

The Canadian Citizenship Reform Project:

In Search of the Holy Grail?

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1. Introduction

During approximately the past half-century the Canadian polity has been embarked on a monumental citizenship project. During that time there have been at least three distinct phases in that project, each of which is marked by the production of either a citizenship act or at least draft legislation. The first phase is marked by the enactment of the Citizenship Act of 1947, the second phase is marked by the enactment of the Citizenship Act of 1977, and the third phase is marked by the production and deliberations on three relatively similar pieces of draft citizenship legislation between 1998 and 2003 designed to supplant the existing citizenship Act. The first two of those died on the order paper, and the third is still before Parliament at the time that this article is being written. It remains to be seen whether this particular piece of legislation will have the same fate as the two which preceded it during the third phase.

The central objective of this paper is to provide an overview and assessment of the initiatives undertaken during the third phase (i.e., the past quarter century since the 1977 Act was adopted) to reform the citizenship act. More specifically, the objective is to answer the following questions:

- ◆ What have been the purposes and policy goals of the citizenship act reform agenda?
- ◆ What have been the factors that have shaped the citizenship act reform agenda?
- ◆ What accounts for the remarkably protracted process to produce a new citizenship Act which, to date has still not, been enacted?
- ◆ What aspect(s) of the citizenship act reform agenda, if any, has been contested, by whom and why?

A full appreciation of the citizenship reform agenda during the third phase requires an understanding of the citizenship acts produced in 1947 and 1977. It also requires an understanding of the initiatives that were undertaken from 1987 to 1997 both by the Mulroney government via a discussion paper on reform of the citizenship act produced during its second mandate, and the reports produced by two Parliamentary Committees in 1993 and 1994 that recommended reforms not only to the citizenship act but also to various related policies and programs. Accordingly, the first part of this paper is devoted to providing an overview of the purposes and policy goals of the citizenship acts of 1947 and 1977. The second section provides an overview of the position paper for a new citizenship act produced by the Mulroney government in 1987. The third section provides an overview of the reports of two Parliamentary committees that examined and made recommendations on the citizenship statutory, policy and program frameworks. The fourth section provides an overview of three successive pieces of legislation that have been produced by the Chretien government during the quinquennium from 1998 to 2003.

2. The 1947 and 1977 Citizenship Acts: An Overview

Since 1945 there has been an evolution in Canadian Citizenship legislation. The evolution has entailed a progression from a concern for national identity to a concern with equality in obtaining and exercising citizenship, to a concern for national security.

2.1. Overview of the 1947 Citizenship Act

The overarching purpose of the 1947 Act was to establish a comprehensive and coherent citizenship regime that embodied key provisions regarding both the naturalization of so-called aliens and also the legal status, rights and responsibilities of what might be loosely termed 'natural' and 'naturalized' Canadians. (Knowles, 2000: 65).

The establishment of such a citizenship regime was advocated and advanced both for practical and political reasons. The practical reasons were that the extant citizenship regime was fragmented, frayed and flawed. Key principles and provisions related to citizenship were contained in a disparate set of statutes such as the Immigration Act of 1910, the Naturalization Act of 1914, and the Canadian Nationals Act of 1921. The Citizenship Act of 1947 was designed to integrate key provisions related to citizenship in a comprehensive and coherent and substantially less flawed statutory framework. The political reasons were that the extant citizenship regime that had been in place prior to 1947 embodied and perpetuated both a subordinated international legal and political status for Canada, and a subject legal and political status for its people. The objective of the new act was to project a singular Canadian identity that was distinct from either a British or a Commonwealth identity.

Canada was the first Commonwealth country to create its own class of citizenship that was separate and distinct from Britain's. This was part and parcel of a broader political project that entailed producing two major changes, one related to the status of the country and the other related to the status of its people. The change in the status of the country entailed the conversion of Canada from a British Dominion to an independent nation. The change to the status of the people entailed a conversion of Canadians from British subjects as defined in the Naturalization Act of 1914, and "Canadian nationals" as defined in Canadian Nationals Act of 1921, to full fledged Canadian citizens (see Brodie 2002: 46-50). Thus, the 1947 Citizenship Act was not merely a naturalization statute; it was also a nation-building and identity-building or identity-formation statute designed to alter the legal status of the state and its people. Moreover, it attempted to place 'Canadians by birth' and 'Canadians by choice' on an equal legal footing. According to the 1987 document produced by the Canada, Secretary of State titled "Citizenship 87: Proud to be Canadian" stated that the objective of the 1947 Act was threefold: "...to give equal citizenship status to Canadians by birth and Canadians by choice, to extend Canadian citizenship to as many qualified people as possible, to impress upon all the value of citizenship status, and to promote national unity" (Ibid, p. 6). It was also designed to give equal citizenship status to men and women, insofar as women were treated individually, in their own right. Previously a married woman acquiring the alien nationality of her husband automatically lost her British-subject status at the time of her marriage (Ibid. p. 7). That same document added that the key provisions in the 1947 Citizenship Act accomplished the following (p.7):

- ◆ Recognized both "natural born Canadian citizens" and "naturalized Canadian citizens"
- ◆ Specified that both natural born and naturalized citizens held equal status, were entitled to identical privileges, and were subjected to the same duties and obligations;
- ◆ Provided for automatic loss of Canadian citizenship on grounds of voluntary acquisition, other than by marriage, of the citizenship of another country or, in some cases, services in the armed forces of another country;
- ◆ Established criteria for citizenship acquisition, including a minimum age of 21, minimum residence of five years, possession of good character, adequate knowledge of either the French or the English language, adequate knowledge of the responsibilities and privileges of Canadian citizenship, and the intention to reside in Canada.

