**Possible Considerations for Legal Opinion re Canadian Charter Challenge / ‘US Persons’ in Canada**

Others will speak to many other aspects to be looked at that I won’t go into. Specific to my adult son, born to two US citizens in Canada as landed immigrants before, a year before parents became Canadian citizens (but I doubt he would be the only one):

* born in Canada
* never registered with the US
* never lived in the US
* never had any benefit from the US
* not able to renounce US citizenship because of ‘mental incapacity’ of developmental disability
* must not have influence of anyone in application for renunciation
* parent, guardian, trustee does not have the right to renounce on behalf of such a person, even with a court order.

**From Washington, DC nationality / immigration lawyer engaged to confirm my son’s US status and give possibilities for his renunciation: my children were US citizens from the moment of their births. And, straight from the US Department of State:**

DOS persons he talked with have “sympathy” for such cases. However, the developmentally disabled person will have to have FULL understanding of what he’s doing; if any question of lack of comprehension and grasping meaning and importance of ramifications, they could NOT approve such a case. **From DOS point of view, US citizenship is precious and they have therefore established fundamental requirements for “compelling reason”. Even though there is the risk that a person’s financial resources could run out before his/her life was over, they will never approve a renunciation for financial / economic reasons. DOS has NEVER had such a renunciation case approved due to “compelling circumstances”.** Bottom line: “compelling reason” in their regulations is not helpful to my son’s case. I could sue – **persons he talked with at DOS are SURE no one would ever win such a case as the courts view the discretionary action that DOS has would take precedence.**

My son would not have the requisite ‘mental capacity’ to go through the process of applying for a US social security number in order to back file US tax and reporting returns -- the only purpose of which would be to be able to renounce the acquired extraneous US citizenship, which he could not do as he does not have the requisite ‘mental capacity’ as above.

**For those like my son, with a developmental disability, or those with any other kind of ‘mental incapacity’ (such as age-related dementia), they are “entrapped” into US citizenship and the compliance requirements.**

As I have commented, to have watched / listened to the Credit Suisse hearings, Part 1 and Part 2, was more than I could bear to know we are all lumped in with those who really are out for US fraud and tax evasion.  I don’t consider myself or my son (who has a ‘mental incapacity’ and cannot renounce US citizenship nor does a parent, a guardian or a trustee of such a person) or most of the whatever 7 million figure of US expats around the world are those persons.  We are painted with the same exceptional US brush.  **To now see Finance Minister Flaherty’s words (in a letter to CARP** [**http://www.carp.ca/2014/02/22/federal-minister-finances-message-carp-members-canada-won-privacy-protection-exemptions-relief-fatca/**](http://www.carp.ca/2014/02/22/federal-minister-finances-message-carp-members-canada-won-privacy-protection-exemptions-relief-fatca/)**), makes me finally realize that my Canadian-born son (as all other ‘US Persons’ in Canada) is now deemed second class to any other Canadian no matter where they are from or their parents’ “national origin” and not to be protected by the country of his birth.  Two-tiered Canadian citizenship :**

*Our Government fully understands the separate, but important, issue of U.S. citizenship-based taxation on dual Canada-U.S. citizens. The U.S. government’s system of citizenship-based taxation is different from the residence-based approach generally followed most of the rest of the world.*

*This creates unique challenges for U.S. citizens who reside in other countries – especially Canada. However, as these* ***are U.S. laws that apply to U.S. citizens, they can only be addressed by the U.S. government – not Canada. In that regard, I would encourage U.S. citizens in Canada to share their concerns with the U.S. government.***

That the Government of Canada has signed an IGA with the US to allow our local CANADIAN “foreign financial institutions” to turn confidential financial information for persons identified as US Persons over to the CRA for them to then be able to turn the information over to the IRS and now the Finance Minister of that government makes that statement gives me no peace.  **I am no longer a US citizen and my son, being born and lived all his life in Canada and never registered with the US, would have no US representative to share his concerns with if he were able to do that.**

The IGA “exemption” the Conservative government boasts about is for the banks – they do not have to turn Canadian registered account information for US Persons over to the CRA, but there is no exception for US citizens in still having to report that to the US.  So many so-called one million (or however many) US Persons in Canada and their families (many “Accidental Americans”) knew nothing about US citizenship-based taxation and their US tax responsibilities and the US did a very poor job of educating us.  The US seems to have turned a blind eye to this in the many decades my family has chosen to live, work, pay Canadian taxes as citizens of Canada. I confess my ignorance to US tax law; I don’t think US persons who chose to leave the US and live in other countries should be “criminalized” in the real search for “tax evaders” resident in the US – we will be collateral damage of FATCA, combined with US citizenship-based taxation. I believe many who will be deemed US Persons in Canada still do not know – until they are faced with the new requirement for opening a Canadian banking account to certify they do not have a “national origin” of or relationship with anyone who is “US”.  Not ALL Canadians will have the same rights under the Charter of Rights and Freedoms.

