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GUN CONTROL LAW IN CANADA

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GUN CONTROL LAW IN CANADA

INTRODUCTION

Canada has had laws restricting the possession and use of firearms since 1877; there was a nationwide permit system for the carrying of small arms in effect in 1892. All handguns have been registered since 1934, and in 1951 a centralized registry for restricted firearms was established under the control of the Commissioner of the RCMP. The present classification system of prohibited weapons, restricted weapons (including all handguns), and non-restricted long guns was introduced in 1968.

This scheme was significantly enhanced by a number of amendments in 1977.⁽¹⁾ The major addition was the creation of the firearms acquisition certificate, or

"FAC," a screening system for those wishing to acquire any firearm, including non-restricted hunting rifles and shotguns. A new administrative regime, involving local firearms officers and chief provincial firearms officers appointed by the provinces, was also established. The provinces administer the FAC system, and indeed most overall gun control.

This regime was left relatively untouched for over 11 years, until the passage of Bill C-17, which received Royal Assent on 5 December 1991.⁽²⁾ Although the changes and additions made by this bill are not as fundamental as those made in 1977, they have been the subject of considerable controversy. Many of the provisions of the bill involve new regulatory powers. The significantly expanded regulatory law is perhaps the most significant feature of the entire package.

GENERAL FRAMEWORK OF THE REGIME

Canada's gun control laws are composed of three basic elements. One element defines particular kinds of firearms and deals with access to them and to other weapons. Certain specified weapons are prohibited entirely, except to the military and police, although civilians in possession of such weapons when they became prohibited have in some cases been allowed to retain them. Other weapons, all of which are firearms, are "restricted," these may be acquired only for certain purposes and must be registered. The places where they may be kept, and their transportation to other sites, are subject to strict permit control.

Other provisions impose controls on access to all firearms. For possession of non-restricted firearms, the controls are relatively minimal. They focus primarily on the point of acquisition through the general screening of the FAC system, but also include prohibition orders on possession imposed by judges on convicted offenders. They are supplemented by enforcement powers that allow search and seizure in circumstances where public safety is threatened.

The third element consists of provisions incorporating the more traditional approach to criminal law - deterrence of crime through the prescribing of offences and penalties. Some of these offences are ancillary to the prohibitions, restrictions and controls that make up the first two elements of the regime. Other offences consist of prohibited behaviour involving the use of firearms in the commission of other crimes or in a manner that directly endangers the public.

FIREARMS DEFINITIONS

The firearms provisions of the *Criminal Code* are found in Part III, which is entitled "Firearms and Other Offensive Weapons." Although firearms often appear to be the focus of these provisions, many reported criminal cases involve other kinds of weapons. A "firearm" is defined in section 84(1) as any barrelled weapon from which a projectile can be discharged that is capable of causing serious bodily harm to a person.⁽³⁾ Guns that are antiques (unless they are restricted weapons and

the owners intend to fire them), signal guns, animal tranquilizing guns, and any barrelled weapon with a muzzle velocity of less than 152.4 m (500 feet) per second (airguns) are deemed not to be firearms for the purposes of Part III. Prohibited and restricted firearms are those included in the definitions of prohibited and restricted "weapons." Guns that are neither prohibited nor restricted are generally referred to as "non-restricted" firearms.

CONTROLS ON PARTICULAR FIREARMS

A. Prohibited Weapons

Prohibited weapons are defined in section 84(1) of the Code, and include weapons banned by the Code as well as switchblades and a range of martial arts devices and other weapons prohibited by order in council. Since 1977, the firearms defined in the Code as prohibited have included:

- fully-automatic weapons (machine-guns);
- "sawed-off" rifles and shotguns;
- silencers;⁽⁴⁾ and
- specific gun models, not being antiques or firearms of a kind commonly used in this country for hunting or sporting purposes, which have been declared prohibited by a Cabinet order in council.

The police, military, and other government officers are exempted from the prohibition, but only for possession of these weapons in the course of the performance of their duties or employment.

Bill C-17 added converted automatics to the prohibited category in the Code. These are firearms manufactured as weapons capable of fully-automatic fire, and subsequently altered to make them semi-automatics only. Many of these had been seized in recent years and declared forfeit in a number of court cases because they were found to be too easily reconvertible to fully-automatic fire. Under the bill they were all prohibited, regardless of the nature of the alterations.

