

**BILL S-5: THE LONG-GUN REGISTRY REPEAL ACT**

**Robin MacKay**  
**Legal and Legislative Affairs Division**

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## LEGISLATIVE HISTORY OF BILL S-5

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

### SENATE

Bill Stage	Date
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First Reading: 1 April 2009

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

**This bill did not become law before the 2<sup>nd</sup> Session of the 40<sup>th</sup> Parliament ended on 30 December 2009.**

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

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## CONTENTS

	Page
INTRODUCTION .....	1
BACKGROUND .....	2
A. Canada's Firearms Program before the <i>Firearms Act</i> .....	2
B. The <i>Firearms Act</i> .....	3
1. Licensing Requirements.....	3
2. Registration Requirements.....	4
3. Other Requirements .....	4
C. Developments in the Firearms Program.....	4
1. Non-legislative Changes .....	5
2. Report of the Auditor General .....	6
DESCRIPTION AND ANALYSIS .....	6
A. Amendments to the <i>Criminal Code</i> (Clauses 2 to 6) .....	8
1. Offences Relating to Possession of a Firearm (Clauses 2 to 5) .....	8
2. Seizure of a Firearm (Clause 6) .....	9
B. Amendments to the <i>Firearms Act</i> (Clauses 7 to 28) .....	9
1. Purpose of the Act (Clause 7) .....	9
2. Transferring, Lending, Importing and Exporting Firearms (Clauses 8 to 17) .....	10
3. Administrative Matters and Inspections (Clauses 18 to 23) .....	11
4. Business Records and Offences (Clauses 24 to 28).....	12
C. Coordinating Amendments and Coming Into Force (Clauses 29 to 30) .....	13
COMMENTARY .....	13



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BILL S-5: THE LONG-GUN REGISTRY REPEAL ACT\*

INTRODUCTION

Bill S-5, An Act to amend the Criminal Code and another Act (also called the Long-Gun Registry Repeal Act), received first reading in the Senate on 1 April 2009.<sup>(1)</sup> It is substantially similar to Bill C-21, which received first reading during the 1<sup>st</sup> Session of the 39<sup>th</sup> Parliament and to Bill C-24, which received first reading during the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament. Both bills died on the *Order Paper* when Parliament was prorogued and dissolved, respectively. The primary objective of the bill is to repeal the requirement to obtain and hold a registration certificate for a non-restricted firearm<sup>(2)</sup> (i.e., long gun, shotgun, hunting rifle, etc.).

Under Bill S-5, the Registrar of Firearms (the “Registrar”) will no longer issue, or keep records of, registration certificates for non-restricted firearms. Provisions of the *Firearms Act* regarding the expiry and revocation of registration certificates are accordingly amended, as are provisions setting out the documentation that is involved when lending, importing or exporting non-restricted firearms. Although registration certificates will no longer be involved when transferring (i.e., selling or giving) a firearm, a person transferring a non-restricted firearm

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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.

This document is based in large part on a legislative summary for a previous version of this bill, entitled *Bill C-21: An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted)* (LS-532E), prepared by Wade Riordan Raaflaub, formerly of the Library of Parliament.

- (1) Bill S-5, An Act to amend the Criminal Code and another Act was introduced by the leader of the Government in the Senate. It can be found at [http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=S-5\\_1](http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=S-5_1).
- (2) For ease of reference, the expression, “non-restricted firearm” is used here according to common usage to refer to a firearm that is neither prohibited nor restricted (see the heading “Description and Analysis” for a more detailed explanation).

to an individual will be required to seek an authorization from the Chief Firearms Officer, who will verify that the recipient is entitled to possess the firearm.

As a registration certificate will no longer be required to possess a non-restricted firearm, certain offences in the *Firearms Act* are amended or repealed. The *Criminal Code* is also amended so that failure to hold a registration certificate for a non-restricted firearm does not give rise to any of the offences relating to unauthorized possession of a firearm, and does not allow police to seize a firearm.

Although Bill S-5 removes the need to hold a registration certificate for non-restricted firearms, it does not change the requirement for all individuals to hold a licence in order to possess a firearm, and therefore to undergo a background check and pass any required safety course. Additionally, Bill S-5 will allow for regulations to require firearms businesses to record transactions relating to non-restricted firearms.

