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## LEGISLATIVE SUMMARY



### **Bill C-52: An Act to amend Chapter 6 of the Statutes of Canada, 2012**

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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-52*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-52: AN ACT TO AMEND CHAPTER 6 OF THE STATUTES OF CANADA, 2012

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## 1 BACKGROUND

On 9 June 2017, Bill C-52, An Act to amend Chapter 6 of the Statutes of Canada, 2012 (alternative title: “Supporting Vested Rights Under Access to Information Act”),<sup>1</sup> was introduced in the House of Commons by the Minister of Public Safety and Emergency Preparedness, the Honourable Ralph Goodale.

Bill C-52 amends the *Ending the Long-gun Registry Act*<sup>2</sup> (ELRA) by repealing the amendments made to it by the *Economic Action Plan 2015 Act, No. 1*.<sup>3</sup> The bill retroactively restores the application of the *Access to Information Act*<sup>4</sup> (ATIA) and the *Privacy Act*<sup>5</sup> to records related to the registration of non-restricted firearms until the day on which this bill receives Royal Assent. According to clause 4, “*record* means ... a record referred to in subsection 29(1) or (2) of the [ELRA],” namely a record in the Canadian Firearms Registry (CFR) related to the registration of firearms that are neither prohibited firearms nor restricted firearms and all copies of those records. This legislative summary uses the term “record” in the same way.

The bill also provides that the ATIA and the *Privacy Act* continue to apply to proceedings initiated under those Acts with respect to records related to the registration of non-restricted firearms before the day on which this enactment receives Royal Assent, until those proceedings are concluded or a final decision is made by a competent authority.

Finally, the bill directs the Commissioner of Firearms to provide a copy of records related to the registration of non-restricted firearms to the Government of Quebec at its request.

### 1.1 HISTORY OF THE *FIREARMS ACT*

The *Firearms Act* was adopted by the Parliament of Canada in 1995. The *Firearms Act* and its accompanying regulations govern the possession, transportation, transfer and storage of firearms. It complements Part III of the *Criminal Code*, “Firearms and Other Weapons,” which lists and defines the classes of firearms and sets out offences related to unlawful possession or misuse of a firearm. Section 84 of the Code defines the three main classes of firearms:

- restricted firearms;
- prohibited firearms; and
- non-restricted firearms (defined as firearms that are neither prohibited nor restricted).

The coming into force of the *Firearms Act* led to the creation of a firearm control regime requiring all firearms holders to license and register their firearms. Created in 1996, the Canadian Firearms Program (CFP) administers the *Firearms Act* and related regulations.<sup>6</sup> The Royal Canadian Mounted Police (RCMP) was given responsibility for the CFP in 2006 and reports on its activities through the Commissioner of Firearms.<sup>7</sup> The CFP provides operational support through its database, the Canadian Firearms Information System (CFIS). The CFR is a subset of the information contained in the CFIS and assists police officers by allowing them to better evaluate risks when responding to calls and conducting investigations.<sup>8</sup>

In the 2000 *Reference re Firearms Act (Can.)*, the Supreme Court of Canada considered whether the licensing and registration provisions of the *Firearms Act* were constitutional. The Supreme Court ruled that, under the federal parliament's criminal law power, it had jurisdiction to enact the *Firearms Act*, particularly since it concerns gun control in the interests of public safety.<sup>9</sup>

## 1.2 ABOLITION OF THE FIREARMS REGISTRY

The ELRA came into force in April 2012. This legislation limited firearms registration requirements to two classes of firearms: restricted firearms and prohibited firearms. This means that the ELRA removed the requirement to register non-restricted firearms. This class of firearm normally includes long guns, ordinary hunting rifles and shotguns that have not been modified (section 84 of the Code).

Overall, the ELRA amended the *Firearms Act* and the Code to reflect the fact that the registration of non-restricted firearms was no longer required.

Under section 29(1) of the ELRA, the Commissioner of Firearms must ensure the destruction of all records in the CFR related to the registration of firearms that are neither prohibited firearms nor restricted firearms, as well as all copies of those records under the Commissioner's control.<sup>10</sup>

Similarly, under section 29(2) of the ELRA, each chief firearms officer must ensure the destruction of all records under the officer's control related to the registration of firearms that are neither prohibited firearms nor restricted firearms and all copies of those records under the officer's control.

