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MEMORANDUM TO THE MINISTER

**GRAPHICS TO SUPPORT MEMO F-4975: POSSIBLE AMENDMENTS TO BILL C-37  
TO SUPPORT PASSAGE AND ADDRESS CONCERNS ABOUT ACCESS TO  
CITIZENSHIP**

FOR INFORMATION

SUMMARY

- Bill C-37, *Strengthening the Value of Canadian Citizenship Act*, was tabled June 10, 2010, and is awaiting Second Reading.
- In anticipation of Committee Stage we have prepared a memo (F-4975) "*Possible Amendments to Bill C-37 to Support Passage and Address Concerns about Access to Citizenship*" which outlines options for possible amendments that could address concerns around access to citizenship, and help with the passage of the Bill.
- The attached graphics are complimentary pieces to the memo that has been sent to you to support your Portfolio meeting to be held on Monday, November 22.
- Attachment 1, "*Summary of options to amend C-37 to extend citizenship to more persons*" is a graphic illustration of the content of the memo, which demonstrates who would or would not acquire citizenship as a result of the options outlined. Examples of cases of persons who could acquire citizenship under the proposed options are portrayed in the graphic "*Scenarios*" (attachment 2). The last graphic lays out the benefits and risks of pursuing certain options in combination (attachment 3).
- These graphics have been developed in consultation with CIC Legal Services.

Attachments (3):

1. Summary of options to amend C-37 to extend citizenship to more persons
2. Scenarios
3. Possible Amendments to Bill C-37 to Support Passage and Address Concerns about Access to Citizenship: Option Combinations

Neil Yeates

# Summary of options to amend C-37 to extend citizenship to more persons

	Pre-1947	Jan 1, 1947-April 17, 2009	April 17, 2009-Forward
<b>Born in or Naturalized in Canada</b>	 Person born/naturalized in Canada lost status and didn't become a citizen on 1/1/47 Person can acquire citizenship under option 2(a)* or 2(b)	Parent/grandparent born/naturalized in Canada	Parent/grandparent born/naturalized in Canada is a citizen
<b>1<sup>st</sup> Generation Born Abroad</b>	 Child born abroad can acquire citizenship under option 2(a)* and 2(b)	 Child born abroad can acquire citizenship under option 2(a)* and 2(b)	Persons given/restored citizenship in April 2009
<b>2<sup>nd</sup> Generation Born Abroad</b>	 Grandchild born abroad cannot acquire citizenship under option 2(a)*	 Grandchild born abroad cannot acquire citizenship under option 2(a)*	 Grandchild born abroad can acquire citizenship under option 3
	 Grandchild born abroad can acquire citizenship under option 2(b)	 Grandchild born abroad can acquire citizenship under option 2(b)	 Grandchild is a citizen under option 1 if parent meets connection test*
<b>3<sup>rd</sup> and Subsequent Generations Born Abroad</b>	 *	 * †	 *

- = Not a Citizen
- = Citizen as a result of options
- = Amendments in 2009 gave/restored citizenship to those born in first generation
- = Automatically a British subject (pre-1947) or citizen
- = Preferred option combinations-options 1,2(b) and 3 would extend citizenship beyond first generation
- = Pursuing options 1 and 2(a) would maintain policy intent of first generation limit
- Option 1: Maintain first generation limit, second generation connection test
- Option 2(a): Maintain first generation limit, remedial provision to address child of person who didn't become a citizen on 1/1/47
- Option 2(b): Extend citizenship beyond first generation, remedial provision to address child and grandchild of person who didn't become a citizen on 1/1/47
- Option 3: Maintain first generation limit going forward, remedial provision to address grandchild born abroad between 1947-April 17, 2009

## Scenarios



### Option 1: Maintain first generation limit, second generation connection test



Mary is born in Canada in 1955. Mary's child Peggy is born abroad in 1975. Peggy is a citizen of Canada under the current law. Peggy subsequently has a child abroad, Jeff, in 2010.



Under Option 1, Jeff will be a citizen of Canada if Peggy meets a connection test to Canada. The connection test will require Peggy to have lived in Canada for 3 years prior to Jeff's birth.

This option would enable kids of expats and adoptees, whose parent has lived in Canada, to acquire citizenship in the second generation.