## BACKGROUND

### A. Canada's Firearms Program before the *Firearms Act*<sup>(3)</sup>

Canada has had laws restricting the possession and use of firearms since 1877, and a nationwide permit system for the carrying of small arms came into effect in the *Criminal Code* in 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 enhanced by a number of amendments to the *Criminal Code* in 1977.<sup>(4)</sup> 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

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(3) The information in this section is adapted from William Bartlett, *Gun Control Law in Canada*, BP-378E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, April 1994, <http://lpintrabp.parl.gc.ca/lopimages2/PRBpubsArchive/bp1000/bp378-e.htm>.

(4) *Criminal Law Amendment Act*, S.C. 1976-77, c. 53.

established. Further amendments, including the introduction of new regulatory powers, were enacted in 1991.<sup>(5)</sup>

## B. The *Firearms Act*<sup>(6)</sup>

In 1995, Parliament passed the *Firearms Act*,<sup>(7)</sup> most of which came into force in December 1998. The legislation was and remains very controversial, particularly the requirement to hold both a licence and registration certificate in respect of *all* firearms. The *Firearms Act* complements Part III of the *Criminal Code*, in which firearms-related offences continue to be found.

### 1. Licensing Requirements

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. This will not change under Bill S-5. The eligibility requirements for a licence will continue to be set out in the *Firearms Act*, and all applicants will still have to undergo a background check to verify that they do not pose a safety risk.

A firearms licence sets out the class of firearms for which it is valid: non-restricted, restricted or prohibited (see definitions below under “Description and Analysis”). For adult firearms owners, the two types of licences available are generally in effect for five years and must then be renewed. A “possession only” licence 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 this licence are less strict, in that the individual is not required to pass a firearms safety course, for example. However, an individual was required to apply for this type of licence before 1 January 2001 and must renew it before it expires. If an individual does not already have a possession only licence, or allows it to expire,

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(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*, TIPS-30E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, June 2001, <http://lpintrabp.parl.gc.ca/apps/tips/tips-cont-e.asp?Heading=12&TIP=38>.

(7) *Firearms Act*, S.C. 1995, c. 39.

he or she must obtain a “possession and acquisition” licence. Such licences are also necessary for anyone who wishes to acquire a firearm.

## 2. Registration Requirements

Under the *Firearms Act*, all firearms, including shotguns and rifles, were required to be registered by 1 January 2003. It became necessary for every firearm to have 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 required approval, so that a new registration certificate could be issued to the new owner. It is the registration requirement for non-restricted firearms that is eliminated by Bill S-5.

## 3. Other Requirements

Although the licensing and registration provisions of the *Firearms Act* probably 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, firearms businesses, the exporting and importing of firearms, authorizations to transport or carry restricted or prohibited firearms, conditions for transferring firearms, gun shows, shooting clubs and shooting ranges.

Bill S-5 will permit regulations in order to reintroduce requirements for businesses to keep records of transactions involving the sale, purchase or disposal of non-restricted firearms. Businesses were required to keep such records prior to 1995,<sup>(8)</sup> but the *Firearms Act* replaced this requirement with the need to inform the Registrar of all firearm transfers and other transactions, so that a new registration certificate could be issued. As Bill S-5 dispenses with the need for a registration certificate for a non-restricted firearm, the government may announce its intention to again require businesses to keep certain records.

## C. Developments in the Firearms Program

Canada’s firearms program has been the subject of non-legislative changes by the government, as well as a report by the Auditor General.

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(8) *Criminal Code*, s. 105, as it then existed.

## 1. Non-legislative Changes

In May 2006, the government introduced a series of administrative and regulatory measures regarding the firearms program, including transferring responsibility for the *Firearms Act* and regulations back to the RCMP, which took over from the formerly independent Canada Firearms Centre (CFC).<sup>(9)</sup> The annual operating budget for the program was reduced by \$10 million, and certain fee waivers and refunds were introduced.<sup>(10)</sup> The government also eliminated the need for physical verification of non-restricted firearms, and introduced a one-year amnesty to protect currently or previously licensed owners of non-restricted firearms from prosecution for failing to hold a licence and/or registration certificate.<sup>(11)</sup> The amnesty has been extended to 16 May 2009. The combined regulatory amendments extend the fee waiver associated with renewing or upgrading an existing licence, extend the amnesty which protects non-restricted firearm owners taking steps as set out in the Amnesty Order, such as obtaining a licence and/or a registration certificate, from criminal prosecution, and enable expired Possession Only Licence (POL) holders to apply for a new POL.<sup>(12)</sup>

