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Citizenship Reform Proposal #19: Birth on Soil

ISSUE:

Whether to limit citizenship by birth on soil to ensure that people who obtain citizenship at birth have a strong connection to Canada.

BACKGROUND

In Canada, citizenship can be acquired automatically (by operation of law) either through birth on soil (*jus soli*) or by descent (*jus sanguinis*). Under the *Citizenship Act*, all children born in Canada are Canadian citizens by birth, with the exception of children born to foreign diplomats.

There has been periodic debate on whether citizenship by birth on soil should be limited in Canada in order to ensure that children who acquire citizenship by birth have a connection to Canada. These debates are linked to news articles reporting on "birth tourism," i.e., the practice of foreign women coming to Canada to give birth in order to secure Canadian citizenship for their child and to provide an "anchor" for the rest of the family. Reports have also emerged of refugee claimants giving birth in Canadian hospitals.

CONSIDERATIONS

Limiting citizenship by birth on soil would require legislative amendments. Such a change may be considered to strengthen program integrity and protect the value of citizenship. Similar to the first generation limit for persons born abroad to a Canadian parent, restricting citizenship by birth in Canada to children born to a parent who is either a permanent resident or citizen could also be seen as supporting efforts to protect the value of citizenship.

Implementing changes to the current birth on soil policy could entail significant costs for the Government, for Provinces and Territories (P/Ts) and Canadian citizens (discussed below). Policy approval in principle to restrict citizenship by birth on soil could be sought through the Memorandum to Cabinet (MC) on citizenship legislative reform. However given the significant impact on P/Ts, the MC would also likely need to seek approval to consult with provinces on the implementation approach.

Incidence of children born in Canada to foreign national parents

There is limited data available on the number of children born in Canada to foreign national parents for a number of reasons: information on the immigration or citizenship status of the parents is not collected when registering the birth of a child with the province or territory; CIC Missions are not in a position to readily determine if women are pregnant before they arrive in Canada as they do not see all applicants for a Temporary Resident Visa (TRV); many TRV applicants are issued multiple-entry visas valid for several years so the opportunity to be aware of applicants potentially seeking entry to give birth is limited; etc.

Some data is available from Statistics Canada on the number of children born in Canada each year to non-resident mothers. There is also some information available on the number of

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applications received for permanent residence on Humanitarian and Compassionate consideration (H&C) in which the applicant has a Canadian-born child, and on the number of babies born to refugee claimants who have received coverage under the Interim Federal Health Program. Available figures point to fewer than 500 cases of children being born to foreign national parents in Canada each year, out of an average of over 360,000 births per year in Canada. However, this data may under represent the true number. The Statistics Canada data, for example, is based on self-declaration. Details on this data are presented in Annex A.

While the limited data available suggests that the incidence of children born in Canada as a result of maternity tourism may be small, anecdotal information indicates that the problem could be more widespread. CIC Missions report that having an "anchor baby" may be a motivation for women coming to Canada to give birth. The phenomenon of "anchor babies" is linked to the notion that having a Canadian-born child who acquires citizenship may provide benefits for the family down the road, for example as a means to have family members sponsored for immigration to Canada by that child once the child is 18 years of age (and assuming that they meet the residence and income requirements that would apply at the time of sponsorship), or with regard to possible evacuation by the Canadian government in an emergency situation. Once again, the extent of this phenomenon is not known.

Potential impact of changing Canada's birth on soil policy

Limiting citizenship by birth on soil would affect how individuals born in Canada demonstrate citizenship. There are some federal and provincial services that cannot be obtained without showing a birth certificate (or Certificate of Citizenship) as proof of citizenship. These include: obtaining a social insurance number; obtaining health services; registering at a public educational institution; obtaining a passport; and proving citizenship when applying for a job. Were citizenship by birth on soil restricted, the birth certificate in its current form would no longer be sufficient to prove citizenship. Changes would need to be made to what documents provinces and territories, as well as the government of Canada, use to determine an individual's citizenship status in Canada.

