Canada Introduces New Bill To Restore Citizenship By Descent



On May 23, 2024, the Canadian Government introduced Bill C-71, An Act to amend the Citizenship Act, which significantly changes the framework for citizenship by descent. This legislation responds to the December 2023 Ontario Superior Court ruling that declared the first-generation limit for citizenship by descent unconstitutional. For details of the Ontario Court of Justice's ruling on the unconstitutionality of the second-generation cut off rule, please refer to our previously published article "Ontario's Superior Court Of Justice Found The Second-Generation Cut-Off Rule Unconstitutional".

Key Provisions of Bill C-71

Removal of First-Generation Limit

The first-generation limit prevented Canadian citizens born outside Canada from passing on citizenship to their children born abroad. Bill C-71 automatically remedies the status of those already affected by this limit, granting them citizenship retroactively. Once passed, the Bill will extend automatic citizenship to anyone who was born outside of the country to a Canadian parent before the legislation comes into force. This change directly addresses those who were unfairly excluded under the old rules, ensuring they receive the citizenship status they are entitled to.

Establishing Substantial Connection

The new legislation introduces a "substantial connection" test, allowing Canadian parents born abroad to pass on citizenship to their children born abroad beyond the first generation if they can demonstrate a substantial connection to Canada. This is defined as having a cumulative 1,095 days (three years) of physical presence in Canada before the birth or adoption of the child.

Addressing the Issue of "Lost Canadians"

The term "Lost Canadians" refers to individuals who lost or never acquired citizenship due to outdated provisions in former citizenship laws. Previous amendments in 2009 and 2015 resolved many such cases, but some individuals and their descendants remained excluded. Bill C-71 aims to restore citizenship to these remaining "Lost Canadians", including their descendants, and anyone born abroad to a

Canadian parent in the second or subsequent generations before the legislation comes into force. This includes those who lost citizenship under the former section 8 of the Citizenship Act. These generally include people born as the second generation abroad between February 15, 1977, and April 16, 1981, who turned 28 before the first-generation limit was introduced in 2009.

Implications of the New Law

For Canadian families living abroad, the new legislation brings practical benefits. It eliminates the uncertainty and administrative hurdles previously faced when trying to secure citizenship for their children. This ease of process can be particularly comforting for families considering long-term plans that involve both their country of residence and their connection to Canada.

By addressing the limitations of the first-generation rule, Bill C-71 ensures that Canadian citizens, regardless of their place of birth, can pass on their citizenship to their children, provided that they have spent at least 3 years in Canada before the birth or adoption of their children.

Once the new law is passed, it will likely lead to an increase in citizenship applications from those who were previously ineligible. This could result in a higher administrative load for Immigration, Refugees, and Citizenship Canada (IRCC), necessitating efficient handling procedures to accommodate the likely surge in applications.

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: Pauline Fong

Harvey Law Group (HLG)