**Legislative Summary** **LS-591E**

# BILL C-37: AN ACT TO AMEND THE CITIZENSHIP ACT

**Penny Becklumb**
**Law and Government Division**

**9 January 2008**
***Revised 23 September 2008***

Library of Parliament
Bibliothèque du Parlement

**Parliamentary Information and Research Service**

# LEGISLATIVE HISTORY OF BILL C-37

| HOUSE OF COMMONS | | SENATE | |
|---|---|---|---|
| **Bill Stage** | **Date** | **Bill Stage** | **Date** |
| First Reading: | 10 December 2007 | First Reading: | 26 February 2008 |
| Second Reading: | 7 February 2008 | Second Reading: | 4 March 2008 |
| Committee Report: | 14 February 2008 | Committee Report: | 16 April 2008 |
| Report Stage: | 15 February 2008 | Report Stage: | |
| Third Reading: | 15 February 2008 | Third Reading: | 16 April 2008 |

Royal Assent: 17 April 2008

Statutes of Canada 2008, c.14

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

# TABLE OF CONTENTS

**Page**

CANADA
LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

# BILL C-37: AN ACT TO AMEND THE CITIZENSHIP ACT*

## BACKGROUND

Bill C-37, An Act to amend the Citizenship Act, was introduced in the House of Commons and received first reading on 10 December 2007. The purpose of the Act is to address the issue of the so-called "lost Canadians," people who think of themselves as Canadians and who wish to participate in Canadian society, but either ceased to be citizens, or never were Canadian citizens in the first place, for various legal reasons. In many cases, "lost Canadians" were not aware that they were not Canadian citizens until they applied for a certificate of Canadian citizenship or other documentation.

## GROUPS OF "LOST CANADIANS"

There are at least four distinct legal groups of "lost Canadians." The details of the manner in which the members of each group lost citizenship are discussed below:(1)

- People naturalized to Canada who subsequently lived outside the country for more than 10 years prior to 1967;
- People born abroad to a Canadian parent before the current *Citizenship Act* came into effect on 15 February 1977;
- People who lost their citizenship between 1 January 1947 and 14 February 1977 because they or their parent acquired the nationality or citizenship of another country; and

---

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Some people may belong to both the second and third groups.

- Second- and subsequent generation Canadians[2] born abroad since the current *Citizenship Act* came into effect on 15 February 1977.

### A. People Naturalized to Canada who Subsequently Lived Outside the Country for More than 10 Years Prior to 1967

In 1947, Canada's first citizenship act came into effect.[3] Under the *Canadian Citizenship Act*, Canadian citizens who were not "natural-born"[4] lost their citizenship if they resided outside of Canada for a period of at least six consecutive years, subject to certain exceptions.[5] This period was increased to 10 years during the 1950s, and repealed altogether in 1967. However, some people had already lost their Canadian citizenship, in many cases unknowingly.

### B. People Born Abroad to a Canadian Parent Before the Current *Citizenship Act* Came Into Effect on 15 February 1977

A large number of "lost Canadians" were born outside Canada to a Canadian parent before 15 February 1977.[6] They believed that they were Canadian citizens because of their parent's citizenship. Such people may have lost Canadian citizenship, or never had it in the first place, due to three separate provisions of the pre-1977 citizenship legislation.

---

(2) Second-generation Canadians are Canadians born abroad to a Canadian parent who was also born abroad. This group also includes subsequent generations of Canadians born abroad.

(3) *Canadian Citizenship Act*, S.C. 1946, c. 15.

(4) Canadian citizens who were not "natural-born" included naturalized Canadians¸ British subjects who had Canadian domicile on 1 January 1947, and certain war brides. War brides are European women who married Canadian servicemen who fought for Canada in World War II. During and immediately following the war, thousands of European women immigrated to Canada to join their new Canadian husbands. By way of a 1945 Order in Council (P.C. 1945-858, 9 February 1945), special allowance was made for the dependants (brides, widows and minor children) of members of the Canadian Armed Forces who served in World War II. The order provided that, upon being permitted to enter Canada, these dependants either became Canadian citizens or they enjoyed Canadian domicile, depending on the status of the member of the Canadian Forces upon whom they were dependent. When the *Canadian Citizenship Act* came into effect on 1 January 1947, war brides who had been lawfully admitted to Canada for permanent residence became "other than natural-born" Canadian citizens.

