

November 13, 2009

The Honourable Robert Nicholson, P.C., M.P.
Minister of Justice and Attorney General of Canada
Justice Canada
Room 105, East Block House of Commons
Ottawa, ON K1A 0A6

Dear Minister:

In October, the Canadian Chamber of Commerce concluded its 80th Annual General Meeting (AGM) in Victoria. A major highlight of our AGM is the Policy Session. It is during the Policy Session that resolutions submitted by local chambers of commerce and boards of trade from across Canada are debated and voted on by accredited delegates. Once approved, these resolutions become policy of the Canadian Chamber for the following three years. In 2009, our delegates issued a clear and decisive national policy mandate that we intend to pursue vigorously with the federal government over the coming months.

The following resolutions, which pertain to your portfolio, were adopted by our delegates.

Fighting Cybercrime Beyond ID Theft and Spam

We welcomed the government's action on identity theft with the passage of Bill S-4. Beyond that, more can still be done to fight cybercrime. The Canadian Chamber is pleased that the government is looking to amend the *Criminal Code* to modernize search, seizure and intercept provisions with Bill C-47 currently being debated in the House of Commons.

Counterfeiting and Piracy

Product counterfeiting and piracy continues to have a major impact in Canada and worldwide. Changes are desperately needed to Canada's intellectual property rights regime to ensure Canadian law enforcement have the authority and power to search and seize suspected counterfeit goods at Canada's gateways.

Increased Sentences for Repeat Offenders

To reduce crime, Canada needs to deal more strongly with the chronic offenders who are responsible for a significant proportion of the crime inflicted upon the citizens, businesses and other organizations in Canada.

The Canadian Chamber recommends the federal government amend the *Criminal Code* by adding the following clause:

“S718.2(a)(vi) evidence that the offence committed is part of a continuing pattern or history of criminal convictions that indicates that the public interest may be served by an increased length of incarceration.”

Establishing a Register of Repeat Offenders and a Register of Violent Offenders

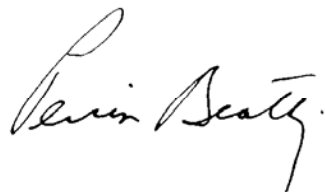
It is in the public interest that information be made available to the public and law enforcement on individuals who have been convicted of violent criminal offenses. While some information is available to police in Canada, it is limited in scope. The Canadian Chamber recommends the federal government establish a Register of Prolific Offenders and a Register of Violent Offenders (the “Registries”) in consultation with the provinces and territories; amend the *Criminal Code* to create a new offense when a registered offender fails to advise of any change of name or address; give paramount importance to the need to allow unimpeded and immediate electronic access to the Registries for any legitimate law enforcement purpose; and determine how best to make the information in the Registries available for timely, electronic, access by member of the the public providing a reasonable, legitimate, “need to know” request.

Crime in Canada

To demonstrate its commitment to tackling crime and making Canadians more secure, the Canadian Chamber recommends the federal government work with all levels of government to take measures including, but not limited to, providing an additional \$161M to fund the hiring of 1000 more RCMP officers; providing the Public Prosecution Service of Canada with an additional \$32M over two years; improving sentencing guidelines for serious crimes; revising the public policy underlying the *Criminal Code* to re-emphasize the protection of society and the responsibility of individuals for their criminal behaviour; improving addiction and mental health treatment; and addressing underlying social conditions and influences that contribute to crime.

The full texts of these resolutions are attached and I would be pleased to discuss them with you.

Sincerely,



Perrin Beatty
President and Chief Executive Officer

Attachments

c.c. John Sims, Deputy Minister, Justice Canada



The Honourable / L'honorable Rob Nicholson, P.C., Q.C., M.P. / c.p., c.r., député
Ottawa, Canada K1A 0H8

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The Honourable Perrin Beatty
President and Chief Executive Officer
The Canadian Chamber of Commerce
Suite 420
360 Albert Street
Ottawa ON K1R 7X7

Dear Mr. Beatty:

Thank you for your correspondence concerning a number of justice-related resolutions adopted by the Canadian Chamber of Commerce at the 80th annual general meeting. I regret the delay in responding.

I appreciate being made aware of the Canadian Chamber's renewed policy mandate and its recommendations for enhancing the criminal justice system.

I would mention that some of the recommendations touch on issues that would be more appropriately addressed by my colleague the Honourable Vic Toews, Minister of Public Safety. I have therefore taken the liberty of forwarding a copy of your correspondence to Minister Toews for his information and consideration.

