# Lost Canadians Found, Parliament Remedies Citizenship Laws

On December 10, 2007, Bill C-37, An Act to Amend the Citizenship Act, was tabled in the House of Commons for first reading. The Bill addresses the plight of children of Canadian war veterans who do not qualify for Canadian citizenship based on archaic citizenship laws. One such person is Joseph Taylor, a British citizen and son of a Canadian WWII veteran and English war bride. Taylor applied for citizenship in 2003 but was denied on the basis that he had not applied prior to age 24 and because he was born out of wedlock. Both reasons were based on paragraph 4(b) of the 1947 Canadian Citizenship Act (which was repealed in 1977 by the current Act).

In 2005, Taylor applied to the Federal Court for judicial review of the Citizenship Officer's decision, arguing that his right to due process was breached because he was not given proper notice of the effect of the legislation on his individual rights. He also argued that his s. 15 equality rights under the Charter of Rights and Freedoms were violated because his application for citizenship was denied on the discriminatory grounds of marital status and age.

Although the Federal Court found in favour of Taylor [1], the Federal Court of Appeal reversed the decision [2]. Justice Décary, writing for a unanimous court, ruled that citizenship is a creature of statute and consequently, to become a citizen, an individual must satisfy statutory requirements [3]. Décary characterized the issue as falling under paragraph 4(b) of the 1947 Canadian Citizenship Act. As a result, Décary held that the Charter should not have a retroactive effect, stating:

There is some wisdom in not having the Charter apply retroactively or retrospectively to a 1947 statute that was repealed before the Charter came into force…it would be unfair to the Parliament and to the government of that day to judge moral values of a distant past in the light of today's values. It could also be an unbearable burden on today's government to demonstrate today that the measures taken then were then justified in a free and democratic society. And since we would be moving in the realm of history, speculation and hypothesis, could we not contemplate the possibility that Parliament, in the circumstances prevailing in 1947, would have invoked the notwithstanding clause? For if we are to apply the Charter to the past, should we not apply it with its checks and balances? All this is to suggest that courts may not be the best instruments for rewriting history. [4]

Décary held that even if the loss provisions in the 1947 Act did not apply, the "arbitrary" method by which Taylor lost his citizenship did not amount to a principle of fundamental justice for the purpose of finding a breach of due process. The legislative process in Canada, with bills receiving three readings in the Senate and House of Commons as well as royal assent before becoming law, is sufficiently public to disentitle individuals from the right to proper notice.

Finally, Décary held that Taylor's situation was not in the "domain of the courts to redress," [5] and encouraged Taylor to apply for citizenship under the discretionary power of s. 5(4) of the Citizenship Act [6]. On December 5, 2007, this power was used by Diane Finley, Minister of Citizenship and Immigration, to grant Taylor his Canadian citizenship.

The next day a Parliamentary Committee released the report "Reclaiming Citizenship for Canadians: A Report on the Loss of Canadian Citizenship" to the House of Commons. The unanimous report, prepared by an all-party committee, contained three recommendations:

1. Citizenship laws should not distinguish between people based on their year of birth, whether their parents were married at the time of their birth, or any other such factors.
2. Lost Canadians should have their citizenship restored retroactive to the date it was lost, or granted retroactive to birth, as the case may be.
3. The Minister should consider using her discretionary power to implement the committee's recommendations even before the new legislation is drafted and introduced in the House of Commons. [7].

Other "lost Canadians" similar to Taylor will receive Canadian citizenship if Bill C-37 becomes law. Estimates as to the number of lost Canadians range up to the hundreds of thousands; however, only 700 people have applied to have their citizenship reinstated [8].

Cases

- Taylor v. Canada (Minister of Citizenship and Immigration), 2007 FCA 349.
- Taylor v. Canada (Minister of Citizenship and Immigration), 2006 FC 1053.

Sources


- Standing Committee on Citizenship and Immigration, "Reclaiming Citizenship for Lost Canadians: A Report on the Loss of Canadian Citizenship" (News Release), online: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=220494>.
- Richard Foot, "Lost Canadians, son of war veteran to regain citizenship" National Post (5 December 2007).


[1] 2006 FC 1053, [2007] F.C.J. No. 1328.
[2] 2007 FCA 349, [2007] F.C.J. No. 1478.
[3] Ibid. at para. 50.
[4] Ibid. at para 107.

[5] Ibid. at para. 72.
[6] R.S. C. 1985, c. C-29.
[7] Standing Committee on Citizenship and Immigration, “Reclaiming Citizenship for Lost Canadians: A Report on the Loss of Canadian Citizenship” (News Release), online: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=220494>
[8] Richard Foot, “Lost Canadians, son of war veteran to regain citizenship” National Post (5 December 2007).