The Honourable Percy Mockler, Senator
Chair
Standing Senate Committee on National Finance
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Dear Senator Mockler:

In anticipation of the deliberations of the Standing Senate Committee on National Finance, I would like to respond to some of the concerns that have been raised by stakeholders during testimony at the Senate Standing committee on Social Affairs, Science and Technology during their study of C-97, Part 4, Division 16.

As you are aware, Budget 2019 investments reflect the Government’s commitment to better manage, discourage and prevent irregular migration and to improve the efficiency of the Canadian asylum system, without compromising its fairness and compassion. Bill C-97 proposes legislative amendments to the Immigration and Refugee Protection Act (IRPA) to support the implementation of this strategy. Through these amendments, I want to assure you that the Government will continue to meet its domestic and international obligations to offer protection to people who are fleeing persecution.

Among these legislative amendments, clause 306 has received attention from Parliamentarians, stakeholders, and the media. This clause amends subsection 101(1) of IRPA by adding a new ineligibility ground for claimants who have made an asylum claim in another country. The objective of this provision is to discourage against the practice of individuals making claims in multiple countries. As drafted in the legislation, this measure will only apply to foreign nationals who have made a claim in countries with which Canada has an information and biometrics sharing agreements; countries that have robust immigration and asylum systems.

I can assure you that this measure meets Canada’s domestic and international obligations because the appropriate safeguards are in place to ensure that we do not return any individual to harm or persecution. The Pre-Removal Risk Assessment (PRRA) considers the same protection grounds and threshold as the Immigration and Refugee Board (IRB) when determining

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whether an individual requires protection under the Refugee Convention or the Convention Against Torture, or if they require protection from a risk to their life or a risk of cruel and unusual punishment or treatment, unless they are excluded under the Refugee Convention.

In addition, I would like to reinforce that I am committed to ensuring that individuals who are found ineligible for making a claim in another country, under Clause 306, will have access to a hearing as part of their PRRA. Taking into careful consideration concerns raised by stakeholders, legislative amendments were introduced, requiring mandatory hearings for these individuals, unless protection can be granted on the basis of the written submission alone. I am pleased to report that on May 29, 2019, the House of Commons Standing Committee on Finance accepted these amendments.

While I appreciate the spirit of the concerns raised about the role of counsel in PRRA hearings, I would like to assure you that the PRRA – a process that is compliant with the Canadian Charter of Rights and Freedoms and with the principles of natural justice – already provides for a robust role for counsel participation. Under the proposed measure, applicants who are affected by the new ineligibility may continue to be assisted, at their own expense, by a barrister or solicitor or other counsel. Counsel will also continue to be allowed to provide advice, consultation, or guidance to applicants at any stage of the PRRA process. Counsel may also accompany applicants to their hearings, provide support to the applicant and ensure that the process is fair for their clients. The applicant and counsel are also afforded the opportunity to make legal arguments or representations post-hearing.

In addition, for the new ineligibility cohort, hearings would no longer be restricted to issues of credibility. Instead, it would be open to the officer to explore any issues of fact that the officer feels are central to the decision and should be addressed during the hearing.

I would also like to assure you that I have listened carefully to your concerns about vulnerable populations, including victims of domestic and gender-based violence and unaccompanied minors. In anticipation of the implementation of these new measures, my officials are working on enhancing the current PRRA training by strengthening existing content on conducting hearings and dealing with vulnerable persons. Enhancements will also include guidance on how to use information received from other countries to confirm whether a claimant has previously made an asylum claim there, and ensure that those who were excluded from accessing asylum are not captured by this ineligibility. These aspects of the training will be developed in consultation with colleagues at the IRB and the United Nations Refugee Agency. Ultimately, the PRRA Assessment will be used to ensure that no one is
returned to a situation of risk, including members of these vulnerable populations. I would also like to highlight that this cohort of claimants would not be excluded from Canada’s protection if they receive a positive PRRA decision. Such a decision would confer the same protected person status on an applicant that would have been received from a similar decision at the IRB. This status then allows an individual to make an application for permanent residency.

Finally, I would like to address the issue of the independence of decision makers at the Department of Immigration, Refugees and Citizenship. As I explained to honourable Senators and confirmed by the Federal Court, PRRA officers are independent decision makers; neither the Government nor the Department can interfere or fetter the discretion of officers with respect to their decision making.

I am committed to working with Senators and stakeholders to ensure that Budget 2019 investments can be implemented in the spirit in which they are intended: to better manage, discourage and prevent irregular migration and to improve the efficiency of the Canadian asylum system, without compromising its fairness and compassion. To end, the government is willing to provide SOCI with an update on the effectiveness of these new measures within two years.

Thank you for your attention and dedication to this file. I look forward to continued discussions on these important issues.

Yours sincerely,

[Signature]

The Honourable William Blair, P.C., COM., M.P.
Minister of Border Security and Organized Crime Reduction

c.c.: The Honourable Ratna Omidvar, Senator
      The Honourable Peter M. Boehm, Senator
      The Honourable V. Peter Harder, Government Representative in the Senate