

**Submissions to the Standing Committee on Citizenship and Immigration on
Bill C-24 – Strengthening Canadian Citizenship Act**

by

Inter-Clinic Immigration Working Group and
Parkdale Community Legal Services

written by Geraldine Sadoway and Jennifer Stone

*The **Inter Clinic Immigration Working Group (ICIWG)** is a network of lawyers and community legal workers in Ontario community legal clinics and student legal aid services societies. Clinics are funded by Legal Aid Ontario (LAO) to provide services to low income, disadvantaged and vulnerable people. We serve clients in a variety of ways including summary legal advice, representation, public legal education and law reform activities. There are currently over thirty legal clinics in Ontario that belong to ICIWG, which has been meeting monthly in Toronto for over twenty-five years. Members of ICIWG are particularly concerned with immigration law matters, including issues of refugee law, family reunification through immigration procedures, migrant workers issues and citizenship matters.*

***Parkdale Community Legal Services (PCLS)**, a member of ICIWG, has worked for more than forty years in the low-income community of Parkdale in Toronto, providing legal services and carrying out community driven law reform, education and outreach. Historically, many residents of Parkdale are new immigrants and refugees, making immigration and refugee law a major area of work for the law students, community legal workers and lawyers at PCLS over the years. We have also worked with members of Parliament to ensure that the voices of new immigrants and refugees are heard and that the issues affecting this vulnerable sector of Canada's community are understood. PCLS has been particularly concerned about changes to citizenship processes since about 2007 when we began to see increased numbers of refusals of citizenship applications among refugees and family class immigrants. PCLS has been working with other legal clinics, organizations such as the Canadian Civil Liberties Association and the Teachers of English as a Second language (TESL), and community groups to identify the barriers to acquiring citizenship for increasing numbers of new permanent residents in Canada and to help members of the community to overcome these barriers.*

Introduction

When Bill C-24 was introduced members of ICIWG and PCLS recognized that this legislation exacerbated some of the existing barriers to the acquisition of citizenship for many new permanent residents and added new obstacles.

Since 1947 Canadian citizenship has been part of the process of building the Canadian nation, encouraging all residents of this country who live and work here, who pay their

taxes and raise their families here, to become full members of the body politic. The *Citizenship Act* of 1985 stressed this welcoming and inclusive approach and as a result, Canada has had the highest rate of naturalization of new immigrants in any of the OECD countries. As noted by Elke Winter in her recent publication *Becoming Canadian*, “in 2005-06 the share of foreign-born residents aged 15 and older who had become Canadian citizens was 75 percent”.¹

We are greatly concerned by the proposed changes to the Canadian *Citizenship Act* as set out in Bill C-24. We believe that the changes will have a negative effect on many residents of Canada who are seeking to become Canadian citizens and who will be unduly disadvantaged by the proposed changes in the law. Rather than “strengthening” Canadian citizenship, these provisions will seriously **weaken** Canadian citizenship **and our democracy**. These proposed changes violate a long-standing principle of encouraging and fostering the successful integration of refugees and new immigrants in Canada. Should they be implemented, it will result in unequal and discriminatory treatment of immigrants and refugees, contrary to the principles of the *Charter of Rights and Freedoms*.

We propose the following amendments to Bill C-24:

<p>1. Maintain the residency period of 3 out of the last 4 years, and recognize at least a year of residency credit prior to obtaining PR status.</p> <p>2. Exemptions from the language and knowledge requirements should be facilitated for refugees and family class immigrants who have difficulty meeting those requirements.</p> <p>3. Language proficiency should be tested at the end of the process rather than as part of the initial application.</p> <p>4. Do not require applicants aged 14-17, and 55-65 to meet the language and knowledge criteria.</p>	<p>5. Maintain the current appeal as of right to the Federal Court for review of Citizenship refusals with the possibility of further appeal to the Federal Court of Appeal on a certified question.</p> <p>6. Reverse the increased fee for applications for Citizenship and provide waiver of fees for financial hardship.</p> <p>7. Do not grant the power to strip dual citizens of their Canadian citizenship, and</p> <p>8. Ensure new revocation provision for misrepresentation does not apply to a citizen, following grant, due a belief that she lacked intent to reside in Canada.</p>
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¹Elke Winter, “Becoming Canadian: Making Sense of Recent Changes to Citizenship Rules” IRPP, Jan 16, 2014: <http://www.irpp.org/assets/research/diversity-immigration-and-integration/becoming-canadian/Winter-No44.pdf> at page 3.