In addition, section 29(3) of the ELRA states that the preservation of information requirements under sections 12 and 13 of the *Library and Archives of Canada Act*<sup>11</sup> and sections 6(1) and 6(3) of the *Privacy Act* do not apply to the destruction of records and copies related to the registration of non-restricted firearms.<sup>12</sup>

## 1.3 SUPREME COURT RULING IN *QUEBEC (ATTORNEY GENERAL) V. CANADA (ATTORNEY GENERAL)*

As soon as Bill C-19 creating the ELRA<sup>13</sup> was introduced in Parliament, Quebec expressed its desire to create its own firearms registry and asked the federal government for the CFR data pertaining to Quebec.<sup>14</sup> The federal government refused. Quebec then challenged the constitutionality of the ELRA and "sought an

order requiring the federal government to turn ... over [the data in question].”<sup>15</sup> In March 2015, in *Quebec (Attorney General) v. Canada (Attorney General)*, the Supreme Court of Canada ruled in a 5–4 decision that section 29 of the ELRA, which requires the destruction of all records related to the registration of non-restricted firearms, “is a lawful exercise of Parliament’s criminal law legislative power under the Constitution” and that “Quebec has no legal right to the data.”<sup>16</sup>

In April 2015, the RCMP destroyed all records related to the registration of non-restricted firearms for Quebec residents. However, a copy of these records was preserved as part of another court case<sup>17</sup> discussed later in this Legislative Summary.

#### 1.4 AMENDMENTS TO THE *ENDING THE LONG-GUN REGISTRY ACT*

In June 2015, Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures (*Economic Action Plan 2015 Act, No. 1*),<sup>18</sup> received Royal Assent.

Section 230 of the *Economic Action Plan 2015 Act, No. 1*, amended section 29 of the ELRA regarding the destruction of existing records (and copies of records) related to the registration of non-restricted firearms so as to:

- reiterate that the requirements under sections 12 and 13 of the *Library and Archives of Canada Act* pertaining to the preservation of records do not apply with respect to the destruction of records related to the registration of long guns (new section 29(3) of the ELRA);
- state that the ATIA does not apply to the destruction of records related to the registration of long guns (new section 29(4) of the ELRA). The application of this section was retroactive to 25 October 2011, when the ELRA was introduced as Bill C-19 and received first reading;
- state that the *Privacy Act* does not apply to the destruction of these records (new section 29(5) of the ELRA). The application of this section was retroactive to 25 October 2011, when the ELRA was introduced as Bill C-19 and received first reading;
- specify that any request, complaint, investigation, application, judicial review, appeal or other proceeding under the ATIA or the *Privacy Act* with respect to anything that would fall under new sections 29(4) and 29(5) that came into existence on or after 25 October 2011 is to be dealt with according to the new provisions (new section 29(6) of the ELRA); and
- specify that sections 29(1) and 29(2) of the ELRA, concerning the destruction of records and copies, take precedence over any other federal Acts, and that the destruction is to take place notwithstanding any document retention requirements found in any other federal Act (new section 29(7) of the ELRA).<sup>19</sup>

Section 231 of the *Economic Action Plan 2015 Act, No. 1* replaced section 30 of the ELRA with new provisions specifying that no administrative, civil or criminal liability is to lie against the Crown for the destruction of records and any copies thereof. In fact, new section 30(2) specifies that no administrative, civil or criminal liability is to lie

against the Crown for any act or omission with respect to compliance with the ATIA or the *Privacy Act* that might occur between the time Bill C-19 was introduced on 25 October 2011 and the day on which this new section comes into force.<sup>20</sup>

## 1.5 RIGHT OF ACCESS TO INFORMATION UNDER THE CONTROL OF A GOVERNMENT INSTITUTION

The ATIA, which came into force in 1983, is quasi-constitutional legislation.<sup>21</sup> The purpose of the ATIA is to “provide a right of access to information in records under the control of a government institution.”<sup>22</sup> Section 4(1) of the ATIA states that access to any record under the control of a government institution<sup>23</sup> is to be given to Canadian citizens and permanent residents within the meaning of the *Immigration and Refugee Protection Act*.<sup>24</sup> The ATIA provides exemptions to, and exclusions from, this right of access.<sup>25</sup> The ATIA also establishes the Information Commissioner of Canada, an officer of Parliament who investigates complaints regarding the right of access to information.<sup>26</sup> Sections 67 and 67.1 of the ATIA set out the offences of obstructing the work of the Information Commissioner and the right of access.

