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Signed by the Deputy Minister on October 29, 2010

F-4975

MEMORANDUM TO THE MINISTER

**POSSIBLE AMENDMENTS TO BILL C-37 TO SUPPORT PASSAGE
AND ADDRESS CONCERNS ABOUT ACCESS TO CITIZENSHIP**

FOR DECISION

SUMMARY

- Based on the 2009 Standing Committee recommendations to change the first generation limit to citizenship by descent for those born abroad, we expect access to citizenship will be a key area of pressure regarding amendments to Bill C-37, Strengthening the Value of Canadian Citizenship Act.
- This memo outlines options for possible amendments that could address concerns in this regard, and help with the passage of the Bill. A separate memo is being prepared regarding other aspects of the Bill, including physical presence provisions, which is another potential area of pressure.
- Pursuing the options outlined in this memo would require a Memorandum to Cabinet.
- We recommend, that should you decide that legislative change is desirable, consideration be given to the options presented below. The options proposed may be sought independently or in combination. In addition, any early information from your office with regard to strategies to facilitate passage would be of assistance.

BACKGROUND:

- A combination of factors suggests the first generation limit may be a key area of pressure with regard to Standing Committee amendments to Bill C-37.
- The 2009 report by the Standing Committee on Citizenship and Immigration recommended the following changes to the first generation limit:
 - 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
 - Citizenship by descent be transmitted to children born abroad, provided the Canadian parent lived in Canada for a specific period of time before the child's birth, as established through legislation.

- In response to the report, the Government responded that it is reviewing the implementation of Bill C-37 regarding the first recommendation on adoptees; and it rejected the other.
- In addition, the April 2009 legislative changes to the *Citizenship Act* addressed most, but not all, anomalies of past legislation. *this line OK to release*
- There continue to be persons without access to citizenship because of the differential impacts of previous legislation. This includes pre-1947 cases, such as some children of war brides and servicemen born prior to January 1, 1947. The attached table provides additional information on these groups (see Annex A). These cases are a result of previous legislation conferring citizenship on the basis of gender and marital status, and due to the current first generation limit to citizenship by descent.
- If there is any flexibility for the Government to consider amendments that could address concerns with regard to those who do not have access to citizenship, the proposed amendments could provide an opportunity to facilitate passage of the Bill.
- In the absence of any such amendments, it is possible the Bill may stall at Standing Committee (or even that opposition parties could collaborate to amend the Bill).

CONSIDERATIONS:

- During committee review of Bill C-37, the Government could face two types of pressure with regard to the first generation limit:
 - To relax the first generation limit and extend citizenship to those born abroad whose parent meets a connection test, as previously recommended by the Committee; or
 - To address public and stakeholder concerns about the remaining anomaly cases who do not have access to citizenship other than through an exceptional 5(4) grant.
- The media have reported that Olivia Chow, MP, has indicated she will propose inclusive amendments to the first generation limit.
- Modifying the first generation limit would require consideration of legislative change but could address many of the concerns of impacted groups. The following are options for consideration that address this issue.
 - The options to address the cases of those without Canadian citizenship born before 1947, or between 1947 and April 17, 2009, are likely to require significant changes to the citizenship program (including changes to systems, training, application forms, publications, website, etc.), while only impacting a small number of persons who are expected to come forward, and who are currently dealt with using the 5(4) discretionary process.

- If there is no interest in pursuing the proposed options, the Government could continue to communicate to the public that those affected by the first generation limit have the option to sponsor their children to gain permanent resident status first then citizenship, and others impacted may be eligible for a discretionary grant of citizenship under subsection 5(4). The Government could also emphasize the number of 5(4)'s approved. However, lack of flexibility on the first generation limit may impede passage of the Bill.
- The following options would require further legal and Charter analysis with regard to any potential risks in relation to the proposed options or suite of options.

