

BILL C-24

The Strengthening Canadian Citizenship Act

**Brief submitted by UNICEF Canada
to the House of Commons Standing Committee on
Citizenship and Immigration**

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INTRODUCTION

This brief is being submitted by UNICEF Canada to the House of Commons Standing Committee on Citizenship and Immigration in response to Bill C-24, The *Strengthening Canadian Citizenship Act*, introduced by the federal government on 6 February 2014.

The Minister of Citizenship and Immigration's announcement on Bill C-24 indicated that the impetus behind the bill was to reduce citizenship fraud and increase the system's efficiency. Certainly, there are several positive implications for children¹ in the proposed amendments, yet there is also potential for a number of the new provisions to result in negative, direct (and indirect) impacts upon children – impacts that could be avoided or mitigated with some corrective amendments. A number of the provisions set out in Bill C-24 have the potential to negatively affect the well-being and best interests of children and their families and may lead to an increase in divided families and, ultimately, a diminished sense of belonging to Canada for newcomers.

ABOUT UNICEF

The United Nations Children's Fund (UNICEF) works in 190 countries through country programs and National Committees. UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the United Nations Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF is the world's leading child-focused humanitarian and development agency. Through innovative programs and advocacy work, we save children's lives and secure their rights in virtually every country. Our global reach, unparalleled influence on policymakers, and diverse partnerships make us an instrumental force in shaping a world in which no child dies of a preventable cause. UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We

¹ The terms "Child" and "Children" are used in this written brief to refer to persons under age 18, who have distinct, age-related legal rights under the UN Convention on the Rights of the Child, ratified by Canada in 1991.

are the world's advocate for children and their rights. For more information about UNICEF, please visit www.unicef.ca.

OVERVIEW OF UNICEF CANADA'S POSITION

UNICEF Canada recognizes the government's stated intention for Bill C-24; ultimately achieving a balance of rights and responsibilities in the context of immigration and citizenship. There appear to be a number of positive impacts for children in the proposed reforms, as well as some potential negative impacts that could be remedied by further amendment. Children have a constellation of rights under international treaties to which Canada is party, including the 1991 ratification of the Convention on the Rights of the Child, to a durable identity which includes the preservation of family ties and of citizenship. These rights apply to all persons under 18 (the definition of "child"). Children generally do not have the legal status to make decisions in the context of immigration – parents, guardians and the state make decisions affecting their rights – and all such decisions by the state must give priority to their best interests. Children often require special protections such as exemptions or child-specific measures to ensure their rights to the kind of treatment that will best ensure their rights and consequently their well-being. UNICEF Canada is concerned that the bill would, in some instances, negatively impact the rights and well-being of a particularly vulnerable group of children.

We strongly recommend that this bill receive further study and consultation at the committee stage, from a child rights perspective on: the proposed extended age requirements for children (aged 14 to 18) to successfully pass language and knowledge testing; the continuation of fee requirements for child applicants; the potentially negative impact of citizenship limitations or revocation upon children; and, the broad discretionary powers provided to the Minister of Citizenship and Immigration under Bill C-24. We recommend that special protections be afforded to children under 18, as a vulnerable group which has little or no agency and decision-making status in the context of immigration.

A CHILD RIGHTS-BASED APPROACH TO CITIZENSHIP

As a State Party to the Convention, the primary responsibility to ensure that the rights articulated in the Convention are implemented in Canada rests with government, both federal and provincial/territorial. In relation to the acquisition of citizenship, a number of Convention articles are engaged, including: definition of the child (including age) (article 1); equality and non-discrimination (article 2); the best interests of the child (article 3); family integrity (article 5); survival and development (article 6); birth registration, nationality and protection from

statelessness (article 7); family relations (article 8); protection from arbitrary separation from parents (article 9); and, family reunification (article 10).

A child rights-based approach to citizenship requires considering issues affecting different groups of immigrant and refugee children with the full range of their human rights under the Convention on the Rights of the Child in mind.

