

Bill C-18: The Citizenship of Canada Act

**Brief submitted to the Standing Committee on Citizenship and
Immigration**

by the International Civil Liberties Monitoring Group

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The coalition

The **International Civil Liberties Monitoring Group (ICLMG)** brings together international development and humanitarian non-governmental organizations (NGOs), church groups, unions, environmental, human and civil rights advocates, other faith groups and associations representing immigrant and refugee communities in Canada as well as Canada's indigenous peoples (a complete list of members appears in Appendix 1).

The ICLMG was created following the adoption of anti-terrorist measures in 2001, when a number of civil society organizations came together to share concerns about the impact of new legislation with regard to civil liberties, human rights, refugee protection, racism, political dissent, governance of charities, international cooperation and humanitarian assistance. The ICLMG was formalized in May 2002 to serve as a roundtable for discussion and exchange and to provide a point of reflection and cooperative action.

The Monitoring Group is composed of organizations vitally engaged in both domestic and international affairs, committed to human rights and democracy and to the protection of the rights and liberties guaranteed by the Canadian constitution. (*See Appendix 1 for list of members*)

Some members of the ICLMG –the Canadian Arab Federation, the Canadian Council for Refugees and the Canadian Ethnocultural Council – have submitted briefs on Bill C-18 to the Standing committee. The ICLMG is deeply concerned by a number of provisions contained in Bill C-18, as they pertain to fundamental issues of due process, fairness, openness, equality and civil liberties and recommends amendments so that the future *Citizenship of Canada Act* complies with international norms.

This is the third bill to introduce new citizenship legislation in the past four years. It approaches the notion of citizenship in a fundamentally different way. Citizenship is now seen as a privilege, subject to a ministerial decision, rather than a right with due process protection. It is significant as it shifts the determination role away from citizenship judges to the minister's jurisdiction. It also creates two categories of citizens: those who are automatically entitled to citizenship and those who may, within five years of acquiring it, be stripped of it without access to due process.

Revocation of Citizenship by Certificate

Bill C-18 allows a Federal Court judge to revoke a former immigrant's citizenship on the grounds of national security, violation of human or international rights or organized crime, without that person being allowed to see the evidence against her or him. The ruling cannot be appealed or be subject to judicial review.

This new provision mirrors the inadmissibility provisions in the recently adopted *Immigration and Refugee Protection Act (IRPA)*, which was widely condemned by many groups, including the Canadian Bar Association and the Canadian Council for Refugees. A ruling that a person is inadmissible on one of these grounds (security, violation of human or international rights or organized crime) automatically becomes a removal order

under IRPA, without further hearings. It is significant that the provisions of IRPA which allow the use of secret evidence against permanent residents or foreign nationals would now be used against Canadian citizens.

The coalition is also concerned that under Bill C-18, the Court will not be bound by any technical or legal rules of evidence when assessing whether a person is not admissible for citizenship. The Court will be allowed to receive and base its decision on any evidence it considers “credible or trustworthy.”

These provisions are clearly inadequate as they do not allow a person facing revocation of citizenship to the due process of law. They contravene the equality section of Canada’s *Charter of Rights and Freedoms*; citizens who have acquired their citizenship as a result of immigration can lose it, without being apprised of the evidence against them, a process that citizens born in Canada are spared.

The provisions raise concerns not only with respect to actual uses that may be made of them but also because of the risk of intimidation. Naturalized citizens may feel intimidated by these powers, fearing that if they speak or act in ways that offend the government, these provisions could be used to strip them of their citizenship without their ever having a chance to know the evidence against them.

The ICLMG believes that such provisions cannot be allowed to be part of the *Citizenship of Canada Act*, and that Section 17 should be removed from Bill C-18.

Annulment of Citizenship

Under Section 18, Bill C-18 grants broad new powers to the Minister to issue an annulment order to revoke the citizenship of a former immigrant within five years of the person becoming a citizen. The Minister will merely have to be “satisfied” that the person was ineligible, or used a false identity. The citizen is not, according to the law, entitled to know the full case against him or her (the bill says only that a “summary of grounds” must be provided) and won’t have an opportunity to defend him or herself in an open hearing.

The Minister’s decision would be reviewed by the Federal Court; however the grounds of review would be considerably narrower than if an appeal were allowed on the merits. In fact Federal Court review will be virtually meaningless because of the “satisfied” standard. It is only in extraordinary cases that a judge could find that the Minister was not entitled to be satisfied.

This is an unacceptable procedure. There may be a situation where information provided by an informant may be biased or false, the result of a grudge or political conflict, or a consequence of a foreign government’s practice of persecuting dissidents.

Revocation or annulment of citizenship is one of the most serious penalties that a state may invoke against its citizens. The consequences are critical: immediate loss of all

rights of citizenship which may lead to statelessness, deportation from Canada and possibly life-threatening situations. Thus, the decision must be made by an independent decision-maker and based on at least a balance of probabilities, not merely whether the decision-maker is satisfied.