1. **Proposed change in residency requirement to four out of six years with no credit for residency prior to becoming permanent resident**

Excessive delay and discriminatory impact:

Bill C-24 proposes increasing the residency requirement (four out of six years, with 183 days of physical presence in any of those 4 years, including partial years that fit within the last 6 years), non-recognition of residence in Canada prior to obtaining permanent resident status. It is counter-intuitive to increase the residency period for the purpose of strengthening citizenship in Canada. These provisions will actually **delay citizenship** and **discourage** some residents from applying. Furthermore, this provision has a discriminatory impact on refugees and on some groups of immigrants. The purpose of the increased residency requirement is purportedly to ensure that persons seeking to become Canadian citizens have physical residence in Canada during four of the six years prior to applying for Canadian citizenship. Some of the jurisprudence on the issue of residence indicates that the physical residence criteria is intended to ensure that the prospective Canadian becomes “Canadianized” by “rubbing elbows” with Canadians in every aspect of life in Canada – “in shopping malls, corner stores, libraries, concert halls, auto repair shops, pubs, cabarets, elevators, churches, synagogues, mosques and temples...wherever one can meet and converse with Canadians”².

For some immigrants, the clock starts running for possible acquisition of Canadian citizenship from the first day of arrival in Canada. As a result they could apply for Canadian citizenship immediately upon completion of four years in Canada because they could manage to be physically present for four of the previous six years.

Impact on refugees

However for refugees who are granted refugee status in Canada, they often do not acquire permanent residence until two or three years after they arrive in Canada

Case study: Refugee: Amran has been a Convention refugee and Permanent Resident of Canada for the past 20 years. Her children are scattered across the globe and none can return to their war-ravaged country of origin. She has adult working children in Canada, and is an active grandmother. She participates widely in her community. During the 4 years prior to applying for Citizenship she had to travel on several occasions to spend time first with her dying son, and then for her daughter’s wedding. She was outside Canada for too many days to meet a strict residency test. Amran’s citizenship application was significantly delayed as her trips outside Canada were investigated. Finally a citizenship judge exercised discretion to grant her citizenship using a flexible test to determine residency. Under Bill C-24 the new strict residency test would have meant her application would be refused.

²*Pourghasemi (Re)* [1993] F.C.J. No. 232; *MCI v. Naveen* 2013 FC 972

seeking protection. Under the current law they get up to one year of credit for their period of legal residence in Canada prior to receiving permanent residence. As a consequence of the proposed change, the two or three years of “rubbing elbows” with Canadians doesn’t count and the accepted refugee will not be eligible to apply for full membership – i.e. Canadian citizenship, until **two or three years later** than the immigrant who is granted permanent residence upon arrival. It should be noted that many refugees are often **legally or practically stateless**. By contrast, the immigrant who is granted permanent resident status upon arrival will continue to have the benefit of the citizenship of their country of origin throughout the four-year period while awaiting eligibility for Canadian citizenship.

Impact on live-in caregivers

The proposed changes also discriminate egregiously against residents who are in the Live-In Caregiver program. In the case of live-in caregivers, they are doing more than “rubbing elbows” with Canadians during their period of working in Canada while qualifying for permanent resident status – they are caring for the children or the elderly parents of Canadians and living with Canadians twenty-four hours a day. It is not fair to fail to recognize this mode of work and residency as qualifying for citizenship, when on the other hand, working in the federal or provincial government services **outside of Canada** does qualify as residency for citizenship eligibility. Although one might justify special residency exceptions for new immigrants who become members of Canada’s armed forces, one cannot justify employment with the federal or provincial public service outside of Canada as being of any more value than the work of live-in caregivers in Canada, in the homes of their Canadian employers.

Moreover, a person may reside in Canada for up to four years as a live-in caregiver and be eligible to apply for permanent resident status after completing two years of work as a live-in caregiver within that four year period. It then usually takes from two to three years before the worker and any of her dependent family members will be granted permanent resident status. So she is likely to have resided in Canada for **five years** or more before she can begin to count the four years of residency needed to be eligible to apply for citizenship. Thus, a full **nine years** after arriving in Canada she would be eligible to apply for citizenship.

Case study: Live-in Caregiver

Betty is a live-in caregiver who has lived and worked in Canada since 2008. Her employer forced her to work overtime hours without pay. When she brought her employer to small claims court Betty’s employer retaliated by refusing to provide her proof of the hours she worked. With the help of PCLS Betty applied for permanent residency with Humanitarian considerations. In 2013 she was approved in principle but she is still waiting to be landed. If the proposed changes come into effect Betty’s last 6 years of living and working in Canada will not bring her any closer to becoming a Canadian citizen.

