CRITIQUE OF BILL C-42:

The Common Sense Firearms Licensing Act (Revised)

CANADA'S NATIONAL FIREARMS ASSOCIATION

In defence of freedom

Presented by:

Canada's National Firearms Association

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Introduction

Since the historic and public failure of the *Firearms Act* (1992 C-17 and 1995 C-68) and election of the Conservative Government in 2006, Canada has been the only nation in the Commonwealth to pursue any firearms law reforms by trying to address the egregious domestic gun control agendas perpetuated in the name of civil disarmament in the 1990s.

The ending of the "long gun registry" of Bill C-19 in 2012 broke over 40 years of political and legal stalemate that prevented any firearms law reforms from being enacted in the aftermath of each round of civil disarmament legislation that has been imposed in Canada since the late 1960s. Canada's National Firearms Association has recently intervened at the Supreme Court of Canada to support the Federal Government in also ending the registry in Quebec.

The ending of long gun registration under Bill C-19 and the stated intent of the Bill C-42 demonstrates that firearms law reform has been recognized by the Government of Canada as legitimate and needed in the face of the past 40 years legislation of bad firearms legislation which has targeted regular law abiding Canadians and stripped them of their rights and property.

While Canada's National Firearms Association celebrates this political sea change with all other Canadians who believe in rights and freedoms, these reforms, although well intentioned, may create problems and do fail to address the most obvious solution to address the failure of Canada's firearms control system.

The failed firearms legislation of 1992 and 1995 must be repealed.

The CPC's Bill C-42 has been in planning for several months, at least from December of 2013. Its introduction was delayed due to high-profile incidents.

The federal government's recent introduction of Bill C-42, ostensibly aimed at reforming Canada's morass of failed and ill-conceived firearms law, is the product of many months of consultation, review and debate that began last December. As a result of two high-profile incidents, introduction of the new bill was unavoidably delayed. Unfortunately, the bill delivered misses the mark by a wide margin and does not reflect the data which demonstrates conclusively that none of Canada's firearms control legislation has affected crime rates. The recent well-known work by Dr. Caillin Langmann on the matter in *The Journal of Interpersonal Violence* (2012) is particularly persuasive on the matter.

There are some aspects of Bill C-42 which have the potential to provide some small relief from irritating bureaucratic processes; however, this bill does little to address the many significant problems with Canadian firearms law of which the government is well aware. Bill C-42 though marketed as offering "common sense" reforms for firearms owners, nevertheless contains significant problems which prevent the NFA endorsing it as introduced. The NFA supports the repeal of former Bills C-17 and C-68 in their entirety as the research demonstrates that the drop in crime rate has more to do with an aging population rather than anything to do with firearms legislation. Firearms laws do not prevent bad behaviour and poor decision-making, nor do they limit the extent of any ill-doer's ability to cause harm.

Specific Criticisms

Easing ATT restrictions may help firearm users in Quebec, Ontario, and other jurisdictions where there have been significant problems with narrow ATT issuance. However, limiting these ATTs to the province of residence is unnecessary and creates an additional bureaucratic process in many places where ATTs were multijurisdictional. Section 63 of the Firearms Act provides that licenses and authorizations to transport are valid throughout Canada. For that reason it is surprising that the government would choose to limit ATTs only to the province of residence in s. 19(2), which is in direct conflict with s. 63 - especially when tying the ATT to the license. It is ironic that under the proposed process it will likely be easier to take a restricted firearm to and from the US than to a neighbouring province. Perhaps this situation represents confusion of the drafters between authorizations to transport (ATT), and authorizations to carry (ATC) which are limited to province of issue. Correcting this situation would represent an improvement to existing legislation and represent a significant improvement to the bureaucratic process as well as a cost savings.

