



"Family Lore or Legal Proof: One Canadian's Pursuit of U.S. Citizenship," feature article, Cincinnati Bar Association Report

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The minister was getting nervous. The snowflakes were growing larger and falling faster. As the bride's father pleaded with him to stay for the wedding reception, he looked out the church window again and saw the snow beginning to accumulate. He hurried his quill across the parchment he would use to record the marriage in the official register, noting the young bride's name and her birthplace in Red Deer, Alberta in 1901. He turned to look for the groom, but Mr. Larkin was surrounded by guests engaged in an animated discussion. While Mr. Larkin's accent had struck him as not a local one, he had forgotten to ask for this detail earlier in the day, and now the snowflakes were intensifying in the gathering dusk. But he knew that Mr. Larkin was an employee of the Canadian National Railway Company stationed at nearby Fort Saskatchewan. So he scribbled "Fort Saskatchewan," pressed the bride's father on the shoulder, put on his hat, and made for the door. It was December 17, 1919.

Eighty-eight years after Lawton Larkin's wedding day, I opened the envelope from the Alberta Registry of Vital Statistics and felt a large lump develop in my throat. All the progress we had made seemed at risk. It had all started when Bill had called me in the early Spring. A bit of a drifter in the sense that he had never established himself in one career or another during his first 41 years of life, Bill had not earned a degree.

He had jumped from one industry to another, with no common thread between jobs. Bill had no United States job offer, but was eager to head to the U.S. to try his luck, since many friends had gone South with success. However, without a degree, without a common core of experience in any specialty, without a job, and without an interest in attending a U.S. school, he did not have a bona fide claim to any type of visa that would permit him to temporarily or permanently reside in the United States. Per my usual procedure, I asked him about his lineage and particularly whether he had any family members who had been born in the U.S. While he indicated that he had no immediate family members who were U.S. citizens, he said he needed to call his mother because he believed that his late maternal grandfather had been born in the U.S. Bill called me back later that week and confirmed that his mother was sure that his grandfather had been born in Horace, North Dakota. However, she did not believe that any birth certificate existed because Lawton Larkin had been born on July 11, 1896, at a time when North Dakota did not regularly create birth records, especially in small towns.

I had explained to Bill that under U.S. immigration law, certain individuals born in Canada to one U.S. citizen parent and one Canadian citizen parent can claim a right to derivative U.S. citizenship if the claimant can document that certain preconditions were met which are dictated by the date of birth. If his mother was able to attain U.S. citizenship and then establish a U.S. domicile, I further explained that she would be able to sponsor Bill for U.S. permanent resident status (more commonly referred to as a "green card"), albeit it would be some years before the quota would permit this. A widow who no longer had close relatives in Prince Rupert, B.C., the Western terminus of the original Grand Trunk Pacific railway, but had close friends in Naples, Florida, Sally Winchester was willing to do anything for her son, and if Bill had a most prominent virtue, it was that he was patient to a fault. Since his mother had been born in Prince Rupert, British Columbia on May 11, 1934 to a U.S. citizen father who had resided in North Dakota before emigrating to

Canada, his mother had a claim to U.S. citizenship. However, as with all legal matters, she had the burden of proof and so the hunt began for documents that would prove her claim.

We started with North Dakota Department of Health Vital Records office. We submitted a request for a birth certificate for Lawton Larkin but received a letter advising us that "a birth certificate cannot be found on file for the above named person. If a birth certificate is desired, it will be necessary to file 'a delayed registration of birth.' The enclosed instructions contain detailed information about completing the form, documentary evidence to be submitted and the required fee." The subsequent search resulted in Bill and his mother, Sally, reconnecting with relatives across a number of Canadian cities. The relatives opened old trunks stashed in forgotten corners of attics and moldy boxes in the dark recesses of basements to search for documents. We also contacted Cass County in North Dakota where Horace is located. By the end of our search, we had secured a copy of a Teacher's Report from the County Superintendent of schools confirming that Lawton Larkin had attended school there, a real property record which listed the Larkin family on a deed with dates coinciding with ownership as of the year of Lawton's birth, his death certificate from Alberta, citing his birth in North Dakota. Most remarkably, one relative furnished a deteriorating original County Clerk's affidavit from 1892 signed by Lawton Larkin's father, citing his birth in England, his immigration to the U.S. in 1878, and his pledge "to renounce forever all allegiance and fidelity to any foreign State or Sovereignty whatever, and particularly to the Queen of Great Britain whereof he is a subject, and that he will support the Constitution and the Government of the United States." Some weeks latter, I could sense the smile in Sally Winchester's voice as I conferenced her in with Bill and notified her that we had received an official "Certificate of Birth (Delayed Registration) from the North Dakota Department of Health, 111 years after her father's birth."

