

Canadian't: Policy Options to Address Birthright Citizenship for Tourists

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Abstract

There has been growing concern about the phenomenon of “birth tourism” in Canada. Birth tourism refers to foreign non-residents arriving in Canada on tourist visas with the intention of giving birth, so that their children benefit from birthright citizenship. Although this practice has occurred for decades throughout the world, many countries have adjusted their birthright citizenship laws to prevent it. Consequently, Canada is now one of only two developed countries to still have birthright citizenship. Although the long-term outcomes of birth tourism are not well understood, the practice represents a challenge to the integrity of the immigration system. This capstone research explores the issue with the aim of evaluating possible policy responses. It conducts a literature review, examines case studies, and draws on expert interviews. Four policy options are presented and evaluated. The capstone recommends making eligibility for birthright citizenship conditional on the possession of a Social Insurance Number.

Dedication

To the first teacher that believed in me, despite all evidence to the contrary. Thank you,
Mrs. Calaciura.

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This project, and life overall, would not have been possible without everlasting love and support given by my family and friends. You all already know.

I cannot express enough gratitude to my partner for all she has had put up with the past two years. Thankfully, I'll have the rest of our lives to make it up to you.

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Chapter 1. Introduction

There is an increasing trend of non-residents giving birth in Canada. Much of the increase has been attributed to the phenomenon of so-called “birth tourism”. Birth tourism refers to non-residents entering a country, often already pregnant, with the intent to give birth so their children can benefit from birthright citizenship. This is done because Canadian citizenship is highly sought after, given the high standard of living in the country. While the practice is not illegal, it engenders public opposition in Canada because it is seen to threaten the integrity of the immigration system. In contrast to the established immigration system, where Canada selects which non-residents become citizens, birth tourism circumvents this process.

Despite public opposition, the long-term social outcomes of birth tourism are not well understood. In addition, birth tourism in Canada is not a new phenomenon – concerns also arose about the issue in the 1990s (Oziewics and Moon, 1991; O’Neil, 1994; Farrow, 1994; Steffenhagen, 1998). Nevertheless, there have been growing attempts to get a handle on the issue. The most recent attempt occurred when the City of Richmond, British Columbia, the primary location for birth tourism in the country (see Figure 2), voted in February 2020 to send a letter to the federal government asking to put an end to birthright citizenship. However, changing federal citizenship law is highly contentious, as episodes in 2014 and 2017 showed, and thus there has remained no organized policy movement at the federal level.

While the primary concern of most Canadians appears to be the integrity of the immigration system, concerns have also been raised around related issues such as maternity ward crowding, unlicensed maternity hotels and the potential impact on housing costs (Bilefsky, 2018). However, these related issues are secondary to the central concern around immigration fairness, and there is little research into these other aspects of the issue. Given this, the policy problem investigated here is the following: birth tourism represents an attempt to circumvent the policy objective of Canada’s official immigration system, and in doing so, undermines public faith in the immigration system and in Canadian citizenship. The aim of this research is to consider and evaluate possible policy options to address this problem.

This paper proceeds in the following way. Chapter 2 examines relevant background issues: the history of birthright citizenship; the different avenues of obtaining Canadian citizenship; current data on rates of non-resident births; an analysis of other controversial forms of citizenship attainment; and an overview of recent public debate and opinion. Chapter 3 outlines the methodology for the research. Chapter 4 conducts case study analysis of Ireland, New Zealand, and the United States. Chapter 5 details the results of interviews conducted with a handful of subject matter experts and stakeholders. Chapter 6 presents four proposed policy options to address rising non-resident births in varying degrees of amendments to birthright citizenship, including maintaining the status quo. Chapter 7 sets out the criteria and measures that will be used to conduct the analysis, while Chapter 8 evaluates the policy options according to these criteria. Chapter 9 concludes with a discussion of research limitations and makes a policy recommendation, which is to make eligibility for birthright citizenship conditional on the possession of a Social Insurance Number.

Chapter 2. Background

This chapter will provide some background information on birth tourism and contextualize the social, economic, and political environment that affects birthright citizenship. First, I will briefly introduce the history of Canada's citizenship regime before broadly presenting Canada's current immigration framework. I will then describe the bureaucratic framework that enables foreign residents to attain citizenship for their children. Afterwards, I will provide the most reliable statistics on birth tourism and highlight where it is most prevalent. I will then present other controversial forms of citizenship attainment that have received policy interventions to rationalize a response to birth tourism. The political debates over birthright citizenship will then be introduced, including findings of a recent public opinion poll assessing Canadians' attitudes towards birth tourism.

2.1. History of Birthright Citizenship

The practice of birth tourism is made possible only in countries that provide unconditional birthright citizenship, a practice known as *jus soli*, or 'right of the soil'. *Jus soli* has been federal policy in Canada since the Canadian Citizenship Act of 1947, which was the foundational piece of legislation that defined Canadian nationality. Prior to this, the notion of being a Canadian did not legally exist, and those that were born and naturalized in Canada were considered to be British subjects with Canadian domicile, provided they had Canadian domicile for 5 years (Government of Canada). The alternative to *jus soli* is *jus sanguinis*, or right of descent, which refers to obtaining citizenship through the nationality of one's parent(s). *Jus soli* and *jus sanguinis* are not mutually exclusive, and the 1947 act applied both. Those that were natural-born were conferred citizenship automatically; those born to a Canadian parent outside of Canada were also conferred citizenship.

The next major change in citizenship laws came with the Citizenship Act of 1977. This act ended preferential treatment given to British nationals that was embedded in the 1947 act, making it more equitable for Canada's contemporary demographic profile. The 1977 Act also permitted dual citizenship, in addition to a number of other changes (Government of Canada). Minor amendments were made to the 1977 act in later years,

with the next major reform coming in 2014 under Bill C-24: Strengthening Canadian Citizenship Act. Bill C-24 introduced sweeping changes to citizenship laws, including the potential for dual citizens to lose citizenship if convicted of serious crimes and requiring new citizens to continue living in Canada after receiving citizenship (Government of Canada). These changes received significant criticisms, and were quickly repealed or revised after a change in government with Bill C-6: An Act to amend the Citizenship Act and make consequential amendments to another Act, in 2017. Some of the significant changes in Bill C-6 include reducing the residency requirement for permanent residents, easing the language and knowledge requirements for youth and seniors, and delegating authority to the courts, rather than ministers, for deciding on revocation cases (Government of Canada, 2017). Canada's current citizenship regime has not substantially changed since the reforms to the 1977 Citizenship Act framework brought in by Bill C-6.

The roots of birthright citizenship are more characteristic of historic British influence than of modern Canadian policy-making. Birthright citizenship was, for a long time, a British policy that saw all those "born in the allegiance of the king" as being natural-born citizens (Sawyer, 2013). Countries under commonwealth rule would have had the same policy until they were granted independence, most by 1947, which gave colonized states the opportunity to decide citizenship policy for themselves. Canada, in addition to India, Australia, New Zealand and others, merely inherited British common law and the practice of birthright citizenship. However, the United Kingdom itself became the first commonwealth country to abandon its birthright citizenship policy through the British National Act of 1981. Other commonwealth countries abandoned their birthright citizenship policies shortly after, including India in 1986 and Australia in 1987 (Sawyer, 2013). Canada has remained as one of very few commonwealth countries that maintains unconditional birthright citizenship as a part of its citizenship policy.

2.2. Process of Granting Citizenship

There are four immigration streams that accommodate prospective Canadian citizens and permanent residents, listed in order of prevalence: economic, family, refugees, and humanitarian & compassionate. Overall immigration numbers have been increasing throughout the past decade, with 2019-2021 projections ranging from 310,000 to 370,000 per year (Immigration, Refugee, and Citizenship Canada, 2018). There is persistent demand for Canadian citizenship, and the Canadian government controls how

many people are let in, in addition to who is let in. As a result, prospective migrants sometimes misrepresent a part of their application, or try to find alternate routes of attaining citizenship. Some do this because they may be unable to qualify otherwise, and other merely to expedite their efforts. This is considered to be immigration fraud. Generally speaking, when a specific form of immigration fraud becomes prevalent, government responds either through policy changes or stricter enforcement. For example, recent changes in regulations now require all prospective temporary residents (e.g. workers, students) from visa-required countries to submit biometric data when applying for their stay, in order to cross-reference previous applications and international records. This policy was implemented to curb a known tactic of potential migrants merely reapplying with different names if their application was rejected (Canada Gazette, 2018). Another example of immigration fraud, marriage fraud, is discussed in-depth in chapter 2.4. Birth tourism may not necessarily classify as immigration fraud, as it is not explicitly forbidden. While birth tourism does not contain an element of deceit, it does contain a specific intent to circumvent an established protocol for citizenship. This legal loophole in obtaining citizenship is an unintended consequence of current citizenship policy.

Birth tourism is an attractive measure because those born on Canadian soil, or airspace, will be automatically eligible for a birth certificate from the province or territory they were born in, with some specific exceptions. A provincial or territorial birth certificate is the fundamental document that persons born within Canada rely on to access Canadian social services. For naturalized citizens, that fundamental document is the federal citizenship certificate. Both the provincial birth certificate and federal citizenship certificate have evolved through many versions, including simple cards. In their current form, provincial birth certificates have been standardized by the Vital Statistics Council for Canada as a 5-inch by 7-inch polymer document with a number of security features (Northwest Territories, 2014). The citizenship certificate is a letter-sized document that no longer contains a photograph, but can be verified using an internal governmental online portal. Federal departments consider either certificate as a “documentary evidence of citizenship”, which allows applicants to apply for a range of services, including passports and social insurance numbers.

Applying for a birth certificate is often a very simple process that is provided by each provincial and territorial vital statistics agency. While each province and territory marginally vary in the application process, the framework is very similar in that birth

certificates are the result of birth registrations. When a baby is born, doctors and/or hospitals send details of the birth to the relevant vital statistics agency – though this is not necessarily the birth registration. In some jurisdictions, nurses submit the birth registration with the parent(s) through the hospital. In other jurisdictions, parents often have a limited amount of time (30 days to 1 year) to initiate and complete the registration, which requires them to provide information about themselves and the birth. Ontario and British Columbia's birth registration process is completed online by the parent(s). In it, they provide basic information such as the name of the child, the date of birth, where the birth took place, and their personal information. They are also able to instantly apply for government services such as medical services, child tax benefits, social insurance numbers, and registered education savings plans (RESPs), though confirmation for all these services are done through the respective agencies responsible for those services. Once vital statistics confirms the registration with the hospital-submitted information, the birth registration is completed, and the certificate is issued, if requested.

