



HOUSE OF COMMONS  
CANADA

# **CITIZENSHIP REVOCATION: A QUESTION OF DUE PROCESS AND RESPECTING CHARTER RIGHTS**

## **Report of the Standing Committee on Citizenship and Immigration**

**Hon. Andrew Telegdi, M.P.  
Chair**

**June 2005**

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PROCESS AND RESPECTING CHARTER RIGHTS**

**Report of the Standing Committee on  
Citizenship and Immigration**

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# **THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION**

has the honour to present its

## **TENTH REPORT**

In accordance with its permanent mandate under Standing Order 108(2), your committee has conducted a study *Citizenship Revocation* and reports its findings:



## ACKNOWLEDGEMENTS

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The Committee could not have completed its study *Citizenship Revocation: A Question of Due Process and Respecting Charter Rights* without the cooperation and support of numerous people. The Chairman and members of the Committee extend their thanks to all the witnesses who shared with them their insight and their knowledge on this subject.

Our task could not be completed without the valuable work of the Analyst of the Parliamentary Information and Research Services, Library of Parliament, Benjamin Dolin. The Committee also wishes to acknowledge the Clerk, William Farrell, and Denyse Croteau for the administration and support throughout the course of this study.

The members of the Committee also wish to express their appreciation to the staff of the Translation Bureau of Public Works and Government Services Canada, the Department of Citizenship and Immigration staff and the support services of the House of Commons Committee Directorate who have provided logistic and administrative support to elaborate this report.

Finally, the Chairman wishes to thank the members of the Committee for the hours they dedicated to study this question and to prepare this report.



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# **CITIZENSHIP REVOCATION: A QUESTION OF DUE PROCESS AND RESPECTING CHARTER RIGHTS**

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## **INTRODUCTION**

When the House of Commons Standing Committee on Citizenship and Immigration first organized at the beginning of this Parliament, we determined that a study of Canada's citizenship laws would be our first priority. The current *Citizenship Act* came into force in 1977 and although the necessity of revising this legislation has been widely recognized since the late 1980s, attempts to amend and update the law have faltered. A government discussion paper led to a report by this committee in 1994. That was followed by a series of bills, all of which died on the *Order Paper*, the last being Bill C-18 in the 37th Parliament. At the beginning of the 38th Parliament, then-Minister Judy Sgro requested input from the Committee prior to the tabling of a new bill that was projected to be introduced this spring. In November 2004, the Committee tabled a report entitled *Updating Canada's Citizenship Laws: Issues to be Addressed*. In that report, the Committee identified the citizenship issues that we believed were most pressing.

Unfortunately, the government has not chosen to introduce a bill to date. Like his predecessor, the new Minister Joseph Volpe has requested this committee's input on various matters. Specifically in the context of citizenship revocation, he asked: "What are the appropriate reasons to remove citizenship and what process would be most appropriate?"<sup>1</sup> This report will address that question.

The Committee has decided to report only on citizenship revocation before the summer break of the House of Commons. However, we do intend to table a comprehensive report on all citizenship matters upon our return this fall. Given the importance of the issue of revocation, we felt it necessary to provide our advice at the earliest opportunity.

## **THE STUDY**

On 28 October 2004, the Committee passed a motion providing that the evidence and documentation presented to the Committee during the 36th Parliament and the Second Session of the 37th Parliament in relation to the study of citizenship legislation be deemed received by the Committee in this session. We reviewed this material and it formed the basis for our November 2004 report. Since that time, we have also heard presentations from witnesses in

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<sup>1</sup> Minister Volpe's letter to the Committee is attached as Appendix A to this report.

Ottawa, including officials with Citizenship and Immigration Canada (CIC), and in April 2005 the Committee traveled the country, visiting all the provincial capitals as well as Calgary, Montreal, Vancouver and Waterloo. While citizenship was just one of three issues being studied in the course of our cross-Canada consultation, a large number of Canadians came forward to provide their views on a new *Citizenship Act*. In total, we have heard from 131 witnesses on the issue of citizenship during this Parliament.

## **THE CURRENT CITIZENSHIP REVOCATION PROCESS**

The current *Citizenship Act* provides that the Governor in Council may make an order that a person ceases to be a citizen where the person obtained citizenship or permanent residence by false representation, fraud, or by knowingly concealing material circumstances. The order can only be made following a report of the Minister of Citizenship and Immigration. The Act sets out the procedure the Minister must follow, beginning with notice to the individual. The person may request that the Minister refer the case to the Federal Court. If referred, a judge of the Court must agree that, on a balance of probabilities, the person improperly obtained citizenship before the Minister may make a report to Cabinet.

The vast majority of witnesses argued that there is an appearance that this process is unduly political as the Governor in Council makes the final decision on revocation. Most agreed that moving the power of revocation from Cabinet to the courts is necessary. On this, the Committee agrees. After careful deliberation, the Committee has identified the key issues involved in the revocation process and makes the following comments and recommendations.

## **THE MEANING OF CITIZENSHIP**

Citizenship — particularly the potential loss of citizenship — evokes strong emotional responses. In the course of our hearings, many witnesses spoke passionately about what their Canadian citizenship means to them. Naturalized Canadians who testified before the Committee were particularly emphatic about their attachment to Canada and their fear that their citizenship status is somehow different from those born in the country.

While citizenship carries with it certain rights and responsibilities, it is also highly symbolic. It is an expression of common values and collective aspirations. It is abundantly clear to the Committee that Canadian citizenship is not something to be treated lightly and, thus, the revocation of citizenship must be very carefully proscribed.

Even if it might be acceptable to make the acquisition of citizenship difficult, it is not acceptable to make the revocation of citizenship easy. — Witness Submission

## **THE COMMITTEE'S PROPOSAL**

### **A. Grounds for Revocation**

The Committee agrees that the grounds for revocation should not be changed. False representation or fraud or knowingly concealing material circumstances in an application for citizenship or in the initial application for permanent residence should continue to be the basis for citizenship revocation.