April 17, 2009 - Forward

Born in or Naturalized in Canada	Parent/grandparent born/naturalized in Canada is a citizen
1 <sup>st</sup> Generation Born Abroad	Under current law, persons born abroad in the first generation are automatically citizens
2 <sup>nd</sup> Generation Born Abroad	 Grandchild is a citizen under option 1 if parent meets connection test
3 <sup>rd</sup> and Subsequent Generations Born Abroad	

 = Not a Citizen  
 = Citizen as a result of option

 = Automatically a British subject (pre-1947) or citizen  
 Option 1: Maintain first generation limit, second generation connection test

## Scenarios

### Option 2(a) and 2(b): Pre-1947 Cases (no loss of British subject status)

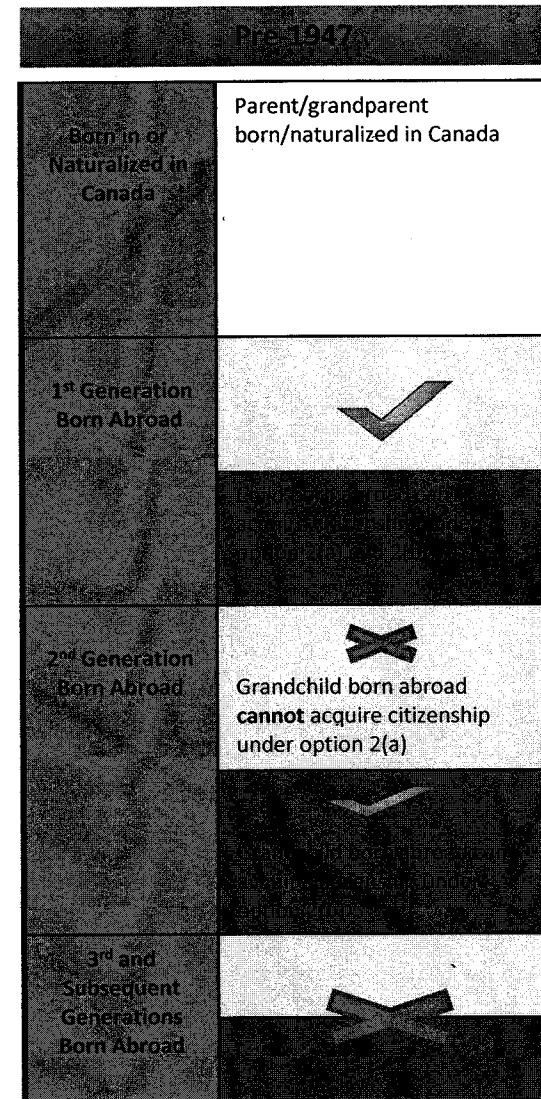
Jacob is born in Canada in 1926. He was a British subject. Jacob moves to Mexico and marries Anna (a US citizen) in a religious marriage. Jacob and Anna have a child, Joseph, in Mexico.

Only civil marriages are considered legal under Mexican law. For this reason, Joseph is considered to have been born out of wedlock and did not acquire British subject status. Joseph did not become a citizen on January 1, 1947, and therefore, was not restored by the amendments in 2009.

Under option 2(a) and 2(b), Joseph would be eligible for a grant of citizenship as he was born in the first generation abroad.

Under option 2(b) if Joseph has a child abroad, this child would also be eligible for a grant of citizenship as they are born in the second generation abroad. Under option 2(a) on the other hand, this child would not be eligible for such a grant.

These options would also benefit the children and grandchildren born abroad to war brides and service men.



= Not a Citizen  
 = Automatically a British subject (pre-1947) or citizen  
 = Citizen as a result of option

Option 2(a): Maintain first generation limit, remedial provision to address child of person who didn't become a citizen on 1/1/47

Option 2(b): Extend citizenship beyond first generation, remedial provision to address child and grandchild of person who didn't become a citizen on 1/1/47

## Scenarios

### Option 2(a) and 2(b): Pre-1947 Cases (loss of British subject status)



Mark was born in Canada in 1915. He is a British subject.


Mark moves to the United States in 1937. Mark naturalizes in the United States in 1945. Upon becoming an American citizen, through naturalization in a non-commonwealth country, Mark loses his British subject status. Mark did not become a Canadian citizen on January 1, 1947, and therefore, was not restored by the amendments in 2009.


Under option 2(a) and 2(b), Mark would be eligible for a grant of citizenship as he was born in Canada, subsequently lost status, and did not become a citizen on January 1, 1947.

If Mark had any children abroad, option 2(a) would fix his children. Option 2(b) would fix his grandchildren born abroad.