Impact on other immigrant classes

Persons who apply for permanent resident status as members of the **Spouse or Common-Law Partner in Canada class** will also suffer a disadvantage as the processing time of their In-Canada application (one to two years on average) will not count towards their residency for citizenship. In addition, it is not clear whether spouses who arrive as “**conditional permanent residents**” – the new status for sponsored spouses which came into effect on October 26, 2012,³ would be able to count their two year period of “conditional residence” towards the four years of permanent residence prior to applying for citizenship. This adds to the uncertainty and vulnerability of their situation as conditional permanent residents. Another immigrant group that will be negatively affected by the change to residency requirement is the Canadian Experience Class, particularly those applicants who enter Canada originally as international Students. [See Appendix A, attached]

We submit that the proposed changes in residency requirements have a discriminatory effect on some groups of immigrants and refugees – from the most vulnerable, to the most talented and well-educated. In the final result, the longer the residency requirement, the more people we have residing, working, and paying taxes here without the benefit of full civic participation. We have already seen a huge increase in the numbers of persons living and working in Canada as temporary foreign workers with precarious status, paying taxes and contributing to Canada’s economy with no meaningful political voice and no hope of ever being granted permanent resident status, let alone citizenship.⁴ The lengthening of the residency requirement for permanent residents to become citizens will exacerbate the growing democratic deficit in Canada of long term residents who are excluded from the democratic process. **This weakens Canada as a nation.**

The required period of residence has been three years for the past thirty years. This proposed change sends the message towards newcomers, that Canada does not appreciate their contribution and is not sure whether to accept them fully. With respect to refugees the longer time to qualify is especially problematic because until they become citizens they continue to live with insecurity and face practical problems, such as the difficulty of travelling without a passport.

³ See Operational Bulletin: http://www.youtube.com/results?search_query=geripcls&aq=f

⁴ Faraday, F., *Made In Canada: How the Law Constructs Migrant Workers’ Insecurity*, Metcalf Foundation, September 2012: <http://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>

Recommendation:

Accordingly, it is recommended that the residency requirement not be changed from three years in the previous four years and that, at least, one year of residency credit be granted to recognize legal residency prior to being granted permanent resident status. We also recommend removing a strict physical test requirement as this will remove any discretion for refugees or stateless persons to assert meaningful residency in Canada even if extraordinary circumstances have forced them to travel for too many days.

If the change to four out of six years is implemented, **it is recommended that in order to avoid the discriminatory effect on some immigrants and refugees, up to two years credit for legal residence prior to becoming a permanent residence be granted.**

2. Exemptions from the language and knowledge requirements should be readily granted to refugees and family class immigrants who have difficulty meeting those requirements.

We recognize that knowledge of one or the other of Canada's official languages promotes successful integration in Canada, especially regarding employment. Language instruction for newcomers is a key component of settlement and an integral

part of their education. Increased employment earnings have been linked to language proficiency in one of Canada's official languages, yet close to **90 percent of new immigrants to Canada have neither English nor French as a first language.** Language proficiency is an important determinant of income and employment, as is education in general. In addition to the economic benefits, these are also important for personal development and civic participation.⁵

Case study: PTSD and citizenship

Sedonia left Eritrea in 2004 when her husband sponsored her to join him in Canada. She suffers from Post Traumatic Stress Disorder as a result of being forced to serve in the army and witnessing multiple deaths from bomb explosions. When she applied for citizenship in 2010 Sedonia was required to write the written test, which she failed. With the help of PCLS she sought an exemption. After waiting five years for her hearing before a citizenship judge she appeared with a letter from her doctor explaining her inability to perform in testing due to her PTSD. Currently she is being asked to provide further medical assessments at her own expense. If she is unable to satisfy the minister she will have to start the process from the beginning. As this experience has exacerbated her anxiety greatly, Sedonia would consider waiting until she turns 55 if it remains an option.

⁵ Wayland, S. V., "Unsettled: Legal and Policy Barriers for Newcomers to Canada, 2006 at page 13; <http://www.cfc-fcc.ca/doc/LegalPolicyBarriers.pdf> (accessed Feb 11, 2013)

It is also a benefit to Canada that new members of the community learn about Canada's history, culture and governing process. Knowledge of English or French is a requirement for successful immigration applications in the economic class and economic immigrants are required to pass specific language tests prior to coming to Canada. Formal education is also a requirement for immigration in the economic class, and a new immigrant who has completed primary and secondary schooling and has also obtained other qualifications through post-secondary studies, will not have great difficulty in learning the material required to pass the knowledge of Canada test.

Disparate impact on refugees and family class immigrants

But knowledge of English or French is **not a requirement for refugees** accepted in Canada, whether selected abroad or determined to be persons in need of protection after arriving in Canada. Nor is knowledge of English or French a criterion for granting permanent residence to **members of the family class**, including the **dependants** of principal applicants in the economic class. While it is certainly desirable that refugees and family class immigrants learn to communicate in English or French as quickly as possible, some will not be able to acquire the required level of language proficiency and will be excluded from Canadian citizenship as a result.⁶

In the case of refugees, the very experiences that caused them to become refugees may be factors impeding their ability to learn a new language and could also affect their ability to pass the knowledge of Canada test. And yet these refugees and family class immigrants may be able to communicate adequately in English or French and to live productive and fulfilling lives in Canada. They are able to work, pay taxes, raise families and participate in community life in Canada, but cannot qualify for full civic participation as citizens.

