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Bill C-19: An Act to amend the Criminal Code and the Firearms Act

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Legislative Summary of Bill C-19

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-19: AN ACT TO AMEND THE CRIMINAL CODE AND THE FIREARMS ACT

1 BACKGROUND

On 25 October 2011, the Minister of Public Safety introduced Bill C-19, An Act to amend the Criminal Code and the Firearms Act (short title: Ending the Long-gun Registry Act), in the House of Commons, and the bill was given first reading. The summary of the bill states that it amends the *Criminal Code*¹ and the *Firearms Act*² to remove the requirement to register firearms that are neither prohibited nor restricted. The bill also provides for the destruction of existing records, held in the Canadian Firearms Registry and under the control of firearms officers, which relate to the registration of such firearms.

1.1 CANADA'S FIREARMS SCHEME BEFORE THE *FIREARMS ACT*³

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

Canada's firearms scheme was significantly amended by changes made to the *Criminal Code* in 1977.⁴ The major change 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. Further amendments, including the introduction of new regulatory powers, were enacted in 1991. These amendments changed the screening requirements before an FAC could be acquired by adding a mandatory training course, a detailed questionnaire, a reference check, and a 28-day waiting period.⁵

1.2 THE *FIREARMS ACT*⁶

In 1995, Parliament passed the *Firearms Act*, most of which came into force in December 1998. The Act and its accompanying regulations govern the possession, transport, and storage of firearms. The main purpose of the Act was examined by the Supreme Court of Canada in the *Reference re Firearms Act*.⁷ In the decision, handed down in 2000, public safety was identified as the main purpose of the regime. More specifically, the Supreme Court observed that the registry was an attempt to bring an end to the problems arising from the criminal or dangerous use of firearms, in cases such as suicide, accidental shootings and domestic violence. In short, the firearms registry sought to deter the improper use of firearms and control access to them based on the person filing the application and the type of firearm.

Federal laws are not exclusive in governing the firearms regime. In the reference case concerning the *Firearms Act*, the Supreme Court of Canada was asked whether the licensing and registration provisions of the Act, as they relate to ordinary firearms, were within Parliament's jurisdiction. The Supreme Court concluded that the *Firearms Act* constituted a valid exercise of Parliament's jurisdiction over criminal law, as set out in section 91(27) of the *Constitution Act, 1867*. The Court found that the effects of the *Firearms Act* amendments in 1995 were, in essence, to promote public safety; the regulation of guns as dangerous products was found to be a valid purpose within the criminal law power. The Court also concluded that there was an overlap with the provincial power over property and civil rights under section 92(13) of the *Constitution Act, 1867*, but that "we cannot draw sharp lines between criminal law and property and civil rights."⁸ Since firearms regulation is an area of overlapping jurisdiction between the federal and provincial governments, the legislation of one level of government may have an incidental effect on the authority of the other level of government. If those effects are merely incidental, the law will be found to be valid.

The Act also works as a complement to Part III of the *Criminal Code*, which lists and defines the various categories of firearms and identifies certain offences – along with the applicable sentences – related to unlawful possession or misuse.

The legislation was and remains controversial, particularly the requirement to hold both a licence and a registration certificate in respect of *all* firearms. The individual firearm owner must possess a licence, showing that he or she has met specific safety requirements and is authorized to own and use a firearm, while the firearm itself has a registration certificate attached to it, tying it to a particular owner. An analogy may be drawn to a driver's licence, which attests that an individual is fit to drive, and a vehicle registration, which ties a particular vehicle to a particular owner.

1.3 LICENSING REQUIREMENTS, WITH DIFFERENT CLASSES OF FIREARMS

Since 1 January 2001, all individuals have been required to hold a firearms licence in order to lawfully possess or acquire a firearm, and to buy ammunition. As a general rule, applicants for a Possession and Acquisition Licence (PAL), the only licence currently available to new applicants, must have passed the Canadian Firearms Safety Course. A Possession Only Licence (POL) is available to those who lawfully possessed a firearm when the *Firearms Act* came into force on 1 December 1998 and do not intend to acquire any new firearms. The requirements for a POL are less strict than those for a PAL, in that the individual is not required to pass a firearms safety course, for example. However, individuals were required to apply for this type of licence before 1 January 2001 and to renew it before it expired. Generally speaking, for adult firearms owners, both types of licences are in effect for five years and must then be renewed.⁹

A firearms licence sets out the class of firearms for which it is valid: prohibited firearms, restricted firearms, or firearms that are neither prohibited nor restricted. Prohibited and restricted firearms are defined in section 84 of the Code. Firearms that are neither prohibited nor restricted are commonly called "non-restricted" or "long guns," which is a non-statutory term for shotguns and rifles (e.g., hunting rifles).

