Letter to Parliamentary Committee on Citizenship and Immigration and MPs

March 2, 2001

Dear :

RE: Bill C-11 — *Immigration and Refugee Protection Act*

I am writing on behalf of the National Citizenship and Immigration Law Section of the Canadian Bar Association (the Section), to seek your support in opposing passage of Bill C-11 without substantial amendment. The Section comprises over 600 lawyers whose practices embrace all aspects of immigration law.

The Section had grave concerns with substantial parts of Bill C-11 — provisions which would deny access to justice, remove existing processes that ensure fair decision making and accountability in matters of removal and sponsorship, and invade the civil rights of immigrants and others in Canada. Canadians and non-Canadians alike will feel the effects of these changes.

The former Bill C-31 (also called the *Immigration and Refugee Protection Act*) was condemned by the CBA and many other organizations. It died on the Order Paper before being fully considered by the Parliamentary Committee. While some of the shortcomings of Bill C-31 have been addressed in the new Bill, the most egregious faults remain. This Bill represents a fundamental and unacceptable shift in the way Canada treats immigrants and potential immigrants. We wish to make it absolutely clear that we cannot support this legislation in its current form, and we hope that you will agree.

The current *Immigration Act* has been amended over the years to reflect evolving priorities, protect Canadian society, and preserve the integrity of the immigration system through the mechanisms of inadmissability and deportation. These are legitimate considerations with which we do not take issue.

The Section strongly opposes provisions of the Bill that significantly and unnecessarily change longstanding cornerstone policies of immigration law:

1. Complete removal of Appeal Division jurisdiction to review loss of status and deportation of permanent residents described by certain broad grounds of inadmissibility. (s. 64)

The right of Appeal Division review originated in the 1969 *White Paper on Immigration* and was established in the 1976 *Immigration Act*. It is a is a commendable and effective process. Removing Appeal Division jurisdiction is unnecessary and unwarranted. The failure to legislate a guarantee of any review of circumstances and appropriate process is unconscionable, and not in keeping with basic Canadian values of fairness and justice.

In our opinion, the denial of meaningful review of circumstances of permanent residents facing deportation will not be justified under the *Charter of Rights*, and is inconsistent with Canada's obligations under of the *International Covenant on Civil and Political Rights*.

2. Imposition of a leave provision to limit access to Federal Court judicial review of decisions by visa officers abroad. (s.72)

The leave provision will effectively insulate these decisions from judicial overview. It will prevent correction of decisions made in error, through improper application of the law, or unfairly. These corrections are required regularly. The leave requirement will prevent the Federal Court from effectively supervising both the Department and applicants.

3. Sweeping, unrestricted and draconian powers of arrest and compelled examination that are offensive to the most basic civil rights of foreign nationals, including established permanent residents in Canada. (ss.15, 16, 128, 55)

Permanent residents may be subject to arrest, compelled examination, and seizure of documents at any time, before any report is made or hearing ordered, at the instance of an immigration officer conducting a mere investigation.

4. Processes that will restrict permanent residents who are overseas from returning to Canada, even to participate in proceedings to determine their status, although they may have perfectly valid status. (ss.19(2), 27, 31(2)(b))

These provisions restrict the right of entry that has been fundamental to permanent resident status, and impair the permanent resident’s ability to contest the alleged loss of status.

5. Poorly structured requirements for renewal of permanent resident cards that will lead to expensive, time consuming and unnecessary determinations, faulty denials of entry and faulty assessments of inadmissibility. (s.28)

6. **Removal of the guaranteed role of an independent tribunal to supervise government enforcement powers, including the guaranteed role to supervise removal orders and loss of status determinations against permanent residents.** (ss.44, 64)

7. **Bypassing Parliament by wholesale downloading of law-making powers to the Minister and Cabinet in matters affecting essential rights and status of foreign nationals, including permanent residents and refugees.** (ss.17, 32, 43, 53, 61, 102, 116, 147, 150)

The provisions of Bill C-11 would bring about the following changes, amongst others:

- Administrative deportation of permanent residents using a broad statutory definition of "serious criminality". These permanent residents would have no access to review and would face mandatory removal regardless of whether they had resided in Canada for many years, without independent consideration of whether their criminal act was an isolated event or a pattern of criminal behavior, without regard to the particular circumstances of the offence, and without regard to family and social support in Canada promoting rehabilitation.

- Administrative deportation of permanent residents using broad statutory definitions of "organized crime", "human rights violations" and "security". The true measure of Canada's processes for immigration enforcement is the assurance that affected individuals, particularly established permanent residents facing loss of status and deportation, have access to review processes ensuring that these critical determinations are fairly and properly made. This Bill seeks to remove long standing and proven processes of review of these decisions. Diminishing these processes will result in decisions for deportation that are of grave consequence and not necessary.

- Allow overseas immigration officers to prevent legitimate permanent residents of Canada from returning to Canada, based on their assessment of whether the permanent resident meets new residency requirements that are poorly defined. Permanent residents could be stranded abroad, awaiting an appeal in Canada that they could not attend.

- Removing the right of access to the Federal Court to persons whose visa applications are refused overseas. Access will only be with leave, with only a fraction of legitimate cases having access to court reviews. Current statistics suggest that over 85% of leave applications are dismissed without reasons. With unrestricted access to Federal Courts, the Department succeeds in having only 35% of applications dismissed.

There will always be cases where deportation or denial of admissibility is appropriate. Our concern is that Bill C-11 proposes removing essential procedural safeguards to ensure that these critical decisions are made fairly and appropriately. In the absence of procedural safeguards,

including review by independent tribunal, decisions of grave consequence will be made that are inappropriate. The processes envisioned by Bill C-11 are contrary to Canada's commendable history of fairness and access to justice.

It is in the interest of preserving and continuing the commendable commitment to fair and just processes, and in the interest of protecting basic civil rights, that we urge you not to approve this legislation until it has been the subject of cross-country hearings and extensive study by the Standing Committee on Citizenship and Immigration and until substantial amendments have been made.

The Section will be submitting a comprehensive analysis of the new Bill to the Parliamentary Committee. In the meantime we ask that you give careful consideration to the new legislation and do what you can to effect positive changes before it is passed.

Yours very truly,

Michael A. Greene
Chair
National Citizenship and Immigration Law Section