We have seen cases of refugees who have lived in Canada for many years, who have raised families in Canada, held down jobs, paid taxes, and who have not been able to acquire the level of ability in English or French to pass the language and knowledge criteria, despite enormous effort and repeated attempts. Some have a learning disability or problems with literacy due to deprivations they experienced before coming to Canada.⁷ Becoming proficient in a new language as an adult is often very difficult, even for a highly educated and literate person. Others suffer from serious Post Traumatic

⁶Derwent T., et al "An Examination of the Canadian Language Benchmark data from the Citizenship Language Survey" <http://www.cic.gc.ca/english/pdf/research-stats/language-benchmark.pdf>

⁷ Adult literacy is a problem in Canada as well: according to a 2014 report of the Canadian Literacy and Learning network, 42% of Canadian adults between the ages of 16 and 65 have low literacy skills; 55% of working age adults in Canada are estimated to have less than adequate health literacy skills. <http://go.microsoft.com/fwlink/?LinkId=121315>

Stress Disorder which impedes their ability to acquire a new language,⁸ or to learn the general historical and factual information in the *Discover Canada*⁹ guide needed to pass the knowledge of Canada test. Yet these refugees and family class immigrants are residing permanently in Canada, raising families, working and paying taxes. They should be welcomed as citizens and encouraged to participate in the community to the full extent of their ability to do so.

Canada's legal obligation to facilitate naturalization of refugees

Furthermore, Canada has a legal obligation to **facilitate access to citizenship for refugees**. According to Article 34 of the Convention relating to the Status of Refugees, 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'¹⁰

We are troubled by the recent CIC Operational Bulletin, OB 530-B¹¹ which, in conjunction with a recently revised notification for Applicants who either do not appear or who fail the Citizenship exam, places an emphasis on advising Applicants to *withdraw* their application for citizenship rather than encouraging a facilitative approach for accommodation in re-writing the test, or advising Applicants that it is possible to seek a waiver from this requirement on humanitarian grounds as provided in section 5(3) of the 1985 *Citizenship Act*.

Recommendation:

We recommend that exemptions from the language and knowledge requirement be facilitated and readily granted in the situation of refugees and family class immigrants who have difficulty meeting these requirements.

3. Language proficiency should be tested at the end of the process rather than as part of the initial application.

The amendment to the *Citizenship Act* introduced in November of 2012, requiring proof of level four language proficiency as a **prerequisite** to beginning the citizenship application has resulted in many refugees and family class immigrants being excluded from the process of acquiring citizenship, despite the fact that they already met the residency requirement and despite the fact that processing of their application would

⁸REFUGEES AND SECOND LANGUAGE LEARNING :A Review of Second Language Learning Factors for Refugee Populations, Rachel Borrell University of Minnesota.
<https://www.psych.umn.edu/assets/pdf/news/borrell.pdf>

⁹*Discover Canada* <http://www.cic.gc.ca/english/resources/publications/discover/read.asp>

¹⁰ UN Refugee Convention, Art. 34. <http://www.unhcr.org/3b66c2aa10.html> at page 30

¹¹ Operational Bulletin 530-B: <http://www.cic.gc.ca/english/resources/manuals/bulletins/2014/ob530B.asp>

take two to three years.¹² There is considerable evidence that language courses available for new immigrants and refugees are inadequate to meet the need.¹³ As well, private language courses and testing are beyond the means of many newcomers. It is submitted that refugees and family class immigrants should be granted exemptions from the language and knowledge requirements, especially if they have tried repeatedly and failed to pass despite sincere effort.

Recommendation:

We recommend that the language proficiency requirement be tested at the end of the process, rather than as part of the initial application.

4. Extending the group of applicants who must pass language and knowledge criteria to applicants aged 14-17, and those aged 55-64.

Bill C-24 proposes that an applicant for citizenship must be able to pass the language and knowledge test if they are between fourteen and sixty-four years of age. Currently persons over fifty-five or under eighteen do not have to meet the language and knowledge criteria. Broadening the group of new immigrants and refugees who must pass the language and knowledge test from age 14 to 65 does not strengthen Canadian citizenship: rather it excludes a larger number of immigrants and refugees from full civic participation and may actually impede the integration of newcomers.

Impact on children

Children aged 14 to 17 will now have to provide proof of language proficiency and pass the knowledge of Canada test. They would not be able to provide a secondary school certificate as they will not have completed secondary schooling. They may have to take a private IELTS test in order to have proof of their language ability. They may need to pay for private language classes, in addition to attending school full time in order to pass the language test. They will be required to study the 68 page “Discover Canada” guide and to know facts about Canada’s history that their Canadian peers are not required to know.