The stated goal of extending the amnesty period is to increase the accuracy and add to the completeness and effectiveness of firearms program data in the Canadian Firearms Information System. One element of the Canadian Firearms Program is the Continuous Eligibility Screening, which is designed to ensure that any act committed by a valid firearms owner that threatens public safety is automatically brought to the attention of the provincial Chief Firearms Officer (CFO) and allows authorities to take appropriate action, including revoking a licence and seizing a firearm. Once a firearms owner becomes non-compliant (for example, when a licence expires), that individual is removed from the Continuous Eligibility Screening, thereby making it more difficult for law enforcement agencies to take pre-emptive measures to deal with higher-risk firearms owners.

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(9) SI/2006-80. This shift of responsibility was possible under the *Public Service Rearrangement and Transfer of Duties Act*, R.S.C. 1985, c. P-34. Under s. 81.1 of the *Firearms Act*, the Commissioner of the Royal Canadian Mounted Police was appointed Commissioner of Firearms.

(10) *Regulations Amending the Firearms Fees Regulations*, SOR/2006-96.

(11) *Order Declaring an Amnesty Period (2006)*, SOR/2006-95.

(12) *Order Amending the Order Declaring an Amnesty Period (2006)*, SOR/2008-147.



## 2. Report of the Auditor General

Also in May 2006, the Office of the Auditor General of Canada released a report, chapter 4 of which reviewed the Canadian Firearms Program.<sup>(13)</sup> The Office noted that the costs of the Canadian Firearms Program, as of March 2005, totalled \$946 million and that current annual funding was set at \$82.3 million. It found that the CFC had made satisfactory progress in implementing a 2002 recommendation regarding proper financial reporting, except with respect to reporting two large amounts relating to the Canadian Firearms Information System (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 been improved, certain problems remained.

The 2006 report of the Auditor General also noted concerns about the quality of the data in CFIS (e.g., client addresses and firearm serial numbers). Furthermore, the CFC did not know the status of 62% of the firearms for which registration certificates had been revoked due to expired licences between July and October 2005. It relied on local police to enforce revocations, yet 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 CFIS, primarily as a result of legislative changes.

## DESCRIPTION AND ANALYSIS

Bill S-5 eliminates the need to register firearms that are neither prohibited nor restricted. A “prohibited firearm” is defined in the *Criminal Code* as:

- 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;

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(13) *A Status Report of the Auditor General of Canada to the House of Commons*, Chapter 4, “Canadian Firearms Program,” Office of the Auditor General, Ottawa, May 2006, [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200605\\_04\\_e\\_14961.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200605_04_e_14961.html). The Firearms Program was also the subject of *Government Decisions Limited Parliament’s Control of Public Spending*, Report of the Auditor General of Canada to the House of Commons, Ottawa, May 2006, [http://www.oag-bvg.gc.ca/internet/English/parl\\_otp\\_200605\\_e\\_14966.html](http://www.oag-bvg.gc.ca/internet/English/parl_otp_200605_e_14966.html). See also Public Safety and Emergency Preparedness Canada, Highlights Document, “The long-gun registry: Costs and crime statistics,” Ottawa, last updated 16 November 2007, <http://www.publicsafety.gc.ca/media/nr/2007/nr20071116-2-eng.aspx>.

- 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 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.<sup>(14)</sup>

Individuals are allowed to possess certain firearms that are now prohibited if they had one registered when the firearm became prohibited and they have continuously held a valid registration certificate for that type of prohibited firearm since 1 December 1998. The *Firearms Act* refers to this 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 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 (including some long guns).<sup>(15)</sup>

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

Firearms that are neither prohibited nor restricted are commonly called “non-restricted” firearms. They are also often referred to as “long guns,” which is a non-statutory term for shotguns and rifles (i.e., hunting rifles). For ease of reference, the term “non-restricted” will be used in the description and analysis that follow.

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(14) *Criminal Code*, R.S.C. 1985, c. C-46, s. 84.

(15) *Ibid.*

A. Amendments to the *Criminal Code* (Clauses 2 to 6)

Bill S-5 amends the *Criminal Code* (the “Code”) so that failure to hold a registration certificate for a non-restricted firearm does not give rise to any of the offences relating to unauthorized possession of a firearm, and does not allow police to seize a firearm.

