

October 21, 2001

The Honourable Senator Lorna Milne  
Chair, Standing Senate Committee on  
Legal and Constitutional Affairs  
The Senate of Canada  
Ottawa, Ontario  
K1A 0A4

Dear Senator Milne:

Re: Bill C-7 – Proposed **Youth Criminal Justice Act**

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On behalf of the Canadian Association of Elizabeth Fry Societies (CAEFS), I am writing to thank you for inviting us to appear before your committee and requesting that you forward this letter and attachments to the other committee members. CAEFS is pleased to continue our involvement in efforts to improve the legal, policy, programming and services available to youth, especially young women and girls, involved in the juvenile justice system.

#### Historical Context

The process of replacing the **Young Offenders Act (YOA)** commenced after little more than a decade of implementation. Originally paraded internationally as one of the most innovative and progressive legislative responses to juvenile justice, the Act suffered serious chiseling and atrophy of its most progressive elements virtually from its inception. Indeed, even before it was proclaimed on April 2, 1984, some of the most proactive elements of the Act were threatened following its enactment in 1982.

A major reason for the delay in proclamation related to negotiations between the federal government and provinces regarding the manner in which monies could be utilized pursuant to cost-sharing agreements. Despite the commitment of the federal government to provide more resources for the development of community-based programming and services for young people, the provinces negotiated long and hard for monies to build new prisons for youth. We live with the unfortunate results of those negotiations and now see a revisiting and furtherance of pre-existing deficits in terms of community-based diversion, sentencing and releasing options.

In spite of the best intentions and concerns of many at the Department of Justice, calls for toughening and opening up of the **Young Offenders Act** continued -- indeed, even with the prospect of the **Youth Criminal Justice Act (YCJA)**, the media depiction of perceived public animosity toward youth still show no signs of dissipating. It is indeed time that we all took a closer look at how regressive amendments to the **YOA** have severely limited the positive approaches initially envisioned for young people. It seems unconscionable to consider addressing concerns regarding youth by merely off-loading them into the ordinary court and the criminal justice system designed for adults.

It is also distressing to consider the possibility that, without federal guidelines, resources and monitoring, Bill C-7 could merely serve to continue attempts to erode and chisel the fundamental tenants and guiding principles of the juvenile justice system. CAEFS remains committed to retaining young people in the community utilizing the least restrictive interventions and alternative social support systems for as many youth as possible. In fact, both pieces of legislation call for an examination of all other systems prior to invoking the juvenile justice provisions.

Alternative or diversionary options are entrenched in the proposed Act; but so were they in the **YOA**. Paradoxically, the past decades have seen just the opposite developments. In most schools or child welfare group homes, for instance, matters that previously might have been dealt with by the relevant administrative authority are increasingly more likely to be referred externally to the juvenile justice or young offender system.

Rather than adopt a 'zero violence' approach, 'zero tolerance' policies are resulting in ever increasing numbers of disenfranchised youth being jettisoned out of schools and communities, usually through, rather than into, an ever more drafty social safety net. Rather than nurturing our youth, we are increasingly scapegoating and disposing them as though they are expendable human refuse. Recognizing the current stresses of fiscal restraint and downsizing, more focus upon consolidating creative energies, as well as upon encouraging a more empowered student body to provide peer and mentoring support are but examples of the manner in which schools might re-direct energies.

In terms of custodial sanctions, both the **YOA** and the proposed **YCJA** stipulate that such dispositions should be viewed as extraordinary and must only to be used as a last resort. Further, where a custodial disposition is resorted to, the expectation is that open custody be utilized before the employment of secure or closed custody.

Clearly, it was initially anticipated that the use of secure custodial settings for young people was to be the absolute last resort in terms of sentencing young people under the **Young Offenders Act**. Moreover, it was envisioned that open custody would be easily distinguishable from secure custody settings. Open custody was anticipated to denote a group-home type of setting, as opposed to an institutional setting. This fact notwithstanding, in most provinces, the two forms of custody have been virtually indistinguishable, given that most open custody settings have either evaporated or are mostly institutional in nature.