(5) As an example of an exception to the rule, years during which such a person served outside Canada while in the public service of Canada, or any province of Canada did not count towards the six years. Other exceptions also applied. See section 20 of the 1947 *Canadian Citizenship Act*.

(6) The date the current *Citizenship Act*, R.S.C. 1985, c. C-29 came into effect.

1. Registration of Births

Starting in 1947 when the *Canadian Citizenship Act* came into effect, the birth of a child outside Canada to a Canadian parent had to be registered within two years in order for the child to be a "natural-born Canadian citizen."(7) Some births were never registered. To provide relief, the Government extended the registration deadline over the years. The final registration deadline for all births abroad that occurred before 1977 was 14 August 2004.(8) Still, some births were never registered, with the result that such people did not become Canadian citizens.

A person born in wedlock abroad to a Canadian mother and a foreign father was not entitled to register to obtain citizenship, but the 1977 Act provided a special streamlined procedure for the person to obtain citizenship without first becoming a permanent resident.(9) However, that provision was also in effect only up to 14 August 2004; therefore, those who missed the deadline missed the opportunity.

2. Declaration of Retention

Another provision of the 1947 *Canadian Citizenship Act*(10) required those who acquired Canadian citizenship by descent to assert their Canadian citizenship by registering a declaration of retention between their 21st and 22nd birthdays. Failure to do so resulted in the person ceasing to be a Canadian citizen. This requirement was later amended to provide that such a person could retain his or her Canadian citizenship either by registering the declaration

---

(7) The Canadian parent had to be the father in the case of a child born in wedlock, and the mother in the case of a child born out of wedlock. See the subsection below headed "The Wedlock Issue." Also see Section 5(b)(ii) of the 1947 *Canadian Citizenship Act*.

(8) There is no registration requirement for any births abroad occurring after 14 February 1977.

(9) When the current Act came into effect in 1977, it provided some relief to people who were born abroad before 1977 in wedlock to a Canadian mother and foreign father. Since such a person's "responsible parent" was the father, previously he or she was treated like a stranger to Canada. Section 5(2)(b) of the 1977 Act provided a "limited time offer" for such people to become Canadian citizens without first becoming permanent residents. There were several problems associated with this opportunity, however. First, it applied only to children of Canadian mothers, so children born out of wedlock to Canadian fathers were out of luck. In *Augier* v. *Minister of Citizenship and Immigration*, 2004 FC 613 the Federal Court found this infringed Charter equality rights, (s. 15). Second, it did not confer citizenship automatically upon application. A candidate still had to undergo background checks, and could be denied citizenship if he or she had committed an offence. (The Supreme Court found this infringed Charter equality rights (s. 15) in *Benner* v. *Canada (Secretary of State)*, [1997] 1 S.C.R. 358). Third, when citizenship was conferred, it was not retroactive to the time of birth. Finally, as a limited time offer, it ended 14 August 2004 and is no longer available.

(10) The relevant provision was added to the *Canadian Citizenship Act* after its enactment in 1947.

between his or her 21st and 24th birthdays, or by living in Canada on his or her 24th birthday. With the passage of the current *Citizenship Act* in 1977, the requirement to retain citizenship was repealed altogether. People who otherwise would have been subject to the requirement, but had not yet turned 24 when the Act came into force, were relieved from complying.(11) However, those born earlier who had failed to retain their citizenship, and did not reside in the country on their 24th birthday, lost their Canadian citizenship.