2.2. Overview of the 1977 Citizenship Act

The overarching purpose of the 1977 Act was to modernize and update the 1947 Act with two major objectives in mind: (a) improved access and (b) equal treatment. In keeping with the improved access to citizenship objective, the 1977 Act embodied several important provisions and principles, including:

- ◆ declaring that citizenship for all qualified applicants is a right rather than a privilege;
- ◆ promoting citizenship among newcomers by removing or lowering barriers to obtaining it;
- ◆ reducing the residence requirement for would-be citizens from five years to three; and
- ◆ eliminating controls on plural/multiple citizenship.

In keeping with the equal treatment objective the 1977 Act embodied the several important provisions and principles, including:

- ◆ reaffirming that Canadian citizens by birth and citizens by choice have identical rights and responsibilities;
- ◆ removing all special treatment of British nationals in the citizenship application process;
- ◆ placing heightened emphasis on the equal treatment of men and women; and
- ◆ guaranteeing that all individual applicants for citizenship would receive equal treatment.

3. The Mulroney Government's Initiatives at Producing a New Citizenship Act

On the 29th of January 1987, forty years since the 1947 Citizenship Act was enacted and ten years since the 1977 Citizenship Act was enacted, the Mulroney government announced in the Speech from the Throne that it was initiating another round of major reforms. Six months later, in June of 1987, it launched the reform process by releasing a position paper titled “Citizenship 87: Proud to be Canadian.” Two years later the Mulroney government reiterated its commitment to introduce a new Citizenship Act in the Throne Speech delivered the 4th of April 1989.

3.1 The Mulroney Government's Rationale for Considering Revising the 1977 Citizenship Act

The official rationale for revising the 1977 Citizenship Act was provided by Canada’s Secretary of State at the time, David Crombie, was threefold. First, that the world was changing and the Citizenship Act must be changed to ensure that it did not become either anachronistic or, more importantly, problematic in dealing with citizenship matters. Second, and related to the first, that it had to be revised to render the citizenship act consonant “in wording and spirit” with the provisions in Charter of Rights and Freedoms that had been entrenched in the constitution in 1982. Third, that there was a need to find ways to foster national unity. The position paper noted that: “The federal government regards citizenship as a cornerstone of national unity and is resolved to buttress it with new legislation” (p.8). This was based on the fundamental belief that “Canadian Citizenship enhances loyalty and commitment to Canada and enriches the significance of membership in the Canadian Community.” The position paper added that “In proposing amendments to the 1977 Act, the government will seek to expand citizen’s awareness of their rights and obligations, and to heighten both the practical and symbolic aspects of Canadian citizenship.”

It should be added that this was part of a broader package of statutory, policy and program reforms undertaken by the Mulroney government designed to establish a special connection with immigrant and ethnic societies. A notable accomplishment in that package was the enactment of the national Multiculturalism Act in 1988. This linkage between the citizenship and multiculturalism projects was underscored in the government’s position paper which quotes the Minister’s pronouncement that “Multiculturalism exists in the very heart of Canadian citizenship” (p. 21).

The position paper identified several interesting and important sets of issues and options for reforming the Canadian citizenship regime contained in the 1977 Act. The most notable of these are explained below. As shall become evident in subsequent sections of this paper, these are the basic issues that have generally re-emerged in subsequent rounds of reform. It is therefore useful to describe each of these issues in some detail here.

Plural citizenship

The first major issue was whether Canada should continue to maintain a permissive policy toward dual or plural citizenship embodied in the 1977 Citizenship Act or whether it should revert toward the more restrictive policy that was embodied in the 1947 Citizenship Act (p. 9-10).

Citizenship Qualifications

The second major issue was the qualifications to become a Canadian citizen. Among the key issues that were being considered were the definition and length of residence in Canada and exemptions from the residence requirement. The position paper indicated that the 1977 Act did not contain a clear and specific definition of residence. Evidently a courts case had broadened the definition of citizenship to the point where lawfully admitted “residents” can leave Canada, and live and work abroad, while accumulating the necessary three years of residence to qualify for citizenship. Moreover, individuals could receive credit in meeting the residence requirement for any time they had spent in Canada as students, visitors, or even as “illegal” immigrants, before being admitted. The position paper posited that “Such practice subverts the original purpose of the requirement, which was to make certain that prospective citizens should spend enough time in Canada to learn about the country, and to establish their ability to adapt to it.” (p. 11)

Other issues related to qualifications for citizenship considered in that position paper were exemptions from standard requirements for at least two categories of applicants. The first was an exemption from the residence requirement regarding ‘physical presence’ in Canada for spouses of Canadian military and foreign service personnel based in other countries. The second was an exemption from the knowledge of one of the official languages for applicants over the age of sixty.

Statutory Bars to Citizenship

The third major issue raised in the position paper was whether the grounds for refusing citizenship should be increased or decreased. Notable issues that were cited as examples that should be considered were the following: (a) the broadening of provisions related to denial of citizenship on the basis of criminal activity during the three year residency requirement in Canada to include major crimes committed against local laws while in other countries; and (b) expanding the denial of citizenship to applicants who are under deportation orders to include any individual who has become the subject of an immigration inquiry; and (c) standardizing the treatment for identical types of summary convictions for purposes of citizenship regardless of whether the judges choose to impose a fine or a period of probation as part of the sentence.

Loss of Citizenship for Cause

The fourth major issue addressed in that position paper was the loss of citizenship for cause. The position paper posited that consideration should be given to various possible revisions to the existing provisions regarding revocation of citizenship. More specifically, the issue was what type of provisions should be included in a new citizenship act regarding two key matters:

- (a) whether to allow persons whose citizenship has been revoked to apply for reinstatement of citizenship after a waiting period of three years
- (b) whether the legal status of persons whose citizenship has been revoked should revert to that person's status prior to becoming a citizen under the Immigration Act.

