

THE CANADIAN CITIZENSHIP ACT*

I

When the Canadian Citizenship Act came into force on January 1st, 1947, it replaced the Naturalization Act and the Canadian Nationals Act. The Immigration Act has been amended to bring it into conformity with the Citizenship Act, so that there are now *two* statutes in force instead of *three* — the Canadian Citizenship Act, which contains the definition of a “Canadian citizen”, and the Immigration Act which states the requirements for right of entry to the Dominion.

The official title of the act is “An Act respecting Citizenship, Nationality, Naturalization and Status of Aliens”; it was designed to deal with the subject of naturalization and aliens, a responsibility of the Federal Government under the British North America Act. Among its most significant features is one that provides a definition of a Canadian citizen, for all purposes, for the first time.

The first general federal act dealing with naturalization was passed in the early 1880's and this act remained in force (with relatively minor amendments) until the Naturalization Act was passed in 1914.¹

The Naturalization Act of 1914 conferred on the holder of a certificate the status of British subject, which was recognized in the United Kingdom and in the other self-governing Dominions. It prescribed the requirements for naturalization and contained a statutory definition of a British subject. British subjects under this act were divided into two classes: *natural-born* and *naturalized* British subjects.

When Canada became a member of the League of Nations it was realized that there should be a definition of “Canadian nationals” in order to distinguish them from the nationals of other parts of the Commonwealth who shared with Canadians the status of British subjects. To meet this need the Canadian Nationals Act was passed in 1921; it accepted as the basis of Canadian nationality for the act the definition of “Canadian citizen” as given in the Immigration Act. However, it described also as Canadian nationals a number of persons who were not Canadian citizens under the Immigration Act.

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¹ Before Confederation in 1867 naturalization could be conferred only by a private act of a legislature.

The Immigration Act contained, for the purpose of this act only, a definition of Canadian citizenship, which described the persons who would be deemed to have a right of entry to Canada. These persons were of three groups: (1) persons born in Canada who had not become aliens; (2) British subjects who had not been born in Canada but who had acquired Canadian domicile by five years continuous residence; and (3) persons naturalized under the Canadian naturalization laws, so long as they retained Canadian domicile.

While the Naturalization Act defined a "British subject", it did not contain a definition of a "Canadian citizen". The Canadian Nationals Act defined a "Canadian citizen" in terms of the Canadian Immigration Act, but this definition was not effective since it included certain classes of persons who were not Canadian citizens under the Immigration Act. The Canadian Immigration Act defined "Canadian citizen", but the definition was for purposes of immigration only. There was, therefore, no general definition of "Canadian citizenship" for all purposes until the Canadian Citizenship Act was passed in 1946.

The laws respecting immigration and naturalization, which were in force prior to January 1st, 1947, caused frequent difficulty and embarrassment to the government, besides being a source of hardship to many individuals.

For instance, under section 2 of the Immigration Act, a citizen of Canada who was a British subject by naturalization, or a British subject not born in Canada having Canadian domicile, might lose his Canadian citizenship after one year's residence outside Canada. This loss of status would result if he failed to have his naturalization certificate endorsed by a British diplomatic or consular officer, before the expiration of the year, to the effect that he wished to retain his Canadian domicile. Obviously this presented many difficulties, particularly to a person whose mental or physical health became impaired while outside Canada.

Then there was the case of a person who came to Canada, as a child, from another country. He became naturalized, lived in Canada all his lifetime and was a Canadian in every respect. He left Canada for some reason and remained away for more than a year without having his naturalization certificate endorsed, and when he wanted to return to what he had always considered his own country, he found that he had to re-enter as an immigrant with the possibility of being refused if he should come under the prohibited class.² He had no rights as a citizen whatever

² Section 3 of the Immigration Act.

and was subject to deportation to the land of his birth, which he might not have seen since childhood. Now, a naturalized Canadian citizen will not lose his citizenship unless he is outside the country for six consecutive years.³ The new act also provides for persons employed outside the country in the public service of Canada or one of the provinces, as well as for persons who represent abroad business organizations or religious houses with establishments in Canada.