1. Offences Relating to Possession of a Firearm (Clauses 2 to 5)

Section 91 of the Code makes it an offence to possess a firearm without both a licence and a registration certificate. Bill S-5 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 (sub-clause 2(1)). It will remain an offence to be without a licence for all firearms.

An individual who comes into the possession of a firearm by the operation of law (e.g., through inheritance) may avoid criminal liability by disposing of the firearm, or obtaining a licence and registration certificate. Bill S-5 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 (subclause 2(2)). It also repeals a subsection 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 (sub-clause 2(3)). The exemption becomes unnecessary under Bill S-5, 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 one under section 91, given the *mens rea*, or mental requirement. Bill S-5 makes amendments so that no offence is committed if a person does not hold a registration certificate for a non-restricted firearm. A person who comes into possession of a non-restricted firearm need only obtain a licence to avoid liability, and a now 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 an unauthorized 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 S-5 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)<sup>(16)</sup> applies only to prohibited and restricted firearms. Additionally, a subsection 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 is no longer necessary.

Bill S-5 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). No other changes are required, as the offence already does not apply to non-restricted firearms.

## 2. Seizure of a Firearm (Clause 6)

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 S-5 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 6). 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 if a person wishes to claim a seized firearm within 14 days of seizure, production of a registration certificate is not necessary to claim a non-restricted firearm, but only to claim a prohibited or restricted firearm.<sup>(17)</sup>

## B. Amendments to the *Firearms Act* (Clauses 7 to 28)

Bill S-5 amends several sections of the *Firearms Act* (the “Act”), primarily to reflect the change that registration certificates will no longer be required for non-restricted firearms.

### 1. Purpose of the Act (Clause 7)

Under Bill S-5, section 4 of the Act now states that, in order to allow possession of a firearm in circumstances that would otherwise constitute a criminal offence, the legislation

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(16) The word “transport” is removed from the section, presumably because an authorization may not necessarily be an authorization to transport.

(17) Clause 6 also makes some non-substantive wording changes to both the English and French versions.

provides for licences with respect to all firearms, but authorizations and registration certificates with respect to prohibited and restricted firearms only (clause 7).<sup>(18)</sup>

## 2. Transferring, Lending, Importing and Exporting Firearms (Clauses 8 to 17)

On the transfer of a non-restricted firearm to an individual, Bill S-5 removes the need for a new registration certificate to be issued, and therefore the need for the transferor to inform the Registrar of the transfer (clause 8).<sup>(19)</sup> However, the transferor of a non-restricted firearm, as in the case of prohibited or restricted firearms, must now inform the Chief Firearms Officer (CFO) of the transfer in order to obtain an authorization. When Bill C-21 was introduced, the government stated that this measure would help ensure that guns did not get into the hands of individuals who should not have them, such as convicted criminals, and assist investigators in identifying the owners of stolen firearms or in conducting criminal investigations.<sup>(20)</sup>

Accordingly, the transfer of any firearm will be subject to section 27 of the Act, which is amended by removing the reference to prohibited and restricted firearms (clause 9). Now, in the case of *all* firearms, the CFO must verify whether the transferee holds a licence, whether the transferee is still eligible to hold that licence, and whether the licence authorizes the transferee to acquire that kind of firearm. The need for the CFO to inform the Registrar of an approval remains necessary only for prohibited and restricted firearms, as only those transfers will require new registration certificates to be issued.

With respect to lending a firearm to a person with the necessary licence, the registration certificate must also be lent for prohibited and restricted firearms only, given that certificates are no longer required for non-restricted firearms (clause 10). A similar amendment is made regarding the lending of a firearm to Her Majesty, a police force or a municipality (clause 11).

If unlicensed non-residents wish to import a firearm other than a prohibited firearm, they must satisfy the border services officer that they hold a registration certificate in the

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(18) Although the *Firearms Act* still requires certain authorizations with respect to non-restricted firearms (e.g., to import/export), the purpose set out in subparagraph 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.

(19) Clause 8 also makes some non-substantive wording changes to the English version.

(20) Public Safety Canada, “Legislative changes to the *Firearms Act* and *Criminal Code* introduced in Parliament,” Backgrounder, 2006, <http://www.publicsafety.gc.ca/media/nr/2006/nr20060619-1-en.asp>.

case of a restricted firearm, but not a non-restricted firearm (clause 12). If the border services officer confirms the declaration of the firearm and the non-resident's authorization to transport, it has the same effect as a licence to possess that particular firearm, as well as a registration certificate for a restricted firearm (clause 13). The length of time that the non-resident may possess the firearm does not change.<sup>(21)</sup>

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), but only for a prohibited or restricted firearm (clause 14). Likewise, when returning to the country with the firearm, it is necessary for the individual to satisfy the border services officer that he or she holds a registration certificate only in the case of a prohibited or restricted firearm (clause 15).