In its 2012 Concluding Observations to Canada, the UN Committee on the Rights of the Child recommends that Canada:

“...ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative, and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children...”²

More specifically, the 2012 Concluding Observations also urge Canada to:

“...ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes and that determination of the best interests is consistently conducted by professionals who have been adequately trained on such procedures...”³

One approach to ensure that children’s best interests are given priority consideration and that potential discriminatory impacts are regularly taken into account in decision-making affecting children is through the use of standardized Child Rights Impact Assessments. A Child Rights Impact Assessment (CRIA) can be defined as:

“... a systematic process or methodology of ensuring children’s best interests and the potential impacts of policy change upon them are considered in the policy-making process. CRIA involves examining a proposed law or policy, administrative decision or action in a structured manner to determine its potential impact on children or specific groups of children, and whether it will effectively protect and implement the rights set out for children in the Convention on the Rights of the Child.”⁴

² CRC/C/CAN/CO/3-4 (8).

³ CRC/C/CAN/CO/3-4 (18).

⁴ For more information, see: <http://www.unicef.ca/en/policy-advocacy-for-children/what-is-a-child-rights-impact-assessment>.

From time to time, notwithstanding the best of intentions, legislation and policy set off unintended negative consequences for the very children they are meant to benefit. In some instances, children are not considered at all in the policy development process, even when it is likely that a proposed course of action will have impacts upon them. A Child Rights Impact Assessment could be effectively used to avoid or mitigate adverse impacts and enhance the benefits of policy, particularly for vulnerable children – in this case, immigrant children.

Recommendation 1

That the provisions affecting children within Bill C-24 be treated as part of a child rights-based approach to the provision of Canadian citizenship to such children. This process should be aided by the use of a structured and credible Child Rights Impact Assessment (CRIA) process.

SAFEGUARDS FOR ADOPTEES

In its present form, the *Citizenship Act* does not explicitly reflect that international adoption requirements must be met with respect to international adoptions completed in Canada.

As such, UNICEF Canada is encouraged by the proposed amendments to subsection 5.1(1) of the *Citizenship Act*, as set out in Bill C-24⁵, that would require these adoptions to adhere to the 1993 Convention on the Protection of Children and Co-operation in respect to Inter-Country Adoption (Hague Convention) or other legal and procedural requirements for inter-country adoptions, where the country is not a signatory, before citizenship may be granted.

The addition of this provision therefore ensures greater safeguards for the well-being of children involved in international adoptions completed in Canada, and promotes coherence between the processes of international adoption and of initiating and securing citizenship for adopted children. The likely positive impacts include greater protection of children from exploitation leading to their availability for adoption, and a reduced risk of statelessness should an adoption later be found to be invalid, by improving the coherence of the adoption and citizenship processes.

⁵ Paragraph 19(8)(3), Adoptees - Minor

While the proposed amendments will likely improve the outcomes for children being adopted overseas by Canadian citizens, they do not address the reality faced by many children who arrive in Canada alongside a de facto family, without a parent or legal guardian. Common to refugee families, many children may be orphaned from conflict or natural disasters in their home countries and taken in by other adults or family members.

In many of these cases there has often already been an adoption overseas, but it is not recognized under Canadian legal standards. Under such circumstances, depending on their age and the province/territory in which they are living in Canada, children of such precarious 'families' may be denied citizenship.

Recommendation 2

That a Best Interests Determination (BID)⁶ process be applied to determine the best course of action for migrant children of precarious 'families' who would otherwise be denied citizenship.

LANGUAGE AND KNOWLEDGE TESTING REQUIREMENTS

Bill C-24⁷ proposes to amend subsection 5(2) of the *Citizenship Act* to expand the age requirements of applicants to 14 to 64 (currently 18 to 54) to successfully complete both the language and knowledge requirements. The proposed amendments would effectively put the onus on children aged 14 to 18 to successfully pass both language and knowledge requirements, without additional supports, in order to become a Canadian citizen. The proposed amendments remove the ability of applicants to use the support of interpreters during the testing, including for child applicants.

This shift in age requirements is problematic for immigrant and refugee children for a number of reasons. For instance, language and knowledge testing of children could lead to challenges with reuniting children with their families, and therefore could lead to the deprivation of the child's right to family reunification under the UN Convention on the Rights of the Child (article 10). This measure does not take into account the added stress that such testing may cause, or children's ability to be successful in test environments. In some cases, children may still be facing fear of authority, trauma from their home countries, and other experiences - depending on their

⁶ Best Interests Determination (BID) in relation to unaccompanied and separated children begins, in principle, as soon as an unaccompanied or separated child is identified and ends when the child has obtained a durable solution to the situation of separation and of displacement from country of origin or place of habitual residence.