2.3. Trends in Non-Resident Births

In late 2018, the first reliable set of statistics on foreign-resident births were published by the Institute for Research on Public Policy (IRPP). Using hospital discharge data from the Canadian Institute for Health Information (CIHI), researchers found that the number of non-resident births was significantly higher than previously reported in Statistics Canada (StatsCan) data. The CIHI data contained a billing code for foreign residents that was better indicative of the prevalence of birth tourism than StatsCan data, which relied upon self-declared home address when applying for a birth certificate (Statistics Canada, 2018). One caveat of the CIHI dataset is that it may overstate the birth rate, as it likely includes other non-residents such as temporary foreign workers or international students. Refugee claimants or new permanent residents, however, are not included, as they are coded differently. The IRPP research established one very clear finding: non-resident births in Canada are increasing. In the absence of other causal factors, birth tourism likely accounts for the majority of non-resident births (Griffith, 2019).

The 2018 estimate of non-resident births in Canada, excluding Quebec, is 1.4 percent of all births that year, or 4,099 offspring – a substantial 13 percent increase from 2017. To provide perspective, there were just 1,354 non-resident births in 2010, implying an almost threefold increase in eight years (Griffith, 2019). While the research presents

foreign resident births as a share of Canadian births, they are not often considered as a share of immigration. In 2017, Canada admitted 82,470 immigrants through the family stream, while it was reported that 3,628 non-residents gave birth in that same year; this represents a 4.4 percent share (Immigration, Refugee, and Citizenship Canada, 2018). This is relevant when considering the likelihood of birth tourists applying for Canadian citizenship through their child’s sponsorship. The share of birth tourists as immigrants granted admission through the family stream could potentially double or more, depending on siblings and future spouses. The concern begins to materialize when realizing that birth tourists are only screened upon initial entry and circumvent federally mandated requirements when their children are granted citizenship. On the other hand, typical family sponsors are previously admitted economic migrants who have contributed to Canadian society, as opposed to being merely natural-born citizens with no other natural-born family members.

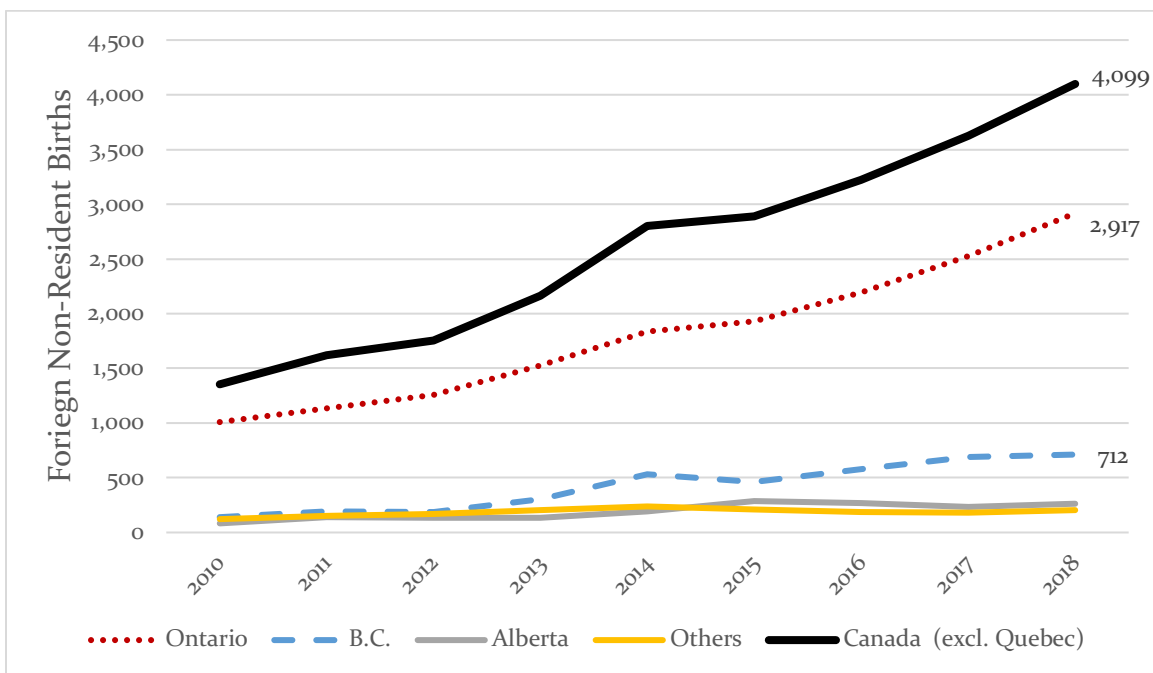


Figure 1. Foreign Non-Resident Births
Source: Griffith, 2019

Birth tourism appears to be concentrated in Ontario and British Columbia, which account for over 88 percent of non-resident births in Canada outside of Québec. One hospital in particular, Richmond Hospital, is responsible for about 22 percent of all non-resident births in the entire country. The top five hospitals that deliver babies from non-residents account for over 58.5 percent of non-resident births in the country, as shown in

Figure 2 (Griffith, 2019). St. Mary's Hospital, in Montréal ranks third on this list as a result of data collection from six Montréal hospitals. Data from the rest of Québec was not released due to concerns about coding errors. The proportion of non-resident births in specific areas suggest that birth tourism is a highly concentrated, rather than diffuse, policy problem. Figure 3 shows the share of foreign non-resident births in Richmond in comparison with the rest of the Province of British Columbia to highlight this concentration. The greater Toronto region also accommodates a substantial portion of foreign non-resident births in comparison with the rest of Canada. Research also suggests that birth tourism occurs in communities where immigrants with the same nationality as birth tourists have already established themselves (Wang, 2017). For example, 76 percent of the population in the City of Richmond identify as a visible minority, with 71 percent of those minorities identifying as Chinese (City of Richmond, 2019). Richmond Hill holds a similar demographic and experiences greater than average rates of foreign non-resident births, with 60 percent identifying as a visible minority, with half of those minorities identifying as Chinese (Town of Richmond Hill, 2017).