Options to Address Groups Going Forward: Option 1 and 2(a) seek to maintain the policy intent of the first generation limit:

Option 1: Maintain first generation limit; extend citizenship to the second generation born abroad in cases where parent meets connection to Canada test (e.g. three years physical presence):

- The first generation limit is maintained, in that only those born in the first generation abroad will get citizenship by birth automatically. The Act could be amended to extend citizenship by descent to the second generation born abroad but only if certain requirements are met by the parent. Such requirements could include connection to Canada through residence. Parents could be asked to demonstrate physical presence in Canada for three years any time prior to the birth of the child. It is not recommended that the three years be within a window, such as 5 or 10 years before the child's birth as this could exclude those who have lived most of their lives in Canada, but who more recently have worked abroad. Assessments on residence could be made on proof applications by Department officials. If refused, the parent would have the option to sponsor and meet the sponsorship requirements, which generally require residence in Canada. This option would be available for adoptees and natural born children. To ensure fairness and equal access to citizenship, this option would be extended to those already born in the second generation since April 17, 2009.
- As an indicator of this group, in 2007 and 2008, from 11,000-12,000 applications were approved per year from those born abroad in the second generation or beyond.

Pros:

- This option addresses concerns raised by Committee members, parents of adoptees, stakeholders and the general public and could generate momentum needed to smooth bill passage; would reduce incidence of statelessness; and would benefit a range of expatriates, including UN employees who are Canadian.

Cons:

- This option would add to existing operational burdens as proof determinations, in some circumstances, may be more complex; may give rise to potential fraud issues with regard to residence, an area which is already a concern in the program; may give rise to complaints from parents who claim they were unaware of the residence requirement prior to giving birth or adopting abroad; and may have resource implications for CIC, DOJ and the Federal Court. (Refusals of proof applications could be judicially reviewed by the Federal Court, and on appeal to the Federal Court of Appeal.)

Options to Address Pre-1947 Cases:

- If applications from those born before 1947 are any indication, the estimated number of those who could benefit from amendments to extend citizenship could be modest. The majority of these cases have no claim to citizenship due to the wedlock rules for those born abroad. Of the 50 such cases considered for an exceptional 5(4) grant from 2005-2010, most (41) were accepted.
- In light of anticipated pressure to address those who do not have access to citizenship because of past differential provisions in legislation, the following additional options are provided:

Option 2(a): Amend the Act to allow persons who were born or naturalized in Canada, lost status (other than those who renounced or whose British subject status was revoked) and didn't become citizens on January 1, 1947, and persons born outside of Canada whose parent was born or naturalized in Canada to come forward for a grant of citizenship.

- Given that these persons would have been citizens under previous legislation had they been treated equally, it is proposed that persons granted citizenship under this option would not need to meet the regular grant requirements, e.g. residence, language/knowledge, prohibitions or oath requirement. This grant of citizenship would require persons to come forward to apply for the grant of citizenship, making them citizens from the day of grant forward. Persons receiving such a grant would not be able to pass citizenship on. If there is any interest in pursuing option 2(a) it could be pursued in conjunction with option 1 as both options maintain the policy intent of the first generation limit.

Pros:

- This option would positively benefit persons in the first generation who would have been Canadian citizens on January 1, 1947, had it not been for the differential provisions of that time; and it would protect the value of citizenship by upholding the first generation limit to citizenship by descent.

Cons:

- This option would have operational impacts as more clients would need to come forward to receive a grant; processing times may increase as all persons would need to submit an application to obtain citizenship; would require significant changes to program (i.e. systems changes; changes to applications, publications, website, training, etc.); may only impact a small number of persons who come forward; may have modest resource implications for CIC, DOJ and the Federal Court.

Option 2(b) and 3 would extend citizenship to certain groups beyond the first generation:

Option 2(b): Amend the Act to allow persons who were born or naturalized in Canada, lost status (other than those who renounced or whose British subject status was revoked) and didn't become citizens on January 1, 1947, and persons born outside Canada whose parent OR grandparent was born or naturalized in Canada to come forward for a grant of citizenship:

- Given that these persons would have been citizens under previous legislation had they been treated equally, it is proposed that persons granted citizenship under this option would not need to meet the regular grant requirements, e.g. residence, language/knowledge, prohibitions or oath requirement. This grant would require persons to come forward to apply for the grant, making them citizens from the day of grant forward. Persons receiving such a grant would not be able to pass citizenship on. If there is any interest in pursuing option 2(b) it could also be pursued in conjunction with option 3 as both options extend citizenship beyond the first generation limit. In addition, option 1 could also be pursued in combination with options 2(b) and 3.