⁷ Subsection 19(5), Grant of Citizenship.

individual life circumstances and migratory paths – that impair their capacity to successfully take such tests.

It remains unclear as to whether this testing would be properly adjusted to account for these variances in age and experience. The proposed amendments to subsection 5(2) of the *Citizenship Act* note the requirement of demonstrating ‘adequate knowledge’ of one of the official languages and of Canada and accompanying responsibilities and privileges of citizenship, yet it remains unclear what benchmarks would be considered ‘adequate’ under the revised Act. While the interest in promoting integration of older children into Canada seems to motivate the proposed amendments, given some research suggesting older children who lack capacity in an official language may have considerably greater difficulties doing so, this is not a sufficient reason to compromise the Convention rights of children under age 18. The testing process is not a reliable indicator of a child’s ability to become a productive citizen.

In addition to the testing itself, it is not clear whether child applicants between 16 and 18 would be required to pay for their language testing under the proposed amendments. If fees apply to child applicants in this age category, this is an undue burden on them and may add further strain to the family and exceed the family’s financial resources.

Due to these and other potential barriers created for child applicants under the proposed testing requirements, these children should not be held to the same standards as adult applicants.

Recommendation 3

That the proposed amendments requiring children aged 14 to 18 to successfully complete both language and knowledge testing be removed altogether or, at a minimum, that testing be adjusted in a manner appropriate to such children’s age and/or experience.

APPLICATION FEES

Citizenship and Immigration Canada’s *Blueprint for Citizenship Improvements* describes an increase of fees for Canadian citizenship for adult applications from \$100 to \$300, with the \$100 Right of Citizenship fee for successful applicants remaining (for adults only). While this fee increase, effective February 6, 2014, for all adult applicants will increase barriers to citizenship for some, it is likely to have a disproportionately negative effect on refugees and family class immigrants.

While we recognize that the Blueprint did not propose fee increases for citizenship applications for children, the previous fee of \$100 remains. Consistent with the Convention on the Rights of the Child, no fee should be assessed in processes that directly advance the rights of children – whether in education, in birth registration, or in citizenship.

Time and again, in instances where user fees are imposed on basic administrative procedures for children, a significant proportion of children are excluded. For instance, in cases where immigrant and refugee children in care (without parental guardianship and representation) are applying for citizenship, it is unclear who would be willing to pay these administrative costs. It is well documented that unaccompanied children arriving in Canada may spend years socializing into Canadian life but whose citizenship remains precarious.

UNICEF Canada appreciates the impetus behind the cost recovery fee structure; however the cost burden should be exempted for those most vulnerable – children.

Recommendation 4

That the requirement of citizenship application fees for children be eliminated, regardless of whether the application is made by a child or by an adult on behalf of the child.

CITIZENSHIP ELIGIBILITY BY SERVICE

UNICEF Canada commends the extension of the exception to the first-generation limit to citizenship by descent to children born to, or adopted, abroad by parents who were themselves born to, or adopted, abroad by a Canadian parent who served in the Canadian military or worked for the Canadian federal or provincial governments. While this is an important remedy for potential risks for stateless children, it remains unduly narrow in scope.

We recognize the value and importance of extending citizenship for those who serve this country (by extension); however there are a multitude of ways in which Canadians living overseas perform jobs that benefit Canadians and the world, including those men and women engaged in the corporate and non-profit sectors.

The 2012 Concluding Observations on the Convention on the Rights of the Child recommend that Canada:

“...review the provisions of the [April] 2009 amendment to the Citizenship Act that are not in line with the Convention with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents...”⁸

UNICEF Canada is concerned that the amendments, as stated, risk creating statelessness among some children of Canadians, particularly if the country in which they are born similarly does not confer citizenship to them. The Government has publicly stated its intention to ensure that no child is rendered stateless through its legislative reforms. UNICEF Canada urges the Government of Canada to consider including a provision in the law to automatically extend citizenship to any child in these circumstances upon birth if they are not automatically entitled to citizenship in the country in which they are born, as a minimum. However, the preferable measure would be to amend this provision further to offer Canadian citizenship to second generation children born abroad to foreign born Canadian citizens, if other compelling conditions exist – for instance, where a significant connection to Canada exists, as reasonably evidenced by a range of factors.