Under the old legislation there were two distinct classes of persons who could call themselves "Canadians". A person could be a "Canadian national" under the Nationals Act or a "Canadian citizen" under the Immigration Act.

The Immigration Act confined the class of "Canadian citizens" to: (a) persons born in Canada who had not become aliens; (b) natural-born and naturalized subjects of His Majesty who resided in Canada; and (c) aliens naturalized under the laws of Canada who had not subsequently become aliens or lost Canadian domicile.

Under the Immigration Act, the definition of "Canadian domicile" included "landing" in Canada within the meaning of that act. Consequently the alien wife of a "Canadian citizen" unless "landed" in Canada, and the children of a Canadian citizen born outside Canada unless "landed" in Canada, were not "Canadian citizens" within the meaning of the Immigration Act. Yet such wife and children were "Canadian nationals" within the meaning of the Canadian Nationals Act. As a result we had the paradoxical situation where a person who could not enter Canada under the Immigration Act, since he was in the prohibited category, was entitled to receive a Canadian passport, which requested assistance and protection for him in foreign countries as a Canadian national.

When the Canadian Citizenship Act came into force on January 1st, 1947, the Canadian Nationals Act was repealed and hence there is no longer any person defined as a "Canadian national".

II

The Canadian Citizenship Act is divided into seven parts, together with an introductory section dealing with the interpretation of certain terms found in the act.

Apart from registration, there is nothing that is essentially new or different in Part I. The relevant provisions concerning

³Section 20, Canadian Citizenship Act.

foundlings and children born after the death of their father fill in gaps that existed in previous legislation.

The first section sets out the persons who become Canadian citizens by right of birth; the second section concerns persons born after the act came into force and states who among them are to be recognized as natural-born Canadian citizens. In general the provisions made here for persons born before the act came into force are similar to those for persons born after the act came into force, and do not differ greatly from the definitions of a natural-born British subject that were contained in the Naturalization Act. The principal difference is that in the future, if the parents of a Canadian child born abroad desire to preserve Canadian citizenship for the child, they will have to register the birth of the child within two years of the birth either at a diplomatic, consular or trade commissioner's office or with the Secretary of State at Ottawa. Hitherto there had been no provision for the registration of children born abroad and it had been difficult for some of them to present evidence of their national status. This provision for registration will give Canadians born abroad an opportunity to obtain documentary evidence which will satisfy the Immigration authorities that they have a right of entry to Canada.

Part II of the act deals with Canadian citizens other than natural-born Canadians. It provides for persons who became Canadian citizens before the Canadian Citizenship Act was passed and for those persons who become citizens *after* the act was passed. Provision is made also for persons other than natural-born Canadian citizens who became Canadian citizens when the act came into force on January 1st, 1947. The intention here is to ensure that people who had been previously naturalized in Canada, non-Canadian British subjects who have resided in Canada for five years or more and non-Canadian women who married Canadians and had come to live in Canada with their husbands would become Canadian citizens immediately.

The second section of Part II provides for future acquisition of Canadian citizenship through naturalization. The qualifications for future naturalization are very similar to those previously in force, *except that only one year of residence rather than five will be required of persons who served outside Canada in our armed forces during time of war.*⁴

Before application can be made for Canadian citizenship a declaration of intention to become naturalized must be filed. This

⁴ The time a man served in the armed forces of Canada is to be taken as a period of residence in Canada.

declaration has to be made at least one year and not more than five years before naturalization may become effective; it is necessary for aliens who wish to become naturalized but not for the wives or husbands of Canadians or for non-Canadian British subjects.

The Canadian Citizenship Act now requires that applicants have a knowledge of the responsibilities and privileges of Canadian citizenship. Arrangements are being made under which prospective new Canadians may have an opportunity to study the principles of the Canadian way of life. This will enable them to prepare themselves for the discharge of their responsibilities of citizenship and for the proper exercise and enjoyment of the privileges of Canadian citizenship. In this connection the co-operation of educational and other authorities throughout Canada is being enlisted.

