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21(1)(b), 21(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

MP

BILL C-37 FIRST-GENERATION LIMITATION AND ADOPTION

KEY MESSAGES:

- **The first generation limit to citizenship by descent preserves the value of Canadian citizenship. It ensures that citizenship is not passed on endlessly to generations of Canadians living abroad.**
- **The limit applies equally to those who are born outside Canada to a Canadian parent and to children adopted internationally by a Canadian parent who became citizens through the direct route to citizenship.**
- **Persons born in Canada and those who immigrated to Canada and became citizens are able to pass on citizenship to children born outside Canada in the first generation.**
- **If a Canadian born or adopted outside Canada has a child in Canada, that child will be Canadian. Alternatively, if they have or adopt a child outside Canada and the child can't claim Canadian citizenship through their other parent, the child may be sponsored for permanent residence and can then apply for citizenship.**
- **In October 2009 the Government responded to the Standing Committee's report on Bill C-37. The government continues to review the implementation of Bill C-37 with regard to the Committee recommendation concerning adopted persons.**
- **Bill C-37 complies with Canada's obligations under the 1961 United Nations Convention on the Reduction of Statelessness.**

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BACKGROUND:

Parents of foreign-born adopted children have expressed concern about the impact of the first-generation limitation in Bill C-37 on their children. They say it takes away the benefits they gained with a change to the law which occurred in December, 2007. Until December 23, 2007, when legislation known as Bill C-14 came into force, parents who adopted a child outside Canada first had to bring their child to Canada as a permanent resident and then seek citizenship whereas children born outside of Canada to Canadian parents were Canadian at birth. Bill C-14 allowed adopted children to become citizens without immigrating. In that respect, they were treated similarly to children born outside Canada to Canadian parents.

Bill C-37, which was passed by Parliament in April 2008 and which came into effect on April 17, 2009, introduced a first-generation limitation to citizenship by descent. The previous law allowed for citizenship by descent beyond the first generation but had retention rules for those born in the second-generation and beyond. Many stakeholders criticized the retention rules for their complexity and for the confusion they caused and they advocated for simpler rules. The first generation limitation simplifies the rules. In order to be fair, it applies equally to those who are citizens through birth outside of Canada to a Canadian parent and to those who were adopted by a Canadian parent and obtained citizenship through the direct route to citizenship under Bill C-14. Since April 17, 2009 only those who are born or naturalized in Canada are able to pass on citizenship by descent to children born to them outside Canada on or after April 17, 2009.

The first generation limitation also means that persons born abroad to a Canadian parent in the second or subsequent generation may be stateless at birth. Bill C-37 provided a new grant of citizenship for persons who are, and who have always been, stateless, consistent with Canada's obligations as a party to the 1961 United Nations Convention on the Reduction of Statelessness.

The change in the law resulting from Bill C-37 has two main impacts on adopted persons.

First, a parent who is themselves a citizen by descent is no longer able to apply for a direct grant of citizenship under the adoption provisions for a child born outside of Canada that they wish to adopt. There is, however, the possibility of sponsoring that child for permanent residence and then applying for citizenship. Second, adopted persons who obtained citizenship through the Bill C-14 process are not able to pass on citizenship to children born to them outside Canada, nor are they able to apply for a grant of citizenship under the Bill C-14 adoption provisions for a child born outside of Canada that they wish to adopt. Such children may be sponsored for permanent residence. **With both of these impacts, adopted persons are treated similarly to natural born persons as the limitations to citizenship by descent apply to both groups.**

The Standing Committee on Citizenship and Immigration tabled a report regarding Bill C-37 on June 25, 2009. The Government tabled its response on October 23, 2009. The Report made three recommendations:

- that the Minister, pursuant to subsection 5(4) of the *Citizenship Act* (the Act), ensure consideration of cases not resolved by Bill C-37 as quickly as possible;
- that children adopted abroad by Canadian parents ordinarily residing in Canada, have the same ability as children born in Canada to pass on their citizenship by descent; and
- that citizenship by descent be transmitted to children born abroad, provided the Canadian parent lived in Canada for a specific period of time, as established through legislation, before the child's birth.

In its Response, tabled October 23, 2009, the Government indicated that it supports the first, is reviewing the implementation of Bill C-37 with regard to the second, and rejects the third.

