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SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION
Bill C-6: *An Act to Amend the Citizenship Act and to make consequential amendments to another Act*

April 2016 ‖ Laura Track, Counsel

The BC Civil Liberties Association is pleased to take this opportunity to make written submissions to the Committee on Bill C-6: *An Act to Amend the Citizenship Act and to make consequential amendments to another Act*.

We are largely supportive of the proposed legislation, which repeals significant portions of the *Citizenship Act*, as amended by Bill C-24, that we believe are unconstitutional. However, there is an important issue that Bill C-6 does not address that we wish to bring to your attention. In this submission, we provide an overview of the portions of Bill C-6 that we support, then move to a discussion of its shortcomings and our recommendation for amendment.

Introduction

The BCCLA opposed the reforms to the *Citizenship Act* made by Bill C-24 from the moment they were first tabled in 2014. It was and remains our position that Bill C-24 is unconstitutional and creates two tiers of Canadian citizens, giving fewer rights to some Canadians based merely on where they were born. This, we say, is second class citizenship, and has no place in a constitutional democracy like Canada.

British Columbia Civil Liberties Association
900 Helmcken Street, 2nd floor
Vancouver, BC, Canada V6Z 1B3
T 604.687.2919
F 604.687.3045
info@bccla.org
www.bccla.org

Working with the Canadian Association of Refugee Lawyers (CARL), when Bill C-24 was proposed we immediately began a public education campaign to alert people in Canada of its unconstitutional nature and the impact it would have on dual and prospective citizens. A petition we launched against the law generated some 60,000 signatures before the bill was passed; by the time it came into force in 2015, that petition had been signed by over 110,000 people. Clearly, this is a critically important issue to many Canadians.

Weeks after the law came into effect, the BCCLA and CARL launched a lawsuit challenging the constitutionality of several of its provisions on the basis that they violate rights protected by the *Canadian Charter of Rights and Freedoms*.

We are pleased to note that Bill C-6 addresses many of what we see as Bill C-24's key constitutional deficiencies, including the power to revoke citizenship on the basis of a conviction for a national security-related offence, and the "intent to reside" provisions of the former law. If Bill C-6 receives Royal Assent, we expect to be in a position to discontinue our lawsuit.

Bill C-6 Addresses Key Constitutional Defects in the *Citizenship Act* as amended by Bill C-24

Revocation

Prior to Bill C-24, section 10 of the *Citizenship Act* provided for revocation of a person's citizenship if it was established that their citizenship was obtained "by false representation or fraud or by knowingly concealing material circumstances". Bill C-24 expands the

grounds upon which citizenship can be revoked (in s. 10(2)) and provides for revocation of citizenship after that citizenship has been lawfully granted.

In our submission, it is unconstitutional to strip citizenship from a Canadian for offences committed after the grant of citizenship. The provisions violate the following *Charter of Rights and Freedoms* provisions:

- They constitute cruel and unusual treatment or punishment contrary to section 12;
- They violate the right to equality under section 15;
- They violate the rights to liberty and security of the person under section 7;
- They violate the protections for accused persons guaranteed by sections 11(h) and (i).

The criminal justice system is the appropriate tool for responding to criminal offences, not the medieval practice of banishment.

Intent to Reside

Since the coming into force of Bill C-24, individuals applying for citizenship must now establish an intention "to continue to reside in Canada" unless they fall into a narrow category of persons connected to the public service or the Canadian Forces working abroad (paragraph 5(1)(c.1)).

This treats different kinds of Canadians unequally: Canadians by birth can live abroad indefinitely without consequence, while naturalized Canadians face the risk that departure from Canada will be construed

as evidence of past misrepresentation of their intent to reside here. In our submission, this is a violation of the mobility and equality rights protected by the *Canadian Charter of Rights and Freedoms*.

Other problematic elements of Bill C-24

In addition to making Canadian citizenship easier to lose, Bill C-24 also makes citizenship more difficult to get by imposing additional language and residency requirements, as well as higher costs. While not the subject of our constitutional challenge, we support the amendments made by Bill C-6 regarding the length of residency required to obtain citizenship and the ages for which language testing is required.