When a licensed individual wishes to import a firearm, other than a prohibited firearm, for which a registration certificate has not yet been issued, he or she may do so if the border services officer is satisfied that the required conditions are met, and confirms the individual's authorization to transport the firearm. The confirmed authorization has the same effect as a registration certificate until the new registration certificate is issued. Bill S-5 makes an amendment so that this latter provision, regarding registration certificates, applies only to restricted firearms (clause 16).

Finally, Bill S-5 provides that when a business wishes to obtain an authorization to export a firearm, it is required to hold a registration certificate only in the case of a prohibited or restricted firearm (clause 17).<sup>(22)</sup>

### 3. Administrative Matters and Inspections (Clauses 18 to 23)

Bill S-5 amends section 60 of the Act to indicate that the Registrar is responsible for issuing registration certificates only for prohibited and restricted firearms (clause 18).<sup>(23)</sup> The bill also clarifies that authorizations to import and export apply to all firearms.

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(21) A non-resident may possess a non-restricted firearm for 60 days following importation, and a restricted firearm for 60 days or until the authorization to transport expires, whichever occurs first. (Clause 13 rearranges the current wording.)

(22) Clauses 12 to 17 make amendments to particular provisions of the *Firearms Act* regarding the import and export of firearms, some of which were previously amended by *An Act to amend the Criminal Code (firearms) and the Firearms Act*, S.C. 2003, c. 8 ("Bill C-10A"). However, these provisions have not been proclaimed in force.

(23) Clause 18 also makes a stylistic change to the French version.

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 19). Section 71, regarding the revocation of a registration certificate for any good and sufficient reason, is similarly amended (clause 20), as is section 72, governing notice to an individual when a registration certificate is revoked (clause 21).<sup>(24)</sup>

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 22).

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 23).

#### 4. Business Records and Offences (Clauses 24 to 28)

Bill S-5 enacts a new paragraph 117(*m.1*) of the Act to allow for regulations regarding records that businesses will be required to keep (and subsequently destroy) in relation to non-restricted firearms (subclause 27(1)). When Bill C-21 was introduced, the government indicated its intention to introduce a requirement for businesses to maintain records of all transactions involving the sale, purchase or disposal of non-restricted firearms, in order to assist police investigators in locating the owners of stolen firearms or firearms used in the commission of a crime.<sup>(25)</sup> Paragraph 117(*o*) of the Act is amended to allow regulations that create offences regarding the keeping and destruction of such records (sub-clause 27(2)). New regulations under paragraphs 117(*m.1*) and (*o*) will presumably be introduced by the government after the enactment of Bill S-5.

Section 119 of the Act is amended so that regulations made under the new paragraph 117(*m.1*) do not require tabling before Parliament if the federal Minister believes that they are urgent (clause 28). Section 109 of the Act is amended to provide for punishment when an offence is committed in contravention of the newly permitted regulations (clause 24).<sup>(26)</sup>

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(24) Clauses 20 and 21 also make some non-substantive wording changes to the French version.

(25) Public Safety Canada (2006).

(26) The punishment will be the same as for the contravention of most other laws under the Act and regulations, namely imprisonment for up to five years if convicted by indictment, or punishment on summary conviction (a fine of up to \$2,000 and/or imprisonment of up to six months). Clause 24 also makes a non-substantive wording change to the French version.

Section 112 of the Act currently sets out a lesser offence than those under sections 91 and 92 of the Code where an individual commits 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 S-5, section 112 is repealed (clause 25), and a reference to section 112 in section 115 is accordingly removed (clause 26).<sup>(27)</sup> Finally, the offence of failing to deliver up a firearm to a peace officer or firearms officer after a required document has been revoked is amended in section 114, so that revocation of a registration certificate applies only to prohibited and restricted firearms (also clause 26).

#### C. Coordinating Amendments and Coming into Force (Clauses 29 to 30)

Clause 29 coordinates certain amendments, depending on the order in which particular provisions of Bill S-5 and amendments to the *Firearms Act* passed in 2003<sup>(28)</sup> come into force.