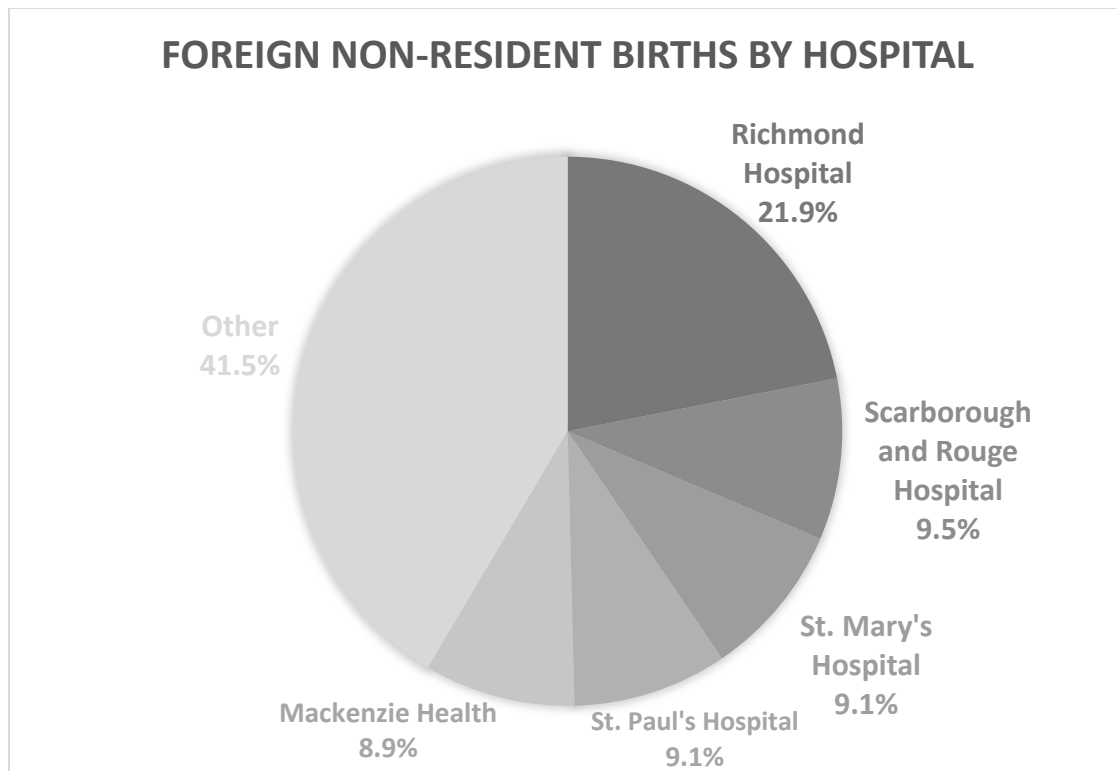


Figure 2. Foreign Non-Resident Births by Hospital
 Source: Griffith, 2019

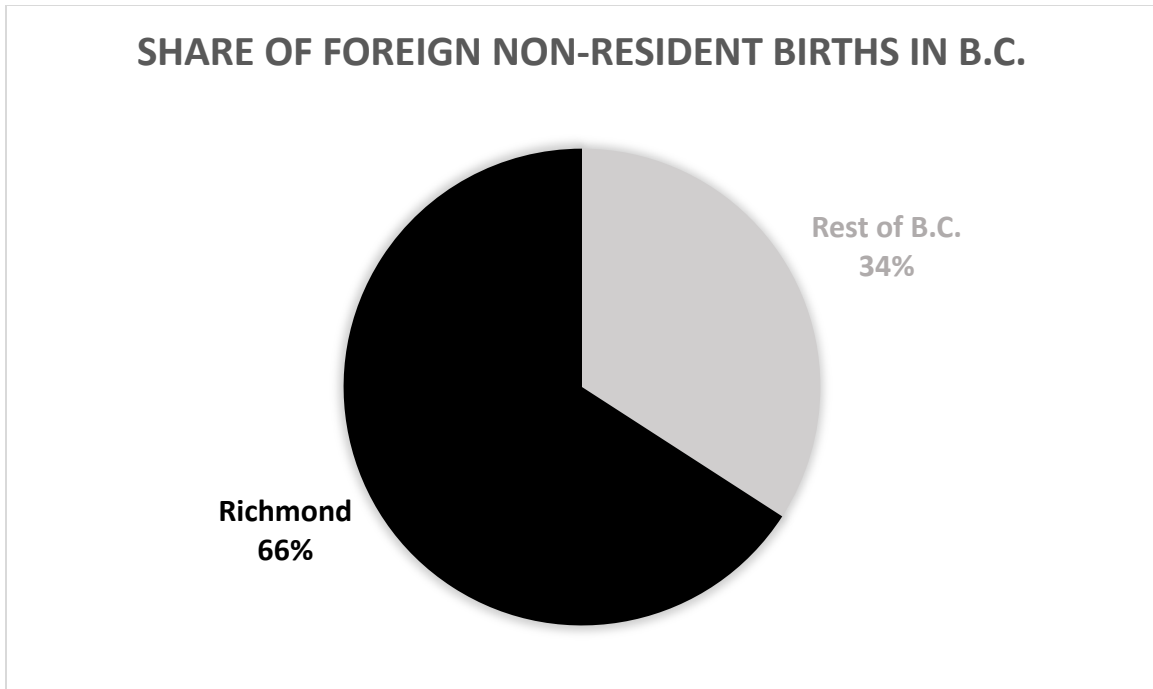


Figure 3. Share of Foreign Non-Resident Births in B.C.
 Source: Griffith, 2019

2.4. Other Controversial Forms of Citizenship Attainment

There are a number of reasons that Canadian citizenship is beneficial. The Canadian standard of living is excellent, resulting in demand for its citizenship throughout the world, even among other developed countries. Top-tier education, socialized healthcare, and a diverse demographic profile are some of the attractive features of Canadian society, though many more exist. Political stability, vast natural environments, and relatively high incomes all contribute in some part to Canada’s attractiveness on the global stage. Mere citizenship without residing in Canada can, in itself, also be desirable. Considerable international mobility, consular assistance, and access to the Canadian education and job markets are all significant benefits to being a Canadian citizen without actually living in Canada.

Immigration fraud can manifest in many different ways. Understanding how the Canadian government has responded to previous threats to immigration can contextualize and provide justification for a response to birth tourism. One of the most well publicized methods of falsely obtaining Canadian citizenship is through marriage fraud, also known as “sham” marriages, or “marriages of convenience.” The basic premise involves a

Canadian citizen marrying a foreigner for the sole purpose of providing them with citizenship through family stream sponsorship. Collecting data on the prevalence of this practice proved to be challenging, as successful frauds would not be counted, and Immigration, Refugees and Citizenship Canada (IRCC) does not publish information on rejected applicants. One Member of Parliament suggested, during parliamentary debate, that 10 to 15 percent of all spousal reunification citizenship applications were rejected on the basis of suspected fraud (Bhueyn et al., 2018). Given an annual average of about 60,000 spousal reunification admissions, this would lead to an assumption of about 6,000-9,000 potential fraudulent applications. This was enough for the Conservative government at the time to make marriage fraud a priority issue in its 2011 Speech from the Throne, instilling two policies to further disincentivize the practice (Government of Canada, 2011). The first instilled a 2-year spousal residency requirement for couples that have been together less than 2 years and do not have any biological children. The second policy forbade sponsored spouses from sponsoring a new spouse for 5 years after receiving their permanent residency status. The first policy was recently amended by the Liberal government, after activists and academics highlighted the deficiencies in the policy, including how it disproportionately affects women by the risks that accompany forced cohabitation.

Despite the policy response, marriage fraud likely still occurs because it can be hard to identify, especially in different cultural contexts. Spousal sponsorship in general is a very cumbersome process, undergoing a high degree of scrutiny when proving the relationship to immigration officials. Birth tourism, in stark contrast, is relatively easy to identify and reasonably easy to perform. Considering the over 4000 non-resident births whose eventual spouses will all be eligible for Canadian citizenship (if they are not already), it appears that birth tourism could potentially result in as much unearned citizenship as marriage fraud.

Beyond circumventing established immigration channels, birth tourism has also enabled a nascent commercial market that caters to and profits from the practice. There are “agencies” who are known to market services that facilitate birth tourism to non-residents, often through maternity hotels, or “birther houses”. Birther houses accommodate pregnant women staying for the purpose of birth tourism, with the agency sometimes performing all the local administrative paperwork involved in the process of giving birth and registering the child (Fayerman, 2016). The evident profiteering of

birthright citizenship is problematic in two ways: First, the notion that citizenship can be easily attained outside of an established framework highlights a potential abuse of the system. Second, with profit as a motive, the health and safety of prospective mothers is of serious concern given the lack of regulation or oversight surrounding maternity hotels.

2.5. Debates

Canada is not alone in dealing with challenges surrounding birth tourism. Only a minority of countries still provide birthright citizenship, with Canada being one of the most developed states to do so, alongside the United States. However, this was not always the case. Britain, Ireland, India, Australia, New Zealand, and South Africa have all amended their citizenship laws in order to address various abuses of birthright citizenship; Canada has yet to do so. The majority of countries that still grant unconditional birthright citizenship exist in the Western Hemisphere, where only five countries in the entire hemisphere do *not* have it. In the entire Eastern Hemisphere, only six countries offer unconditional birthright citizenship, none of which are in Europe. However, a small number of European countries offer *conditional* birthright citizenship, often dependent on parental immigration status or an age/residency requirement (The Law Library of Congress, 2018).

Jus sanguinis is typical in states where the immigration ethos is exclusionary, such as countries where statehood can be ethnically homogenous (e.g. China, Japan). An extreme example would be that of the United Arab Emirates, where citizenship is only provided to those that are able to prove their lineage lived in the territory in 1925 (The Law Library of Congress, 2018). A third alternative, *jus domicile*, is an assimilationist perspective, where citizenship can be provided based on one's residence within a state for a given length of time. Some political commentary has suggested that the exploitations of birthright citizenship "are logical results of globalization confronting now-outdated citizenship laws" (Wang, 2017). This could have some merit in the Canadian context, as the 1977 Citizenship Act remains minimally changed relative to shifts in geopolitics and migration patterns.

Birth tourism in popular media has often been presented without reference to reliable statistics or an understanding of the scope of the problem. Instead, stories are presented highlighting the practice of birther houses: the journeys of women who decide to come, and the strain placed on maternity wards and health care systems (Lyndsie

Bourgon, 2017; Wood and Xiong, 2017). Often times, critics of unconditional birthright citizenship face assertions of xenophobia or implicit misogyny (Paradkar, 2020). These assertions, however, overlook the fundamental problem of birth tourism – it undermines public faith in the immigration system and in Canadian citizenship. Birth tourists should be encouraged to apply for citizenship in a manner similar to most prospective immigrants – this is not currently the case because the children of birth tourists automatically obtain citizenship. Addressing birth tourism is not a means to limit immigration, but a means to limit those who seek to obtain immigration outside of an established protocol.

Any effort to address birth tourism should seek to improve the health outcomes of pregnant foreign non-resident women. The current policy incentivizes women to enter maternity hotels that are often unlicensed, unregulated, and potentially even unknown to authorities. Authorities are well aware of the presence of birther houses, but do not know exactly what care is being provided. While there have been calls to restrict or regulate these businesses, it is debatable as to the effect it would have on maternity health. Blanket restrictions can lead to more concealed activities, and regulating them legitimizes the practice, which could lead to a growth.

Ultimately, birth tourism results in consequences both known and unknown. A known consequence is the overloading of particular maternity wards in communities with concentrated birth tourism. However, whether or not the children of birth tourists eventually result in a net benefit for Canadian society is unknown. Yet, citizenship exists to imply some measure of shared trust. The existence of a loophole begins to erode that trust, which could potentially lead to more serious problems, including racism and discrimination. Birth tourism should be addressed not only to mitigate known consequences, but also to limit future societal repercussions.

2.6. Public Opinion

Public opinion polling in Canada, conducted by the Angus Reid Institute, finds that birth tourism is notably unpopular, but does not indicate a clear solution through amendments to birthright citizenship. When asked whether children born to parents on tourist visas should be given citizenship, 64 percent of respondents said no. Other circumstances are shown in Figure 4, below. However, at the same time, 40 percent of those surveyed say birthright citizenship is either a “very good” or “good” policy while 33

percent indicated it is either a “very bad” or “bad” policy (the remainder believed it is neither good nor bad).

Should the child be a citizen if...			
	<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
Only the mother is in Canada on a tourist visa	24%	58%	17%
Both parents are in Canada on tourist visas	24%	64%	13%
Both parents are in Canada on student visas	40%	48%	12%
Both parents are in Canada on work visas	55%	34%	11%
One parent is a permanent resident (the other is not)	82%	10%	8%
Both parents are permanent residents	92%	4%	3%

Figure 4. Public Opinion Polling on Birth Tourism
Source: Angus Reid Institute, 2019

Those that identified as Conservative supporters were much more likely to support the idea that changes to citizenship policy are necessary, while Liberal and NDP supporters tended to think policy changes are not necessary, as shown in Figure 5.

