

[A Missed Deadline: Understanding The Pathway Toward Citizenship For Second Generation Canadians Under Bill C-71](#)



Canadian citizenship embodies opportunity, diversity, multiculturalism, and freedom. It provides a lifelong connection to Canada, offering numerous advantages such as universal healthcare, voting rights, access to quality education, and the ability to travel freely on a Canadian passport with limited restrictions.

Until recently, only individuals born outside Canada with at least one Canadian born parent were eligible to apply for Canadian citizenship by descent. Or, someone born abroad with a naturalized Canadian parent (not Canadian born) could also apply.

On December 19, 2023, however, the Ontario Superior Court of Justice decided in a landmark ruling, [Bjorkquist et al. v. Attorney General of Canada](#), that the “second-generation cut-off” rule at section 3(3)(a) of the Canadian *Citizenship Act* is unconstitutional, and as of June 19, 2024, will be of no force and effect. In response, the Canadian Government accepted the ruling and The Honourable Marc Miller, Minister of Immigration, Refugees and Citizenship Canada (IRCC) pledged to overhaul the impugned provisions by the deadline of June 19, 2024.

Approximately five months after the initial Court ruling, in May 2024, *Bill C-71, an Act to amend the Citizenship Act (2024)*, was tabled in order to address the *Bjorkquist* decision and restore citizenship rights to lost Canadians. This new legislation, which passed its first reading in the House of Commons, proposes the introduction of a *Substantial Connection* test in order for Canadian parents born abroad, who acquired citizenship by descent, to pass their citizenship to their children or adopted children born abroad.

This test requires the Canadian parent to demonstrate they have accumulated at least 1,095 days in Canada prior to the birth or adoption of their child. If met, the child would be eligible to apply for a grant of Citizenship. The Honourable Minister Marc Miller announced this bill as the Government’s attempt to “extend citizenship by descent beyond the first generation in a way that is inclusive and upholds the value of our citizenship.”

While Bill C-71 is on its face an exciting, expansive change that stands to benefit hundreds of thousands of Canadians potentially, the issue remains for IRCC that the new law has not yet come into effect by the Court’s initial deadline of June 19,

2024.

The recent Ontario Superior Court of Justice decision from June 19, 2024, ordered the Government pay approximately \$35,000 to account for the missed deadline and commented: “the unconstitutional law remains on the books and continues to interference with the Charter right of Canadians to make important decisions about where to live, and where and when to have children.”

Ultimately, however, the Court did grant an extension of the suspension of the declaration of invalidity related to section 3(3)(a) of the *Citizenship Act* until **August 9, 2024**, to avoid any legislative gap and to ensure that the Government can make measured policy choices in repairing the unconstitutional provisions.

New updates from IRCC will likely be available closer to August 1, 2024, when the matter returns to the Court to consider the need for a further extension. Importantly, the deadline has the potential to be further extended until December 19, 2024.

It is worth noting that, in the interim, the Government has put a temporary mechanism in place while waiting for Bill C-71 to become law. Under this mechanism:

1. applications of those seeking proof of citizenship who may be subject to current limits under the unconstitutional law will be de-prioritized so that they can be considered under the new law once it is passed;
2. applications may be urgently processed under s.5(4) of the *Citizenship Act*, which permits the Minister to grant citizenship to alleviate cases of statelessness or of unusual hardship or to reward services of an exceptional value to Canada;
3. application referrals for urgent processing will be determined by IRCC staff, considering the applicable guidelines.

Green and Spiegel would be happy to advise on any of these types of applications and will provide further updates from the Government in relation to Bill C-71 as they are released closer to August 1.

Co-authored with Faith Davis who is a Summer Law Student with Green and Spiegel LLP in Toronto.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: [Peter Salerno, B.A., J.D.](#)

Green and Spiegel