Backgrounder: Unfairness in the Citizenship Revocation Process

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What is the problem?

The federal government is initiating citizenship revocation on up to 60 Canadians each month, using a process put in place under the last government's Bill C-24 that is unfair and unconstitutional, in the view of the BC Civil Liberties Association and Canadian Association of Refugee Lawyers. When a Canadian gets a parking ticket, they are entitled to a court hearing to defend themselves. But when the government strips a Canadian of their citizenship, alleging that they misrepresented themselves, they have no right to a hearing with an independent decision-maker. The Minister alone has the authority to act as prosecutor and judge, and the Canadian who is affected does not have the right to know the full case against them.

The Minister of Immigration, Refugees and Citizenship has recognized that this process is unfair (see below), and the Federal Court has suggested that removing citizenship demands a high level of procedural fairness (see below) – but the federal government has pressed ahead with these citizenship revocations anyway.

That is why the BCCLA and CARL have taken legal action against the federal government – to stop the government from carrying out these unfair citizenship revocations until a proper process can be put into place.

Background – Bill C-24

Bill C-24, the "*Strengthening Canadian Citizenship Act*", was passed by the previous government and became law in June, 2015. Bill C-24 created two tiers of citizens: those who could have their citizenship revoked, and those who could not. It gave fewer rights to some Canadians based on where they were born, turning some Canadians into second class citizens.

A few weeks after Bill C-24 came into effect, the BC Civil Liberties Association (BCCLA) and Canadian Association of Refugee Lawyers (CARL) filed a constitutional challenge in the Federal Court of Canada alleging that the amendments to the *Citizenship Act* made by Bill C-24 violate the *Charter*.

You can read more about that litigation here: https://bccla.org/end-second-class-citizenship/

In February, 2016, the Liberal government introduced Bill C-6, which – when passed – will reverse many of the problematic changes brought about by Bill C-24. However, there is one important issue that Bill C-6 did not address: the process by which citizenship revocations happen.

What is the process for citizenship revocations?

It's important to know that the Canadian government has always had the ability revoke someone's citizenship on the basis of fraud or misrepresentation. If someone lies in order to gain Canadian citizenship, revoking their citizenship is akin to correcting a mistake, as the person should never have been granted citizenship in the first place.

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 a full hearing and decision.

Now, the decision to revoke is taken by the Minister (or his delegate) directly, and in almost all cases, the subject has

- no right to an oral hearing,
- no right to have the matter referred to Federal Court or any other independent decision-maker, and
- no right to disclosure of relevant materials in the possession of the Minister that would allow the subject to know the case against them.

This regime established by Bill C-24 lacks basic procedural protections for persons at risk of revocation. We believe it is contrary to principles of fundamental justice and in violation of section 7 of the *Charter*.

What have the courts said about this issue?

In a recent Federal Court decision,[1] a number of individuals who had received revocation notices on the basis of misrepresentation under these new procedures sought an injunction preventing the Minister from taking any further steps or proceedings in their cases. This is known as a stay of proceedings.

Their underlying application seeks a declaration that the procedural provisions described above violate s. 7 of the *Charter* and the right to a fair hearing protected by s. 2(e) of the *Bill of Rights*. That challenge will be heard in November.

[1] *Monla v Minister of Citizenship and Immigration Canada*, 2016 FC 44.

The Court granted the applicants' stay motion. 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)

On the basis of the Court's decision, numerous individuals who have received revocation notices have also obtained stays of their proceedings pending the outcome of the constitutional challenge. However, notwithstanding the many individual stays granted by the Federal Court, the Government has continued to use the current process to give notice and revoke the citizenship of individuals on fraud/misrepresentation grounds.

In essence, the Court has already decided that individuals facing the loss of their citizenship under the regime established by Bill C-24 should not have to go through that process until its constitutionality is adjudicated. The Court hearing on whether the process is unconstitutional won't happen until mid-November, and a decision could take months.

In the meantime, the Minister continues to commence new revocation proceedings under C-24's unfair procedure.

For those who have the ability, knowledge and resources to retain counsel, the Federal Court has been granting them individual stays as a matter of course. But for those who cannot find a lawyer – or who do not know that they should even try – the Minister's conduct forces them into an unfair process with terrible consequences: the loss of their Canadian citizenship and, quite possibly, deportation to a country they do not even know.

What has the government said about this issue?

Incredibly, all of this is occurring while the Minister of Immigration, Hon. John McCallum, agrees that the current revocation process is defective and needs to be reformed. In May, the Minister informed the House Standing Committee on Citizenship and Immigration that he would "move forward in the fall on a proper appeal right on the issue of citizenship revocation".[2]

When in opposition, he put the problems with the process bluntly and succinctly. 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.

[2] Standing Committee on Citizenship and Immigration, *Evidence*, No. 11 (Tuesday, May 5, 2016), 1st Sess, 42nd Parl.

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.

What's the solution?

In light of the fact that the Government intends to cure the serious defects in the current regime at some point over the year to come, the BCCLA and CARL requested that the Minister impose a voluntary moratorium on further revocation notices and revocation decisions pending either the promised legislative change or the outcome of the constitutional challenge. The Government refused.

Instead, the government continues to issue revocation notices to people under a process it has publicly acknowledged to be unfair, and people are losing their citizenship. The BCCLA and CARL cannot sit idly by while people are stripped of their Canadian citizenship under a process that we fully expect will be found unconstitutional by the courts.

Ultimately, 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.

In the meantime, the government must stop issuing revocation notices until the process is fixed.

What action is the BCCLA and CARL taking?

On September 26, 2016, the BCCLA and CARL launched an action in Federal Court specifically targeting the procedural unfairness of the citizenship revocation regime. We are seeking a stay of the operation of the revocation provisions of the *Citizenship Act* pending either a decision from the courts about whether the regime is constitutional or the creation of a new and fair process.

Find out more: https://bccla.org/end-second-class-citizenship/