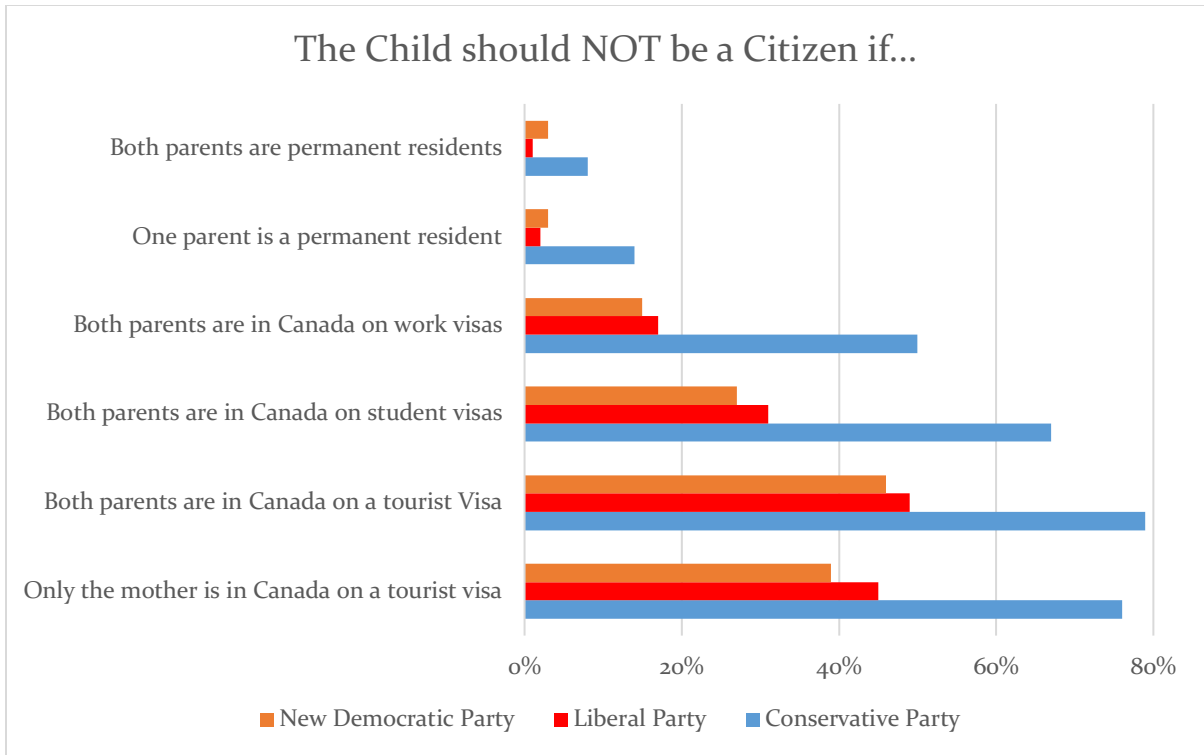


Figure 5. Public Opinion Polling on Birth Tourism, by Political Party Support
 Source: Angus Reid Institute, 2019

There also seemed to be a clear trend in age and likelihood to support birthright citizenship reform; older respondents are more likely to support changes to birthright citizenship as shown in Figure 6. However, women aged 55+ are much more likely than men (41 percent vs 26 percent) in the same age category to think birthright citizenship is a very good/good policy. Generally speaking, most respondents supported birthright citizenship if at least one parent is a permanent resident or citizen. The uncertainties of citizenship manifest when the parents are defined as temporary residents, whether on work visas (55 percent support granting birthright citizenship in this case), student visas (40 percent), or tourist visas (24 percent). While there are mixed results on who may be eligible for birthright citizenship, there is opposition to granting citizenship to the children of those on tourist visas. Despite government inaction so far, there seems to be a strong appetite among the Canadian public to address this particular loophole (Kurl and Korzinski, 2019).

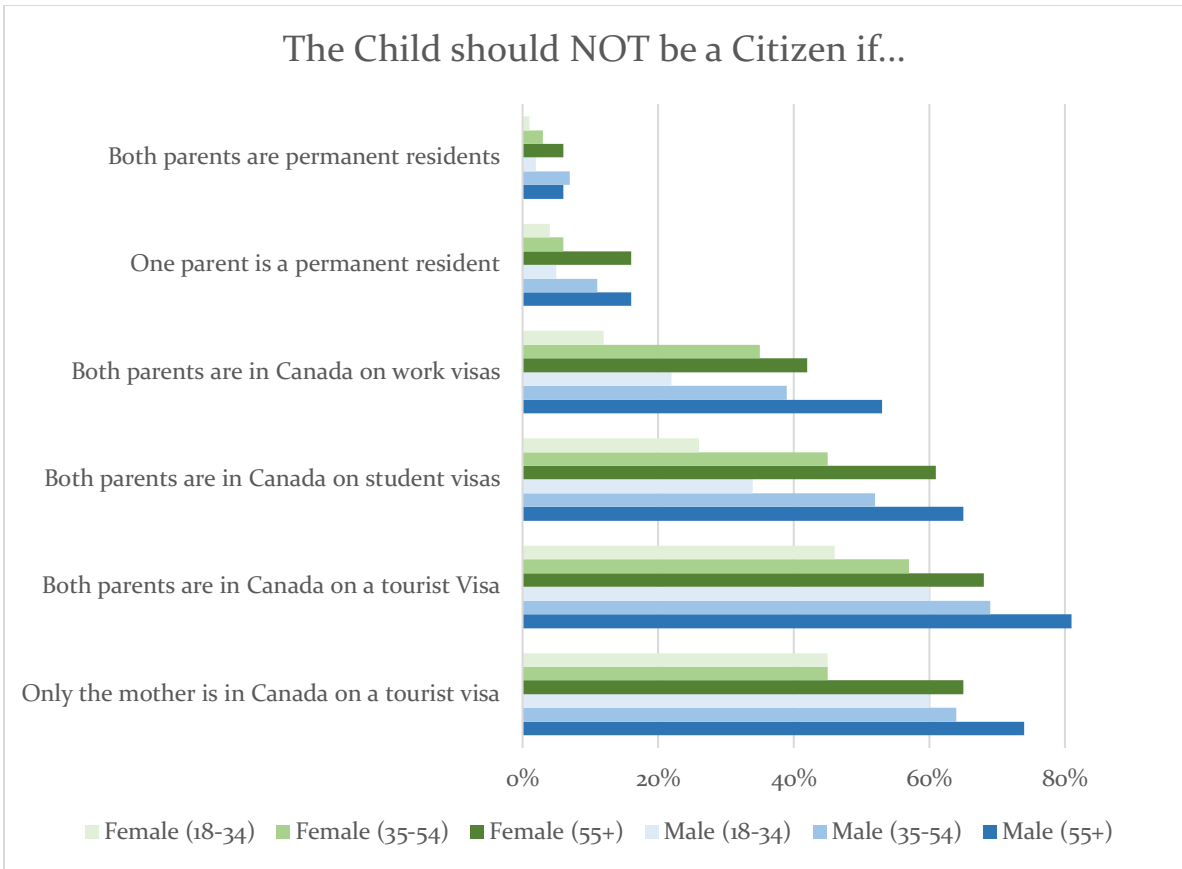


Figure 6. Public Opinion Polling on Birth Tourism, by Age and Gender
 Source: Angus Reid Institute, 2019

Chapter 3. Methodology

The goal of this project is to understand what, if any, policy response is necessary to address the increasing rates of birth tourism in Canada. To do this, this project employs a literature review, expert interviews, and case studies as its methodologies. The literature review assesses contextual and background information relevant to birthright citizenship and foreign non-resident births in Canada, and has largely been presented in the preceding chapter.

Case studies will be conducted in three appropriate jurisdictions: Ireland, New Zealand, and the United States. There are a number of relevant factors that make these cases appropriate in assessing birth tourism. Ireland and New Zealand have parliamentary systems similar to Canada's and were both under British common law at some point in their history. While the Canadian population vastly outnumbers that of Ireland and New Zealand, they have an additional similarity in that all three countries are relatively geographically isolated. As the case studies will show, Ireland was the last country in the European Union to change its birthright citizenship policy, and New Zealand was the last developed country to do so. The United States was identified as an appropriate jurisdiction to conduct a case study not only because of its shared values and proximity to Canada, but also because it is the only other developed country in the world to still have unconditional birthright citizenship.

Interviews were conducted with a small handful of experts following a semi-structured interview guide available in Appendix A. Despite over twenty interview requests being sent, only five participated in this research. Participants provided a diverse range of perspectives, including a researcher, lawyers, and municipal city officials. Confidentiality was assured to each participant due to the sensitive and ongoing nature of the issue, so they are not identified in their contribution, or in this document as a whole.

3.1. Limitations

There are some minor limitations in this research. First, while the IRPP data is the most reliable data that exists, it does not distinguish between birth tourists and other temporary residents who would operate under the same billing code. Moreover, no data could be found that identifies the number of citizenships provided by *jus sanguinis*. While

not essential to this research, knowing how many citizenships are provided to the children of Canadian foreign residents would allow, at the very least, some comparison between the two policies. There is also limited information on the occurrence of birth tourism in other jurisdictions, particularly given that birthright citizenship is now an uncommon policy. Outside of the legislative changes, no data was found on the occurrence of foreign non-resident births in the United Kingdom, India, or Australia, all of which changed their policies in the 1980s. It seems, thus, policy changes in these jurisdictions were done out of principle, but the story is incomplete. The relatively small number of interviewees also affects the qualitative findings in this research. Various governmental departments, including Immigration, Refugee, and Citizenship Canada, Canada Border Services Agency, Service Canada (including the Passport Office) and regional health authorities were unable to contribute due to the sensitive and ongoing nature of the topic. While each of these stakeholders would have provided valuable input, the policy problem and analysis presented remains robust.

Chapter 4. Case Studies

International context will be drawn to further illustrate how Canada is able to respond to birth tourism, given the changing nature of birthright citizenship and immigration around the world.

4.1. Ireland

Ireland was the last country in the European Union to abolish birthright citizenship, which it did in 2004 (Honohan, 2007). The history of birthright citizenship in Ireland dates back to the 1922 Constitution of the Irish Free State, with revisions in both 1935 and 1956 through the Irish Nationality and Citizenship Act. In 1998, *jus soli* became enshrined in the Irish constitution as part of the Good Friday Agreement, also known as the Belfast Agreement (Honohan, 2007). A few short years later, Ireland repealed the principles of *jus soli* through a nationwide referendum that received overwhelming support (79 percent) to amend the constitution (Mancini and Finlay, 2008). In comparison to Canada, the sociopolitical context that upheld birthright citizenship in Ireland is admittedly different. However, the eventual demise of *jus soli* has some parallels to the dynamic that Canada is facing today.

When Ireland seceded from British rule in 1921, it was split into two different polities, the Republic of Ireland and Northern Ireland. Over many decades, tensions and violence arose between the ruling “unionist” majority and “nationalist” minority within Northern Ireland, ultimately culminating in a prolonged ethno-nationalist conflict during the late 20th century. The 1998 Good Friday Agreement marked an unofficial end to this conflict and established the institutional framework for Northern Ireland’s current multi-party democracy (Mancini and Finlay, 2008). In the context of immigration, the Good Friday Agreement provided distinct administrative structures within Northern Ireland, between Northern Ireland and the Republic of Ireland, and a channel of communication between Britain and Ireland. Part of the administrative structure created between Northern Ireland and the Republic of Ireland included the constitutional establishment of birthright citizenship, something that had only existed on a statutory basis between the states prior (Honohan, 2007). The text in the agreement read:

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified by law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage. (Honohan 2007)

While the Good Friday agreement did much more than clarify citizenship laws, understanding the roots of the social context makes the repeal of birthright citizenship six years later seem more imperative. The Good Friday agreement was approved by a referendum in both jurisdictions, receiving 94 percent support in Ireland and 71 percent in Northern Ireland (Mancini and Finlay, 2008).

