applications.

We recommend that the test in Citizenship and Immigration Canada’s Operational Manual Citizenship Policy (Residence)(CP-5), setting out allowable exceptions to physical residence, be incorporated into the test for residency. CP-5 indicates that physical presence in Canada at the

¹ Canadian Bar Association, *Bill C-63 - Citizenship of Canada Act* (March 1999); Canadian Bar Association, *“Bill C-18, Citizenship of Canada Act”* (November 2002), online: <http://www.cba.org/CBA/submissions/pdf/02-46-eng.pdf>.

required level (whether three years in four, or four years in six), ordinarily be demonstrated prior to citizenship being granted.

However, CP-5 sets out additional considerations that would warrant a finding of residency in cases where physical presence for the required period is not established:

1. Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?

Example of an allowable exception: an applicant lived in Canada for three years before leaving for a period of several months. The applicant then returns to permanently live in Canada and files a citizenship application at that time.

2. Where are the applicant's immediate family and dependents (and extended family) resident?

Example of an allowable exception: an applicant leaves Canada for several days each month, but her mother-in-law, husband and children continue to live in Canada while she is outside of the country.

3. Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

Example of an allowable exception: an applicant leaves Canada each month for seven or ten days, but stays abroad at hotels where the applicant conducts business or at the home of someone the applicant is visiting. The applicant always returns to Canada at a home owned or rented by the applicant.

4. What is the extent of the physical absences: if an applicant is only a few days short of the 1,095 total it is easier to find deemed residence than if those absences are extensive.

Example of an allowable exception: an applicant was physically present in Canada the vast majority of the time, despite repeated absences.

5. Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted temporary employment abroad?

Example of an allowable exception: the applicant obtains permanent residence in Canada and is offered a job here. After beginning employment here, she is asked by her employer to serve abroad for one year to help manage an important business venture. The applicant then returns here after the assignment is completed to resume her work in Canada.

6. What is the quality of the connection with Canada: is it more substantial than that which exists with any other country?

Example of an allowable exception: an applicant has been spending a few months abroad, each year, to look after his elderly parents. When in Canada, however, the applicant is involved in his work and business ventures. He also is involved with community organizations and the vast majority of his personal contacts (professional

and social) are people who live here in Canada. Finally, the applicant pays income tax in Canada and in no other country.²

Permitting qualitative decision-making by independent citizenship judges, who could take into account the factors in CP-5, is more appropriate in the context of citizenship. Canadian citizenship is something valuable that deserves this careful attention and consideration.

Although our preference is adopting the test in CP-5, other alternatives would mitigate the risk that deserving applicants for citizenship with a significant connection to Canada will be turned away:

- Maintain the current definition and exceptions but reduce the requirement to the equivalent of three out of six years;
- Maintain the residency requirement in Bill C-24, but add flexibility by allowing applicants to benefit from a limited number of days abroad if they satisfy the definitions in paragraphs 28(a)(ii) - (v) of the *Immigration and Refugee Protection Act (IRPA)*.³ The limit for days abroad could be one year; or
- Empower the Minister to recognize “residency” on a discretionary basis for deserving situations, by expanding the criteria and scope of special grants under section 5(4) of the Act.

Finally, Bill C-24 does not define a physical day as including any time spent physically in Canada in a calendar day. Currently, the online residence calculator gives credit only for the date of departure or the date of return, not both. An applicant could spend the majority of both days physically in Canada or over Canadian airspace.

² At 13-14.

³ Clauses 28(2)(a)(ii)-(v) of the Act read as follows:

(2) The following provisions govern the residency obligation under subsection (1):

(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

...

(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

(v) referred to in regulations providing for other means of compliance;

RECOMMENDATIONS:

1. **The CBA Section recommends that the residency test in Bill C-24 be amended to include additional considerations that would warrant a finding of residency even in cases where physical presence for the required period has not been met, in accordance with CIC's *Operational Manual Citizenship Policy (Residence) CP-5*.**
2. **In the alternative, the CBA Section recommends one of the following amendments to the residency test in Bill C-24:**
 - **Maintain the current definition and exceptions but reduce the requirement to the equivalent of three out of six years;**
 - **Maintain the residency requirement in Bill C-24, but add flexibility by allowing applicants to benefit from a limited number of days abroad if they satisfy the definitions in paragraphs 28(a)(ii) - (v) of the *Immigration and Refugee Protection Act*. The limit on days abroad could be one year; or**
 - **Empower the Minister to recognize "residency" on a discretionary basis for deserving situations, by broadening the criteria and scope of special grants under section 5(4).**
3. **The CBA Section recommends that Bill C-24 specify that a day includes any time spent physically in Canada in a calendar day.**

B. Physically present in Canada 183 days during each of four calendar years within six years

The requirement that an applicant be physically present in Canada for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of application adds an unnecessary layer of complexity. This new requirement will significantly complicate the calculation of eligibility and in turn slow processing and review of cases, leading to backlogs and the need for greater CIC resources to process cases.

