

Submission to the House of Commons
Standing Committee on Citizenship and Immigration

Tuesday 7 May 2019

Re: Bill **C-97**, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, Division 16 of Part 4 amends the ***Immigration and Refugee Protection Act***

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1. Context

- 1.1 *Canada's immigration policies* since the 1990s have been among the *most successful in the world in integrating immigrants* in Canadian society, *building broad societal support for substantial levels of orderly migration*, and *addressing barriers to full participation by immigrants in Canada's economy and society*. A key element in building this consensus has been the widespread perception among Canadians (including immigrants) that, whatever its correctable shortcomings, the system is based on clear principles and reasonably consistent rules that serve the broadly shared interests of all Canadians, including immigrants.
- 1.2 *Past policies and administrative practices that failed to serve these shared interests have at times led Canadians to question the system's fairness and efficiency*: whether long delays in the approval of prospective immigrants through regular channels, the exploitation of temporary foreign workers or their use to replace Canadian workers, particularly in lower-skilled, lower-paid jobs, real and perceived abuses of refugee policies to “jump the queue,” diverting resources from serving prospective and recently-arrived Canadians who work within the system, and slow, inefficient processing of refugee claimants to serve the system's humanitarian objectives.
- 1.3 *Over the coming years, challenges to the system and its integrity will mount* due to (1) an additional 3 billion people in the coming 3-4 decades projected to be added to the planet's current population of over 7 billion; (2) that population growth's concentration is in countries whence most of Canada's refugee claimants already originate; (3) the compound effects of change on those countries or origin.
- 1.4 For that reason, it is critical for governments, of whatever political complexion, to *address these challenges forthrightly*, to *maintain the confidence of a broad cross-section of Canadians*, and *enhance incentives for prospective migrants, employers, and others to work within the system rather than trying to evade it or abuse its provisions*. Extensive efforts by Canadian immigration officials and the Immigration and Refugee Board (IRB) to reduce its case backlog and delays in adjudicating the claims of asylum seekers in 2012-16 noted in a comprehensive review by former Deputy Minister (2009-2013) of (then) Citizenship and Immigration Canada Neil Yeates (2018) illustrates this kind of responsiveness.

- 1.5 Irregular migration – defined as the pursuit of residence in another country outside formal or regular channels of migration – includes the use of falsified travel documents and the destruction of travellers’ identification documents en route before seeking asylum in Canada. Research by the International Organization of Migration and others suggests that *human smuggling networks to facilitate these movements are lucrative, widespread, growing, and often linked to organized crime* (Ferrier and Kaminsky 2017; Shelley 2012, 2014). In 2017 U.S. authorities arrested two Canadians and a Nigerian national who was subsequently convicted in Canada of running a cross-border human-smuggling ring preying on Nigerian citizens and asylum seekers hoping to enter Canada (Cowan 2017). *When the integrity of the refugee system had come under duress previously, Canada unilaterally imposed visa requirements on residents of countries with surging proportions of unsuccessful refugee claimants. More recently, Canada has tightened screening of applications for visitor visas* (York and Zilio 2018).
- 1.6 *International cooperation has proven essential to curbing irregular migration, and is becoming more important to this effect.* Canada signed the Safe Third Country Agreement (STCA) with the United States in 2002 (ratified in 2004) to restrict the ability to transit one country en route to seeking asylum in the other. In recent years, Canada – along with other advanced industrial countries such as the United States and members of the European Union – have introduced Electronic Travel Authorization (eTA) requirements (or equivalent programs) to allow for the pre-screening of travellers to or through Canada in transit to other destinations. These policies overlap with the business strategies of major Canadian airports (and airlines) to market themselves as and through the use of international hubs, and to expedite passenger throughput at airports. As it becomes more difficult for migrants who might otherwise be deemed inadmissible to come to Canada by air, crossing by land is increasingly the sole remaining option.
- 1.7 *Irregular migration to Canada has grown significantly since 2015. Inter alia, large numbers of people have exploited a well-publicized loophole in the SCTA to cross the Canadian border between formal ports-of-entry (PoE).* The widespread use of information (and sometimes, misinformation) on social media advertised opportunities provided by Canada’s relatively generous refugee protection system, along with relatively accessible border crossing routes (Nasser 2018). The vast majority of irregular migrants between ports-of-entry on the Canada-U.S. border – 95.4 percent in 2018, 97.8 percent through March 2019 – entered through Quebec, primarily the well-publicized Roxham Road crossing (Immigration, Refugees and Citizenship Canada 2019). However, the social impact of this surge has been much wider, overwhelming social housing and other resources in Ontario (Zilio 2018).
- 1.8 Table 1 outlines average monthly asylum claims through all sources since 2011. Average monthly claims increased from 1,338 in 2015, slightly above the 2012-15 average, to 5,323 in the second half of 2017, before subsiding slightly in 2018-19. The proportion of RCMP interceptions of irregular migrants between ports of entry (data not collected before 2017) peaked at 50.8 percent in the second half of 2017, before declining somewhat in 2018-19. However, even excluding those migrants detained by the RCMP, *the total number of asylum seekers has more than doubled since 2015.*