Fully-automatic guns had been moved from the restricted to the prohibited category in 1977; however, those lawfully in possession of registered automatic firearms at that time were deemed "genuine gun collectors" and were allowed to retain them as "grandfathered" weapons. Apparently approximately 10,000 of these machine-guns were grandfathered in this way, of which 5,000-6,000 remain in circulation. Under Bill C-17, the now prohibited converted automatics were also grandfathered, that is they could be retained by "genuine gun collectors." This term was defined for the first time in the bill, however, so that there is now a basis for distinguishing those who are true collectors.

Those who wished to retain their converted automatics had to qualify under the new definition, and had to apply to register the guns as restricted weapons no later

than 1 October 1992. Apparently only those conversions deemed sufficiently permanent were considered eligible for grandfathering. The others were presumably seized, when proffered for registration, as being prohibited weapons pursuant to the existing case law.⁽⁵⁾ Like fully-automatic firearms, grandfathered converted automatics can be traded only among the closed class of owners who became eligible as of 1 October 1992. Even "genuine gun collectors" could not acquire them after that date, and they cannot be passed on to family members either by gift or bequest.⁽⁶⁾

The order in council power to prohibit particular weapons had never previously been used in regard to firearms, except in the case of a miniature handgun small enough to be concealed in a cigarette package. The Minister of Justice had announced, however, when Bill C-80 (the predecessor to Bill C-17) was introduced, that the entire range of military and para-military firearms manufactured as semi-automatics would be examined with a view to prohibiting some of them and restricting others. Bill C-17 did not itself prohibit such weapons, however.

The Minister of Justice created a Canadian Advisory Council on Firearms, which was directed to develop criteria for determining which of these guns would become prohibited or restricted. The concern was with their high firepower and fast-firing military-design characteristics. The Council came up with a number of criteria, including a point rating system; and, in July 1992, after Bill C-17 had been passed, over 30 such firearms were added to the Prohibited Weapons Orders. These firearms included semi-automatic assault shotguns designed for use by police, semi-automatic versions of military sub-machine guns, "assault pistols," and some rather exotic para-military weapons. Relatively few of the more common military or para-military designs were prohibited entirely.

Bill C-17 provided for an express power to grandfather any firearms declared prohibited by order in council, thus allowing their owners to retain them as restricted weapons. Persons in possession of such prohibited firearms as of 27 July 1992 were given until 1 October 1992 to register them. These persons are not required to be genuine gun collectors, but they cannot transfer or bequeath the firearms.⁽⁷⁾

The bill also provided for a power to declare prohibited by order in council "parts, components, accessories and ammunition" for firearms. The intent was to outlaw accessories and ammunition of a military nature for which the government saw no legitimate civilian use. Two accessories were prohibited in July 1992. One was a trigger device designed to allow semi-automatic weapons to fire in more rapid succession than is possible with finger action alone. The other was a rifle stock design known as the "bull-pup," which increases the concealability of high-firepower long guns.

In July 1992, the government also prohibited ammunition capable of piercing body

armour, bullets that ignite or explode on impact, and a dart-like device known as a "flechette," designed to increase the range and lethality of shot projectiles. While collectors interested in these items may be affected by their prohibition, it is difficult to see how hunters and sport shooters could be disadvantaged.

One of the more controversial regulatory powers enacted by Bill C-17, however, was the power to prohibit designated "large-capacity" magazines. This does affect large numbers within the recreational firearms community, as the limits have been set so low as to prohibit many thousands of existing magazines. The regulations, which came into force on 1 July 1993, set limits of ten rounds for all semi-automatic handguns, and five rounds for centre-fire semi-automatic rifles and shotguns, as well as handguns not commonly available in Canada, and grandfathered assault pistols and fully-automatic firearms.

Magazines designed for use in rim-fire rifles such as the standard .22 calibre are exempted, as is the magazine designed for the bolt-action Lee-Enfield used in World Wars I and II; the issue arose because this magazine may fit some models of modern semi-automatics. Some dozen rare and valuable antique magazines of interest to military history collectors have also been exempted. The regulations also allow magazines to be converted so as to bring them within the legal capacity, so long as the modifications are not easily reversible. Three particular methods for such conversions are set out in the regulations. Their feasibility, and that of any alternative methods, was, however, the subject of some controversy. In any case, all existing magazines in Canada had to be converted before the prohibition became effective on 1 July 1993.

Bill C-17 set out a specific exemption from the cartridge magazine limits for competition shooting, which requires larger magazines. Individuals may now, in theory, be authorized by the local registrar of firearms to possess such magazines for competitions approved by the Attorney General of the province or territory. As of the end of 1993, no such competitions had been approved, and it appeared that none would be.⁽⁸⁾ Without such approval, the competition shooter exemption cannot be put into practical effect.