RECOMMENDATIONS:

4. **The CBA Section recommends that the requirement of being physically present in Canada for at least 183 days during each of the four calendar years that are fully or partially within the six years immediately before the date of an application be eliminated.**

C. Requirement to file a tax return

Everyone should comply with their obligations under the *Income Tax Act*. However, these obligations are best enforced by the Canada Revenue Agency. As a general principle, the CBA Section opposes using immigration or citizenship law as an indirect way of enforcing other laws that already contain appropriate penalties and enforcement mechanisms.

Embedding income tax requirements in citizenship legislation raises significant concerns, given the complexity of the *Income Tax Act* and the serious consequences for making any misrepresentation under the proposed provisions. It is unclear whether a minor breach of reporting requirements under the *Income Tax Act* could form the basis for a loss of citizenship in the future. This is of particular concern in a scheme where a single officer will decide what constitutes a material misrepresentation.

Applicants may have to delay filing applications for citizenship until they have proof that they have filed their tax return. This could impact their ability to meet the eligibility requirement of physical presence.

RECOMMENDATION:

- 5. The CBA Section recommends that the requirement to meet any application requirement under the *Income Tax Act* to file a return of income in respect of four taxation years that are fully or partially within the six years immediately before the date of his or her application, be eliminated.**

D. Intent to Reside in Canada if Granted Citizenship

This proposal is one of the most troubling in Bill C-24 and is highly vulnerable to abuse. The CBA Section strenuously opposes requiring applicants to demonstrate an intent to reside in Canada if granted citizenship.

First, the proposed requirement is likely unconstitutional. It would distinguish between naturalized and other Canadian citizens, and would violate mobility rights.⁴ It would create two tiers of citizenship: natural born Canadian citizens, who could travel and live abroad without restriction; and naturalized Canadians, who would risk losing their status if they were

⁴ There would also be an incidental impairment of mobility for natural born Canadian citizens with naturalized children and spouses.

ever to leave Canada. Naturalized citizens could find themselves in a situation where, despite having an intent to reside in Canada at the time of application, need to go abroad temporarily for employment or personal reasons. Under the Bill, a single officer would decide whether the original intent to reside was a misrepresentation and potentially strip citizenship on this basis.

The intent requirement will result in a significant drain on CIC resources for both assessment and enforcement. Processing times will inevitably be longer with a subjective review of each applicant's intent along with supporting documents. The requirement will not clarify or simplify the criteria or processing of citizenship, contrary to the Bill's objective.

RECOMMENDATION:

- 6. The CBA Section recommends that the requirement that an applicant demonstrate an intent to reside in Canada if granted citizenship be eliminated.**

E. Knowledge of Official Languages

The CBA Section opposes requiring applicants to take the knowledge test in one of Canada's official languages. This amounts to a second language test and is not necessarily an accurate assessment of an applicant's knowledge of Canada. Language competency required to pass a knowledge test is significantly different than that required to live and work in Canada. Many immigrants over the last century came to Canada and worked in areas that did not require them to read or write in English or French but have paid taxes, attended religious institutions, volunteered in their communities, raised children and have little to no ties to their country of birth. They may lack the ability to complete a knowledge test in English or French, but still possess the language skills needed to be a long-term, contributing member of Canadian society. This requirement would preclude those with a lower education and English or French language skills from qualifying for citizenship and does not achieve the intended goal of ensuring that those who become Canadian citizens have a greater connection to Canada.

RECOMMENDATION

- 7. The CBA Section recommends that the requirement that the applicant take the knowledge test in one of the official languages be eliminated.**

F. Authority to Grant Citizenship

Under the current Act, independent citizenship judges exercise much of the authority in determining who will be granted citizenship. Bill C-24 would make the process primarily a departmental one, delegating authority to individual officers. This change does nothing to strengthen the value of Canadian citizenship. Decisions about who is entitled to become a Canadian citizen are at the foundation of our democracy, and should be exercised by independent decision-makers. This independence should not be sacrificed in the name of cost saving or administrative expedience.

The CBA Section does, however, support the proposed transition from cabinet to ministerial decision-making on special grants of citizenship under s. 5(4), as the change may make the special grants process more efficient.

