

April 4, 2000

Santosh Sirpaul
Clerk, Standing Committee
on Citizenship and Immigration
House of Commons
Room 631
180 Wellington Street
Ottawa ON K1A 0A6

Dear Ms. Sirpaul,

Re: Bill C-16, *Citizenship of Canada Act*

Thank you for granting the National Citizenship and Immigration Law Section of the Canadian Bar Association (the “Section”) the opportunity to appear before the Standing Committee on Citizenship & Immigration to present its views on Bill C-16. Our comments are limited to those differences between Bill C-63, introduced last session, and Bill C-16. For matters which haven’t changed, we adopt our C-63 submission in its entirety.

The Section’s submission focuses on four issues. These issues are:

1. The Residency Test

Bill C-16 makes the residency test somewhat more flexible. However, for the reasons detailed in our submission on Bill C-63, the Section still objects to the exclusive reliance on physical presence. In our global economy, many business people have to spend considerable time outside the country yet can still demonstrate a commitment and attachment to Canada. We suggest that it is not in Canada’s interest to require such people to “put in their time” in Canada to get citizenship. We recommend that the legislation provide for flexibility in these cases.

We are pleased to see that Bill C-16 has reinstated the “half-day credits” for people who are physically present in Canada but not permanent residents.

When the move to a physical presence requirement for acquisition of Canadian citizenship was introduced, it was the Section’s understanding that the government would eventually make it easier to maintain Canadian permanent resident status. The implied trade-off was that although it would be harder to achieve the ultimate prize of Canadian citizenship, applicants would be given greater flexibility

to maintain permanent resident status in circumstances that are in Canada's interest. However, recently released government documents suggest that Citizenship and Immigration Canada is abandoning the current test for residency and the grant of Returning Resident Permits. The new residency requirements will not be in Canada's best interests if Bill C-16 is adopted in its present form. The Section recommends that no final decisions be taken on the residency test in Bill C-16 until the residency test under the new *Immigration Act* is made public and can be considered by the Committee.

2. Guidelines for the discretionary grant of citizenship by the Minister

The Committee's members are aware of the Section's concern that people who are deserving of Canadian citizenship, but who cannot meet the new residency requirement, will be disadvantaged by the adoption of Bill C-16. We are concerned that the Bill's imposition of a physical presence requirement means citizenship applications will not succeed without this criterion being met.

We propose that Bill C-16 be amended to allow the government to make regulations which would deem certain activities abroad as meeting the physical presence requirement. The *Act* should empower the government to bring forward such regulations without requiring an amendment to the *Act*, to enable a more flexible application of the *Act* in appropriate circumstances.

3. Adopted Children

Bill C-16 introduces a new factor in assessing whether an adopted child should be granted citizenship, namely whether the adoption was in the best interests of the child.

We have serious concerns about this new addition because it leaves the "best interests" assessment in the hands of visa officers. Visa officers have little if any training in the area of family relations and we therefore believe it is inappropriate to place this decision in their hands. Visa officers should rely on the assessment of the local authorities as to whether an adoption is in the "best interests" of the child.

We are also concerned that there is a potential constitutional conflict in the federal government's imposition of a best interests test in international adoptions. Adoptions normally are considered to fall within provincial and territorial jurisdiction. Provinces and territories set their own standards for valid adoptions, including the recognition of foreign adoptions. Many if not most provinces and territories have strict standards that require careful assessment by trained professionals before an adoption can be approved. This legislation would allow provincial and territorial government decisions to be overridden by federal visa officers (many of whom are foreign nationals) with little or no experience in this area.

The Section reiterates its belief that the right of appeal should be to the Immigration Appeal Division and its concern that the Bill apply to adoptions prior to its coming into force.

4. Bill C-16's review mechanisms

The Section has voiced a number of concerns regarding the review mechanisms contained in the Bill. These concerns include the lack of time and other constraints on the Minister's power under section 30 to reverse a decision. Without repeating those concerns, the Section considers it critical that any review of a visa officer's decision regarding an adopted child's qualifications for Canadian citizenship be done by the same persons who will be responsible for other reviews under section 30, notwithstanding that a visa officer made the initial decision.

We also reiterate our concerns that the *Act* not apply retroactively.

5. Technical amendments

We also will present a short series of technical amendments in writing for your consideration. These would not change the intent of the affected sections, but would only clarify their meaning.

We note that a great deal of the substance involving Canadian citizenship will be found in the regulations made under Bill C-16 when it becomes law. Citizenship & Immigration Canada should be in a position to finalize its proposed regulations in the near future if it is to be in a position to implement Bill C-16 as planned in the Fall of this year. The Section respectfully requests the opportunity to communicate with your Committee concerning these regulations after they are released.

We look forward to assisting the Committee with its deliberations and are grateful for the opportunity to do so.

Yours truly

Elizabeth D. Chow Bryson,
Chair, National Citizenship and
Immigration Law Section