Pre-1947	
Born in or Naturalized in Canada	
1 <sup>st</sup> Generation Born Abroad	
2 <sup>nd</sup> Generation Born Abroad	 Grandchild born abroad cannot acquire citizenship under option 2(a)
3 <sup>rd</sup> and Subsequent Generations Born Abroad	

 = Not a Citizen  
 = Citizen as a result of option

 Option 2(a): Maintain first generation limit, remedial provision to address child of person who didn't become a citizen on 1/1/47

 Option 2(b): Extend citizenship beyond first generation, remedial provision to address child and grandchild of person who didn't become a citizen on 1/1/47

# Scenários

## Option 3: Provisions to address grandchild born abroad 1947-2009

Emily is born in Canada in 1950. In 1969, Emily moves abroad and has a child out of wedlock, Sara, with Jackson, a US citizen. In 1971, Emily and Jackson marry. In 1973, Emily and Jackson have a child in wedlock, Tara.

At birth, Sara, who was born prior to her parents' marriage, would have been eligible for citizenship as she was born out of wedlock to a Canadian mother. Tara, would not have been eligible for citizenship because she was born in wedlock to a Canadian mother and non-Canadian father.

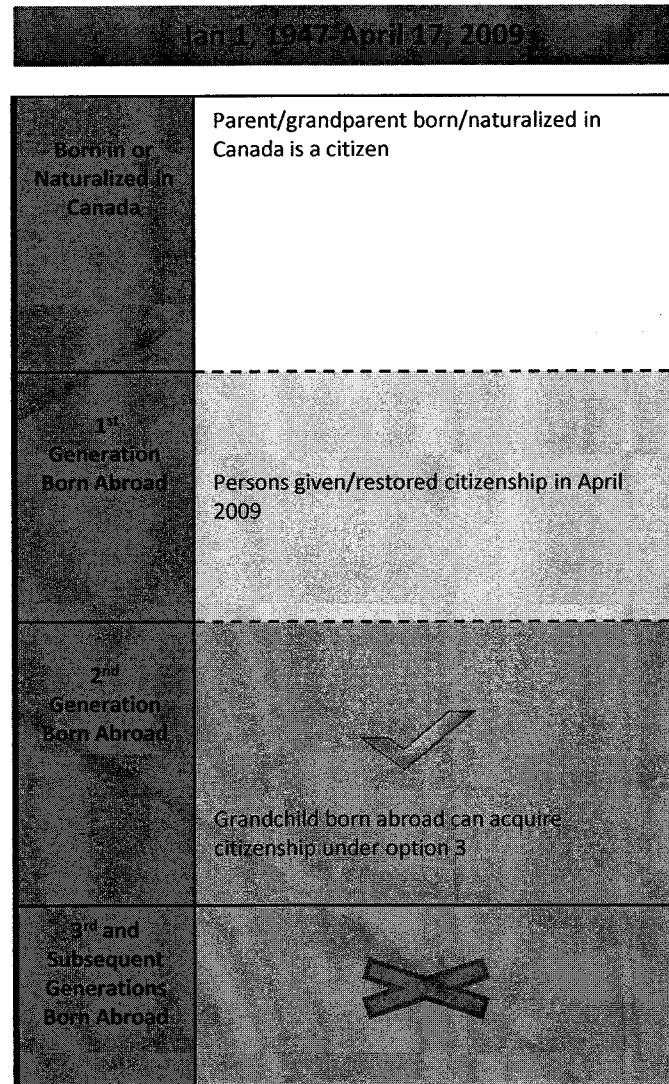
In 1989, Sara has a child abroad, Rachel. Rachel is a citizen by descent because her mother is Canadian, and, prior to 2009, citizenship was not limited to the first generation born abroad.


Tara subsequently has a child abroad, Jessica, in 1995. Jessica is not a citizen by descent because her mother is not Canadian.


When the amendments to the citizenship legislation came into effect in April 2009, Tara would have become a Canadian citizen back to her date of birth. Jessica did not as she was born abroad in the second generation.


Under Option 3, Jessica could become a citizen, like her cousin Rachel.


This option would also benefit those who failed to retain in the second generation born abroad from 1947-2009.




 = Not a Citizen

 = Amendments in 2009 gave/restored citizenship to those born abroad in the first generation




 = Citizen as a result of option








 = Automatically a British subject (pre-1947) or citizen

 Option 3: Maintain first generation limit going forward, remedial provision to address grandchild born abroad between 1947-April 17, 2009

### Possible Amendments to Bill C-37 to Support Passage and Address Concerns about Access to Citizenship: Option Combinations

Should you decide that legislative change is desirable; we recommend you consider option 1. If you also wish to address groups who do not have access to citizenship because of past differential provisions in the legislation, options 2(a), or 2(b); and/or 3 could be pursued. For consistency and fairness, it is not recommended that option 2(a) and 3 be pursued in combination as option 3 extends citizenship by descent beyond the first generation whereas option 2(a) maintains the first generation limit. The options and combinations of options set out in the chart below are the subject of a Charter analysis with regard to any potential risks that these options or combination of options may pose.