3. The Wedlock Issue

A third feature of the 1947 *Canadian Citizenship Act* and prior legislation that has had the effect of denying Canadian citizenship to many people who would otherwise be Canadian citizens was the distinction between children born in and out of wedlock. Persons born abroad prior to 1977 could acquire Canadian citizenship from their Canadian father if the child was born in wedlock, and from their Canadian mother if the child was born out of wedlock.(12) This anachronistic rule had the effect of denying Canadian citizenship to children born in wedlock to Canadian mothers and foreign fathers, and to children born out of wedlock to Canadian fathers and foreign mothers.

## C. People who Lost their Citizenship Between 1 January 1947 and 14 February 1977 Because they or their Parent Acquired the Nationality or Citizenship of Another Country

A third group of "lost Canadians" ceased to be citizens between 1947 and 1977 because, in general, dual citizenship was not permitted during this period. Under the 1947 *Canadian Citizenship Act*, Canadian citizens who voluntarily acquired the nationality or citizenship of another country lost their Canadian citizenship.(13) In addition, the minor children of such persons could also lose their citizenship if the children were, or also became, a citizen of another country.(14) The Act provided a mechanism for minors who lost their citizenship due to

(11) In other words, people born after 14 February 1953 were not affected by the requirement because they had not yet reached their 24th birthday when the requirement was repealed on 15 February 1977.

(12) As noted earlier, there were other requirements to fulfill as well, such as registering the birth and registering a declaration of retention, in line with the requirements in effect at the relevant time.

(13) See s. 16 of the *Canadian Citizenship Act*.

(14) The child ceased to be a Canadian citizen at the same time as his or her "responsible" parent if the child either became a citizen of the other country at the same time as the "responsible" parent, or was already a citizen of another country at the time the "responsible" parent became a citizen of another country. Presumably, this rule was put in place to ensure that minor children who ceased to be Canadian citizens did not become stateless. The "responsible" parent was deemed to be the father of a child born in wedlock, and the mother of a child born out of wedlock.

their parent's action to regain Canadian citizenship by making a declaration between their 21st and 22nd birthdays to resume Canadian citizenship.(15) Nevertheless, many did not make the necessary declaration and therefore ceased to be Canadians.

In 2005, the current *Citizenship Act* was amended to relieve such people, who lost their citizenship as minors, from the requirement of becoming a permanent resident of Canada in order to resume citizenship.(16) However, resumption of citizenship for such people was not automatic upon application, and for those whose applications to resume citizenship were approved, the status of being a Canadian citizen was not retroactive. Accordingly, if such a person had a child born abroad during the period after losing Canadian citizenship and before resuming citizenship, the person would not have been able to pass on Canadian citizenship to the child.

### D. Second- and Subsequent Generation Canadians Born Abroad Since the Current *Citizenship Act* Came Into Effect on 15 February 1977

The last broad group of "lost Canadians" is distinct from the other three groups because it comprises people who have lost, or are in danger of losing, Canadian citizenship under a provision of the Act currently in force.(17) The current *Citizenship Act* states that a person who was born outside Canada after 14 February 1977 and who derived Canadian citizenship from a parent, who was also born outside Canada and who derived Canadian citizenship from his or her parent, ceases to be a citizen on his or her 28th birthday unless the person has applied to retain citizenship, and either resided in Canada for a year before applying or established a substantial connection with Canada.(18)

Canadians first started losing citizenship under this rule on 15 February 2005, which is 28 years after the current *Citizenship Act* came into force.

---

(15) See section 18(2) of the 1947 *Canadian Citizenship Act*.

(16) See section 11(1.1) of the current *Citizenship Act*.

(17) See section 8 of the current *Citizenship Act*.

(18) Note that even if such people never register to retain citizenship beyond their 28th birthday, as long as each successive Canadian by descent has a child before his or her 28th birthday, Canadian citizenship may be passed down indefinitely through multiple generations born abroad under the current *Citizenship Act*, before the Bill C-37 amendments.