III. REVOCATION OF CITIZENSHIP

Under the Act, revocation of citizenship is limited to naturalized Canadians who acquired their citizenship by false representations. Any citizen who stands to lose their status has the right to full hearing before a Federal Court judge. Bill C-24 would change this in the following ways:

- Citizens who may be subject to citizenship revocation include those born in Canada who are presumed to be able to claim citizenship in another state through one of their parents, notwithstanding that the Canadian may have no ties with the other country at all.
- The grounds on which citizenship may be revoked are expanded to include a number of criminal offences as defined in the *Criminal Code*, the *National Defence Act*,⁵ and the *Security of Information Act*,⁶ committed in or outside of Canada and for which a life sentence (or a five-year sentence in some instances), has been imposed. They now will also include engaging in armed conflict with Canada.
- The grounds are broad and may not be objectively serious in context. For example, a five-year sentence for a terrorism offence may not be a heavy

⁵ Section 2 of both the *Criminal Code* R.S.C., 1985, c. C-46, and the *National Defence Act* R.S.C., 1985, c. N-5 define a “terrorism offence” as including any “indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a terrorist group,” any “indictable offence under this or any other Act of Parliament where the act or omission constituting the offence also constitutes a terrorist activity”, and “conspiracy or an attempt to commit, or being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in the definition.”

⁶ Sections 16 and 17 of the *Security of Information Act* RSC, 1985, c. O-5 make it an offence to communicate safeguarded information (or is believed by the accused to be such), to a foreign state or terrorist entity and carries a maximum penalty of life imprisonment.

penalty, as most actual terrorist related offences result in lengthy sentences. Similarly, a minor offence in another country may be characterized as terrorist and given a five-year sentence when it might be a relatively benign act of opposition to government repression.

- The revocation process will be a paper one, where the Minister gives notice of the intent to revoke, the person responds and a decision is made by the Minister. The Minister may hold a hearing in some instances. In limited circumstances (misrepresentation of association with a prescribed organization and engaging in armed conflict against Canada), there will continue to be a hearing before a Federal Court judge.
- There is no longer any recourse to the Governor in Council, who may take into account equitable considerations.

The CBA Section has serious concerns with these changes. They signify a fundamental change to the concept and importance of citizenship.

A. Dual Nationals – Exile

Canadian courts have long recognized that citizenship is not just a status but much more. Section 6(1) of the *Charter*, which is not subject to legislative override under s. 33, provides: “Every citizen of Canada has the right to enter, remain in and leave Canada”. The Supreme Court has said that “the central thrust of s. 6(1) is against exile and banishment, the purpose of which is the exclusion of membership in the national community.”⁷ Exile is a prohibited form of punishment and may constitute grave human rights breach.⁸

Canada’s citizenship law currently makes only one distinction between citizens – a naturalized Canadian can lose their citizenship if it was obtained by fraud or under false pretenses. This proposal will create a new distinction between Canadians – those who are subject to exile and banishment and those who are not. Fundamentally changing the concept of citizenship to permit the exclusion of those born here, because they have committed an offence and may have

⁷ See for example, *United States of America v. Cotroni*, [1989] 1 SCR 1469 at para 19; *United States of America v. Burns*, [2001] 1 SCR 283 at para. 41; *Canada v. Schmidt*, [1987] 1 SCR 500; *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para 28; *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 SCR 519.

⁸ See Article 12.4 of the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (“No one shall be arbitrarily deprived of the right to enter his own country”). See also Article 9, *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) (“No one shall be subjected to arbitrary arrest, detention or exile”); Human Rights Committee, *General Comment 27, Freedom of movement (Art.12)*, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999); *Ngalula Mpandanjila et al. v. Zaire*, Communication No. 138/1983, U.N. Doc. CCPR/C/OP/2 at 164 (1990) at para 10.

a claim to citizenship in another state through a parent or more distant relative, is of very serious concern to the CBA Section. It appears to impose exile as an additional form of punishment.

The CBA Section supports Canada's tradition of allowing dual citizenship. This tradition is undermined if dual citizens face banishment. It would not matter under what circumstances an individual possesses dual citizenship. These provisions allow for the revocation of citizenship from someone born and raised in Canada, even someone born to generations of Canadians. The only criteria would be that they can make a claim to citizenship in another country. Accordingly, the proposed legislation would create four classes of citizens:

- a) Canadian born who do not have another nationality. These "true" citizens would be most secure in their status. There is no mechanism proposed for revoking their citizenship, even if they commit the most egregious crimes against Canada or its people.
- b) Naturalized citizens without another nationality. These would be the equivalent of all naturalized citizens under the current legislation. The only way they could risk losing their citizenship is if it was originally obtained by misrepresentation.
- c) Canadian born citizens with another nationality. Apart from misrepresentation (that would rarely apply to this group), the full range of revocation provisions would apply, including those that might be proposed in the future.
- d) Naturalized citizens with another nationality. These truly "third class" citizens would face the full range of retrospective revocation provisions being proposed, including those that might be proposed in the future.