Pros:

- This option would have the same pros as option 2(a). In addition, this option would benefit more pre-1947 cases than option 2(a) (as option is extended to second generation); and may address some descendents of First World War servicemen.

Cons:

- This option would have the same cons as option 2(a). In addition, this option would not uphold the first generation limit to citizenship by descent; may have operational and resource impacts somewhat greater than option 2(a) as an additional generation would need to come forward for the grant.

Option to Address Cases from 1947-April 17, 2009:

- In order to address most of the remaining persons who do not have access to citizenship, due to the differential impacts of previous legislation, the following option could be considered:

Option 3: Maintain first generation limit going forward, amend the Act to allow persons born abroad between 1947-April 17, 2009, with a Canadian grandparent born or naturalized in Canada to come forward and be granted citizenship:

- This option would allow persons in the second generation born abroad (as amendments in 2009 would have restored their parent in the first generation), who as a result of previous legislation did not become citizens, or who were citizens but who lost citizenship (other than those who renounced or whose Canadian citizenship was revoked), to come forward and submit an application for a grant of citizenship. This option would maintain the first generation limit going forward and would fix those disadvantaged groups in the second generation who did not benefit from the remedial provisions of the 1977 Act, as well as those of the smaller group of retention cases in the second generation who were not grandfathered as others were (e.g. those who turned 28 after April 17, 2009 who no longer needed to retain citizenship).
- Given these persons would have been citizens under previous legislation had they been treated equally, it is proposed that persons granted citizenship under this option would not need to meet the regular grant requirements, e.g. residence, language/knowledge, prohibitions or oath requirement. This grant of citizenship would require persons to come forward to apply for the grant, making them citizens from the day of grant forward. Persons receiving such a grant would not be able to pass citizenship on.
- Past application rates by those who applied under similar remedial provision that expired in the legislation in 2004 may provide some indication of those impacted. From 1977-2004, 3,163 persons applied and were processed under the remedial provisions, with all but 11 accepted.

Pros:

- This option would positively benefit persons who would have been Canadian citizens, had it not been for the differential provisions of previous legislation. It may also address most of the key concerns raised by stakeholders and the general public with regard to the anomalies in past legislation.

Cons:

- This option would have operational impacts as more clients would be eligible to come forward to receive a grant; increase application intake, leading to larger inventories and longer processing times; require significant changes to program and may only impact a small number of persons who come forward; does not uphold the first generation limit; may have cost implications for CIC, DOJ and the Federal Court.

RESOURCE IMPLICATIONS:

- Any increase in application intake will increase the number of cases needing to be processed. Option 1, because of the new work on residence assessment of parents, could add significant pressure to proof and grant processing times and may impact our redesign efforts. Options 2a, 2b and 3, because of the estimated low numbers, will have operational impacts in order to implement (e.g. system changes, changes to applications, publications, website, training, etc.), but should have marginal impact on the overall processing times for proofs. The options may also have resource implications for DOJ and the Federal Court.

RECOMMENDATIONS:

- Should you decide that legislative change is desirable; we recommend you pursue option 1 and indicate your choice by checking the appropriate box and signing the 'I concur' block below.
- 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, we do not recommended 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.
- Departmental officials would appreciate an opportunity to discuss this with you at your earliest convenience.

Neil Yeates

I concur

- OPTION 1
- OPTION 2(a)
- OPTION 2(b)
- OPTION 3

The Hon. Jason Kenney, PC, MP

Attachment: Impacts of Previous and Current Legislation on Persons Today (table)

Annex A: Impact of Previous and Current Legislation on Persons Today

As a result of previous and current legislation there continue to be persons who do not have access to Canadian citizenship. Those who continue to be impacted by the differential provisions of previous legislation are outlined below.