The most significant and potentially divisive problem with the proposed changes to s. 19 (2) is that it makes it clear that the owners of prohibited firearms which are not handguns may not use them, and may only move them at all in order to change residence or transfer ownership. This issue is a major concern with Bill C-42. It is imperative that owners of prohibited long guns be authorized to transport and use these firearms for legitimate purposes. In the past, the refusal to grant authorization to do this was used to set the stage for the creative manufacture of grounds for confiscation of private property.

The "authorization to transport" itself is a document useless for any purposes of public safety and created only as a means to control and manipulate the legitimate ownership and use of firearms. It must be ended, and the only way government can do this by developing legislation to replace the 1995 C-68 *Firearms Act*.

Giving the Minister clear power to change classifications from prohibited to restricted status may well be a useful step if it is used to remove the prohibited status of standard capacity magazines, and to start reclassifying firearms wrongly classed as prohibited as an interim step to eliminating the classification system. Even so, the wording remains problematic if this is the intent.

Under clause 10, the change to businesses in the non-proclaimed section of the *Firearms Act* that affects information sharing between the registrar and a customs officer may well assist the firearms control system, but it will not be helpful to businesses, or their customers. On the surface, this may seem to be a logical and helpful step to curb smuggling and illegal importations, but this change also suggests that there will be an increased burden on firearms importers and increased onus on importers of surplus firearms, where firearms data supplied at the front end of the importation process may problematic when shipments actually arrive in Canada. Firearms importing is not always an exact science, and information sharing between CBSA and Firearms Program might result in a hostile investigatory environment where no offense is actually being committed.

An ill-considered aspect of the Bill is the requirement to eliminate the ability of people to challenge the exam to obtain a license by modifying the Firearms Act s 7 (1) b. In effect, this change would deny capable people with alternate training from being able to obtain a license without taking a course and seems to run counter to the Government of Canada's stated commitments to northern and rural Canada. It would also present hardship to people in areas with few instructors and those in small communities or people with limited time from obtaining a

license – a license required in the criminal code in order to possess firearms. It should be pointed out that the license only exists due to S. 91 which creates the crime of possessing a firearm without a license from the former Bill C-68.

There is currently little infrastructure in Northern Canada and in rural areas to offer the course. In many places CFSC instructors are few in number, and the economic effect of requiring payment for the full course and the associated economic impact in having to travel to obtain the course will further punish those in rural areas, and actively discourage individuals from licensing themselves. This change should be removed from the Bill.

Section 58 of the *Firearms Act* provides that CFOs may add conditions to licenses and authorizations. The geographic limitations on authorizations to transport are conditions added pursuant to that section. C-42 does not prevent the CFO from continuing to add conditions to ATTs, except in the amendment subject to the regulations. This hardly represents a curtailing of the arbitrary nature of CFO power, and leaves open the possible imposition of a harsh system of regulations. Obviously, the Minister of Public Safety cannot micro-manage the Canadian Firearms Program, and this change will entail that that the minister will only be able to act after punitive or misguided policies are implemented by the CFP and the damage is done. Section 58 should be repealed completely.

The change of clause 14 to s. 64 (1.1) of the Act regarding a 6 month grace period seems odd – if the intent is to remove the criminality of the offence of expired paperwork, why not make the license good for life, and thus ease all of the bureaucratic processes and cost that are associated with this controversial aspect of the law? Again, the license exists only as a defence to the criminal charge of possessing a firearm without one. Mandatory licensing coupled to criminal penalty for simple possession or ownership of property is wrong.

In clause 18, the changes affecting the definitions in the Criminal Code, and thereby creating a narrow definition of non-restricted firearms, is a dangerous step to take that has the potential of creating several unintended legal consequences. Firearms currently considered non-restricted may well not be included in the chosen definition, and thus this is not a supportable aspect of the Act. Many of the sections appear to be intended to address the effect of this creating this definition, and to simplify wording. The current definition is anything that is not a restricted or prohibited firearm AND anything that is prescribed to be non-restricted. The classification system itself is problematic in that no firearms law has ever prevented, or limited, bad behaviour.