The problem of loss of Canadian citizenship has existed for decades, but gained prominence after 2001 when the United States tightened its border security, resulting in an increase in the number of Canadians applying for passports. This uncovered a number of cases of loss of citizenship. Also responsible for drawing attention to the problem was Joe Taylor, a "lost Canadian" who took legal action against the government. In September 2006, the Federal Court declared that Mr. Taylor is a Canadian.(19) That declaration was subsequently overturned on appeal.(20)

## PARLIAMENTARY COMMITTEE STUDY ON THE LOSS OF CANADIAN CITIZENSHIP

In early 2007, the House of Commons Standing Committee on Citizenship and Immigration embarked on a study on the loss of Canadian citizenship. It heard from dozens of witnesses, including "lost Canadians" and the officials trying to deal with the issue.

On 29 May 2007, the Minister of Citizenship and Immigration, the Honourable Diane Finley, appeared before the Committee and announced proposed changes to the *Citizenship Act* that would be tabled in the fall of 2007 to resolve most, but not all, of the "lost Canadian" cases. The Minister stated that the proposals were not intended to be the final word, and that she would consider the Committee's recommendations in that regard.

In September 2007, Parliament prorogued. When the Committee met in November 2007 during the next session, it adopted a motion to take into consideration the evidence and documentation received in the prior session, and finalized a unanimous report on the loss of Canadian citizenship.(21)

The report contains 13 recommendations aimed at resolving the "lost Canadians" issue. Specifically, the Committee recommended that citizenship be granted or restored to "lost Canadians" retroactive to birth, or the time citizenship was lost, as the case may be. More generally, the Committee recommended that citizenship be a permanent status, and that the rules for determining who is a citizen be few, clear and easy to apply.

---

(19) *Taylor* v. *Minister of Citizenship and Immigration*, 2006 FC 1053, http://decisions.fct-cf.gc.ca/en/2006/2006fc1053/2006fc1053.html.

(20) *Minister of Citizenship and Immigration* v. *Taylor*, 2007 FCA 349, http://decisions.fca-caf.gc.ca/en/2007/2007fca349/2007fca349.html.

(21) House of Commons, Standing Committee on Citizenship and Immigration, *Reclaiming Citizenship for Canadians: A Report on the Loss of Canadian Citizenship*, Report 2, 2nd Session, 39th Parliament, December 2007, http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=13182&Lang=1&SourceId=221845.

Another recommendation of note relates to the case of Joe Taylor. Mr. Taylor, the son of a Canadian serviceman and war bride, saw his application for a certificate of Canadian citizenship denied on several of the grounds described earlier. As mentioned above, Mr. Taylor's challenge of the citizenship legislation was successful in Federal Court, but that decision was overturned on appeal. The Committee recommended that the Minister consider exercising her discretionary power to seek a special grant of citizenship for Mr. Taylor as well as the approximately 250 other people in similar circumstances. Mr. Taylor has since accepted an offer of Canadian citizenship.

## DESCRIPTION AND ANALYSIS

Bill C-37 amends the *Citizenship Act* in four main ways. It adds five new situations to the list defining who is a citizen. It provides for retroactive application of these new citizenship provisions. It precludes Canadians from passing down Canadian citizenship to their offspring born abroad after one generation. And it provides some relief for the stateless offspring of Canadians. Other provisions of Bill C-37 address various technical or housekeeping matters, including coordinating the coming into force of Bill C-37 with an Act adopted in June 2007 amending the *Citizenship Act* in relation to foreign adoptions.(22)

### A. New Situations Resulting in Citizenship (Clause 2(1) adds New Sections 3(1)(f) to (j))

Bill C-37 addresses the "lost Canadians" problem by adding five new situations to the list defining who is a citizen. Everyone to whom any of these situations applies is a Canadian citizen. Clause 2(1) adds new subsections 3(1)(f) to (j), setting out the following situations:

Situation 1. A person lost citizenship for any reason other than the following three reasons (subsequently referred to as the "three prohibited reasons"):

- the person renounced his or her Canadian citizenship;
- the person's Canadian citizenship was revoked for false representation, fraud or concealment of material circumstances; or

(22) *An Act to amend the Citizenship Act (adoption)*, S.C. 2007, c. 24, formerly Bill C-14.