Bill C-6 requires an additional amendment to make it constitutionally compliant

The BCCLA-CARL lawsuit challenging the constitutionality of Bill C-24 challenged an additional element of the law that has not been addressed by Bill C-6: the lack of basic procedural protections for persons at risk of revocation. In our view, this oversight renders the process for revocations constitutionally suspect and susceptible to being struck down under section 7 of the *Charter*. We urge you to amend Bill C-6 to address this deficiency, described in more detail below.

The Canadian government has always had the ability revoke someone's citizenship on the basis of fraud or misrepresentation. Essentially, this is akin to correcting a mistake, as the grant of

citizenship should never have been made in the first place and is void *ab initio*.

Prior to Bill C-24, a finding of fraud could only be made by the Governor in Council based on a report prepared by the Minister. Prior to issuing a report, the Minister was required to notify the affected individual, who had a right to require that the matter be referred to the Federal Court for adjudication.

Now, the decision to revoke is taken by the Minister directly, and the subject has no right to an oral hearing, no right to have the matter referred to Federal Court, and no right to disclosure of relevant materials in the possession of the Minister.

In our submission, the discretionary regime established by Bill C-24 lacks basic procedural protections for persons at risk of revocation, contrary to principles of fundamental justice and in violation of section 7 of the *Charter*.[1]

In a recent decision of the Federal Court called *Monla v Minister of Citizenship and Immigration Canada*,[2] a number of individuals who had received revocation notices on the basis of misrepresentation under these new procedures sought an injunction staying the Minister from taking any further steps or proceedings.

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[1] This regime does not apply to revocations on the basis of fraud or misrepresentation where the misrepresentation relates to certain serious offences set out in ss. 34, 35 and 37 of the *Immigration and Refugee Protection Act*. See s. 10.1(1) of the *Citizenship Act*.

[2] 2016 FC 44.

Their underlying application seeks a declaration that the procedural provisions described above offend s. 7 of the *Charter* and the right to a fair hearing protected by s. 2(e) of the *Bill of Rights*.

The Minister sought to strike the applications. Justice Zinn granted the applicants' stay motion and refused the Minister's application to strike.

In his reasons for judgment, Justice Zinn noted the serious consequences for individuals of a decision to revoke their citizenship:

> The more serious the consequences to an individual, the greater the need for procedural fairness and natural justice. Revocation of citizenship for misrepresentation and fraud is a very serious matter and the allegations made by these applicants, although they may ultimately not succeed, raise a case demanding a response from the Minister. (at para 80)

Bill C-6 fails to respond to this issue, and we believe this oversight must be corrected before the bill is passed into law.

It would seem that government MPs, including the current Immigration Minister, Hon. John McCallum, agree with this view. On June 9, 2014, during debates on Bill C-24, Mr. McCallum said:

> We object in principle to the arbitrary removal of citizenship from individuals for reasons that are highly questionable and to the very limited opportunity for the individual to appeal to the courts against that removal of citizenship.

Similarly, on June 2, 2014 he said:

> When you give the minister dictatorial powers to remove a Canadian citizenship, you rather devalue the citizenship. You reduce the value of the citizenship because it can be so arbitrarily taken away. You reduce its value rather than increase its value as a consequence of this bill.

Further, on June 3, 2014, Geoff Regan, MP, proposed an amendment to Bill C-24 that would provide that a Canadian will have a full appeal to the Federal Court in the case of citizenship revocation proceedings. He said in support of this motion:

> Canadian citizenship is, of course, our most fundamental right. The government shouldn't have the power to remove it without a full and complete right of appeal to the courts. It's absolutely mindboggling, in fact, that the government would not support such an amendment. To not support such an appeal would fly in the face of our Charter and in the face of the rules of natural justice.
> …
> Mr. Chairman, in my view, Canadians deserve the full right of appeal with regard to citizenship. It's a very special thing, so Liberals will oppose removing this right.

We agree. In our submission, the government should repeal the procedural changes made to the *Citizenship Act* by Bill C-24 and restore individuals' right to a fair hearing before an independent judicial decision-maker who can take humanitarian and compassionate considerations into account in making their decision. The new law should also restore the right to disclosure of relevant materials in the possession of the Minister.