In order to determine how changes to Canada's birth on soil policy could be implemented, CIC would need to work with Provincial and Territorial (P/T) partners and Other Government Departments (OGDs). Depending on the outcome of those discussions, there would be varying impacts on P/Ts, OGDs, CIC, and Canadian citizens. These are discussed in the implementation scenarios to option 2.

International comparisons

Many countries have limited access to citizenship by birth on soil. Of comparator countries, Canada and the US are the only countries to have birth on soil provisions. The United Kingdom, Australia, New Zealand, and most European countries restrict citizenship by birth on soil to children born to parents who are either citizens or permanent residents. Of the countries that restrict citizenship by birth on soil in this way some, such as New Zealand and Australia, have a provision that recognizes a person as a citizen at birth if the person's parents are neither

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citizens nor permanent residents and the child would otherwise be stateless. Australia has an additional provision whereby a child who is born in Australia and who is not eligible for citizenship at birth automatically acquires citizenship on his/her 10th birthday as long as that child ordinarily resides in Australia (an exception exists for diplomats).

Statelessness provisions

A child who does not obtain citizenship as a result of being born in Canada may be born stateless. To prevent this situation and uphold Canada's international obligations under the 1961 United Nations Convention on the Reduction of Statelessness, a provision would be needed to allow for a grant for children in this situation. The Convention provides optional conditions to be placed on such a grant including age, period of residence and prohibitions on grounds of serious criminality or security issues. Considerations and options regarding a provision granting citizenship to stateless persons born in Canada are provided in the attached Annex B.

Initial analysis supports that the options proposed will uphold Canada's obligations under the 1961 Convention but not frustrate removals of children born in Canada to refugee claimants. However, given the importance of ensuring that the Government has a strong basis on which to support removals, consultations are ongoing with CBSA and DOJ on the impact of the presence or absence of a residence requirement for a statelessness grant on the speed of removals, as well the potential impact on H&C requests for the family to remain in Canada because of the child's newly acquired citizenship status.

Other Immigration and Refugee measures

On-going Government projects aimed at improving the integrity and efficiency of immigration programs could decrease the number of people who would be in the position of giving birth in Canada without having citizenship or permanent resident status. For instance, faster removals of failed refugee claimants envisioned under implementation of the *Balanced Refugee Reform Act* could make it less likely that foreign national women would give birth in Canada.

OPTIONS:

Option 1- Status Quo :

This option proposes the status quo, i.e., maintaining the legal concept that any child born in Canada will automatically acquire Canadian citizenship by birth on soil regardless of their parent's immigration or citizenship status (except children born to foreign diplomats).

Pros:

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- Maintains Canada's long-standing position of automatic citizenship for children born on Canadian soil in a context where the data suggests the number of children born to foreign nationals is a small portion of the 360,000 births in Canada per year.
- Allows the birth certificate, issued under current processes, to continue to act as a reliable proof of citizenship for the majority of citizens, and facilitates determination of eligibility for government benefits, programs and services.
- Maintaining the status quo is the least costly option, as it avoids the need for expensive process changes and the associated costs to CIC, OGDs, and P/Ts.

Cons:

- Does not remove incentive for foreign national mothers to come to Canada to give birth to their children and gain access to Canada and the benefits of citizenship.
- Perception that the value of citizenship is weakened by laws that allow someone with no attachment to Canada to give birth in Canada and that the child would be Canadian with all of the current and future entitlements that would bestow.
- Although the impact appears small, there is a perceived negative impact to program integrity as raised by the media and by MPs in the past by allowing foreign nationals with the intent to give birth in Canada to obtain Canadian citizenship for their child. There is also a reported impact on the medical community given reports of cases of non-citizen and non-permanent resident mothers coming to Canada to give birth and leaving without paying medical bills.
- If the child obtains Canadian citizenship, the child could have a different status than the parent(s). While Canadian-born children are a factor considered in applications for permanent residence on H&C grounds by foreign- nationals in Canada, the existence of a Canadian-born child will not necessarily result in a positive H&C decision. If the parents' H&C application is refused, it is assumed that the parent(s) will return to their country of origin with their Canadian-born child.