To make matters worse, young women remain disproportionately disadvantaged in terms of access to open custody settings. The majority of young women who receive open custody dispositions must serve their sentences in secure custody and/or co-correctional facilities. Consequently, they tend to have more limited access to the community as well as institutional services and programs. In many of the young offender centres across the country, incidents of sexual assault and/or pregnancies have led to the further segregation of young women within co-correctional facilities.

Statistics reveal that there has been an overall reduction of youth crime rates generally as well as a relatively low incidence of violent and repeat youth crime more specifically. These realities notwithstanding, by providing the media with access the **YOA**, the legislators guaranteed increased police, media and general community focus on youth crime. The increased attention upon a previously inaccessible area has also quickened a tendency to criminalize the behaviour of young people. The result is that many more youth are being jettisoned into the ever wider, deeper and stickier nets of the juvenile justice system.

It is clear that all young people suffer as a result of the lack of adequate support services and other systems-based deficiencies. Members of the Standing Committee will be all too familiar with the erosion of resources for our community-based support systems for young people. The overall situation is all the more acute for young women. Young women are disproportionately disadvantaged as a result of a lack of gender-focused community and institutional programming and services, extremely limited access to open custody settings and consequent systems-dictated secure custody re-sentencing, over-representation of young women in custody for administrative breaches and child welfare types of concerns.

Systemic bias and discriminatory practices undergo a multiplier effect where gender, race, class, ethnicity and/or sexual orientation converge. Accordingly, immediate action is required in order to develop more comprehensive understanding and concerted efforts to address issues of bias within the youth justice system.

## **Bill C-7 – Youth Criminal Justice Act**

CAEFS very much appreciates being provided with this opportunity to present its views to the Senate Committee on Legal and Constitutional Affairs. At this stage, while CAEFS remains extremely concerned about the resourcing and thus the implementation implications of Bill C-7, we are generally supportive of its passage. If implemented as intended, **Youth Criminal Justice Act** could mean a significant new direction for youth justice in Canada. Most young people self report behaviour that could result in their criminalization and those who are criminalized generally come into conflict with the law as a result of fairly minor and isolated incidents.

Rather than dealing with offending incidents in a way that ensures a youth's continuation in the criminal justice system, CAEFS supports the proposals that are designed to improve the circumstances of marginalized youths within the criminal justice system. We will be more likely to achieve societal goals of public safety and accountability through crime prevention, diversion and provision of services that meet the needs of youth than by the continued over use of incarceration for young people. Indeed, young people themselves repeatedly request that they have access toward services that promote treatment and rehabilitation. Obviously, for community-based social services and justice alternatives to succeed, both levels of government must be committed to providing the necessary resources for those services.

Bill C-7 recognizes the importance of extra judicial measures, such as warnings, cautions and referrals to victim/offender mediation and family conferencing, and encourages increased community involvement and responsibility toward young people via the utilization of Youth Justice Committees. Both the *Preamble* and the *Purpose and Principles* of the Bill underscore the importance of the provision of appropriate interventions and services in order to promote the rehabilitation and integration of young people into society.

Some of the concerns that many expressed in relation to the previous iteration of the proposed **Youth Criminal Justice Act**, Bill C-3, have been partially resolved by Bill C-7. For instance, the distinctions between "non-violent," "violent" and "serious violent" offences and the changes to the protections with respect to statements made by youths to police are improvements. CAEFS remains concerned, however, about an erosion of the legal protections currently afforded young people pursuant to the provisions of the **Young Offenders Act**.