A “prohibited firearm” means:

- a handgun (except for certain prescribed handguns used in international sporting competitions) that has a barrel equal to or less than 105 mm in length, or is designed or adapted to discharge a 25- or 32-calibre cartridge;
- a firearm that is adapted from a rifle or shotgun, whether by sawing, cutting or any other alteration, so that it is less than 660 mm in length, or is 660 mm or greater in length and has a barrel measuring less than 457 mm in length;
- an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger; or
- any firearm that is prescribed to be a prohibited firearm.¹⁰

Individuals are allowed to possess certain firearms that are now prohibited if the firearms were registered when they became prohibited and if the individuals have continuously held a valid registration certificate for that type of prohibited firearm since 1 December 1998. The margins of the *Firearms Act* refer to this provision as being “grandfathered.”

A “restricted firearm” means:

- a handgun that is not a prohibited firearm;
- a firearm that is not a prohibited firearm, has a barrel measuring less than 470 mm in length, and is capable of discharging centre-fire ammunition in a semi-automatic manner;
- a firearm that is designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping or otherwise; or
- a firearm of any other kind that is prescribed to be a restricted firearm.¹¹

Restricted firearms are allowed only for approved purposes such as target shooting or as part of a collection.

1.4 REGISTRATION REQUIREMENTS

Under the *Firearms Act*, all firearms, including shotguns and rifles, were required to be registered by 1 January 2003. Every registered firearm is given a separate registration certificate, which is valid for as long as the person owns the firearm and the firearm continues to be a firearm. All transfers of firearms made after 1 December 1998 also require approval, so that a new registration certificate can be issued to the new owner.¹²

An amnesty is currently in place to protect certain individuals from criminal liability for unauthorized possession of an unregistered, non-restricted firearm, while they are taking steps to comply with the licensing and registration requirements of the *Firearms Act*. The amnesty, which is in effect until 16 May 2013, applies only to individuals who hold a valid firearms licence or who held a licence that expired on or after 1 January 2004.¹³

1.5 OTHER REQUIREMENTS

Although it is the licensing and registration provisions of the *Firearms Act* that are likely to have the most impact on individual firearms owners, the legislation and its accompanying regulations address many other activities related to firearms. For example, there are provisions dealing with the storage, display, transportation and handling of firearms, the exporting and importing of firearms, authorizations to transport or carry restricted or prohibited firearms, conditions for transferring firearms and details relating to gun shows, shooting clubs and shooting ranges.

1.6 THE CANADIAN FIREARMS PROGRAM AND THE REGISTRY

The Canadian Firearms Program (CFP) was created in 1996 to oversee the administration of the *Firearms Act* and the accompanying regulations. In 2006, responsibility for the CFP was transferred to the RCMP. The CFP's objective is "to help reduce firearms-related death, injury and crime and to promote public safety through universal licensing of firearms owners and registration of firearms in Canada."¹⁴

The CFP provides operational support through its database, the Canadian Firearms Information System (CFIS), which contains the names of firearms licence holders and registration certificates. The ability to match a firearm to its owner is, therefore, the foundation of the CFIS.

The Canadian firearms registry is a subset of the information contained in the CFIS. According to the RCMP, its goal is to assist police officers by allowing them to better evaluate risks when responding to calls and conducting investigations. Police have access to the registry in vehicle computers through the Canadian Police Information Centre. Information in the registry is updated daily and provides information to police officers about the presence of legal firearms at a particular location, allowing for the identification of lost or stolen firearms and for details about the source of a firearm left at a crime scene. Police officers can extract information from the registry concerning a firearm or its owner based on a licence number, serial number, registration certificate number, address, name, or telephone number.

Delivery of the CFP depends on the existing partnership between the federal government, the provincial governments and law enforcement agencies. The federal government contributes funds to the provinces that are responsible for the administrative work relating to various aspects of the Act, such as processing licences and registration certificates. It should be noted that not all of the Canadian provinces have opted to enter into such agreements with the federal government. There are currently five provincial governments federally funded for the delivery of the CFP: Nova Scotia, Prince Edward Island, New Brunswick, Quebec and Ontario.¹⁵

Should the long-gun registry be eliminated at the federal level, it has been argued that a province could still regulate firearms so long as it does not trench upon Parliament's jurisdiction over criminal law. As the Supreme Court noted in the *Reference re Firearms Act*, most provinces already have in place regulations dealing with hunting, discharge within municipal boundaries, and other aspects of firearm use, and these have all been found to be legitimate subjects of provincial regulation.

The analogy to the registration of motor vehicles is often used in this context. There are registries of vehicles in each province, which aids in many tasks, such as assessing parking fines and the use of red light cameras. It is accepted that these registries are within the jurisdiction of the provinces, and a similar type of registry could possibly be implemented for long guns. As the Supreme Court noted in the *Firearms Reference*, the “double aspect doctrine” permits both levels of government to legislate in one jurisdictional field for two different purposes.¹⁶ In this instance, the federal government has stepped into the area to regulate public safety while the provinces still have the legislative authority to regulate firearms as items of property.