Table 1

Asylum Claims: General Claims vs. Outside Ports-of-Entry: 2011-18

	Total Asylum Claims / month	vs. 2012-15 Average (= 100)	RCMP Interceptions beyond PoEs	RCMP as percent of total
2011	2,109.6	167.8	----	no separate data ----
2012	1,705.8	135.7	na	na
2013	863.8	68.7	na	na
2014	1,120.0	89.1	na	na
2015	1,338.3	106.5	na	na
2016	1,989.2	158.2	na	na
1-2 Q/2017	3,074.2	244.6	729.2	23.7
3-4 Q/2017	5,323.3	423.5	2,703.0	50.8
1-2 Q/2018	4,203.3	334.4	1,790.7	42.6
3-4 Q/2018	4,966.7	395.1	1,445.8	29.1
1Q/2019	4,313.3	343.2	899.3	20.8

Source: Immigration, Refugees and Citizenship Canada (2019), "Asylum claims," Ottawa: April 15. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html>; Hale 2019.

- 1.9 Although policy changes announced by the Trump administration, particularly the proposed withdrawal of Temporary Protected Status (TPS) from significant numbers of U.S. residents from Caribbean, Central American, and other states that have experienced significant internal disruption, have been contributed to the surge in irregular migration, the growth in asylum seekers preceded Mr. Trump's election. **The largest single group of migrants has actually been Nigerians intent on entering Canada by entering the U.S. legally on visitors' visas.** Saudi nationals have been obtaining American visas from the U.S. embassy in Riyadh with the intent of then entering Canada to claim asylum (Bronskill and Blanchfield 2017). **Cooperation with U.S. authorities on monitoring of the U.S. visa application process has been essential to manage and restrict these flows, reducing the flow of irregular migrants from an estimated 87 per day in mid-2017 to 42 per day by mid-2018** (Crawford, 2017a; Grant 2018). In 2016, Operation Northern Watch (ONW), initiated by the Diplomatic Security Service (DSS) within the Bureau of Diplomatic Security – the law enforcement and security arm of the U.S. Department of State – in cooperation with Canadian authorities resulted in approximately 2,400 U.S. visas being revoked affecting 85 U.S. diplomatic posts (Crawford 2017a). The U.S. Department of State reported that “[...] the vast majority of the individuals referred through Operation Northern Watch are individuals intending to claim asylum in Canada or who have already claimed asylum. Included in this group were individuals with ties to designated terrorist organisations” (United States Department of State 2017). Canada's Minister for Public Safety, Ralph Goodale, has singled out U.S. diplomatic posts in Nigeria for issuing travel documents to individuals who then transit the United States to Canada (Crawford 2017b). The U.S. has since cut the number of tourist visas issued to Nigerians by 10 percent (Cossette 2018).

1.10 The Government of Canada has announced its intention to negotiate revisions to the Safe Third Country Agreement (SCTA) so that it may apply to persons entering Canada outside formal ports-of-entry. It has also included measures in the 2019 budget implementation legislation that will restrict access to the refugee protection system, along with other administrative measures intended to facilitate repatriation of irregular migrants who do not qualify for refugee status under current or revised legislation. While close cooperation between Canadian and U.S. immigration and border management officials remains a critical element in the integrity and effectiveness of Canada's immigration system, *it is important to retain effective checks and balances that maintain access to Canada's asylum regime for persons genuinely in need of protection as refugees while limiting actual and prospective abuses of the system.*

2. Proposed Legislation

2.1 Division 16, Part 4 of the Bill C-97, *Budget Implementation Act No. 1*, contains three provisions amending the Immigration and Refugee Protection Act on which the Committee has requested comment:

(a) introducing a new ground of ineligibility for refugee protection if a claimant has previously made a claim for refugee protection in another country [Sec. 306];

