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Canada's New Gun Control Legislation: Stiffer Penalties and Controlled Access

Peter M. Neumann*

On December 6, 1989, fourteen women were murdered at the Ecole Polytechnique in Montreal by a gunman equipped with a legally acquired semi-automatic paramilitary rifle and a large capacity clip magazine. Although the weapon was advertised by its manufacturers, Sturm, Ruger and Co. of Connecticut, as "ideal for law enforcement", it was popular with hunters and was readily available at gun stores.¹ The gunman's rampage provoked an unprecedented outcry² for stricter gun control laws in Canada. While revisions to the firearms provisions of the *Criminal Code*³ were already being considered, the tragedy reopened gun control debate and committed federal legislators to a firm timetable for enacting new legislation. On the eve of the second anniversary of the women's deaths *Bill C-17*,⁴ which contained a substantial number of amendments to the firearms section of the *Criminal Code*, was given royal assent.

In this paper I will attempt to analyse the *Bill C-17* amendments from two perspectives: accessibility to, and availability of, firearms. Controlling accessibility entails tightening the screening processes for gun procurement whereas circulation and regulating availability involves reducing the number of weapons in possession and circulation. These two approaches also represent divided perspectives in the community. Generally, gun owners and their supporters favour access controls, which leave legitimate purchasers free to buy and own as many weapons as they wish, while people wishing to move towards a gun free society support access controls coupled with a reduction in the numbers of available weapons.

With *Bill C-17* Parliament has attempted to increase controls on access to firearms and stiffen penalties for weapons related offences. Provisions directly affecting the availability of firearms - which depend mostly on the classification of weapons, as either prohibited or restricted - remain by and large unchanged. Thus, although large capacity clip magazines, like those used by the gunman in Montreal, are now prohibited, semi-automatic rifles remain classified as non-restricted firearms. Together with any number of smaller capacity magazines,⁵ they can still be purchased in unlimited quantities.

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The Amendments Stricter Access Provisions

Bill C-17 amendments provide police with greater control over the regulation of legal access to firearms. Access is controlled by a variety of permits and certificates restricting the purchase, sale, possession, and transport of firearms. The *Criminal Code* enumerates or prescribes a framework of minimum requirements for each permit within which the police and the courts are given the discretionary power to grant or deny access.

a) Prescribed Access Restrictions

Prescribed access provisions affected by *Bill C-17* include those sections relating to Firearms Acquisition Certificates (FACs),⁶ Restricted Weapon Registration Certificates,⁷ and permits required for the carriage, storage, and commercial sale of restricted and non-restricted weapons.⁸ Gun purchasers must now wait twenty-eight days between the time of application for and receipt of an FAC;⁹ they must provide the names of two references along with their application;¹⁰ and they must now be eighteen years of age or older to acquire an FAC, two years older than the previous legal limit.¹¹

Genuine gun collectors¹² wishing to possess restricted weapons¹³ must comply with regulations relating to the secure storage and keeping of records. Local registrars of firearms¹⁴ must indicate on registration applications to the Commissioner (RCMP) that possessors of converted automatic weapons¹⁵ are genuine gun collectors.¹⁶ All alterations to the weapon must be described on the application form.¹⁷

Where a person has been convicted or discharged of an indictable offence, the duration of mandatory court prohibition orders, barring the possession of weapons, FACs, or other permits, has been significantly increased. For a first offence, prohibitions have been extended from five to ten years. In all other cases, the offender is barred from possessing any weapon for life.

These amendments attempt to restrict or improve controls over legal access to firearms. Minors and persons with criminal records are denied access altogether and a stricter framework of enumerated prescriptions allows for extending discretionary police inquiry.