1.7 CANADIAN FIREARMS PROGRAM FACTS AND FIGURES

The CFP has produced statistics on various aspects of firearms licensing and registration.¹⁷

1.7.1 LICENCES

Table 1 shows the numbers of valid firearms licences as of September 2011.

Table 1 – Valid Firearms Licences as of September 2011

Province/Territory	Possession Licence	Possession and Acquisition Licence	Minor Licence	Total	Per 100,000 Population (2006 Census)
Alberta	62,864	160,672	1,351	224,887	6,849
British Columbia	77,056	147,979	416	225,451	5,479
Manitoba	27,476	52,935	300	80,711	7,037
New Brunswick	41,359	31,911	120	73,390	10,063
Newfoundland and Labrador	28,181	45,028	154	73,363	14,514
Northwest Territories	540	4,580	48	5,168	12,464
Nova Scotia	41,519	32,810	1,121	75,450	8,260
Nunavut	51	2,936	8	2,995	10,161
Ontario	195,689	324,631	3,531	523,851	4,308
Prince Edward Island	3,396	3,050	19	6,465	4,759
Quebec	173,042	323,450	21	496,513	6,572
Saskatchewan	31,267	60,158	82	91,507	9,457
Yukon	1,095	5,168	43	6,306	20,763
<i>Total</i>	<i>683,535</i>	<i>1,195,308</i>	<i>7,214</i>	<i>1,886,057</i>	<i>5,966</i>

Source: Royal Canadian Mounted Police, “[Canadian Firearms Program](#),” *Facts and Figures (July–September 2011)*.

1.7.1.1 LICENCE REFUSALS AND REVOCATIONS

Licensing of an individual to possess firearms requires a variety of background checks. Applicants are screened to detect potential public safety risks based on information provided with a firearms licence application. Continuous eligibility screening is conducted over the term of the licence to identify any public safety risks that may arise over time. A licence may also be revoked following a court order or a chief firearm officer’s investigation resulting from a call to the CFP’s public safety line. The Registrar is notified of all licence revocations, is responsible for revoking all associated registration certificates, and works to ensure proper disposal of the firearms. The reasons for licence refusals or revocations include a history of

violence, mental illness, potential risk to oneself or others, unsafe firearm use and storage, drug offences and providing false information.¹⁸

Tables 2 and 3 summarize firearms licence refusals and revocations from 2006 to 2011.

Table 2 – Firearms Licence Refusals by Year

Year	Refused Applications
2006	391
2007	438
2008	461
2009	513
2010	570
2011 (to 30 September)	395

Source: Royal Canadian Mounted Police, "[Canadian Firearms Program](#)," *Facts and Figures (July–September 2011)*.

Table 3 – Firearms Licence Revocations by Year

Year	Licences Revoked
2006	2,065
2007	1,748
2008	1,834
2009	2,075
2010	2,229
2011 (to 30 September)	1,762

Source: Royal Canadian Mounted Police, "[Canadian Firearms Program](#)," *Facts and Figures (July–September 2011)*.

1.7.2 FIREARMS REGISTERED

Table 4 shows, by category and province, the number of firearms that were registered as of September 2011.

Table 4 – Firearms Registered as of September 2011

Province/Territory	Non-restricted Firearms	Restricted Firearms	Prohibited Firearms	Total	Per 100,000 Population (2006 Census)
Alberta	931,524	96,444	24,564	1,052,532	32,054
British Columbia	844,611	99,482	28,432	972,525	23,635
Manitoba	352,222	19,480	6,044	377,746	32,933
New Brunswick	276,035	12,125	5,234	293,394	40,229
Newfoundland and Labrador	206,685	4,213	1,583	212,481	42,036
Northwest Territories	18,903	1,104	326	20,333	49,038
Nova Scotia	288,927	16,503	7,264	312,694	34,232
Nunavut	12,584	159	42	12,785	43,377
Ontario	2,113,607	189,535	84,011	2,387,153	19,631
Prince Edward Island	21,946	1,731	816	24,493	18,029
Quebec	1,630,704	58,458	33,172	1,722,334	22,799
Saskatchewan	415,346	27,271	8,399	451,016	46,609
Yukon	24,292	1,818	398	26,508	87,278
<i>Total</i>	<i>7,137,386</i>	<i>528,323</i>	<i>200,285</i>	<i>7,865,994</i>	<i>24,882</i>

Source: Royal Canadian Mounted Police, "[Canadian Firearms Program](#)," *Facts and Figures (July–September 2011)*.

1.7.3 QUERIES

Table 5 shows the average number of daily queries to the Canadian Firearms Registry between 2004 and 2011.