- the person is a second- or later generation Canadian born abroad since 15 February 1977 who lost citizenship because he of she failed to retain it by age 28 (new section 3(1)(f)).

Situation 2. A person was born abroad before 15 February 1977 to a Canadian parent but never became a citizen (new section 3(1)(g)).

Situation 3. A person was born abroad before 15 February 1977 to a Canadian parent and who did not become a citizen by descent but went through the process to "immigrate" to Canada and become a Canadian through naturalization (new section 3(1)(h)).

Situation 4. A person had been a citizen other than by way of grant, ceased to be a citizen for a reason other than one of the three prohibited reasons listed in situation 1, above, but regained citizenship under the current *Citizenship Act* (new section 3(1)(i)).

Situation 5. A person had been a citizen other than by way of grant, ceased to be a citizen for a reason other than one of the three prohibited reasons listed in situation 1, above, but resumed his or her Canadian citizenship under a provision from prior legislation (new section 3(1)(j)).

Only situations 1 and 2 deal with "lost Canadians" (people who are not currently citizens but arguably should be). Situations 3 to 5, above, describe people who were "lost Canadians" at one time, but who have subsequently had their situations resolved by receiving a grant or resumption of Canadian citizenship (hereafter referred to as "former lost Canadians.") Accordingly, these people are already citizens and do not need an additional legal confirmation of citizenship. They are included as citizens in Bill C-37 only to provide a reference for use later in Bill C-37 when citizenship for "lost Canadians" is made retroactive.

### B. Retroactive Application of Citizenship Provisions (Clause 2(2) Adds New Sections 3(6) to (8))

In general terms, Bill C-37 ensures that citizenship is restored to "lost Canadians" retroactively, either to the time it was lost, or for those who never have been citizens in the first place, to birth. These retroactive provisions fill in "gaps" of time in the past when "lost Canadians" were not citizens. Legally recognizing the continuous citizenship of Canadians is important for those who had children born abroad. A person must be a Canadian citizen at the time of his or her child's birth in order to pass citizenship by descent to the child born abroad.

More specifically, in respect to the “former lost Canadians” (described above), Bill C-37 states that these people are deemed never to have been citizens by way of grant (new section 3(6)). In other words, they are recognized as citizens because they were born in Canada, or were born abroad to Canadian parents, and not because they subsequently received a grant of citizenship to correct a loss (or to acquire citizenship in the first place, for those “lost Canadians” who technically never were citizens at birth).

For people who first became Canadians by a grant of citizenship,[23] and then who subsequently lost citizenship for any reason (other than the three prohibited reasons set out above),[24] and finally became citizens again, citizenship is made retroactive to the time citizenship was first lost (new section 3(7)(a) for those who resumed citizenship under the current *Citizenship Act*; new section 3(7)(b) for those who resumed citizenship under prior legislation; and new section 3(7)(c) for those who resumed citizenship under situation 1, described above).

For people who were born Canadians, then lost citizenship and later resumed citizenship under situation 1, above, (that is, under the new section 3(1)(f), clause 2(1) of Bill C-37), citizenship is made retroactive to the time it was first lost (new section 3(7)(d)).

For people born abroad before 15 February 1977 to a Canadian parent and who were not citizens at birth, but subsequently became citizens (situations 2 or 3 described above, which refer to new sections 3(1)(g) or (h), clause 2(1) of Bill C-37), citizenship is retroactive to birth (new section 3(7)(e)).

For people who were born Canadian, then ceased to be citizens for any reason (other than the three prohibited reasons) but subsequently resumed citizenship (situations 4 or 5 described above, which refer to new sections 3(1)(i) or (j), clause 2(1) of Bill C-37), citizenship is retroactive to the time it was lost (new sections 3(7)(f) and (g)).