The witnesses appearing before the Committee were practically unanimous in stating that conduct after the grant of citizenship should not be taken into account. We understand that some countries do permit revocation based on offences such as treason or terrorism, but the majority of the Committee is of the opinion that once citizenship is properly granted, any future conduct should be addressed through Canada's criminal justice system. If citizenship is legitimately awarded and there is no question as to fraud in the application process, a person who later commits a crime is "our criminal."

### **RECOMMENDATION 1**

**Revocation should be based on false representation or fraud or knowingly concealing material circumstances in the application for citizenship or in the application for permanent residence. A person's conduct after being granted citizenship should not be relevant to revocation.**

### **B. Procedure**

There was considerable debate regarding the appropriate procedure to be established for citizenship revocation. Most witnesses argued that the current Act is problematic in that the power of revocation lies with the Governor in Council. The Committee agrees that a fully judicial process would be preferable. Leaving the final decision to the Cabinet fosters a perception that the process is neither fair nor transparent.

We note as well that the government demonstrated a desire to move in this direction in Bill C-18, which would have removed the involvement of the Governor

in Council in revocation matters. However, Bill C-18 and its two predecessors would also have granted a new power to be exercised at the discretion of the Minister of Citizenship and Immigration: the power to annul citizenship. A limited period of applicability was provided in Bill C-18 — the power would have to be exercised within five years of the original citizenship decision —and the person would be given notice regarding the proposed order, after which he or she could make representations to the Minister. There would not have been a formal hearing and no appeal of an annulment order would have been permitted.

As noted in our November 2004 report, if the intention is to move to a fully judicial revocation process in an effort to remove the perception of unfairness inherent in the current system, it would seem anomalous to create an administrative revocation power from which no appeal would be permitted.

## **RECOMMENDATION 2**

**The process for revoking citizenship should be exclusively a judicial process.**

## **RECOMMENDATION 3**

**There should be no provision in the law for an administrative power to annul citizenship.**

### **C. Standard of Proof**

The appropriate standard of proof to be applied in revocation proceedings was a crucial issue for the Committee. Some witnesses argued in favour of maintaining the current civil standard of a balance of probabilities. Others pointed to the *Oberlander* and *Odynsky* cases<sup>2</sup> and argued that the civil standard of proof resulted in unfair decisions; in both cases, the Court found that there was no evidence that either had participated personally in any atrocities but that it was “more probable than not” that they had been asked about their wartime activities and had not been truthful. The concerns of some witnesses and Committee members were compounded by the fact that no appeal of the Federal Court decision is permitted under the current Act.

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<sup>2</sup> *Minister of Citizenship and Immigration v. Helmut Oberlander*, [2000] F.C.J. No. 229 (T.D.); *Minister of Citizenship and Immigration v. Wasyl Odynsky*, [2001] F.C.J. No. 286 (T.D.).

...[A] person who has been charged with shoplifting is afforded more rights under our law than the citizen who faces revocation of his or her citizenship. — Witness Testimony

The majority of the Committee agrees that the current standard of proof is too low. In stripping someone of something as fundamental to their identity as their citizenship, we feel that the government should be required to meet a more onerous burden. Some witnesses argued that a higher civil standard should be legislated and suggested that “clear and convincing evidence” of fraud should be required. Others advocated for moving to the criminal standard of proof beyond a reasonable doubt. Given the importance of citizenship — some witnesses indicated that they would choose incarceration over losing their citizenship — the majority of the Committee has agreed that the criminal standard would be appropriate. Indeed, the offence of false representation, fraud or knowingly concealing material circumstances already exists in the *Citizenship Act* independently of the revocation provisions. A charge under section 29 of the Act would result in a criminal court process. The majority of the Committee believes that this is the appropriate procedure to invoke for revocation and we recommend that revocation be tied to the offences of false representation, fraud or knowingly concealing material circumstances in an application for permanent residence or citizenship.

I ask those honourable members of this Committee who were born in other countries than Canada, do you want to be exposed to a political process that can destroy your family and everything you have worked for since coming to Canada in good faith? For me, as a landed immigrant, the risk of being separated from my Canadian-born wife and my Canadian-born children on fabricated allegations is far too great to consider at this stage trading in my first class European citizenship for a second class Canadian one. — Witness Testimony

#### **RECOMMENDATION 4**

**To revoke citizenship, false representation or fraud or knowingly concealing material circumstances should be proven beyond a reasonable doubt in a criminal court.**

The question of the applicability of the Canadian Charter of Rights and Freedoms to revocation proceedings — in particular section 7 — has also been discussed in the course of our hearings. With respect to the argument that revocation does not infringe one’s security of the person and thus does not engage section 7 of the Charter, the Committee cannot agree. We note the recent

judgment of the Honourable Mr. Justice R.D. Reilly of the Ontario Superior Court in *Oberlander*<sup>3</sup> who stated:

There can be no question that the revocation of citizenship, particularly in the circumstances of this case, triggers s. 7 of the *Charter*. A revocation of citizenship engages both liberty interests and security of the person....In sum, I can think of no consequence, apart from a sentence of several years imprisonment in a penitentiary, which would be more significant to a responsible citizen than the loss of that citizenship.

The legal protections of the Charter must apply to revocation proceedings.

## **RECOMMENDATION 5**

**The legal protections of the Canadian Charter of Rights and Freedoms — specifically section 7 to 14 — must apply to citizenship revocation proceedings.**

### **D. Evidentiary Questions**

As we have recommended that revocation proceedings be dealt with in the criminal justice system, the normal criminal rules of evidence should apply.