In 1977, an amendment requiring all FAC applicants to complete either a course or a test in the safe handling and use of firearms was introduced to the *Criminal Code*. Unfortunately, having failed to achieve consensus with the provinces over how to implement such courses, Parliament never proclaimed this provision. The matter was raised in the aftermath of the Montreal killings with the suggestion that such courses or tests might have prevented the killer from obtaining his weapon. This seems highly unlikely, however, given the killer's interest in and familiarity with firearms. Although safety instruction may help reduce accidental injuries, these courses seem ill fit to function as psychological screening mechanisms for future criminal activity. *Bill C-*

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17 amends the course and test requirement provisions to include mandatory instruction in the laws relating to firearms for all FAC applicants. It remains to be seen whether these provisions will be proclaimed in the future.¹⁸

b) Discretionary Access Restrictions

Within the framework of enumerated access restrictions, *Bill C-17* considerably expands the investigatory and discretionary powers of firearms officers to grant or deny access to an FAC. These amendments give substantial new powers to the police since this responsibility rests with local law enforcement authorities. Police may now conduct an investigation into an FAC applicant's personal background which involves, but is not specifically limited to, interviews with the applicant's neighbours, community and social workers, spouse, dependents, or "whomever in the opinion of the firearms officer may provide information pertaining to whether the applicant has a history of violent behaviour, including violence in the home."¹⁹

In Section 106(9.1) of the *Criminal Code* Parliament has drawn a distinction between violence and violence in the home. This amendment potentially addresses the needs of battered women who suffer weapons violence disproportionately in the home and for whom police protection has been far from reliable.²⁰ The provision is a pre-emptive measure directed at the police which could lead to the disarming of violent males and a reduction in domestic firearms violence. Much of the provision's effectiveness will depend on the attitudes and sensitivity of the police to this type of battery.

The courts have also been given greater discretionary authority. Where an applicant has been refused an FAC and has asked for a reference for a hearing before a judge,²¹ the judge may refuse the application "if there is another good and sufficient reason [other than an indication of previous violent or mentally unstable behaviour] for confirming the opinion [of the firearms officer]." ²²

Persons convicted of an offence related to drug trafficking may now be prohibited from possessing a firearm or an FAC if a court decides that it is not in the interests of safety that the offender possess a firearm.²³ This amendment appears to complement the stricter prohibitions against automatic weapons²⁴ in an attempt to ward off American style drug warfare.²⁵

Parliament's access control mechanisms rely heavily on the discretion of police to screen applicants. The success of these mechanisms will depend in large measure on the ability of the police to discover and deny potentially violent people the right to purchase or possess firearms.

c) Search and Seizure

Where permits and certificates fail to prevent weapons offences, access to firearms can be controlled through seizure. The *Bill C-17*

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search and seizure amendments are directed at tightening controls over the movement and use of FACs and other permits and at clarifying certain police powers. Peace officers may now search and seize FACs, registration certificates, and other permits in addition to weapons and ammunition or explosive substances.²⁶ Where certificates are not found, police may automatically revoke them. This restriction prevents persons who have had their weapons seized by the police from legally purchasing other firearms without reapplying for an FAC.

On the other hand, police powers have been narrowed where a weapons related offence has been or is being committed.²⁷ Evidence of the offence must "be likely to be found on the person, vehicle or premises." Whereas, previously, belief on reasonable grounds was sufficient for police to search without a warrant, 'exigent circumstances' are now required.²⁸

d) Penalties

As a last resort, access to firearms may be controlled through prison sentences and mandatory prohibition orders upon release. *Bill C-17* sharply raises both maximum sentences and the duration of mandatory and discretionary prohibition orders, doubling them, for the most part, from five to ten years.

Bill C-17 suggests that Parliament is clamping down on weapons offenders, particularly repeat offenders. This is not surprising given that harsher penalties are politically expedient and address the concerns of gun lobbyists and law abiding voters.²⁹ Studies show that repeat offenders are more likely to be affected by an increase in severity of *Criminal Code* sanctions.³⁰ This is particularly true where, as in the 1977 amendments to the *Criminal Code*, new offences have been created. As *Bill C-17* introduces comparatively few substantive offences, it is debatable whether the stricter penalties in the new amendments will have a significant impact on court sentencing.

