

What Canadian Gun Owners need to Know about Bill C-71

On Monday May 28, 2019, the Canadian Senate passed Bill C-71 in third reading. All amendments recommended by the Senate Committee in 2nd reading were defeated. Therefore, the Bill does not need to be sent back to the House of Commons for reconsideration. Bill C-71 received royal assent on June 21, 2019, which was the last step required to turn it into law. However, only a very limited number of its provisions are currently in effect.

Bill C-71 amends multiple sections of the Firearms Act, Criminal Code as well as other acts and regulations dealing with firearms. Its provisions will be implemented in multiple installments. A first group of provisions has come into effect immediately upon royal assent, while others will come into effect as set forth in one or multiple Orders in Council (“OIC”). In the latter case, it is likely because the implementation of certain provisions depends upon either the prior enactment of Regulations, or the availability of administrative resources.

Each Group of provisions will be dealt with separately.

Group 1- Provisions with Immediate Effect (as of June 21, 2019)

Group 1 provisions are those that have come into effect immediately upon royal assent of Bill C-71 on June 21, 2019.

Summary of Key Group 1 Provisions

Long Gun Registry Data

Many of those provisions purport to preserve the remaining data of the defunct long gun registry, a back-up copy of which had been preserved pursuant to an order from the Federal Court. Ancillary provisions enable the Canadian Government to settle the underlying litigation, and to provide the Quebec portion of said data to the Government of Quebec. In order to accomplish the latter, Bill C-71 takes away the privacy rights of the individual owners over their personal data.

Grandfathering of Prohibited Firearms

An aspect of particular interest is the addition of Subsection 12(9) to the Firearms Act. This particular provision purports to grandfather rights of owners of prohibited “firearms of a prescribed class”. In the Bill C-71 Legislative Summary, the purpose of that provision is described as follows:

“Clause 3(1) of Bill C-71 creates a general authority for the grandfathering of individuals by way of regulation (new section 12(9) of the *Firearms Act*).”

The power to deem certain firearms to be prohibited by way of regulations already existed pursuant to the Criminal Code since 1998, and it has been used extensively. The enactment of Sub-section 12(9) may be a prelude to an extensive use of that regulatory power, which would allow the Government to soothe the pain of existing owners by “grandfathering their existing rights”. There are rumors that such prohibitions are imminent. Other provisions of Bill C-71 allow owners of such firearm owners to obtain authorizations to transport (“ATT”) to take such firearms to gun clubs and ranges. `

Prohibition orders

Forfeiture of seized and surrendered firearms becomes the rule, whenever a prohibition order is pronounced. A court may make an exception in appropriate circumstances. This rule applies irrespective of whether the prohibition order is mandatory, discretionary, or merely preventive.

The following table summarizes those provisions of Bill C-71

| Article in Bill C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. CC: Criminal Code FA: Firearms Act | Purpose and effect | Remarks |
|-----------------------------|--|--|---|
| 3 (1) | 12 FA | Adding Subsection 12(9) to the <u>Firearms Act</u> . This allows for the | The power to prohibit certain firearms by way of OIC existed before C-71. This provision will |

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| | | <p>grandfathering of individuals who possess certain firearms “prescribed” to be prohibited by regulations. It does not apply to firearms deemed to be prohibited by application of the existing statutory rules.</p> | <p>allow the government to soothe the pain of prohibition for existing owners, since owners of firearms prohibited by way of OIC (regulations) may be allowed to keep them and be granted consequent licence status, provided they meet the applicable requirements on a continuing basis.</p> <p>Since the “cut-off date” is yet to be known for any given class of yet to be prohibited firearms, some individuals may not be eligible for grandfathering.</p> |
| 4(1) and (2) | 19 (1.1 and (2), 19 (2.1), (2.2) and (2.3) FA | <p>Maintains automatic ATTs (issued as a condition of a licence to individuals who possess restricted firearms and 12(6.1) handguns for the purpose of engaging in target practice or competition) for going to shooting clubs.</p> <p>Contemplates that ATTs may be issued for 12(9) prohibited firearms, but not automatically.</p> | <p>Owners of firearms that might in the future be prohibited by OIC will have to apply for an old fashioned paper ATT from their respective CFOs, in order to go to gun range, etc...</p> |
| 12 | 109 CC | <p>Broadens the scope of s. 109 of the Firearms Act to encompass a violation of regulations made</p> | |