Bill C-18 had proposed a special revocation process for those accused of terrorism, war crimes or organized crime. The process would have allowed for the protection of sensitive information in these cases when a judge determined that disclosure could be injurious to national security or to the safety of any person. The subject of the revocation proceeding would be given only a summary of the evidence, with the judge excluding any information deemed to be sensitive. This procedure mirrored the provisions in sections 76-81 of the *Immigration and Refugee Protection Act* relating to the protection of information on security grounds. As in “standard” revocation proceedings, it was anticipated that the revocation decision would be made on the balance of probabilities. However, no appeal or judicial review would be permitted.

As noted in our November 2004 report, the witnesses who addressed this process objected to it most strenuously, arguing that it violates the most basic tenets of due process. The Committee understands that court challenges have been made in the immigration context. While the security certificate process has been upheld thus far, other cases are still pending. In our last report we suggested waiting for the results of the reviews of the *Anti-terrorism Act* that are currently

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<sup>3</sup> *Helmut Oberlander v. Attorney General of Canada and The Minister of Citizenship and Immigration*, 2004 CanLII 15504 (ON S.C.)

underway in the House of Commons and the Senate.<sup>4</sup> While some members of the Committee have concluded that the process is so troubling that it should not be invoked for citizenship revocation cases — indeed, some would like to see it removed from the *Immigration and Refugee Protection Act* — the majority of the Committee has decided that we should wait for the House of Commons and Senate committees that are studying this issue to table their reports. Pending their recommendations, the Committee reiterates that it would not be appropriate to include a security certificate process in Canada's *Citizenship Act*. However, we wish to make clear that the introduction of a new *Citizenship Act* should not be delayed pending these reports.

#### **RECOMMENDATION 6**

**The criminal rules of evidence should apply to citizenship revocation proceedings.**

#### **RECOMMENDATION 7**

**The government should not include a security certificate process for citizenship revocation proceedings in its proposed new *Citizenship Act*, but may consider such a process after the House of Commons and Senate committees who are reviewing the *Anti-terrorism Act* report on the issue of immigration security certificates.**

### **E. Appeal Rights**

Under the current legislation, no appeal is permitted from the decision of a Federal Court that a person has obtained citizenship by false representation or fraud or by knowingly concealing material circumstances. Given the numerous widely publicized cases involving wrongful criminal convictions, we are very cognizant of the possibility of error. The Committee sees no reason to preclude an appeal of a revocation order. It would help to ensure the integrity of the revocation process. We further note that Bill C-18 would have permitted an appeal to the Federal Court of Appeal and, with leave, to the Supreme Court of Canada.

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<sup>4</sup> Although the *Anti-terrorism Act* does not contain the security certificate provisions, both the House of Commons and Senate committees have decided to review the process as part of the general context of anti-terrorism measures.

Much depends upon the cosmic coincidence of what judges are sitting on what cases at what time. — Witness Testimony

## **RECOMMENDATION 8**

**There should be no special limits placed on the right to appeal a decision of a court that has made a finding of false representation or fraud or knowingly concealing material circumstances.**

### **F. The Final Order**

Once a finding has been made by a judge that the Crown has proven beyond a reasonable doubt that a person acquired citizenship based on false representation or fraud or knowingly concealing material circumstances, the Committee believes that there should be some flexibility in determining the consequences. To begin with, the majority of the Committee is of the opinion that revocation should not automatically result from a finding of guilt. The trial judge should be given the option of ordering revocation of citizenship or another punishment, such as a fine or period of incarceration, based on the particular circumstances of the case.

Many witnesses also argued that there should be a temporal limit placed on revocation. That is, after a certain period of time in Canada, a person should be able to be secure in their status as a citizen and revocation should not be permitted. The Committee was divided on this issue.

...as a naturalized citizen, I exhort you to address the issue of fairness and the equality of all citizens. We live in fear, actually, that one day there's going to be a rule, and our citizenship will be taken away from us. This is very undermining to us as citizens... — Witness Testimony

Since revocation is pursued in so few cases, some Committee members feel that the six million naturalized Canadians should not be concerned about the possibility of having their citizenship revoked. As for those who committed egregious crimes before entering Canada and lied about their past, they *should* be constantly looking over their shoulder and worrying about their crimes catching up to them. Committee members opposed to any temporal limitation on revocation also argued that people should not be able to benefit from their fraud simply because they were able to get away with it for a long enough period of time.

On the other side of the argument, some Committee members suggested that after a certain amount of time, the government has to take responsibility for its decision to grant citizenship. Keeping the possibility of revocation open indefinitely to address a very small minority of naturalized citizens creates uncertainty for the millions of others.

You never feel quite the same as the persons born here. Every time you see the question arising about conditions under which your citizenship could be revoked...[t]he question that comes up is: how long is enough? How long before I become a real Canadian? I have Canadian-born children. They can do anything, but when is it that I'm going to be here permanently? — Witness Testimony

The Committee realizes that no citizenship screening process can be foolproof and has therefore rejected the suggestion made by some witnesses that citizenship should be completely irrevocable once granted. In our discussions about establishing a limitation period for citizenship revocation, some Committee members suggested that a five year window would be appropriate. At the end of the day, however, it was agreed that as long as proof beyond a reasonable doubt is required for revocation and an appeal process exists, there is no pressing need to set a limitation period on commencing revocation proceedings.

The Committee has also been asked to address the prospect that citizenship revocation may render some individuals stateless. As witnesses pointed out, statelessness has been increasing in recent years, leaving many people in legal limbo, often without rights in their country of residence and no possibility of emigrating elsewhere. They argued that Canada should be playing a leading role in reducing statelessness and that our *Citizenship Act* should conform to this objective. That said, the Committee understands that it is permissible in international law — more specifically, under the Convention on the Reduction of Statelessness<sup>5</sup> — for a person to be rendered stateless when their citizenship was acquired by fraud.