B. Restricted Weapons

1. General Provisions

Restricted firearms must be registered, and may be used only for certain specified purposes, which include target shooting and collecting, but not hunting (see details below). The category consists of:

- all handguns;
- semi-automatic centre-fire long guns with barrels shorter than 470 mm;
- long guns which are designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping, or otherwise;

- automatic weapons grandfathered as of 1 January 1978;
- converted automatics grandfathered as of 1 October 1992; and
- any other firearm, not being reasonably usable for hunting or sport shooting in the opinion of the Cabinet, that is declared to be restricted by a Cabinet order in council.

Only two gun models, the semi-automatic version of the FN military assault rifle once used by the Canadian Forces, and an auto-loading twelve-gauge shotgun known as the "High Standard Model," were on the order-in-council restricted list prior to the recent review of all military and para-military firearms. A few others had been added to or removed from that list in the past. In July 1992, the government added well over 200 other models, when all the variations within the families are taken into account.

Added to the Restricted Weapons Orders were the semi-automatic versions of the standard military assault rifles (usually capable of fully-automatic fire for military purposes) issued to the combat personnel of armies around the world. These include all models of the AK-47 family used by the former Soviet-bloc countries, the M-16 used by the United States and many of its allies (called the Colt AR-15 in its semi-automatic version), and the comparable assault rifles produced by the major arms producers, when originally manufactured as semi-automatics.⁽⁹⁾ Many, if not most, of these guns were formerly non-restricted. Many gun control advocates had expected to see them added to the Prohibited list; but, though they must now be registered, they can still be owned and used for certain purposes, not including hunting. One major reason that they have been left as legal but restricted weapons may be the limitation on the order-in-council power to prohibit weapons that exempts "firearms of a kind commonly used in Canada for hunting or sporting purposes." If these firearms are currently used for target-shooting or other "sporting" purposes, they cannot be banned by order in council. Some of these guns are used for specialized target-shooting by groups such as the Dominion of Canada Rifle Association. They are probably also of interest to collectors.⁽¹⁰⁾

Those who wish to acquire restricted firearms must first obtain an FAC and a registration certificate, whereby the firearm is registered by make and serial number; central registration records are maintained by the RCMP. The certificate is good for life or until the firearm is transferred, unless it is revoked by the Commissioner of the RCMP.

Certificates are available only for certain specified purposes. The local registrar may issue one to any person 18 years of age or over, but only if the gun is required:

- for the protection of life (rarely issued);
- for use in a lawful occupation;
- for use in target shooting under the auspices of an approved⁽¹¹⁾ shooting club or pursuant to specified conditions; or

- if the gun will form part of the collection of a "genuine gun collector," or is deemed by regulation to be a "relic."[\(12\)](#)

Restricted weapons may thus be used for recreational purposes, apart from hunting. However, obtaining such weapons may involve a second and possibly more stringent level of screening than that required for access to non-restricted firearms. As well, restricted weapons must be kept at specified locations and may be transported to the location where they are to be used only under the authority of a permit to carry.

The issuance of a registration certificate or permit may be refused in the interests of the safety of the applicant or the general public. A certificate may also be revoked by the Commissioner of the RCMP, and a permit may be revoked by anyone authorized to issue it. The applicant or owner may appeal the refusal or revocation to a provincial court judge, and either party may then appeal further to the District or Superior Court of the province.

Breach of the requirements regarding restricted weapons is an indictable offence punishable by up to five years in prison, or, on summary conviction, by up to six months in jail. Offences include: possession of a restricted weapon without a valid registration certificate; possession at any place not specified on the certificate, except pursuant to a permit; and being present in a motor vehicle in which the accused knows there is an illegal restricted weapon. There is an exemption for lawful use by non-owners under the immediate supervision of the registered owner. As with prohibited weapons, there is also an exemption for the police, military and other government officers for use in the course of their duties.

Bill C-17 made provision whereby storage or carry permits for restricted firearms may be issued to persons other than the registered owner. The applicant for such a permit still requires an FAC, but this provision means that spouses and friends, for example, can transport the firearm, with permission, for such purposes as storage and delivery to the sites of competition events. The bill also allowed borrowing or sharing a firearm at a gun range in the absence of the owner, and contains provisions for temporary storage permits and for carry permits for non-resident competitive shooters.

[2. Genuine Gun Collectors](#)

Gun collection is one of the purposes for which permission may be given to register and possess restricted weapons. Bill C-17 defined the term "genuine gun collector" for the first time, thus imposing substantive requirements on such persons when they seek a restricted weapon registration certificate. Collectors of only non-restricted firearms are not affected.

