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June 7, 2018

Via email: Minister@cic.gc.ca

The Honourable Ahmed Hussen, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Minister Hussen:

Re: Independence of Canada's refugee determination process

I am writing on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) in the context of the independent review of refugee determination procedures at the Immigration and Refugee Board (IRB). The CBA Section urges the federal government to maintain the IRB as an independent quasi-judicial tribunal responsible for refugee determination in Canada.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing in all areas of immigration law. Our members deliver professional advice and representation on the Canadian immigration system to clients in Canada and abroad.

As we await the results of the independent review, we are concerned that the government may consider reassigning responsibility for refugee determination from the IRB to Immigration, Refugees and Citizenship Canada, or other non-adjudicative first level determination body. We understand this concern is shared by other stakeholders, including the Canadian Association of Refugee Lawyers and the Canadian Council for Refugees.

Refugees are among the most vulnerable in our society, the issues to be decided are complex, and determinations can have dire consequences. The IRB stands as a model around the world for independent refugee determination, separate from other arms of government. The UN High Commissioner for Refugees, Filippo Grandi, emphasized the need for independence during a recent visit to Canada: "You have a body in this country that is...relatively well

insulated from political pressures... that's important, especially at this time of great politicization... The board has to remain independent, this for us is very, very important.”¹

Opting for non-adjudicative first-level refugee determination would likely also result in an increase in appeals, along with the associated added costs and delays. Countries that have chosen this route have experienced a high rate of decisions overturned at appeal; for example, in the U.K., 41 percent of refugee determinations (made by a non-adjudicative body), are overturned by the courts.²

The IRB has worked to improve its efficiency with existing resources. In 2017, the rate of finalization was 37% higher than in 2016.³ While the refugee determination process can undoubtedly be improved, and we look forward to hearing the recommendations of the independent review, those improvements should be implemented in the context of an independent IRB.

We trust that our comments are helpful, and we would be pleased to provide any further clarification.

Yours truly,

(original letter signed by Sarah MacKenzie for Barbara Jo Caruso)

Barbara Jo Caruso
Chair, CBA Immigration Law Section

¹ Stephanie Levitz, [UNHCR urges Liberal government to keep politics out of refugee determination system](#), Globe & Mail, November 6, 2017.

² U.K. Home Office February 23, 2017, [National Statistics/Asylum](#).

³ IRB finalized 21,513 claims in [2017](#) and 15,761 in [2016](#).