The Committee has decided that the potential of rendering someone stateless should not preclude initiating revocation proceedings. If a person has obtained citizenship fraudulently, they should not be permitted to retain their ill-

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<sup>5</sup> Convention on the Reduction of Statelessness, 989 *U.N.T.S.* 175, entered into force December 13, 1975.

Article 8 provides as follows:

1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.
2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:
  - (a) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;
  - (b) Where the nationality has been obtained by misrepresentation or fraud.

gotten status simply because revocation might leave them stateless. We also note that the government has the ability to grant status for non-deportable stateless persons, allowing them to work and study in Canada.

Finally, the Committee has been asked to address the question of deportation of those whose citizenship is revoked. Currently, if a person's citizenship is revoked, a second process must be commenced in the Immigration Division of the Immigration and Refugee Board for a declaration that they are inadmissible to Canada. Bill C-18 would have permitted the Minister to seek a second judgment from the Federal Court regarding inadmissibility after a ruling that the person's citizenship was revoked and many witnesses were supportive of streamlining the removal process. The Committee believes that some sort of procedural consolidation would be logical. In cases where revocation is ordered based on false representation or fraud or knowingly concealing material circumstances in an application for *permanent residence*, the Committee believes that the judge should also be able to issue a deportation order against the individual. In other situations, the person's status would revert to that of permanent resident and CIC could initiate removal proceedings based on the *Immigration and Refugee Protection Act*, if merited.

When deportation is being considered, the Committee wants to ensure that Canada's commitments under the Convention against Torture (CAT) are upheld. Canada has ratified the CAT which explicitly prohibits state parties from returning people to torture. Article 3(1) states:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Under no circumstances are states permitted to deviate from this absolute prohibition. Article 2(2) of the CAT reads:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Both Human Rights Watch and Amnesty International have recently reported on this issue and the United Nations Committee against Torture has voiced its concerns regarding Canadian practice. Specifically, the United Nations Committee stated:

The Committee expresses its concern at...the failure of the Supreme Court of Canada in *Suresh v Minister of Citizenship and Immigration* to recognise,

at the level of domestic law, the absolute nature of the protection of article 3 of the Convention that is subject to no exceptions whatsoever...<sup>6</sup>

The U.N. Committee recommended that Canada unconditionally undertake to respect the absolute nature of Article 3 in all circumstances and fully incorporate the provision of Article 3 into domestic law.

We agree that no one should be deported to face torture. Thus, when citizenship revocation has the potential of resulting in a deportation order, a risk assessment must be undertaken. Deportation should not be permitted where there are reasonable grounds to believe that torture will occur.

## **RECOMMENDATION 9**

**Whether to revoke citizenship or impose another punishment should be left to the discretion of the trial judge.**

## **RECOMMENDATION 10**

**When following a finding of guilt a judge orders that a person's citizenship is revoked, the judge should also be empowered to order that the person be deported if the false representation or fraud or knowing concealment of material circumstances related to the person's application for permanent residence in Canada.**

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<sup>6</sup> *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] SCC 1, dealt with a deportation order against an individual who argued that he would face torture if returned to his home country. The Supreme Court of Canada unanimously held when examining the issue that the prohibition on returning a person to face a risk of torture is also the prevailing international norm; that is, it is customary international law. In direct contradiction, however, was a section of the former *Immigration Act* that permitted deportation to a country where the person's life would be threatened if the person was inadmissible for any specified reason and was designated to be a danger to the security of Canada. (This continues to be the case under the new *Immigration and Refugee Protection Act*.) In essence, Canadian law provides that in certain situations, people may be deported to face torture. Mr. Suresh was allegedly a member of and fundraiser for the Tamil Tigers. Although the Court allowed Suresh's appeal and ordered that he was entitled to a new deportation hearing, the legislation was upheld as valid. The principles of fundamental justice in section 7 of the Charter would guide the new hearing and the Court suggested that the Minister should "generally decline to deport refugees where on the evidence there is a substantial risk of torture." The Court set out its restrictive view of when deportation under these circumstances could take place as follows: "We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s. 7 of the Charter or under s. 1 ... Insofar as Canada is unable to deport a person where there are substantial grounds to believe that he or she would be tortured on return, this is not because Article 3 of the CAT directly constrains the actions of the Canadian government, but because the fundamental justice balance under s. 7 of the Charter generally precludes deportation to torture on a case-by-case basis."

## **RECOMMENDATION 11**

**Before deporting an individual, there must be a risk assessment to determine whether they will face torture. Where there are reasonable grounds to believe that torture will occur, deportation should not be permitted under any circumstances.**

### **G. Transitional Provisions**

A new citizenship bill will of course have to address the issue of processes that are currently underway under the existing legislation. Should they be discontinued and proceedings commenced under the new legislation, if appropriate? In Bill C-18, the government had proposed a transitional provision that would have allowed pending revocation proceedings to continue under the current Act if some evidence had been received or a decision already rendered by the Federal Court.

The Committee has determined that if Parliament, in responding to the perception that the current practice is unfair, sees fit to switch to a fully judicial process, it would be illogical to maintain pending proceedings. New citizenship legislation would obviously be intended to improve upon the existing system. It is therefore appropriate that individuals engaged in revocation proceedings when the new law takes effect be given the choice of proceeding under the new legislation or under the 1977 *Citizenship Act*.

## **RECOMMENDATION 12**

**People engaged in revocation proceedings when the new law takes effect should be given the choice of proceeding under the new legislation or under the 1977 *Citizenship Act*.**

## **CONCLUSION**

We hope that the fact that we have selected to report on the topic of citizenship revocation will emphasize the importance it holds for Committee members and the witnesses who appeared before us. We are continuing to hear witnesses on other citizenship issues and, as noted, will table a comprehensive report following the summer break.