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| | | under s. 117 (k2) of the Firearms Act (re: marking of firearms manufactured in Canada or imported into Canada and the removal, alteration, obliteration and defacing of those markings) | |
| 13(2) | 117 (m) CC | Adds “transmission” of records to the scope of the government’s regulatory powers. | This change is likely related to the upcoming communication of the long gun registry data to the Quebec Government, but could potentially have broader application. |
| 17 | 115(1) CC | Amends s. 115(1) of the Criminal Code. Expands the “forfeiture rule” whenever a prohibition order is pronounced, so as to include items already seized or surrendered, in addition to items in the possession of the targeted individual. | Criminal defense lawyers will have to be vigilant and specifically ask that seized or surrendered items be exempt from forfeiture at the time of sentencing, or making of a preventive prohibition order (s. 111), in appropriate circumstances. This does not apply to firearms that were used in connection with or are the subject matter of the infraction. The latter are automatically forfeited under s. 491 CC, without exception. |
| 23 | 29(3), (4), (5), (6) and (7) of the Ending the Long Gun Registry Act. | Repeals the provisions that removed the long gun registry data from the application of the Library and Archives of Canada Act and subsections 6(1) and (3) of the Privacy Act | Will allow the Government (and RCMP) to keep the back-up copy of the old long gun registry. |

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| | | Repeals the amendments that had removed the Long Gun Registry data, from the application of the Access to Information Act. | |
| 25, 26, 27, 28 | | These provisions remove the remaining long gun registry data from the application of the Privacy Act. They also allow the government to settle the pending litigation with Bill Clennett and the Canadian Information Commissioner, over the Clennett access to information application, for the long gun registry data. They also allow the Information Commissioner to view the actual unedited data of the Long Gun registry. | |
| 29 | | These provisions allow the communication of the long gun registry data to the Quebec Government | |

Provisions of Bill C-71, the implementation of which is deferred to the passing of an OIC (Not yet in effect, until further notice)

Group 2

Notice to reader: These provisions (Group 2) will come into effect (likely simultaneously) on a day to be fixed by OIC.

Summary of Key Group 2 Provisions

Classification of firearms

The power of the Government to overrule an RCMP determination as to the classification of a firearm is taken away, but only insofar as it would result in re-classification to a less restrictive class (e.g. non-restricted instead of restricted or prohibited). The power of the Government to overrule an RCMP determination by re-classifying a particular firearm to a more restrictive class remains whole.

CZ 858 and SAN Swiss Arms rifles

Provisions of Regulations enacted by the former Conservative Government in respect of CZ-858 and SAN Swiss Arms rifles are repealed. Those firearms are, returned to prohibited status. Existing owners of those rifles are grandfathered, provided they possessed those firearms on or prior to June 30, 2018 and they meet the other statutory requirements. Classes 12(11) i.e. CZ-858, and 12(14) i.e. SAN Swiss Arms are created.

Authorizations to transport (to engage in target shooting at approved ranges) will be available to owners of firearms of those classes, but will not be issued automatically as a condition of a licence.

The following table summarizes those provisions of Bill C-71

| Section in Bill C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. | Purpose and Effect | Remarks |
|-----------------------------|---|---------------------------|----------------|
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| | CC: Criminal Code FA: Firearms Act | | |
| 1 | 2(2) FA | Amends s. 2(2) of the Firearms Act, so as to remove the effect of s. 117.15 (3) and (4) | This is a correlative amendment in relation with the fact that the power of the Government to downgrade the classification of a firearm (e.g. from prohibited to restricted or non-restricted, or from restricted to non-restricted, is being repealed. |
| 3(2) CZ | 12 FA | Adding Subsections 12(10), (11) and (12) to the <u>Firearms Act</u> . This allows for the grandfathering of individuals who possessed certain CZ rifles declared by Bill C-71 to be prohibited firearms. | <p>The cut-off date for grandfathering is June 30, 2018.</p> <p>If the subject firearm was a restricted firearm as of June 30, 2018, the individual must have held a registration certificate for that firearm continuously since the cut-off date. In any other case, there is a one year window to apply for a registration certificate.</p> <p>Individuals who acquired a first CZ rifle after June 30, 2018 are left out. They will likely have to surrender their rifles, or sell them to individuals who are grandfathered.</p> <p>The subject firearms are:</p> <p>(i) Česká Zbrojovka (CZ) Model CZ858 Tactical-2P rifle, (ii) Česká Zbrojovka (CZ) Model CZ858 Tactical-2V rifle, 5</p> |