Bill C-37’s retroactive recognition of citizenship is limited. The effect of the retroactivity is for citizenship purposes only. In other words, retroactive citizenship does not confer rights or impose obligations on anyone under any other laws. In respect of the period when citizenship was not recognized, the government’s liability for anything done or not done is limited (new section 3(8)).

---

(23) As opposed to being a Canadian citizen automatically by being born in Canada or by descent from a Canadian parent.

(24) Only the first two prohibited reasons apply in respect of those who resumed Canadian citizenship under legislation in place prior to the current *Citizenship Act*, which came into force on 15 February 1977.

### C. Citizenship by Descent Limited to First Generation (Clause 2(2) Adds New Sections 3(3) to (5); Clause 6 Repeals Pre-existing Section 8)

Bill C-37 precludes citizens from passing citizenship down to their children born abroad after one generation (new section 3(3)). Accordingly, the pre-existing mechanism for Canadians who are the second or subsequent generation born abroad to register and retain citizenship by age 28 is repealed (old section 8 is repealed).

An exception is provided for people who are born to a Canadian parent working abroad in or with the Canadian Armed Forces, the federal public administration or the public service of a province, unless the parent is a locally engaged person (new section 3(5)). For such people, citizenship is automatic at birth even though the person is a second- or subsequent generation Canadian born abroad.

This new rule cutting off citizenship after one generation born abroad is only applicable to people born after the rule comes into effect. People born before the rule comes into effect and who are second- or subsequent generation Canadians born abroad retain their existing Canadian citizenship (new section 3(4)). In fact, their position is improved under Bill C-37 as they are no longer subject to the requirement to register and retain their citizenship by age 28. However, Bill C-37 provides no relief for those people who are the second or subsequent generation born abroad since 14 February 1977 and who have lost their citizenship because they failed to register and retain it before reaching age 28.

### D. Relief for Stateless Offspring of Canadians (Clause 4(2) Adds New Sections 5(5) and (6))

Cutting off citizenship by descent after the first generation of Canadians born abroad, as described above, will result in some offspring of Canadians born abroad in the future being stateless. Bill C-37 provides limited relief for some of these people (new sections 5(5) and (6)). It provides for a mandatory grant of citizenship to a person who was born outside Canada after the provision comes into force and to a parent who was Canadian at the time of the person's birth if, at the time the person applies for Canadian citizenship, the person:

- is less than 23 years old;
- has resided in Canada for at least three years during the four years immediately before the date of the application for citizenship;

- has always been stateless; and
- has not been convicted of various listed national security offences.[25]

E. Housekeeping Matters

Bill C-37 contains a number of technical or housekeeping amendments. Some amendments update or clarify existing wording without changing the meaning (clause 1 amends the definition of "certificate of renunciation" in section 2(1); clause 12(1) amends section 27(a)). Other amendments adjust references to new section numbers (clause 10 amends section 14(1)(a); clause 11 excludes a reference to new section 5(5) from old section 22).

The pre-existing but limited relief provided for some "lost Canadians" is superseded by Bill C-37, and therefore repealed (clause 3 repeals section 4(3); clause 4(1) repeals section 5(2)(b); and clause 7 repeals section 11(1.1)). References to the former registration and retention requirement for second- and subsequent generation Canadians born abroad are deleted (clause 8 amends section 12(2); clause 9 amends section 13; clause 10 repeals section 14(1)(b); clause 12(2) repeals section 27(b)(iii); and clause 12(3) repeals section 27(d)(iii)).

Bill C-37 provides a new regulatory power for regulations governing future renunciation of citizenship by "lost Canadians" who have their citizenship restored under Bill C-37 (clause 5 amends section 7, and clause 12(5) adds section 27(j.1)). As well, a new regulatory power is provided in respect of the adoption of a foreign national by a Canadian citizen, an issue dealt with under legislation from the prior session[26] (clause 12(4) adds new sections 27(d.2) and (d.3)).