Reduced Availability Provisions

The legal availability³¹ of firearms depends to a large extent on how weapons are classified in the *Criminal Code*. Weapons defined as prohibited, either by specification or name, in the *Criminal Code* and the regulations are in every sense illegal and thus, theoretically unavailable. Such weapons cannot be bought, sold, traded, or possessed through any means except where previously registered as restricted weapons.³² Weapons classified according to the definition of 'restricted' (handguns, for example) must be registered with the police and statutory requirements for ownership must be met. All other weapons are freely available subject to FAC and other access restrictions.

Bill C-17 has made relatively few amendments affecting overall firearms availability. Firearms can still be purchased in unlimited quantities. There are no further restrictions on the importation or sale of handguns, semi-automatic rifles, or other non-restricted firearms.

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In addressing the issue of availability, Parliament's chief concern seems to have been closing a legislative loophole that permitted the importation of fully automatic assault rifles and sub-machine guns converted to fire semi-automatically. The definition of a prohibited firearm has been amended to include any firearm that is capable of, or is "assembled or designed and manufactured with the capability of", firing projectiles in rapid succession during one pressure of the trigger "whether or not it has been altered to fire only one projectile with one such pressure."³³ Further, parts, components or accessories of automatic and other firearms can be declared prohibited by regulation.³⁴

These amendments clear up some of the confusion in the courts that has arisen over the issue of whether converted or disassembled automatic weapons retain their capability to fire automatically, and thus, their prohibited status.³⁵ This concern is perhaps better understood when one considers the context of an increasingly widespread criminal use of these weapons in the United States, particularly in drug related offences. Clearly, an effort has been made to prevent these activities from spilling across the border.³⁶

It is ironic then, that in a separate initiative, *Bill C-6*,³⁷ Parliament has created the legislative environment for an expandable armaments industry in Canada. Prior to *Bill C-6*, exemptions for offences relating to the possession and trafficking of prohibited weapons applied solely to manufacturers providing such goods to the Canadian Armed Forces and the police. By a legislative oversight, weapon manufacturers were barred from selling or exporting their wares to other customers. *Bill C-6* 'corrects' this oversight. Government impact analysis statements indicate that the urgency in passing *Bill C-6* (it was passed six months before *Bill C-17*) arose as a result of the desire to capitalize on "commercial and trade developments" in the Middle East after the 1991 Persian Gulf conflict. As the domestic market for Canadian arms manufacturers is too small to be independently economically viable, Parliament has determined that access to "selected, legitimate foreign military markets"³⁸ is necessary to retain "highly skilled, well paying jobs, expertise and expensive technology."³⁹

Given the influence of the massacre in Montreal in initially steering gun control debate and the symbolic importance the government attached to the timing of *Bill C-17*, it is surprising that the only express new weapon prohibition in the amendments is the inclusion of "large-capacity cartridge magazines" as prohibited weapons.⁴⁰ Whether a similar killer's deadly force might thus be reduced by the necessity to reload smaller capacity magazines begs the question of whether there exists an acceptable number of deaths that can be measured against the interests of gun owners.

Accessibility and Availability

After the Montreal massacre, one of the most frequently debated questions in the media was how the gunman⁴¹ could so easily have gained access to a powerful semi-automatic rifle. The implicit assump-

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tion is that more stringently controlled firearm acquisition laws might prevent such crime by screening out dangerous persons and denying them the necessary permit to acquire a firearm. This assumption is flawed for two reasons. Firstly, it is unlikely that a criminal, or any person, desiring a weapon would have difficulty obtaining one. With some 925,000 registered handguns and 11,000,000 rifles and shotguns in circulation throughout Canada in 1989, 53,000 of which have been reported stolen, lost, or missing,⁴² accessibility is not a real obstacle.

