October 3, 2001

The Honourable Lorna Milne, Senator
Chair, Committee on Legal and Constitutional Affairs
The Senate
Ottawa ON K1A 0A4

Dear Senator Milne,

Re: Bill C-7, *Youth Criminal Justice Act*

I am writing on behalf of the Canadian Bar Association's National Criminal Justice Section (the Section). The Section has commented on the government's proposals to reform the youth justice system over the past several years, and appreciates this opportunity to present its views to the Senate Committee on Legal and Constitutional Affairs. The attached submission to the House of Commons Standing Committee on Justice and Human Rights, on what was then Bill C-3, outlines our general position on the proposed *Youth Criminal Justice Act* in more detail.

Generally speaking, the Section supports the passage of Bill C-7. We believe that it embodies an important new direction for youth justice in Canada. Most youths come in contact with the law as a result of fairly minor and isolated incidents. Rather than dealing with those incidents in a way that ensconces troubled youths within the criminal justice system, our view is that society will better achieve its goals of public safety and accountability through crime prevention and by diverting those youths toward services that promote treatment and rehabilitation. Of course, for those alternatives to succeed, we must ensure that both levels of government are committed to providing the necessary resources for those services.

Bill C-7 follows this preferred approach in several ways. It recognizes the importance of extra judicial measures, such as warnings, cautions and referrals, victim/offender mediation and family conferencing. It supports community involvement and responsibility toward young people through mechanisms such as Youth Justice Committees of concerned citizens. It stresses the importance of rehabilitation and reintegration of offenders into society throughout, including in both the *Preamble* and the *Purpose and*

Principles of the *Act*.

Some of our main objections to Bill C-3 were at least partially addressed by Bill C-7. We were previously concerned with potential ambiguities and contradictions in the classifications used in Bill C-3 of "non-violent," "violent" and "serious violent" offences. Bill C-7 has clarified many of these potential problems. We had previously expressed our concern over the lack of protections in Bill C-3. Bill C-7's changes in regard to statements by youths to police are a step in the right direction, but we remain concerned about an erosion of the protections currently afforded young people under the *Young Offenders Act*. Section 56 of the current *Young Offenders Act* recognizes the more vulnerable position of young people when dealing with police, by requiring that special protections be given before a statement of a youth is admissible in court. While originally we were extremely concerned because Bill C-3 would have allowed the admission of a statement taken in contravention of such special requirements if a judge determined that its admission would not bring the administration of justice into disrepute, those concerns have been partially allayed by the added protections now contained in Bill C-7.

In spite of our appreciation and support for the overall direction of Bill C-7, we have some remaining concerns and suggestions for improvement.

We support the Bill's overall approach of distinguishing between very violent youths (who must be dealt with in a manner that adequately protects society), and the majority of young offenders who come in contact with the law rarely and on fairly minor matters (and can be treated in a manner that holds them accountable without stigmatizing them for life). However, we object to the "three strikes" approach the Bill takes in dealing with more serious offenders. According to Bill C-7, paragraphs 62(a) and 2(1), once a judge has designated two offences as "serious violent offences," a third will signal a presumptive transfer to the adult system. This is of particular concern if certain provinces or territories opt to lower the age for transfer to the adult system to fourteen years of age, as permitted by the Bill. While common sense dictates that we must deal with a pattern of anti-social behaviour differently than an isolated incident, we object to the legislated presumption that a youth will be transferred to the adult system after a given number of offences. Instead, in the few appropriate cases, the Crown should apply to a judge to consider such a transfer.

In addition to carefully circumscribing the occasions when youths will be transferred to adult court, we also support an explicit statement in the Bill clarifying that dangerous offender proceedings are not an option for young offenders.

In spite of these remaining concerns, we support Bill C-7's passage. Overall, we believe it to be an appropriate balance between the need to protect society from youth violence and society's responsibility to treat and rehabilitate trouble youths whenever possible.

Yours truly,

Heather Perkins-McVey
Chair
National Criminal Justice Section