Fighting Cybercrime Beyond Identity Theft and Spam

Your support for the passage of Bill S-4, *An Act to Amend the Criminal Code (identity theft and related misconduct)*, is very much appreciated. You may be pleased to learn that this act came into force on January 8, 2010.

The Government of Canada is taking important steps to combat cybercrime. In fact, many of your recommendations are addressed by Bill C-46, the *Investigative Powers for the 21st Century Act*, and Bill C-47, the *Technical Assistance for Law Enforcement in the 21st Century Act*, which were introduced in the House of Commons on June 18, 2009. I tabled Bill C-46 and my colleague the Honourable Peter Van Loan, in his former role as Minister of Public Safety, tabled Bill C-47. I would like to assure you that the Government intends to re-introduce this legislation in the House of Commons.

Bill C-46 would create preservation demands and orders that could be used to require service providers to preserve specified data in relation to a particular person under investigation. This data could then be produced using one of the production orders also created in the bill.

Bill C-47 would require certain telecommunications networks to have interception capabilities in order to assist law enforcement in combating sophisticated organized crime, child abuse, terrorist, and trafficking organizations. It would also give certain members of law enforcement the ability to request basic subscriber information, such as name, address, phone number, and Internet Protocol (IP) address. Responsibility for the content of this bill rests with the Minister of Public Safety.

I hope you agree that, with the re-introduction of legislation to create new investigative techniques for Internet-related criminal activity, the Government will be providing greater assistance to law enforcement agencies to tackle cybercrime of all kinds. Please be assured that we will continue to explore ways to strengthen our responses in this area.

Counterfeiting and Piracy

The Government is aware of the need for strong protections against counterfeiting and piracy. To that end, different federal departments are engaged in addressing these issues.

For instance, I have proposed amendments to the "designated offence" regulations made pursuant to the *Criminal Code*. These amendments would allow the proceeds of crime regime of the Code to apply to proceeds derived from indictable offences under the *Copyright Act*.

In addition, Industry Canada and Canadian Heritage are responsible for certain statutes relating to intellectual property and for cultural aspects of copyright policy, respectively. The Canada Border Services Agency, an agency of Public Safety Canada, is involved with the enforcement of intellectual property rights at the border. Furthermore, a number of departments and agencies have also been working with Foreign Affairs and International Trade on international initiatives to combat counterfeiting and piracy. If you have not already done so, I would encourage you to share these recommendations with the departments mentioned above.

Increased Sentences for Repeat Offenders

The issue of chronic offending is a complex one with no single measure being capable of solving the myriad problems involved. In your recommendation, you suggest that the Code be amended to treat a continuing pattern of criminal convictions as an aggravating factor for sentencing. In fact, Canadian courts are already empowered to impose more severe sentences for repeat offenders, which they do impose when it is deemed appropriate.

According to principles set out in the Code, the fundamental purpose of sentencing is to contribute to the maintenance of a just, peaceful, and safe society. The Code expressly requires judges to consider the sentencing objectives of accountability, deterrence, denunciation, rehabilitation of the offender, reparation to the victims and the community, and separation of the offender from society when necessary.

All of the sentencing objectives must be balanced with the unique circumstances of any given case. Section 718.2 of the Code states that in the process of determining a sentence the court must take into account all relevant aggravating and mitigating factors. There are specific circumstances that the Code will deem to be aggravating for the purpose of sentencing. In all other cases, the court will have the discretion of determining at sentencing whether an event is an aggravating or mitigating factor. There is nothing in the Code that would prevent a court from finding that a continuing pattern or history of criminal convictions can be considered an aggravating factor in sentencing. In fact, there are a number of cases that have found this to be so.

More broadly, we continue to work with our provincial and territorial partners to develop innovative and appropriate responses to chronic offending. I am convinced that strategies must be developed and implemented locally. To that end, the National Chronic Offenders Initiative has proposed a series of regional conferences to explore locally based, non-legislative solutions to chronic offending, which in turn will facilitate a commitment from the federal, provincial, and territorial Ministers Responsible for Justice to finding new approaches to this issue. I look forward to hearing the results of the first conference, which took place in Edmonton at the end of January.

Establishing a Register of Repeat Offenders and a Register of Violent Offenders

Canada already has a number of highly effective and comprehensive registers of repeat and violent offenders. These include the Central Police Information Centre (CPIC) computer system, the national Sex Offender Registry, the National Databank Registry, and the Serious Crimes and Violent Crime Linkage Analysis System (ViCLAS). These databanks, which are maintained by the RCMP, are available to personnel in the justice system and law enforcement who ensure the effective management and community monitoring of convicted individuals. In addition, the National Flagging System, overseen by a committee of police and justice officials representing the federal, provincial, and territorial governments, allows for the flagging of high risk and violent offenders on the CPIC. This permits effective management of these offenders whenever a criminal records search is conducted.