Secondly, it is uncertain that the FAC screening process can identify persons with violent and/or criminal tendencies. This uncertainty is suggested by gun control statistics. In 1981, a year for which detailed figures are available, only eight out of every 1,000 applicants were refused an FAC in Ontario.⁴³ Of those refused, half had a criminal record and were clearly ineligible. Thus, only four out of every 1,000 applicants in Ontario were refused an FAC through a discretionary determination on the part of a firearms officer. In Canada in 1981, of 168,558 applications made for FACs, 1,006 applicants were refused. Yet in that same year police charged 6,544 people with firearms offences, and of these charges, 1,225 were for serious offences.⁴⁴ These figures suggest that a significant number of offenders have passed through the FAC screen and that some offenders are operating outside the process altogether.

Rather than operating as an effective mechanism for preventing serious crimes by reducing the accessibility of firearms to criminals, it is more probably the case that the FAC, registration, and permit processes, act as general control mechanisms on a basically lawful group of gun owners. This is supported by studies of the FAC and registration processes. In "Evaluation of the Canadian Gun Control Legislation",⁴⁵ Elisabeth Scarff showed that the population involved in firearm crimes is shifting to suspects with more serious criminal records. With gun control legislation in effect, suspects with less serious criminal histories seem less likely to commit weapons offences. Scarff's study also found that the access and safety controls introduced in the 1977 *Criminal Code* amendments contributed somewhat to a decline in the number of firearm accidents and suicides. Thus, while repeat offenders will operate outside the framework of controls, the controls can act as a damper on the type of senseless criminal activity and accidents that result from complete freedom of access to firearms and lack of restrictions on firearms circulation.

Despite the 1977 firearms amendments, over the past fifteen years most weapon related crime and accident trends in Canada have shown a remarkable similarity to American trends.⁴⁶ How then can one explain the enormous difference in weapon related crime, accident, and suicide rates between Canada and the United States? Certainly one factor is the near total lack of restrictions on weapons sales and accessibility in certain American states. Another explanation that merits further consideration, however, is the vast difference in firearms availability between the two nations.

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In Canada, the rate of handgun possession is approximately four per cent, and the rate of possession for all firearms is forty-five per cent.⁴⁷ This contrasts sharply with American rates where there are twenty-five handguns and ninety firearms overall for every one hundred people.⁴⁸ The frequency of homicides with firearms in each country reflects these differences. In the United States, this rate is approximately twice that in Canada.⁴⁹ Seventy-five per cent of these homicides in the United States are caused by handguns, whereas, in Canada, the corresponding figure is twenty-five per cent.⁵⁰ In considering the effect of a greater availability of firearms, the comparison of suicide rates between the United States and Canada is particularly revealing. Although Canadians are more likely to commit suicide, the rate of suicide by firearms in the United States is nearly double that in Canada.⁵¹ These figures seem to indicate that the significant difference in homicide rates between Canada and the United States is, to a considerable extent, a function of enormously different rates of firearms availability and possession.

Conclusion

Gun control remains a divisive issue in Canadian society. By concentrating on strictly controlling access to firearms with the *Bill C-17* amendments, Parliament has clearly addressed the interests of a significant number of Canadians who own or wish to be able to own firearms.⁵² As the vast majority of these persons are men,⁵³ one must question the extent to which *Bill C-17* has been informed by the interests of women.

The difficult policy question is whether Canada should be moving towards a gun free society, or at the very least, gun free urban communities. Access restrictions are, to some extent, beneficial in reducing weapons related accidents and violence. They are, however, limited by the inability of police to predict and screen out all future offenders. As Scarff's study shows, a significant number of suspects involved in crimes with firearms have no previous criminal records.⁵⁴ Either these offenders are slipping through the current access control mechanisms or they are choosing to operate outside of these mechanisms.

With the exceptions of further restricting the possibility of possessing prohibited automatic weapons and prohibiting the sale and use of large-capacity cartridge magazines, *Bill C-17* will have little impact on reducing the numbers and, thus, the availability of firearms. To many of the people who petitioned the government for stricter gun control following the Montreal massacre, the bill will be a disappointment. Access controls reach a limit in controlling firearms violence. To reduce firearms violence further Parliament must address the issue of availability.