The “best and the brightest” 14 and 15 year olds will probably do fine, but some of the more average new immigrant students, especially those who are members of refugee families who have experienced deprivations in their schooling and who are still learning English or French, will have difficulty passing the language and knowledge tests. Being denied citizenship, especially when younger siblings or peers are granted citizenship

¹² Winter, E., *Becoming Canadian: Making Sense of Recent Changes to Citizenship Rules*, IRPP, 2014: <http://www.irpp.org/en/research/diversity-immigration-and-integration/becoming-canadian>

¹³ Wayland, *supra* pp. 11-15

will be humiliating for these young people and will not assist in their integration in Canada.

Impact on older adults

The extension of the group required to pass the language and knowledge test up to the age of 65 is also counter-productive. One of our clients who is now 40 and who has lived in Canada as a refugee for 11 years, is still unable to speak English adequately according to the citizenship judge who just refused his 4th citizenship application. Excluding him from citizenship until he is 65 does not serve any purpose except to further marginalize him, to humiliate him and to cause him hardship. New immigrants and refugees who have not been able to acquire the necessary language proficiency before turning 55 are unlikely to acquire this language proficiency in the years from 55 to 65. They will simply continue to be excluded from full participation in Canadian society – they are deemed “not good enough to be citizens” even if they are working, paying taxes and raising their families in Canada.

For those who are refugees and who are legally or practically stateless, this exclusion from citizenship **in the only place where they can be a citizen**, is a particularly harsh result. They cannot get a passport to travel even to a neighbouring country, they are excluded from voting in Canada, and they continue to live with the insecurity of statelessness and of potential deportation if they are subjected to a cessation [define!] application.

There is also an element of racism in the greater stringency of the language and knowledge requirement and the extension of it to those aged 14 to 65. A study commissioned by CIC in 2010 found significant difference in English language acquisition results for new immigrants based on their immigration class and their mother tongue: refugees scored the lowest among all immigration classes, and the South Asian and South East Asian language groups had the most difficulty with English language acquisition.¹⁴ So the up-front Level 4 proficiency in one of the official languages as a pre-requisite to applying for citizenship has a disparate impact on refugees and on East Asian and South East Asian immigrants.¹⁵

Recommendation:

We recommend that there be no expansion from age fourteen to age sixty-five for citizenship applicants who must meet the language and knowledge criteria.

¹⁴*An Examination of the Canadian Language Benchmark data from the Citizenship Language Survey*
Tracey Derwing et al, University of Alberta, March 2010 – study for CIC on effectiveness of ESL
language training:

<http://www.cic.gc.ca/english/pdf/research-stats/language-benchmark.pdf>

“members of East Asian...and Southeast Asian language categories appear to have been disadvantaged relative to other language groups”...“refugees received the lowest CBAL scores of all”

¹⁵This study could be used as a basis for better ESL instruction programs for refugees and immigrants from East Asian and South East Asian communities. But unless that is done, it is clear that these permanent residents who have greater difficulty learning English will be excluded from Canadian citizenship.

5. Access to an appeal process for refusal of citizenship

Bill C-24's proposed appeal process for refusals of citizenship will be less accessible. Under our current *Citizenship Act* if the application for citizenship is denied, the applicant has an **appeal as of right** to the Federal Court, based on the record of the case before the citizenship judge. Bill C-24 proposes that the person refused citizenship will now have **to apply for leave to seek judicial review of that decision** by the Federal Court.

Seeking leave for judicial review on an error of law is an extremely problematic remedy as it can only be done effectively with the assistance of experienced lawyers. It is an expensive legal process and

inaccessible to persons of modest means. The Federal Court does not give reasons when leave for judicial review is refused and it has been shown that there is a great discrepancy in acceptance levels by Federal Court judges.¹⁶ If leave to go to the Federal Court is not granted, then the applicant's only recourse is to start the long and expensive application process all over again. Access to membership in the franchise – i.e. full participation in Canadian life – is too important to be subjected to the vagaries of obtaining leave at the Federal Court.

Recommendation:

We recommend that refused applicants for citizenship continue to enjoy an appeal as of right, based on the record, to the Federal Court of Canada, without leave to seek judicial review . We further recommend that in refusing an appeal, the Federal Court may certify a question of general importance for a further appeal to the Federal Court of Appeal.

Case Study: The Impact of Leave Requirement

Tenzin is a refugee from Tibet. He has been living and working in Canada for twelve years. In that time he has attempted and failed the Citizenship three times. After his third attempt Tenzin approach PCLS for help in 2011. Tenzin's learning disability was confirmed by letters from his doctor and ESL teachers as well as a psychoeducational report from a psychologist. The psychologist noted that Tenzin's case is especially difficult because he had no formal education as a child and had never even held a pencil before coming to Canada. Tenzin waited another two years before attending his hearing. After an additional six months for the decision he found that the citizenship judge disregarded the medical evidence and concluded he does not have a disability. Currently Tenzin is able to take his case to the Federal Court by right.

