



LEGISLATIVE SUMMARY



Bill C-71: An Act to amend certain Acts and Regulations in relation to firearms

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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-71
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-71: AN ACT TO AMEND CERTAIN ACTS AND REGULATIONS IN RELATION TO FIREARMS

1 BACKGROUND

Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms,¹ was introduced in the House of Commons on 20 March 2018 by the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness.

Bill C-71 is divided into two parts. Part 1 amends the *Firearms Act*,² the *Criminal Code*³ (Code) and the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*.⁴

Part 2 of the bill reintroduces the legislative amendments contained in Bill C-52, An Act to amend Chapter 6 of the Statutes of Canada, 2012 (short title: Supporting Vested Rights Under Access to Information Act),⁵ which amend the *Ending the Long-gun Registry Act* (ELRA),⁶ the *Access to Information Act* (ATIA)⁷ and the *Privacy Act*.⁸

Bill C-71 received second reading and was referred to the House of Commons Standing Committee on Public Safety and National Security (SECU) on 28 March 2018. SECU reported the bill with amendments on 12 June 2018 and the House of Commons concurred in that report on 20 June 2018. The bill received third reading in that Chamber on 24 September 2018 and was introduced in the Senate on 25 September 2018. The bill was read a second time and referred to the Standing Senate Committee on National Security and Defence on 11 December 2018.

SECU amended the bill to, among other things,

- clarify for greater certainty that nothing in the Act shall be construed so as to permit or require the registration of non-restricted firearms (new section 2(4) of the *Firearms Act*);
- prescribe new factors to be considered by the judge or the chief firearms officer (CFO)⁹ when determining an applicant's eligibility to hold a firearms licence (amended section 5(2)(c) and new sections 5(2)(d) to 5(2)(f) of the *Firearms Act*); and
- specify that the terms "threatened violence" and "threatening conduct" include threats or conduct communicated to a person by means of the Internet or other digital network when determining an applicant's eligibility to hold a firearms licence (new section 5(2.1) of the *Firearms Act*).

2 DESCRIPTION AND ANALYSIS

Bill C-71 contains 30 clauses. The following description examines the more substantive provisions of the bill; however, it does not review every clause.

2.1 PART 1 OF BILL C-71: AMENDMENTS TO THE *FIREARMS ACT* AND THE *CRIMINAL CODE*

2.1.1 CANADIAN FIREARMS FRAMEWORK

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, transportation, transfer and storage of firearms. The *Firearms Act* is also a complement to Part III of the Code, “Firearms and other Weapons,” which lists and defines the categories of firearms and contains firearms offences related to unlawful possession or misuse.

The Canadian Firearms Program (CFP) was created in 1996 to oversee the administration of the *Firearms Act* and its accompanying regulations. Its administration falls under the responsibility of the Royal Canadian Mounted Police (RCMP). The CFP also provides operational support to law enforcement organizations through its database, the Canadian Firearms Information System, which contains the names of firearms licence holders and registration certificates.

In 2000, the Supreme Court of Canada examined questions concerning the constitutional validity of the licensing and registration provisions introduced by the *Firearms Act*. In its *Reference re Firearms Act (Can.)* decision upholding the Act, the Court found that the Act “is directed to enhancing public safety by controlling access to firearms through prohibitions and penalties.”¹⁰ In short, the regime endeavours to deter and reduce the misuse of firearms.¹¹

Since the enactment of the ELRA in 2012, non-restricted firearms are no longer required to be registered in Canada. However, the registration of restricted and prohibited firearms is still compulsory.

2.1.2 ELIGIBILITY TO HOLD A FIREARMS LICENCE (CLAUSE 2)

Licensing requirements under the *Firearms Act* depend on the firearm’s classification. The firearms licence sets out the class of firearms for which it is valid (i.e., prohibited, restricted or non-restricted).¹² One must hold a valid firearms licence to lawfully possess or acquire a firearm and buy ammunition. Generally speaking, a licence that is issued to an individual 18 years of age or older¹³ expires after five years¹⁴ and then needs to be renewed.

Section 5(1) of the *Firearms Act* provides that eligibility to hold a firearms licence is determined from a public safety perspective; specifically, whether it is desirable, in the interest of the safety of the applicant or any other person, that the applicant be eligible to hold a licence. For example, individuals who are bound by a firearms prohibition order made under the Code are not eligible to hold a firearms licence (section 6(1) of the *Firearms Act*).