Clause 19, affecting s. 91 of the Criminal Code seems to portray an inconsistency of use of the defined terms in removing the inclusive word firearm and replacing it with the defined terms. The effect is to make the language longer and not improve the wording.

At clause 26, the maintenance of mandatory minimum sentencing remains an unacceptable limitation on the ability of judges to apply justice by taking into consideration the circumstances of the offence and offender.

At clauses 30s and 31, we find probably the most egregious aspect of this Act to be the amendments to s. 109 and 110. For even relatively minor offences, a person can be prohibited from possessing firearms for life. This seems on the face of it to be an unreasonable and excessive use of the power of the state to coerce for offences much less than intended by the original law. The law does already provide for a prohibition order to be applied for serious offences.

In addition to all of the above, the minor tinkering with s. 91 et al to improve the wording represents an unpalatable commitment to the essence of the *Firearms Act* in that it will remain a criminal offence to possess a firearm without the government license. Canada's National Firearms Association reminds the government that large numbers of otherwise innocent Canadians currently in possession of firearms do not have firearms licenses as a result of the failure of the implementation of the C-68 firearms licensing system. These Canadians will still be criminals if C-42 becomes law.

The only purpose of Section 28 of the Firearms Act is to limit and prevent the transfer of restricted/prohibited firearms. This is a clear violation of the property rights of the owner and should be repealed.

The prohibited class only exists as a means of removing arbitrarily selected firearms and other items from people which in effect removes their value to the owners and his or her heirs. It is imperative that the government should repeal the prohibited class and return the control of this property to the owners. At the very least, the government should remove the impediments to the use, transport, and transfer of these firearms and other items.

Section 67 of the *Firearms Act* has the purpose of removing arbitrarily selected firearms from use and circulation – the government should repeal that section.

Conclusion

In the view of the NFA, Bill C-42, while recognizing some important issues with Canada's failed firearms control system, takes little action to correct the many significant problems with Canadian firearms legislation. At the request of the Minister of Public Safety the NFA provided 5 limited aspects which would represent significant action to improve the firearms laws as an interim process towards repealing the ineffective and unnecessary former firearms control Bills C-17 and C-68. Those suggestions do not appear to have been considered in C-42. They are reproduced here for reference:

The problem with a list of five points is that it is like the rest of the Firearms Act – an arbitrary construct. Here are five basic points along the lines of recent letters that we have written that are relatively easy to fix as a start; however, these alone are not sufficient to resolve the many significant problems with Canadian Firearms law.

A relatively comprehensive list of five points might include, for example:

1. Decriminalize firearms possession (elimination of S. 91, 92 and related sections)

2. Extensively modify and eliminate prohibited and restricted classes, including rescinding of arbitrary clauses on barrel length and calibre that classify firearms, and regulations affecting magazines and other accessories such as stocks, as per our letter. Firearms chosen by appearance alone should especially be removed from these classes. This fix could be done easily without going to parliament merely by rescinding the former OiCs.

3. Eliminate punitive safe storage and transport requirements that have caused much grief to firearm owners in the absence of any wrongdoing. Storage matters should be a civil issue to be dealt with if harm occurs, not a criminal one. Education is the key, not criminal law.

4. Restructure Firearms Act enforcement so that there are no longer arbitrary powers granted to the CFO regarding the issuance of licenses and authorizations pertaining to the use and sale of firearms, or the operation of ranges or other firearms events. F.A. Section 58.1 should be rescinded.

5. Remove the administration of the Firearms Act from the control of the RCMP and so reduce the stigma associated with the ownership and use of firearms.

Those five would cover a lot of ground, but need to be presented in the context of an over-arching need to rescind the Firearms Act and its related regulations and redress outstanding problems.

The National Firearms Association hopes that this criticism of Bill C-42 is useful in beginning the process to correct many years of bad law.