Persons who apply as collectors for restricted weapon certificates (a separate certificate is required for each restricted firearm) now have to demonstrate that

their collection does or will include firearms related by historical, technological or scientific characteristics about which they are knowledgeable. They also have to comply with requirements prescribed by regulation concerning: the nature and extent of their knowledge of the collection, although nothing as yet has been prescribed; secure storage, though no special secure storage requirements are specified; and the keeping of records, which are only basic documents such as the registration certificates, records of transfers, and proof that lost or stolen restricted weapons have been reported.

The applicant must also consent to periodic inspections of the premises in which the restricted weapons will be kept. This is the most controversial of the new requirements. The inspections must be carried out in a reasonable manner and in accordance with the regulations, that is, at any time agreed on by the collector and the inspecting police officer, or, failing agreement, between the hours of 7:00 a.m. and 9:00 p.m. local time. Reasonable notice must be given of the intention to inspect, and inspection must be restricted to the parts of the premises in which the restricted weapons and records are kept.

Anyone who is deemed by the local registrar not to fit the definition, and who is thus refused a certificate, may appeal pursuant to the provisions that apply to any refusal of a certificate. The determination may thus not be arbitrary and will be judicially supervised. There were no reported such cases as of the end of 1993, but the development of a body of case law in the future may flesh out the definition, and provide guidelines to help local registrars apply the definition consistently across the country.

ACCESS AND POSSESSION - ALL NON-PROHIBITED FIREARMS

A. Non-Restricted Firearms

In the Code, there is no definition of or reference to "non-restricted" firearms. As noted earlier, this term is generally used to refer to anything that fits the definition of a "firearm," but is neither "prohibited" nor "restricted."

B. The Firearms Acquisition Certificate ("FAC")

The 1977 amendments introduced a basic screening requirement for access to any firearm, whether by way of purchase, gift, or borrowing. Those acquiring a gun after the provisions came into effect must first obtain a firearms acquisition certificate (an "FAC"), which is valid for a period of five years. The certificate allows for the legal acquisition of any number of non-restricted firearms, and is also a prerequisite to an application for a restricted weapon certificate.

The requirement binds both parties to a transfer;⁽¹³⁾ both are liable to an indictable offence, punishable by up to two years in prison, or to a summary conviction offence, if the person acquiring does not produce a valid FAC. There is

an exemption where firearms are borrowed for use under the direct supervision of the owner, or where someone lends a firearm to a person requiring it for hunting or trapping for family sustenance. Those who come into possession of any firearm by operation of law, such as a bequest, are not guilty of an offence if they dispose of it or obtain an FAC with reasonable dispatch, assuming the gun is non-restricted. Prohibited weapons must, of course, be disposed of, while retaining a restricted weapon would require both an FAC and a certificate.

The requirement for an FAC applies, however, only to the point of acquisition. It is not a possession permit. Those who acquired firearms before the requirement came into effect (probably several million guns acquired prior to 1978 are still in the hands of Canadians) did not have to obtain an FAC, and those who have acquired guns after that point do not have to keep a current FAC if they do not require additional firearms after the five-year term expires. The additions made to the FAC screening process by Bill C-17 affected only the issuance of new certificates; certificates issued before that point will continue to be valid until their five-year terms expire, even if their holders would not be eligible for a certificate under the new rules (for example, because of a change in the age limit).

Applications for an FAC must be made to a local firearms officer (usually a local police officer). The basic age requirement was raised from 16 to 18 by Bill C-17. The firearms officer may refuse to issue the certificate only if there is information indicating that this is desirable in the interests of public safety or the safety of the applicant.

Certain persons are effectively barred by the Code from obtaining an FAC: those who, within the preceding five years, have been convicted of an offence involving violence, or have been treated for a mental disorder involving violence, or who otherwise have a history of violent behaviour; and those prohibited from possessing a firearm because of a probation order or a prohibition order.

Bill C-17 provided that the fee for an FAC, set at \$10 in the *Criminal Code* itself in 1977, would henceforth be fixed by regulation. The regulations set the fee at \$50 for individuals and \$200 for corporations and businesses. The bill provided, however, that those who apply for another FAC while holding a current certificate need pay only half the prescribed fee.

The applicant must now provide the names of two "references" who can confirm the information he or she submits. The references must have known the applicant for at least three years, and are protected from civil liability. They must also come from a class of persons prescribed by regulation. This new requirement should not be unduly onerous, as the class has been broadly drawn; it includes, for example, any employer or co-worker of the applicant and the applicant's spouse if the spouse is at least 18 years old.