Under the Immigration Act British subjects became Canadian citizens after they had been lawfully admitted for permanent residence to Canada and had resided here for at least five years, but, prior to January 1st, 1947, they could not obtain any certificate or document to establish their status as Canadian citizens. Now, any British subject who was domiciled in Canada prior to January 1st, 1947, may obtain a certificate of citizenship. However British subjects who did not have domicile in Canada prior to January 1st, 1947, or who arrive in Canada after that date will not become Canadian citizens automatically, for the residence requirement of five years is unaltered. It will be necessary for them to get a citizenship certificate before they can claim to have the status of Canadian citizen. Possession of a citizenship certificate will enable a person to establish without inconvenience his right of entry into Canada, his right to Canadian diplomatic protection and his right to the general privileges of citizenship in Canada.

Another group of people affected by the change in this part are the future non-Canadian wives of Canadian citizens. Married women, prior to the passing of the Canadian Citizenship Act, were classed as persons "under a disability" for purposes of naturalization, but the act now gives them control of their national status. Accordingly it has been necessary to delete the old provisions for automatic change of national status upon marriage.

If women are to have control of their national status, there must be nothing automatic about it; it must be a matter of discretion. Nevertheless, while as a principle this is desirable, it is undesirable that non-Canadian women who marry Canadians

should have to wait five years before acquiring Canadian citizenship. To meet this point it has been provided that a woman who marries a Canadian may become a citizen after only one year's residence in Canada with her spouse. This establishes the principle of full control by married women of their legal status with respect to nationality and will impose hardship on no one.

Under the Naturalization Act it was open to the Secretary of State in his absolute discretion to grant or refuse a certificate of naturalization, even though the court might have approved the case and decided that a certificate should be granted. It was felt, however, that this was too wide a discretion. Accordingly, in the Canadian Citizenship Act the specific provision for discretion has been deleted and instead provision has been made for rehearing in cases where it seems doubtful whether the applicant properly should be given a certificate of naturalization or where there appears to have been some omission in the hearing. It is established now that the decision of the court on rehearing is final.

Loss of Canadian citizenship is dealt with in Part III. The provisions with regard to loss upon the acquisition of a foreign nationality have not been changed materially from those previously in effect. In general there have been and still are two ways by which a Canadian might lose his citizenship: (1) by the acquisition of a foreign nationality, or (2) under prescribed conditions in the case of naturalized persons.

In many countries persons are claimed as nationals or citizens who are children of a father who, at the time of their birth, possessed citizenship of the state in question. On the other hand, under Canadian law, any child born in Canada, whether or not his father is a Canadian citizen, is deemed to be a Canadian. The consequence is that in Canada and other countries there are many people who possess dual nationality.

Certain of the enemy countries in the last war, such as Germany and Japan, looked upon some Canadian-born people as possessing German or Japanese nationality. Although the number was not great, there were cases where some young men born in Canada elected, before the outbreak of hostilities, to return to the country of their ancestors and, it is alleged, served in the armed forces of the enemy state. It was, therefore, deemed necessary to include in the new Citizenship Act a provision that any person possessing this legal status of dual nationality, who served in the armed forces of an enemy at a time when Canada was at war, would be taken to have elected

citizenship in the enemy state and would automatically, by so doing, deprive himself of his status as a Canadian citizen.

The principal change in Part III is that in the future Canadian women will not immediately lose Canadian citizenship upon marrying an alien and acquiring his nationality. In accordance with the general principle of giving women an equal position, they will be allowed a discretion as to whether or not they wish to give up their Canadian citizenship.

The new provisions in Part III, which are concerned with the automatic loss of citizenship, deal with naturalized persons who remain abroad for six consecutive years or more and do not protect their citizenship. This provision however does not apply to naturalized persons who have served in the armed forces of Canada in time of war. In addition, the six years do not run during absence from Canada as a representative of the Canadian government or a Canadian firm or for other specified purposes.

The provisions for revocation of certificates of citizenship are virtually unchanged from those previously in effect. The remainder of this part of the act consists of minor provisions which, while new in form in some cases, introduce no new principles.

Part IV of the act deals with the rights and obligations of naturalized Canadian citizens and represents no change from the previous situation. Sections 26 and 28 are complementary and provide for the continuation of the common status of British subjects that has always prevailed throughout the Commonwealth. Provision is made under which Canadian citizens are recognized as British subjects and subjects or citizens of another country of the Commonwealth who are considered to be British subjects under the law of that country will be recognized as British subjects in Canada. In effect these clauses of the act merely perpetuate the basic status of all Canadians as British subjects, while providing at the same time for legal recognition of a new national status — that of Canadian citizen.