# **LIST OF RECOMMENDATIONS**

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## **RECOMMENDATION 1**

Revocation should be based on false representation or fraud or knowingly concealing material circumstances in the application for citizenship or in the application for permanent residence. A person's conduct after being granted citizenship should not be relevant to revocation.

## **RECOMMENDATION 2**

The process for revoking citizenship should be exclusively a judicial process.

## **RECOMMENDATION 3**

There should be no provision in the law for an administrative power to annul citizenship.

## **RECOMMENDATION 4**

To revoke citizenship, false representation or fraud or knowingly concealing material circumstances should be proven beyond a reasonable doubt in a criminal court.

## **RECOMMENDATION 5**

The legal protections of the Canadian Charter of Rights and Freedoms — specifically section 7 to 14 — must apply to citizenship revocation proceedings.

## **RECOMMENDATION 6**

The criminal rules of evidence should apply to citizenship revocation proceedings.

#### **RECOMMENDATION 7**

The government should not include a security certificate process for citizenship revocation proceedings in its proposed new *Citizenship Act*, but may consider such a process after the House of Commons and Senate committees who are reviewing the *Anti-terrorism Act* report on the issue of immigration security certificates.

#### **RECOMMENDATION 8**

There should be no special limits placed on the right to appeal a decision of a court that has made a finding of false representation or fraud or knowingly concealing material circumstances.

#### **RECOMMENDATION 9**

Whether to revoke citizenship or impose another punishment should be left to the discretion of the trial judge.

#### **RECOMMENDATION 10**

When following a finding of guilt a judge orders that a person's citizenship is revoked, the judge should also be empowered to order that the person be deported if the false representation or fraud or knowing concealment of material circumstances related to the person's application for permanent residence in Canada.

#### **RECOMMENDATION 11**

Before deporting an individual, there must be a risk assessment to determine whether they will face torture. Where there are reasonable grounds to believe that torture will occur, deportation should not be permitted under any circumstances.

#### **RECOMMENDATION 12**

People engaged in revocation proceedings when the new law takes effect should be given the choice of proceeding under the new legislation or under the 1977 *Citizenship Act*.

**APPENDIX A**  
**LETTER FROM MINISTER VOLPE**

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**Minister  
of Citizenship  
and Immigration**



**Ministre  
de la Citoyenneté  
et de l'immigration**

Ottawa, Canada K1A 1L5

FEV 18 2005  
FEB

The Honourable Andrew Telegdi, P .C., M.P.  
Chair  
Standing Committee on Citizenship and Immigration  
House of Commons  
Ottawa ON KIAOA6

Dear Mr. Telegdi:

I would like to express my appreciation to you and to all the members of the Standing Committee on Citizenship and Immigration for the work that you have undertaken with regard to citizenship and immigration matters.

I look forward to hearing from you on the results of your upcoming public consultations on the important and challenging areas of citizenship legislation, recognition of the foreign experience and credentials of immigrants, and family reunification. Each of these issues is of significant concern to me and my department, and your recommendations will be important input to our efforts to make progress in these areas.

As you well know, citizenship law is of vital importance to all Canadians. The Government has made a commitment to modernize Canada's Citizenship Act to reaffirm the responsibilities and rights of Canadian citizenship and to reaffirm the values of multiculturalism, gender equality and linguistic duality that we share as Canadians. Any new bill has to be carefully written to reflect these shared Canadian values and to respect the views expressed by Canadians in public polling as well as the findings of Committee members during consultations.

I would like to ask you to assist me in exploring certain fundamental questions on the notion of citizenship that should be reflected in new citizenship legislation through your conversations with groups and individuals across Canada. More specifically, I would appreciate hearing from you on the following principles which are the foundations for citizenship in Canada:

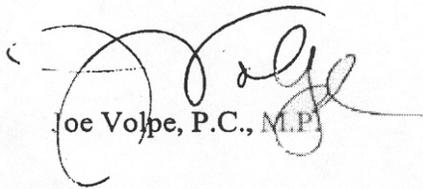
**Canada**

1. **Should new citizenship legislation include a preamble in which the rights and responsibilities of citizenship are clearly addressed?**
  - Citizenship legislation is perhaps the most concrete instrument with which to articulate our collective understanding of the meaning of citizenship, for all Canadians. Is a preamble the most effective way of expressing this?
  
2. **Should legislation limit the ways citizenship can be obtained by birth?**
  - Under citizenship law, citizenship by birth can be obtained in one of two ways: by birth on soil, *jus soli*, or through a bloodline connection, *jus sanguinis*. Does Canada need to consider and possibly re-evaluate how Canada bestows citizenship by birth giving consideration to both Canadian values and today's global context?
  
3. **What criteria should there be for granting citizenship to newcomers to Canada?**
  - Requirements for naturalization become the standard newcomers must meet in order to gain full membership into the Canadian community. It is therefore important that these requirements accurately reflect the values with which Canadians imbue their citizenship. What should be expected from individuals who seek to become citizens?
  
4. **What are the appropriate reasons to remove citizenship and what is the most appropriate process to follow?**
  - Currently in Canada, the only basis on which someone can have their citizenship taken away is if they engaged in misrepresentation about important facts before they obtained it. Actions after becoming a citizen have no consequence on citizenship, even if those actions are highly reprehensible (e.g. murder or terrorism). Should Canada consider other grounds for revocation?
  - Under current legislation, those who have misrepresented themselves to obtain Canadian citizenship can only have their citizenship removed in one way: revocation. Having one method for removing citizenship is a clear way of dealing with citizenship application fraud, and ensures that all individuals subject to removal of citizenship undergo the same process. However, lack of flexibility can also constrain the government's ability to deal with fraud that involves more serious activities or more clear-cut facts. Given differing circumstances, what is the best process or processes for removing citizenship? Should citizenship be removed solely via a revocation process, or should a simpler process such as annulment be considered for objective factual errors?