In determining an applicant's eligibility to hold a firearms licence, the judge or the CFO is required to consider the following factors specified in section 5(2) of the *Firearms Act*:

- whether the person has been convicted or discharged (pursuant to section 730 of the Code) of
 - an offence in the commission of which violence against another person was used, threatened or attempted,
 - a firearm-, weapon- or ammunition-related offence under the *Firearms Act* or Part III of the Code,
 - criminal harassment (pursuant to section 264 of the Code), or
 - drug trafficking or possession for the purpose of trafficking (section 5(1) or 5(2) of the *Controlled Drugs and Substances Act* [CDSA]),¹⁵ importing or exporting or possession for the purpose of exporting (section 6(1) or 6(2) of the CDSA), or production of a substance (section 7(1) of the CDSA);
- whether the person has been “treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person”; or
- whether the person “has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.”

Previously, there was a five-year limit placed on how long these factors could affect the ability to hold a licence. Clause 2 of Bill C-71 deletes the wording “within the previous five years” from section 5(2), making them factors to be considered regardless of when they occurred.

2.1.3 TRANSFER OF NON-RESTRICTED FIREARMS (CLAUSES 5, 9 AND 10)

Under the *Firearms Act*, the term “transfer” means to sell, barter or give (section 21). Bill C-71 replaces sections 23 and 23.1 of the *Firearms Act* with new sections 23(1) to 23(5) and raises the threshold of responsibility for a person wishing to transfer non-restricted firearms who must now verify the validity of the licence of an individual prior to the transfer.

Clause 5 of the bill provides that a “person” (defined to include a corporation in section 35 of the *Interpretation Act*¹⁶) must verify the transferee's eligibility with the Registrar of Firearms (the Registrar) before completing the transfer. A transfer can therefore only occur once the Registrar is satisfied that the transferee holds a licence authorizing the acquisition and possession of a non-restricted firearm. At the time of verification by the Registrar, a reference number is given that is valid for a prescribed period.

Previously, the transferor was authorized to transfer non-restricted firearms without verification if there was no reason to believe that the transferee was not authorized to acquire and possess a non-restricted firearm. Thus, all requests to the Registrar for verification were made on a voluntary basis.

Clause 9 of the bill amends section 70(1)(a) of the *Firearms Act* to provide that a CFO may revoke the licence of a transferor who does not conform to the transfer requirements under new sections 23(1) to 23(5).

As a result of the repeal of section 23.1 of the *Firearms Act*, the Registrar is no longer prohibited from maintaining a record of a request made by a transferor in the case of a firearm transfer. In fact, clause 10 of Bill C-71 amends section 85 of the *Firearms Act* by adding new sections 85(1)(c) and 85(1)(d), which require the Registrar to establish and maintain a record of the following information (collected under the new authority in section 23 of the *Firearms Act*):

(c) every request for a reference number made to the Registrar under section 23 and, if the request is refused, the reasons for refusing the request; and

(d) every reference number that is issued by the Registrar under subsection 23(3) and, with respect to each reference number, the day on which it was issued and the licence numbers of the transferor and transferee.

2.1.4 CONDITIONS ATTACHED TO BUSINESS LICENCES (CLAUSES 7 AND 14)

Clause 7 of Bill C-71 enacts a due diligence practice for businesses (new section 58.1 of the *Firearms Act*). The term “business” is defined in section 2 of the *Firearms Act* to mean a person who carries on a business that includes

(a) the manufacture, assembly, possession, purchase, sale, importation, exportation, display, repair, restoration, maintenance, storage, alteration, pawnbroking, transportation, shipping, distribution or delivery of firearms, prohibited weapons, restricted weapons, prohibited devices or prohibited ammunition,

(b) the possession, purchase or sale of ammunition, or

(c) the purchase of cross-bows

and includes a museum.

Thus, a number of conditions are now attached to firearms business licences. Businesses must

- record the prescribed information relating to the business’s possession and disposal of all non-restricted firearms and keep this information for a prescribed period;
- record and retain for a minimum period of 20 years from the day on which the business transfers a non-restricted firearm, or for a longer period that may be prescribed, the following information:
 - the reference number issued by the Registrar and the day it was issued, and
 - the transferee’s licence number and the firearm’s make, model, type and serial number; and

- transmit, unless otherwise directed by a CFO, the records containing the recorded information to a prescribed official if it is determined that the business will cease to be a business.

New section 58.1(2) of the *Firearms Act* provides that the prescribed official may destroy the records of businesses ceasing to do business at the times and in the circumstances prescribed by way of regulation.