Opponents to the Good Friday agreement argued that unconditional birthright citizenship may lead to unfettered immigration, though this became a minute detail in the grander scheme of peace and unity. However, this fear began to materialize when the number of pregnant foreign non-residents, and asylum seekers in specific, began to rise. The percentage of foreigners in Ireland increased from 2 percent in 1990 to 10 percent in 2006. More than 11,000 asylum seekers applied in 2002, which was one of the highest per capita rates in the European Union at that time. Applications for residency based on having an Irish-born child also increased during that time, from 3,153 in 2001 to over 4,000 in 2002 (Honohan, 2007). Those numbers are strikingly similar to the current reported number of foreign-resident births in Canada. The admission of late-stage pregnant women and asylum seekers became visible, with statements from ministers and coverage in the media. The case of *Zhu and Chen v Secretary of State for the Home Department* (Case C-200/02) received notable attention and highlighted the shortcomings of *jus soli*. The mother, Mrs. Chen, gave birth to her daughter, Catherine Zhu, while on a temporary visa in Northern Ireland in 2000. Zhu did not qualify for United Kingdom citizenship due to her mother's temporary status, but was eligible for Irish citizenship due to the constitutional amendment in effect at that time. Mrs. Chen argued that, as long as she is financially independent, she is able to benefit from her child's citizenship and live anywhere in the European Union, to which the courts ultimately agreed (Case C-200/02, 2004).

The undesirable implications of unconditional birthright citizenship seemed evident enough that a bill for a referendum was introduced by the liberal-conservative coalition government. The new text that sought to replace the constitutional article read as follows:

1. Notwithstanding any other provision of this Constitution, a person born on the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law.
2. This section shall not apply to persons born before the date of the enactment of this section. (Honohan, 2007)

The justifications for the change in policy included “preserving the integrity of Irish citizenship, coming into line with other EU member states, reducing pressure on maternity hospitals, and protecting the health of babies and their mothers induced to travel in late pregnancy” (Honohan, 2007). Opponents of this measure reportedly did not provide much in terms of a policy alternative, and instead criticized “a lack of consultation and inadequate statistical evidence” (Honohan, 2007), akin to the debates heard in Canada. Ultimately, unconditional birthright citizenship in Ireland received overwhelming backlash to the tune of nearly 80 percent of voters electing to end it.

4.2. New Zealand

The history of citizenship in New Zealand aligns, to a certain degree, with Canada’s experience largely because of the shared Commonwealth history between the two countries. The notion of a New Zealander identity and citizenship was created the same time as Canada, as a result of the British Nationality Act of 1948, which gave Commonwealth member-states the responsibility to legislate their own citizenship. The next major citizenship reform in New Zealand came with the Citizenship Act of 1977, coincidentally aligned with Canadian reforms to its inaugural citizenship policy.

New Zealand ultimately changed its citizenship laws in 2005, which amended section six of its Citizenship Act of 1977 – the section that entailed the principles of *jus soli* to obtain citizenship (Sawyer, 2013). While all persons born prior to the enactment of the amendment are still entitled to their citizenship, the act now reads that “a person is a New Zealand citizen by birth if—the person was born in New Zealand on or after 1 January 2006, and, at the time of the person’s birth, at least one of the person’s parents was – (i) a New Zealand citizen; or (ii) entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau” (Citizenship Act, 2019). While (i) refers to *jus sanguinis*, and has always been a mode to

acquire citizenship under New Zealand law, (ii) refers to those that are granted permanent residency in New Zealand or one of the territories in free association with New Zealand.

Principally, all temporary residents, whether tourists, students or others, are no longer eligible to receive citizenship for their children if the child is born in New Zealand. This is considered to be a form of conditional birthright citizenship, namely that the parents must have some permanent status in New Zealand. Some of the criticisms of this policy include the potential that a person could be born and raised in New Zealand, but not be eligible for citizenship. In contrast, when Australia amended its birthright citizenship laws, it included the option for those that were born in Australia to receive citizenship if they lived in Australia for their first ten years (Sawyer, 2013). However, New Zealand did include a provision that would provide citizenship to any child that might be rendered stateless as a result of this policy change. As Canada is a signatory to the Convention on the Reduction of Statelessness, any substantial change to Canadian policy will likely have to include some form of this provision.

The motivation to change citizenship laws in New Zealand came about because of the rising incidence of birth tourism. Legislators wanted citizenship to be representative of “a genuine and on-going link to New Zealand”, rather than enabling a means to obtain residency options in the future for the child’s immediate and extended family (Bedford, 2008). There were also publicized incidents of foreigners overstaying their visitor visas in order to give birth in New Zealand, and then claiming a right to remain in the country based on their children’s status (Sawyer, 2013) This perceived threat was enough for the Citizenship Act amendments to receive widespread support in parliament, with 80 members voting for, and only 32 against this bill. Interestingly, the bill was introduced and supported by the New Zealand Labour party, a center-left political party that was running a coalition with other leftist parties. Most of the votes against the 2005 amendments were from right-wing parties and the Green Party (New Zealand Parliament, 2005).

One analysis of the loss of *jus soli* in New Zealand suggests that “the responsibility for the abandonment of the pure *jus soli* principle is often attributed to foreigners trying to abuse it in order to outwit legitimate immigration policy” (Sawyer, 2013). While New Zealand acted on this problem 15 years ago, the Canadian government continues to sit idly as birth tourism continues to grow.

4.3. United States of America

Birthright citizenship in the United States of America is a constitutionally protected right under the Fourteenth Amendment, brought about in 1868, whereby it states “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside” (Lyons, 2019). At the time, the amendment provided significant gains in humanity for black people living in the United States, as their rights to citizenship has been denied by a U.S. Supreme Court decision a decade prior. That decision arose from the landmark case of Dred Scott v. Sandford in 1857, where Chief Justice Roger Taney wrote that “African slaves and their descendants were not, and could never become, citizens of the United States” (Dyer, 2010). The denial of citizenship rights nullified not only the privileges, but, in the context of slavery, the protections attached to citizenship. The reaction to this decision became remarkably split between the northern and southern United States, with the latter supporting the Supreme Court decision. Ultimately, Dred Scott v. Sandford served as one of many catalysts for the American Civil War, which lasted from 1861-1865 (Dyer, 2010).

While the evolution of birthright citizenship in the United States has been met with a handful of challenges since the Fourteenth Amendment, it remains a foundational aspect of America’s identity. However, that is not to suggest it is widely accepted. As the United States is the only other developed country that offers unconditional birthright citizenship, it has also faced a visible amount of birth tourism, though no reliable figures are available to quantify the practice. This is because there is no requirement or government body that tracks the nationality of mothers in maternity wards (Folse, 2017). One statistic is provided by a conservative think-tank, the Center for Immigration Studies, which suggested there were about 36,000 births resulting from birth tourism in 2012 (Camarota, 2015).

In addition to conventional birth tourism, where families return to their home country after delivery, the United States also deals with a significant amount of illegal immigration. When illegal immigrants establish themselves within America’s borders and begin to have children, they can use their American children as justification for clemency in hopes of obtaining citizenship for themselves, or at least residency. This practice is often referred to as having “anchor babies”, as the child born in the United States acts as an “anchor” to legitimize their family’s residency (Rodriguez, 2018). Research from the Pew Hispanic Research Center suggests that between March 2009 and March 2010, 8

percent of all births had at least one parent as an unauthorized immigrant – about 350,000 newborns (Passel and Cohn, 2011). However, this number may not include birth tourists, as those on tourist visas are not considered unauthorized.

Just like Canada, birth tourism is effectively a legal route to citizenship for newborns, which could eventually lead to citizenship for the family at large. Although the United States faces peculiar challenges in its birthright citizenship that Canada is not subject to, recent efforts by the Trump administration have sought to curtail the practice of birth tourism. In January 2020, the State Department issued a directive that bans the issuance of “B” non-immigrant (tourist) visas to applicants that wish to give birth in the United States. Consular officers now have significant discretion to determine whether or not an applicant would have intent to give birth, and are able to deny visa applications on this basis (Department of State, 2020).

Despite the policy being written with a gender variable applicant (he or she), this clearly affects prospective female applicants much more than males. Prospective mothers could go to great lengths to make it inside America’s borders, as is the case with illegal immigrants, since *jus soli* is still ingrained in the U.S. Constitution. Any changes to constitutional amendments are subject to the process described in Article V of the constitution, which requires proposed amendments to be voted through by two-thirds of both the House of Representatives and the Senate, followed by ratification from at least three-fourths of state legislatures (U.S. National Archives, 2016).

One particularly concerning implication of the Trump Administration’s recent policy directive could be that Canada is now seen as a much more attractive target for birth tourists. Simply put, it is more feasible and requires less effort to get into Canada as a pregnant woman than it is the United States. Some media reports have also recognized this implication, and time will tell how much this will materialize (Shore, 2020).

4.4. Application to Canada

Each of the case studies above presents contextual information that can be applied to a Canadian response to growing birth tourism. The case study of Ireland shows that unconditional birthright citizenship in the modern context can easily be abused. Despite enshrining the policy in monumental legislation in 1998, the policy was repealed merely 6

years later through overwhelming public support. Canadian public polling suggests that 64 percent of Canadians are opposed to granting birthright citizenship for those on tourist visas, which exceeds the 60 percent super-majority threshold common in Canadian referendums (Pilon, 2006). What Ireland teaches us about birth tourism is that something can be done about it, and that it can (and, according to Angus Reid polling, will likely) receive overwhelming public support.

New Zealand, being the latest state to abolish unconditional birthright citizenship, did so fairly swiftly. The application to the Canadian dynamic is fairly straightforward in the sense that it does not need to be an overly complicated process. The fact that a centre-left government enacted the policy change that were opposed by its right-wing opponents runs counter to the Canadian rhetoric that changing birthright citizenship is a conservative ideal. The Conservative Party of Canada, Canada's right-wing, passed a resolution at convention to end birth tourism as part of their immigration policy (Conservative Party of Canada, 2018). Meanwhile, Canadian left-wing parties, including the New Democratic Party, have rejected changing birthright citizenship laws. Our centrist ruling party, the Liberal Party, have yet to act. The case of New Zealand suggests that partisan politics may be responsible for disparities more than fundamental disagreements. Regardless, due to the similarities in political systems, New Zealand shows that policy change can be done, with due care given to stateless persons.