Rather than set out explicitly the Canadians subject to the new revocation provisions, proposed s. 10.4 states that the legislation would not authorize any "decision, action or declaration that conflicts with any international human rights instrument regarding statelessness to which Canada is signatory". The reference to undefined international treaties creates an interpretative challenge for the courts and a resulting uncertainty. Specifically, there is a question about the application to Canadians who have dual nationality by marriage or descent, even if they have not taken active steps to confirm or document their second nationality. The effect could also change if Cabinet withdraws from a treaty without consulting Parliament.

The courts have not yet addressed the government's ability to strip a Canadian of their citizenship, outside limited cases in which individuals obtained the status through fraud. A person who has obtained citizenship through fraud never truly became a citizen and should not

have the protections associated with that status. This is why the *Convention on the Reduction of Statelessness* makes an exception, allowing states parties to revoke citizenship obtained by misrepresentation or fraud, even if it would render an individual stateless.⁹ However, revoking citizenship in other circumstances poses fundamental constitutional challenges.

Targeting dual nationals for citizenship revocation results in differential treatment based on ethnicity or national origin and therefore implicates section 15 of the *Charter*. Canadians from countries that do not recognize dual nationality would not be subject to the provisions. However, Canadians whose ancestors came from countries that recognize dual citizenship and pass citizenship to generations born abroad would face the prospect of revocation. Entire ethnic or national communities would either be subject to the provisions or not. Gradating the rights of Canadians on the basis of the laws of another state creates different classes of citizens. It is unfair and discriminatory.

Finally, banishment is one of the most serious punishments that can be inflicted on a citizen and has not been in common use since the Middle Ages. The retrospective nature of the provisions makes this an even more striking concern. Individuals should have adequate notice of the consequences of their actions. If Parliament sets a precedent allowing for retrospective banishment, citizens are unable to determine with certainty what conduct may place them at risk. The use of banishment as a punishment and its retrospective application are unacceptable and likely unconstitutional.

RECOMMENDATION:

- 8. The CBA Section recommends that the Bill's amendments to section 10 of the Act be deleted. Citizenship revocation should continue to be limited to those instances where naturalized citizens materially misrepresent.**

B. Expanded Grounds for Revocation

The proposed grounds for revoking citizenship are broad. The rationale for the list of offences subject to revocation appears to be connected to loyalty to Canada or certain Canadian ideals. However, it is not clear why the loyalty of dual nationals should be put into question more than that of other Canadians. The implication is insidious: an act of espionage, treason or terrorism

⁹ Article 8, *Convention on the Reduction of Statelessness*, 30 August 1961, 989 UNTS 175, art 7(3) (entered into force 13 December 1975).

by dual nationals can sever their connection to Canada because they are inherently less Canadian than their fellow citizens who do not hold another nationality.

Once the precedent is established for banishing dual nationals, other forms of conduct may be added to the list. A range of serious offences such as organized criminality, murder, aggravated sexual assault or crimes against children have attracted significant sentences and condemnation from Canadian courts. If the five-year sentence in some of the proposed sections is a threshold for gravity, the scope is very large indeed.

Proposed s. 10(2)(b) includes as one offence that would permit the Minister to revoke citizenship, “ a terrorism offence as defined in section 2 of the *Criminal Code* — or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section — and sentenced to at least five years of imprisonment”.

The definition of terrorism is often grounded in the political context. In many countries, one side of a conflict will frame the other side as terrorism. This has been particularly true for most national liberation movements. Nelson Mandela was convicted of what could be considered a terrorism offence under the *Criminal Code* and sentenced to life in prison in South Africa. The proposed section would have the further oddity of not including conduct in Canada pre-dating the relevant sections of the *Criminal Code* but including that conduct abroad. Convictions resulting from the FLQ crisis in the 1970s are a good example of conduct that would not lead to revocation under Bill C-24, even though Canada was the direct target. However, that same conduct occurring abroad, even against a dictatorial regime, would be subject to the Bill.

Five years’ imprisonment is an arbitrary threshold for revocation of citizenship, particularly for foreign convictions, as the length of imprisonment can vary widely from one country to another. Some of the most oppressive regimes in the world are most likely to imprison individuals for lengthy periods on the basis of questionable “terrorism” related offences. Including foreign convictions for terrorism offences is particularly troubling given the low threshold for these allegations.

An analysis of whether the conviction is the equivalent of a terrorism offence in Canada would not be straightforward. Under IRPA, the analysis of whether a foreign offence committed by a permanent resident is the equivalent of a Canadian offence is made by the Immigration and

Refugee Board, not individual officers. The potential complexity and severe consequences are even more serious in the proposed revocation provision. The scope of discretion the Bill would grant to an individual officer to strip citizenship in such cases is significant.

Section 10.1(2) provides another ground for revoking citizenship: “If the Minister has reasonable grounds to believe that a person, before or after the coming into force of this section and while the person was a citizen, served as a member of an armed force of a country or as a member of an organized armed group and that country or group was engaged in an armed conflict with Canada”.