PROPOSED OPTION COMBINATIONS	OPTION 1	OPTION 2(A)	OPTION 2(B)	OPTION 3	OPTION 4
<b>COMBINATION A</b>					-Government's position on automatic citizenship for first generation limit maintained. Second generation citizenship by descent allowed if connection to Canada demonstrated.  -Would address key concerns on Bill from a wide range of stakeholders: <ul style="list-style-type: none"> <li>• Adoptees</li> <li>• Expat Canadians (including those working for the UN)</li> <li>• Groups concerned with statelessness provisions (CCR)</li> <li>• Groups concerned with first generation limit (for example, Standing Committee on Citizenship and Immigration (CIMM) MP's)</li> </ul>
<b>COMBINATION B</b>					-Both options maintain policy intent of first generation limit.  -Would address concerns raised by stakeholders mentioned above as well as "Lost Canadians" and Mennonites born prior to 1947 (in first generation).

PROPOSED OPTION COMBINATIONS	OPTION 1	OPTION 2(A)	OPTION 2(B)	OPTION 3	RATIONALE
<b>COMBINATION C</b>					<p>-Options fix all similarly positioned persons in the second generation pre 1947-forward.</p> <p>-For consistency and fairness treats two similar groups in time the same (i.e. those born abroad in the second generation pre and post 1947).</p> <p>-This combination of options would address the widest range of stakeholder concerns. This combination would address concerns raised by stakeholders mentioned in 'Combination A', "Lost Canadians", Mennonites born prior to 1947, and Mennonites born after 1947 who failed to retain citizenship (in second generation).</p>
<b>COMBINATION D</b>					<p>-Options fix similarly positioned persons in the second generation from 1947-forward.</p> <p>-Canadian citizenship as a legal status did not exist until 1947. Excluding the pre-47 group may therefore be supported.</p> <p>-This combination would address concerns raised by stakeholders mentioned in 'Combination A' as well as "Lost Canadians" (in second generation).</p>
<b>COMBINATION E</b>					<p>-For policy consistency, this combination and all others not depicted above are not recommended as they fail to fix similarly situated groups over time.</p>



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## Annex A: Background Information on the Differential Impacts of Previous Legislation

- The first *Canadian Citizenship Act* came into force on January 1, 1947. This Act specified who was a Canadian citizen and who could become a citizen. It also specified numerous ways in which citizenship could be lost.
- Prior to 1947 persons born or naturalized in Canada were considered to be British subjects. A person born before 1947 became a Canadian citizen on January 1, 1947 if that person was a British subject born in Canada or born outside Canada in wedlock to a father who was a British subject born or naturalized in Canada; was a British subject who immigrated to Canada and was residing in Canada for at least five years before the child's birth; or, who had been living in Canada at least 20 years immediately before 1947.
- A person born before 1947 could have derived citizenship through a mother if born out of wedlock; however, the person must have also been a British subject when the *Canadian Citizenship Act* (1947) came into force. British subject status could only be obtained by birth in wedlock to a British subject father; by birth in a Commonwealth country or through naturalization (by making a formal application to become a British subject).

### Canadian Citizenship Act (1947):

- Canadian citizenship legislation, in common with the citizenship legislation of many other countries, reflected the social norms of the times in which it was adopted. At times this has resulted in differential treatment for children depending on if they were born in or out of wedlock. For example, under the 1947 Act, citizenship by descent could only be transmitted through the father for children born in wedlock. This rule meant that children born in wedlock to a Canadian mother and foreign father, and children born out of wedlock to a Canadian father and foreign mother were not eligible for citizenship by descent.
- The 1947 permitted citizenship by descent to be passed on for endless generations but included registration and retention provisions for citizenship by descent for the first generation and beyond in order for persons to maintain their status as Canadian citizens. Subsequent changes to citizenship legislation corrected many of these issues, but often did so in a prospective manner.