Option 2 – Seek policy approval in principle to: signal the Government's intent to amend the Citizenship Act to restrict the acquisition of citizenship by birth on soil to children who are born to at least one parent who is a citizen or permanent resident at the time of the child's birth; and to provide for children born in Canada who would otherwise be stateless the ability to apply for a grant of citizenship for stateless persons born in Canada (recommended Option A in Annex B); and seek Cabinet approval to consult provinces and territories on the implementation approach for this change. (Recommended)

Under this option, the bill to be tabled in June 2012 in support of citizenship legislative reform bill would not include amended birth on soil provisions. At tabling of the citizenship legislative reform bill, the Government could signal its intent to pursue changes to birth on soil, include a stateless provision, and consult with P/Ts on an implementation approach.

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Once the implementation approach has been devised in consultation with P/Ts, it is likely that the CIC Minister will need to return to Cabinet with an MC seeking funding.

This option would also require a grant of citizenship for stateless persons born in Canada. Options for this grant are provided in Annex B.

This option may also require changes to the *Immigration and Refugee Protection Act* (IRPA) in order to ensure that children born in Canada to parents who have temporary status (such as temporary foreign workers or students) have access to a temporary status of a similar duration to that of their parent. This could also apply to children of protected persons who cannot acquire permanent residence status.

Pros:

- Would remove the incentive for those coming to Canada to give birth to their children and gain access to Canada and the benefits of Canadian citizenship without establishing a connection to Canada.
- Would diminish the intent of those coming to Canada to give birth so their child, upon turning 18, could be able to sponsor their parents for immigration to Canada if they meet the financial and residence requirements.

Cons:

- The potential costs for CIC, OGDs and P/Ts of enforcing this provision, the potential challenges with children being born stateless in Canada and the uncertainty of their status may outweigh the benefits linked to limiting citizenship by birth on soil.
- Discussions with CBSA have indicated that limiting citizenship by birth on soil would likely impact the removals program. It could be more challenging to remove families which have a child born in Canada in terms of getting access to travel documents for that child, regardless of whether or not the child is stateless.
- Will likely require that the Minister return to Cabinet with an MC seeking funding for implementing this policy.
- With the current large-scale investigations across Canada on residence, ensuring that a child born in Canada is Canadian may require additional verifications from CIC to determine that a permanent resident parent had not lost status at time of birth of the child.
- May increase the risk of individuals producing fraudulent birth certificates as citizenship acquisition is more restricted.
- May increase the incidence of "father of convenience" whereby a non-Canadian/non-permanent resident woman who gives birth in Canada falsely claims that the child's father is a citizen or permanent resident.

Two possible approaches for implementing a revised birth on soil policy are discussed below.

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Implementation scenario 1 - Explore with P/Ts their issuance of modified birth certificates indicating the holder's citizenship status.

Pursue discussions with provinces and territories to explore the willingness to amend the birth certificate issuance process so that the birth certificate can continue to be used as a reliable proof of citizenship to access a range of P/T and OGD services. Provinces and territories would need to alter the birth certificate registration and issuance process in order to issue birth certificates indicating the holder's citizenship status. This would require P/Ts to have the ability to collect and validate the citizenship or permanent resident status of a newborn's parents. Preliminary discussions with Ontario have indicated that, in their case, this could require legislative amendments in order to provide authority to collect and validate the status of a newborn's parents, and significant system changes. They have indicated they would need to undertake extensive consultations with stakeholders.

Pros:

- If P/Ts are amenable to this implementation approach which preserves the value of the birth certificate, this scenario would minimize the impact of the change on Canadian citizens born in Canada as they could continue to use birth certificates as proof of citizenship.
- Continuing to use the birth certificate as proof of citizenship would also minimize the impact of the change on P/T and OGD partners who require proof of citizenship in order to provide services to Canadians.