In 2009, two notices of motion were tabled before Standing Committee concerning Bill C-37. On February 10, 2009, Maurizio Bevilacqua (Liberal) tabled a notice of motion before the Standing Committee on Citizenship and Immigration (CIMM) calling on the Government to extend citizenship by descent to the third generation born abroad. On May 25, 2009 Olivia Chow (NDP) presented motion M-385 (persons born abroad) and on May 27, presented Bill C-397 (persons born abroad) before the House of Commons. On December 7, Ms. Chow introduced a petition (402-1433) to urge the Government to pass Bill C-397. All items call on the Government to revoke the first generation limitation provisions of Bill C-37.

MPC

CITIZENSHIP ACT - LEGISLATIVE AMENDMENTS - FIRST GENERATION LIMITATION PROVISIONS

KEY MESSAGES:

- **The Government of Canada recognizes that Canadian citizenship is one of the most prized in the world and is committed to strengthening its value.**
- **To preserve the value of Canadian citizenship, a first generation limit to citizenship by descent was introduced through Bill C-37, which was implemented on April 17, 2009 with unanimous consent of the Committee. This limit ensures that citizenship is not passed on endlessly to generations of Canadians living abroad.**
- **To protect Canadian citizenship and ensure application of the first generation limit as intended, the Government is including amendments in this area as part of the bill tabled on June 10 to strengthen citizenship.**
- **These legislative amendments will strengthen the authorities to deny citizenship to those born or adopted abroad in the second and subsequent generations, and ensure access to citizenship for those born outside Canada beyond the first generation who are eligible.**
- **Canada highly values the contributions and sacrifices made by individuals and their families who work abroad for the federal, provincial and territorial governments and the military. The Government therefore is proposing to extend the current exception to the first generation limit for children born abroad to Crown servants. This would ensure such children are able to pass on citizenship to any children they may have or adopt outside Canada.**
- **These new measures are in line with international practices and will help ensure that the value of Canadian Citizenship is preserved.**

BACKGROUND:

On June 10, 2010, the Government tabled a Bill amending provisions of the *Citizenship Act* related to citizenship revocation. Several other amendments to improve the integrity of the citizenship process were also included. The Bill also contains amendments to plug gaps which have been identified since C-37 came into force in April 2009, particularly in relation to the application of the first generation limit.

C-37 Gaps

As drafted, Bill C-37 may not be adequate to achieve the policy intent behind the first generation limit. Amendments therefore include:

- Ensuring access to citizenship for those born beyond the first generation who are eligible (for example, in cases where they are sponsored by their parents, become permanent residents and then apply for citizenship). Second generation children born outside Canada who naturalize are not described as citizens under the legislation. The proposed amendment would ensure access to citizenship for these persons.
- Clarifying eligibility rules for a grant of citizenship under the adoption provisions to ensure that the first-generation limitation applies equally to the natural-born children of Canadians and to adopted children born outside of Canada and granted citizenship through the adoption provision. The amendments clarify that parents who are themselves the first generation born abroad cannot apply for a grant on behalf of their adopted child under the C-14 adoption grant provision (other grant provisions remain available).
- Clarifying that a person born outside Canada in the first generation acquires derivative citizenship through their deceased parent where that parent's citizenship would have been restored by operation of law upon the coming into force of Bill C-37 had that parent been alive upon the coming into force of Bill C-37.

Children of Crown Servants

C-37 included an exception to the limit to citizenship by descent for children born abroad to, or adopted abroad by, Crown servants. This exception ensures that children born outside Canada to serving Crown servants (of the Province, Federal Government or Canadian Forces) are Canadian at birth, even if the Canadian parent is a citizen by descent. However, in common with all other citizens by descent, these Canadians are not able to pass on citizenship to any children they may have outside Canada, unless they themselves are Crown servants serving outside of Canada.

Amendments have therefore been introduced to ensure children born outside Canada to or adopted by crown servants serving outside of Canada are able to pass on citizenship to children they have or adopt outside Canada.