To me, in principle, this is all wrong. I just want common sense. If Mr. Flaherty maintains, now, that my son does not first have Canadian citizenship, as a person born and raised in Canada, that he cannot benefit from a Registered Disability Savings Plan (RDSP) and a Tax Free Savings Account as any other Canadian with a disability with a right to have savings for him in those Canadian registered accounts, so be it. I will use my voice to say that I think it is discriminatory and unjust. It appears to me that the Government of Canada says my son does not have the same rights under the Charter of Rights and Freedoms as any other Canadian, especially other Canadians with a disability, would have as even though, with the intergovernmental agreement signed by the Government of Canada with the US for FATCA, these registered accounts are not FATCA reportable by Canada’s ‘foreign financial institutions’ to the CRA, they are still tax and reporting compliance reportable by the individual to the IRS. This yearly US tax compliance, for my son or any other with a ‘mental incapacity’ would require undue cost of US tax professional assistance, to complete the IRS 1040, including especially IRS Forms 3520, 3520A and 8938 (and others), year after year after year, for (usually) no actual US taxes owed. As the US-Canada Tax Treaty does not address this, I, as the Holder of my son’s RDSP, have paid US taxes on the grants and bonds that the Government of Canada contributed to my son’s RDSP. (I have now officially renounced my US citizenship and certified compliance with US tax with IRS Form 8854.)

I wondered if any of this applies:

This is from the ‘Americans with Disability Act’ which doesn’t address a lot of the discrimination for RDSPs, etc. for Canadians with developmental disabilities (and the like).

But I did glean the following portion, which talks about discrimination ‘economically’.

The Congress finds that

(1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

 (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
**THESE INDIVIDUALS HAVE EMPLOYMENT, HOUSING, PUBLIC ACCOMMODATION, EDUCATION, TRANSPORTATION, COMMUNICATION, RECREATION, HEALTH SERVICES!!!!!, VOTING, ACCESS TO PUBLIC SERVICES IN CANADA — THAT IT WOULD BE DIFFICULT TO PROVIDE FOR THEM IN THE US (WITHOUT THEIR FAMILIES WHO ARE ALSO LIVING  IN CANADA).**

 (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
**THESE INDIVIDUALS ARE DISCRIMINATED AGAINST ECONOMICALLY; I.E. THEIR CANADIAN BENEFITS ARE DIMINISHED IF THEIR PARENTS / GUARDIANS / TRUSTEES ARE NOT ALLOWED TO MAKE A DECISION FOR THEIR BEST INTERESTS TO RENOUNCE THEIR US CITIZENSHIP, WHICH THEN BECOMES A SEVERE ECONOMIC HARDSHIP FOR THEM LIVING IN CANADA OR ANOTHER COUNTRY.   IF THEY HAVE IN THEIR NAME A CANADIAN REGISTERED DISABILITY SAVINGS ACCOUNT OR A TAX-FREE SAVINGS ACCOUNT, IT DOES NOT GIVE THEM THE SAME VALUE FOR THOSE LEGAL TAX-SAVINGS PLANS AS A CANADIAN WITH A DEVELOPMENTAL OR OTHER DISABILITY COMPARED TO THE SAME CANADIAN WITHOUT AN ADDITIONAL US CITIZENSHIP AND ITS RESPONSIBILITIES.**

 (7) the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
**THESE INDIVIDUALS CANNOT HAVE ECONOMIC SELF-SUFFICIENCY — IT IS INCOMPATIBLE WITH AN EXTRANEOUS (TO THEIR CANADIAN OR OTHER COUNTRY CITIZENSHIP) US CITIZENSHIP.**

 (8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.
**THIS IS, FURTHER, UNFAIR AND UNNECESSARY DISCRIMINATION BY NOT LETTING THE PARENTS / GUARDIANS / TRUSTEES OF DEVELOPMENTALLY OR OTHERWISE DISABLED CANADIANS RENOUNCE US CITIZENSHIP ON THEIR BEHALF, WHICH DENIES THESE INDIVIDUALS THE OPPORTUNITY TO COMPETE ON AN EQUAL BASIS (IN THE COUNTRY WHERE THEY RESIDE AND HOLD CITIZENSHIP), THEREBY CREATING MORE DEPENDENCY AND MORE RESULTING EXPENSES. THE COST OF ADMINISTRATION OF THEIR EXTRANEOUS US CITIZENSHIP IN CANADA (OR ANY OTHER COUNTRY) CREATES LITTLE, OR IN MOST CASES $0.00, FOR THE US. IT DOES GIVE MONEY TO CROSS-BORDER ACCOUNTANTS AND US TAX LAWYERS IN CANADA (OR ANY OTHER COUNTRY) — NOTHING FOR ANY SERVICES IN THE US.**