Table 5 – Average Daily Queries to the Canadian Firearms Registry Online

Type	2004	2005	2006	2007	2008	2009	2010	2011 (to 30 September)
Individual name	1,820	2,397	4,001	4,262	6,435	7,653	10,528	12,798
Address	42	1,434	2,268	2,364	2,574	2,842	3,175	3,974
Serial no.	130	143	187	176	202	316	307	363
Licence no.	57	74	89	121	140	185	208	221
Certificate no.	13	14	15	16	19	19	16	13
Telephone no.	9	12	11	14	15	20	40	34
Other	16	17	21	21	22	50	85	83
<i>Total</i>	<i>2,071</i>	<i>4,074</i>	<i>6,570</i>	<i>6,952</i>	<i>9,385</i>	<i>11,035</i>	<i>14,273</i>	<i>17,402</i>

Source: Royal Canadian Mounted Police, "[Canadian Firearms Program](#)," *Facts and Figures (July–September 2011)*. That report notes that totals may not match the sum of the components due to rounding.

1.8 CANADIAN FIREARMS PROGRAM EVALUATIONS

The following is a brief overview of the various evaluations of the CFP that have been conducted to date.

1.8.1 CANADA FIREARMS CENTRE MANAGEMENT CONTROL FRAMEWORK AUDIT FINAL REPORT (MAY 2010)

The objective of this internal evaluation was to ensure that the Canada Firearms Centre (CAFC) Management Control Framework (MCF) was adequate and effective to support its activities, and that operational processes were conducted in a manner consistent with the *Firearms Act* and related regulations. There were five audit recommendations. It was found that overall the CAFC MCF was adequate, effective and consistent with legislation.¹⁹

1.8.2 RCMP CANADIAN FIREARMS PROGRAM EVALUATION FINAL APPROVED REPORT (FEBRUARY 2010)

The scope of this strategic evaluation of the CFP is said to be limited to the direct costs incurred by CFP and RCMP partners in the administration of the CFP. It touches upon various issues, including success and cost-effectiveness. A total of 17 findings and 33 recommendations were made. Some refer specifically to the effectiveness and use of the firearms registry.²⁰

1.8.3 ANNUAL REPORT OF THE COMMISSIONER OF FIREARMS

This report is prepared by the RCMP CFP in accordance with section 93 of the *Firearms Act*, which requires the Commissioner of Firearms to table an annual report to Parliament. The latest report, from 2009, contains statistics on all aspects of the CFP, as well as examples of how law enforcement agencies use the registry.²¹ The Commissioner of the RCMP has appointed the Commissioner of Firearms since responsibility for the CFP was assigned to the RCMP in 2006.

1.8.4 REPORT OF THE AUDITOR GENERAL (MAY 2006)

In May 2006, the Office of the Auditor General of Canada released a report in which the CFP was reviewed.²² The Office noted that as of March 2005 the costs of the CFP totalled \$946 million and annual funding was set at \$82.3 million. It found that the CFC had made satisfactory progress in implementing the Auditor General's 2002 recommendation regarding proper financial reporting, except with respect to reporting two large amounts relating to the CFIS. There had been improved operational management since the CFC became a separate agency in 2003, particularly with processing a large volume of applications and creating the infrastructure for a stand-alone department. While contracting practices had improved, certain problems remained.

The 2006 report of the Auditor General also noted concerns about the quality of the data in the CFIS (e.g., client addresses and firearm serial numbers). It pointed out, furthermore, that the CFC did not know the status of 62% of the firearms for which registration certificates had been revoked between July and October 2005 due to expired licences. The report also mentioned that while the CFIS relied on local police to enforce revocations, there was a lack of communication between police and the CFC. Finally, the Auditor General noted delays and increased costs associated with the implementation of a second phase of the CFIS, primarily as a result of legislative changes.

1.8.5 DEPARTMENT OF JUSTICE COMMISSIONED REPORT (2003)

A 2003 report commissioned by the Department of Justice focused on the economic aspects of the firearms registry.²³ It proposed certain managerial, technological, and procedural changes in the manner in which the firearms registry is administered to make it more efficient for both the administrators of the system and gun owners who register their firearms and to reduce the costs of the registry.

1.9 CANADIAN FIREARMS PROGRAM FUNDING

There do not appear to be any figures available concerning the registry operating costs specifically related to non-restricted firearms (or "long guns"), as opposed to restricted or prohibited firearms. It should also be noted that the costs listed in the latest RCMP departmental performance reports do not distinguish between administration costs and maintenance and upgrading costs. That being said, the facts and figures shown in Table 6 have been made public.

Table 6 – Program Activity: Canadian Firearms Centre

	2009–2010 Financial Resources (\$millions)			2009–2010 Human Resources (FTEs)		
	Planned Spending	Total Authorized Spending	Actual Spending	Planned Number	Actual Number	Difference
Firearms registration	22.1	23.5	8.5	125	53	-72
Firearms licensing and support infrastructure	56.2	62.3	49.6	277	272	-5

Source: Royal Canadian Mounted Police, "[Section II – Analysis of Program Activities by Strategic Outcomes](#)," 2009–2010 Departmental Performance Report.

In its evaluation report of February 2010, the RCMP noted the direct and indirect costs²⁴ related to the administration of the CFP (Table 7).

