

Deprivation of Citizenship: A Canada/United Kingdom Comparison

by Patti Kemp and Edward C. Corrigan
Published on 08-26-2015 02:17 PM

Changes to Canadian citizenship law became law on May 28, 2015 when portions of the Strengthening Canadian Citizenship Act came into force[1]. This Act amends important sections of the Citizenship Act, including the ability to strip Canadians of their citizenship[2]. United Kingdom law already provides for deprivation of citizenship under s. 40 of the British Nationality Act 1981[3]. In considering the potential ramifications of this new law on the Canadian system, it is worthwhile to compare it to the UK system.

Grounds for Depriving Citizenship

The first three grounds for deprivation under both UK and Canadian law are essentially the same: if, during an individual's application, they committed an act of fraud, an act of false representation, or the concealment of a material fact.[4]

The fourth ground under UK law is if the deprivation of citizenship is conducive to the public good[5]. Conduciveness to the public good covers terrorism, espionage, serious organised crime, war crimes and any other unacceptable behaviours[6]. Under the new Canadian law, citizenship can now be deprived if an individual has served in a military or armed group engaged in an armed conflict with Canada or holds a conviction for treason, terrorism or spying, including convictions from jurisdictions outside of Canada[7].

Deprivation decisions in the UK are made by the Secretary of State for the Home Department, although this power is delegated to Governors and Lieutenant-Governors of British overseas territories.[8] There is no time limit within when deprivation must take place, so an individual could be indefinitely liable. [9]

In Canada, the decision to deprive will be made by the Minister of Citizenship and Immigration, or an immigration officer designated to carry out that duty. There is no restrictions on time limits in the Act.

The Appeal Process

In the UK, an individual has a right of appeal to either the Asylum and Immigration Tribunal[10] with onward appeal rights to the Upper Tribunal and Court of Appeal or, for national security and public interest issues, to the Special Immigration Appeals Commission (SIAC) with onward appeal rights to the Court of Appeal [11] . Deprivation now occurs at the date of the decision to deprive, so the individual loses citizenship before their appeal[12]. It can be reinstated by either the Tribunal or SIAC if their appeal is successful.[13]They remain in legal limbo until a final decision is made.

In Canada, the Minister must provide a written decision containing the grounds for the deprivation decision[14]. The individual has the opportunity to make written representations in response to the decision within a specified time period. The Minister then seeks a declaration of revocation which is granted by the Federal Court. The burden of proof for a decision under the ground of fraud must be on the balance of probabilities, but for the other grounds, the Minister must have reasonable grounds. The only appeal right for the declaration is if the Federal Court certifies a serious question of general

importance[15]. The effect of the decision is that the individual becomes a foreign national. These provisions will not apply if the individual would be left stateless.[16]

Although denied by the UK government[17], practitioners have expressed concerns that deprivation proceedings are commenced after the individual has left the UK, leaving them at risk of ill-treatment and persecution and being unable to appeal effectively the decision[18]. Refoulement, or returning an individual to a country where they face the risk of torture, is illegal under international law.[19]

Amnesty International has expressed concerns that the new Canadian law could be used in the same manner[20].

Concerns about the Increased Use of Deprivation

Despite reassurances to the contrary[21], there has been an increased use and a broadening of the scope of deprivation in recent years in the UK. Changes to the law have increased the spectrum of individuals liable to deprivation[22] with amendments being criticised for lowering the threshold for deprivation decisions.[23] At the same time, the number of deprivation orders has increased dramatically[24], particularly for those involved in “fighting, extremist activity or terrorist training overseas”[25] such as fighting in Syria[26].

It remains to be seen whether the Canadian government will use its new law in a similar manner. The Canadian government certainly indicates that it intends to use the law to target individuals who fight for groups such as ISIS[27]. The Canadian government has already started proceedings against two Canadian Citizens who have been convicted of terrorism offences.[28] Commentators note that the new law could be used beyond this purpose, such as against journalists prosecuted in other countries for reporting on human rights violations[29].