Clause 14 provides that a business licence that is valid on the day that the new requirements come into force is deemed to include all the new conditions set out in new section 58.1.

2.1.5 CLASSIFICATION OF FIREARMS

Section 84 of the Code categorizes firearms into three different classes: prohibited firearms, restricted firearms and firearms that are neither prohibited nor restricted and referred to as non-restricted firearms.

The prohibited firearms category includes automatic firearms, smaller concealable handguns and sawed-off rifles. The restricted firearms category includes handguns that are not prohibited firearms and semi-automatic rifles. Non-restricted firearms are usually long guns, ordinary hunting rifles and shotguns that have not been modified.

A firearm's classification is determined by comparing its type and attributes with the criteria provided in the Code and corresponding regulations. For instance, barrel length and discharging capabilities are scrutinized in order to classify the specific firearm. Its class is validated by certified verifiers coordinated through the CFP. In some instances, a firearm will initially be classified pursuant to the information provided by its manufacturer or importer, prior to importation. However, upon inspection, it may be determined that the information initially provided was inaccurate or that the design of the firearm has changed from that of the initial shipment, resulting in a different classification.

2.1.5.1 "DEEMING AUTHORITY" PROVISIONS (CLAUSES 1, 16, 18, 20 AND 21)

Section 117.15(1) of the Code currently gives the Governor in Council the power to make regulations in relation to anything that may be prescribed under Part III of the Code, such as adding prohibited and restricted firearms to those that are already described in the definitions of "prohibited firearm" and "restricted firearm" in section 84 of the Code. However, section 117.15(2) of the Code limits those powers:

In making regulations, the Governor in Council may not prescribe anything to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition if, in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes.

When the firearms classification deeming provisions contained in the *Common Sense Firearms Licensing Act*¹⁷ came into force in 2015, the Governor

in Council was granted additional authority to override the firearms classification definitions in section 84 of the Code by way of regulations carving out exceptions. Accordingly, a firearm that would otherwise be defined as a prohibited or restricted firearm could be prescribed to be a non-restricted firearm and deemed not to be a prohibited or restricted firearm (section 117.15(3) of the Code). Similarly, the Governor in Council could deem a firearm that would otherwise be defined as a prohibited firearm to be a restricted firearm (section 117.15(4) of the Code).

This additional authority to override the firearms classification definitions in section 84 of the Code is repealed by Bill C-71. Specifically, clause 18 of Bill C-71 repeals sections 117.15(3) and 117.15(4) of the Code, and clause 16 amends the definition of non-restricted firearm in section 84(1) of the Code to remove the words “a firearm that is prescribed to be a non-restricted firearm.” Clause 1 of the bill also makes a related amendment to section 2(2) of the *Firearms Act* to specify that unless otherwise provided, all of the words and expressions used in this Act have the meaning assigned to them by the definitions provided in section 2 or 84 of the Code.

Moreover, clauses 20 and 21 of Bill C-71 repeal sections 3.1 and 3.2 of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, as well as Part 2.1 of the schedule to these regulations. Sections 3.1 and 3.2 of the Regulations and Part 2.1 of the Schedule provide for prescriptions of specific models of firearms; in this case, the SAN Swiss Arms and Česká Zbrojovka (CZ) firearms described below. These provisions had been amended in 2015 pursuant to the “deeming authority” granted to the Governor in Council by the *Common Sense Firearms Licensing Act* that permitted the downgrading of certain prohibited firearms to a less restrictive class.

2.1.5.2 “GRANDFATHERING” OF SAN SWISS ARMS AND CESKÁ ZBROJOVKA FIREARMS (CLAUSE 3)

Individuals who are eligible to hold a firearms licence are generally not eligible to hold a licence allowing the possession of prohibited firearms (section 12(1) of the *Firearms Act*). This general rule is subject to exceptions that stem from the registration of specified firearms and weapons under previous legislation. This is referred to as the “grandfathering” of individuals and firearms.

Grandfathering “allows individuals who owned registered, prohibited weapons when the Act came into force to keep their weapons and acquire others under certain conditions” provided they satisfy the registration requirements.¹⁸ It is also “a function of the public safety purpose of the *Firearms Act*” as it limits the number of people who are authorized to own such firearms and imposes strict restrictions upon them.¹⁹

Specific prohibited automatic and altered firearms, handguns and prohibited weapons all fall within the scope of the section 12 exemptions. Under specified circumstances, the exemptions also apply to the next-of-kin of grandfathered individuals.