The class of permitted references includes a range of persons whose qualifications

to act as a reference clearly differ: ministers; aboriginal chiefs, councillors and tribal elders; bank officers; judges; police officers; wildlife officers and wildlife biologists; federal, provincial and municipal office-holders; health care practitioners; social workers; military officers; and persons in regulated professions (lawyers, architects, engineers and many others). In some cases, the basis for inclusion seems to be the specific expertise of the person, while in others it appears to be the person's public or social position.

Bill C-17 also added an express authorization for an extended investigation. The firearms officer may interview an applicant's family and neighbours, as well as community workers and anyone else deemed appropriate, in order to obtain or verify information as to whether the applicant has a history of violent behaviour, particularly domestic violence. The number of cases in which an investigation of this depth is actually carried out may be limited, however, by scarce police resources.

Administrative changes in the screening process may have strengthened it more significantly than some of these statutory changes. Before the introduction of Bill C-17, the FAC investigation often involved nothing more than a criminal record check and a search of local police files for the applicant's name. The application form was fairly basic, and gave the firearms officer relatively little information on which to determine whether the applicant could be trusted with a firearm.

A new FAC application form created as part of the Bill C-17 package of measures has been prescribed by the Commissioner of the RCMP, and requires the applicant to supply much more personal information. As well as questions concerning any criminal record or history of mental instability, the form asks the applicant, for example, whether he or she has been treated for alcohol or drug abuse within the last five years, or has experienced a divorce or job loss within the last two.

While a divorce or job loss would not automatically disqualify an applicant, they might, for example, indicate the need for a further investigation. Only when coupled with other relevant information might these facts justify a rejection. If an application is rejected for any reason, the person may appeal the decision to a provincial court judge, and must be afforded a full hearing. Pursuant to Bill C-17, however, the onus is on the applicant to satisfy the judge that the refusal to issue the FAC was not justified.

A safety and competency training requirement has been on the books since 1977 but was never proclaimed in force. Bill C-17 reproduced and expanded the requirement, which this time has been put into effect. All FAC applicants are now required to provide evidence of successful completion of a course or test (the requirement will in most cases be administered in the form of a course and a test) on the safe handling and use of firearms, and the laws relating to them.

Pursuant to a provision that accompanied the original incarnation of the safety

course requirement in 1977, and which was not repealed by Bill C-17, the requirement had to be brought into force province by province. It came into force on 1 January 1994 in the provinces of British Columbia, Alberta, Ontario, Quebec, Prince Edward Island, and the Yukon Territory, and in the provinces of Newfoundland, Nova Scotia, New Brunswick and Manitoba on 1 April 1994. It is scheduled to come into force in the province of Saskatchewan and the Northwest Territories on 1 September 1994.

The requirement provides that the course or test in each jurisdiction be approved by the provincial Attorney-General. The federal government has, however, in cooperation with the provinces, produced the "Canadian Firearms Safety Course." It appears that this course will be accepted across the country, and that all FAC applicants will thus ultimately have to meet the same national standards.

As the Attorney-General of the province can approve, for the purposes of the requirement, a course or test taken "at any time prior to the application," some provinces apparently considered approving courses or tests, such as hunter safety courses, taken before the new requirement came into force. The effect would have been to "grandfather" those who had taken courses in the past. All of the provinces, however, appear to have decided against such grandfathering.[\(14\)](#)

There is also a provision for discretionary certification by a firearms officer without a course or test (referred to as "alternative" certification) in circumstances prescribed by regulation. Persons who can thus be certified are those who have owned firearms since 1 January 1979 (approximately the point at which the original requirement would have been put in place had the provinces been ready to implement it), and who can demonstrate a knowledge of the basic principles of firearms safety, the operation of common hunting and sporting guns, and federal and provincial firearms laws. The intent is to meet the concerns of those who have used firearms safely for some time, and thus may not need to undergo the training required of new FAC applicants.[\(15\)](#)

The FAC must now bear a photograph of the holder, except where the requirement has been dispensed with by the Commissioner of the RCMP. Bill C-17 also imposed a mandatory 28-day waiting period before an FAC may be issued. Prior to the amendment, the administrative backlog in major cities such as Toronto and Montreal, and in a number of remote areas, was longer than 28 days, while in other areas applications were processed almost immediately. The mandatory waiting period ensures that the firearms officer has the time to conduct a proper investigation, and acts as a "cooling-off" period to discourage those attempting to acquire firearms while in a temporary state of emotional instability.