Statelessness and the New Immigration Bill

Under the Immigration Act 2014, an individual can be deprived of UK citizenship and left stateless if they obtained citizenship through fraud, false representation or concealment of material fact, or if they obtained citizenship through naturalization and they have behaved in a manner “seriously prejudicial to the vital interests of the United Kingdom”[30]. This second ground mimics the wording of the permitted reservation to the 1961 UN Convention on the Reduction of Statelessness[31], which the UK has ratified[32]. The Home Office contends that statelessness does not breach an individual's human rights[33] because the Act complies with the permitted reservation to the 1961 Convention.[34]

Under the new Canadian law, s. 10.4(1) states that the law does not authorise a decision which would go against any human rights instruments to which Canada is a signatory, a distinction noted by the Canadian Bar Association as being very vague[35]. Citizenship and Immigration Canada has clarified that citizenship will only be revoked if the individual is a dual-national.[36] However, the individual must prove, on the balance of probabilities, that they would be made stateless as a result of the decision.[37] The Canadian Civil Liberties Association (CCLA) and the Canadian Council of Refugees (CCR) are both critical of this provision and the CCR believes that the provision could still lead to statelessness.[38]

Commentators, including the Canadian Bar Association, the CCLA and the CCR have expressed concern that the new Canadian law creates two different classes of citizenship. The more secure form is enjoyed by Canadians born here and who are not, or cannot become, dual nationals. The less secure

form, which is subject to deprivation, is for those who are or can become dual nationals[39]. The CCLA points out that this differentiation compromises “the right to equality before the law”.[40] The CCR believes that the law will cause “a loss of a sense of belonging to society” among the greater community of dual citizens, regardless of whether they are at risk of having their citizenship revoked. [41] The BC Civil Liberties Association and the Canadian Association of Refugee Lawyers recently announced that they are taking legal action against the federal government to challenge what they refer to as “Canada's new second-class citizenship laws”[42] which they describe as “anti-democratic, anti-Canadian and anti-immigrant.”[43]

In comparison, there are six different types of British nationality[44]. Time will tell whether the new law leads to a further fragmentation and devaluation of Canadian citizenship. If the result is that they would be returned to a country where they face a serious risk of persecution and even torture then this action would be contrary to International law. Concerns remain that the revocation procedure will be abused for political reasons.

[1] <http://news.gc.ca/web/article-en.do?nid=985219>

[2]"New Requirements for Canadian Citizenship Took Effect June 11, 2015," by Edward C. Corrigan, Immigration Daily

(ILW), 23 June 2015. Link found at <http://discuss.ilw.com/content.php?4594-Article-NEW-REQUIREMENTS-FOR-CANADIAN-CITIZENSHIP-TOOK-EFFECT-JUNE-11-2015-By-Edward-C-Corrigan>

[3] As amended by the Nationality, Immigration and Asylum Act 2002 and the Immigration, Asylum and Nationality Act 2006

[4]s. 40(3) British Nationality Act 1981

[5]s. 40(2) British Nationality Act 1981

[6] Para 55.4 Nationality Instructions

[7]<http://www.parl.gc.ca/HousePublications/Publication.aspx?doc=C-24&pub=bill>

[8]s. 43 British Nationality Act 1981; a more in-depth discussion is beyond the scope of this article.

[9]Para 55.5 Nationality Instructions

[10]s. 40A(1) British Nationality Act 1981

[11]s. 2B SIAC Act 1998

[12] Schedule 2 Asylum and Immigration Act 2004, SI2005/565 (repealing s. 40A(6) British Nationality Act 1981)

[13]British Nationality Act 1981 (as amended), s40A(3)