Table 7 – Direct and Indirect Costs Incurred by the Canadian Firearms Program/RCMP in the Administration of the Canadian Firearms Program

Organization	Past Expenditures (1995–1996 to 2006–2007) (\$millions)	Actual 2007–2008 Expenditures (\$millions)	Actual 2008–2009 Expenditures (\$millions)	Planned Spending 2009– 2010 (\$millions)	Planned Spending 2010– 2011 (\$millions)
Direct Costs					
Canada Firearms Program	726.1	47.6	50.8	59.5	59.5
Royal Canadian Mounted Police ^a	117.2	0.0	0.0	0.0	0.0
Other Federal Government Departments (costs reimbursed by the Canadian Firearms Program)					
Canada Border Services Agency	22.3	1.7	1.6	1.7	1.7
Department of Justice	2.0	0.6	0.7	0.8	0.8
Public Works and Government Services Canada	1.8	0.9	0.8	0.0	0.0
Human Resources Development Canada ^b	32.7	0.0	0.0	0.0	0.0
Transfer payments to provinces	202.0	12.5	13.6	14.2	14.2
Contribution payments to Aboriginal communities, other communities	2.0	0.2	0.0	0.3	0.3
<i>Total direct costs</i>	<i>1,106.1</i>	<i>63.5</i>	<i>67.5</i>	<i>76.5</i>	<i>76.5</i>
Indirect Costs					
Costs Not Reimbursed by the Canada Firearms Program					
Public Safety and Emergency Preparedness Canada	1.5	0.2	0.3	0.3	0.3
Royal Canadian Mounted Police	4.3	0.0	0.0	0.0	0.0
Royal Canadian Mounted Police – NWEST	8.5	0.0	0.0	0.0	0.0
Canada Border Services Agency	7.4	0.0	0.0	0.0	0.0
Correctional Service Canada	45.5	9.4	9.3	9.3	9.3
National Parole Board	6.0	0.9	0.9	0.9	0.9
Department of Justice	11.1	0.0	0.0	0.0	0.0
International Trade Canada	0.4	0.0	0.0	0.0	0.0
Public Works and Government Services Canada	16.9	1.9	1.7	2.1	2.0
Other	11.0	1.7	2.0	2.0	2.0
<i>Total indirect costs</i>	<i>112.6</i>	<i>14.1</i>	<i>14.2</i>	<i>14.6</i>	<i>14.5</i>
<i>Total program costs</i>	<i>1,218.7</i>	<i>77.6</i>	<i>81.7</i>	<i>91.1</i>	<i>91.0</i>
<i>Net revenues^c</i>	<i>(128.4)</i>	<i>(7.1)</i>	<i>(22.2)</i>	<i>(24.6)</i>	<i>(24.6)</i>
<i>Net program costs</i>	<i>1,090.3</i>	<i>70.5</i>	<i>59.5</i>	<i>66.5</i>	<i>66.4</i>

- Notes:
- a. Reflects direct costs reimbursed by the Department of Justice/CFP to the RCMP before 17 May 2006. Starting in 2006–2007, direct and indirect costs incurred by the RCMP in support of the Firearms Program were to be included within CFP's direct operating costs.
 - b. HRSDC no longer provides support services to the CFP for the Central Processing Site in Miramichi, N.B.
 - c. Revenues are credited to the Consolidated Revenue Fund and are not available as offsets to expenditures.

Source: Royal Canadian Mounted Police, [Canadian Firearms Program Evaluation: Final Approved Report](#), February 2010, pp. 14–15.

2 DESCRIPTION AND ANALYSIS

Bill C-19 contains 31 clauses. The following description highlights selected aspects of the bill; it does not review every clause.

2.1 AMENDMENTS TO THE *CRIMINAL CODE* (CLAUSES 2–8)

Bill C-19 amends the *Criminal Code* so that failure to hold a registration certificate for a firearm that is neither restricted nor prohibited does not give rise to any of the offences relating to unauthorized possession of a firearm, and does not allow police to seize that firearm.

2.1.1 OFFENCES RELATING TO POSSESSION OF A FIREARM (CLAUSES 2–5)

Section 91 of the Code makes it an offence to possess a firearm without both a licence and a registration certificate. Bill C-19 amends this section so that it is an offence to be without a registration certificate for a prohibited or restricted firearm, but not for a non-restricted firearm (clause 2(1)). It will remain an offence to possess any firearm without holding the appropriate licence.

This section specifies that an individual who comes into the possession of a firearm by the operation of law (e.g., through inheritance) may avoid criminal liability by lawfully disposing of the firearm, or obtaining a licence and registration certificate. Bill C-19 further amends section 91 of the Code so that it is necessary to obtain a registration certificate only in the case of a prohibited or restricted firearm (clause 2(2)). It also repeals a section of the Code that exempts individuals from criminal liability for failing to hold a registration certificate for a non-restricted firearm, if they hold a licence and borrowed the firearm in order to sustain themselves through hunting or trapping (clause 2(3)). The exemption becomes unnecessary under Bill C-19, as a registration certificate will no longer be necessary for *any* non-restricted firearm.