Cons:

- Would require agreement from all 13 P/Ts to make significant changes to the process for registering a birth and issuing a birth certificate indicating the holder's citizenship status. For some P/Ts, making this change could require legislative amendments and significant system changes.
- These changes and the resource impact on P/Ts may lead to resistance from P/Ts, who may press for CIC to issue more proofs of citizenship instead (implementation scenario 2).
- Would have IT costs for CIC to expand e-verification to all 13 P/Ts and develop a system for verifying PR status.
- Parents who may be in Canada illegally might not register their child's birth with the provincial authorities if concerned about their status being identified which could leave the child's status in question, deprive the child of enrolment in school, and prevent or delay the child's right to a birth certificate and identity documents.

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Implementation scenario 2 - CIC issues proof of citizenship to persons born in Canada after the change takes effect.

If P/Ts are not amenable to the approach in implementation scenario 1, persons born in Canada after the change takes effect would need to apply for a citizenship certificate to CIC in order to have proof of citizenship, in order to access a range of P/T and federal services.

Pros:

- While changes could result in an increase in citizenship fraud, unlike under implementation scenario 1, were CIC assessing citizenship for all persons born in Canada claiming to have a right to citizenship, CIC could investigate suspect cases. Given CIC's expertise in detecting fraud in other lines of business, CIC may be in a better position to detect fraud in such cases and better enforce changes to birth on soil (for instance, by requesting DNA where there is doubt of parentage).

Cons:

- Significant operational and cost implication for CIC as proof applications could rise from less than 60,000 per year (of which only 38,000 are supported through A-Base funding) to over 300,000.
- Failure to promptly issue proof of citizenship would negatively impact P/Ts as certain services (such as health care) may need to be provisionally offered to children who do not have proof of citizenship.
- Failure to promptly issue proof of citizenship could lead to an increase in the issuance of limited validity passports by PPTC, resulting in clients being required to pay full price for less value (less validity). This could result in an increase of complaints to PPTC, thus creating additional costs.
- If the birth certificate would no longer serve as proof of citizenship for Canadians born in Canada after the change takes effect, PPTC would have to adjust how applications are processed, incurring additional costs: changing the application forms for Canadians under 16 years of age would represent an estimated cost of \$300,000.
- Canadians born in Canada after the change takes effect would be burdened by the extra cost of applying for a proof of citizenship (75\$ per proof application).
- May increase the risk of individuals producing fraudulent citizenship certificates as citizenship acquisition is more restricted.

LEGAL ASSESSMENT

Legal assessment of option 2 indicates a low risk of successful Charter challenge. However, as the policy proposal becomes more firmly developed further legal analysis will be required.

CONSULTATIONS

The Department of Justice, Passport Canada, DFAIT, CBSA, and Public Safety have been consulted. Should option 2 be chosen, Canadian provinces and territories would need to be

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engaged as this option would require their cooperation to make significant changes to the processes for registering a birth and issuing a birth certificate. Other Government Departments, such as HRSDC and Service Canada (amongst others) would also need to be consulted.

STAKEHOLDER IMPLICATIONS

It is unknown at this stage whether any stakeholders or organizations may support a change limiting access to citizenship by birth on soil. However, media reports concerning the child born in Canadian air space and comments from physicians in Montreal to the media regarding maternity tourism suggest that there may be some support for a restrictive policy. A change could draw concern from the UNHCR given its mandate to deal with Statelessness issues and compliance with International Convention obligations. A change would likely be opposed by the Canadian Council for Refugees (CCR) as they have spoken out against the new limit to citizenship by descent in the case of children born abroad to Canadian citizens.

Notwithstanding the proposed statelessness provision discussed in Annex B, the CCR would likely be critical of a new policy that could result in children being born stateless if they were born in Canada to refugee claimants or other persons who are legally in Canada but who are not citizens or permanent residents.

Any change that imposes an additional burden on "Canadian born" may not be well received. Parents of newborn citizens born in Canada may be critical if there were a need to apply and pay for both a birth certificate and a citizenship certificate.

RESOURCE IMPLICATIONS

Under option 2 (scenario 1), asking 13 provinces and territories to change their birth certificate issuance process and validate parent status with CIC and with other provinces and territories in order to issue a birth certificate indicating the holder's citizenship status could involve significant IT costs for provinces and territories, as well as for the federal government. Scenario 1 would also entail increased processing costs for P/Ts.