MPC

QUESTION PERIOD NOTE

Date: November 2, 2010
Classification: Protected
Department: CIC

QP Note	
25. FIRST-GENERATION LIMITATION AND ADOPTION	
ISSUE: Parents of foreign-born adopted children have expressed concerns with regards to the impact of the first generation limit on persons adopted abroad. Some stakeholders have also claimed that despite amendments which came into force on April 17, 2009 through Bill C-37, <i>An Act to Amend the Citizenship Act</i> , citizenship legislation continues to discriminate on the basis of gender.	
PROPOSED RESPONSE: <ul style="list-style-type: none">• The first generation limit preserves the value of Canadian citizenship. It ensures that citizenship is not passed on to endless generations abroad.• The limit applies equally to those who are born to or adopted internationally by a Canadian parent.• If a Canadian born or adopted outside Canada has a child in Canada, that child will be Canadian. Alternatively, if they have or adopt a child abroad, the child may be sponsored for permanent residence and can then apply for citizenship.• The 2009 changes to the <i>Citizenship Act</i> comply with obligations under the 1961 United Nations Convention on the Reduction of Statelessness.• The <i>Citizenship Act</i> does not discriminate based on gender or marital status. The 2009 amendments resolved many inequities related to past legislation.• Persons who did not benefit from these amendments may be eligible for a discretionary grant of citizenship under subsection 5(4) of the <i>Citizenship Act</i>.	
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PROTECTED

BACKGROUND:

Adoptions and the First Generation Limit

The amendments to the *Citizenship Act* which were implemented on April 17 2009 introduced a first-generation limitation to citizenship by descent. The previous law allowed for citizenship by descent beyond the first generation but had retention rules for those born in the second-generation and beyond. Many stakeholders criticized the retention rules for their complexity and for the confusion they caused and they advocated for simpler rules. The first generation limitation simplifies the rules. In order to be fair, it applies equally to those who are citizens through birth outside of Canada to a Canadian parent and to those who were adopted by a Canadian parent and obtained citizenship through the direct route to citizenship under Bill C-14. Since April 17, 2009, only those who are born or naturalized in Canada are able to pass on citizenship by descent to children born to them outside Canada on or after April 17, 2009.

The first generation limitation also means that persons born abroad to a Canadian parent in the second or subsequent generation may be stateless at birth. The amendments which came into force in April, 2009 provided a new grant of citizenship for persons who are, and who have always been, stateless, consistent with Canada's obligations as a party to the 1961 United Nations Convention on the Reduction of Statelessness.

The introduction of a first generation limit has had two main impacts on adopted persons. First, a parent who is themselves a citizen by descent is no longer able to apply for a direct grant of citizenship under the adoption provisions for a child born outside of Canada that they wish to adopt. There is, however, the possibility of sponsoring that child for permanent residence and then applying for citizenship. Second, adopted persons who obtained citizenship through the Bill C-14 process are not able to pass on citizenship to children born to them outside Canada, nor are they able to apply for a grant of citizenship under the Bill C-14 adoption provisions for a child born outside of Canada that they wish to adopt. Such children may be sponsored for permanent residence. **With both of these impacts, adopted persons are treated similarly to natural born persons as the limitations to citizenship by descent apply to both groups.**

In 2009, the Standing Committee on Citizenship and Immigration tabled a report regarding the then recent Bill C-37 amendments and made three recommendations, one of which was related to adoptees. It recommended that children adopted abroad by Canadian parents ordinarily residing in Canada be able to pass on their citizenship. In its October 2009 response concerning this recommendation, the Government indicated that it would review the implementation of the amendments.

On June 10, 2010, the Government tabled the new Bill-C37, *Strengthening the Value of Canadian Citizenship Act*. The Bill contains amendments to ensure that the law supports implementation of the first generation limit to passing on citizenship, and extends the exception to the first generation limit to allow children born outside Canada to or adopted by crown servants serving outside

of Canada to pass on citizenship to children they have or adopt outside Canada.

Gender discrimination and the Citizenship Act

There has been criticism from some stakeholders that citizenship legislation continues to discriminate on the basis of gender. The amendments which came into force in April, 2009 resolved many inequities in past legislation. For example, they give equal access to citizenship to children born outside of Canada on or after Jan 1, 1947 in the first generation, regardless of the gender or marital status of the parent. **However, the amendments do not resolve all cases resulting from inequities in previous legislation.**