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

Moreover, the bill adds grandfathering provisions for certain models of CZ and SAN Swiss Arms firearms and the individuals possessing these firearms. More precisely, clause 3(2) adds four models of CZ rifle (new sections 12(10) and 12(11) of the *Firearms Act*) and 16 models of SAN Swiss Arms rifles and carbines (new sections 12(13) and 12(14) of the *Firearms Act*) to the list of grandfathered prohibited firearms. In general, individuals are now allowed to possess these firearms

- if they were in possession of them on 30 June 2018 and held on that day a registration certificate for such firearms, or if they have applied for a registration certificate before the coming into force provision and that registration certificate has been subsequently issued; and
- if they continuously held a valid registration certificate on 30 June 2018 for the corresponding class of firearm or continuously held a valid registration certificate since the day it was subsequently issued.

2.1.6 TRANSPORTING PROHIBITED AND RESTRICTED FIREARMS: GRANDFATHERED INDIVIDUALS (CLAUSES 4(1) AND 4(2))

As a rule, prohibited and restricted firearms may only be possessed at a person's dwelling as recorded in the Canadian Firearms Registry (CFR) or at a place authorized by a CFO.

Section 19 of the *Firearms Act* currently sets out the circumstances under which a CFO may grant an authorization to transport prohibited and restricted firearms between two or more specified places "for any good and sufficient reason," including

- where the firearm is to be used in target practice or in a target shooting competition, under specified conditions or under the auspices of a shooting club or approved shooting range;
- where the firearm is to be used to provide instructions in the use of firearms as part of a restricted firearms safety course; or
- where the registered owner of the firearm
 - is changing residence,
 - is transporting the firearm to a peace officer, firearms officer or CFO for registration or disposal,
 - is transporting the firearm for repair, storage, sale, export or appraisal, or
 - is transporting the firearm to a gun show.

Current section 19(1.1) of the *Firearms Act* provides that an authorization to transport a firearm between two or more specified places for the purposes of using a firearm for target practice or in a target shooting competition within the province where the holder of the authorization resides must include "all approved shooting clubs and ranges." Clause 4(1) of the bill amends section 19(1.1) to exclude "all approved shooting clubs

and ranges” located within the province from the reasons for which individuals grandfathered under new section 12(9) may be permitted to transport the firearm. A CFO would be able to issue an authorization to transport (ATT) the grandfathered firearms to specified clubs and ranges only (as opposed to all of them throughout the province).

Clause 4(1) of the bill amends section 19(2) of the *Firearms Act* to add individuals grandfathered pursuant to new section 12(9) to be granted an exemption and authorized to transport their firearm between specific places for the following purposes:

- where the registered owner of the firearm is changing residence;
- for the transportation of the firearm to a peace officer, firearms officer or chief firearms officer for registration or disposal;
- for the transportation of the firearm for repair, storage, sale, exportation or appraisal; or
- for the transportation of the firearm to a gun show.

Clauses 4(1) and 4(2) of the bill both amend the transportation of prohibited and restricted firearms by grandfathered individuals in the same manner, through amendments to sections 19(1.1) and 19(2) of the *Firearms Act*. However, because the general authority for the grandfathering of individuals by way of regulation in new section 12(9) comes into force upon Royal Assent, whereas the grandfathering provisions for the CZ and SAN Swiss Arms firearms in new sections 12(11) and 12(14) come into force by order of the Governor in Council, clauses 4(1) and 4(2) are drafted to reflect and correspond to the sequenced coming into force of the new *Firearms Act* grandfathering provisions in clauses 3(1) and 3(2) of the bill.

2.1.7 AUTOMATIC AUTHORIZATION TO TRANSPORT (CLAUSE 4(3))

Clause 4(3) of Bill C-71 replaces current sections 19(2.1) to 19(2.3) of the *Firearms Act* by removing certain automatic ATT prohibited or restricted firearms. The amended provisions are as follows:

- Amended section 19(2.1) provides that, upon renewal of a firearms licence, an individual who holds a licence authorizing the possession of a restricted firearm or a grandfathered handgun as prescribed in current section 12(6.1) continues to be automatically authorized to transport within that person’s province of residence to and from all approved shooting clubs and ranges, except a restricted firearm or handgun that has been acquired for the purpose of having it form part of a gun collection. An automatic ATT will no longer be available for the purpose of transporting the firearm to and from a peace officer, firearms officer or CFO for verification, registration or disposal; to and from a business for the purpose of repair or appraisal; to and from a gun show; and to a port of exit and from a port of entry.
- Under amended section 19(2.2), where a CFO has authorized the transfer of a restricted or prohibited firearm to an individual, an automatic ATT for the purpose

of transporting the firearm from the place it was acquired to the place where it may be possessed will continue to be issued. However, authorizations are no longer automatically issued for the transport of a firearm to and from all approved shooting clubs and ranges; to and from a peace officer, firearms officer or chief firearms officer for verification, registration or disposal; to and from a business for the purpose of repair or appraisal; to and from a gun show; and to a port of exit and from a port of entry.