Interestingly, the paper noted that in the ten years since the 1977 Act had been in force no Canadian's citizenship had been revoked even though the Act provided grounds for revocation where an individual obtained entry into Canada, and subsequently obtained citizenship through fraud, false representation, or concealment of material circumstances. It is noteworthy in light of the political dynamics surrounding the reform proposals that have been under active consideration during the most recent quinquennium that the position paper recognized that Canadians were likely divided on this particular issue:

“The government is aware that Canadians may well be divided on the issue of citizenship revocation. Some may feel that persons who, in effect lied to achieve their status, either as landed immigrants or as citizens, should not subsequently receive the benefits of life under the flag of Canada. On the other hand, many Canadians may argue otherwise on the ground that some would-be citizens, being anxious to create a good impression and being unfamiliar with Canadian laws and customs, might withhold details of their personal background rather than jeopardize their chances to join the Canadian community. As a result, such persons might be liable to subsequent loss of citizenship because of an original lack of candour” (p. 13).

Issues of Citizenship Fairness

The fifth major issue addressed in the position paper was fairness and equity. The most notable issues related to this included the following: (a) giving statutory approval for those applying for citizenship, including disabled applicants, to have an interpreter present to provide assistance while they meet the requirements regarding knowledge of Canada, and its system of government; (b) giving statutory approval to permit various types of youths born to at least one Canadian parent either in-wedlock or out-of-wedlock either to be granted Canadian citizenship or to regain their citizenship in cases where they had lost it due to the responsible parent acquiring the citizenship of another country. Generally the objective was to eliminate what are tantamount to unfair or inequitable provisions that were carried over from the 1947 Act (p. 15).

Citizenship Judges

The sixth major issue addressed in the 1987 position paper was the qualifications, powers and terms and conditions of citizenship judges. The position paper noted that under the 1977 Citizenship Act there was only one provision related to citizenship judges, namely that “The Governor in Council may appoint any citizen to be a citizenship judge.” It also noted that the 1977 Act was silent regarding the position and precise roles and responsibilities of the senior Citizenship judge, and concluded that to address that deficiency in the Act thethe government is prepared to review the provisions of the current Citizenship Act concerning the citizenship judges” and to specify the qualifications, powers, and term and conditions of tenure both for the senior citizenship judge and all other citizenship judges (p.15-16). Indeed, the government also wanted to consider a change in title from “citizenship judge” to “citizenship commissioner”.

The Citizenship Oath and the Ceremony

The seventh major issue was the nature of the citizenship oath. The key issue was to what or whom the prospective candidates for citizenship should give their allegiance to the Crown, the country or both. In the position paper, the federal government indicated that it was prepared to consider whether the citizenship oath should be amended so as to either give the allegiance and service to the country of Canada precedence over allegiance and service to the Crown, or to completely eliminate any reference to the Crown. (p. 18).

Citizenship Proclamation in Preamble

The eighth major issue addressed in that position paper was whether there should be any changes to The government also indicated that consideration should be given to the inclusion of a preamble containing a declaration or proclamation of the ideas and principles of Canadian citizenship designed to “inspire national pride...remind all citizens of their rights and duties, and to declare the enduring values of a free, united, bilingual and multicultural Canada.

Citizenship Celebrations

The ninth major issue addressed in that position paper was how we should celebrate our common Canadian citizenship. The position paper advanced the idea of a Canadian Heritage day to be held in February of each year. The position paper noted that this was a controversial issue and there were likely to be as many opponents as proponents of such a statutory holiday (pp. 21-22). Although the paper did not mention why it would be controversial the inference was clearly to the standard arguments that have been made in various jurisdictions in Canada against adding a statutory holiday in February because of the cost implications for employers.

3.3 Result of the Mulroney Government Initiative

Although those issues were discussed, ultimately they did not result in any significant statutory reforms (Young, 2000: p. 4). One of the most likely reasons for this is that the initiative was overshadowed and overtaken by constitutional reform debates surrounding the Meech Lake Accord and the Charlottetown Accord both of which became major preoccupations for the Mulroney government during its second mandate. Nevertheless, at one point during the machinations on constitutional reform, the Mulroney government did consider introducing a statutory reform package that would include a proclamation of Canadian citizenship that was consonant with the spirit of the Canada Clause that was being devised for the Charlottetown Accord. The belief, or more precisely the hope, was that a proclamation of Canadian citizenship in a citizenship act would contribute to and compound the pride in Canada and consolidate support for any measures, such as the constitutional reform measures, that were required to foster Canadian unity (see Estanislao Oziewicz, “Citizenship legislators study rights preamble: Tories believe declaration would reinforce unity plan.” Globe & Mail August 2, 1991: A4).

Ultimately, however, for reasons which are still not altogether clear and require further investigation, the Mulroney government did not introduce a major bill to overhaul the existing citizenship act. Indeed, it did not introduce any major bills related to the citizenship act. The Mulroney government was taken to task in the House of Commons on its failure to live up to its promise to introduce legislation for a new Citizenship act, by Liberal Members of Parliament on several occasions between 1991 and 1993. In September 1991 and again in February 1993 Warren Allmand, a Liberal M.P. from Notre-Dame-de-Grace, introduced a private members bill designed to amend the Canadian oath of allegiance. In both cases the majority of Progressive Conservative M.P.s blocked passage of the bill (Canada: Hansard, 1991, pp. 2552. 15877-87, and 19957-62). In 1993 the Liberal M.P. from Saint-Laurent--Cartierville, Shirley Maheu, also raised the issue in a motion stating that: “In the opinion of this House, the government should amend the Canadian Citizenship Act, to ensure it reflects the evolving nature of Canadian society and considers Canada’s commitment to diversity and individual human rights.” (Canada, Hansard, 1993: 18773-18782).