Finally, Bill C-37 includes several provisions for coordinating the coming into force of Bill C-37 with legislation passed in the prior session governing adoption of a foreign national by a Canadian citizen[27] (clause 13).

---

(25) These include (i) a terrorism offence, as defined in section 2 of the *Criminal Code*; (ii) an offence under section 47 (treason), 51 (intimidating Parliament or a legislature) or 52 (sabotage) of the *Criminal Code*; (iii) an offence under subsection 5(1) (unauthorized use of uniforms; falsification of reports, forgery, personation and false documents) or any of sections 6 (approaching, entering, etc., a prohibited place) and 16 to 22 (communications with foreign entities or terrorist groups; economic espionage; foreign-influenced threats or violence; harbouring or concealing; preparatory acts) of the *Security of Information Act*; or (iv) a conspiracy or attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in (ii) or (iii) above.

(26) Note 22.

(27) Ibid.

F. Coming into force

Most provisions of the bill will come into force on a day or days to be fixed by order of the Governor in Council, but no later than 365 days after the bill receives Royal Assent. Section 13, which coordinates the coming into force of the bill with earlier adoption legislation, will come into force on Royal Assent (clause 14).

COMMENTARY

**Various** aspects of Bill C-37 have attracted criticism. First, it does not provide a resolution for all "lost Canadians." Second, it limits citizenship by descent to the first generation born abroad to a Canadian parent. Third, it may be expected to result in some offspring of Canadians being stateless. **Finally, it represents one more amendment to a piece of legislation that many feel needs to be replaced entirely.**

In its report on the loss of Canadian citizenship,[28] the House of Commons Standing Committee on Citizenship and Immigration recommended that a resolution be provided for all "lost Canadians." Bill C-37 restores or grants citizenship retroactively to most, but not all "lost Canadians." In general, the bill will not help several groups of "lost Canadians" who were born, or naturalized to Canada, prior to 1947.[29] It will not help "lost Canadians" who are the

(28) Note 21.

(29) The following groups would not be helped by the bill:

Group 1. People born or naturalized in Canada prior to 1947 who became "aliens" (that is, lost British subject status) prior to 1 January 1947 and therefore were not considered as citizens when the 1947 Act came into force. (See 1947 *Canadian Citizenship Act*, ss. 4(a), and (b)).

Group 2. People born abroad prior to 1947, and at the time of their birth, their "responsible parent" was not a person who became a citizen at the time of the 1947 Act, but their other parent was. (The responsible parent is the father for a child born in wedlock, and the mother for a child born out of wedlock. See 1947 *Canadian Citizenship Act*, s. 4(b)). This group includes a child born abroad and out of wedlock before 1947 to a Canadian serviceman serving in World War II.

Group 3. People born abroad prior to 1947, and at the time of their birth, their "responsible parent" (defined above) was a person who became a citizen at the time of the 1947 Act, but the "child" was not a British subject who had been admitted to Canada for permanent residence by 1 January 1947 and was an adult at that time. (See 1947 *Canadian Citizenship Act*, s. 4(b)).

second or subsequent generation born abroad since 15 February 1977 who lost their Canadian citizenship because they failed to apply to retain citizenship and register as a citizen before attaining age 28.(30) Also, it will not help those who are currently holding citizenship cards issued in "error."(31)

**The Senate Committee that studied Bill C-37 commented on this last group of "lost Canadians" whom the bill will not help. Rather than "delay[ing] resolution for the vast majority of lost Canadians by seeking an amendment to address the problems faced by this smaller group," the Committee reported the bill without amendment, but urged the Minister of Citizenship and Immigration to adopt a policy "with a view to providing a fast and compassionate resolution" for such people.(32)**

A second contentious issue raised by the bill relates to citizenship by descent. Under Bill C-37, the child born abroad to a parent who derived his or her citizenship from a Canadian parent who was also born abroad will not automatically become a Canadian citizen. In other words, Bill C-37 cuts off citizenship by descent after the first generation born abroad. The benefits of this approach include clarity and certainty; the opportunity to repeal retention and registration requirements that the Government has no way of communicating to those at risk of losing their citizenship; and an end to the possibility of Canadian citizenship being passed down indefinitely to people who have little or no connection with Canada. The major problem with this approach is that it may result in some people not being Canadian citizens at birth even though they and their parents have a substantial connection with Canada.