### Citizenship Act (1977):

- The current Act, the *Citizenship Act* (1977), replaced the 1947 Act and aimed to ensure equal treatment and improved access to citizenship. For example, the 1977 *Citizenship Act* permitted the transmission of citizenship by descent through either parent whether born in or out of wedlock, for children born on or after February 15, 1977 when the legislation came into effect.
- The 1977 Act also contained remedial provisions to correct some of the anomalies of the past (i.e. for children born in versus out of wedlock) so that children born while the former Act

was in effect (between 1947 and 1977) and were disadvantaged by those provisions could have access to citizenship. From 1977-2004, the Act contained a transitional provision which allowed for a grant of citizenship under section 5(2)(b) for children born between January 1, 1947 and February 14, 1977 in wedlock to a Canadian mother. In 2004, the grant provision was extended for several months to children born between 1947 and 1977 to a Canadian father out of wedlock. This provision required persons come forward to apply for the grant and they became citizens from that day forward. Any children they had prior to that grant did not have access to citizenship by descent. The transitional provisions expired on August 14, 2004.

- The 1977 Act continued to allow citizenship to be passed on to endless generations of Canadians living outside Canada but removed the registration requirement of citizenship by descent. Persons born abroad continued to be required to retain their citizenship before their 28<sup>th</sup> birthday, but only for those in the second and subsequent generations. Retention rules were criticized by the public and stakeholders as being complex, not well understood and resulted in some people losing citizenship on their 28<sup>th</sup> birthday without knowing it.

#### Adoption (2007) and Lost Canadians (2009):

- The adoption provisions of the Citizenship Act, introduced as Bill C-14, came into effect in December 2007. Prior to that date, Canadians who adopted internationally had to first sponsor their child for permanent residence. Adoptive parents called for a more direct route to citizenship for their adopted children in order to minimize the difference between children born outside Canada to Canadians and those adopted internationally by Canadians. C-14 allowed adopted persons to become citizens without first having to acquire permanent residence.
- Amendments which came into force in April 2009 corrected some of the inequalities and outdated provisions of previous legislation and attempted to address most, but not all, anomalies. It restores and gives citizenship to many persons who had lost it or did not have it as a result of previous legislation; however, the changes also limit citizenship by descent to the first generation born abroad. Therefore, these amendments did not give or restore citizenship to those born beyond the first generation. Also, in reiterating the importance of January 1, 1947 as the first date on which Canadian citizenship took effect, it did not address some of the cases involving children born out of wedlock prior to January 1, 1947.
- In order to be fair, the first generation limitation introduced in 2009 applies equally to those born outside Canada to a Canadian parent and those adopted outside Canada by a Canadian parent and granted citizenship through the adoption provisions of the Citizenship Act (C-14).
- On June 25, 2009, the Standing Committee on Citizenship and Immigration completed a review of the subject matter of Bill C-37 and tabled a report. The report contained three recommendations. The third recommendation called upon the Government of Canada to allow citizenship by descent where the parent had resided in Canada for a specific period of time, as established through legislation, before the child was born. Conservative Committee members issued a dissenting view with regard to that recommendation, saying that they did

not believe this offered an improvement on the current situation.

Bill C-37 (2010):

- On June 10, 2010, the Government introduced Bill C-37: *Strengthening the Value of Citizenship Act*, which proposes to amend the Act to improve the revocation process. Other amendments proposed in the bill propose to strengthen the process for applying for citizenship (for example, strengthened residence and foreign criminality provisions) and new tools to address fraud, including provisions for new *Citizenship Act* offences, an authority to regulate citizenship consultants, and stronger fraud penalties in the Act to bring it in line with those in IRPA. The bill also proposes changes to ensure that the law supports implementation of the first generation limit to citizenship, that it does not bar access to eligible applicants, and to expand the exception to the first generation limit so that children of Crown servants can pass on citizenship.

Stakeholder and Public Reactions to the First Generation Limit and Pre-1947 Cases:

- Many groups have expressed concern with the first generation limit to citizenship by descent. Some groups have been critical of the limit, particularly as it impacts children granted citizenship under the adoption provisions. Others have expressed concern that the amendments made in 2009 did not go far enough as they do not give citizenship to those born outside Canada to a Canadian parent before January 1, 1947 who did not become a citizen under the *Canadian Citizenship Act*.
- Others have made claims that there continue to be persons who do not have access to citizenship as a result of provisions in previous legislation which treated children born to Canadian parents in and out of wedlock differently, and this notwithstanding the corrective amendments to the Act in April 2009. Don Chapman has publically claimed that the 1947 Act was discriminatory and that the 1977 Act did not correct this discrimination. He argues both Acts provide for the unequal treatment of women.