Public access to these registries is currently restricted except in specific situations, such as volunteer checks of criminal records and employment background checks with the permission of the affected individual. Any decision on whether to establish a new federal criminal databank, or to broaden access to existing criminal databanks, would fall under the purview of the Minister of Public Safety.

Currently, under the *Criminal Records Act*, it is an offence for any individual charged with a criminal offence to fail to attend at a police agency to provide fingerprints and be photographed. Similarly, it is an offence to fail to provide a DNA sample if so ordered by a court. In addition, any individual convicted of a sexual offence and ordered by a court to comply with the *Sex Offender Information Registration Act* must register after conviction and provide subsequent reports on an annual basis and whenever there has been a change of name or address, or be subject to criminal prosecution.

I would also note that a number of provincial governments have established their own registries of high risk offenders, with different levels of public access, such as the Alberta High Risk Offender Registry, the Ontario Sex Offender Registry, and the Manitoba High Risk Offender Registry.

Crime in Canada

Addressing serious property and violent crime is a continuing priority of our government. I believe that this commitment has been reflected and supported in the Government's legislative agenda.

As you are likely aware, Bill C-14, *An Act to amend the Criminal Code (organized crime and protection of justice system participants)*, received Royal Assent on June 23, 2009, and has since come into force. The Act provides law enforcement and the justice system with better means to address organized crime-related activities, in particular gang murders and drive-by shootings that have occurred in parts of the country.

A number of other criminal justice bills were also tabled in the House of Commons during the last session. As with Bill C-46 and Bill C-47, it is the Government's intention to re-introduce these legislative reforms.

For example, on February 27, 2009, I introduced Bill C-15, *An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts*, which proposed mandatory jail time for those who produce and sell illegal drugs. The Bill would also allow a Drug Treatment Court to suspend a sentence while the addicted accused person was taking an approved treatment program. On this last point, I would note that treatment programs for addiction and mental health fall under provincial jurisdiction, as does the responsibility for enacting legislation to mandate community treatment orders.

On June 15, 2009, I also proposed changes to the Code that would further restrict the use of conditional sentences by tabling Bill C-42, the *Ending Conditional Sentences for Property and Other Serious Crimes Act*. The Bill proposed to prohibit the use of conditional sentences for all offences punishable by 14 years or more of imprisonment and for offences punishable by 10 years and prosecuted by indictment that result in serious bodily harm, involve the import or export, trafficking and production of drugs, or involves the use of a weapon. In addition, it would prohibit the use of conditional sentences for a list of specified offences prosecuted by indictment and punishable by a maximum sentence of 10 years of imprisonment.

More recently, on October 21, 2009, I introduced Bill C-52, the *Retribution on Behalf of White Collar Crime Act*, which proposed a two-year mandatory minimum sentence for fraud over \$1 million and provided for additional aggravating factors in fraud cases. In addition, the proposed amendments would permit the court to order the offender not to

take employment or do volunteer work involving authority over other people's money, to consider restitution for victims of fraud, and to consider Community Impact Statements that would describe the losses or harm suffered by a particular community, such as a neighborhood, seniors' centre, or club.

Again, with the re-introduction of this legislation in Parliament, I believe the amendments contained in Bill C-15, Bill C-42, and Bill C-52 will bring greater clarity and consistency in cases of serious property and violent offences and increase public confidence in the administration of justice.

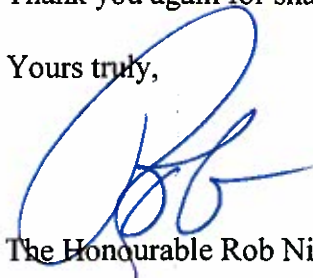
I note your recommendation to increase levels of policing; however, this issue falls more directly under the purview of Public Safety Canada. I will therefore leave this matter to be considered by Minister Toews.

In closing, I would like to assure you that all the recommendations you make in these resolutions have been noted and shared with my departmental officials. Your suggestions on how the Government might improve its response to serious and violent crime are most appreciated.

Our government will continue to take steps with our provincial and territorial counterparts, who have direct responsibility for the administration of justice, to explore further reforms to the criminal justice system.

Thank you again for sharing the Canadian Chamber's position on these issues with me.

Yours truly,

A handwritten signature in blue ink, appearing to be 'Rob Nicholson', written over a circular stamp or seal.

The Honourable Rob Nicholson

c.c.: The Honourable Vic Toews, P.C., Q.C., M.P.
Minister of Public Safety