### 1.5.1 SPECIAL REPORT BY THE INFORMATION COMMISSIONER

In May 2015, the Information Commissioner tabled a special report to Parliament, *Investigation into an access to information request for the Long-gun Registry*.<sup>27</sup> In it, the Commissioner informed Parliament of the investigation she had conducted in response to a complaint received about an access to information request regarding long-gun registry data. The following are the key facts relating to this investigation, which are outlined in the special report:

- The access to information request was submitted in March 2012. The request concerned the “Firearms Registry database.”
- In April 2012, the Information Commissioner wrote to the then-minister of Public Safety and Emergency Preparedness to inform him that
  - any records subject to an access to information request under the ATIA were subject to the right of access; and
  - these records could not be destroyed until a response had been provided under the ATIA and any investigation and court proceedings related to the access request had been completed.
- In May 2012, the Minister responded to the Commissioner’s letter, stating that the RCMP would abide by the right of access described in section 4 of the ATIA.
- In October 2012, “the RCMP destroyed all electronic records of non-restricted firearms, with the exception of those belonging to Quebec residents.”
- In January 2013, the requester received a response from the RCMP to the access request.
- In February 2013, the requester submitted a complaint to the Office of the Information Commissioner alleging that the information provided by the RCMP was incomplete and that by destroying the responsive records, the RCMP had obstructed the complainant’s right of access (section 67.1 of the ATIA).



- Following the investigation, the Information Commissioner:
  - found that the complaint was well founded, found that the RCMP's response was incomplete and made recommendations, including the sharing of additional information;
  - found that the RCMP had destroyed records responsive to the request with the knowledge that these records were subject to the right of access guaranteed by section 4(1) of the Act; and
  - in March 2015, "referred the matter to the Attorney General of Canada for possible obstruction of the right of access under section 67.1 of the Act."

In her special report, the Commissioner wrote that

the proposed changes in Bill C-59 [*Economic Action Plan 2015 Act, No. 1*] will deny the right of access of the complainant, it will deny the complainant's recourse in court and it will render null and void any potential liability against the Crown.

Lastly, the Commissioner stated that, pursuant to section 42 of the ATIA, she would be filing a court application before the Federal Court, which she did.

### 1.5.2 ONGOING LITIGATION

In May 2015, the Information Commissioner, with the complainant's consent, "applied to the Federal Court for a judicial review of the Minister's refusal to process these additional long-gun registry records."<sup>28</sup> As an initial step, the Commissioner obtained "a court order directing the Minister of Public Safety and the Commissioner of the RCMP to deliver the hard drive containing the remaining long-gun registry records to the Federal Court Registry."<sup>29</sup>

In June 2015, the Commissioner and the requester filed an application in the Ontario Superior Court of Justice challenging the constitutionality of the amendments to the ELRA enacted by the *Economic Action Plan 2015 Act, No. 1*<sup>30</sup> on the grounds that these amendments unjustifiably infringed section 2(b) of the *Canadian Charter of Rights and Freedoms*, which protects freedom of expression, and that they contravene the rule of law, given their retroactive effect.<sup>31</sup>

Consequently, in July 2015, with the Ontario Superior Court of Justice decision pending, the Commissioner's Federal Court application was stayed.<sup>32</sup>

In March 2016, following the change in government, the new Minister of Public Safety "sought the Commissioner's consent to suspend the Ontario Superior Court proceedings in order to discuss settling this litigation, as well as the associated judicial review application in Federal Court."<sup>33</sup> The Information Commissioner and the complainant consented to this request. The negotiations are therefore aimed at "resolving all outstanding litigation related to the complainant's underlying access request for long-gun registry records."<sup>34</sup>

According to the Commissioner's 2016–2017 annual report tabled in June 2017, these negotiations are still under way.<sup>35</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill C-52 repeals, retroactively, amendments made to the ELRA by the *Economic Action Plan 2015 Act, No. 1*.

### 2.1 RESTORATION OF SECTION 29(3) OF THE *ENDING THE LONG-GUN REGISTRY ACT* (CLAUSE 2(1))

Clause 2(1) retroactively undoes the amendments made by the *Economic Action Plan 2015 Act, No. 1* to section 29(3) of the ELRA. The wording of section 29(3) of the ELRA is restored to its original form, which stipulated that the preservation of information requirements under sections 12 and 13 of the *Library and Archives of Canada Act* and sections 6(1) and 6(3) of the *Privacy Act* do not apply to the destruction of records.

### 2.2 APPLICATION OF THE *ACCESS TO INFORMATION ACT* AND THE *PRIVACY ACT* (CLAUSES 2(2), 4, 5 AND 6)

Clause 2(2) retroactively removes sections 29(4) to 29(7), which had been added to the ELRA by the *Economic Action Plan 2015 Act, No. 1*.