The "renewal" situation is also now recognized for the first time. Applicants already holding a current certificate need pay only half the normal fee, and may have the mandatory 28-day waiting period waived.

Bill C-17 also added an express statement that applications can be made by mail, a provision that primarily benefits renewal applicants, as all first-time applicants will have to appear for an interview before the application is processed. The firearms officer retains the discretion to require even renewal applicants to appear for an interview before proceeding with the application; but in many cases they may be required to appear on only one occasion, to pick up the certificate and have the photograph verified as current. This could save renewal applicants in remote areas from significant inconvenience.

C. Minor's Permits

Those under 18, and thus not eligible to acquire firearms, may nonetheless possess them for certain purposes pursuant to a "minor's permit," which may be issued to any minor who hunts or traps to provide sustenance for the family, or to minors over the age of 12 who wish to engage in target-shooting, hunting or instruction in firearms use. In both cases, such permits require the consent of a parent or guardian.

D. Safe Storage

Previous regulations imposed secure storage and handling requirements on dealers, shippers, and museums. Prior to Bill C-17, however, such rules for private owners extended only to collectors of restricted weapons and were quite minimal. Bill C-17 vastly expanded the power to make regulations applying to private owners of firearms.

The regulations now extend to all classes of firearms owners, and cover the "storage, display, handling and transportation of all firearms." There are exemptions for dealers, other firearms businesses,⁽¹⁶⁾ police officers on duty (and off duty under certain circumstances), armed forces personnel, and the small number of people authorized to carry firearms in order to protect their lives.

The requirements are relatively minimal, and, except for a predator control exception, do not vary according to local circumstances, although representatives of rural firearms owners had argued that the requirements should be less stringent outside the major metropolitan areas. This was probably simply not feasible. The regulations do not distinguish between different kinds of ownership; for example, the rules for storage of restricted firearms are the same, regardless of whether the person owns one handgun for target shooting purposes or a hundred military or para-military firearms as part of a collection. Many gun control advocates had hoped for more stringent requirements in certain circumstances, such as gun collections composed of large numbers of weapons or firearms with high firepower characteristics.

1. Storage and Display of Non-Restricted Firearms

The rules require non-restricted firearms to be stored unloaded and rendered inoperable either by a secure locking device (generally a trigger lock or cable) or by the removal of the bolt or bolt-carrier. Alternatively, non-restricted firearms may be stored in a securely locked container or room; they must be stored separately from the ammunition, unless the ammunition is locked up. Non-restricted firearms need not be rendered inoperable or locked up if they are being stored temporarily for the purpose of predator or other animal control, but must still be kept unloaded and away from ammunition. When being displayed, they must be unloaded and secured by a locking device, and the ammunition must not be readily accessible.

2. Storage and Display of Restricted Firearms

The storage requirements for restricted firearms are more stringent. The firearms must be unloaded, and must be both rendered inoperable by a secure locking device and stored in a securely locked container or room, or, alternatively, stored in a vault, safe or room that has been constructed or modified for the secure storage of restricted firearms. Restricted firearms must also be kept separate from the ammunition, unless the ammunition is locked up.

Restricted weapons on display in a home must be securely attached to a non-portable structure. When on display outside the home, at events such as gun shows, they must be securely attached to the display structure by a chain, cable or similar device. They may not be removed unless they are being handled under the direct supervision of the owner.

3. Loading and Transportation

Firearms may be loaded only in a place where no relevant federal, provincial and municipal law prohibits their being discharged. Both restricted and non-restricted firearms must be transported unloaded, and if the vehicle in which they are carried is unattended, they must be locked in the trunk or a similar compartment. If there is no trunk, the vehicle must be locked and the firearm must not be visible. If the vehicle, such as a snowmobile or an all-terrain vehicle, cannot be locked up, the firearm cannot be left with it. Restricted firearms must also be secured by a locking device and carried in a locked case.

4. Enforcement

For the enforcement of these regulations, Bill C-17 included a specific penalty provision that is part of the *Criminal Code* itself. A breach of the storage, handling and transportation requirements is thus an offence under the Code. The maximum penalty is two years in jail in the rare cases where the breach is treated as an indictable offence. Most cases will be treated as summary conviction matters, with a fine as penalty.

E. Search and Seizure

Police officers are given significant powers of search and seizure where weapons are involved. They may search without warrant any person, vehicle or premises, other than a dwelling-house, if they believe on reasonable grounds that an offence involving firearms has been or is being committed. The power may extend to any place where there is good reason to believe that a person's possession of firearms threatens that person's safety or the safety of the public, even if there is no reason to believe that an offence has been committed. To ensure that these powers of warrantless search would not offend the *Canadian Charter of Rights and Freedoms*, Bill C-17 made them subject to a requirement that they could be used only in exigent circumstances involving a relatively immediate danger to safety.