Section 92 of the Code makes it an offence to possess a firearm *knowing* that one does not hold both a licence and registration certificate. This is a more serious offence than the offence provided for under section 91, given the *mens rea*, or mental requirement. Bill C-19 makes amendments so that no offence is committed if a person does not hold a registration certificate for a firearm that is neither restricted nor prohibited. A person who comes into possession of a non-restricted firearm need only obtain a licence to avoid liability, and a provision for what would therefore become an unnecessary exemption for certain hunters and trappers is repealed (clause 3).

Section 94 of the Code makes it an offence to occupy a motor vehicle knowing that there is a firearm in it, unless somebody in the vehicle holds the necessary licence, authorization and registration certificate, or one reasonably believes that somebody else does. Bill C-19 amends this section so that possession of a registration certificate is required only in the case of prohibited and restricted firearms (clause 4). It also clarifies that, for the purpose of criminal law, the need to hold an authorization

(e.g., to transport)²⁵ applies only to prohibited and restricted firearms. Additionally, section 94(5) is repealed because an exemption to allow certain hunters and trappers to carry a non-restricted firearm in a motor vehicle without a registration certificate would no longer be necessary.

Bill C-19 amends section 95 of the Code, regarding unauthorized possession of prohibited or restricted firearms with ammunition, by making a non-substantive wording change to the English version (clause 5). This is merely a technical amendment and no other changes are required, as the offence already does not apply to non-restricted firearms.

2.1.2 DESTRUCTION OF A FIREARM (CLAUSE 6)

Section 106 of the Code makes it an offence to fail to report destroying any firearm, prohibited weapon, restricted weapon, prohibited device, and any prohibited ammunition with “reasonable dispatch.” It is also an offence to fail to report the destruction of such items that were in one’s possession on becoming aware of the destruction. Clause 6 of Bill C-19 amends this section to limit its application to the destruction of any prohibited or restricted firearm.

2.1.3 TAMPERING WITH THE SERIAL NUMBER OF A FIREARM (CLAUSE 7)

Section 108 of the Code makes it an offence to, without lawful excuse, alter, deface, or remove a firearm’s serial number or possess a firearm knowing that the serial number has been altered, defaced, or removed. Section 108(3) provides a defence where the serial number has been replaced and a registration certificate has been issued setting out the new serial number. Clause 7 amends section 108(3) so that the defence of a new registration certificate being issued applies only in the case of any prohibited or restricted firearm, since these are the only firearms that will require registration certificates.

2.1.4 SEIZURE OF A FIREARM (CLAUSE 8)

Section 117.03 of the Code allows police to seize a firearm if an individual fails, on demand, to produce a licence and registration certificate, unless he or she is otherwise authorized to possess the firearm, or is under the supervision of another person who may lawfully possess the firearm. Bill C-19 amends this section so that seizure is permitted on the basis of failure to produce a registration certificate for a prohibited or restricted firearm, but not a non-restricted firearm (clause 8). Seizure on the basis of failure to produce a licence continues to apply in the case of all firearms.

Section 117.03 of the Code is further amended so that a person wishing to claim a seized firearm within 14 days of seizure must produce a registration certificate to claim a prohibited or a restricted firearm only, but not to claim a non-restricted firearm.²⁶

2.2 AMENDMENTS TO THE *FIREARMS ACT* (CLAUSES 9–28)

Bill C-19 amends several sections of the *Firearms Act*, primarily to reflect the change that registration certificates will no longer be required for firearms that are neither restricted nor prohibited.

2.2.1 PURPOSE OF THE ACT (CLAUSE 9)

Under Bill C-19, section 4 of the Act states that, in order to allow possession of a firearm in circumstances that would otherwise constitute a criminal offence, the legislation provides for licences with respect to all firearms, but authorizations and registration certificates with respect to prohibited and restricted firearms only.²⁷

2.2.2 TRANSFERRING, LENDING, IMPORTING AND EXPORTING FIREARMS (CLAUSES 11–18)

Bill C-19 removes the need for a new registration certificate to be issued upon the transfer of a non-restricted or a non-prohibited firearm to an individual, and therefore the need for the transferor to inform the Registrar of Firearms of the transfer (clause 11). However, new section 23.1 provides that, in the case of a firearm that is neither restricted nor prohibited, a transferor may request that the Registrar of Firearms tell the transferor whether the transferee holds and is still eligible to hold the required licence.

New section 23.2 deals with the transfer of a prohibited or restricted firearm. For these classes of firearms, the current rules on transfer apply, such as informing a chief firearms officer of the transfer and obtaining his or her authorization. Clause 13 of Bill C-19 amends section 27 of the *Firearms Act* to reflect the notification of the chief firearms officer set out in new section 23.2.