4. The Reports of the Parliamentary Standing Committees

Although David Crombie's discussion paper did not receive much attention and did not result in any substantial reforms to the statutory framework, the ideas embodied therein were not lost or forgotten. In fact all of the policy issues and options contained in that document were included in at least one and in some cases both of the reports produced in 1993 and 1994 by two Parliamentary standing committees --the Senate Standing Committee on Social Affairs and Science and Technology and the House of Commons Standing Committee on Citizenship and Immigration. Both of those reports proved to be quite influential in the principles and provisions that would ultimately be embodied in three bills designed to reform the statutory framework for Canadian citizenship.

Those reports were produced in the aftermath of the failure of the Meech Lake and Charlottetown accords that were designed to appease the Quebec government's desire for a particular type of constitution and to encourage it to become a signatory to a revised constitutional framework. The reports were essentially responses of Parliamentarians to the position paper that had been produced the Mulroney government in 1987. The reports of those two Parliamentary committees were essentially mirror opposites of each other. Whereas the former devoted most of its recommendations to changes in citizenship administration and programs and only one recommendation to statutory amendments, the latter devoted most of its recommendations to statutory amendments and only a few to matters of citizenship administration and programming. This difference in the two reports underscores an important difference in philosophy regarding what are essential components of the citizenship reform agenda. Whereas one school of thought maintains that the most essential component are the provisions in the statutory framework related to naturalization, the other school of thought maintains that it is the provisions in the policies and the programs related to citizenship training/orientation related to identity formation.

4.1 Senate Standing Committee on Social Affairs, Science and Technology (1993)

In 1993, after approximately six months of deliberating on the issue starting on 11 December 1992 in the wake of the failure of the Charlottetown Accord, the Senate Standing Committee on Social Affairs Science and Technology produced a report titled "Canadian Citizenship Sharing the Responsibility" which only contained one recommendation regarding amending the 1977 Citizenship Act, namely that Parliament enact a new citizenship act by 1995 that did the following:

- (a) reflected the pluralist, officially bilingual and multicultural nature of Canadian society, and
- (b) provided a clear statement of citizenship rights and responsibilities.

The remaining recommendations contained in the report of the Senate Standing Committee focused on various matters related to citizenship institutions, policies and programs, rather than the citizenship statutory framework *per se*. The Committee recommended that:

- ◆ The citizenship initiatives espousing responsibilities and rights be targeted at all Canadians and not only at new Canadians.
- ◆ The Federal Government promotes national initiatives addressing matters of citizenship education.
- ◆ The Department of Secretary of State assesses existing models of citizenship education.
- ◆ The Department of Secretary of State consults with the Council of Ministers of Education concerning the applicability of such models in school curricula.
- ◆ The Department of Secretary of State participates in a second series of initiatives of Canadian studies.
- ◆ The Government gives consideration to the provision of an "endowment fund" for the establishment of a Canadian Centre for Citizenship Education and Promotion.
- ◆ That the Centre of Citizenship Education and Promotion report on an annual basis to the Minister of Multiculturalism and Citizenship who shall table the report to Parliament.

The report of the Senate Standing Committee on Science and Technology was rejected outright by the new Liberal Minister responsible for citizenship and immigration, namely Sergio Marchi, who felt that it had simply not devoted sufficient attention to key issues and options related to reforming the Citizenship Act. It was on his initiative that the House of Commons Sanding Committee on Citizenship and Immigration was requested to undertake a review and make recommendations on citizenship reforms (Cornea, 1997).

4.2 House Standing Committee on Citizenship and Immigration (1994)

Shortly after it was elected in 1993, the Liberal government announced its intention to overhaul the Citizenship Act. Toward that end it asked for the advice of the Standing Committee on Citizenship and Immigration. In June 1994, just nine months after the Liberal election victory, that Committee produced a report titled “*Canadian Citizenship: A Sense of Belonging*” which contained several key provisions related statutory amendments that would prove very influential in three iterations designed to reform the Citizenship Act between 1998 and 2003. There were eight general categories of recommendations in that report:

1. A declaration of Canadian citizenship that expressed vision and importance of citizenship
2. A citizenship oath
3. Criteria and conditions for granting, denying, and revoking of citizenship
4. Dual citizenship
5. Citizenship of children of citizens born outside of Canada or adopted
6. Ministerial discretion in waiving citizenship and language tests on compassionate grounds, and in granting citizenship to alleviate cases of special or unusual hardship or to reward services of an exceptional value to Canada should be continued
7. Standardized, fair testing for all citizenship applicants
8. A one year residency requirements for resumption of citizenship lost through various means

The House of Commons Committee, unlike its Senate counterpart, made only one minor recommendation that was not directly related to reforming the Citizenship Act per se. That recommendation dealt with the nature of the citizenship test on Canada. The Committee recommended that the test should be fair and objective, available in several languages, drawn from a large pool of questions based on facts regarding various regions of Canada, sufficiently challenging, and subjected to a high grade for a passing mark.

Most, if not all, of the recommendations of the House of Commons Standing Committee on Citizenship and Immigration, echoed what had been included in the discussion paper produced by David Crombie and, as subsequent sections of this paper reveal, they were embodied in the provisions contained in the proposed Citizenship legislation produced during the five year period from 1998-2003 (Bill C-63, Bill C-16 & Bill C-18) by the Chretien government.

Before examining the key provisions and principles in those three bills, it should be noted that the Immigration Legislative Review Advisory Group appointed by the Chretien government in the mid-1990s (1995-1997) had recommended that the Immigration Act and the Citizenship Act be consolidated into a single piece of legislation and that a new Department be created that dealt both with citizenship and immigration. Although the second part of that recommendation was accepted by the Chretien government and resulted in the creation of the Citizenship and Immigration Canada, the first part was rejected by the government. Instead of trying to consolidate those two acts, as suggested by the committee, the Chretien government set out to achieve consonance in the key provisions and principles of those two acts. Indeed, since 9/11 it has also tried to achieve such consonance with other statutes enacted to enhance security in the aftermath of the bombing of the World Trade Centre and the resulting ‘war on terrorism.’

