



27 Roncesvalles Avenue, Suite  
206  
Toronto, Ontario  
M6R 3B2  
(416) 314-5277  
(416) 314-5285

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

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

Dear Madam Chair:

I am in receipt of your correspondence indicating that POAO will not be provided an opportunity to address the Senate Standing Committee on Legal and Constitutional Affairs. This is most disappointing considering our level of expertise in working with young offenders and the existing legislation. I note that a similar opportunity to present to the Standing Committee on Justice and Human Rights regarding C-7 was denied. This situation certainly speaks to the federal government's willingness to hear from the front-line professionals regarding this legislation.

In terms of your suggestion to provide further information, our brief is enclosed. We urge you to examine this document and consider returning C-7 for amendments which will result in greater consistency, accountability and public safety.

Sincerely,

Cathy Hutchison  
President

From a historical perspective, the Probation Officers Association of Ontario (POAO) presented to the Standing Committee on Justice and Human Rights regarding the Phase II Review of the Young Offenders Act in 1996. At that time, we made it abundantly clear that we had specific concerns with language regarding the performance of certain duties within the Act. Specifically, the generic term “Youth Worker” is conducive to misrepresentation and abuse. Our position was indeed prophetic, as the issue has become an even greater concern in environments of fiscal restraint and “alternatives to custody”. Given the Standing Committee’s positive response to our suggestions in 1996, we are astounded that the proposed changes have not already been made. The Chair of the Standing Committee acknowledged that this “Youth Worker” issue was a real and immediate concern.

As noted in our recent letter, and previous submission on Bill C-3, issues related to the Youth Worker term remain unresolved. As an Association, we support the concepts of rehabilitation and reintegration for youth, and the additional sentences involving community supervision under YCJA. These are important both to offender rehabilitation and protection of the public. However, it is essential that supervision is provided by a Probation Officer. Should legislation and implementation allow otherwise, the potential for bias, conflict, and vested interest impacting supervision and enforcement decisions is great.

While this theme exists through the *Youth Criminal Justice Act*, we highlight several key areas that critically require amendment.

### **Extrajudicial Measures (s. 4 – 12)**

The Association recognizes the need for extrajudicial measures for first time, non-violent offenders. However, Sections 4 to 12 of this Act lack clarity regarding the extent to which such measures can be used repeatedly for the same youth, or for youth who already have a record. The definition and conditions provided under Section 10 are quite alarming. Our position is that young offenders who come into conflict with the law numerous times clearly require formalized professional intervention. However, Section 10 indicates, despite “the nature and number of previous offences committed by the young person”, the youth may still qualify for the extrajudicial process. While the Act purports to provide accountability, having the same youth diverted from the justice system repeatedly will not provide accountability to the youth, victims, or other members of the public.

It is essential to have Probation Officer involvement in this “extrajudicial” process so that objectivity is maintained while determining the youth’s suitability and the appropriate measure or sanction. This process must be transparent to instill public confidence, and youth who require the formal court system must in fact be directed there. Should the motivation be solely the desire to avoid court involvement, then biased decisions will undoubtedly result.

We note that there is victim involvement in the extrajudicial measures and sanctions processes. YCJA implementation, and Youth Justice Renewal funding, potentially allow for offender advocate organizations to administer such sections of the Act. Should offender-focussed programs result, victims would undoubtedly feel alienated and consequently not wish to participate. A balanced, objective perspective is essential in determining if the victim actually desires participation and/or reparation. In the absence of public justice officials, the victim would recognize the offender-focussed nature of the process, and the stated principles of these sections would not be met.

**Youth Justice Committees and Conferences: (s. 18 and 19)**

Clarification is required regarding the purpose of such conferences, and who can call one. The mandate described in the Act includes giving advice regarding judicial interim release, and sentencing. This conferencing process must, therefore, involve public justice officials, or conferences will occur which do not recognize public safety concerns. As an Association, we have witnessed the impact of agency interference in the sentencing process, and are fully aware of the resultant public safety risks. This situation will only be exacerbated should non-justice system personnel attain power to make such important recommendations under these sections of the YCJA.

**Pre-Sentence Reports (s. 40)**

The wording “Provincial Director shall cause to be prepared” should be amended to reflect the same expectations that exist regarding Pre-Sentence Report preparation for adults. Section 721 of the Criminal Code of Canada (Report by a Probation Officer) provides appropriate language stipulating that only a Probation Officer can prepare such a report. We have yet to receive an explanation as to why lower standards are condoned for Pre-Sentence Reports on youth.