By the time the envelope from the Alberta Registry of Vital Statistics arrived, we were confident that it was the last piece in the puzzle, since we had accumulated all evidence required by the U.S. Consulate in Vancouver to file a derivative citizenship claim coupled with our completing a U.S. passport application. The document, bearing the seal of Alberta, listed Lawton Larkin's birthplace as "Fort Saskatchewan, Alberta." It threatened to undermine the entire credibility of Sally Winchester's derivative citizenship claim, and her son's dream of eventual permanent residence. When I relayed the story to Sally Winchester, I could hear the tears, not for herself, but for her son. She then told me the story of her parent's wedding on December 17, 1919, and how the family lore was that right after the minister performed the ceremony, he saw the snow falling and decided to race for his horse and buggy. The greater Edmonton area was just beginning to grow, with the Canadian National Railway having triggered its expansion from a frontier town to a growing city. The unpaved dirt roads were a concern, particularly at night in the winter snow.

When one makes this type of phone call, one has the sensation of diving into a swimming pool that one suspects will be cold. You anticipate the shock to your system, but you find yourself jumping in because you have to. But every so often, when one practices immigration law, one encounters a government official who possesses a willingness to consider all the circumstances and facts in a measured fashion, is receptive to new evidence, and applies common sense with an open mind. So I placed the call hoping that the odyssey of Sally Winchester's claim was not over and that I would encounter such an official. I introduced myself to the official at the Alberta birth certificate unit and told her the story of the kindly, grey-haired mother in Prince Rupert, B.C., the document chase we had gone through, and our surprise at the incorrect information in the Alberta marriage certificate. She patiently listened as I explained that we were concerned about submitting an incorrect Alberta document to the U.S. Consulate and that it may result in confusion and a denial at that end, and so we wondered if there was any way Alberta would consider issuing a corrected certificate. Her voice was polite, but her response was clear, "We cannot correct a marriage certificate 88 years after the event." I pressed on and told her the family lore about the wedding. I asked, "What if we were able to incontrovertibly show that the information about Mr. Lawton's place of birth is incorrect? Would not the Province of Alberta be unhappy and troubled to be the issuer of a materially incorrect document?" Finally, she agreed to at least receive a packet from me containing my arguments and the evidence.

I felt a thrill as some time later, I opened a fresh envelope from the Province of Alberta and in it was a corrected marriage certificate. A month or so later, Bill Winchester greeted his mother as she stepped

outside the U.S. Consulate in Vancouver. He handed her a small American flag for her to wave to show her pride as a newly minted U.S. citizen.

Across the world, there are many families, of all generations, formed by one parent born in the U.S., and the other parent born outside the U.S. Many of their children are entirely unaware of a possible claim to U.S. citizenship. Some are the Canadian born children of fathers who were born in the U.S. when their fathers, in turn, went down to the U.S. to work on the railways in the late 1800s and early 1900s. However, many are the children of families that went to the States from many other countries on short to intermediate-term work assignments and then returned abroad after a number of years. There are many tales, and each one is unique and involves an individual interpretation of the law, which was frequently amended to change the rules from generation to generation, as well as the burden of proof that applies.

This is a true story, but names, dates, and places have been altered in order to preserve the confidentiality of the people involved.