The ICLMG recommends that this section be deleted. Any cases where the government believes that citizenship was wrongly acquired can be very adequately dealt with through the Section 16 revocation process.

New Broad Powers to the Federal Cabinet

Bill C-18 also gives the federal Cabinet new power to deny citizenship on the grounds that the person has “demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic society.” Although the government has cited as potential cases, hate-mongering or human rights violators, the “principles” and “values” are not defined and remain open to a wide variety of interpretations.

This section is worrisome as it sets the stage for a case where an immigrant could be refused citizenship for participating in any legal activities that the Cabinet considers evidence of “disregard for the principles and values.” The decision to refuse citizenship could be open to outside political influence and future governments may have very different ideas of who should or should not become a citizen of Canada.

It is quite ironic in fact that such a cabinet decision would be taken in secret without due process, clear standards or remedy, while most Canadians believe that “the principles and values underlying a free and democratic society” require due process and fair treatment.

The ICLMG is convinced that such a provision cannot meet the test of fairness and recommends that Sections 21 and 22 be set aside.

Conclusion

With this third attempt to craft a new *Citizenship Act*, we are noticing an important shift away from an independent rules-based system to one relying heavily on secret information, closed doors processes and life-threatening decisions making, based on satisfaction, rather than proof and evidence.

Bill C-18 is yet another piece of legislation introduced by the current government which seeks to restrict the rights of its citizens to fair and impartial processes in the name of security and secrecy. While national security concerns are legitimate, there needs to be some balance that includes a fair and transparent hearing with a right of appeal.

As Gordon Maynard, Vice-Chair of the National Citizenship and Immigration Section of the Canadian Bar Association told your committee in November 2002, “Canadians will not tolerate ‘star chamber’ hearings.”

Recent security legislation, whether Bill C-36, Bill C-23, Bill C-17 and Bill C-18, appear to have been drafted in haste with no (or little) consideration to fundamental and universal human rights law, including the *Charter on Human Rights* and Canada's own *Charter on Rights and Freedoms*.

The common thread of secrecy and broad stroke-legislation may be designed to respond to a perceived need to move swiftly to remove undesirable individuals from Canada who may have obtained their citizenship illegally or through misrepresentation, in this current climate of fear of war and terrorism. Ignoring balance and legal safeguards is not the solution.

Unfortunately, the events of September 11 have led some to believe that weakening legal safeguards and trampling on human rights will make us all safer. In fact, we are made safer by laws and processes that guarantee the respect of everyone's rights.

It is evident that Canada continues to be under pressure from its neighbour to the South to review our laws and practices in order to combat terrorism and tighten security by emulating such initiatives as the Homeland Security Project, the National Security Entry-Exit Registration System and the profiling and registering of certain persons. Flaunting due process, creating two classes of Canadian citizens and relying on secret and untested information to deal with these issues will only contribute to undermine democracy and erode Canadians' confidence in their government.

APPENDIX 1

The current members of the ICLMG are:

Amnesty International Canada
Association québécoise des organismes de coopération internationale (AQOCI)
B.C. Freedom of Information and Privacy Association
Canada Arab Federation
Canadian Association of University Teachers
Canadian Auto Workers Union
Canadian Bar Association
Canadian Centre for Philanthropy
Canadian Council for International Co-operation (CCIC)
Canadian Council for Refugees
Canadian Ethnocultural Council,
Canadian Friends Service Committee
Canadian Labour Congress (CTC)
CARE Canada
Centre for Social Justice
Council of Canadians
Canadian Catholic Organization for Development and Peace
David Suzuki Foundation
Greenpeace
International Development and Relief Foundation
Inter Pares
Ligue des droits et libertés (Québec)
Muslim Lawyers Association
Ontario Council of Agencies Serving Immigrants
Primate's World Relief and Development Fund
Rights & Democracy
United Steelworkers of America
World Vision Canada

Friends of the ICLMG

Hon. Warren Allmand; Mr. Allmand is a former Solicitor General of Canada and the immediate past president of "Rights and Democracy".

Hon. Edward Broadbent; Mr. Broadbent is a former leader of Canada's New Democratic Party. He was the first president of the International Center for Human Rights and Democratic Development now known as "Rights and Democracy".

Hon. Gordon Fairweather; Mr. Fairweather is the first chief commissioner of the Canadian Human Rights Commission. He has been Attorney General of New Brunswick and a member of the Canadian House of Commons.

Hon. David MacDonald; Mr. MacDonald is a former Canadian Secretary of State and Minister of Communications. Mr. MacDonald has been Canada`s ambassador to Ethiopia.

Hon. Flora Mcdonald; Ms. MacDonald is a former Canadian Minister of Foreign Affairs and a former Minister of Communications.

The Very Reverend the Honorable Lois Wilson; Lois Wilson is a former Moderator of the United Church of Canada and a recently retired member of the Canadian Senate.