Part V deals with the status of aliens, precisely as it has been dealt with under the Naturalization Act, and Part VI with matters of procedure and evidence.

Sections 36 and 38 are significant inasmuch as they deal with the issuing and delivery of the citizenship certificate to the new Canadian after he has taken the oath of allegiance. For many years the authorities had been convinced that a greater degree of solemnity and dignity should surround the ceremony at which new Canadians were admitted to the Canadian

family. It was felt that every effort should be made to make the occasion a memorable one in the life of the applicant. In this regard the views of the Government met with the unanimous approval of all parties in the House of Commons. The purpose of such ceremonies would be to impress upon the new Canadian that he has become a partner in a great enterprise, that his fellow-citizens are interested in his future welfare and that they are anxious that he should feel along with them a sense of responsibility for the future progress of his newly adopted country. To ensure that such a sense of responsibility is based on adequate knowledge, section 37 of the act provides that "The Minister, with the approval of the Governor in Council, shall take such measures as to him may appear fitting to provide facilities to enable applicants for certificates of citizenship to receive instruction in the responsibilities and privileges of Canadian citizenship".

There are a number of general provisions in Part VII. One section, virtually an unaltered re-enactment of an old section in the former Naturalization Act, concerns the power to make regulations to carry out the purposes of the act. One of the sections in the new act preserves the status a person has acquired under existing legislation. This is really a form of insurance to make certain that no one who has now any rights or status in Canada will suffer by the coming into force of this act.

The act concludes with two schedules. Both schedules were in the former Naturalization Act but in a slightly different form. Hitherto the first schedule has been a "list of dominions". It was drawn up in 1914 and never changed. It has now been brought up to date in point of time and constitutional theory by referring to "countries in the British Commonwealth". As far as the second schedule is concerned, a change is made by adding to the oath of allegiance the following words:

. . . . and that I will faithfully observe the laws of Canada, and fulfil my duties as a Canadian citizen.

Since it is Canadian status that is being given to a new citizen upon naturalization it would be illògical not to include a reference to Canada in the oath.

To summarize, the Canadian Citizenship Act is essentially an act defining status. In doing so it removes many of the difficulties encountered in previous legislation. It does not change the British status of Canadians. On the contrary it specifically states that a Canadian citizen as defined in the act is a British subject. It provides for the naturalization of aliens and sets out

more comprehensive standards of qualification for Canadian citizenship than were heretofore explicitly required. And finally, to ensure that all applicants for Canadian citizenship may be enabled to fulfil their duties as Canadians, provision is made for appropriate instruction before their final examination and admission to full Canadian status by the court.

THE INTRACTABLE LAWYER

Permit me, sir, to add another circumstance in our colonies, which contributes no mean part towards the growth and effect of this untractable spirit — I mean their education. In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to Congress were lawyers. But all who read, and most do read, endeavour to obtain some smattering in that science. I have been told by an eminent bookseller that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the Plantations. The colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's "Commentaries" in America as in England. General Gage marks out this disposition very particularly in a letter on your table. He states that all the people in his government are lawyers, or smatterers in law; and that in Boston they have been enabled, by successful chicane, wholly to evade many parts of one of your capital penal constitutions. The smartness of debate will say that this knowledge ought to teach more clearly the rights of legislature, their obligations to obedience, and the penalties of rebellion. All this is mighty well. But my honourable and learned friend [the Attorney-General, afterwards Lord Thurlow] on the floor, who condescends to mark what I say for animadversion, will disdain that ground. He has heard, as well as I, that when great honours and great emoluments do not win over this knowledge to the service of the State it is a formidable adversary to government. If the spirit be not tamed and broken by these happy methods, it is stubborn and litigious. *Abeunt studia in mores*. This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries, the people, more simple and of a less mercurial cast, judge of an ill principle in government only by an actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance; and snuff the approach of tyranny in every tainted breeze. (Edmund Burke: On Conciliation With America. 1775)