- Amended section 19(2.3) provides that where a CFO has authorized the transfer of restricted firearm or a grandfathered handgun as prescribed in current section 12(6.1) to an individual authorized to possess such a firearm, that individual must be issued an automatic ATT to transport the firearm in question to and from all approved shooting clubs and ranges within their province of residence unless the transfer of the firearms was approved for the purpose of having it form part of a gun collection.

2.2 PART 2 OF BILL C-71: AMENDMENTS TO THE *ENDING THE LONG-GUN REGISTRY ACT*, THE *ACCESS TO INFORMATION ACT* AND THE *PRIVACY ACT*

2.2.1 FIREARMS REGISTRY RECORDS: LITIGATION AND FEDERAL GOVERNMENT RESPONSE

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

As soon as Bill C-19 creating the ELRA was introduced in Parliament in 2011, Quebec expressed its desire to create its own firearms registry and asked the federal government for the CFR data pertaining to Quebec.²⁰ 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].”²¹ 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.”²²

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 case²³ discussed later in this Legislative Summary.

2.2.1.2 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 (short title: *Economic Action Plan 2015 Act, No. 1*),²⁴ 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*²⁵ 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).²⁶

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.²⁷

2.2.1.3 RIGHT OF ACCESS TO INFORMATION UNDER THE CONTROL OF A GOVERNMENT INSTITUTION

The ATIA, which came into force in 1983, is quasi-constitutional legislation.²⁸ The purpose of the ATIA is to “provide a right of access to information in records under the control of a government institution.”²⁹ Section 4(1) of the ATIA states that access to any record under the control of a government institution³⁰ is to be given to Canadian citizens and permanent residents within the meaning of the *Immigration and Refugee Protection Act*.³¹ The ATIA provides exemptions to, and exclusions from, this right of access.³² The ATIA also establishes the Information Commissioner of Canada, an officer of Parliament who investigates complaints regarding the right of access to information.³³ 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.

2.2.1.3.1 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*.³⁴

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, except for 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
 - concluded 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, knowing that these records were subject to the right of access provided for in section 4(1) of the ATIA; 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.

2.2.1.3.2 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."³⁵ 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."³⁶

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 ELRA enacted by the *Economic Action Plan 2015 Act, No. 1*³⁷ 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.³⁸

Consequently, in July 2015, with the Ontario Superior Court of Justice decision pending, the Commissioner's Federal Court application was stayed.³⁹

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."⁴⁰ 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."⁴¹

According to the Commissioner's 2016–2017 annual report tabled in June 2017, these negotiations are still under way.⁴²

2.2.2 AMENDMENTS TO THE *ENDING THE LONG-GUN REGISTRY ACT*, THE *ACCESS TO INFORMATION ACT* AND THE *PRIVACY ACT*, AND OTHER TRANSITIONAL PROVISIONS

2.2.2.1 RESTORATION OF SECTION 29(3) OF THE *ENDING THE LONG-GUN REGISTRY ACT* (CLAUSE 23(1))

Clause 23(1) of Bill C-71 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.

2.2.2.2 APPLICATION OF THE *ACCESS TO INFORMATION ACT*
AND THE *PRIVACY ACT*
(CLAUSES 23(2), 25, 26 AND 27)

Clause 23(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 23(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 26(1) states that the ATIA and the *Privacy Act* will no longer apply to records and copies as of the commencement day. Clause 25 defines the commencement day as the day on which the bill receives Royal Assent.

Second, clause 23(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 27 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 25 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 27(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.”

2.2.2.3 CROWN IMMUNITY
(CLAUSE 24)

Clause 24 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 24, 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.