Another noteworthy observation regarding the Immigration Legislative Review Advisory group is that its creation and work was one of the factors that contributed to the relatively long delay for the Chretien government to introduce legislation on citizenship, especially after members of the Liberal caucus had been critical of the Mulroney government for not showing more urgency in introducing such legislation. Other factors that likely contributed to that delay was the work of the Standing Committee on Citizenship and Immigration from 1993 to 1994 and the machinations surrounding the Quebec referendum of 1995 created a substantial distraction for the Chretien government in trying to advance various statutory reform measures, including those related to the citizenship act.

5. The Chretien Government's Draft Legislation (1998-2003)

During the quinquennium from 1998 to 2003 three bills have been introduced to reform the Citizenship Act but to date none has been enacted. This includes the following bills: first, Bill C-63 which was introduced in 1998, it was reviewed and amended by the Standing Committee on Citizenship and Immigration, as was awaiting to go to the Report Stage when the session ended and the bill died on the Order Paper; second, Bill C-16 was introduced on the 25th of November 1999, made it through all three stages in the House of Commons, and through the first and second reading stage in the Senate by 27th of June 2000, ultimately died on the order paper because it did not get past second reading in the Senate prior end of the session; third, Bill C-18 which was introduced in October 2002 but in the spring of 2003 it is still stuck at the second reading stage in the House of Commons.

There is considerable commonality in purposes, provisions, principles and politics of those three bills. Thus, rather than provide a detailed overview of each of them in turn, the objective here is to provide an overview of similarities and differences in their overarching purpose, their key provisions and principles, and their politics.

5.1 Overarching Purpose of the Proposed Legislation

The draft legislation produced during the past quinquennium embodies two overarching purposes, albeit arguably not of equal importance. The first purpose is to enhance national security by improving the control measures (i.e., policies and procedures) in granting, denying and revoking citizenship, and the second purpose is to enhance national identity and unity through the articulation and transmission of a common or shared citizenship identity and a common or shared set of citizenship values. Whereas during the first half of that quinquennium the primary emphasis was on enhancing national identify and nation unity, during the second half of that quinquennium but particularly since 9/11 the primary emphasis has been much more on the first purpose.

This shift in emphasis corresponds to a shift in some of the key provisions and principles in the bills produced prior to and after 11 September 2002 related to granting, refusing, and revoking citizenship for persons who either have not complied with various laws and regulations in getting into Canada or in applying for and acquiring citizenship, or anyone whom the government deems to be a potential threat to the public interest. As discussed below, such a shift proved to be one of the major issues of concerted debate in deliberations on Bill C-18.

5.2 Key Provisions and Principles Embodied in Bill C-63, Bill C-16, and C-18

A summary of the key differences between 1977 Citizenship Act and Bill C-16 and C-18 are outlined in a table in Appendix 1. The objective here is to provide a brief explanation of some of the most significant provisions contained in Bill C-18. Toward that end it is useful to begin by noting that Bill C-18, like the other two bills that preceded it, contains many of the same provisions and principles contained in the 1977 Citizenship Act. The most notable of these are the following:

- ◆ Children born in Canada will automatically become Canadian citizens;
- ◆ Children born in other countries to a Canadian parent will still have a right to Canadian citizenship;
- ◆ Canadian citizens will still be able to be citizens of other countries;
- ◆ People must still be permanent residents of Canada when they apply for Canadian citizenship; and
- ◆ Applicants for Canadian citizenship must still demonstrate sufficient knowledge of Canada and of one of its two official languages before being granted citizenship.

The notable new provisions in the proposed legislation relate to the following eleven matters:

First, that a citizenship oath be adopted that places a greater emphasis on existing Canadian values by changing the oath of citizenship to include a direct expression of loyalty to Canada, rather than to the Monarchy and her heirs and successors.

Second, that a permanent resident must be physically present in Canada for a total of three years out of the six years immediately prior to applying for Canadian citizenship.

Third, that a fully judicial process be instituted under which a judge would decide if an individual's citizenship should be revoked.

Fourth, that the Minister of Citizenship and the Solicitor General of Canada be authorized to sign a certificate that commences a proceeding to revoke the citizenship of a person who has acquired or resumed citizenship by false representation, fraud or by knowingly concealing material circumstances.

Fifth, that a new judicial process be established to revoke the citizenship of a person who has acquired, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

Sixth, that the Governor-in-Council (i.e., cabinet) be authorized to refuse citizenship in those rare cases where a person demonstrates a serious flagrant disregard for Canadian values.

Seventh, that there be new prohibitions and offences with more severe punishment in order to maintain the integrity of the new citizenship system.

Eighth, that children adopted abroad by Canadians become citizens without having to enter Canada as permanent residents and apply for citizenship. This effectively put these children on the same legal footing as children born to Canadian parents abroad.

Ninth, that the transmission of citizenship to persons born abroad of Canadian parents be restricted to the first and second generations, with an automatic loss of citizenship at the age of 28 years to those in the second generation who have not resided in Canada for the requisite period of time

Tenth, that citizenship judges be referred to as citizenship commissioners and that they Be required to play a more active role in promoting Canadian citizenship, and advising the Minister on citizenship issues.

Eleventh, that an administrative rather than a quasi-judicial process be established to deal with applications for citizenship.

5.3 Overview of Politics Related to Bill C-63, Bill C-16, and C-18

The three bills did not produce any highly charged or highly publicized political dynamics. This is equally true of partisan political politics in Parliament and of societal politics outside Parliament. This is not to suggest that the various provisions in those bills were not contested, because as is discussed below they were, but that the debates were neither highly charged nor highly publicized.