The officers may seize firearms that they reasonably believe to have been involved in an offence, or whose possession does not appear to meet the requirements of the Code regarding prohibited or restricted weapons, or non-restricted firearms in the case of minors. Where the question is the legality of possession, it must be referred to a provincial court judge, who will decide the issue after affording the person an opportunity to establish legal possession.

A police officer may also seek a warrant to search for and seize any firearms or ammunition where there are reasonable grounds to believe that their possession may constitute a danger to the safety of the owner or public safety in general. A police officer may also search without a warrant, where obtaining one is impracticable, subject to the exigent circumstances requirement referred to above. Where such a search is carried out, the matter must be referred forthwith to a provincial court judge, for confirmation of the existence of a danger and the validity of the seizure of any firearms. If the judge confirms the seizure, an order prohibiting any further possession of firearms by that person for a period of up to five years may be made; otherwise the firearms or ammunition seized must be returned to the owner.

F. Prohibition Orders

Judges are required to impose orders prohibiting the possession of any firearms or ammunition by a person convicted of a serious violent offence (one for which the maximum penalty is 10 years or more in prison) or an offence in which a firearm was used. The judge fixes the term of the order, which must be for a minimum period of 10 years for a first offence (five years before Bill C-17) and life for a repeat offence (ten years before Bill C-17), beginning after the offender serves any term of imprisonment imposed. Bill C-17 also gave the judge a limited discretion to relieve an offender from these mandatory prohibition orders in rare circumstances where the person appears to pose no danger and requires a firearm to provide sustenance or obtain employment. This discretion will be most often applicable in the Territories or other remote areas.

Discretionary prohibition orders may also be imposed after a conviction for a less serious offence involving violence, for offences against the firearms control provisions themselves, or for drug trafficking. The duration of the order is in the discretion of the judge, but the maximum period is 10 years, again beginning after the completion of any prison sentence imposed. Although the imposition of such an order is discretionary, Bill C-17 expressly instructed the sentencing judge to consider making the order in these cases.

Bill C-17 also extended the power to make discretionary interim prohibition orders. They may now be added as a condition of bail for offences involving violence or drug trafficking; again, judges are expressly instructed to consider making them. Such orders may also be made a condition of restraining orders ("peace bonds") where safety is threatened, usually in cases involving domestic violence.

CRIMINAL PENALTIES

Part III of the Code makes it an offence to: use a firearm in the commission of another offence; point a firearm; possess a firearm or imitation thereof for a purpose dangerous to the public peace; possess a weapon while attending a public meeting; carry a concealed weapon; possess a prohibited weapon (the military, police, and other government officials such as customs and immigration officers are excepted); possess an unregistered restricted weapon; transfer a firearm to a minor under the age of 18 who does not hold a minor's permit; give a firearm to anyone who is clearly of unsound mind or impaired by alcohol or a drug; import or deliver a prohibited weapon; make or assemble a firearm so that it is capable of fully-automatic fire; deliver a restricted weapon to a person without a permit; or deliver any firearm to a person who does not produce a valid FAC.

There are "saving provisions" for particular circumstances where it was clearly not intended that criminal liability should attach. For example, persons who come into possession of prohibited weapons by operation of law, as part of an estate and in other similar cases, are not guilty of an offence if they dispose of the firearm with reasonable dispatch. There is a similar provision for those who acquire other firearms without, for example, an FAC. Those not authorized to possess restricted or unrestricted firearms may nonetheless use them under the immediate supervision of the owner.

The most serious crime involving the use of a firearm is found in section 85 of the *Criminal Code*, and deals with the use of a gun in the commission of an indictable offence or while fleeing after committing such an offence. This section provides for a mandatory minimum jail sentence of one year for a first offence and three years for a subsequent offence, with a maximum term of 14 years. Other offences involving the use of firearms do not provide for mandatory prison terms, but the maximum penalties are relatively severe. The possession of a weapon for a purpose dangerous to the public peace, for example, can bring a maximum jail

term of ten years, while other offences carry maximum terms of five years, or two years when prosecuted as indictable offences, and can also be prosecuted as summary conviction matters. Carrying a weapon while attending a public meeting is always a summary conviction matter.