In addition to the problems with retrospective application discussed above, the wording of this provision is problematic. For example, it would not necessarily require knowledge of the nature of the group with which the person has associated.¹⁰ “Armed conflict with Canada” is not defined and it is unclear when the section would apply. It is also unclear whether members of any of the armed forces active in a region where Canada participates in UN, NATO or other allied activities would be subject to the section. If so, what scale of involvement by Canada would be required? If Canada sent a single advisor on a NATO mission, would any engagement with that mission qualify as “armed conflict with Canada”?

Many countries conscript large portions of the population into the armed forces and they remain members of the armed forces for a long time even if not on active duty. If there is no mechanism for withdrawing from the armed forces, a person might continue to be a “member”. This would particularly be problematic in situations where there was little or no warning that an armed conflict with Canada might take place.

RECOMMENDATIONS:

- 9. The CBA Section recommends deleting s. 10(2)(b). An alternative if it is maintained is to delete the words “or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section” from the provision.**

¹⁰ See for example, *Kozonguizi v MCI*, [2010] F.C.J. No. 361; 2010 FC 308, at para 26-28. The applicant joined the Caprivi Liberation Army because she was in love with her fiancé who was a member. She attended a few meetings. She denied knowing that it sought the secession of a portion of Namibia by armed force. She was deemed inadmissible to Canada on the basis that the membership bar did not require knowing support of the subversion by force of a government. Membership per se was sufficient.

10. The CBA Section recommends that s. 10.1(2) be deleted. An alternative if it is maintained is to more clearly delineate the concept of “armed conflict with Canada” and membership in an “organized armed group”.

C. Lack of Hearing, Equitable Considerations

The Bill would fundamentally alter the process of revocation of citizenship. Currently, the process consists of three steps. The first is a report under s. 10 of the Act, that the Minister is satisfied that a person obtained citizenship fraudulently. Second, once notified of the report, the person can request that the matter be referred to the Federal Court for a hearing. Third, if the Federal Court makes the finding requested by the Minister, citizenship is revoked by the Governor in Council, which can and does consider equitable factors in addition to the breach itself.

The proposed process cuts out the Federal Court hearing, except where persons have engaged in conflict against Canada or have misrepresented in relation to specific inadmissibility grounds under IRPA. In all other cases, the Minister will decide with no requirement of a formal hearing. For a matter as serious as revocation of citizenship, a formal hearing before an independent and impartial decision-maker must be maintained. A fair process for revocation, including an oral hearing before an independent judge, reflects the value of Canadian citizenship and respect for the rule of law.

Another aspect of these changes of grave concern is the absence of consideration of equitable factors. Currently, the Governor in Council may consider these factors. Under the proposed process, this will no longer be possible – the decision of the Federal Court judge on revocation is determinative and there is no further consideration of equitable factors by the Governor in Council. Where the Minister is responsible for revoking citizenship, there is no discretion. Even if discretion could be implied, the Minister is not an independent or impartial decision-maker.

A permanent resident alleged to have misrepresented to obtain status under IRPA would have the opportunity to make written submissions to an officer before being referred to the Immigration Division for an admissibility hearing. If the Immigration Division found them inadmissible, the person would have a right to appeal the removal order to the Immigration Appeal Division. The Immigration Appeal Division could consider the validity of the decision to

issue a removal order, and also equitable or humanitarian and compassionate factors. Once becoming a citizen, the same person could lose their citizenship, permanent residence and become an inadmissible foreign national on a decision by a single officer.¹¹

The end result is that Canadians are given less consideration and fair process than permanent residents. Given the importance of the rights lost, a statutory tribunal, like the Immigration Appeal Division, ought to have the jurisdiction to consider the validity of the decision to terminate citizenship if ministerial revocation is maintained, as well as humanitarian and compassionate factors that warrant retention of permanent residence if not citizenship.

RECOMMENDATIONS:

11. The CBA Section recommends that a citizen facing revocation always have the right to a hearing before an independent and impartial decision-maker.

12. The CBA Section recommends that citizenship not be revoked without an assessment of humanitarian and compassionate factors by an independent and impartial decision-maker.

D. Apparent anomaly

Proposed s. 10.1(4) states that for the purposes of revocation proceedings for false representation, fraud or knowingly concealing material circumstances on a fact described in section 34, 35 or 37 of IRPA, the Minister need prove only that the person has obtained, retained, renounced or resumed their citizenship by false representation or fraud or by knowingly concealing material circumstances. The purpose of this is unclear. Read with the other sections, it may be intended to empower the government to revoke citizenship even if the person was not inadmissible under IRPA s. 34, 35 or 37 at the time they applied for citizenship. Historically, and for good reasons, citizenship revocation has been rare and is undertaken in circumstances where, but for the misrepresentation, citizenship would not have been granted. We recommend that this provision be deleted so that it remains so.

