

The 2007 Annotated Citizenship Act

Goslett, Henry M., Caruso, Barbara Jo

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This is the first publication of this popular annotated act in ten years. Practitioners in the field of immigration and citizenship law or family law will find the most up to date and significant case developments. Completely updated and revised, the **2007 Annotated Citizenship Act** is a comprehensive treatment of the Citizenship Act, related regulations and leading case law. Written by two of the leading immigration experts in Canada, Henry Goslett and Barbara Jo Caruso combine their experienced minds to provide you leading cases with the utmost relevance and currency you can rely on with confidence.

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- Key Federal Court Decisions interpreting the meaning of residency under section 5(1)(c)

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Preface

Citizenship Act 2007

Canadian citizenship is at once both a right and a privilege. It is a right because the Minister is obliged to confer citizenship on persons who meet the criteria as set out in Section 5. It is a privilege because it entitles the holder to come into and live in a tolerant and democratic society. The orderly development of Canadian citizenship law has been impeded to some extent by the prohibition against appeals in Section 14(6). Many of the judges of the Federal Court have commented on the need for an appellate court to comment on the meaning of residency within the context of the Citizenship Act. The review of the decisions of the Trial Division and Appeals where residency has been an issue reveals significant differences of opinion in the Court of what must be required before a person can be a Canadian citizen. While it is understandable that differences of opinion would exist, it is unacceptable that such differences should take turns being the law of the land as the Judge's take turns hearing appeals from refusals to grant citizenship. In *Collier vs. the Minister of Citizenship and Immigration*, T-442-06 (Nov. 30, 2006), Mr. Justice Robert L. Barnes, summarized the current state of the citizenship system as follows: "It does not engender confidence in the system for conferring citizenship if an applicant is, in the course of a single application, subjected to different legal tests because of the differing

legal views of the Citizenship Court”. The effect has been inconsistent decisions and unpredictability for applicants, leading to a waste of resources and the expenditure of time and emotion while pursuing an application for Canadian citizenship.

Most recently in *Taylor v. Canada (Minister of Citizenship and Immigration)*, September 1, 2006, T-1024-5, (F.C.) the Federal Court held subsections 3(1)(b), (d) and (e) and section 8 of the *Citizenship Act*, when read together, contravene section 15(1) of the *Canada Charter of Rights and Freedoms (Charter)* and were found not to be justified under section 1 of the *Charter*. These sections resulted in the denial of citizenships to a person born out of wedlock outside of Canada prior to February 15, 1977. The Federal Court has pointed out that since Parliament was prepared in 1977 to correct retrospectively, discrimination directed against women resulting from past discriminating treatment based on sex, that there was no reason to not correct the injustice caused to all “illegitimate children” born abroad prior to and after 1947 who could not by dissent derive Canadian citizenship from their natural father. This decision is further evidence of the need for legislative reform.

Furthermore, the crisis in Lebanon in the summer of 2006 sparked a debate with respect to the rights and privileges that should be attached to Canadian Citizenship and a discussion on whether obligations should be required of Canadian citizens, such as residence in Canada.

This book was last published in 1997, and although consideration to update the book has been taken on several occasions, it appeared that significant legislative amendments would be made to the *Citizenship Act*, and accordingly the project was always delayed.

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The cases summarized in this edition, illustrate Parliament’s delay in drafting and passing new legislation has hindered the orderly development of Canadian Citizenship Law. As 2007 marks the 60th anniversary of the first *Citizenship Act*, we are hopeful that this will cause reflection on the need for reform and that this Annotated Act will also encourage timely reform. An announcement in May 2007 by the Minister of Citizenship and Immigration, to create new law to help people who were born in Canada, or born to Canadian parents, and who lost their Canadian status because of quirks of the 1947 Citizenship Act, is a positive initiative.

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July 1, 2007

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