Conversely, if all citizens born in Canada after these changes come into effect need to apply for a citizenship certificate (option 2, scenario 2) to access P/T and federal services, this would result in a near eight-fold increase over CIC's current proof A-base capacity, which would not be sustainable under current funding levels. Scenario 2 would also result in an increase in costs for PPTC and P/Ts, as processes for assessing eligibility for services would need to be changed.

Under both implementation scenarios of option 2 there could also be an increase in applications for grants of citizenship for minor children born to temporary residents if the temporary resident parents become permanent residents and then apply for citizenship.

If option 2 is chosen and following the recommended consultations with P/Ts, the CIC Minister will likely need to return to Cabinet with an unfunded MC in order to secure a source of funds.

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COMMUNICATIONS IMPLICATIONS

Eliminating birth on soil in order to ensure that everyone who obtains citizenship at birth has a strong connection to Canada would have significant cost implications, either for P/Ts (option 2, scenario 1) or for CIC (option 2, scenario 2). The challenge of communicating this change would be convincing the public that restricting the acquisition of Canadian citizenship is worth that cost, particularly in a climate of deficit reduction.

If option two is chosen, a communications strategy will be needed to support the Government's signalling of this policy change at the time the Bill is tabled. Messaging would highlight the need to consult with key stakeholders, such as PTs, before going forward.

RECOMMENDATION

Option 2 is recommended as restricting birth on soil to those who have a permanent status in Canada would remove the incentive for foreign nationals coming to Canada to give birth to their children and gain access to Canada and the benefits of Canadian citizenship, thereby preserving the value of citizenship. Obtaining approval to signal this policy change and consult with P/Ts would allow for the discussions necessary before such a change were implemented and allow for the possibility of a return to Cabinet to seek funding for costs associated with implementing the change to help ensure smooth implementation.

Neil Yeates

I concur

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☐ **OPTION 1: STATUS QUO**

☐ **OPTION 2: SEEK APPROVAL TO PUBLICLY SIGNAL THE INTENTION TO RESTRICT THE ACQUISITION OF CITIZENSHIP BY BIRTH ON SOIL [WHILE PROVIDING FOR CHILDREN BORN IN CANADA WHO ARE STATELESS THE ABILITY TO APPLY FOR A GRANT OF CITIZENSHIP, SUBJECT TO CERTAIN REQUIREMENTS (DISCUSSED IN ANNEX A). SEEK AUTHORITY FROM CABINET TO CONSULT P/Ts ON THE IMPLEMENTATION OF THIS CHANGE. (RECOMMENDED)]**

☐ **I DO NOT CONCUR**

The Hon. Jason Kenney, PC, MP

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Annex A: Data on the Incidence of Children Born in Canada to Foreign Nationals

There is limited data available on the number of children born in Canada to foreign national parents for a number of reasons discussed below. Some information on the number of children born in Canada each year to mothers whose primary residence was outside Canada is available through Statistics Canada. In 2008, of a total of 378,133 births in Canada, 247 births were to mothers who reported their primary residence was outside Canada. Similarly, in 2006, of a total of 357,289 births in Canada, 289 births were to mothers who reported their primary residence was outside Canada (Statistics Canada). It is unknown whether these numbers include people who were here legally in Canada for extended periods, such as temporary foreign workers, students and refugee claimants as these persons could be considered as residing in Canada. While these numbers suggest that births in Canada to foreign national mothers may represent a very small percentage of the total annual births in the country, as this is based on self-declaration, these figures likely under-represent the number of children born in Canada to foreign national parents.

The main reason why data on the number of children born in Canada to foreign nationals is limited is because information on the immigration or citizenship status of the parents is not collected when registering the birth of a child with the province or territory. Moreover, CIC Missions do not see all applicants for a Temporary Resident Visa (TRV) and many applicants are issued multiple-entry visas valid for several years so the opportunity to be aware of applicants potentially seeking entry to give birth is limited.