¹¹ The proposed s. 10.2 concerns a presumption of false representation, fraud or knowingly concealing material circumstances in a citizenship application if the individual committed those acts to obtain permanent resident status. Although this is in substance already in s.10(2) of the current Act, when combined with the proposed procedural changes, the Bill accords citizens accused of misrepresentation fewer procedural safeguards than permanent residents facing the same allegations of misrepresentation.

RECOMMENDATION:

13. The CBA Section recommends that section 10.1(4) be deleted.

IV. SECTION 13.1 SUSPENSION OF PROCEEDING

The CBA Section opposes the introduction of section 13.1, permitting the Minister to suspend citizenship applications and other proceedings while additional information or evidence is gathered. Applicants in administrative processes should have their applications processed in a reasonable time and be given adequate notice of issues about their application so that they may respond. Section 13.1 would permit the government to delay processing citizenship applications indefinitely. Recent Federal Court decisions demonstrate the need for a statutory timeframe for decision-making to avoid inordinate and unexplained delays.¹²

RECOMMENDATION:

14. The CBA Section recommends that section 13.1 be deleted.

V. ELIMINATION OF RIGHT OF APPEAL

Under the current Act, there is no appeal to the Federal Court of Appeal from a Federal Court citizenship appeal. This has led to a lack of clarity in the law on basic citizenship questions, with different judges of the Court applying different tests. Applicants may waste of energy and resources, applying and waiting years, only to be told that they might have been accepted but for the fact that the judge assigned to their case was from the “wrong” school of thought.

Unfortunately, Bill C-24’s solution is to replace the Federal Court appeal with judicial review modelled on that in IRPA. The Federal Court’s ability to overturn administrative decisions on judicial review is limited. Further, before the matter is even heard by a judge, the applicant must successfully apply for leave to commence a judicial review application. The leave decision is rendered without personal appearance, in a summary fashion, and without reasons. Citizenship is an important status, and the appeal and review mechanisms should be robust.

The CBA Section recommends maintaining the existing system and adding an appeal to the Federal Court of Appeal.

¹² *Asad Stanziari v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 74; *Murad v Canada (Minister of Citizenship and Immigration)*, 2013, FC 1089.

RECOMMENDATION:

- 15. The CBA Section recommends the existing system of permitting an appeal of citizenship decisions to the Federal Court be maintained, with the addition of an appeal to the Federal Court of Appeal.**

VI. AUTHORIZED REPRESENTATIVES

The CBA Section supports the government's commitment to protect the public from unscrupulous or incompetent advisors and representatives. No federal statute or regulation addresses who may practice citizenship law, including advising or representing individuals in proceedings under the Act. In the absence of federal legislation, provincial and territorial statutes regulating the practice of law apply. This means the practice of citizenship law is limited to licensed lawyers or notaries public, with certain prescribed exceptions.

Nevertheless, CIC accepts representations from non-lawyers in citizenship legal matters. We oppose any unauthorized practice of immigration or citizenship law. If non-lawyers are permitted to practice citizenship law, they should be properly regulated. Regulation of non-lawyers in citizenship law should be synchronized with the regulation of immigration consultants, by tying proposed s. 21.1(5) (empowering the Minister to designate a body whose members in good standing may represent or advise a person for consideration – or offer to do so – in a citizenship proceeding or application) to s. 91(5) of IRPA. This would avoid two separate organizations designated for immigration and citizenship law, and reduce administrative steps in designating a body under the new citizenship legislation.

Additional changes are required to Bill C-24 to protect the public. First, “students-at-law” should be clearly defined in the proposed s. 21.1(3) to include only those designated as articulated students or students-at-law by provincial or territorial law society. There also should be a revision to clarify that students-at-law may act as authorized representatives directly, as long as they are under the supervision of a lawyer. Without this clarification, students-at-law could be interpreted as effectively in the same position as any other staff member, rendering the section meaningless.

Second, proposed s. 21.1(4) would allow the Minister to authorize any organization (and their employees) to provide legal advice or representation in citizenship matters “if it is acting in accordance with an agreement or arrangement between that entity” and the Canadian

government. This roughly mirrors the wording of s. 91(4) of IRPA, which was intended to allow visa application centres overseas (VACs) to provide intake services. We see no role for anything analogous to VACs in citizenship applications, which are processed exclusively in Canada. The CBA Section opposes allowing any such entity to provide legal advice or representation, even if they are permitted to provide administrative services such as application intake.