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| | | | <p>(iii) Česká Zbrojovka (CZ) Model CZ858 Tactical-4P rifle, or</p> <p>(iv) Česká Zbrojovka (CZ) Model CZ858 Tactical-4V rifle;</p> |
| 3(2) SwissArms | 12 FA | <p>Adding Subsections 12 (13) and (14) to the <u>Firearms Act</u>. This allows for the grandfathering of individuals who possessed certain SAN Swiss Arms rifles declared by Bill C-71 to be prohibited firearms.</p> | <p>The cut-off date for grandfathering is June 30, 2018.</p> <p>If the subject firearm was a restricted firearm as of June 30, 2018, the individual must have held a registration certificate for that firearm continuously since the cut-off date. In any other case, there is a one year window to apply for a registration certificate.</p> <p>Individuals who acquired a first CZ rifle after June 30, 2018 are left out. They will likely have to surrender their rifles, or sell them to individuals who are grandfathered.</p> <p>The subject firearms are:</p> <ul style="list-style-type: none"> (i) SAN Swiss Arms Model Classic Green rifle, (ii) SAN Swiss Arms Model Classic Green carbine, (iii) SAN Swiss Arms Model Classic Green CQB rifle, (iv) SAN Swiss Arms Model Black Special rifle, (v) SAN Swiss Arms Model Black Special carbine, |

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| | | | <ul style="list-style-type: none"> (vi) SAN Swiss Arms Model Black Special CQB rifle, (vii) SAN Swiss Arms Model Black Special Target rifle, (viii) SAN Swiss Arms Model Blue Star rifle, (ix) SAN Swiss Arms Model Heavy Metal rifle, (x) SAN Swiss Arms Model Red Devil rifle, (xi) SAN Swiss Arms Model Swiss Arms Edition rifle, (xii) SAN Swiss Arms Model Classic Green Sniper rifle, (xiii) SAN Swiss Arms Model Ver rifle, (xiv) SAN Swiss Arms Model Aestas rifle, (xv) SAN Swiss Arms Model Autumnus rifle, and (xvi) SAN Swiss Arms Model Hiemis rifle; |
| 4(2) | 19 (1.1) and 2 FA | Further amends Subsections 19(1.1) and 2 of the Firearms Act. Provides for the automatic issuance of an ATT for going to | For 12(9), 12 (11) and 12(14) prohibited firearms, it is possible to obtain an ATT to take those firearms to a range, but those authorizations will not be automatic. |

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| | | a range for target practice, except for 12(9), 12(11) and 12(14) classes, for which ATTs will have to be applied for. | |
| 16 | 84(1) CC | Amends the definition of Non-restricted firearm, by removing firearms designated as such by OIC from the definition. | |
| 18, 19, 20 and 21 | 117.15(3) and (4) CC, Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted (« Regulations ») 2.1, 3.1 and 3.2 of the Regulations | Repeals regulatory provisions that prescribed certain firearms to be non-restricted, in spite of RCMP classification as prohibited. | |

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Group 3

Notice to reader: These provisions will come into effect on a day to be fixed by OIC.

Summary of Key Group 3 Provisions

Eligibility to Hold a Firearms Licence

As part of the licence issuance/renewal/revocation process, chief firearms officers (CFO) will be required to consider the entire life history of the applicant/licence holder, as opposed to only the previous five (5) years. This may very well be conducive to abuse, since individuals who are currently licensed may very well be denied a renewal or see their licence revoked, because of events that occurred in the distant past. It is also almost a certainty that the form of licence application/renewal will be modified accordingly.

The table below summarizes the changes:

| Provision of C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. CC: Criminal Code FA: Firearms Act | Purpose and Effect | Remarks |
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| S. 2 | 5 FA | Amends Section 5 of the Firearms Act. Provides that | This change will likely entail correlative changes to the licence application/renewal |

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| | | <p>the entire life history of the licence holder/applicant may be considered for determining eligibility. It also amends the list of criteria to be considered so as to include: having been subject to a peace bond, restraining order or prohibition order.</p> | <p>forms. It will be interesting to see the extent of the disclosures that will be required.</p> <p>Arguably, some individuals who were deemed eligible may be denied renewal of their licence because of events that occurred prior to their initial firearms licence application.</p> |
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Group 4

Notice to reader: These provisions will come into effect (likely simultaneously) on a day to be fixed by OIC.

Summary of Key Group 4 Provisions

Authorizations to Transport (ATT)

Existing ATTs issued as a condition attached to a licence will be revoked as set forth in the OIC, except for the authorizations issued to restricted firearms owners and 12(6.1) handgun owners, for the purpose of going to and from an approved range within the licensee's province of residence. Authorizations to transport issued for the purpose of taking possession of a newly acquired restricted firearm or 12(6.1) handgun are also preserved. Other ATTs, such as those enabling a licensee to transport restricted firearms and 12(6) hand guns, to and from a gun show or port of exit/entry, will be revoked. Individuals will be required to re-apply for such ATTs in the traditional prescribed manner.