Offences involving illegal possession or dealing in firearms generally carry maximum terms of five years as indictable offences, and may also be dealt with as summary conviction matters. The least serious offence, delivery of a firearm to a person who does not possess an FAC, carries a maximum term of only two years, even when it is dealt with as an indictable matter. Bill C-17 increased from five to ten years the maximum sentences for the three most serious of these offences: possession of a prohibited weapon; possession of any firearm while prohibited; and importing, buying, or selling a prohibited weapon.

OTHER

A. Firearms Businesses and Museums

Anyone who carries on the business of manufacturing or dealing in firearms requires a permit and is subject to requirements regarding the keeping of inventory records, transaction records, the reporting of any loss or theft, the holding of FACs by employees, and other matters. Dealers must now also keep their personal firearms collections separate from their inventories. Museums are subject to the same requirements. Persons and companies who import, manufacture, repair or modify firearms under the authority of the Canadian Armed Forces or a police force, as well as approved museums, are permitted to possess both prohibited and restricted weapons. Other firearms businesses may hold unregistered restricted weapons, other than converted automatics, as a part of their inventory or for other purposes in the ordinary course of business.

Provision has also now been made for businesses to possess and deal in otherwise prohibited weapons for approved "industrial purposes," such as renting automatic weapons for use by film and television companies, and the development or testing of ammunition for the Government of Canada or for approved export.

B. Parliamentary Review of Regulations

Because Bill C-17 significantly expanded the scope of regulation-making powers, and made them applicable to some relatively major issues, the bill also required that all regulations be laid before Parliament before becoming law. This applies to all regulatory powers under section 116(1), the regulation-making provision. This covers all regulations, except for orders designating particular firearms, accessories, etc. as prohibited or restricted weapons. Members and Senators have 30 sitting days to consider the regulations and make recommendations, and the appropriate committees in each House may hold public hearings and recommend

changes.

The Minister of Justice tabled the first major package of draft regulations made pursuant to BILL C-17 in the House of Commons on 31 March 1992. In May and June 1992, the Standing Committee on Justice and Solicitor General held hearings on these draft regulations and tabled a substantial report containing 37 recommendations, many of which were implemented when the regulations were finalized.

(1) *Criminal Law Amendment Act, 1977*, S.C. 1976-77, c. 53. Most of the provisions came into force on 1 January 1978, and others were proclaimed a year later; a safety and competency training requirement was never proclaimed. An earlier bill, which would have gone even further, died on the Order Paper the previous year after much controversy.

(2) S.C. 1991, c. 40. The statute was put into force in stages. By 1 January 1993, almost all the provisions, with the notable exception of the firearms safety education training requirement, were in effect. This requirement was put into force on 1 January 1994 in some provinces, and will be in force in the rest on 1 April 1994.

(3) It also includes the "frame or receiver" of such a barrelled weapon and anything that can be adapted for use as a firearm.

(4) The silencer is actually a firearm accessory rather than a "weapon" (defined in section 2 of the Code) or a "firearm." The validity of the designation of silencers as "prohibited weapons" in the Code may thus be open to question, but the Code now contains an express power to prohibit firearm accessories by order in council.

(5) Defined by Mr. Justice Cory of the Supreme Court of Canada as any firearm "capable of conversion to an automatic weapon in a relatively short period of time with relative ease," *R. v. Hasselwander* (1993), 2 S.C.R. 398, at p. 416.

(6) They can, of course, be sold or bequeathed if they are deactivated, as they are then no longer "firearms."

(7) See footnote 6 re deactivation.

(8) Court challenges to the decisions not to approve any competitions are underway in Ontario, Manitoba and the Northwest Territories. A trial judge has already turned down one such application in Ontario, but the denial is being appealed.

(9) Fully-automatic weapons, and now converted automatics, are defined as

prohibited weapons by the *Criminal Code*.

(10) Whether gun collecting is a "sporting purpose" is an open question, but the activity is not what would normally be regarded as a "sport."

(11) The shooting club must be approved by the provincial Attorney-General or his or her designated agent.

(12) Defined as a firearm with value as a "curiosity or rarity," or any firearm that is a "memento, remembrance or souvenir."

(13) The requirement applies when anyone "sells, barter, lends, transfers or delivers any firearm" (section 97(1)).

(14) It may be questioned in any case whether a course or test taken prior to the coming into force of the new training requirement could satisfy the requirement for proof of knowledge of "the laws relating to firearms." This must surely mean the laws in force at the time of the FAC application; that is, the current law.

(15) The firearms officer could, of course, administer the test developed as part of the Canadian Firearms Safety Course. This would not actually involve "alternative" certification, as the basic safety, competency and knowledge provision requires only a course or test.

(16) Storage, display, handling and transportation by firearms businesses are regulated elsewhere.