(b) providing that if the Federal Court refuses a person's application for leave to commence an application for judicial review, or denies their application for judicial review, with respect to their claim for refugee protection or their application for protection, the date of that refusal or denial is the first day of the period that must pass before a request or application referred to in section 24, 25 or 112 of that Act may be made; [Sec. 302(2), Sec. 303] and

(c) authorizing the Governor in Council to make an order regarding the processing of applications for temporary resident visas, work permits and study permits made by citizens or nationals of a foreign state or territory if the Governor in Council is of the opinion that the government or competent authority of that state or territory is unreasonably refusing to issue or unreasonably delaying the issuance of travel documents to citizens or nationals of that state or territory who are in Canada. [Sec. 304]

2.2 Section 302(1) precludes applicants for refugee protection from applying for a temporary residence permit while their application for protection is pending.

2.3 **Section 306** renders ineligible for refugee protection any person who has made similar claims to another country with which Canada has entered into an information sharing agreement to assist in the administration and enforcement of immigration and citizenship laws. Canada currently has such agreements with the United States, the United Kingdom, Australia, and New Zealand.

2.4 This measure appears to be intended to address questions of "asylum shopping" by asylum seekers involving parallel or sequential claims for asylum in different jurisdictions, raising questions of equity and efficiency in the use of finite resources in frequently overloaded systems. For example, *Canada's refugee backlog, with 71,675 cases pending in December 2018 (Immigration Review Board 2019), is currently reported to be in excess of two years, with similar delays reported in the United States (Miroff and Sacchetti 2019).* The 2019 budget's announcement

of funding sufficient to process 50,000 claims annually is an important step towards addressing this concern. However, actual implementation of this commitment will take time.

- 2.5 Given other provisions of the *Immigration and Refugee Protection Act* that provide for waiting periods prior to accessing alternative forms of entry to Canada, **an absolute ban on sequential applications may be an excessive response to a valid concern**, particularly as detailed provisions and administrative processes relating to refugee protection vary across countries with which Canada has information sharing arrangements and these processes evolve over time. **A more suitable and humane response may be to limit the proposed exclusion to eligibility for refugee protection in Canada to three years from the date on which previous claims in such countries are finalized.** In exceptional cases, the Minister still retains discretion to extend protection on humanitarian grounds.
- 2.6 **Section 304's provision enabling the Minister to make an order relating to the processing of applications for temporary resident visas, work permits and study permits by citizens of countries or territories that unreasonably refuse to cooperate with Canada in issuing travel documents to citizens or nationals of such countries denied entry to Canada appears to be a reasonable, discretionary measure to enforce reciprocity in the application of national immigration laws.**

3. Other issues for consideration

- 3.1 Provisions of the *current budget*, with adjustments as suggested, are likely to provide a fair and balanced approach to managing the current surge of irregular migration, and enhancing processes to combine humanitarian objectives with the orderly processing and timely adjudication of refugee protection claims necessary to maintain the credibility of the system.
- 3.2 The number, complexity, and interaction of economic and social forces and policy / administrative issues associated with different streams of migration are such that *it is rare for governments to anticipate or manage all trade-offs* associated with changing patterns of migration. One challenge of negotiating changes to the Safe Third Country Agreement to apply to persons crossing between formal ports-of-entry is that it could create incentives for irregular migrants to use more remote locations, at increased risk to themselves, while increasing the number of undocumented migrants within Canada. An example of such a trade-off is for Canada to leverage U.S. Border Patrol's ability to carry out inland immigration inspections in proximity to a U.S. external border that might stem the northbound flow towards Roxham Road but detaining individuals in violation of the conditions under which they gained access to U.S. territory.
- 3.3 One means of reducing the likelihood of such outcomes and improving incentives to work within the system would be to **restore Section 41 of IRPA regulations, the so-called "Direct Back" provisions.** Such action would allow persons at significant risk to apply for refugee protection status from within the United States -- if they were not otherwise covered by provisions of the STCA. Such measures would provide a safety-valve in case of changes to U.S. Temporary Protected Status (TPS) provisions likely to create significant risks of another surge in irregular migration. **However, a necessary condition for reinstating Section 41 would be to include amendments within a revised STCA providing for a**

standstill in prospective U.S. deportation proceedings for any person awaiting a Canadian refugee protection hearing under these provisions. Implementation of such measures would require safeguards to clarify the categories of persons at risk subject to such provisions to preserve the benefits provided by STCA in providing effective 'triage' of claimants from third countries.

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