First, clause 2(2) retroactively restores the application of the ATIA and the *Privacy Act* to data contained in records and copies of records. New sections 29(4) and 29(5), which were added to the ELRA by the *Economic Action Plan 2015 Act, No. 1*, and stipulated that the ATIA and the *Privacy Act* did not apply to records retroactively to 25 October 2011, are deemed never to have come into force.

Clause 5(1) states that the ATIA and the *Privacy Act* will no longer apply to records and copies as of the commencement day. Clause 4 defines the commencement day as the day on which the bill receives Royal Assent.

Second, clause 2(2) retroactively restores application of the ATIA and the *Privacy Act* to proceedings initiated pursuant to these Acts prior to the date the bill is assented to until these proceedings are concluded or disposed of. The combined effect of new sections 29(4) to 29(6) of the ELRA, added by the *Economic Action Plan 2015 Act, No. 1*, had been to render proceedings initiated under the ATIA and the *Privacy Act* groundless, given that these Acts no longer applied to records retroactively to 25 October 2011.

Clause 6 states that the *Privacy Act*, other than its sections 6(1) and 6(3), and the ATIA “continue to apply with respect to any specified proceeding and to any complaint, investigation, application, judicial review or appeal that results from a specified proceeding” regarding records, copies and personal information. Clause 4 defines a specified proceeding as:

any request, complaint, investigation, application, judicial review, appeal or other proceeding under the *Access to Information Act* or the *Privacy Act* that is with respect to a record or copy or to personal information and that

(a) was made or initiated on or before June 22, 2015 and was not concluded, or in respect of which no decision was made, on or before that day; or

(b) was made or initiated after June 22, 2015 but before the commencement day.

Clause 6(4) stipulates that no destruction of records held in the CFR, or of copies of such records, related to the registration of firearms that are neither prohibited nor restricted is to occur “until all proceedings referred to in [subsection (1)] are finally disposed of [by a competent authority], settled or abandoned.”

### 2.3 CROWN IMMUNITY (CLAUSE 3)

Clause 3 retroactively repeals section 30 of the ELRA, stating that this section is deemed never to have come into force. Section 30 of the ELRA had been amended by the *Economic Action Plan 2015 Act, No. 1* to specify that no administrative, civil or criminal liability is to lie against the Crown with respect to the destruction of records and copies. Therefore, pursuant to clause 3, the Crown no longer has immunity and could be convicted of criminal offences, such as the offence set out in section 67.1 of the ATIA.

### 2.4 AMENDMENT ALLOWING THE INFORMATION COMMISSIONER TO VIEW RECORDS (CLAUSE 7)

Clause 7 allows the Information Commissioner to access any record that was in the CFR on 3 April 2015 for the purpose of settling the Federal Court proceeding *Information Commissioner of Canada v. Minister of Public Safety and Emergency Preparedness*.<sup>36</sup> In April 2015, the RCMP destroyed all records related to non-restricted firearms registered to Quebec residents,<sup>37</sup> further to the Supreme Court of Canada ruling that Quebec had no legal right to the CFR data.<sup>38</sup>

### 2.5 ACCESS FOR QUEBEC TO CANADIAN FIREARMS REGISTRY DATA (CLAUSES 8 AND 9)

Clause 8(1) states that the Commissioner of Firearms is to provide the minister of the Government of Quebec responsible for public security (Quebec Minister), at the written request of the Quebec Minister, with a copy of all records that were in the CFR on 3 April 2015 and that relate to firearms registered, as at that day, as non-restricted firearms.

It specifies that the records are to be provided for the purpose of the administration of the *Firearms Registration Act*,<sup>39</sup> enacted by the Quebec National Assembly in June 2016, which creates requirements in Quebec for the registration of non-restricted firearms (as they are defined in the Code).

Under clause 8(2), if the Quebec Minister does not request the records in accordance with clause 8(1), the Commissioner of Firearms shall send written notice to the Quebec Minister once the Commissioner is in a position to destroy them.

Under clause 8(1), the Quebec Minister then has a maximum of 120 days after the written notice provided for in clause 8(2) is sent to request copies of the records. Clause 9 stipulates that the Minister of Public Safety and Emergency Preparedness may extend this period for an additional 120 days by making an order to that effect.