CIC does, however, have some information from different sources which gives an indication of the number of children born to foreign nationals in Canada. For example, until recently, CIC issued Interim Federal Health Programme (IFHP) coverage to children born to refugee claimants, resettled refugees, victims of trafficking in persons (VTIP), and detainees outside of B.C., Ontario and Québec (i.e., in provinces and territories where there is no automatic coverage for health care). In the last three fiscal years, a total of 233 newborns were eligible for IFHP coverage in these provinces and territories. It should be noted, however, that this data may include children born abroad immediately before the parent's arrival in Canada given that the country of birth has not been consistently recorded.

CIC receives applications for permanent residence inside Canada for Humanitarian & Compassionate consideration where there is a Canadian-born child. In 2005, CIC conducted a survey of sample H&C decisions (approximately 700) from 2003-2005. The survey provides some information on the number of H&C applicants with Canadian-born children over a three year period. Of 693 applications for H&C reviewed as part of the survey, 156 applicants had Canadian-born children.

While the limited data available suggests that the incidence of children born in Canada as a result of maternity tourism may be small, anecdotal information indicates that the problem

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could be more widespread. CIC Missions have anecdotal information on the incidence of pregnant women seeking entry into Canada in order to give birth. While in some cases, pregnant women may be seeking entry into Canada in order to have access to Canada's medical services (and make arrangements with the hospital in advance), some CIC Missions reported that having an "anchor baby" may also be a motivation. The phenomenon of "anchor babies" is linked to the notion that having a Canadian-born child who acquires citizenship may provide benefits for the family down the road, for example as a means to have family members sponsored for immigration to Canada by that child once the child is 18 years of age (and assuming that they meet the residence and income requirements that would apply at the time of sponsorship), or with regard to possible evacuation by the Canadian government in an emergency situation.

Statistics on the "anchor baby" phenomenon are not available. DFAIT advises that in the recent Arab Spring evacuations, it was not uncommon to see family configurations where one child was a Canadian-born citizen and the remainder of the family were not. During the Syria Voluntary Evacuation (which ended on January 14, 2012), CIC's Case Management Branch received a total of 49 referrals. Each referral was for a case including one or more individuals. Of these 49 cases referred, 15 cases involved children born in Canada, of which 19 were "anchor babies".

Many Missions report that they find out about potential "anchor baby" cases indirectly: when a foreign-national applies for a visa and the CIC officer learns that the person gave birth on a previous TRV; when an applicant applies for an Authorization to Return to Canada (ARC) and reveals that a child or children were born in Canada during the refugee claim process; or when the consular section (DFAIT) receives an application for a Canadian passport and neither parent is a Canadian citizen. CIC Missions noted that there are some indicators suggesting that maternity tourism may be more of an issue in areas where there is political instability and where dual citizenship is accepted.

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Annex B: Options Regarding a Grant of Citizenship for Stateless Persons Born in Canada

ISSUE:

Were the *Citizenship Act* amended to restrict the acquisition of citizenship by birth on soil to children born in Canada to at least one parent who was a citizen or permanent resident at the time of birth, a provision would be required to enable stateless children born in Canada to apply for a grant of citizenship.

CONSIDERATIONS

A change in Canada's citizenship by birth on soil policy could result in some children being born stateless. This situation is likely to be rare, but could occur if a child is born in Canada to foreign-national parents and that child is unable to acquire citizenship by descent from either parent because of the nationality laws in their country of citizenship.

As a signatory to the 1961 United Nations Convention on the Reduction of Statelessness, Canada has an international obligation to reduce the incidence of statelessness by conferring citizenship on persons born in Canada who would otherwise be stateless and to persons born outside Canada to a Canadian parent who would otherwise be stateless. The Convention provides optional conditions to be placed on a grant of citizenship for stateless persons, including age, period of residence and prohibitions on grounds of serious criminality or security issues.

Canada currently has a grant of citizenship for stateless children born abroad to a Canadian parent (subsection 5(5) of the *Citizenship Act*). This grant was introduced in 2009 when citizenship by descent was limited to the first generation born abroad. The provision has the following requirements: the applicant must always have been stateless; the applicant must have been born abroad to a Canadian parent; the applicant must be less than 23 years of age; the applicant must meet a residence requirement (three years during the four years immediately preceding the application); and must not be prohibited on grounds of criminality or security (for which there is a high threshold, in accordance with the guidelines of the Convention).