5. **What is the most appropriate text for a new oath of citizenship?**
- In the current *Citizenship Act*, new citizens swear or affirm their allegiance to the (Queen, Her Heirs and Successors, and pledge that they will observe Canadian laws and fulfil the duties of citizenship. Is pledging loyalty to these ideals and institutions sufficient for a new oath of citizenship or should different principles be included?
6. **What kind of citizen engagement strategy does Canada need to make sure that all Canadians are encouraged to recognize and celebrate the value of our shared citizenship?**
- A new *Citizenship Act* brings with it the opportunity to create and strengthen bonds between all Canadians, and to elevate and celebrate our core principles. What are reasonable, cost-effective strategies to engage all Canadians on the rights as well as responsibilities of citizenship?

Thank you again for all your efforts to assist with the improvement of citizenship and immigration legislation. I look forward to discussing the results of your consultations with you.

Sincerely,



Joe Volpe, P.C., M.P.

cc: Members of the Standing Committee on Citizenship and Immigration



## APPENDIX B LIST OF WITNESSES

Associations and Individuals	Date	Meeting
<b>Canadian Arab Federation</b> Ameena Sultan	2005/02/08	18
<b>Canadian Islamic Congress</b> Khurram Awan, Law Student		
<b>German Canadian Congress, National</b> Ulrich Frisse, Kitchener-Waterloo		
<b>Metro Toronto Chinese and Southeast Asian Legal Clinic</b> Avvy Yao-Yao Go, Director		
<b>Ukrainian Canadian Congress</b> Paul Grod, Canadian Citizenship Coalition Bill Pidruchney, Edmonton		
<b>B'nai Brith Canada</b> David Matas, Lead Counsel Alan Yusim	2005/04/04	28
<b>Ukrainian Canadian Congress, Manitoba Provincial Council</b> Lesla Szwaluk		
<b>Ukrainian Professional and Business Federation of Canada</b> John S. Petryshyn, President		
<b>Saskatchewan Intercultural Association</b> Kebrom Haimanot, Member, Board of Directors	2005/04/05	30
<b>Ukrainian Canadian Congress, Saskatchewan Provincial Council</b> Tony Harras, Standing Committee on Immigration Edward Lysyk, Vice-president Danylo Puderak, Executive Director		
<b>City of Regina</b> Pat Fiacco, Mayor Larry Hiles, Chief Executive Officer, Regina Regional Economic Development Authority		31

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As Individual</b> Joseph Garcea, Professor, Department of Political Studies, University of Saskatchewan	2005/04/05	31
<b>Ethno-Cultural Council of Calgary</b> Lloyd Wong Teresa Woo-Paw, Chair	2005/04/06	32
<b>Pakistan Canada Association of Calgary</b> Masood Parvez, President		
<b>Ukranian Canadian Civil Liberties Calgary Office</b> Borys Sydoruk, Director		
<b>Ukranian Canadian Congress, Calgary Branch</b> Michael Ilhnycky, President		
<b>As Individual</b> V. Nallainayagam		
<b>Fédération des communautés francophones et acadienne du Canada</b> Georges Arès, President	2005/04/07	34
<b>As Individuals</b> Chinwe P. Okelu Bill Pidruchney William W. Zuzak		
<b>Inter-Cultural Association of Greater Victoria</b> Mavis DeGirolamo, President	2005/04/08	36
<b>Qualicum First Nation</b> Kim Recalma-Clutesi, Chief Councillor Bill White		
<b>As Individual</b> Eswyn Lyster		
<b>As Individuals</b> Donald Galloway Joe Taylor		37

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As Individuals</b>	2005/04/09	39
Jocelyn Boyce		
Bobby Brown		
Don Chapman		
Norm Chapman		
Mary Lou Fraser		
Rob Nixon		
<b>Committee for Racial Justice</b>	2005/04/11	40
Aziz Khaki, President		
<b>Fédération des francophones de la Colombie-Britannique</b>		
Yseult Friolet, Executive Director		
Michèle Rakotonaivo		
<b>Grassroots Women</b>		
Rachel Rosen, Coordinator		
<b>Hungarian Cultural Society of Greater Vancouver</b>		
Andrew Jackoy, Vice-president		
Les Szanyl, President		
<b>National Congress of Chinese Canadians</b>		
David Choi		
<b>Sponsor Your Parents</b>		
Peter Li, Greater Vancouver Branch		
Irina Portnova, Vancouver Branch		
Evelyn Zhang, Greater Vancouver Branch		
<b>Success</b>		
Ansar Cheung, Program Director, Public Education and Settlement		
Lillian To, Chief Executive Officer		
<b>Ukrainian Canadian Congress, B.C. Provincial Council</b>		
Myroslav Petriw, Past President		
<b>University Colleges of British Columbia Consortium</b>		
Robert Buchan, Executive Director		
Barb Smith, Manager, International Education — Kwantlen University College		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Vancouver Status of Women</b> Junie Desil, Volunteer/Resource Coordinator	2005/04/11	40
<b>As Individuals</b> Kate Manvell, Mediator & Immigration Practitioner, Member of Canadian Society of Immigration Consultants Sheila Walshe		
<b>African Canadian Legal Clinic</b> Nkiru Agbakwa, Policy Researcher Marie Chen, Acting Director, Legal Services	2005/04/13	42
<b>Canadian Association of Professional Immigration Consultants</b> Keith Frank, Vice-president Berto Volpentesta		
<b>Canadian Centre for Victims of Torture</b> Ezat Mossallanejad, Settlement Counsellor		
<b>Canadian Civil Liberties Association</b> Motek W. Sherman, Student-at-law Alexei Nicole Wood, Policy Analyst		
<b>Chinese Canadian National Council</b> Apollo Chung, National Executive Christine Li, National Executive		
<b>COSTI Immigrant Services</b> Josie Di Zio, Senior Director, Planning and Development		
<b>Ukranian Canadian Congress</b> John William Pidkowich, Government Liaison, Toronto Branch		
<b>As Individuals</b> Louis R. Béliveau Charles William Esser Oksana Miroutenko, Member, Ukrainian Canadian Social Services and the Ukrainian Canadian Congress		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Norwegian Parliamentary Committee on Local Government</b></p> <p>Torbjorn Andersen, Second Deputy Chairman, The Progress Party</p> <p>Barbro Bakken, Director General, Norwegian Ministry of Local Government and Regional Development</p> <p>Peter Skovholt Gitmark, The Conservative Party</p> <p>Sigvald Oppoeboen Hansen, The Labour Party</p> <p>Ingvard Havnen, Ambassador, Ottawa and Toronto</p> <p>Hans Kristian Hogsnes, The Conservative Party</p> <p>Heikki Holmas, The Socialist Left Party</p> <p>Kari Lise Holmberg, The Conservative Party</p> <p>Jannicke Jaeger, Minister Counsellor, Ottawa, Toronto and Montreal</p> <p>Ivar Ostberg, The Labour Party</p> <p>Signe Oye, The Labour Party</p> <p>Anita Apelthun Saele, The Christian Democratic Party</p> <p>Ingrid Sand, Committee Secretary</p> <p>Reidar Sandal, The Labour Party</p> <p>Per Sandberg, Deputy Chairman</p> <p><b>Ukrainian Canadian Congress</b></p> <p>Alexandra Chyczij</p> <p><b>Undocumented Worker's Committee</b></p> <p>Manuel Alexander</p> <p>Tony Letra, Chair</p> <p>Theresa Rodrigues, Member</p> <p><b>As Individual</b></p> <p>Olya Odynsky</p>	2005/04/13	43
<p><b>German Canadian Congress, National</b></p> <p>Ulrich Frisse, Kitchener-Waterloo</p> <p><b>Golden Triangle Sikh Association</b></p> <p>Kuldip Sign Bachher, Secretary</p> <p><b>Kitchener-Waterloo Multicultural Centre</b></p> <p>Myrta Rivera, Executive Director</p>	2005/04/15	46

