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Bill C-71 depreciates Canadian citizenship | Sergio R. Karas

By **Sergio R. Karas**

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Law360 Canada (June 3, 2024, 12:55 PM EDT) -- On May 23, 2024, Immigration Minister Marc Miller introduced Bill C-71, *An Act to Amend the Citizenship Act (2024)*, in Canada's Parliament. This bill aims to extend citizenship by descent beyond the first generation, allowing children of Canadian citizens born abroad to pass their citizenship on to their children. Further, Bill C-71 seeks to restore citizenship to "Lost Canadians" — individuals who lost or never acquired Canadian citizenship due to changes in the legislation.

Under the proposed amendments, Canadian citizens, regardless of their place of birth, will be able to pass on their citizenship to their children if they have spent at least three years in Canada before the birth or adoption of their children.

The current *Citizenship Act* restricts citizenship by descent to the first generation born abroad. Section 3(1)(a) grants citizenship to individuals born in Canada (*jus soli*) and those born abroad to Canadian citizens (*jus sanguinis*).

Bill C-71 has been proposed because of the Ontario Superior Court of Justice ruling in *Bjorkquist et al. v. Attorney General of Canada*, 2023 ONSC 7152, which held that s. 3(3)(a) of the *Citizenship Act* was unconstitutional because it discriminated against second-generation Canadians born abroad. The federal government chose not to appeal this decision to a higher court, which is inexplicable given the far-reaching consequences of the ruling.

The second-generation limit was implemented in 2009 to prevent Canadians born abroad from passing citizenship to their children "ad infinitum." This change aimed to curb the influx of "Canadians of convenience" — individuals who enjoyed the benefits of citizenship without residing in Canada or contributing to the country. This issue came into focus during the costly evacuation of Canadians from Lebanon in the 2006 war between Israel and the Hezbollah terrorist organization. A *Globe and Mail* article published on May 23, 2024, quoted McGill political science professor Daniel Béland, who framed the issue succinctly: "Canadians living abroad sometimes can be a burden for the government in the sense that if we need to evacuate them during an armed conflict, or if they come back to the country to seek healthcare and so forth."

The economic implications of Bill C-71 amplify these pressing concerns. Processing citizenship applications, verifying eligibility and resolving legal challenges will require substantial resources, which could be better allocated to other areas. Integrating newly arrived citizens into the economy, many of whom may need significant support, will further strain public finances. Also, many Canadians born abroad live in low-tax countries and regard Canada as an insurance policy if trouble ensues, but have no intention to pay exorbitant Canadian taxes.

Canada is already struggling with a prohibitive cost of living and a severe housing crisis. Introducing tens of thousands of new citizens without a robust integration plan is reckless. Our social infrastructure is buckling, and health care is under severe pressure. The lack of a clear strategy for accommodating this potential population surge only heightens concerns. Minister Miller indicated that more details would be available if the bill passed and received royal assent but did not provide a time or, more importantly, an estimate of the number of new citizens. Like in many other areas, this

government is fond of creating programs without thinking about their long-term consequences.

Beyond logistical and economic factors, the removal of the second-generation limit risks impacting Canadian national identity. Citizenship is more than just a legal status, it represents a connection to the nation's values, culture and responsibilities. Abruptly increasing the number of eligible citizens who have no real connection to Canada could dilute the shared identity and commitment that form the foundation of Canadian society. There is no benefit derived from having non-contributing citizens living abroad, not paying taxes, but just using a Canadian passport for their convenience and parachuting into Canada when they need assistance.

Under Bill C-71, applicants must prove that at least one of their biological or legal parents was a Canadian citizen at the time of their birth, and they must also demonstrate a substantial connection to Canada, defined as 1,095 cumulative days of physical presence. This requirement could create a significant administrative burden as collecting and verifying extensive documentation may slow the processing of other immigration and citizenship applications. The subjective and potentially manipulable nature of proving a substantial connection could lead to inconsistencies and legal challenges, further straining the judicial system. It will prove to be fertile ground for litigation.

The Liberal government argues that current laws negatively impact families living abroad. However, setting a clear cutoff point to prevent chain citizenship that benefits individuals with a tenuous connection to Canada is entirely reasonable. Setting limits is essential to preserving the integrity and value of citizenship. Several Western countries that used to have very generous citizenship by descent laws have limited it: in Germany, the second generation born abroad after January 1, 2000, are not German citizens automatically and will only become German if their birth was registered within one year from date of birth; and in the United Kingdom, children born to parents who are British by descent after May 21, 2002, have no automatic claim to British citizenship.

The fundamental question remains: How does extending citizenship eligibility to successive generations born abroad truly benefit the nation? I would argue that it does not.

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