

## JUSTICE MINISTER NICHOLSON PUSHES CRIME BILL HE USED TO BE AGAINST

As a Mulronev backbencher, Rob Nicholson was against mandatory minimum sentences for drug crimes.

By Harris Macleod

Federal Justice Minister Rob Nicholson, who is pushing the government's tough on crime agenda and plans to revive the bill on mandatory minimum sentences for drug crimes in the next Parliamentary session, did not support the proposed law when he was a Mulronev backbencher.

In 1988, Mr. Nicholson vice-chaired a Parliamentary committee that released a report recommending mandatory minimum sentences not be used, except in the case of repeat violent sexual offenders. The committee found, based on testimony and the U.S. experience, that the law didn't work and increases prison populations.

The report, titled "Taking Responsibility," cited many of the same arguments that led Liberal Senators today to make amendments to the bill, which died on the Order Paper when Parliament was prorogued on Dec. 30 by Prime Minister Stephen Harper (Calgary Southwest, Alta.), although Mr. Nicholson has said it would be reintroduced in its original form when Parliament returns on March 3.

It noted that sentencing guidelines, which remove some of the discretionary powers of judges, "have had the undesirable effect of contributing to rapidly increasing prison populations in the United States." Additionally, it said that both witnesses and committee members doubt the effectiveness and have reservations about the social and financial costs of mandatory minimum sentences, noting they tend to increase court time because defendants fight harder to avoid conviction, as well as causing "distortions" in charging practices and plea negotiations.

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Witnesses appearing before the House of Commons and Senate committees studying Bill C-15 said overwhelmingly that mandatory minimum sentences are ineffective in deterring drug-related crimes, and a 2001 government report done by the Justice Department reached the same conclusions.

The bill would require anyone found with as few as five marijuana plants to serve a minimum of six months in prison, with one and two-year minimum sentences for other drug-related offences.

Geneviève Breton, Mr. Nicholson's (Niagara Falls, Ont.) director of communications, said in an email to The Hill Times that the justice system and the drug world are different than they were 22 years ago, and therefore the government's response has also changed.

She noted that the Criminal Code contains a total of 43 offences that carry a mandatory minimum sentence, mostly for firearm and child exploitation offences, but in recent years the Harper government has added to the list.

“Parliament is expected to draft and enact laws that clearly articulate the legislators’ intent, which is reflective of the values of the citizens who elected them. It is the role of the legislator to give guidance to the judiciary on maximum penalties, as well as on minimum penalties. For certain offences, our Government firmly believes that a minimum period of incarceration is justified,” Ms. Breton stated.

Former PC MP David Daubney, now a public servant at the Department of Justice, was chair of the committee that authored the 1988 report, which is sometimes referred to as the “Daubney Report.” He said Mr. Nicholson’s views on mandatory minimum sentences today are clearly different from those in the report to which he was a signatory.

“I’m proud of the report, frankly, it was wellreceived and still is being used in law schools and other places as a well-received blueprint. But times change, and public opinion changes, and governments change,” he said.

Mr. Daubney cited a recent Angus Reid poll, which indicated Canadians’ attitudes on justice issues are hardening, as a possible motive for Mr. Nicholson’s change of heart. The poll found that 65% of respondents had a moderate or strong feeling that mandatory minimum sentences send a tough message to criminals, and that 62% supported the death penalty for those convicted of murder. This even though crime rates in Canada have been steadily falling for three decades.

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The Conservative government introduced 17 justice bills in the last session, and the they have made law and order issues a central plank of their agenda. Last week, Mr. Nicholson announced he would be putting forward proposals to stiffen penalties for youth offenders.

The justice minister has repeatedly lashed out at the Liberals, both in the House and in the media, for what he calls the gutting of Bill C-15 by Grit Senators, even though the bill was passed in the House with Liberal support. Many in the Liberal caucus have said they are uncomfortable with the measures in the bill, but there is a fear within the party of being labeled “soft on crime.”

Last week Tory MP Brent Rathgeber (Edmonton-St. Albert, Alta.), who sits on the House of Commons Justice Committee, put out a press release attacking statements by Liberal MP Rob Oliphant (Don Valley West, Ont.) that his caucus was grappling with whether to continue their support of all the government’s crime legislation.

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NDP MP Libby Davies (Vancouver East, B.C.), whose party voted against Bill C-15, said Mr. Nicholson's zest for introducing mandatory minimum sentences for drug crimes is purely political.

"This has got to be an evidence-based process, and of course he couldn't show any. All he could say was that he believed that Canadians wanted this legislation. To discover a Parliamentary report that he was a signatory to that comes to the same conclusion that we have, that mandatory minimums don't work for drug crimes, I think that's very incredible. It's reinforcement that what they are doing is not based on any evidence whatsoever. It's a political stance that they're taking that has nothing to do with solving Canada's serious drug issues. It's a politically fabricated response. It's fascinating to see that back in 1988 he obviously came to a more objective conclusion," she said.

Liberal justice critic Dominic LeBlanc (Beauséjour, N.B.) said he agrees with some of what is in Bill C-15, but voiced concerns about the mandatory minimum sentencing provisions. He said his caucus has not yet decided whether they would continue their support of the bill.

Mr. LeBlanc mused that perhaps the discrepancy between Mr. Nicholson's 1988 report and his position today is because of Prime Minister Stephen Harper's (Calgary Southwest, Alta.) preference for "American style solutions" to drug crime.

The Globe and Mail recently reported the government plans to increase the size, and budget for federal prisons in order to make way for the flood of new inmates resulting from the new crime bills. The annual budget for prisons has grown from \$88.5-million in 2006-07 to \$195.1-million this year, and is projected to reach \$211.6-million in 2010-11.

At this point the government is refusing to say how much its crime legislation would cost the justice system, but Parliamentary Budget Officer Kevin Page will release a report examining the expected expenditures in the coming months.

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