---

(30) See section 8 of the pre-existing *Citizenship Act*. In order to retain citizenship, such people were also required to either reside in Canada for a period of at least one year immediately preceding the date of the application to retain citizenship, or establish a substantial connection with Canada.

(31) During its hearings on the loss of Canadian citizenship, the House of Commons Standing Committee on Citizenship and Immigration heard from witnesses whose Canadian ancestors moved to Mexico in the 1920s and had church marriages instead of civil marriages. For decades Canada accepted these marriages as valid and issued citizenship documents to children of Canadian fathers. Much later, Canada stopped recognizing those church marriages as valid because Mexico did not recognize them. As a result, children born of such unions were deemed to have been born out of wedlock, with the further result that prior to 1977, Canadian citizenship was not passed down through generations from father to child. (In cases where children were deemed to have been born out of wedlock prior to 1977, Canadian citizenship was passed down through generations from mother to child, if the mother was Canadian). The Government took the position that citizenship documents that had previously been issued to these descendants had been issued in error. More discussion is provided in the Committee Report, note 21, pp. 7–8.

**(32) Senate, Standing Committee on Social Affairs, Science and Technology, Eleventh Report, 2nd Session, 39th Parliament, 16 April 2008, http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/soci-e/rep-e/rep11apr08-e.htm.**

**The Senate Committee that studied Bill C-37 took note of the approach proposed to limit citizenship by descent, describing it as "arbitrary and unfair." At the same time, the Committee agreed with the Minister that "those seeking Canadian citizenship must be able to demonstrate a connection with this country." However, rather than amend the bill, the Committee called on the government to replace the relevant provision, in the future, with guidelines that indicate how attachment to Canada for citizenship purposes is to be demonstrated, other than by using place of birth.(33)**

A third criticism the bill has attracted arises because of the cut-off described above. Under the bill, a person who is the second or subsequent generation born abroad to a Canadian parent may be stateless if he or she does not acquire citizenship of the state of birth, or through his or her other parent. Canada is a contracting state to the United Nations' Convention on the Reduction of Statelessness.(34) Under article 4 of that Convention, a contracting state is required to grant its nationality to a person not born in the territory of the contracting state, who would otherwise be stateless, if the nationality of one or both of the person's parents at the time of the person's birth was that of the contracting state. Such a grant of nationality may be subject to certain stipulated conditions, however. The provision included in Bill C-37 to deal with statelessness is compliant with the Convention, but only minimally so.

**The Senate Committee that studied Bill C-37 expressed regret that the bill was amending, rather than replacing, the *Citizenship Act*, a piece of legislation it described as "nothing short of a cumbersome patchwork of technically drafted provisions, many of which refer to other provisions in now-repealed legislation." When the Senate Committee reported the bill back to the Senate without amendment, it included in its observations(35) a suggestion that the government "prioritize replacing the *Citizenship Act* with new, clear and straightforward citizenship legislation in the near future."**

---

**(33) Ibid.**

(34) United Nations Office of the High Commission of Human Rights, adopted on 30 August 1961, in force 13 December 1975, http://www.unhcr.bg/bglaw/en/Convention_reduction_statelessness_en.pdf.

**(35) Observations carry no legal weight but serve to indicate to the Senate and the government some of the issues the Committee was concerned with. As noted in a Speaker's Ruling from the Senate, "These observations are not a procedurally significant part of [Senate Committee] reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation." Senate, *Journals*, 11 December 2002, p. 412.**