Lastly, the United States presents a complicated dynamic that Canada cannot necessarily relate to. It is unlikely that any constitutional amendments will succeed in the United States given the state of politics, yet the current administration has still made an effort to address birth tourism. It is clear that unconditional birthright citizenship can become a problem in first-world countries because of the benefits they present to prospective families. Although the United States has gone the regressive route by profiling women, it is the only strategy available to them given their constitution. With the United States a less attractive option for potential birth tourists, Canada will likely become the best alternative. Implementing the lessons learned from Ireland, New Zealand, and the United States leads to the finding that something should be done about unconditional birthright citizenship in Canada.

Chapter 5. Interview Results

A handful of subject matter experts and stakeholders were interviewed on the topic of birth tourism, following a semi-structured interview guide. Specifically, interviewees were asked what their thoughts were on the crux of the problem in birth tourism, and whether enough is understood about the long-term effects, whether they were consequential or beneficial. Interviewees were also asked which level of government they think is responsible for taking the initiative to address the issue, and what the political feasibility of doing so is. Following that, ideas of how birth tourism can be solved, if it should be solved, were then explored, with considerations given to implementation and potential challenges. The general question of whether birthright citizenship should be abolished or made conditional was asked, specifying to whom any change would apply to, and what those specific changes would be. Lastly, interviewees were asked what they thought the primary objective in addressing birth tourism would be.

5.1. The Primary Issue

Respondents indicated no clear consensus on the foundational problem with birth tourism. One interviewee suggested that birth tourism is a problem when it becomes concentrated, and thus impacts cities. This idea is justified by the notion that the problem of birth tourism only came to light because of the clustering, as supported by the data presented in Figure 2. Another interviewee believes that the issue is centred around “companies that are based abroad that profit merely from the birth of children, which is layered on top of class issues”, which refers to the inequalities between prospective migrants and their routes to citizenship. While it is generally the belief that wealthy foreigners are coming to take advantage of limited resources, be it health or social, the inexcusable harm is the profiteering from an established government policy. It is also suggested that the real problem with birth tourism is that it provides a shortcut to citizenship that was never the intent of the policy, which intended to provide citizenship to the children of people who actually reside in Canada and contribute or have some connection. Despite this, the respondent stated that the incidence is not significant enough to create a major problem, although the general populace is not comfortable with it, as evidenced in the Angus Reid poll. Although there is no agreement on the fundamental problem, the breadth of the responses highlights the many harmful facets of birth tourism.

All interview participants agreed that simply not enough is known about the long-term effects of birth tourism, and whether any harmful consequences may arise. Interestingly enough, some participants highlighted that birth tourism may be used as a mechanism to escape a problematic situation, such as political violence or environmental concerns. One interviewee noted “if [they] lived in a country in a dictatorship”, then obtaining Canadian citizenship for their children as a backup plan would be a reasonable act. Making claims on the long-term effects of birth tourism is more difficult, as one participant highlighted the difficulties involved in even finding evidence for this analysis. However, the same interviewee suggested that if the intent of birth tourism involves some long-term outcome, then it may be the case that these families eventually contribute to Canada.

5.2. Political Responsibility

In terms of considering which level of government would be most effective in addressing birth tourism, all three levels of government were given consideration. Whether federal, provincial or local (including both regional and municipal), interviewees noted how some responsibility was beholden to every level. One respondent suggested that the shared jurisdiction among multiple levels of government is contributing to the continued inaction on the matter. The majority of interviewees noted that the federal government will be the ultimate arbitrator on immigration and citizenship policy; however, they recognized the potential for provincial and local governments to engage in their own efforts. Specifically, they highlighted how provincial governments are able to improve on their own data collection, and how municipalities could use licensing as an enforcement tool to curb maternity hotels and other business practices associated with birth tourism.

There was recognition over the breadth of the problem and the appropriateness of a response at each level of government. For example, it is unlikely that many municipal governments outside of Richmond would deem it appropriate to create regulations specific to maternity hotels for tourists, as it is not known to be a problem elsewhere. Provincial governments also have discretion in responding, whether through vital statistics agencies, or directing regional health authorities. However, it was noted that birth tourism does not place a significant burden on any provincial authority that would warrant a response, particularly in the context of limited resources and more pressing issues.

5.3. Potential Solutions and Implementation

When asked how the problem of birth tourism can be solved, if it should be solved, participants provided a wide array of options, with some even questioning whether it is practical to solve it. One participant suggested that it is pertinent to address the businesses that arise from birth tourism, particularly the maternity hotels. Naturally, this would be done at the municipal level, since services are being offered through illegitimate and unlicensed businesses that are still allowed to operate. Another participant suggested that it needs to be addressed in areas where birth tourism is concentrated, potentially through a tax audit. They suggested that the provision of public services is based on census data, and areas that receive a significant portion of foreign non-resident births relative to other areas are burdened with a greater demand on their resources. Other potential solutions to birth tourism were provided by other participants, and they included options such as coordinating with the Chinese consulate to provide passports for the children of Chinese birth tourists, requiring pre-established healthcare arrangements for pregnant travelers to be presented upon entry, or empowering the Canada Revenue Agency to enforce taxation both domestically and in coordination with foreign authorities where foreign non-residents would otherwise reside.

Participants were then asked what challenges would arise in implementing their proposed options, with cost of implementing a new policy being the most common factor. As one participant candidly stated, “the money has to come from somewhere”. Another interviewee considered the cost of potential solutions and inquired whether addressing birth tourism is the most effective use of that money, considering that birth tourism remains a relatively small problem. Better data was also cited as a precursor to properly assessing a policy response. Some interviewees expressed specific concern over the racialized element of a policy response, given the common rhetoric of Asian birth tourists. Ensuring that a response does not promote the notion of “yellow peril”, or unfairly profile Asian tourists or raise anti-Chinese sentiment would be integral to a potential solution.

5.4. Birthright Citizenship and its Discontents

As the potential solutions may or may not involve changes to birthright citizenship, interviewees were asked directly if they thought that birthright citizenship should be abolished or made conditional. Responses were unclear over what conditions would apply

if birthright citizenship were made conditional. However, there was unanimous agreement in not ending birthright citizenship outright. If it were to be made conditional, one respondent stated that babies born as a result of birth tourism should not be eligible for citizenship, as there would be no need to restrict birthright citizenship in any other categories. Another interviewee suggested following the Australian approach, where birthright citizenship is only provided to parents who are either citizens (*jus sanguinis*) or permanent residents. Conditional birthright citizenship is also provided in Australia for those who spend the first 10 years of their lives living in Australia.

One respondent suggested that making birthright citizenship conditional in Canada would cause more harm than good by breaking up families. If birthright citizenship were conditional, they argue that the family may still make an effort to obtain citizenship for their children, as would be the intent in giving birth within Canadian borders. This effort could cause families to split until the condition is met, leading to a rise in “satellite families” – a term for families where the primary income earner lives abroad while other family members live in Canada. If, for any number of reasons, one parent cannot remain with the child to meet the condition(s) for the entire required time, then the child is at risk of being left with guardians that may not be fully vetted or capable to raise them. The interviewee noted that identifying the specific condition that would curb birth tourism would be difficult, and making the condition overly broad brings the risk of tackling an issue that is not necessarily fully defined, affecting those beyond its intended scope.

5.5. Societal Objectives in a Policy Response

Respondents were asked what key societal objective(s) needed to be considered in a policy response to birth tourism. This was followed with a question clarifying the intent of an effective policy solution. One interviewee suggested that what is really important is the value in being a Canadian citizenship, greater than merely “passing through.” In their words, “citizenship is more than a happenstance of the place you were born”. This was echoed in other interviews, where one suggested the primary objective was the fairness and integrity of citizenship. That particular interviewee noted that, despite the overall arbitrariness of citizenship, it seems amiss that citizenship is granted to those that have no real commitment nor spent any time in Canada. In the context of Canada’s inclusive approach to citizenship, fairness towards established immigration policy is imperative.

A differing approach to the most important societal objective was provided by a respondent who suggested that it is the safety of women and women's rights overall that need to be protected. That is, the interviewee argued women should not be painted as vulnerable in debates surrounding birth tourism, lest the issue become yet another area where men are making a decision on behalf of women. Ultimately, giving birth is a woman's experience, and it is essential that any policy changes not expose women to greater harm. Following from this, the interviewee also cited procedural fairness as being important, so that prospective immigrants "know what they are getting into". Ensuring that the notion of citizenship cannot be so easily given and taken away merely to reflect changes in societal interests is necessary given Canada's reputation as a stable and welcoming country.

Chapter 6. Policy Options

The rationale for each policy option follows from the very high likelihood that children born to foreign residents in Canada are still eligible for their parents' citizenship by the principle of *jus sanguinis*. The vast majority of countries, including Canada, automatically provide citizenship to the children of their citizens even if they do not reside in the country at the time of birth. Thus, Canadian citizenship in virtually all cases of foreign resident births is not essential, since the child will most likely be eligible for their parents' citizenship through *jus sanguinis*. The supplementary nature of providing citizenship to those looking to exploit the benefits of Canadian citizenship is perhaps the core issue of birth tourism.

In the unlikely scenario that a child is born and cannot be eligible for any citizenship, each option will imply that stateless children receive Canadian citizenship, as Canada is a signatory to the United Nations Convention on the Reduction of Statelessness. This would be akin to the stateless provision that New Zealand added when they revised their birthright citizenship laws. Each option that modifies birthright citizenship policies will affect each provincial vital statistics agency, in that they will alter the issuance of birth certificates. For these options (1 through 3), a "record of birth" will have to be created to provide non-resident parents with the necessary documentation of an official birth certificate. Again, this is akin to New Zealand, where the government actively reminds foreign non-residents to obtain the record of birth on their birth registration website for those not eligible for a birth certificate.

6.1. Policy Option 1: Make Birthright Citizenship Conditional

One of the contentious factors of *jus soli* in the Canadian context is the fact that it is unconditional. Conditional birthright citizenship is not an uncommon practice throughout the developed world, with conditions often prescribing an age and residency requirement for the child and/or the parent(s). In some cases, there is also a race or ethnicity attachment to obtaining citizenship.