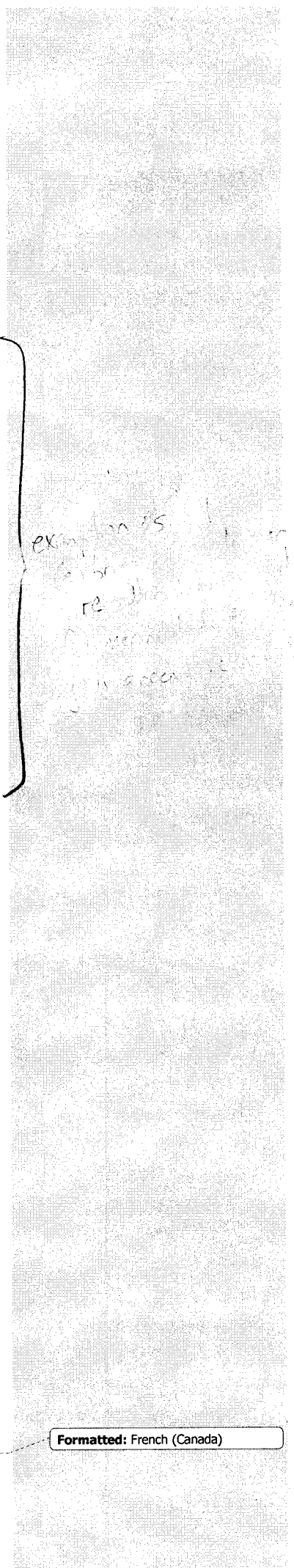
In preserving the date of Jan 1, 1947 as the date Canadian citizenship status was created, the amendments which came into force in 2009 do not address any issues of gender inequality that pre-date Jan 1, 1947 and that resulted in people not becoming citizens on January 1, 1947.

In applying consistently the first generation limitation, the amendments do not give citizenship to children who are born in the second generation outside Canada to a Canadian parent who was given citizenship under the amendments and who had been ineligible for citizenship by descent as a result of the provisions of the 1947 Act.

Therefore, because the amendments only go back to the first generation born abroad, someone born in the second generation who was not eligible under the 1947 Act because they were born to a Canadian mother in wedlock or a Canadian father out of wedlock is not eligible for citizenship acquisition under the 2009 amendments.

Section 5(4) of the Citizenship Act provides for a discretionary grant of citizenship by the Governor in Council. While cases are assessed on their merits, generally speaking anyone who has never been Canadian, who has not lived here for many years, or who has never lived here and is a citizen of another country in which they have resided most of their life, likely does not have a strong case to warrant the exceptional use of the discretionary authority to grant citizenship.

Of the 40 cases granted citizenship under 5(4) in 2010 so far, 4 were granted to so-called "anomaly" cases, 31 were granted to failed retention applicants and 5 were granted for exceptional service or other hardship.



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NOTE POUR LA PÉRIODE DE QUESTIONS

Date : 1^{er} novembre 2010
Classification : Protégé
Organisme : CIC

Note PQ

25. LIMITE DE LA PREMIÈRE GÉNÉRATION ET ADOPTION

OBJET :

Les parents d'enfants adoptés à l'étranger ont exprimé des inquiétudes face à l'impact de la limite à la première génération sur les personnes adoptées à l'étranger. Certains intervenants ont également soulevé que malgré les changements entrés en vigueur le 17 avril 2009 à travers le projet de loi C-37, *Loi modifiant la Loi sur la citoyenneté*, la Loi sur la citoyenneté continue de discriminer en fonction du sexe.

RÉPONSE SUGGÉRÉE :

- **La limite de la première protège la valeur de la citoyenneté canadienne. Elle veille à ce que la citoyenneté ne puisse pas être transmise indéfiniment à des générations de Canadiens vivant à l'étranger.**
- **Aux fins d'équité, la limite s'applique autant aux personnes né ou adoptés à l'étranger par un parent Canadian.**
- **Si une personne canadienne née ou adoptée à l'extérieur du Canada a un enfant au Canada, cet enfant aura la citoyenneté canadienne. Autrement, si son enfant est né ou adopté à l'extérieur du Canada il peut être parrainé aux fins de l'obtention de la résidence permanente et, par la suite, obtenir la citoyenneté canadienne.**
- **Les changements à la *Lois sur la citoyenneté* introduits en 2009 sont conformes aux obligations du Canada au titre de la Convention sur la réduction des cas d'apatridie des Nations Unies (1961).**
- **La *Loi sur la citoyenneté* n'exerce pas de discrimination en fonction du sexe ou du statut marital. En fait, les changements introduits en 2009 résolvent plusieurs iniquités liées aux lois**

du passé en donnant la citoyenneté à des gens qui ne l'avaient jamais eu auparavant. Les personnes qui n'ont pas bénéficié de ces changements peuvent être éligibles pour une attribution discrétionnaire de la citoyenneté sous le paragraphe 5(4) de la *Loi sur la citoyenneté*. Une telle attribution est faite sur une base de cas par cas dans le but de résoudre des circonstances spéciales et inhabituelles ou pour récompenser un service exceptionnel rendu au Canada.

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