The debates on the various bills have tended to focus primarily on several key matters. The first and most controversial topic of debate has been the scope of individual or collective ministerial discretion in granting and particularly in refusing or revoking citizenship. Of particular concern were provisions regarding refusing and revoking citizenship on various grounds to three different types of individuals. The first type is refugees who do not have all the right documentation or who cannot be entirely forthright with various Canadian authorities while seeking asylum. The second type is immigrants, refugees, and naturalized citizens who might be accused of having committed war-crimes or crimes against humanity at anytime in the past either in World War II or regional conflict that has taken place during the subsequent six decades. The third type is immigrants, refugees, and even naturalized citizens who might be deemed a threat to national security. These concerns were articulated both by M.P.s and Senators during their deliberations on the three bills at various stages of the legislative process as well as by various groups who made representations during to the parliamentary committee hearings. A notable representation on this particular matter was made in a brief by the Alberta Provincial Council of the Canadian Ukrainian Congress which it submitted to the Parliamentary committee holding hearings on Bill C-18.

In addition to concern regarding the grounds for refusing or revoking citizenship, there was concern regarding the procedures for doing so. During the various debates in the House, in Committee and in public hearings, questions were often raised regarding the adequacy of the procedures for revocation of citizenship. As one author noted in discussing the concerns on this matter in conjunction with Bill C-16: “Witnesses before the Committee and some Members in the House pointed out that the lack of an appeal from cases decided by the Trial Division of the Federal Court left no way to settle the opposing views of different judges on points of law. Questions were raised about whether the ultimate decision on revocation should be left with the executive (i.e., the Governor in Council), or whether it should be moved to the courts. Amendments to accomplish those ends, however, were defeated in both Committee and the House of Commons” (Young: 2000).

Concerns over the aforementioned matters have been expressed most strongly in Parliament by Senator William Kinsella and two M.P., namely Inky Mark and Andrew Teledgi, all of whom introduced private members' bills designed to draw attention to their concerns in an effort to constrain the federal government to make what they deemed to be the requisite amendments (See Hansard, 1150-1250).

A second major issue that has been the focus of substantial debate was the residency requirement for citizenship. Whereas some favoured the clarification that prospective citizens must physically reside in Canada for three years to meet the residency requirement, others either felt that this was not prudent because it would be difficult to monitor and enforce, and that such monitoring and enforcement could entail some measure of infringement on privacy. Still others favoured either a longer or shorter residence requirement for citizenship.

A third major issue that has been the focus of substantial debate was the acquisition of citizenship based on birth and adoption by various generations. Some have questioned the merits of the ease or difficulty of granting citizenship to one or more of the following:

(a) children adopted abroad, (b) children born in Canada to non-citizens, and (c) second and third generation children of Canadians who either did not obtain or somehow lost their Canadian citizenship through various means.

A fourth major issue that was the focus of substantial debate was the wording of the Oath of Citizenship and the lack of a Citizenship Proclamation or statement about the meaning and value of Canadian citizenship. It would not be an exaggeration to suggest that in the period since 1987 when the Mulroney government produced its discussion paper on amending the citizenship act, no other issues have captured the imagination of Parliamentarians as members of the attentive public as much as these two issues.

Those who believe that the Citizenship Act, and any policies and programs that flow from it should devote as much, if not more, attention to identity formation, as it does to naturalization *per se*, missed no opportunity to underscore the importance of producing a proper oath and a proper proclamation for inclusion in the citizenship act.

The fundamental issue regarding the oath was to ensure that on balance it was more republican and less monarchical by giving a higher prominence to country than to the monarchy, and that it emphasized a commitment to Canada and to fundamental Canadian values. The general objective in the case of the Citizenship Proclamation, which people wanted to be included as a preamble to the citizenship Act, was that it should be something poetic that at once embodied the wording and spirit of the ‘Canada Clause’ in the Charlottetown constitutional accord, and most of what is noble and appropriate in terms of right, freedoms and duties contained in the Charter of Rights and Freedoms and other parts of the written and unwritten constitution. In effect, this was the search for a highly poetic ode to the virtues of Canada and being a Canadian that would resonate in the hearts and minds of Canadians and prospective Canadians. It was believed that such an ode was essential in transmitting the valuable and proper messages to longstanding and new Canadians in the ongoing process of identify formation and reformation.

There are many other provisions and principles that were the subject of substantial debates. Notable ones include whether the system of citizenship judges or commissioners should persist. Some were of the opinion that a more efficient and effective system could be established for preparing applicants for citizenship without the retention of what were generally characterized as patronage appointees working on a part time basis outside the framework of the civil service for a relatively high pay. The suggestion was that the money devoted to them could be redirected toward non-governmental agencies who work closely with immigrants. Another issue that has been the subject of substantial debate is the nature of the citizenship test. Here too one finds those who support the status quo and those who advocate change either because they feel the citizenship test is appropriate or inappropriate either in terms of the degree of difficulty, or the nature of the material it covers.

6. Conclusions

To reiterate, the central objective of this paper has been to provide an overview and assessment of the initiatives undertaken during the third phase (i.e., the past quarter century since the 1977 Act was adopted) to reform the citizenship act. More specifically, the objective has been to answer the following questions:

- ◆ What have been the purposes and policy goals of the citizenship act reform agenda?
- ◆ What have been the factors that have shaped the citizenship act reform agenda?
- ◆ What accounts for the remarkably protracted process to produce a new citizenship Act which, to date has still not, yielded substantial results?
- ◆ What aspect(s) of the citizenship act reform agenda, if any, has been contested, by whom and why?

The answers to those questions based on information contained in the foregoing sections of this paper are provided in summary form below.

6.1 The Purposes of the Citizenship Reform Agenda

During the third phase the key purposes of the reform agenda have been to render the Citizenship Act more consonant with four major developments, namely: the provisions and principles embodied in the Charter of Rights and Freedoms; the changing conceptions of citizenship within the Canadian polity; the changing nature of citizenship regimes in other countries; the changing realities of immigration and refugee flows as well as the migration patterns of Canadians; and the changing realities of national and international security.