Section 56 of the current **YOA** recognizes the importance of addressing the vulnerability of young people in relation to police by requiring that special provisions apply before a youth's statement may be considered admissible in court. Bill C-3 would have allowed the admission of an otherwise inadmissible statement if a judge determined that its admission would not bring the administration of justice into disrepute. The revisions to this area in Bill C-7 have partially quieted CAEFS' concerns.

We recognize the reflex of attempts to distinguish between the treatment of youth who are labelled as violent and the majority of young people who come in contact with the law on fairly minor matters. Indeed, as the most recent statistical data and analyses reveal, however, media depictions and public attitudes are not reflective of the reality. We have enclosed several articles in an effort to elucidate this area further for you and your committee and urge the Standing Senate Committee on Legal and Constitutional Affairs to reject all provisions that stand to publicly identify and therefore permanently stigmatize youth.

CAEFS also encourages the Senate to reject any provisions that will make it easier for the youth justice system to throw youth into adult prisons. We absolutely support the notion that young people need to be treated in a manner that holds them accountable in ways that they are able to comprehend and utilizing means that will address the harm done by them as well as discourage the likelihood of any future transgressions.

On the whole, as we articulated before the House of Commons Standing Committee on Justice and Human Rights, we believe that the current test for the triggering of an adult sentence might prevent some of the transfers, particularly of young Aboriginal women [please refer to the article attached entitled, *The Jettisoning of Juvenile Justice? The Story of K*]. However, we object to the "three strikes" approach

promoted in paragraphs 62(a) and 2(1) of Bill C-7, which stipulate that once a judge has designated two offences as "serious violent offences," a third such offence will trigger a presumptive move to adult court. In addition to carefully circumscribing the occasions when youths will be subjected to an adult sentence, we support the position of the Canadian Bar Association that the Bill include an explicit statement that dangerous offender proceedings will not be an option that may be considered for youth. For more information regarding the impact of the dangerous offender provisions on young women in particular, please contact the Department of Justice to obtain a copy of a paper completed for them entitled, [\*The Risky Business of Risk Assessment\*](#).

### **Preferred Approaches**

Since existing programs and services are inadequate to address the needs of young people or the protection of society, the first priority must be to address such service or programming deficits. Provinces and territories must be encouraged to develop more gender-specific and culturally appropriate services and programs for young people. Too frequently, services and programs which do exist are ill-equipped to deal with such intersecting issues as gender, race, class and sexual orientation. More community-based dispositional options and fewer custodial beds should exist throughout the country for all youth, but the need is particularly acute for young women. To this end, CAEFS would support the cessation of federal transfer of resources to provinces and territories for custody beds, provided there was a corresponding increase in the transfer of monies for community resource development for young people.

Rather than resort to the "adult" criminal justice context at ever earlier ages, CAEFS supports the development and enhancement of youth-positive community-based dispositional options, as well as the development of improved educational and psycho-social programs and services both in community and institutional settings. CAEFS is particularly concerned about the paucity of community-based and therapeutic alternatives for young people in general and young women in particular.

We believe that the Minister of Justice might better address some of these issues via altering cost-sharing agreements with the provinces and territories, than by additional legislative proposals. Despite the best efforts of many to work to create positive options for youth, current legislative proposals may unfortunately divert additional resources to fund custodial options and thereby serve to diminish the pressure to create more proactive and preventative means of addressing the complex issues and concerns that contribute to the criminalization of young people.

It should be noted that federally sentenced women have repeatedly expressed concern with respect to the increased numbers of young women in the segregated maximum security units in men's prisons. Federally sentenced women and men alike, have voiced opposition to the rendering of young people subject to federal penitentiary sentences. Lifers in particular, some of whom entered prison during their teens, have expressed concern that other young people not face a similar fate.