Clause 14 amends section 33(a)(ii) of the Act to specify that, when lending a firearm to a person with the necessary licence, a registration certificate must be lent along with it for prohibited and restricted firearms only. A similar amendment is made regarding the lending of a firearm to a federal or provincial government, a police force or a municipality (clause 15).

Current section 35 of the *Firearms Act*, allowing a non-resident who does not hold a firearms licence to import a firearm if he or she declares the firearm to a customs officer in the prescribed manner, applies to all firearms that are not prohibited. Section 36 of the *Firearms Act* states that this declaration has the same effect as a licence authorizing the non-resident to possess only that firearm and as a registration certificate for it. Bill C-19 amends this provision to allow the declaration to have the effect of a registration certificate for restricted firearms only (clause 16). The current provision that the non-resident may possess a non-prohibited, non-restricted firearm for 60 days following its importation or he or she may possess a restricted firearm for 60 days or until the authorization to transport expires, whichever occurs first, remains, but clause 16 rearranges the wording.

Bill C-19 amends section 38(1)(a)(ii) of the *Firearms Act*, which is not yet in force. This section stipulates that if a licensed individual wishes to export a firearm, he or she must show the border services officer a registration certificate (in addition to other required documentation). Under the bill, this requirement applies to prohibited or restricted firearms only (clause 17).

Finally, clause 18 amends section 44(a) of the *Firearms Act*, which is not yet in force, requiring that a business wishing to obtain an authorization to export a firearm hold a registration certificate. Bill C-19 restricts the application of the section to prohibited firearms or restricted firearms.

2.2.3 ADMINISTRATIVE MATTERS AND OFFENCES (CLAUSES 19–28)

Bill C-19 amends section 60 of the Act to indicate that the Registrar of Firearms is responsible for issuing registration certificates for prohibited and restricted firearms only (clause 19). No such limitation is listed for authorizations to export and import firearms.

Section 66 of the Act, governing the expiry of a registration certificate, is amended so that it applies only to prohibited and restricted firearms (clause 20). Such a registration certificate expires when its holder ceases to be the owner of the firearm or the firearm ceases to be a firearm. Section 71, regarding the revocation of a registration certificate for any good and sufficient reason, is similarly amended (clause 21), as is section 72, governing notice to an individual when a registration certificate is revoked (clause 22).

Section 83 of the Act is amended so that the Registrar is required to keep records of registration certificates, and applications for registration certificates, for prohibited and restricted firearms, but not for non-restricted firearms (clause 23).

Section 88 of the Act is amended so that the loss, finding, theft or destruction of prohibited or restricted firearms need be made known only to the Registrar of Firearms by the chief firearms officer who took the report (clause 24).

Section 105 of the Act is amended so that an inspector may demand production of a firearm for the purpose of ensuring that an individual is the holder of a registration certificate only in the case of a prohibited or restricted firearm (clause 26).

Section 112 of the Act currently sets out a lesser offence than those under sections 91 and 92 of the Code for individuals who commit a first offence of possession of a non-restricted firearm without a registration certificate. As registration certificates are no longer required for non-restricted firearms under Bill C-19, section 112 is repealed (clause 27), and a reference to section 112 in section 115 is removed (clause 28).

Finally, the offence of failing to deliver up a licence, a registration certificate, or an authorization to a peace officer or firearms officer after the document has been revoked is amended in section 114, so that revocation of a registration certificate applies to prohibited and restricted firearms only (also clause 28).

2.3 TRANSITIONAL PROVISIONS (CLAUSE 29)

Clause 29 of Bill C-19 requires the prompt destruction of records in the registry relating to the registration of non-restricted firearms.

Currently, under section 84 of the *Firearms Act*, the Registrar “may destroy records kept in the Canadian Firearms Registry at such times and in such circumstances as may be prescribed.” Generally speaking, under the *Firearms Records Regulations*, records in the registry must not be destroyed until 10 years “after the date of the last administrative action taken regarding the information in the record”,²⁸ however, currently, a record in the registry “of a registration certificate that is issued or revoked shall not be destroyed.”²⁹

The *Privacy Act*³⁰ and the *Library and Archives of Canada Act*³¹ also have provisions for the retention and destruction of personal information held by government institutions. In particular, section 6(1) of the *Privacy Act* requires a government institution to retain personal information that has been used for an administrative purpose for the prescribed period of time in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information. Under section 6(3), the government institution must dispose of that information in accordance with the regulations and with relevant ministerial directives or guidelines.

In addition, under sections 12 and 13 of the *Library and Archives of Canada Act*, no government record can be destroyed or otherwise disposed of without the written consent of the Librarian and Archivist of Canada or his or her delegate, and records that the Librarian and Archivist considers to have historical or archival value may be transferred to his or her care and control.