¹⁶Rehaag, S. "Judicial Review of Refugee Determinations: the Luck of the Draw?" *Queen's Law Journal* Vol 38, no. 1, 2012, March 22, 2012: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2027517##

6. Increase in application fees

Effective February 6, 2014, CIC increased the fee for applying for citizenship from \$200 to \$400 for adults and from \$100 to \$200 for children. In addition to these fees, there are additional costs for the language exam, unless one has a secondary school certificate. If the applicant needs to undergo private language training to pass the test, this will be a further cost. The increased fees and other additional expenses discriminate against low income immigrants and refugees. These are a type of “user fee” which constitutes a significant barrier for low income people and those living in poverty. Acquisition of Canadian citizenship is not a luxury but a necessity. It is the only way that a permanent resident of Canada can become a full member of the community with the right to participate fully in all aspects of Canadian life, including our democratic institutions. This is especially true for refugees who are often legally or practically stateless until they acquire Canadian citizenship. User fees constitute a **regressive form of taxation** and should not be applied to the acquisition of something as fundamental as participation in the democratic process where one works, lives, and raises their children.

Rather than strengthening Canadian citizenship, the doubling of the fee with the other added costs suggests that Canadian citizenship **is for sale**. This degrades the value of Canadian citizenship, rather than strengthening it. Fees should not be a barrier to applying for citizenship.

Recommendation:

We recommend that the fee increase for applying for citizenship should be reversed and that fee waivers should be permitted in situations of serious economic hardship.

7. New powers for stripping citizenship from dual citizens.

Bill C-24 proposes that the Minister of Citizenship and Immigration or the Federal Court will be authorized to strip Canadian citizenship from a Canadian citizen who is a dual citizen if he or she has been found guilty of “treason” or “terrorism”. This means that a Canadian citizen who has dual citizenship will not be equal to a Canadian citizen who has only Canadian citizenship, whether the dual citizen acquired Canadian citizenship by birth in Canada, through their parents or by naturalization. This clearly discriminates against dual citizens. If implemented, this change will violate the fundamental principle that all Canadian citizens are equal. This amendment would create a two-tiered citizenship, with lesser rights for some citizens.

Stripping citizenship from naturalized citizens on grounds that they have committed an act of treason or terrorism is a particularly dangerous idea. We know from recent history, that people can be wrongly accused of terrorism and subjected to unfair trials. Maher Arar, a naturalized citizen of Canada and a dual citizen, was only able to clear his name after he returned to Canada and won a public inquiry into his case. Canadian journalist Mohamed Fahmy has been detained in Egypt since December 29, 2013, accused of terrorism, and there is great concern that he will not receive a fair trial.¹⁷ We also know from Canada's past history that stripping Canadians of their citizenship because of their race and perceived connection to enemies of Canada, as happened to Japanese Canadians prior to, during and after the Second World War¹⁸ can result in great hardship and subsequent demand for reparations. Citizenship should not be treated as an honour or a privilege that some citizens can lose by bad behaviour. Our criminal justice system is fully capable of dealing with criminal behaviour. Stripping citizenship is a form of banishment and exile, an out-dated practice that is unacceptable in the modern age.

Recommendation:

We recommend that this provision for stripping citizenship on grounds of treason or terrorism be eliminated from Bill C-24.

8. Revocation of citizenship for misrepresentation as to intention to reside in Canada.

A new ground is proposed for revoking citizenship of naturalized citizens on the basis of "misrepresentation" of the intention of residing in Canada permanently as a citizen. While it is currently possible to revoke citizenship if it is shown that it was obtained by fraud, the proposed new power to revoke citizenship from naturalized citizens on grounds of misrepresentation at the time of their application for citizenship drastically weakens the value of Canadian citizenship. As in the situation of potential stripping of citizenship for dual citizens, this new ground of revocation of citizenship for misrepresentation about intention to reside in Canada also sets up two tiers of citizenship.