Clause 8(3) states that, despite section 29(1) of the ELRA authorizing the destruction of records, the Commissioner of Firearms may destroy the records only after providing a copy of them to the Quebec Minister, if the Minister has requested the records, or after the 120<sup>th</sup> day following the day on which the Commissioner notified the Quebec Minister that the Commissioner was in a position to destroy the records, in accordance with clause 8(2).

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## NOTES

1. [Bill C-52, An Act to amend Chapter 6 of the Statutes of Canada, 2012](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. [Ending the Long-gun Registry Act](#), S.C. 2012, c. 6.
3. [Economic Action Plan 2015 Act, No. 1](#), S.C. 2015, c. 36, ss. 230 and 231.
4. [Access to Information Act](#) [ATIA], R.S.C. 1985, c. A-1.
5. [Privacy Act](#), R.S.C. 1985, c. P-21.
6. The Royal Canadian Mounted Police [RCMP] was given responsibility for the Canadian Firearms Program [CFP] in 2006. See Royal Canadian Mounted Police, [History of Firearms Control in Canada: Up to and Including the Firearms Act](#); and Royal Canadian Mounted Police, [2016 Commissioner of Firearms report](#).  
  
The Canada Firearms Centre was established as a stand-alone agency to oversee the *Firearms Act* under the Department of Justice in 1996. In 2003, it became an independent agency under the Department of the Solicitor General and a Commissioner of Firearms was first appointed. In 2006, the Program became a part of the RCMP and it continues to report to the Commissioner of Firearms, who is also the Commissioner of the RCMP.
7. [Firearms Act](#), S.C. 1995, c. 39, s. 93.
8. Tanya Dupuis and Christine Morris, [Legislative Summary of Bill C-42: An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts](#), Publication no. 41-2-C42-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 April 2015.
9. [Reference re Firearms Act \(Can.\)](#), 2000 SCC 31; and *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 91(27).
10. Tanya Dupuis, Cynthia Kirkby and Robin MacKay, [Legislative Summary of Bill C-19: An Act to amend the Criminal Code and the Firearms Act](#), Publication no. 41-1-C19-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 1 November 2011; and [Ending the Long-gun Registry Act](#), s. 29.
11. [Library and Archives of Canada Act](#), S.C. 2004, c. 11.

12. See Dupuis, Kirkby and MacKay (2011):  
[S]ection 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.
13. [Bill C-19, An Act to amend the Criminal Code and the Firearms Act](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament.
14. [Quebec \(Attorney General\) v. Canada \(Attorney General\)](#), 2015 SCC 14, para. 2.
15. Ibid.
16. Ibid., para. 3.
17. [Canada \(Information Commissioner\) v. Canada \(Public Safety and Emergency Preparedness\)](#), 2015 FC 803.
18. [Economic Action Plan 2015 Act, No. 1](#), S.C. 2015, c. 36.
19. Taken from [Legislative Summary of Bill C-59: An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures](#), Publication no. 41-2-C59-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 12 May 2015.
20. Ibid.
21. [Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\)](#), 2011 SCC 25, paras. 40 and 79.
22. ATIA, s. 2(1).
23. Section 3 of the ATIA specifies the federal institutions to which it applies.
24. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.
25. Exemptions “permit or require institutions to withhold a range of records and information from disclosure,” while exclusions “provide that the Act does not apply to certain records or information”; see Information Commissioner of Canada, [Striking the Right Balance for Transparency: Recommendations to modernize the Access to Information Act](#), 2015, p. 38.
26. ATIA, s. 54(1).
27. Office of the Information Commissioner of Canada, [Investigation into an access to information request for the Long-gun Registry](#), Investigation Report – 3212-01427, May 2015.
28. Office of the Information Commissioner of Canada, [Annual Report 2015–2016](#).
29. [Canada \(Information Commissioner\) v. Canada \(Public Safety and Emergency Preparedness\)](#); and Office of the Information Commissioner of Canada, [Annual Report 2015–2016](#). In the 2015–2016 annual report, the Commissioner states that this order was complied with.
30. Office of the Information Commissioner of Canada, [Annual Report 2014–2015](#).
31. Ibid.

32. Ibid. See also *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*.
33. Office of the Information Commissioner of Canada, *Annual Report 2015–2016*.
34. Ibid.
35. Office of the Information Commissioner of Canada, [Annual Report 2016–2017](#).
36. *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*.
37. Ibid.
38. *Quebec (Attorney General) v. Canada (Attorney General)*, para. 3.
39. [Firearms Registration Act](#), S.Q. 2016, c. 15.