RECOMMENDATION:

- 16. The CBA Section recommends that non-lawyers be properly regulated if they are permitted to practice citizenship law. Any regulation of non-lawyers in citizenship law should be synchronized with the regulation of immigration consultants, by tying the designation of a body under proposed s. 21.1(5) to the designation of a body under s. 91(5) of IRPA.**
- 17. The CBA Section recommends that Bill C-24 be amended to define "students-at-law" as those designated as articulated students or students-at-law by provincial or territorial law society and to explicitly permit them to act as authorized representatives.**
- 18. The CBA Section recommends that proposed s. 21.1(4) be deleted.**

VII. BARS TO CITIZENSHIP

The CBA Section has concerns about the substantial expansion of bars to citizenship in Bill C-24. Proposed s. 22(1)(a.1) would create a bar for foreign criminality much wider than for the same conduct in Canada. The section is not limited to indictable offences or offences under an Act of Parliament. Even setting aside problems with trial fairness in some countries and determining equivalence of foreign criminality, differences between jurisdictions make the application inequitable. In some jurisdictions (the U.S., for example), it is not uncommon for prohibition orders to last five to ten years, and the person is "serving a sentence." In Canada, a prohibition order cannot be longer than three years, after which the sentence is complete.

If foreign criminality is of a serious nature, proceedings under IRPA to address it before the Immigration and Refugee Board are better suited to make such significant determinations for permanent residents. The IRPA proceedings suspend the citizenship process until they are

resolved. As any permanent resident convicted of the listed offences would almost certainly face loss of permanent residence, s. 22(4) barring their citizenship appears unnecessary.

RECOMMENDATION:

19. The CBA Section recommends that clause 19 in Bill C-24 (amending ss. 22(1) and (2) of the Act) be deleted.

VIII. CITIZENSHIP BY BIRTH

A. Principles of Legislative Drafting

The government has an opportunity to improve the poor drafting in the current Act. However, Bill C-24 uses excessive cross-referencing within the Act and to previous citizenship legislation to the point of near incoherence. This results the legislation being inaccessible to the public as well as many public servants, politicians, lawyers, and judges, delayed processing times for citizenship applications and an increased backlog, and an increased burden on Canadian courts. Plain language drafting is in the interest of all parties.

B. Citizenship by Birth or under the 1946 Citizenship Act

Section 3(1) of the Act lists persons who have a right to citizenship as a result of being born in Canada, born to a Canadian citizen parent, or by operation of the 1946 *Citizenship Act*. In other words, it lists all paths to citizenship other than through naturalization. Some people, known as the “lost Canadians” were inadvertently or inappropriately excluded from the right to citizenship under s. 3(1). Bill C-24 retroactively recognizes the citizenship of many of those excluded from citizenship when the 1946 *Citizenship Act* came into force, which the CBA Section fully supports.

C. Exceptions to Section 3(1) Citizenship Rights

The Act provides a “diplomatic exception” to s. 3(1), which denies citizenship to children of foreign diplomats and diplomatic employees born in Canada. Bill C-24 provides additional exceptions, denying citizenship to a person who, prior to the 1946 *Citizenship Act*, made a declaration of alienage (essentially, took citizenship in another country), or had their British subject status revoked, or after the 1946 *Citizenship Act* came into effect, renounced or had their Canadian citizenship revoked. Excluding persons who sought citizenship elsewhere, renounced, or had their status revoked (normally for fraud) is reasonable. However, these

exclusions *also* include individuals who lost their status as a British subject or citizen as a result of another person's renunciation or revocation of their status (ss. 3 (2.1)(a) and (2.2)). While we take no position on the matter, we question the rationale for extending the exclusions to these individuals.

D. First Generation Limitation

The 2009 amendments to the Act excluded persons of second or subsequent generations born outside Canada from any right to citizenship under s. 3(1). The first generation limitation was overly broad, unjustifiably excluding some from citizenship. Bill C-24 will no longer apply the first generation limitation to a child born outside Canada to a parent who:

1. was a (foreign born) adoptee after the 1946 *Citizenship Act* applied to them; or
2. was born outside Canada to a Canadian father in wedlock or a Canadian mother out of wedlock and obtained a Registration of Birth Abroad by age two.

These persons will have citizenship recognized retroactively under s. 3(7), and we support these amendments.

E. Service Abroad Exception to First Generation Limitation

Section 3(3) of the Act denies citizenship to the second and subsequent generation born outside Canada to a parent who was a citizen at the time of birth. However, Bill C-24 provides an exception, recognizing the citizenship of persons whose parents or grandparents are members of the Canadian Armed Forces or federal or provincial government employees. We support exempting these children from the first generation limitation, but question whether the exemption should extend to grandchildren.

F. Statelessness

Bill C-24 maintains the risk of statelessness for some persons. It is possible for a child born abroad to be excluded from Canadian citizenship and yet have no claim to citizenship in the country where they were born. Many countries restrict giving citizenship to a child born there who has foreign national parents. A child born abroad to Canadian parents may be stateless under Bill C-24, given the generational limitations on passing citizenship.