Moreover, in keeping with those broad purposes, during the third phase there have been two sets of policy goals that have driven the citizenship reform agenda. The first set of policy goals are related to the ‘naturalization regime’ embodied in the Citizenship Act and generally include maximizing the following matters: (a) the number of full fledged citizens among residents in Canada; (b) the objectivity and fairness in refusing, granting and revoking citizenship; and (c) the degree of national and personal security.

The second set of policy goals are related to identity formation and include maximizing the following matters among those who are granted Canadian citizenship: (a) their degree of emotional attachment and personal commitment to Canada; (b) their understanding and appreciation of the importance of the fundamental nature of the Canadian polity and Canadian political values; (c) their ability to function as full fledged Canadian citizens within the political, social and economic spheres of the polity; (d) their ability to contribute to national unity and harmony.

6.2 The Factors That have Shaped the Citizenship Act Reform Agenda

Several factors have contributed to shaping the Canadian citizenship act reform agenda during the third phase. The most notable has been a recognition that the existing citizenship act contains some provisions which are either anachronistic or are not consonant with the Charter of Rights and Freedoms in ensuring equality among various types of individuals and groups. Another factor has been a widespread belief that somehow the existing citizenship statutory, policy and program is deficient in constructing an optimal Canadian identity, therefore in order to produce more and ‘more perfect’ Canadians changes were needed both to the citizenship act and to the various policies and programs undertaken pursuant to it. Still another factor which has been most influential in shaping Bill C-18, are the security imperatives generated by the act of terrorism of the 11th of September 2002. After that date the number and nature of provisions and principles related to security matters achieved an increased importance in the draft legislation.

6.3 The Factors Contributing to the Protracted Reform Process

The time that has elapsed since 1987 when serious attention was first devoted to reforming the 1977 Citizenship Act is quite remarkable. The protracted process has been a function of a combination of factors. Although one is tempted to apply either or both the ‘overload thesis’ and the ‘shift in priorities thesis’ to explain the protracted process, ultimately one is loathe to do so because they simply do not provide a satisfactory answer. At best they provide a rationale rather than a legitimate reason. The more reasonable or plausible explanation emerges if one focuses on two interrelated factors. First, the lack of consensus and second, a lack of political will.

In examining the citizenship act reform process one is struck by the lack of consensus on precise nature and scope of a new citizenship regime both in Parliament and in society. What is interesting is that there is a general consensus on the very broad and general principles and provisions that should be embodied in such a statute, there is a substantial degree of disagreement on the more precise principles and provisions. This is not unusual in most pieces of legislation, what is unusual is the decision of governments with a vast majorities to delay repeatedly the implementation of a statute and to allow the debate to persist on what is required to produce the optimal statutory instrument. During the third phase of reforming the citizenship regime, both those in government and those outside government seem to be embarked on an historic quest in locating the optimal citizenship act. In effect they remind one of crusaders who seem to be searching for the ‘holy grail’ of citizenship acts. The traditional compromises and sub-optimal provisions that are usually at the heart of many statutes do not seem acceptable in this particular crusade where optimality bordering

on divinity seems to be the only acceptable standard. At one juncture in the Bill C-16 process the majority of members in the House of Commons had settled on what it deemed an optimal or at least appropriate statutory framework, but the Senate felt it needed more time to deliberate on the matter but, alas, an election call terminated its deliberations on that particular iteration of a draft bill for a citizenship act.

The foregoing observations related primarily to lack of consensus on how to reform the citizenship act. However, there has also been a lack of political will on the part of successive federal governments to produce a new Act. Both the Mulroney and Chretien governments have had substantial majorities in Parliament which they have used to enact a plethora of controversial and non-controversial legislation. Indeed there is no shortage of such legislation which was by far more controversial than their proposed citizenship acts have been. This raises the question as to why these governments have not been more expeditious in adopting such an act. This is a question which needs to be investigated in more detail before providing a definitive answer. Such an investigation should focus on at least four key questions:

- ◆ Was it the difficulty of producing a statutory framework that was acceptable to them?
- ◆ Was it the difficulty of producing a statutory framework that was acceptable to others inside and outside Parliament and a desire to try to do so?
- ◆ Was it that they had other policy priorities and did not believe that they should devote too much time, effort and political capital to this particular statutory reform initiative?
- ◆ Was it that until September 11, 2002 there was not a truly significant political or policy imperative to produce a new citizenship statutory framework, but that in light of what happened on that day now such an imperative exists?

Those are all unanswered questions that require further research. Such research is best undertaken after this Parliament completes its deliberations on Bill C-18. It will be interesting to see what it does with this particular bill. Will it enacted either in its current form or in some amended form? It would be truly remarkable if Bill C-18 suffered the same fate as Bill C-16 and Bill C-63. That would not only be another interesting and important episode in this already remarkable story, but it would be a remarkably odd legacy for this particular Prime Minister, who is affectionately referred to as “Captain Canada” for his palpable and irrepressible patriotism, if his government were unable to produce a new citizenship act despite repeated efforts during three terms in power and in each case with a majority in Parliament.

APPENDIX I

Comparative Overview of 1977 Act with Bill C-16 and Bill C-18

Source: CIC "Bill C-18 Key Changes"

CIC web-site: www.cic.ca/english/policy/c18-changes.html

Current Act (1977)	Last Proposed Bill: C-16 (1999)	New Proposed Bill: C-18 (Tabled on October 31, 2002)
Adoption		
An adopted person must come to Canada as an immigrant and be a minor at the time of adoption.	An adopted person can acquire citizenship without becoming a permanent resident, but must be a minor at the time of adoption.	An adopted person can acquire citizenship without becoming a permanent resident. A person can be adopted after his or her 18 th birthday, but a genuine parent-child relationship must have existed prior to that time. CIC will carefully review any adult adoption application to ensure it is legalizing an established, legitimate family relationship.
Residence		
Physical presence in Canada is not clearly defined as a requirement for citizenship.	Residence in Canada is defined as physical presence.	As in C-16.
Spouse & Common Law		
No reference made to common-law partners.	Clauses referring to "spouse" were removed, as they were part of the <i>Modernizing Benefits and Obligations</i> bill.	Clauses referring to "spouse" are re-integrated into the bill and include reference to common-law partners so as to ensure consistency with the <i>Modernizing Benefits and Obligations Act</i> .