Reasonable conditions to address the incidence of birth tourism would include having the child live the majority of their youth in Canada. At the very least, some

minimum number of years residing within Canada should be required before someone born in Canada receives Canadian citizenship. The ideal result of this requirement would be the establishment of a Canadian identity, the core element of being considered a national of any country.

The conditions surrounding birthright citizenship can also apply to the prospective parental applicants. A minimum residential requirement in Canada prior to or after the child's birth is a potential variation or supplement of this option. Requiring that parents live with their children in Canada will create stronger families and build a more fulsome filial Canadian identity.

6.2. Policy Option 2: Require a Social Insurance Number for Birthright Citizenship

Ending birthright citizenship for tourists seeks to end the practice of non-contributors being able to attain citizenship for their children merely by being in Canada – according to polling, this is the greatest concern for the Canadian public. However, distinguishing between visa types is challenging, as not all visitors will carry a physical tourist visa, due to agreements with some countries to allow their nationals to visit without one. In the case of these nationals, they apply for an electronic travel authorization (eTA), which is ultimately associated with the traveller's passport.

Instead, the policy implementation for this option would be relatively simple by requiring new parents to submit their social insurance number (SIN) when registering the birth. Temporary foreign residents, such as foreign workers or students, are eligible for a social insurance number for the duration of their stay, indicated by the number starting with a 9. The only residents without access to a SIN number are tourists. Eligibility and process times for social insurance numbers is quick and easy through any Service Canada branch, and prospective applicants would have ample time to apply, given the temporal nature of pregnancy. Provincial and territorial vital statistics agencies would merely have to wait for a confirmation, as some already do when offering other services during birth registration. The underlying principle in this policy option is to prevent non-contributors from exploiting Canada's birthright citizenship.

6.3. Policy Option 3: End Birthright Citizenship Outright

While drastic, this policy option will align Canada with the majority of other developed countries. Ending birthright citizenship entirely will mean that Canadian citizenship will only be afforded to those that are already Canadian, or those that apply through one of the immigration streams. This will, undoubtedly, achieve the ends in preventing birth tourism, but may have broader implications and complexities.

When considering how this affects foreign residents that give birth in Canada and stay in Canada, the problem of birth tourism may be minor in comparison. Birth certificates are foundational documents that are utilized for a number of social services and are sometimes required by other countries and services for various purposes (such as proof of parenthood when traveling with a child). Since birth certificates also provide support for Canadian citizenship, ending birthright citizenship would mean denying birth certificates to the children of foreign nationals that stay and live in Canada – a far greater number than birth tourists.

6.4. Policy Option 4: Status Quo

Maintaining unconditional birthright citizenship is an option in the sense that the effects of birth tourism may not be pronounced. The fears surrounding birth tourism may be unfounded, and these children may eventually return to Canada and contribute to Canadian society in many ways. Accepting that birth tourism is not a wide-spread phenomenon is central to this policy option. This option also allows Canada to maintain its reputation for its acceptance of immigrants.

Chapter 7. Criteria and Measures

In conducting an assessment of the aforementioned policy options, four criteria have been created to evaluate each policy option's effectiveness in addressing birth tourism. Attached to each is the measurement that will be used to quantify the criterion. While each individual criterion is imperative, they are equally weighted, except for the key objective of effectiveness, which is double-weighted. This reflects the contribution and vitality of the key objective for solving the policy problem. The criteria and measures are illustrated at the end of this chapter.

Key Objective: Effectiveness

The paramount objective in analyzing each policy option is based on a simple question: will it work? The goal of responding to birth tourism is to ensure the integrity of Canadian immigration programs to the extent they are not being flouted or taken advantage of, and that established policy targets are being adhered to. If a proposed policy option achieves this, then the number of citizenships that are provided to non-status non-residents would dramatically decrease. Measuring this proposed policy option will be achieved through theoretical forecasting based on the framework suggested in the policy options. In a way, the objective is to analyze whether the loophole has been closed by assessing how many citizenships could be provided to non-status non-residents in each scenario.

This criterion will be rated as either high, medium, or low. Reducing the incidence of citizenship being granted to the children of non-status, non-residents by over 50 percent will be rated as high. Reducing the incidence between 30 to 49 percent will be rated as medium, and anything less than 29 percent will be considered low.

Criterion 2: Public Support

Discussions surrounding birthright citizenship have proven to be politically sensitive. However, the differentiation between altering birthright citizenship or birth tourism is significant enough that it can affect the palatability of a government response. With this in mind, grasping the political feasibility of each policy option will be important in identifying the best response, and this is indicated through public support. The criterion of public support will be measured through public opinion polling as a percentage. Research

conducted by the Angus Reid Institute explored Canadians' views on both birthright citizenship and birth tourism. Inferring from this data to apply to the policy options presented will provide valuable insight about what is politically feasible and what is not.

This criterion will be rated as either high, medium, or low. Overall political support in excess of 60 percent will be rated at high. Popular support measuring between 30 percent to 59 percent will be rated as medium. Support, or lack thereof, measuring between 0 to 29 percent will be rated as low.

Criterion 3: Administrative Complexity

Canada's federalist structure has worked to the benefit of certain policy programs and to the detriment of others. Specific to the policy issue at hand, birth certificates are provincially mandated while immigration policy is set at the federal level. Changes in federal policy are sure to effect changes in provincial administration. However, it may not be the case that changing provincial administration would necessarily affect federal policy. Understanding what changes are associated with each policy option and the complexities attached will provide a pragmatic foundation for deciding on a policy option. The measure will simply be the amount of labour, in hours, needed to enact each policy option. In some cases, this will have to be theoretically assessed based on various bureaucratic demands, while other policy options may be able to draw parallels from jurisdictions with similar government structures. The goal in this measure to get a sense of how long it would take to implement one policy relative to another, rather than an absolute measure.

This criterion will be rated as either high, medium, or low. The options that are able to implemented within one year will be rated as low. Options that will take between one to two years to be applied will be rated as medium. Policy options that will theoretically take longer than two years to materialize will be rated as high.

Criterion 4: Equity

The last criterion to be assessed will be that of equity, which concerns the equity of prospective migrants. Ensuring that any policy response does not disproportionately affect one group of people more than others is key to upholding Canadian values in our immigration system. Changing citizenship policy has the potential to affect those that adhere to the established framework, and they should not be penalized for the misdeeds

of others. Thus, ensuring the equity of prospective migrants will be measured by the additional administrative burden necessary to meet citizenship requirements, if any are required at all.

The criterion will be rated as either high, medium, or low. As all the policy options are hypothetical in nature, intuitive forecasting will be used as the data source. Policy options that will place a high administrative burden on applicants, such as those that will require more than a year of waiting, will be rated as low. Those with up to one year of abeyance will be rated as medium. Lastly, policy options that involve no extra administrative burden onto prospective immigrants that have applied through legitimate channels are rated as high.

Table 1. Societal and Government Objectives

Societal and Government Objectives	Criteria	Measures	High	Med (2)	Low (1)
Effectiveness [Criterion 1] Double Value	Reducing incidence of non-resident tourist births	Number of citizenships provided to non-resident, non-status families (n)	Greater than 50% reduction (6)	Between 30-49% reduction (4)	Less than 29% reduction (2)
Public Support [Criterion 2]	Public support for policy options	Public opinion polling support percentage (%)	Greater than 60% support (3)	30-59% support (2)	Less than 30% support (1)
Administrative Complexity [Criterion 2] Inverse Ratings	Amount of administrative difficulty in administering policy option	Labour/effort needed to enact policy option (hours)	Greater than 2 years (1)	1 year – 2 years (2)	Less than 1 year (3)
Equity [Criterion 3]	Administrative burden placed on	Additional time required to meet citizenship requirements (hours)	None (3)	Up to 1 year (2)	Greater than 1 year (3)

Chapter 8. Analysis of Policy Options

The following chapter provides an analysis of the policy options suggested in Chapter 6, using the criteria and measures defined in Chapter 7. The analysis is informed by both the case studies and interviews, with a justification presented for each rating. A matrix showing the results of this analysis is available in Chapter 9.

Option 1: Make Birthright Citizenship Conditional

Making birthright citizenship conditional gives the Canadian government the opportunity to mandate specific requirements deemed sufficient to be granted Canadian citizenship. Current policies for prospective applicants require them to be permanent residents and to have lived in Canada for at least three out of the last five years, in addition to filing taxes, proving official language skills, and passing a basic knowledge test (for those between 15-54 years-old). It must be considered that the requirements will affect the children more than the non-resident parent(s). As a result, it will most likely involve some residency requirement. The UK and Australia, for example, require that a child live in the country for the first 10 years of their life to be granted citizenship. Other countries have different requirements, with a handful granting citizenship only when the child turns 18, given that they meet defined requirements. The condition could even be to require the parents to have previously lived in Canada for some amount of time, ideally longer than the validity of a tourist visa (to curb birth tourism), in order to qualify for a birth certificate.

The specifics of this policy option are not defined as it will involve political and administrative discussions outside the scope of this research. Given this limitation, rating the effect conditional birthright citizenship will have on the effectiveness criterion will largely depend on the conditions suggested. For example, if the conditions are easily met, then attaining birthright citizenship is not adequately disincentivized, and the issuance of birth certificates to non-status foreign residents does not decrease. If they are overly cumbersome, then very few would go through the effort of meeting those conditions. Ultimately, neither of the scenarios is probable, so a rating of medium has been assigned to this criterion, reflecting a probable substantial change. As the key objective is double weighted, this gives a rating of 4 for this criterion.

The public support for making birthright citizenship conditional is rated as high, given the popular support for amending birthright citizenship reflected in Angus Reid polling data. 60 percent of those polled in the aforementioned 2019 survey stated that changes to birthright citizenship are necessary, though specific changes are not identified. The resulting numerical rating for this criterion is 3.

Where this policy option falters is in its administrative complexity. Deciding what the conditions may be, and then creating the administrative capability to manage and approve those conditions, is a daunting task requiring a high degree of coordination between multiple levels of government, including federal, provincial, and regional health authorities. A high level of administrative complexity gives this criterion a rating of 1.

The administrative burden that is placed on prospective immigrants is largely dependent on what the specific conditionality may be. However, at the very least, one can imagine that it would require residency for over one year as a minimum. As a result of this, this policy options achieves low equity, a score of 1.