While a grant of citizenship for stateless children born in Canada could be modeled on the existing stateless grant, a residence requirement is not recommended given that such a requirement could delay or frustrate removal efforts. For example, if the foreign national parent is under a removal order and the child born in Canada is stateless, a residence requirement for the child to access a grant of citizenship on grounds of statelessness may prevent a family from being removed until the child has obtained citizenship. In such a situation the child may not have access to other documentation that would facilitate removal with family members to the parents' country of origin. A residence requirement could also function as an incentive for a foreign-national parent to remain in Canada with a stateless Canadian-born child until that child meets the residence requirement for this grant.

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A review of citizenship laws of the top 10 source countries for refugee claimants in Canada, as well as the top 10 source countries for failed refugee claimants, suggests that genuine cases of stateless persons born in Canada are likely to be rare. This review has further indicated that genuine statelessness, while very unlikely, could occur if a child is born in Canada to parents from countries that have a limit to citizenship by descent, or from countries that have a birth registration requirement in order for the child to access citizenship and the parents do not register the birth on time. For example, a child born in Canada to Mexican parents who are both Mexican citizens by descent would be stateless. Australia has a grant of citizenship for stateless person born on soil, for which there is no residence requirement, and report that it is rarely used.

OPTIONS:

Option A – If citizenship by birth on soil is restricted, include a provision enabling children born in Canada who would otherwise be stateless to apply for a grant of citizenship for stateless children born in Canada, for which there would be no residence requirement, but for which there would be a prohibition for serious criminality and security, and an upper age limit to apply of 23 years of age. Maintain the existing grant for stateless children born **outside** Canada to a Canadian parent, for which there is a residence requirement and a security prohibition.
(Recommended)

Similar to the existing grant of citizenship for stateless persons born abroad to a Canadian parent, the stateless grant of citizenship for persons born in Canada would have the following requirements: the person must have always been stateless; the person must not be prohibited due to serious criminality or security reasons; and the person would need to apply by the age of 23. However, unlike the grant of citizenship for stateless children born abroad, there would be no residence requirement. Requiring a child born stateless in Canada to meet a residence requirement could make the removal of individuals in this situation difficult, thereby undermining the objectives of refugee reform.

Pros:

- Giving immediate access to a grant of citizenship to children born in Canada who would otherwise be stateless should facilitate the removal of parents who are failed refugee claimants.

Cons:

- Maintaining the residence requirement for the stateless grant of citizenship for children born abroad to a Canadian parent while not requiring stateless children born in Canada to a foreign national to meet a residence requirement would be controversial. This could be mitigated by emphasizing that stateless children born abroad can be sponsored as permanent residents by their Canadian parent and apply immediately for citizenship as minors without accumulating residence in Canada.

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Under this option, both the grant of citizenship for stateless persons born in Canada and the grant of citizenship for stateless persons born abroad to a Canadian parent would have identical residence requirements.

Pros:

- Consistent requirements for a stateless grant of citizenship for children born abroad to a Canadian parent or born in Canada to a foreign national would limit some criticism linked to option A, as both groups of stateless persons (those born in Canada to foreign-nationals and those born abroad to Canadians) would need to meet a residence requirement to qualify for citizenship.

Cons:

- Imposing a residence requirement on stateless children born in Canada could delay the removal process for the duration of the residence period for the child to obtain citizenship and a passport on the basis of which the child could depart Canada with parents who are being removed.
- This option could also result in parents of a stateless child born in Canada remaining in Canada without status in order to enable the child to obtain citizenship.
- Removal of a stateless child prior to the child meeting the residence requirement and acquiring citizenship would be contrary to the spirit of the 1961 Convention, and in any event, the removal of such a stateless child may be very difficult is not impossible.

RECOMMENDATION

Option A is recommended given that a residence requirement for a stateless grant of citizenship could hinder efforts removal efforts in situations involving families with a child born in Canada without access to another citizenship.