2.2.2.4 AMENDMENT ALLOWING THE INFORMATION COMMISSIONER
TO VIEW RECORDS
(CLAUSE 28)

Clause 28 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*.⁴³ In April 2015, the RCMP destroyed all records related to non-restricted firearms registered to Quebec residents,⁴⁴ further to the Supreme Court of Canada ruling that Quebec had no legal right to the CFR data.⁴⁵

2.2.2.5 ACCESS FOR QUEBEC TO CANADIAN FIREARMS REGISTRY DATA
(CLAUSES 29 AND 30)

Clause 29(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*,⁴⁶ 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 29(2), if the Quebec Minister does not request the records in accordance with clause 29(1), the Commissioner of Firearms shall send written notice to the Quebec Minister once he or she is in a position to destroy them. Under clause 29(1), the Quebec Minister then has a maximum of 120 days after the written notice in clause 29(2) is sent to request copies of the records. Clause 30 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 29(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 he or she has provided a copy of them to the Quebec Minister, if the Minister has requested the records, or after the 120th day following the day on which the Commissioner notified

the Quebec Minister that he or she was in a position to destroy the records, in accordance with clause 29(2).

NOTES

1. [Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms](#), 1st Session, 42nd Parliament.
2. [Firearms Act](#), S.C. 1995, c. 39.
3. [Criminal Code](#), R.S.C. 1985, c. C-46.
4. [Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted](#), SOR/98-462.
5. [Bill C-52, An Act to amend Chapter 6 of the Statutes of Canada, 2012](#), 1st Session, 42nd Parliament. The bill was introduced in the House of Commons on 9 June 2017 by the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness.
6. [An Act to amend the Criminal Code and the Firearms Act](#) (short title: *Ending the Long-gun Registry Act*), S.C. 2012, c. 6.
7. [Access to Information Act](#), R.S.C. 1985, c. A-1. [ATIA]
8. [Privacy Act](#), R.S.C. 1985, c. P-21.
9. A chief firearms officer [CFO] (defined in section 2 of the *Firearms Act*) is an individual designated by either the provincial minister or the federal minister as the person responsible for the administration of the Act in a province or territory. See also J. Brunet, P. Goode and S. Friedman, *Annotated Firearms Act & Related Legislation*, 4th ed., LexisNexis Canada, 2017, p. 8.
10. [Reference re Firearms Act \(Can.\)](#), 2000 SCC 31, para. 4.
11. *Ibid.*, para. 24.
12. See Royal Canadian Mounted Police, [Classes of firearms](#).
13. Section 8 of the *Firearms Act* does provide for certain exceptions.
14. Bill C-71 does not amend section 64 of the *Firearms Act* concerning the term of licences.
15. [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19.
16. [Interpretation Act](#), R.S.C. 1985, c. I-21.
17. [An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts](#) (short title: *Common Sense Firearms Licencing Act*), S.C. 2015, c. 27.
18. *R. v. Manson*, [2004] O.J. No. 851 (Ont. C.A.); and J. Brunet, P. Goode and S. Friedman (2017), p. 12.
19. *Ibid.*
20. [Quebec \(Attorney General\) v. Canada \(Attorney General\)](#), 2015 SCC 14, para. 2.
21. *Ibid.*
22. *Ibid.*, para. 3.
23. [Canada \(Information Commissioner\) v. Canada \(Public Safety and Emergency Preparedness\)](#), 2015 FC 803.

24. [Economic Action Plan 2015 Act, No. 1](#), S.C. 2015, c. 36.
25. [Library and Archives of Canada Act](#), S.C. 2004, c. 11.
26. This section of the Legislative Summary is 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.
27. Ibid.
28. [Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\)](#), 2011 SCC 25, paras. 40 and 79.
29. ATIA, s. 2(1).
30. Section 3 of the ATIA specifies the federal institutions to which it applies.
31. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.
32. 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.
33. ATIA, s. 54(1).
34. Office of the Information Commissioner of Canada [OIC], [Investigation into an access to information request for the Long-gun Registry: Investigation Report – 3212-01427](#), May 2015.
35. OIC, [Annual Report 2015–2016](#).
36. *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*; and OIC, *Annual Report 2015–2016*. In the 2015–2016 annual report, the Commissioner states that this order was complied with.
37. OIC, “[3. Court proceedings](#),” *Annual Report 2014–2015*.
38. Ibid.
39. Ibid. See also *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*.
40. OIC, *Annual Report 2015–2016*.
41. Ibid.
42. OIC, [Annual Report 2016–2017](#).
43. *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*.
44. Ibid.
45. *Quebec (Attorney General) v. Canada (Attorney General)*, para. 3.
46. [Firearms Registration Act](#), S.Q. 2016, c. 15.