Purpose Clause		
There is no purpose clause in the current Act.	As in current Act.	<p>A purpose clause has been added to help clarify some of the policy intentions and values in the citizenship legislation.</p> <p>Each of the purposes supports a policy intention and the bill's provisions that enact that intention. For example, the purpose "to promote respect for the principles and values underlying a free and democratic society" supports the provision that allows the Governor-in-Council to refuse citizenship to a person who demonstrates serious disregard for principles and values underlying a free and democratic society.</p>
Oath		
<p>Oath does not include allegiance to Canada.</p> <p>New citizens must pledge allegiance to the Queen and her heirs and successors.</p>	<p>Oath requires both allegiances to Canada and the Queen.</p>	<p>The C-18 oath is almost identical to the C-16 oath. We removed the words 'heirs and successors' from both bills because these words made the oath unnecessarily complicated and were not legally required.</p> <p>The French version of the C-18 oath is slightly different from the C-16 version: 'soutenir nos valeurs démocratiques' was changed to 'préserver ses valeurs démocratiques' and 'no lois' was changed to 'ses lois.'</p>
Decision Making Process for Granting Citizenship		
A quasi-judicial decision-making process based on subjective criteria.	Administrative decision-making process using objective criteria.	As in C-16.

Citizenship Commissioners		
Citizenship judges preside at ceremonies.	Citizenship commissioners preside at ceremonies.	As in C-16.
Canadians Born Abroad		
There is no limit on the automatic acquisition of citizenship at birth for children born abroad to a citizen parent.	<p>Acquisition of citizenship by those born abroad is limited to the second generation born abroad. Cases of children born abroad who are subject to loss of citizenship would begin in 2005. These children would lose citizenship if they did not reside in Canada for three years and apply to retain it.</p>	<p>A transitional provision has been added to the bill for those who are 22 or older when the bill comes into force. This group would not be able to meet the policy objective of acquiring 1,095 days (3 years) of residence in the 6 years before applying. Under the transitional provision, they will instead have the option to acquire one year of residence in the year before applying.</p> <p>This provision will expire when those who are 22 or older turn 28 and either lose citizenship or have retained it by fulfilling the conditions. The provision's exact expiry date will depend on the bill's proclamation date.</p>

Revocation		
Minister sends a notice indicating the Government's intention to revoke citizenship and outlining the grounds. The person then has 30 days to ask that their case be referred to the Federal Court, Trial Division. If that happens, the court will review the case to determine if the person acquired citizenship by fraud, misrepresentation or knowingly concealing material circumstances. If the court finds that citizenship was obtained wrongly or if the case is not referred to court, the Minister can submit a report to the Governor in Council who then decides whether to revoke citizenship.	Revocation remains, ultimately, a Governor in Council power.	Revocation is a fully judicial process including expedited removal where war crimes, terrorism or organized crime is involved. The Minister initiates proceedings at the Federal Court, Trial Division. Appeal is available to either party. For rare cases involving protected information, a special procedure modelled on immigration legislation is used, which does not allow for an appeal.
Annulment		
Difficult to rescind citizenship in simple cases.	New ministerial power allows for annulment of citizenship in clear-cut cases such as the use of a false identity. The Minister must send notice to a person when he intends to annul their citizenship.	As in C-16, a new ministerial power allows for annulment of citizenship in clear-cut cases. However, in C-18, notice of annulment must contain a summary of the grounds alleged against the person, which form the basis for annulling citizenship.

Principles of a Free and Democratic Society		
Difficult to refuse citizenship in extraordinary cases.	A new discretionary power allowed the Governor in Council to refuse citizenship in the "public interest."	This new discretionary power has been more clearly defined. The Governor in Council can now refuse citizenship when a person has demonstrated a "flagrant and serious disregard for the principles and values underlying a free and democratic society" (as judicially interpreted in <i>R v. Oakes</i>).
Security Intelligence Review Committee (SIRC) Report regarding refusal of citizenship		
The conclusion of a SIRC report regarding refusal of citizenship on grounds of national security or organised criminality should be released to the person concerned "at the same time as or after the report is made."	The conclusion of the SIRC report should be released "when it is convenient to do so."	The conclusion of the SIRC report should be released "as soon as practicable."
Consultation with Senate		
When the Governor in Council is appointing a retired judge to perform the functions of the Security Intelligence Review Committee (SIRC), the Prime Minister consults with the Leader of the Official Opposition and the leader of any party having at least 12 members in the House.	Generally the same as in the current Act.	The consultation process will include the Leader of the Opposition in the Senate.

Time spent in jail or on parole		
Periods of time spent in Canada when subject to a probation order, on parole or confined in a penitentiary, jail, reformatory or prison do not count toward meeting the residency requirement. Also, any person in the above circumstances cannot be granted citizenship or take the oath of citizenship.	As in current Act.	These clauses remain the same, but also include restrictions for conditional and intermittent sentences.
Crimes outside Canada		
Prohibitions include only indictable offences committed in Canada.	New prohibitions include summary conviction offences and equivalent foreign offences.	As in C-16.
Transitional provisions		
Two temporary provisions allow persons born abroad to a Canadian parent between 1947 and 1977 to access citizenship.	A transitional provision allows those born or adopted abroad by a Canadian parent between 1947 and 1977 to apply for citizenship. This provision lasts for three years after coming into force.	As in C-16. Provisions also apply to individuals adopted as adults.