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- Failed refugee claimant parents facing removal may need to register their children born in Canada with the country of alleged persecution in order to obtain foreign citizenship for the child to facilitate removal of the family. This could be controversial. However, this could be mitigated by noting that parents would only need to contact their country of citizenship and take such measures after their refugee claim has been rejected as unfounded.

Option B – If citizenship by birth on soil is restricted, include a provision enabling children born in Canada who would otherwise be stateless to apply for a grant of citizenship for stateless children born in Canada, for which there would be no residence requirement, but for which there would be a prohibition for serious criminality and security, and an upper age limit to apply of 23 years of age. Amend the existing grant for stateless children born **outside** Canada to a Canadian parent in order to eliminate the residence requirement, thereby aligning the requirement for the grant of citizenship for stateless persons born in Canada and stateless persons born abroad to a Canadian citizen.

Pros:

- As with Option A, giving immediate access to a grant of citizenship to children born in Canada who would otherwise be stateless would facilitate the removal of parents who are failed refugee claimants.
- Consistent requirements for a stateless grant of citizenship for children born abroad to a Canadian parent or born in Canada to a foreign national would eliminate controversy linked to option A. This option would avoid criticism that an Option B approach would benefit stateless children born in Canada to foreign nationals more (no residence requirement) than the stateless children born abroad to a Canadian (residence requirement to access a grant of citizenship).

Cons:

- Removing the residence requirement for the grant of citizenship for stateless children born outside Canada could be viewed as undermining the objective of ensuring applicants have established a connection with Canada.
- Failed refugee claimant parents facing removal may need to register their children born in Canada with the country of alleged persecution in order to obtain foreign citizenship for the child to facilitate removal of the family. This could be controversial. However, this could be mitigated by noting that parents would only need to contact their country of citizenship and take such measures after their refugee claim has been rejected as unfounded.

Option C – If citizenship by birth on soil is restricted, include a provision for children born in Canada who would otherwise be stateless enabling them to apply for a grant of citizenship for stateless children born in Canada, for which there would be a three year residence requirement, a prohibition for serious criminality and security, and an upper age limit to apply of 23 years of age.

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Neil Yeates

I concur

☐ **OPTION A: CREATE A GRANT OF CITIZENSHIP FOR STATELESS PERSONS BORN IN CANADA, FOR WHICH THERE WOULD BE **NO RESIDENCE REQUIREMENT** BUT FOR WHICH THERE WOULD BE A PROHIBITION FOR SERIOUS CRIMINALITY AND SECURITY, AND AN UPPER AGE LIMIT TO APPLY OF 23 YEARS OF AGE. **MAINTAIN** THE EXISTING GRANT OF CITIZENSHIP FOR STATELESS PERSONS BORN OUTSIDE CANADA TO A CANADIAN PARENT. (RECOMMENDED)**

☐ **OPTION B: CREATE A GRANT OF CITIZENSHIP FOR STATELESS PERSONS BORN IN CANADA, FOR WHICH THERE WOULD BE **NO RESIDENCE REQUIREMENT** BUT FOR WHICH THERE WOULD BE A PROHIBITION FOR SERIOUS CRIMINALITY AND SECURITY, AND AN UPPER AGE LIMIT TO APPLY OF 23 YEARS OF AGE. **REMOVE THE RESIDENCE REQUIREMENT** FROM THE GRANT CITIZENSHIP FOR STATELESS PERSONS BORN OUTSIDE CANADA TO A CANADIAN PARENT.**

☐ **OPTION C: CREATE A GRANT OF CITIZENSHIP FOR STATELESS PERSONS BORN IN CANADA, FOR WHICH THERE WOULD BE A **RESIDENCE REQUIREMENT**, A PROHIBITION FOR SERIOUS CRIMINALITY AND SECURITY, AND AN UPPER AGE LIMIT TO APPLY OF 23 YEARS OF AGE. **MAINTAIN** THE EXISTING GRANT OF CITIZENSHIP FOR STATELESS PERSONS BORN OUTSIDE CANADA TO A CANADIAN PARENT.**

The Hon. Jason Kenney, PC, MP