The provisions enacted by Bill S-5 (except for the sections dealing with the 2003 amendments to the *Firearms Act* which have not yet been proclaimed in force and the coordinating provisions just mentioned) come into force on a day or days fixed by order of the Governor in Council (clause 30).

#### COMMENTARY

Vigorous debate has surrounded the subject matter of Bill S-5, which has the same goal of eliminating the non-restricted firearms registry as its predecessor bills, C-21 and C-24. This paper attempts to present the points of view on these topics as they have been expressed, with particular emphasis on media reports. The majority of the following comments have been made concerning Bill C-21, but the object of that bill and of Bill S-5 is the same.

Even before the first bill to eliminate the “long gun” registry was introduced, commentators expressed divergent views on the anticipated legislation. Some stated that abolition of the long gun registry would be contrary to the government’s general anti-crime message and therefore opposed by police, public health officials and groups against domestic

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(27) Clause 26 also makes stylistic changes to the French version.

(28) Bill C-10A.



violence.<sup>(29)</sup> Conversely, firearms organizations welcomed the expected removal of criminal sanctions when normally law-abiding citizens inadvertently fail to possess required documentation for their firearms.<sup>(30)</sup>

During a news conference announcing Bill C-21, the Minister of Public Safety stated: “We have found out too painfully over the last number of years that the effort of trying to track down every single long gun in Canada has been ineffective, costly and wasteful and has not led to a reduction of crime with guns. [...] Duck hunters, farmers and law-abiding gun owners do not pose a threat to Canadians. Criminals do.”<sup>(31)</sup> Commentators have pointed out the gun registry did not prevent certain high-profile shooting deaths, notably of four RCMP officers in Alberta in March 2005, a teenage girl in Toronto in December 2005, a police officer in Laval in December 2005, and two RCMP constables in Saskatchewan in July 2006.<sup>(32)</sup> At the same time, proponents of gun control have referred to these tragedies as a reason for strengthening, not weakening, the firearms registry.<sup>(33)</sup>

After the introduction of Bill C-21, the Minister of Public Safety received a petition from the Canadian Taxpayers Federation listing the names of 28,000 people calling for its quick passage.<sup>(34)</sup> That bill was also supported by the Ontario Federation of Anglers and Hunters,<sup>(35)</sup> Canadian Shooting Sports,<sup>(36)</sup> and Alberta’s Solicitor General.<sup>(37)</sup> Conversely, the

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(29) Dianne Rinehart, “Half-cocked plan: The conservatives are putting the lie to their law-and-order image by scrapping the gun registry over objections from police and the public,” *Montreal Gazette*, 18 June 2006, p. A17.

(30) Laura Tester, “Firearm plans embraced by gun group,” *Red Deer Advocate*, 19 June 2006, p. A1, citing Jerrold Lundgard, President, Responsible Firearms Owners of Alberta.

(31) Janice Tibbetts, “Tories table bill to kill gun registry: Opposition parties stand firm against scrapping firearm law,” *Times Colonist* [Victoria], 20 June 2006, p. B6.

(32) Editorial, “Get on with dropping the gun registry,” *National Post* [National edition], 20 July 2006, p. A16.

(33) Tim Cook, “Police shootings show need for gun registry to be maintained: advocates,” CPW (The Canadian Press), 18 July 2006.

(34) CBC Television, [“Gun registry...”], *The National*, 19 June 2006; SRC Télévision, [“La fin du registre des armes à feu?”], *Le Téléjournal/Le Point*, 19 June 2006.

(35) Ontario Federation of Anglers and Hunters, CPW (The Canadian Press), Press Releases and Business News, 20 June 2006.

(36) Dave Stewart, “Sport shooting groups lobby Island MPs to scrap gun registry,” *The Guardian* [Charlottetown], 25 July 2006, p. A3.

(37) Darcy Henton, “Gun bill applauded: Alberta SG hails plan to scrap registry,” *The Edmonton Sun*, 21 June 2006, p. 17, citing Harvey Cenaiko, Solicitor General, Alberta.