- [14] <http://www.parl.gc.ca/HousePublications/Publication.aspx?doc=C-24&pub=bill>
- [15] s. 10.7 Strengthening Canadian Citizenship Act
- [16] s. 10.4(1) Strengthening Canadian Citizenship Act
- [17] House of Commons Debate, 11 February 2014, c261-2WH
- [18] Arbitrary deprivation of nationality: Submission of the Immigration Law Practitioners' Association to the UN Office of the High Commissioner for Human Rights, Immigration Law Practitioners' Association, 15 February 2013
- [19] Article 33 1951 Convention Relating to the Status of Refugees; 1967 Protocol Relating to the Status of Refugees; Article 3 1984 Convention Against Torture
- [20] http://www.amnesty.ca/sites/default/files/c24_brief_amnesty_international_canada.pdf
- [21] House of Lords Debate 9 October 2002 c282-3
- [22] Nationality and Immigration Act 2002; S56 Immigration and Nationality Act 2006
- [23] Joint Committee on Human Rights, Counter-Terrorism policy and Human Rights: Terrorism Bill and related matters, HC561-I, 5 December 2005, para 161; 164
- [24] Home Office, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain, Cm 5387, February 2002, p. 35; House of Commons Debate 3 June 2013, c892-3W
- [25] Parliamentary Briefing Paper, "Deprivation of British citizenship and withdrawal of passport facilities", Melanie Gower, Home Affairs Section, 30 January 2015, www.parliament.uk/briefing-papers/SN06820.pdf
- [26] Rise in citizenship-stripping as government cracks down on UK fighters in Syria, The Bureau of Investigative Journalism, 23 December 2013
- [27] Government of Canada Press Release, "Protecting Canadians: Government of Canada now able to revoke citizenship of dual citizens convicted of terrorism", 29 May 2015, <http://news.gc.ca/web/article-en.do?nid=981809>
- [28] "Government seeks to revoke Canadian citizenship of convicted terrorist Misbahuddin Ahmed," by Chris Cobb, Ottawa Citizen, July 26, 2015. Link at <http://ottawacitizen.com/news/politics/government-seeks-to-revoke-canadian-citizenship-of-convicted-terrorist-misbahuddin-ahmed>
- [29] BCCLA, "It's official – second class citizenship goes into effect" 3 June 2015, <https://bccla.org/2015/06/its-official-second-class-citizenship-goes-into-effect/>
- [30] s. 66 Immigration Act 2014
- [31] 1961 UN Convention on the Reduction of Statelessness Article 8 and paragraph 3(a)(i) and (ii)

[32] The UK has also enacted the 1954 UN Convention on Stateless Persons

[33] Found under the European Convention on Human Rights, as enacted in UK law through the Human Rights Act 1998

[34] Immigration Bill: European Convention on Human Rights: Supplementary Memorandum by the Home Office, 10 October 2013

[35] <http://www.cba.org/cba/submissions/pdf/14-22-eng.pdf>

[36] <http://www.cic.gc.ca/english/resources/tools/cit/acquisition/revocation.asp>

[37]s. 10.4(2) Strengthening Canadian Citizenship Act

[38] <http://ccrweb.ca/sites/ccrweb.ca/files/citizenship-bill-c-24-submission.pdf>

[39] bid 21 & 29; <http://www.theglobeandmail.com/globe-debate/editorials/bill-c-24-is-wrong-there-is-only-one-kind-of-canadian-citizen/article19400982/>

[40] <https://ccla.org/ccla-presents-concerns-to-the-un-human-rights-committee-in-geneva/>

[41] <http://ccrweb.ca/sites/ccrweb.ca/files/citizenship-bill-c-24-submission.pdf>

[42]<http://equalcitizens.nationbuilder.com/>

[43] Ibid

[44]<https://www.gov.uk/types-of-british-nationality>

Reprinted with permission.

About The Author

Patti Kemp is a member of the Law Society of England and Wales and the Law Society of Upper Canada. She trained and practised as a solicitor at Birnberg Peirce & Partners in London, England. She works part-time for Edward C. Corrigan in London, Ontario.

Edward C. Corrigan is certified as a specialist by the Law Society of Upper Canada in Citizenship, Immigration and Immigration and Refugee Law. His office is located at 383 Richmond Street Suite 902, London, Ontario, Canada N6A 3C4. tel. 519-439-4015. He can be reached at corriganlaw@edcorrigan.ca.

The opinions expressed in this article do not necessarily reflect the opinion of ILW.COM.