**WHAT ARE THE OPPORTUNITIES FOR THESE INDIVIDUALS FOR WHICH THE US IS JUSTIFIABLY FAMOUS THAT IS BETTER THAN WHAT CANADA, IN THIS CASE, PROVIDES?**

This is what does make sense to me, from a contributor at isaacbrocksociety.ca:

*What do we want? This likely applies to most of us that left the USA, wherever we landed/*

*1.) Asking place of birth where you bank is in the same category as asking what is your religion. It serves no legitimate purpose and is discriminatory*

*2.) Asking citizenship MAY have some legitimate purpose but the fact you may have some lingering citizenship with Eritrea, the USA or Timbuktu is not relevant. If you are a Canadian, living in Canada then that’s it you are Canadian.*

*Bluntly, the Canadian Citizenship Act or whatever it is, needs to be amended and state that the Government of Canada does not recognize dual nationality as having any legal basis in Canada. In the eyes of the Government of Canada you are and want to be looked at as CANADIAN.*

*There may be some merit in writing your MPs and try to get a formal statement for the record, Does the Government of Canada recognize any other nationality held by a Canadian Citizen in dealing with another Government?*

*Folks, this term dual/tri/multi-national has NO legal basis in any country as far as I have seen. Except maybe in the EU where we have dual nationality with the European Union and our own Country.*

Incidentally, I have been told through comment at isaacbrocksociety.ca by someone who identifies as “a practising lawyer, a former USG official, that it is best that I not speak up for my son and for others like him. I disagree. This is what he advises:

*I am trying to be helpful and I happen to know whereof I speak. There was a time when I accompanied Congressmen and Senators around on their junkets. … You need to collect as many arguments as you can, and I fear you are running around in circles. I do not spend much time on this site or on the blogs, but I have read about you both here and in the press. Others have agreed with me that as a practical matter you have done yourself a disservice with publicity. For the reason I mentioned: those responsible for enforcement would like it for cases such as your son’s to stay beneath the radar. That, at present, is the most they can do. Even if you had violated PFIC and tax rules they would have taken no initiative against you.* ***But now you are notorious: it may be your strategy but it is not the best way. It is not “bowing to a bully” at all. The alternative is simply wasteful of time and money: the State has unlimited funds for enforcement if you insult its agents and they choose to take you on.*** *Human rights rarely get a hearing in tax issues. (I have mentioned elsewhere the European Court of Human Rights in connection with (Swiss) government attempt to levy penalties on heirs of a tax debtor; but Canada isn’t in Europe and penalties imposed on an inheritance are not, or not yet, an issue in your case.)*

On another note, it preys on my mind every single day the number of people this round-up of US Persons will affect who DO NOT have financial resources for their own lives, that they think they are unaffected by this, who besides having very little in the way of finances, have very little in the way of financial / tax literacy. There have to be more than a fair share of these individuals / families out there. One has told me she is too poor for this to affect her. So, will that be true? You can’t get blood from a stone so these people should not worry about any of this? What will be their consequences; what will happen to the lives of these families who for whatever reason just don’t have money to get US professional legal / accounting advice and certainly do not have the expertise to handle it themselves? I don’t want to scare them. I can very well put myself into their shoes: there but for the grace of God could have I gone — much of my life a single parent with two children, one with developmental disability as well as concurrent medical problems (and me with my own medical issues). Believe me, I know the lucky breaks I’ve had to be able to be a contributing member of Canadian society (along with some very hard work and planning) and I thank all that is holy, that my path brought me to Canada — I would choose this as my country of citizenship over and over again. Had I stayed in the US, I am convinced my circumstances would have rendered me a ‘welfare mom’ with two small children to raise. Do not my Canadian government, Department of Finance, representatives think that this, aside from my own family’s problems, could be huge in the number of US Person Canadians so affected?

In closing, it is important to note that no one knows what US Persons in Canada (at least the ones who know about this) have been dealing with since their “OMG” moment, when they realize what FATCA and US citizenship-based taxation means for them and their families. Besides the US tax law issues, there are related significant stress, isolation, health and marital problems. I invite a look at a submission to the US Congress Ways and Means Committee that highlights some of that human cost: [**http://waysandmeans.house.gov/uploadedfiles/patricia\_anderson\_daddario.pdf**](http://waysandmeans.house.gov/uploadedfiles/patricia_anderson_daddario.pdf)**.**

Some people are stronger than others; some have more of a voice than others; we all need an even stronger voice now and, hopefully, determine that ALL Canadians have the same rights – that Canada will not have two-tiered citizenship. Those US Persons in Canada who have been experiencing (or will experience) this need to get back to better purpose, regain lost joy in our lives and again be able to effectively contribute to the Canadian society we are part of and want the same rights of as any other Canadian.

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