Coalition for Gun Control<sup>(38)</sup> and Quebec's Minister of Public Safety<sup>(39)</sup> are against any dismantling of the firearms registry. While some opposition party members supported Bill C-21, most Bloc Québécois, Liberal and New Democrat MPs did not.<sup>(40)</sup> Restoration of the full gun registry was called for by the opposition members (who constitute a majority) of the House of Commons Standing Committee on Public Safety and National Security.<sup>(41)</sup> On 22 April 2009, the House of Commons adopted the following motion: "That, in the opinion of the House, the government should not extend the amnesty on gun control requirements set to expire on May 16, 2009, and should maintain the registration of all types of firearms in its entirety."

Police organizations, such as the Canadian Association of Chiefs of Police, are generally in favour of maintaining the firearms registry, as police query it up to 5,000 times a day to determine whether a gun might be encountered in a situation, such as one involving a barricade or domestic violence.<sup>(42)</sup> Others, however, have pointed out that this number of hits is misleading, given that every search of the Canadian Police Information Centre (CPIC) system, regardless of the reason, generates an automatic search of the firearms registry.<sup>(43)</sup> It has also been argued that police cannot be certain that guns are not at a particular scene, given that there are errors in the database and that many people have failed to register.<sup>(44)</sup>

Supporters of Bill C-21 have asserted that there have been few murders or robberies committed in Canada with long guns that were registered, and that public safety will remain protected through storage and transportation rules and the need to have a licence in order

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(38) Wendy Cukier, "Stronger gun controls have sharply reduced death by firearms," *National Post* [All editions but Toronto], 25 July 2006, p. A17.

(39) Alec Castonguay, "Registre des armes à feu: Harper passe de la parole aux actes; Les parlementaires voteront l'automne prochain sur la loi déposée hier," *Le Devoir* [Montréal], 20 June 2006, p. A3, citing Jacques P. Dupuis, ministre de la Sécurité publique du Québec.

(40) Janice Tibbetts (2006), citing Jack Layton, MP, Leader, New Democratic Party, Gilles Duceppe, MP, Leader, Bloc Québécois, MP, and Marlene Jennings, MP, Liberal Party. See also Nathaëlle Morissette, "Registre des armes à feu; Harper dépose son projet de loi cette semaine," *La Presse* [Montréal], 19 June 2006, p. A6, and Isabelle Rodrigue, "Les conservateurs s'attaquent au registre des armes à feu," *La Tribune* [Sherbrooke], 20 June 2006, p. 39.

(41) Campbell Morrison, "Long-gun registry opponents square off in Ottawa," *The Daily Gleaner* [Fredericton], 21 June 2006, p. A3.

(42) Gloria Galloway, "Up in arms over long-gun legislation: Police chiefs, others blast government's bill to dismantle the federal registry," *Globe and Mail* [Metro Toronto editions], 20 June 2006, p. A4.

(43) William E. Henry, "Dubious registry figure," *Globe and Mail* [Metro Toronto editions], 23 June 2006, p. A20.

(44) Editorial, "Good riddance to the gun registry," *National Post* [all editions but Toronto], 20 June 2006, p. A12.

to purchase a gun or ammunition.<sup>(45)</sup> It has also been noted that, to ensure that guns do not end up in the hands of dangerous or irresponsible people, Bill C-21 (and Bill S-5) retains the requirement to register all handguns, as well as to hold a licence, and therefore to undergo safety and background checks, regardless of the type of firearm.<sup>(46)</sup>

Despite the general support of Bill C-21 by firearms owners, some were concerned that the legislation's requirement for individuals to obtain an authorization before transferring any firearm, and for businesses to keep records of the sale of non-restricted firearms, would amount to registration through the back door.<sup>(47)</sup> Others argued that the bill did not go far enough. In particular, they said that all firearms licensing and registration should be abolished in favour of a registry of individuals who are *not* permitted to possess firearms, such as criminals and those considered otherwise too dangerous to own guns.<sup>(48)</sup> In other words, the existing gun registry is ineffective because it has no impact on the behaviour of criminals.<sup>(49)</sup> Another concern raised by members of firearms groups is that the legislation will simply replace a federal registry with a more costly and cumbersome set of provincial registries.<sup>50</sup>

The Minister of Public Safety has estimated that Bill C-21 would free 5 to 6 million people from registering their firearms.<sup>(51)</sup> The legislation was proposed, in part, as a way to counter the escalating costs of the gun registry, which have grown from an original estimate of \$2 million to over \$1 billion.<sup>(52)</sup> However, proponents of the firearms registry have blamed cost overruns on the opponents of the registry, who have forced the government to deal with non-compliant gun owners as well as to initiate, or respond to, expensive court proceedings

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(45) Ibid.

