

Global Immigration alert

June 2024

Canada

Government of Canada introduces legislation for citizenship by descent

Executive summary

The Honourable Marc Miller, Minister of Immigration, Refugees and Citizenship (IRCC), has proposed legislation, referred to as Bill C-71, an Act to amend the Citizenship Act (2024) (Bill C-71) that would extend Canadian citizenship by descent beyond the first generation in a manner that is intended by the government to be both inclusive, while still safeguarding the integrity of Canadian citizenship.

Bill C-71 is also designed to reinstate citizenship for “Lost Canadians”—individuals who either lost their Canadian citizenship or were never able to acquire it due to citizenship laws previously in place.

Background

With extremely rare exception, anyone born in Canada is a Canadian citizen upon birth, and the proposed change in Bill C-71 will not alter this in any way. Instead, the proposed legislative change is intended to address citizenship by descent for a person who is born outside of Canada. The current Citizenship Act includes a limitation that restricts citizenship by descent to the first generation. This means that a Canadian citizen can only transfer citizenship to their children born overseas if the parent was either born in Canada or had obtained Canadian citizenship through naturalization before the birth of the child. Canadians who were born or naturalized in Canada have the option to seek a direct grant of citizenship for their adopted children born abroad.

Because of this first-generation restriction, Canadian citizens who were born outside of Canada do not have the ability to

pass on citizenship to their children if they were also born abroad. Additionally, these Canadian citizens are not permitted to request a direct grant of citizenship for a child who was born and adopted outside of Canada.

Furthermore, under the previous section 8 of the Citizenship Act, certain individuals lost their citizenship when they reached the age of 28, referred to as Lost Canadians. This typically affected those born to Canadian parents abroad as the second generation from 15 February 1977 to 16 April 1981, who reached the age of 28 prior to the establishment of the first-generation limit in 2009.

Some legislative revisions in 2009 and 2015 resolved many of these cases by enabling individuals to either acquire Canadian citizenship or reclaim the citizenship they had lost. However, there remain some situations where so-called “Lost Canadians” exist, and these proposed legislative changes are meant to address this.

Key developments

- ▶ On 19 December 2023, the Ontario Superior Court of Justice ruled that the first-generation limit on citizenship by descent was unconstitutional. This limit generally restricted the right to pass on Canadian citizenship to children born abroad to Canadian parents to just the first generation, albeit with certain exceptions. The Government of Canada chose not to appeal this decision, and acknowledged the unfairness of the first-generation limit.

- ▶ On 23 May 2024, the Honourable Marc Miller proposed Bill C-71 which is intended by the government to make the citizenship process fairer and more transparent. Bill C-71 would:
 - ▶ Automatically grant Canadian citizenship to children born or adopted abroad by Canadian parents to receive a direct grant of citizenship, beyond the first-generation limit. Once the legislation is enacted, Canadian parents born abroad must have lived in Canada for a total of 1,095 days before the birth or adoption of their child to pass on citizenship.
 - ▶ Restore citizenship to any remaining 'Lost Canadians', their descendants and anyone who was born abroad to a Canadian parent in the second or subsequent generations before the legislation comes into force. This includes people who lost their citizenship because of requirements under the former section 8 of the Citizenship Act.

What's next?

The Minister indicated that further details would be forthcoming upon the Bill's passage through Parliament and its subsequent Royal Assent. As Parliament does not sit during the summer break, it is anticipated that Bill C-71 will not be voted on until later in 2024.

Individuals potentially affected by the proposed amendments in Bill C-71 are likely to seek clarity on the implications for themselves and their relatives. Should the Bill be ratified by Parliament and receive Royal Assent, the Canadian immigration authorities intend to expedite the implementation of these changes. IRCC will also update the Canadian immigration website with more detailed information for those who are eligible.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

Follow up on Twitter @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit EYLaw.ca.

© 2024 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 005881-24GbI

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Stephanie Lipstein, Partner
+1 514 874 4610
stephanie.lipstein@ca.ey.com

Author:
Zainab Jamal, Senior Associate Lawyer
+1 416 943 5622
zainab.jamal@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Nadia Allibhai, Partner
+1 613 598 4866
nadia.allibhai@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com

Melanie Bradshaw, Partner
+1 416 943 5411
melanie.bradshaw@ca.ey.com