Comprehensive assessments and sentencing recommendations should only be made by Probation Officers, who perform in an environment governed by the principles of offender rehabilitation and public safety. Private or agency personnel who have contracts for other services clearly cannot be involved in such report preparation, as the desire to increase one’s own client base enters into the recommendations. Having observed offender advocate organizations preparing “sentencing reports”, we state emphatically that these “recommendations” are pre-determined, and the results are not in the interests of public safety. Clarity in the Section 40 wording would alleviate these situations of conflict.

### **Dispositions involving Community Supervision (s.42)**

We note that Section 97.(1), Custody and Supervision Orders, has appropriate wording that restricts provision of supervision to Probation Officers. However, other community supervision sections of the YCJA contain the “or a person designated by the Youth Justice Court” clause. This would be problematic upon implementation as Youth Court Justices could assign these functions to private

personnel. To avoid the inevitable conflict that would result, the following sections must be amended to remove the “person designated” clause.

- 42.(2) (k) probation
- (l) intensive support and supervision
- (o), (p), (q), and (r) , conditional supervision.

These dispositions involve the core functions of a Probation Officer, which include assessment, supervision, brokerage, and enforcement. Such duties must be provided in an accountable manner which is consistent across the province. Factors such as recidivism rates and funding renewal cannot be considered when one is determining case management plans and enforcement activity. There is no doubt that compromised objectivity would result should supervision and enforcement decisions be assigned to non-justice system personnel. Individual organizations are governed by varying philosophies, many of which are based on offender advocacy. While such agencies play an important role in assisting and counselling offenders, they should not be permitted to assume the functions of the public justice system. Research into best practices programming for youth demonstrates the importance of standard quality, program integrity, and consistent messaging. These best practices would not be incorporated if fragmented implementation with multiple supervision providers is permitted.

**Progress Reports: s.59.(3) and 94.(9)**

Progress Reports for Reviews of Custodial and Non-Custodial Sentences should only be prepared by Probation Officers. This issue has become more critical in

light of the privatized youth facilities. Progress Reports must reflect the realities of the youth's progress to date, rehabilitative needs, risks, public safety issues, and an objective determination of whether in fact a change in disposition is warranted. Other matters such as an agency's philosophy, finances and bed availability cannot impact this process or the desired objectivity will not exist.

### **Definition and Role of Youth Worker (s. 90)**

The concept of assigning a Youth worker from the onset of the sentence is a positive one. For enhanced information sharing, continuity, and discharge planning, the Probation Officer is able to work with relevant partners to plan for the youth's return to the community. However, our concern with this section is that the duties of the Youth Worker are specified, but the term Probation Officer does not appear. Amending this definition to utilize the Probation Officer term would greatly enhance the clarity of this legislation.

While our position regarding the language of the YCJA, particularly relating to the Youth Worker term, may seem repetitive, it is of great importance that it is examined. The Association emphasizes that diminished accountability and jeopardized public safety will result should our message not be heeded.

We note that the Roundtable discussions held during 1999 and 2000 did not include representatives of POAO or the Ministries providing supervision in Ontario. While background material and discussions apparently assisted in the

development of the YCJA, it appears that objective input was lacking. As Probation Officers who have a great deal of expertise in working with young offenders and the YOA, we were not only excluded from this process, but we note that numerous inaccurate statements regarding our profession were made and printed in the discussion papers. It is obvious that some of the discussions were missing the public safety aspect that should be included in this legislation. The motives for alternatives to custody, and the possibility of transfer of funds from the public to private or non-profit sector, can be seen throughout these documents. It is certainly not coincidental that Roundtable participants included those who would subsequently attempt to obtain funding to assume the very functions that we have noted in this brief.

Aside from the Youth Worker issue itself, we are concerned with the philosophy of legislation and sentencing recommendations being influenced by the country's apparent custody rates. We support individual risk assessment, and sentencing appropriate to the offender and offence(s). However, to pre-determine that custody is not suitable for an offender because of Canada's "high custody rates" is not in the offender, victim, or public's best interest. POAO has already witnessed the impact of such a philosophy with the implementation of Bill C-41, Conditional Sentencing. We caution against following a similar pattern with the passage and implementation of Bill C-7.

As a professional association dedicated to improving offender rehabilitation and the protection of society, we are extremely committed to ensuring that these necessary amendments occur. The result will be improved service to youths in the justice system, as well as victims, family members and the general public. We strongly caution against continuing the funding of offender-focussed programming which operates under the guise of public safety. Research regarding best practices in young offender programming confirms that standard quality, program integrity, and consistent messaging are essential. While the *Youth Criminal Justice Act* contains positive initiatives for enhanced reintegration and rehabilitation of youth, the goals will not be met without adequate funding to ensure these sentences can be implemented in an effective, accountable manner. High standards must be maintained to ensure that professional integrity is the guiding principle in the administration of youth justice.