

February 4, 2010

The Hon. Rob Nicholson, P.C., M.P.
Minister of Justice
Room 105 EB
The House of Commons
Ottawa, ON K1A 0A6

Dear Minister Nicholson,

I am writing concerning several statements made by you on Friday, January 29 when defending Prime Minister Harper's appointment of an additional five Conservative Senators. In the past 12 months, Prime Minister Harper has made an unprecedented 32 appointments to the Senate – the most Senate appointments made by any Canadian Prime Minister in a 12-month period since Confederation.

I was puzzled to read press reports in which you defended the latest Senate appointments as necessary to allow your Government "to move forward on [y]our tackling-crime agenda." You accused the Liberal opposition of having "obstructed that agenda in the Senate." According to a transcript of your press conference, you said:

"The Ignatieff Liberals have abused their majority in the Senate by obstructing law and order bills that are urgently needed and strongly supported by Canadians."

I can only assume that you have been misinformed as to the progress of anti-crime legislation. In fact, as I am sure your Cabinet colleague, Senator Marjory LeBreton, would tell you, the overwhelming majority of your Government's anti-crime bills had not even reached the Senate when Prime Minister Stephen Harper chose to prorogue Parliament. Indeed, an honest examination of the record compels one to acknowledge that the greatest delays to implementation of your justice agenda have resulted from your own Government's actions – sitting on bills and not bringing them forward for debate, delaying bringing legislation into force, and ultimately, of course, proroguing Parliament. That action alone caused some 18 of your justice-related bills to die on the Order Paper.

As a Canadian Press report described, "Indeed, [Prime Minister] Harper himself has done far more to delay his own crime legislation, by proroguing Parliament and other stalling tactics, than Liberal senators have ever done."

Your Government introduced 19 justice-related bills in the House of Commons. Of these, 14 were still in the House of Commons at prorogation. Of the five justice bills that passed the House of Commons and came to the Senate:

- two passed the Senate without amendment;
- one (the so-called Serious Time for the Most Serious Crime bill) was tabled by your Government in November in the Senate but not brought forward for further action after that;
- one was passed with four amendments and returned to the House of Commons which did not deal with it before Parliament was prorogued; and
- one was being studied in committee when Parliament was prorogued and all committee work shut down.

There were a further two justice bills that your Government chose to initiate in the Senate. One was passed by the Senate after 14 days, sent to the House of Commons, passed and given Royal Assent. The other was tabled in the Senate on April 1, but has not been brought forward by your Government for any further action since then.

In terms of the status of the 14 law-and-order bills in the House of Commons, that had not yet reached the Senate when Parliament was prorogued:

- Four of these bills have been sitting in the House of Commons at first reading, three in that state since October, and one since November – your Government chose not to bring any of these bills forward for second reading debate.
- Another bill, Bill C-19, was tabled in the House of Commons by your Government in March, 2009, brought forward for two days of second reading debate in June, and not brought forward for any further action since then.
- Similarly, Bill C-35 was tabled in June, brought forward for one day of second reading debate in October, and no further action taken since then.
- Seven justice-related bills were being studied in Committee in the House of Commons as of prorogation. That work, of course, was required to stop immediately upon prorogation.
- One bill – Bill C-34, the Protecting Victims from Sex Offenders bill – got as far as to be reported back from the House of Commons Committee on December 7, before dying on the Order Paper with the Government’s prorogation of Parliament.

I fail to understand how this factual record could lead you to say, as you did in your press conference that, “the record also shows that the Liberals are soft on crime” or that the Liberals in the Senate “obstructed” law and order bills. In fact, as I am sure you will now recognize, it is your Government that has failed to move forward a number of your own anti-crime bills. And, of course, by choosing to prorogue Parliament, Prime Minister Harper chose to let 18 of his Government’s 21 “tough-on-crime” bills die on the Order Paper. Comparing the numbers, Canadians would have to conclude that it is the Harper Conservatives who have chosen to obstruct law and order bills – while shamelessly trying to smear the Liberals and the Senate with the blame.

It is difficult to take a law-and-order agenda seriously when it is argued with so little respect for facts. Justice above all depends upon truth. As our country’s Minister of Justice and the

Attorney General of Canada, your first allegiance must always be to the truth, far beyond any political or partisan gamesmanship. Our system of justice depends upon it. How can Canadians have any confidence in their justice system, if the person responsible for that system – the Minister of Justice and Attorney General of Canada – is prepared to play fast and loose with the truth?

In your press conference, you pointed to three bills as evidence of Liberal Senators' supposed "obstruction" of your Government's agenda: Bills C-15, C-25 and C-26.

Bill C-15 was passed by the Senate with four amendments. These amendments represented our advice to the House of Commons, reflecting what we heard and concluded after listening to testimony from Canadians about the bill. That is our job as members of the second legislative House of Canada's Parliament. We fully expected to hear back from the House of Commons with that House's considered response to our advice. Unfortunately, that was not to be: instead, Prime Minister Harper chose to prorogue Parliament. The Senate's work – done in the best tradition of Canadian parliamentary democracy – was lost.

While we may disagree as to whether the Senate's amendments improved the bill (as I would say) or weakened it (as you would say) what cannot be truthfully said is that the Senate either delayed or obstructed the passage of the bill.

What "killed" the bill in the end, was not the Senate but the Prime Minister in shutting down Parliament before the House of Commons had a chance to consider the amendments proposed by the Senate.

I was particularly surprised that you referred to Bill C-25 during your press conference. That bill, which dealt with limiting credit for time spent in pre-sentencing custody, passed the Senate without any amendments on October 21, 2009, yet as of this writing, according to the Library of Parliament and the Privy Council Office, the bill has still not been brought into force by your Government – more than three months later. One is left to wonder whether you simply forgot to bring it into force? Or was the bill more about the appearance of being "tough on crime" than actually taking action? Certainly we now know that bill was not as urgent a priority for the Harper Government as was initially represented.

Finally, Bill C-26 was being studied by the Senate Legal and Constitutional Affairs Committee when Parliament prorogued. As of prorogation, that bill had been in the Senate for 38 days. By comparison, the bill spent 42 days in the House of Commons. Committee study of proposed legislation is what many observers say is among the best work of the Senate. I am sure you want Canada's criminal legislation to be the best and most effective it can be, and would agree that the proposed changes to the Criminal Code regarding auto theft require careful study consistent with our parliamentary system. Unfortunately, that work had to cease because of prorogation.

As Minister of Justice, and as a personal proponent of a strong law-and-order agenda, you have a duty, which I am sure you recognize, to uphold the truth and not mislead Canadians. Accordingly, I am confident that you will wish to quickly correct the record, and agree that the Liberal opposition in the Senate has not in fact "obstructed" your Government's anti-crime agenda. To the contrary, the greatest delays to the implementation of your agenda have

been due to your own Government's actions in failing to bring bills forward for debate, dragging your feet in bringing legislation into force, and most significantly, proroguing Parliament.

I look forward to your clarification of these issues for Canadians.

Yours very truly,

James S. Cowan

Cc: The Right Honourable Stephen Harper, Prime Minister of Canada

Cc: The Honourable Marjory LeBreton, Leader of the Government in the Senate