The following table summarizes those provisions of Bill C-71

| Provision of C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. CC: Criminal Code FA: Firearms Act | Purpose and Effect | Remarks |
|--------------------------|--|--|--|
| 4(3) | 19 (2.1), (2.2) and (2.3) FA | Restricts automatic ATTs, issued as a condition of a licence, to those required for going to a range or club within the province of residence, and to new acquisitions | Automatic ATTs for going to a range or club do not apply to 12(9), 12(11) and 12(14) firearms. |

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| 6 | 54(1) FA | Correlative change | |
| 8 | 61 (3.1) FA | Correlative change | |
| 15 | 135.1 FA | Provides for the revocation of existing ATT issued as conditions attached to a licence, except those for the purpose of going to and from a range/shooting club within the province of residence, and taking possession of a newly acquired firearm. | For all visits to a gun smith, gun show, CFO's office, as well as going to and from a port of entry/exit, a traditional ATT will need to be applied for again. Existing ATTs issued as a condition of a licence will be revoked. Monitoring the implementation of these provisions will be paramount, so as to avoid inadvertent paper crimes. |

Group 5

Notice to reader: These provisions will come into effect (likely simultaneously) on a day to be fixed by OIC.

Summary of Key Group 5 Provisions

Transfers of Non-restricted Firearms

There are two novelties here. First, showing one's firearms licence upon acquisition of a non-restricted firearm is no longer sufficient. It will now be mandatory to verify with the Registrar (i.e. RCMP) whether the transferee's licence is valid and whether the transferee remains eligible to hold such licence. If the transferee is deemed to still be eligible to hold a licence, the Registrar will issue a "reference number".

The latter may result in delays in getting transfers approved, since a significant number of license holders have had their license either "suspended" or put "under review", albeit not officially revoked.

Obtaining a reference number is a mandatory requisite to transfer a non-restricted firearm. Failure to observe these provisions may result in criminal prosecution and/or revocation of a licence.

Further to the transfer, the Registrar must be notified that the transfer has been completed. The Registrar is directed to keep records of all transfers of non-restricted firearms. But, officially, this is not a long gun registry!

The following table summarizes those provisions of Bill C-71

| Provision of C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. CC: Criminal Code FA: Firearms Act | Purpose and Effect | Remarks |
|--------------------------|--|--|---|
| 5 | 23, 23.1 FA | Amends s. 23 and 23.1 of the Firearms Act. Creates a mandatory process for the verification of validity of the transferee's licence upon the transfer of a non-restricted firearm, and the issuance of a reference number. | <p>It looks like a registry, it smells like a registry, it feels like a registry, but you have to believe Ralph Goodale that it is not a registry.</p> <p>Failure to follow the mandatory process exposes an individual to criminal prosecution under s. 101 CC, even if the Transferee holds a valid licence and remains eligible to do so.</p> <p>Upon an application for a reference number, the registrar must verify whether the transferee is eligible to hold a licence. Arguably, the</p> |

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| | | | Registrar may trigger a licence review process, especially since the eligibility criteria have changed. There will also be circumstances, where a refusal or delay will signal that an individual's licence is under review and that a notice of revocation may be expected in the near future. |
| 9,10, 11 | 70 (1) a), 85(1), 85 (1) b), 85 (2), 90 (1) a) FA | Section 9 makes failure to observe the Reference Number process a reason for the revocation of a licence. Section 10 mandates that the Registrar shall keep records of all information provided for the purpose of obtaining transfer numbers. Further to the issuance of a reference number (valid for 30 days) the registrar is to be informed when the transfer is completed. Section 9.1 | |
| 13(1) | 117 (c.1) FA | Provides for the power to enact regulations prescribing the information to be provided upon an application for a | |

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| | | reference number | |
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Group 6

Summary of Key Group 6 Provisions

Notice to reader: These provisions will come into effect (likely simultaneously) on a day to be fixed by OIC, **which cannot be before the provisions of Group 5 are implemented.**

Records to be kept by Firearms Businesses

These provisions require firearms businesses to keep records of all non-restricted firearms transactions.

The following table summarizes those provisions of Bill C-71

| Section of Bill C-71 | Provisions of existing legislation that are being either amended, repealed, or added to. CC: Criminal Code FA: Firearms Act | Purpose and effect | Remarks |
|-----------------------------|--|--|---|
| 7 | 58.1 FA | Mandates that firearms businesses keep records of all non-restricted firearms transactions and maintain those records for 20 years | Repeat after me: But it is not a registry!!!! |

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| 13(3) | 117 (n.1) | Correlative change providing for regulations to be enacted to govern transmission of records between a firearms business and government officials. | Ditto |
| 14 | 126.1 FA | Deems conditions (regarding records of non-restricted firearms businesses) to be included in any firearms business licence | Ditto!!!! |