Young people are best served by supportive and proactive interventions, as opposed to the punitive and reactive types of approaches characterized by and endemic to criminal justice responses. Indeed, CAEFS supports the broadest interpretations of crime prevention within the context of socio-economic, health, educational and cultural realities. There is sufficient evidence that preventative approaches to addressing crime are far more cost-effective than current criminal justice approaches. Accordingly, CAEFS supports the enhancement and development of high quality supportive services and assistance for children, youth and adults alike -- from universal and enriched health, child care and educational opportunities to effective gender, anti-poverty and anti-racism and conflict resolution programs.

For young women in particular, women-centred approaches are required. Because of their relatively low numbers in comparison to those of young men in the youth justice system, their specific needs are often ignored or at best subsumed by those of young men. While there is greater gender parity in terms of childhood experiences of abuse, this situation changes drastically around puberty and certainly into

adolescence. Unfortunately, the youth justice system is rarely equipped with adequate understanding, much less skills or services to address, the differing gender-based manifestations of abusive histories.

Much is already known about effective and empowering ways of meeting the needs of young women. This information, combined with more adequate resourcing of existing support services and networks, as well as increased funding to enable and improve the exploration, documentation, and implementation of additional approaches, would undoubtedly result in ever more effective interventions, increased prevention and decreased recidivism rates.

CAEFS supports federal-provincial/territorial cooperative and collaborative work in this area. Cost-sharing for the advancement of relevant health/treatment services are recommended. It is our view that the youth justice system must not remain the catch-all for other systemic inadequacies. Young people are best served by supportive and proactive interventions, as opposed to the punitive and reactive types of approaches characterized by and endemic to criminal justice responses.

Within the criminal justice system more specifically, CAEFS reiterates that we believe much more emphasis needs to be placed upon the creation of community-based alternatives for young people. At the very least, resource allocations to custody and community need to be flipped, one to the other. Additionally, a refocus on the front-end of the process is vital. Such an orientation would entail increased use of alternative measures programs, reduced caseloads and more holistic probationary practices, vocational and educational foci, as well as increased emphasis on moral, cognitive and personal development generally. Furthermore, all such approaches would require the integration of gender-based as well as racially and culturally-specific foci.

Providing supportive and empowering services to young people at the time of their first contact with the youth justice system generally reduces the likelihood of future "criminal" involvement. A caveat, of course, is that if such services are present only in the youth justice system, it is likely that more youth will be caught in ever wider, deeper and stickier nets of social control and more young people and youthful behaviour will be criminalized. Accordingly, CAEFS reiterates the need for cost-sharing agreements to prioritize the development of preventative and proactive approaches within the child welfare, educational, medical and mental health systems as well as the youth justice systems.

In order to ensure significant short as well as long term change, proactive education and training programs is required for judges, lawyers, probation officers, police officers and all other youth justice personnel. The reorientation of those who work with or are otherwise involved with young people is a prerequisite component to the development of positive and effective change within the youth justice and all other youth-serving systems.

In addition to more traditional training approaches, CAEFS encourages the involvement of young people themselves, as well as front line workers in the development of professional and practical training programs as well as in the development of the services and programs. We endorse the efforts of groups such as Justice for Girls in Vancouver and the National Youth in Care Network. Supporting the efforts of these and other young people to define issues and design youth-directed approaches to addressing their concerns are crucial to the success of any legislation, policies or services designed to address the needs of youth.

### **Committee Appearance**

Please allow me to take this opportunity to thank you once again for providing time in your agenda to consult with the Canadian Association of Elizabeth Fry Societies. Due primarily to the temporal proximity of this appearance to our Annual General Meeting, members of the Board of Directors are not available to attend the hearing. We are very pleased to advise, however, that our Executive Director, Kim Pate, will appear on behalf of CAEFS.

Ms. Pate has conducted a great deal of research, has written extensively and has also worked directly on legislative, policy, program design and service-delivery options for youth over the past two decades. Accordingly, we feel that she will be well able to answer your questions and represent the interests of our Association; and , most importantly, Kim will also present the views of young women with and on behalf of whom we work.

Sincerely,

Dawn McBride  
President

Enclosures