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Ukranian Canadian Liberal Committee</b> Jurji Fedyk	2005/04/15	46
<b>As Individuals</b> John Bryden, Former Member of Parliament Herb Epp, Mayor Elmer Menzie Irene Rooney Bob Sommerville, Retired Citizenship Court Judge Van Mossel, Lorna, Retired Citizenship Court Judge		
<b>Canadian Council for Refugees</b> Nick Summers, President	2005/04/18	48
<b>Council of Canadians with Disabilities</b> Mary Ennis, Vice-chairperson Leslie MacLeod, Member, Human Rights Committee		
<b>Newfoundland and Labrador Families Adopting Multiculturally</b> Lynn Haire		
<b>As Individuals</b> Remzi Cej, Student HuaLin Wong, President, HuaLin Wong Immigration Consultant Limited		
<b>As Individuals</b> Ron Barrett Edward Guergis Virginia Gundaker Gary Luhowy	2005/04/20	50
<b>Canadian War Brides</b> Melynda Jarratt	2005/04/21	51
<b>New Brunswick Multicultural Council</b> George Maicher, Vice-president, Fredericton Asma Regragui, First Vice-president, New Brunswick		
<b>University of New Brunswick</b> Kumud Deka, South Asian Student, Physics Department		
<b>Centre ressources à la vie autonome de Métro Montréal</b> Amy E. Hasbrouck, Executive Director	2005/04/22	53

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Coalition of Concerned Congregations on the Law relating to War Crimes and Crimes against Humanity including those of the Holocaust</b></p> <p>Kenneth Narvey, Legal Researcher, Chief Operating Officer</p> <p><b>Montreal Action Refugee</b></p> <p>Glynis Williams, Director</p> <p><b>National Association of Canadians of Origins in India</b></p> <p>Flora Almeida Marlow, President</p> <p><b>Rassemblement canadien pour le Liban</b></p> <p>Marie-Claire Namroud, Executive Director</p> <p><b>Table de concertation des organismes au service des personnes réfugiées et immigrantes</b></p> <p>Rivka Augenfeld, President</p> <p><b>As Individual</b></p> <p>Cathal Marlow</p>	2005/04/22	53
<p><b>Atlantic Metropolis Centre</b></p> <p>Ather Akbari, Domain Leader, Economic Consequences of Immigration</p> <p>Marjorie Stone, Co-director</p> <p><b>As Individual</b></p> <p>Stuart Martin</p>	2005/04/26	55
<p><b>Canadian Jewish Congress</b></p> <p>Victor Goldbloom, Chair, National Executive</p> <p>Eric Vernon, Director, Government Relations</p> <p><b>Canadian Labour Congress</b></p> <p>David Onyalo, National Director, Anti-Racism &amp; Human Rights Development</p> <p>Hassan Yussuff, Secretary Treasurer</p> <p><b>Canadian Tourism Human Resource Council</b></p> <p>Wendy Swedlove, President</p> <p><b>Mennonite Central Committee Canada</b></p> <p>Bill Janzen, Director, Ottawa Office</p>	2005/05/03	57



## APPENDIX C LIST OF BRIEFS

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African Canadian Legal Clinic

Alberta Association of Registered Nurses

Béliveau, Louis R.