Recommendation 5

That the Government of Canada further amend and remedy the April 2009 amendments to the *Citizenship Act* beyond exemptions for children born to Canadian parents who work outside the country for the Canadian federal or provincial governments or serving in the Canadian Armed Forces. Such further amendment should grant Canadian citizenship to second generation children born abroad to foreign born Canadian citizens, if other compelling conditions exist, such as where there is reasonable evidence of a significant connection by the second generation child to Canada. At a minimum, such an amendment should ensure that Canadian citizenship is automatically conferred upon children of Canadian parents in circumstances where those children would otherwise be at risk of stateless status.

REVOCATION OF CITIZENSHIP

We acknowledge the government’s ongoing commitment to the United Nations Convention on the Reduction of Statelessness as evidenced by the bill’s recognition that no individual should be left stateless following revocation; however, the revocation provisions of the bill and the

⁸ CRC/C/CAN/CO/3-4 (9).

increased discretionary powers that it affords the Minister of Citizenship and Immigration could leave vulnerable children without sufficient protection.

In the case where these citizenship revocation proposals would be applied to a child's parent of dual nationality, under one of the proposed sanctioning circumstances, this would negatively impact upon the rights and best interests of that child. This process could lead to family separation, where the child may not be a dual citizen and be left in Canada without a parent or legal guardian.

Where these revocation proposals would alternatively be applied directly to a child of dual nationality, this could also negatively impact upon the rights and best interests of that child. In cases where a child is found (or believed to be) guilty of an act found to warrant citizenship revocation, it would not be appropriate to treat that child in the same manner as an adult at the age of majority, given the child's right to survival and development (article 6).

Children in these circumstances would likely not have any familial, linguistic or cultural ties to their family's homeland but could find themselves at risk of having their citizenship revoked without the appropriate channels to challenge the decision and placed in situations where their lives and futures are at considerable risk.

Recommendation 6

That a Best Interests Determination (BID) process be applied in cases where there is potential for family separation following the revocation of a parent's citizenship, where children are involved.

Recommendation 7

That the revocation provisions in the bill not apply to children under the age of 18, regardless of the crime committed, or believed to have been committed, in recognition of the requirement that the best interests of the child shall be a primary consideration in all actions concerning children.

CONCLUSION

In summary, UNICEF Canada recognizes the good intent behind the introduction of Bill C-24 but has concerns, as outlined above, that a number of the provisions set out in the bill have the

potential to negatively affect the well-being and best interests of children and their families. This approach has the potential to divide families, to diminish newcomers' sense of belonging in this country, and to place children in situations of considerable risk, rather than reinforcing the value of Canadian citizenship.

As a State Party to the UN Convention on the Rights of the Child, we encourage the Committee to review Bill C-24 with the best interests of the child in mind, taking particular account of the following articles set out in the Convention: definition of the child (article 1); equality and non-discrimination (article 2); the best interests of the child (article 3); family integrity (article 5); survival and development (article 6); birth registration (article 7); family relations (article 8); protection from arbitrary separation from parents (article 9); and, family reunification (article 10). In many cases, simple amendments to exempt children from the application of these new provisions could achieve these ends.

Respectfully submitted on behalf of UNICEF Canada by:

“MMB”

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APPENDIX 'A' – LIST OF RECOMMENDATIONS

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Recommendation 2

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That the revocation provisions in the bill not apply to children under the age of 18, regardless of the crime committed, or believed to have been committed, in recognition of the requirement that the best interests of the child shall be a primary consideration in all actions concerning children.

APPENDIX 'B' – REFERENCES

Legislation

Canada, *Citizenship Act*, R.S.C. 1985, c. C-29

United Nations/ European Conventions and United Nations Committee on the Rights of the Child Concluding Observations (Canada)

Hague Conference on Private International Law, *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993, 33, available at: <http://www.refworld.org/docid/3ddcb1794.html>.

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<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

UNICEF Reports/Materials

UNICEF Canada, *Bringing Children In From The Margins*, Symposium on Child Rights Impact Assessment, University of Ottawa, May 14, 2013, symposium materials available at

<http://www.unicef.ca/en/article/child-rights-impact-assessment-symposium>.

UNICEF Canada, *What is a Child Rights Impact Assessment?* available at <http://www.unicef.ca/en/policy-advocacy-for-children/what-is-a-child-rights-impact-assessment>.