RECOMMENDATION:

- 20. The CBA Section recommends that Bill C-24 be drafted to fulfill Canada's international obligations to prevent statelessness.**

IX. CONCLUSION

The CBA Section supports Bill C-24's objectives of streamlining and simplifying the citizenship process, and we commend the government's recognition of the citizenship of "lost Canadians" who were unfairly excluded in the past. It is in the best interests of both Canada and prospective citizens to have a clear test for residency. However, we do not support Bill C-24's stringent requirement for physical residency, which does not permit consideration of "human factors," and may affect the ability of some most integrated and successful immigrants from becoming citizens. We do not support the requirement that applicants demonstrate intent to reside in Canada if granted citizenship, which adds needless complexity without necessarily ensuring applicants have greater attachment to Canada.

Further, we oppose expansion of the grounds to revoke and bar citizenship. Removing citizenship is one of the most serious consequences that a society may impose, and should remain an exceptional process conducted with the highest degree of procedural fairness.

We believe our recommended modifications to Bill C-24 will ensure a system that is ultimately fairer and easier to administer, and more efficiently uses public resources while providing the necessary safeguards to maintain the integrity of the Canadian citizenship process.

SUMMARY OF RECOMMENDATIONS

- 1. The CBA Section recommends that the residency test in Bill C-24 be amended to include additional considerations that would warrant a finding of residency even in cases where physical presence for the required period has not been met, in accordance with CIC's *Operational Manual Citizenship Policy (Residence) CP-5*.**
- 2. In the alternative, the CBA Section recommends one of the following amendments to the residency test in Bill C-24:**
 - Maintain the current definition and exceptions but reduce the requirement to the equivalent of three out of six years;**

- **Maintain the residency requirement in Bill C-24, but add flexibility by allowing applicants to benefit from a limited number of days abroad if they satisfy the definitions in paragraphs 28(a)(ii) - (v) of the *Immigration and Refugee Protection Act*. The limit on days abroad could be one year; or**
 - **Empower the Minister to recognize “residency” on a discretionary basis for deserving situations, by broadening the criteria and scope of special grants under section 5(4).**
3. **The CBA Section recommends that Bill C-24 specify that a day includes any time spent physically in Canada in a calendar day.**
 4. **The CBA Section recommends that the requirement of being physically present in Canada for at least 183 days during each of the four calendar years that are fully or partially within the six years immediately before the date of an application be eliminated.**
 5. **The CBA Section recommends that the requirement to meet any application requirement under the *Income Tax Act* to file a return of income in respect of four taxation years that are fully or partially within the six years immediately before the date of his or her application, be eliminated.**
 6. **The CBA Section recommends that the requirement that an applicant demonstrate an intent to reside in Canada if granted citizenship be eliminated.**
 7. **The CBA Section recommends that the requirement that the applicant take the knowledge test in one of the official languages be eliminated.**
 8. **The CBA Section recommends that the Bill’s amendments to section 10 of the Act be deleted. Citizenship revocation should continue to be limited to those instances where naturalized citizens materially misrepresent.**
 9. **The CBA Section recommends deleting s. 10(2)(b). An alternative if it is maintained is to delete the words “or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section” from the provision.**
 10. **The CBA Section recommends that s. 10.1(2) be deleted. An alternative if it is maintained is to more clearly delineate the concept of “armed conflict with Canada” and membership in an “organized armed group”.**
 11. **The CBA Section recommends that a citizen facing revocation always have the right to a hearing before an independent and impartial decision-maker.**

- 12. The CBA Section recommends that citizenship not be revoked without an assessment of humanitarian and compassionate factors by an independent and impartial decision-maker.**
- 13. The CBA Section recommends that section 10.1(4) be deleted.**
- 14. The CBA Section recommends that section 13.1 be deleted.**
- 15. The CBA Section recommends the existing system of permitting an appeal of citizenship decisions to the Federal Court be maintained, with the addition of an appeal to the Federal Court of Appeal.**
- 16. The CBA Section recommends that non-lawyers be properly regulated if they are permitted to practice citizenship law. Any regulation of non-lawyers in citizenship law should be synchronized with the regulation of immigration consultants, by tying the designation of a body under proposed s. 21.1(5) to the designation of a body under s. 91(5) of IRPA.**
- 17. The CBA Section recommends that Bill C-24 be amended to define "students-at-law" as those designated as articulated students or students-at-law by provincial or territorial law society and to explicitly permit them to act as authorized representatives.**
- 18. The CBA Section recommends that proposed s. 21.1(4) be deleted.**
- 19. The CBA Section recommends that clause 19 in Bill C-24 (amending ss. 22(1) and (2) of the Act) be deleted.**
- 20. The CBA Section recommends that Bill C-24 be drafted to fulfill Canada's international obligations to prevent statelessness.**