

## LOST CANADIANS

By Leslie H. Morley\*



DON CHAPMAN, who is the descendent of a father of Confederation, lost his Canadian citizenship as a boy when his father was granted American citizenship. He has been fighting to get it back ever since.

Mr. Chapman likens his battle to the civil rights struggles of Rosa Parks. It is true that, like Ms. Parks, he confronted backward-looking forces much larger than himself. However, how much further the comparison between the two of them may be taken depends on the extent to which her campaign for racial equality may be equated to his campaign to attain citizenship for “Lost Canadians”. If one values Canadian citizenship as Mr. Chapman appears to, it would seem that that would be a great distance indeed.

Joe Taylor’s parallel quest was for him both as noble and as tortuous as that of Mr. Chapman. The son of a Canadian D-Day veteran and an English war bride, Mr. Taylor fought Ottawa in the courts for six years (see the [FCTD](#) and [FCA](#) decisions) in an effort to obtain Canadian citizenship. He was rebuffed by the Federal Court of Appeal, which ruled that the relief that he sought under the [Canadian Charter of Rights and Freedoms](#) could not be applied to him retroactively.

Mr. Taylor’s claim to Canadian citizenship through his father was denied not only because Mr. Taylor was born overseas, but also because he was born out of wedlock before the enactment of Canada’s first citizenship legislation, which did not recognize such claims. This was particularly galling to Mr. Taylor as, when his father learned Mr. Taylor’s mother was pregnant, his father was serving in the Canadian armed forces in Europe, and specifically asked his commanding officer for permission to marry before the child was born. Leave to marry was not granted until five months after the Mr. Taylor was born, and this delay was the critical difference for his Canadian citizenship status.

Both Mr. Chapman and Mr. Taylor have come to be known as Lost Canadians. Both have been on the forefront of the campaign to grant or restore citizenship to people like themselves, and both have a substantial following and a presence on the internet (see [Chapman](#) and [Taylor](#)). For both a recent Parliamentary report and legislative initiative have created new opportunities to resolve the issues raised in their campaigns. Indeed, for Joe Taylor the personal battle is now over, as he was offered Canadian citizenship by the Minister and, on January 28, 2008, sworn in as a citizen of Canada. For Mr. Chapman, the saga continues.

## PARLIAMENTARY REPORT: RECLAIMING CITIZENSHIP

Is it possible to be a Canadian when one is not a citizen of Canada? The answer, according to the House of Commons's Standing Committee on Citizenship and Immigration, is yes, there are Canadians without Canadian citizenship. The question is addressed at length in the Committee's [Reclaiming Citizenship for Canadians: a Report on the Loss of Canadian Citizenship](#) (see also the [web version](#)).

The Committee's study of the loss of Canadian citizenship commenced in early 2007, having been prompted by an increase in passport applications caused by tightening security along the US border. Its report built on the work contained in its 2004 predecessor [Updating Canada's Citizenship Laws: Issues to be Addressed](#). The Minister of Citizenship and Immigration appeared before the Committee on May 29, 2007 announcing then that amendments to the [Citizenship Act](#) would be put before Parliament later in the year. The [Report](#) was finalized in November, 2007 and tabled on December 6, 2007 and, as will be seen, the amendments to the [Act](#) were proposed shortly thereafter.

The Committee found there to be four groups of Lost Canadians:

- War brides;
- People born outside of Canada to a Canadian parent before the current [Citizenship Act](#) came into force in February, 1977;
- People who lost their Canadian citizenship because they or a parent acquired the nationality or citizenship of another country between 1947 and 1977; and
- Second and subsequent generation Canadians born abroad since the current [Citizenship Act](#) came into force.

It was determined that, at best, only vague estimates of the number of Lost Canadians could be made, but the figure was said to be in the neighbourhood of 170,000, although others have claimed that to be low. Further, as citizenship can continue to be lost by those in the pool of Lost Canadians in the fourth category, this total continues to grow day by day. Clearly, then, this is not an esoteric problem, but one with application to many people, including the clientele of most immigration law practitioners.