Bocek, Mirko

Canadian Association of Professional Immigration Consultants

Canadian Centre for Victims of Torture

Canadian Civil Liberties Association

Canadian Institutes of Health Research

Canadian Jewish Congress

Canadian Tourism Human Resource Council

Cej, Remzi

Cheung, Rosanna

Chinese Canadian National Council

City of Regina

City of Vancouver's Special Advisory Committee on Diversity Issues

COSTI Immigrant Services

Council of Canadians with Disabilities

Dane, Allan

Department of Citizenship and Immigration

Esser, Charles William

Ethno-Cultural Council of Calgary

Fédération des francophones de la Colombie-Britannique

Galloway, Donald  
Garcea, Joseph  
German Canadian Congress, National  
Golden Triangle Sikh Association  
Inter-Cultural Association of Greater Victoria  
Kitchener-Waterloo Multicultural Centre  
Lebanese Islamic Centre  
Lyster, Eswyn  
Matas, David  
Mennonite Central Committee Canada  
Menzie, Elmer  
Military Dependent  
Miroutenko, Oksana  
Newfoundland and Labrador Families Adopting Multiculturally  
Odynsky, Olya  
Ontario Council of Agencies Serving Immigrants  
Pakistan Canada Association of Calgary  
Pidruchney, Bill  
Quebec Immigration Lawyers Association  
Rooney, Irene  
Saskatchewan Intercultural Association  
Semotiuk, Andy J.  
Singh, Gurvinder  
Sponsor your Parents  
Success

Taylor, Joe

Ukrainian Canadian Civil Liberties Association Calgary Office

Ukrainian Canadian Congress

Ukrainian Canadian Congress—Saskatchewan Provincial Council

Ukrainian Canadian Congress, Calgary Branch

Ukrainian Canadian Liberal Committee

Undocumented Worker's Committee

Vancouver Status of Women

Vedanand, Professor

Walshe, Sheila

Williams, Rhonda

Winter Gundaker, Virginia

Wong, HuaLin

Zuzak, William W.



Copies of the relevant Minutes of Proceedings (*Meeting Nos. 18, 28, 30, 31, 32, 34, 36, 39, 40, 42, 43, 46, 48, 50, 51, 53, 55, 57, 60, 61, 62 and 63 including the present report*) are tabled.

Respectfully submitted,

Andrew Telegdi, M.P.  
*Chair*



## DISSENTING OPINION

While I agree with most of the report, *Citizenship Revocation: A question of due process and respecting Charter Rights*, I must dissent specifically with recommendations 4, 5 and 8. They would change, profoundly, the principles and process through which citizenship is granted.

### ***With regard to recommendations 4 and 5***

The “standard of proof” proposed in recommendations 4 and 5 is unsupportable for the following reasons:

- Revocation is a measure with serious consequences. As demonstrated by the limited number of cases over the years, this is a recourse that must be used only where there is strong evidence that people did not qualify for citizenship in the first place.
- When a person applies for citizenship, the client does not have to prove “beyond a reasonable doubt” that the information they provided on their application is true. Instead, government assesses on a “balance of probabilities” that the client is telling truth when applying for citizenship.
- Applying a different standard when revoking citizenship would be inconsistent and hold government to a different standard than the client. It would also prolong the processing time lines and make the granting of citizenship extremely difficult.
- The Supreme Court of Canada has stated that the “balance of probabilities” is an appropriate standard for revocation proceedings.
- Applying a criminal standard of evidence to a civil proceeding would represent a significant change in the administration of law in Canada.
- Revocation is not prosecution of a crime; it is a mechanism to address the concealment of information that had a bearing on admissibility to Canada or eligibility for citizenship.

***With regard to recommendation 8***

This recommendation proposes other forms of punishment than removal of citizenship for those who obtained citizenship through misrepresentation or fraudulent means. It cannot be supported for the following reasons:

- Citizenship is a right subject to criminal and other prohibitions, with defined criteria to determine who qualifies for that right.
- Removing citizenship is an appropriate remedy for individuals who used misrepresentation or fraudulent means in order to obtain that citizenship.
- Individuals who were successful in concealing facts that would have disqualified them from receiving citizenship should not be rewarded by retaining that citizenship. It would be unfair to the vast majority who waited until they could honestly fulfill the criteria before applying. It would also send the wrong message to those who were truthful when applying and consequently did not qualify for citizenship.

Sincerely,

The Hon. Hedy Fry, CPC, MP Vancouver-Centre  
*Parliamentary Secretary to the Minister of Citizenship and Immigration*



## MINUTES OF PROCEEDINGS

Tuesday, May 31, 2005  
(Meeting No. 63)

The Standing Committee on Citizenship and Immigration met *in camera* at 11:04 a.m. this day, in Room 209 West Block, the Chair, Andrew Telegdi, presiding.

*Members of the Committee present:* Diane Ablonczy, Colleen Beaumier, Roger Clavet, Hedy Fry, Rahim Jaffer, Inky Mark, Bill Siksay, Andrew Telegdi and Lui Temelkovski.

*Acting Members present:* Marc Lemay for Meili Faille, Gurbax Malhi for David A. Anderson and Joy Smith for Helena Guergis.

*Associate Member present:* Nina Grewal.

*In attendance: Library of Parliament:* Benjamin Dolin, Analyst.

Pursuant to Standing Order 108(2) and the motion adopted by the Committee on Wednesday, October 27, 2004, the Committee resumed its study on Citizenship Issues — Citizenship Revocation.

The Committee resumed consideration of a draft report.

It was agreed, — That the report be entitled: Citizenship Revocation: A Question of Due Process and Respecting Charter Rights.

It was agreed, — That the draft report, as amended, be adopted.

It was agreed, — That the Committee append to its report dissenting or supplementary opinions provided that it is no more than 3 pages in length and submitted electronically in both official languages to the Clerk of the Committee, no later than 3:00 p.m., on June 1, 2005.

It was agreed, — That the Chair present the report to the House.

It was agreed, — That the Chair, Clerk and analyst be authorized to make such grammatical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That the Committee print 550 copies of its report in a bilingual format.

At 11:47 a.m., the Committee adjourned to the call of the Chair.

William Farrell  
*Clerk of the Committee*