¹⁷ *Ottawa Citizen*, April 18, 2014 "Baird meets with detained journalist's family; Fahmy in Cairo prison since Dec.
<http://www.ottawacitizen.com/news/Baird+meets+with+detained+journalists+family+Fahmy+Cairo/9752886/story.html>

¹⁸ "From Racism to Redress, the Japanese Canadian Experience" CRRF publication accessible at:
http://www.youtube.com/results?search_query=geripcls&aq=f

This proposed change will mean that the Canadian citizenship of naturalized citizens will not be equal to the Canadian citizenship of persons who have acquired citizenship through birth in Canada or through their parents. Canadians who are citizens by birth sometimes move away from Canada and may even obtain citizenship in another country. We do not strip them of Canadian citizenship for acquiring a new citizenship, although they may face limitations of their access to certain rights attached to residency in a province. For example, Canadian citizens living abroad who return to Ontario to reside would have a three month waiting period before having access to OHIP coverage. Naturalized citizens should also have the right to live and work outside of Canada without the risk of having their citizenship revoked on grounds of misrepresentation. Dual and multiple citizenship is a reality in the increasingly globalized world.¹⁹

If implemented, this change violates the fundamental principle that all Canadian citizens are equal. This amendment will create a two-tiered citizenship, with lesser rights for naturalized citizens. Citizenship is a “right to have rights”²⁰ and once it is acquired, the only basis for revoking it should be if it was obtained fraudulently.

Recommendation:

We recommend that there be no risk of revocation of citizenship on grounds of misrepresentation about intention to reside in Canada permanently.

¹⁹ Macklin, A. and Crépeau, F. “Multiple Citizenship, Identity and Entitlement in Canada” *IRPP Study, No. 6, June 2010* <http://www.irpp.org/en/research/diversity-immigration-and-integration/multiple-citizenship-identity-and-entitlement-in-canada/>

²⁰ Arendt, H. *The Origins of Totalitarianism*, Harcourt Inc., New York, 1976, at page 296

Appendix “A”

Impact of extending the residency requirement for Canadian Experience Class and International Students

Persons who apply for permanent residence in the **Canadian Experience class** will also lose any credit for the years they have spent studying and working in Canada prior to becoming permanent residents. Maintaining the residency period of three out of four years, and recognizing **at least a year of residency credit** prior to obtaining PR status is fair:

“If you have been working or studying in Canada, you already know why, year after year, Canada is consistently ranked as one of the best countries in the world in which to live. [...] With the knowledge, skills and experience you have gained in Canada, you could qualify to make Canada your permanent home.”²¹

This is what the Canadian Experience Class (CEC) brochure advertises. If “rubbing elbows”²² Canadianization is the goal of the residency requirement, then “the knowledge, skills and experience” referred to above should suffice. So why make CEC applicants wait at least four more years to apply for citizenship? Why should we take away the pre-residency credit?

The current CEC processing time is thirteen months.²³ In addition, the current processing time for citizenship is around twenty-four months (for routine applications).²⁴ To obtain permanent resident status under the CEC, a person has to have at least twelve months of full-time (or an equal amount in part-time) skilled work experience in Canada in the three years before applying, and meet the required language levels needed for the respective job for each language ability (speaking, reading, writing, and listening).

For international students, the work requirement must be fulfilled **after graduation**. Any work during studies does not count, whether on campus or with an off-campus work permit.²⁵ In order to obtain the work experience required for CEC, students must have graduated from a participating post-secondary institution. A Post-Graduation Work

²¹ *Canadian and Experience Class Brochure*: <http://www.cic.gc.ca/english/resources/publications/cec.asp> (CIC website, accessed April 17, 2014)

²² *Supra*, at 2.

²³ *Processing times: Economic Classes*: <http://www.cic.gc.ca/english/information/times/perm-ec.asp> (CIC website, accessed April 17, 2014)

²⁴ *Processing times: Grant of Citizenship*: <http://www.cic.gc.ca/english/information/times/canada/cit-processing.asp> (CIC website, accessed April 17, 2014)

²⁵ See Manual OP25a: <http://www.cic.gc.ca/english/resources/manuals/op/op25a-eng.pdf> (CIC website, accessed April 17, 2014)

Permit (PGWP) is not granted for programs that are less than eight months in length.²⁶ In any event, a student will need to attend a program that is at least a year in length in order to obtain a year-long work permit that could presumably allow the student to obtain the full-time work experience required for the CEC (assuming it is the right NOC [National Occupation List] required for CEC). Adding it all up and assuming that everything runs smoothly, it will take an international student a minimum of seven years and a month to be eligible to apply for Canadian citizenship. It will take a non-student worker applying under the CEC a minimum of six years and a month. These are best-case yet unrealistic calculations, given the difficulties with securing employment and the current CEC caps. The road to citizenship is too long and arduous.

International students contribute to the Canadian economy in several ways. The tuition for international students is higher than for their domestic counterparts, if not double. It requires a serious financial commitment. In addition, they start “rubbing elbows” with Canadians from the first day of school. Students participate in a meaningful way on campuses, by interacting with their colleagues, their instructors and becoming engaged in the student life. Some work on campus. Some obtain off-campus work permits if they are in good academic standing and have already gone through at least six months of full-time studies out of the twelve months preceding the application date.²⁷ Off campus, they make friends and experience the Canadian way of living. After graduation, they work and live amongst us. Non-student applicants on a work permit engage with colleagues, customers and affiliates on a full-time basis, which is a minimum of thirty hours per week.²⁸ In their spare time, they participate in the social life of Canada and follow their daily routines.