Clause 29 of Bill C-19 requires the Commissioner of Firearms to ensure the destruction, as soon as feasible, of all records in the registry related to the registration of non-restricted firearms, and all copies of those records under the Commissioner’s control. As well, all chief firearms officers must ensure the destruction, as soon as feasible, of all such records and copies under their control. Clause 29 specifies that sections 12 and 13 of the *Library and Archives Act* and sections 6(1) and 6(3) of the *Privacy Act* do not apply with respect to the destruction of these records.

These sections of those statutes are also referred to in clause 11 of Bill C-19. As discussed above, under new section 23.1(1) of the *Firearms Act*, the transferor of a non-restricted firearm may request that the Registrar of Firearms tell the transferor whether the transferee holds and is still eligible to hold the required licence. New section 23.1(2) specifies that, despite sections 12 and 13 of the *Library and Archives of Canada Act* and sections 6(1) and 6(3) of the *Privacy Act*, the Registrar shall not retain any record of that request.

NOTES

1. [Criminal Code](#), R.S.C. 1985, c. C-46.
2. [Firearms Act](#), S.C. 1995, c. 39.
3. The information in this section is adapted from William C. Bartlett, [Gun Control Law in Canada](#), Publication no. BP-378E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, April 1994. For a more detailed chronology, see Royal Canadian Mounted Police [RCMP], [History of Firearms in Canada: Up to and Including the Firearms Act](#), Revised October 2009.
4. [Criminal Law Amendment Act](#), S.C. 1976-77, c. 53.
5. *An Act to amend the Criminal Code and the Customs Tariff in consequence thereof*, S.C. 1991, c. 40 (Bill C-17). For a discussion of the 1991 amendments, see Bartlett (1994).
6. Much of the information in this section is adapted from Gérald Lafrenière, [Firearms Legislation](#), Publication no. TIPS-30E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, June 2001.
7. [Reference re Firearms Act](#), [2000] 1 S.C.R. 783.
8. *Ibid.*, para. 50.
9. For more information on the licensing process, see RCMP, "[Frequently Asked Questions](#)," *Firearms Licensing*.
10. See *Criminal Code*, s. 84.
11. *Ibid.*
12. For more information on the registration process, see RCMP, "[Frequently Asked Questions](#)," *Registration of Firearms*.
13. For more information on the amnesty, see RCMP, "[Frequently Asked Questions](#)," *Amnesty*.
14. RCMP, [Canadian Firearms Centre \(CAFC\) Management Control Framework \(MCF\) Audit: Final Report](#), May 2010, p. 3.
15. RCMP, [Canadian Firearms Program Evaluation](#), February 2010.
16. *Reference re Firearms Act*, para. 52.
17. RCMP, "[Canadian Firearms Program](#)," *Facts and Figures (July–September 2011)*.
18. *Ibid.*
19. RCMP, "[CAFC Management Control Framework Audit](#)," *Principal Findings and Management Responses*, May 2010.
20. RCMP (February 2010).
21. RCMP, [Commissioner of Firearms – 2009 Report](#).
22. Office of the Auditor General of Canada, "[Chapter 4 – Canadian Firearms Program](#)," *2006 May Status Report of the Auditor General of Canada*. The Firearms Program was also the subject of [2006 May Report of the Auditor General of Canada – Government Decisions Limited Parliament's Control of Public Spending](#). See also Public Safety Canada, "[The Long-Gun Registry: Costs and Crime Statistics](#)," Background, Ottawa.

23. HLB Decision Economics Inc., *Canadian Firearms Program Review – Business Case Assessment and Risk Analysis: Final Report*, Prepared for Department of Justice, 31 January 2003, revised 10 February 2003.
24. These costs were defined as follows in RCMP (February 2010):
 - Direct Costs*: represent those reimbursed by CFP to its partners for services/activities provided in support of the Program and agreed upon through a Memorandum of Agreement.
 - Indirect Costs*: certain costs of the CFP incurred by federal partners that are not reimbursed by CFP (see Auditor General Report – Definitions). Indirect costs can be sub-divided into two categories: those costs incurred and not reimbursed by the Program. An example would be collective bargaining salary increases that are passed on to departments by Treasury Board or, overhead costs for ministerial or infrastructure support. Secondly, indirect costs can be those that are received without charge such as accommodation and employee benefits to, for example, the Public Service Dental Plan.
25. The word “transport” is removed from the section, presumably because an authorization may not necessarily be an authorization to transport.
26. Clause 8 also makes some non-substantive wording changes to both the English and French versions.
27. Although the *Firearms Act* still requires certain authorizations with respect to non-restricted firearms (e.g., to import/export), the purpose set out in section 4(a)(i) of the Act concerns *criminal liability* in relation to possession. No *authorization* (as opposed to a licence) to possess a non-restricted firearm is required to avoid criminal liability.
28. [Firearms Records Regulations](#), SOR/98-213, s. 4(1).
29. *Ibid.*, s. 4(2).
30. [Privacy Act](#), R.S.C. 1985, c. P-21.
31. [Library and Archives of Canada Act](#), S.C. 2004, c. 11.