Option 2: Require SIN for Birthright Citizenship

This policy option is advantageous particularly because it does not discriminate against all foreign residents; only those ineligible for a SIN are barred from birthright citizenship. A SIN signals that a migrant is in the country for a legitimate purpose, and has been deemed eligible to work or receive government benefits. SINs can be temporary in nature, such as for foreign workers, and are reflected by beginning with the number 9. A temporary SIN holder can also become eligible for a permanent SIN, such as when an international student eventually becomes eligible for permanent residence. For the purposes of this analysis, an eligible SIN would be necessary to apply for a birth certificate, or the SIN must have expired less than ten months prior. The expiration caveat would allow prospective applicants to still attain citizenship for children, provided they became pregnant when they were qualified to work and/or receive government benefits.

Requiring a valid SIN will decrease non-status foreign resident birthright citizenship claims entirely, as the child's parents will no longer be eligible to apply. Rather, requiring a SIN will mean that the parents have status (such as a permanent resident, temporary foreign worker, or international student), a key part of the measure. As such, when it

comes to the criterion of effectiveness, this policy option receives a high rating. As this is the key objective, the weighted value of this rating is 6.

The public support of this option receives a rating of medium, as a result of the Angus Reid poll referenced in the last policy option. According to that research, 55 percent of those surveyed support birthright citizenship for the children of those on work visas, and overwhelming support, 82 percent, for those that are permanent residents. Incidentally, there is only 40 percent support for birthright citizenship for the children of those on student visas. Despite the variance of support between the permanent and temporary residents who would be eligible for a SIN, it is largely positive support. The value of the rating for this criterion is 2.

The administrative complexity of this policy option receives a rating of low, the most favourable rating for this criterion, as the implementation would be relatively simple. Many provincial statistic agencies already integrate federal program registration in their registration processes, and require a valid SIN to do so. It would likely take little effort to extend that confirmation, perhaps with some exception made to the 10-month expiry provision suggested in this analysis. The rating for the criterion is valued at 3.

The equity of this option is, at the most, limited to one year of extra administrative burden. This policy option permits birthright citizenship within either nine months or one year of having a valid social insurance number. New migrants, including refugees, are sometimes faced with a waiting period of up to three months before receiving a SIN, thus limiting the administrative burden they face as result of this policy change to only three months. Thus, this criterion is rated as medium for this policy option, a numerical rating of 2.

Option 3: End Birthright Citizenship

The most drastic of the policy options, ending birthright citizenship outright, will have grand implications on Canadian identity while also aligning birthright citizenship policy with the vast majority of the developed world. In the context of measuring the effectiveness of a response to birth tourism, this policy option will undoubtedly achieve that key objective. As the measure is a decrease in non-status foreign resident birthright citizenship claims, foreign residents will be taken out of the equation entirely, as they will no longer be eligible for birthright citizenship. The only method to obtaining Canadian

citizenship will thus be through *jus sanguinis*, or through naturalization. Given the defined measure of effectiveness, this policy option would rate a 6 when curbing non-resident births.

When it comes to public support, it is not a particularly palatable response for the Canadian public to end birthright citizenship entirely. Angus Reid polls suggest that only 33 percent of the public sees birthright citizenship as a negative policy. As a result, the rating of the measure is medium, at 2.

The administrative complexity of this policy option is not necessarily straightforward. While it is theoretically simple to ban birthright citizenship entirely, Canada is home to a significant number of immigrants from a wide variety of countries. Because of the substantial portion of permanent and temporary residents, this policy option will result in consequences for both non-citizens and all levels of government alike. The complications of this policy option will arise from a significant number of infants and children that will be born in Canada as foreign nationals, and accommodating them in health, education, and other government programs. So, while this option may be relatively easy to initiate, the long-term implications make it difficult to successfully implement. Considering the balance of extremes, this criterion will receive a rating of 1.5, a compromise of medium and high to reflect uncertainties.

Ending birthright citizenship outright will cause a massive administrative burden for a significant number of immigrants who have not received citizenship. Given the significant portion of legitimate immigrants in Canada, this will have wide-reaching effects. Regardless, the measured effect on any single family will result in an administrative burden that is longer than one year in length (unless the family is due to receive citizenship within one year), which rates this policy option as low in equity, a score of 1.

Option 4: Status Quo

Maintaining the status quo is an option worth considering given the unknown long-term outcomes of birth tourism. Clearly, it would not result in any decrease in non-status foreign residents giving birth in Canada, but as this criterion is double-weighted, it still receives a rating of low, 2.

The public support for this option also receives a low rating, as the Angus Reid Institute specifically asked about maintaining the status quo when it comes to birth tourism. Only 18 percent of respondents preferred taking the status quo instead of changing birthright citizenship or other policies, which gives the political feasibility a rating of 1.

One of the only benefits of maintaining the status quo is the lack of administrative complexity, as nothing changes on this front. No changes to policy result in no changes to bureaucracy, resulting in a rating of low complexity, a score of 3.

Similar to administrative complexity, the status quo maintains the equity of prospective immigrants as there is no change to the administrative burden for their receipt of birthright citizenship. As such, this option maintains high equity, receiving a score of 3.

Table 2. Policy Options

Policy Options	Key Objective Effectiveness (Double Value)	Other Impacts 1 Public Support	Other Impacts 2 Administrative Complexity	Other Impacts 3 Equity	Total
Conditional Birthright Citizenship	Medium (4)	High (3)	High (1)	Low (1)	9
Require SIN for Birthright Citizenship	High (6)	Medium (2)	Low (3)	Medium (2)	13
End Birthright Citizenship	High (6)	Medium (2)	Medium/High (1.5)	Low (1)	10.5
Status Quo	Low (2)	Low (1)	Low (3)	High (3)	9

Chapter 9. Recommendation

The recommended policy option is policy option 2, requiring a social insurance number to be eligible for birthright citizenship. While it is not an outright change in birthright citizenship, it seemingly meets the expectation of having some standard for attaining citizenship beyond merely being born in the right place at the right time. This policy ensures that those who are here on tourist visas are not eligible for birthright citizenship, while simultaneously recognizing the contributions of temporary residents that give birth during their stay in Canada.

A social insurance number indicates a small number of things that are likely to satiate the demand that non-residents have some attachment to Canada in order to be eligible for birthright citizenship for their children. A SIN indicates that the Canadian government has deemed that individual able to work, pay taxes, and receive government benefits. It is a minimum threshold for an acceptable claim to Canadian citizenship.

This policy option is not an outright termination of the incentive to engage in birth tourism, as it could potentially result in improper SIN applications. Fake firms and schools could materialize in order to sponsor foreign workers and students so that they are able to benefit from birthright citizenship. However, doing so will be an illegitimate practice that would be enforced by the relevant regulatory and enforcement agencies, including the Canada Border Services Agency, potentially resulting in the revocation of status or citizenship.

Given the criteria and measures defined in Chapter 7, this policy option performs well in almost every category. Its effectiveness is clear as it will limit any potential birth tourists. The path to circumventing established policies will no longer be an option – the loophole will be closed. It has widespread public support given the demand for a level-headed, practical, and equitable response to address birth tourism. Administratively, it is perhaps the least intrusive option outside of the status quo. The mechanism to verify a SIN is already a part of many vital statistics agencies' processes to register a newborn into federal child tax benefit programs. Lastly, while this option has some adverse effects on some foreign non-citizens giving birth who have not yet obtained a SIN, it is not unreasonably burdensome, as obtaining a SIN is a quick and simple process so long as one is eligible. A statelessness clause calms those concerns as well.

Chapter 10. Conclusion

Birth tourism appears to be a rising trend in Canada. Although no perfect data exists, there is a pattern of foreign non-residents travelling to Canada temporarily just to give birth. They do this in order gain citizenship for their children, and it has been occurring in Canada since at least the 1990s. It is presumed that in some of these cases, the family hopes to return to Canada through the family sponsorship stream of immigration, although the prevalence of this is not known for certain. In fact, little is known about the outcomes of birth tourism, or whether they may be good or bad. What is known is that birth tourism represents an attempt to circumvent the policy objective of Canada's official immigration system, and in doing so, undermines faith in the immigration system and in Canadian citizenship.

Birthright citizenship, which offers citizenship to those born within a country's borders, is the policy that enables birth tourism to take place. It is a policy that Canada inherited from British common law, and has not been changed since the creation of a legal Canadian identity in 1947. Despite significant changes in global dynamics, technology, and migration patterns, Canada has remained steadfast on unconditional birthright citizenship.

In this paper, I conduct three case studies and interviews to analyze the problem of rising birth tourism. Case studies are conducted in Ireland, New Zealand, and America to deliver pertinent findings on how the issue was dealt in comparable jurisdictions. Each jurisdiction did what was necessary to change unconditional birthright citizenship, whether hosting a national referendum, introducing an act of parliament, or denying visas to potential birth tourists. Canada, arguably, can have a relatively easier approach in dealing with the issue because of its governance structure. Interviews were conducted with a small handful of subject matter experts that showed some differences in opinion but were united on the belief that something needs to be done to prevent an abuse of our system.

Four policy options were presented, along with corresponding objectives. The options were: make birthright citizenship conditional, require a social insurance number for birthright citizenship, end it outright, or maintain the status quo. These were assessed against the objectives of effectiveness, public support, administrative complexity, and equity. An analysis of each of these options was carried out, with criteria and measures

defining each objective. Ultimately, the recommendation was made to make eligibility for birthright citizenship conditional on the possession of a Social Insurance Number. This option is superior in its effectiveness and its implementation, while receiving adequate public support and minimizing impacts on other prospective citizens.

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Appendix A

Interview Questionnaire

1. What do you believe is the crux of the problem in birth tourism, if there is one?
What do you think is the policy problem?
 - a. Do you think enough is understood about the long-term effects of birth tourism to make any causal claims?
2. Which level of government do you believe is responsible for taking the initiative to address the issue? Why?
 - a. How do you feel about the political feasibility of addressing the issue?
 - b. What barriers, if any, exist in addressing birth tourism politically and administratively?
3. How do you think the problem of birth tourism can be solved, if it should be solved?
 - a. How would this be implemented? What challenges do you think would present themselves?
4. Do you think the federal government should abolish birthright citizenship or make it conditional?
 - a. Abolished to whom, and why? TFW? Students? Refugees? PR?
 - b. If conditions, what conditions do you think should apply and to whom?
5. When making a decision about what to do, what societal objective(s) do you think are the most important to consider, and why?
 - a. What are we trying to achieve in a solution?