CEC applicants enrich our culture with their ideas, hard work and determination. They pay taxes. They inevitably become interested in what is happening around them and how political decisions affect them and others. However, the ultimate exercise of their political will is placed on hold. When it really matters, they do not matter. The new changes create a sense of inferiority that is unwarranted and harmful. It leads them to feel undervalued and unappreciated and to question whether they really want to commit to Canada for their future. They are left disenfranchised during the many years studying and working in Canada, living with the uncertainty of whether the rules will change again and they will continue to be excluded from citizenship.

²⁶ See Guide 5580: Applying for a Work permit – Student Guide: <http://www.cic.gc.ca/english/information/applications/guides/5580ETOC.asp#postgrad> (CIC website, accessed April 17, 2014)

²⁷ See Guide 5580: Applying for a Work permit – Student Guide: <http://www.cic.gc.ca/english/information/applications/guides/5580ETOC.asp#offcampus> (CIC website, accessed April 17, 2014)

²⁸ *Supra*, at note 5.

Appendix "B"

Case Study # 1

Mr. G was born in Tibet in 1964. After participating in protests against the Chinese government his property was confiscated. He lived a nomadic life and practiced Buddhism in secrecy. When he was 38 he fled to Canada where he was accepted as a Convention refugee in 2002. As a refugee from Tibet Mr. G is stateless, Canada is his only home. Becoming a full member of Canadian society is of huge emotional significance to him.

After becoming a permanent resident in 2004 he began working to support himself. His employer describes him as "an excellent employee with strong work ethic and a great character." Mr. G submitted his first application for citizenship in 2006. When he was unsuccessful he enrolled in ESL classes which he attended faithfully for four years despite his teachers' observations that he seemed unable to retain the information. After trying and failing the citizenship test two more times he came to our clinic. In 2011 we assisted him to make an application to request accommodation for his inability to speak English or an exemption from the citizenship requirements on humanitarian grounds in accordance with section 5(3) of the *Citizenship Act*.

In the request we provided a letter from his ESL teacher, his employer and evidence from community members about his efforts to learn English and his literacy issues. For Mr. G and many other refugees, being assessed for a learning disability is extremely difficult. Mr. G speaks a unique dialect of Tibetan, is illiterate in his own language and had no formal schooling before entering Canada. After a year of searching we found an organization that did a psychoeducational assessment through a translator and by adjusting standard tests to his unique needs. The report concluded,

"Mr. G will likely never learn the English language to any level of proficiency, it is even more doubtful that he will be able to master any reading or writing skills.... In light of his significant memory deficits he will need an inordinate amount of daily repetition and rehearsal to learn the basics."

In August of 2013 Mr. G had his hearing with a citizenship judge. He took the knowledge of Canada test with the assistance of a Tibetan interpreter and he answered 15 of the 20 knowledge of Canada questions correctly. This was consistent with the psychologist's observations that "he understands the higher order concepts of freedom and religious tolerance afforded by Canadian citizenship." However, in March of 2014, Mr. G. was advised that his citizenship application had been refused again because he had failed the language requirements.

Mr. G has made every effort to document his inability to learn English. The experience of trying to obtain citizenship has been disheartening and alienating at every step. Currently we are appealing the decision on the basis of a disregard for the medical evidence. However, should he be forced to reapply under the rules introduced in November 2012 he feels sure he will have to give up. Standard language testing

cannot be done because of his lack of English and lack of formal schooling and he feels too worn down to start from the beginning as he has tried for eight years now.

Case Study #2

Ms. B is an Eritrean citizen who has been a permanent resident of Canada since 2005 after her husband sponsored her. After failing the knowledge component of the citizenship test, Ms. B approached PCLS for assistance in 2011.

Ms. B's life before coming to Canada was defined by violent incidents. She had very little formal schooling because her village became a conflict site during the civil war. In our submissions asking for an exemption from the knowledge requirement we included a psychologist's report confirming that she suffers from Post Traumatic Stress Disorder and complex grief as well as survivor guilt. Both her psychologist and her nurse of six years confirmed that these conditions prevent her from retaining the knowledge necessary for the language test.

In spite of the trauma Ms. B has experienced, she very much desires to be a part of Canadian society and has taken active steps to try to improve her English and learn more about Canada, including attending ESL classes since 2009. These efforts are made all the more difficult due to her role as caretaker for her family. As a result of her husband's disability (he is legally blind) Ms. B is responsible for caring for not only her husband but her three young children as well. After waiting almost three years, Ms. B attended her citizenship hearing this year. She is now being asked to submit further medical evidence despite having provided reports from her family doctor, nurse, psychologist and counsellor.