In conducting its work the Committee heard testimony of those who were affected by archaic and confusing citizenship rules, which had been applied in an arbitrary way by the citizenship authorities. Beyond that, one witness who is a lawyer, recounted the story of his client, who was summarily ordered deported, despite more than 50 years of residence in Canada, and a claim to citizenship that was recognized with respect to both of his brothers. The Committee also reviewed systemic issues of bad customer service, muddled advice from insensitive citizenship officers, and the sloppy and unresponsive paperwork they generated.

Key recommendations of the Committee included:

- Citizenship should be a permanent status, lost only by renunciation or revocation, that is based on clear and certain rules;

- Citizenship should not distinguish between people based on their year of birth or whether their parents were married at the time of their birth;
- Lost Canadians should have their citizenship restored to the date it was lost or to the date of their birth, as the case may be;
- The Minister should use her discretionary power to implement the recommendations even before the new legislation is drafted; and
- The Minister should take steps to address repeated complaints received concerning any specific CIC agent.

Having heard recounted the trials and tribulations of those caught in the existing citizenship morass, the Committee was clear in expressing its sympathy for the plight of Lost Canadians, and urged dramatic action to be taken by the Minister to address the problem.

### **AMENDMENTS TO THE CITIZENSHIP ACT**

On December 10, 2007, four days after the Committee report was issued, [\*An Act to amend the Citizenship Act\*](#) was tabled in Parliament. According to its [press release](#), Citizenship and Immigration Canada believes that the bill will accomplish the following objectives:

- Anyone who was born in Canada or who became a Canadian on or after January 1, 1947, when the first *Citizenship Act* took effect, and who then lost citizenship, would have their status restored. This includes war brides who are not already Canadian. It also includes people born in Canada prior to 1947 who became citizens when the first citizenship act took effect on January 1, 1947. The exceptions would be those who renounced their citizenship with Canadian authorities, those born in Canada to a foreign diplomat, or those whose citizenship was revoked by the government because it was obtained by fraud.
- Anyone born abroad to a Canadian on or after January 1, 1947, if not already a citizen, would be recognized as a Canadian citizen from birth, but only if they are the first generation born abroad. The exceptions would be those who renounced their citizenship.
- No one who is a citizen today would lose their citizenship as a result of these amendments.

According to Minister Finley, her proposals deal with 95 per cent of the problem cases. Those remaining will be dealt with on a case-by-case basis, and there could be a special grant of citizenship where appropriate.

### **WHAT NEXT?**

Bill C-37 is currently in “[pre-study](#)” before the Standing Committee. Its critics claim that the [\*Citizenship Act\*](#), as it will be amended if the bill is enacted, will still contain too much

language from older legislation, will still be obscure and incomprehensible, and will still not comply with the [Charter](#).

Liberal MP [Andrew Telegdi](#), Vice Chair of the Standing Committee on Citizenship and Immigration and outspoken critic of the current legislation, maintains that the proposals are admirable but fall short as there is too much “legislative baggage” in the present bill. Citizenship advocate Don Chapman, the descendent of the father of Confederation to which reference was made above, agrees. Those granted relief by the bill, on the other hand, will no doubt maintain that even half measures are welcome, particularly in light of the length of time during which amendments of the [Citizenship Act](#) have been pending.

As matters currently stand, in questionable cases, Counsel may wish to wait for the enactment of the amendments before filing an application for citizenship. If time is of the essence, however, it could be profitable to refer, in submissions, to Committee recommendations contained in its [2007](#) report, or to the “Guiding Principles” set out in its [2004](#) counterpart, in hopes that the Committee’s recommendation of immediate recognition of the claims of Lost Canadians will be sustained in practice.

As was the case before either report was issued, it is worthwhile to remember that the CBSA may not know that a potential deportee has a claim to Canadian citizenship or, if it does, may not choose to notify him of that potential. Therefore it continues to be important to remember that, an immigrant caught in removal proceedings which seem utterly hopeless to overcome, may nonetheless be able to prevail, if he is able to establish a claim to Canadian citizenship.

As Mr. Chapman summarizes the plight of the Lost Canadian on his website, the “old rules were just plain wrong”. According to today’s standards, he continues, “they are quite immoral.” One can only hope that Parliament will stay the course set by the the current government to right the wrongs so inflexibly pursued by its predecessors.

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