Categories	Description	Impacts	Option Proposed to Address Category
1.Children and grandchildren of those born in and out of wedlock outside Canada prior to January 1,1947	<p>Those born outside Canada prior to January 1, 1947 to a British subject father out of wedlock (including children of war brides) or to a British subject mother in wedlock who did not acquire citizenship when the first Act came into effect or who did not naturalize after January 1, 1947. This group also includes:</p> <ul style="list-style-type: none"> ● some first generation born abroad to war brides and service men ● people of the Mennonite community who were born outside Canada before their parents were legally married under Mexican law 	Persons not citizens today because of differential impacts based on gender and marital status (i.e. wedlock requirement).	Option 2(a) or 2(b)
2.Children and grandchildren of those born or naturalized in Canada, lost status and who didn't become citizens on January 1, 1947	Those born or naturalized in Canada prior to 1947, who lost British subject status prior to 1947 and therefore did not become Canadian citizens on January 1, 1947.	Persons not citizens today because of loss provisions prior to 1947 (i.e. under British Nationality Law).	Option 2(a) or 2(b)
3.Those born outside Canada in the second or subsequent generation to a parent born in or out of wedlock between 1947 and 1977 who did not apply under the	Those born outside Canada between 1947 and 1977 beyond the first generation to a Canadian mother in wedlock or a Canadian father out of wedlock who did not apply under the remedial provisions of the 1977 Act before they expired in 2004.	Persons not citizens today because of differential impacts of the 1947 Act based on gender and marital status (i.e. wedlock requirement) and because of first generation limit.	Option 3

<p>remedial provisions of the 1977 Act</p>	<p>Note: The transitional provision was available from 1977-2004 for children born in wedlock to a Canadian mother. In 2004, the grant provision was extended for several months to children born to a Canadian father out of wedlock.</p>		
<p>4.Children born after 1977, beyond the first generation, to a parent who did not apply under the remedial provisions OR the parent did so after their birth</p>	<p>Those born outside Canada after February 14, 1977 beyond the first generation:</p> <p>a) to a parent who never took advantage of the remedial provisions of the 1977 Act, or</p> <p>b) to a parent who was born between 1947 and 1977 in wedlock to a Canadian mother or out of wedlock to a Canadian father and who received a grant of citizenship under the remedial provisions of the 1977 Act after their child was born.</p>	<p>Persons not citizens today because of differential impacts of the 1947 Act based on gender and marital status (i.e. wedlock requirement) and because of first generation limit.</p>	<p>Option 3</p>
<p>5.Those born prior to April 17, 2009, beyond the first generation, whose parents benefited from the legislative changes in 2009</p>	<p>Those born in the second or subsequent generation whose parents benefited from the 2009 amendments to the Act which restored and gave citizenship to many persons who had lost it or did not have it as a result of previous legislation.</p>	<p>Persons not citizens today because of first generation limit.</p>	<p>Option 3</p>
<p>6.Failed retentions</p>	<p>Those born abroad in the second or subsequent generations who failed to retain citizenship before their 28th birthday.</p> <p>Note: Those who retained under the 1977 Act and those who would have been required to do so, but for the fact their 28th birthday was after April 17, 2009, remained citizens.</p>	<p>Persons not citizens today because of first generation limit.</p> <p>Note: Loss for failure to retain citizenship under s. 8 only affected those born between February 15, 1977 and April 16, 1981 and who turned 28 years of age prior to April 17, 2009.</p>	<p>Option 3</p>

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In addition to the above categories, option 1, which proposes to maintain the first generation limit and extend citizenship to the second generation born abroad where the parent meets a connection test, would address those who were adopted through a direct grant of citizenship after April 17, 2009 and those born abroad in the second generation after April 17, 2009 who have a connection to Canada but who are not citizens today because of the first generation limit.