(46) Editorial, "The long-gun registry is ripe for dismantling," *Globe and Mail* [Metro editions], 20 June 2006, p. A16.

(47) Lorne Gunter, "Gun owners not breathing easy yet: Conservatives may substitute a paperless registry for the existing one," *Edmonton Journal*, 23 June 2006, p. A18.

(48) Danielle Smith, "Day misfires on registry claim," *Calgary Herald*, 27 June 2006, p. A10; Michel Trahain, "La registre des armes à feu: Courrier/La parole à nos lecteurs," *Le Journal de Montréal*, 23 June 2006, p. 22.

(49) Tom McAuley, "Even Plato knew the gun registry would fail," *The Windsor Star*, 4 August 2006, p. A9.

(50) Bill Curry, "Registry system: Gun owners blast firearms bill; Conservatives have 'spit in the face' of core supporters, some gun groups say," *The Globe and Mail*, 6 April 2009, p. A4.

(51) Tibbetts (2006).

(52) Fred Chartrand, "Les conservateurs déposent une mesure pour abolir le registre des armes à feu," *L'Acadie Nouvelle* [Caraquet, New Brunswick], 20 June 2006, p. 14; Galloway (2006).

and challenges.<sup>(53)</sup> They also say that computer glitches and administrative problems have been resolved, so that abolishing the registry would make no sense now.<sup>(54)</sup> It has further been argued that removing the requirement to register non-restricted firearms will save only \$10 million a year, and that \$22.7 million in revenue a year will be lost if the government stops charging most licensing fees.<sup>(55)</sup> An anticipated loss of jobs at the main firearms centre in Miramichi, New Brunswick, has also been noted if Bill C-21 (or Bill S-5) were to pass.<sup>(56)</sup>

Information and statistics used to evaluate the efficacy of Canada's firearms registry in reducing crime, and therefore the merits of a bill to eliminate the long gun registry, have been inconsistent and contradictory. On one hand, it has been argued that serious crime rates have fallen twice as fast in the United States compared to Canada, even though law-abiding Americans are legally entitled to carry concealed handguns, because the focus there is on higher arrest rates and longer prison sentences.<sup>(57)</sup> On the other hand, it has been argued that because long guns are the ones most frequently found in homes, the long gun registry has successfully reduced domestic violence, suicides and accidents.<sup>(58)</sup> According to a recent Swiss study, a decrease in gun injuries and gun deaths since 1995 shows that Canada may be saving up to \$1.4 billion a year in violence-related costs.<sup>(59)</sup>

The difficulty in assessing how effective Canada's firearms registry has been in reducing crime and violence is aptly summed up by one news article. It reported that a Statistics Canada study had found that death rates related to firearms have fallen over the last 25 years. However, the study was unable to link the decline to gun control measures, given that they have been in place in one form or another in Canada for most of the last century.<sup>(60)</sup>

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(53) Morrison (2006), citing Wendy Cukier, President, Coalition for Gun Control.

(54) Jim Brown, "Tories move to kill gun registry: Chances of success uncertain," *The Telegram* [St. John's], 20 June 2006, p. A10.

(55) Galloway (2006).

(56) Campbell Morrison, "Miramichi jobs to be eliminated; Stockwell Day says Mirimachiers will likely be offered gov't jobs, but not sure where," *Times and Transcript* [Moncton], 20 June 2006, p. C1.

(57) Tester (2006), citing Gary Mauser, Simon Fraser University.

(58) Rinehart (2006), citing Wendy Cukier, President, Coalition for Gun Control.

(59) Nathaniel Gronewold, "Gun registry may be saving Canadians money, study finds: A Swiss report says controls seem to help reduce gun violence," *Vancouver Sun*, 27 June 2006, p. A4, and Richard Hétu, "Le registre des armes, une aubaine?; Malgré son coût, le programme canadien est salué à l'ONU," *La Presse* [Montréal], 27 June 2006, p. A1, both citing Graduate Institute of International Studies, *Small Arms Survey 2006*, Geneva, June 2006.

(60) Gronewold (2006), citing Kathryn Wilkins, "Deaths involving firearms," Statistics Canada, *Health Reports*, Vol. 16, No. 4, June 2005, pp. 37-43. Ms. Wilkins wrote: "Of course, it is difficult to measure the contribution that gun control regulations may have made to this decrease [in the death rate for firearms-related injuries]" (p. 39).