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1. "Killer Fraternized with Men in Army Fatigues" *The Globe and Mail* (9 December 1989) A-6.
2. More than 500,000 people signed a petition demanding tighter controls on guns. "Thousands Mourn Montreal Killing with Candles, Bells" *The Globe and Mail*, 7 December 1990) A-6.
3. *Criminal Code.*, R.S.C. 1985, c.C-46.
4. Bill C-17, *An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof*, 3d Sess., 34th Parl., 1991 (assented to 5 December, 1991).
5. Size to be established in regulations.
6. *Supra*, note 4 at Section 106. A Firearms Acquisition Certificate (FAC) is required of all persons who wish to buy, sell, give away, receive, or otherwise trade a firearm.
7. *Supra*, note 4 at Section 109. All restricted weapons—handguns, automatics modified to fire semi-automatically (which must be registered by Oct. 1, 1992 or be declared prohibited), and other weapons classified as such — must be registered with a local registrar of firearms.
8. *Supra*, note 4 at Section 110.
9. *Supra*, note 4 at Section 106(1).
10. *Supra*, note 4 at section 106(8).
11. *Supra*, note 4 at Section 106(2).
12. Section 84(1) includes the new definition of "gun collector". Among other requirements, such a collector must be knowledgeable of the historical and technological characteristics of his/her weapons, consent to periodic inspections, and comply with secure storage regulations.
13. See *supra*, note 7.
14. Registrars of firearms are normally police officers.
15. See *supra*, note 7.
16. *Supra*, note 4 at Section 109(4.1)(a).
17. *Supra*, note 4 at Section 109(4.1)(b).
18. *The Globe and Mail* reported that Canada's Minister of Justice has established a National Advisory Council on Firearms to find a way of implementing and then proclaiming s.106(2)(c). "Gun Control Legislation Stuck in Committee" *The Globe and Mail* (7 December 1990) A-6.
19. *Supra*, note 4 at Section 106(9.1).
20. For an interesting statistical introduction to the distribution of homicide offences by location and gender of victim see the House of Commons Report, *Homicide in Canada 1976-1985 An Historical Perspective*.
21. *Supra*, note 4 at Section 106(5).
22. *Supra*, note 4 at Section 106(4)(d).
23. *Supra*, note 4 at Section 100(2)(c).
24. I discuss these prohibitions, *infra*, under the section "Reduced Availability Provisions."
25. See *infra.*, under section "Reduced Availability Sections."
26. *Supra*, note 4 at Sections 103(1) and 103(2).
27. *Supra*, note 4 at Section 101(1).
28. This amendment reflects a successful *Charter* challenge in *R. v. McDonough (1988)*, 44 C.C.C. (3d) 370. In this case, an Ontario District Court held that the lack of any requirement for urgency in searching without a warrant violated s.8 *Charter* guarantees against unreasonable searches.
29. Under pressure to sign the *Brady Bill*, which calls for a seven day wait and check on gun purchasers in the United States, National Rifle Association member George Bush has signaled he may sign the bill if the administration's "anti-crime package" is passed as well. See 77 ABA Journal at p.105. In Canada, a report by the Canadian Sentencing Commission, February 1987, concluded that "most Canadians believe sentences to be too lenient."
30. E. Scarff, *Evaluation of the Canadian Gun Control Legislation: Final Report* (Ottawa: Solicitor General Canada, 1983) at 36 to 39.
31. Although the relationship between accessibility and availability is no doubt a complex one, in this analysis I will consider only legal availability on the assumption that this will be the most significant factor in determining the number of such weapons in commercial, and thus personal, circulation.
32. *Supra.*, at note 7.

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33. *Supra*, note 4 at Section 84(2)(c).
34. *Supra*, note 4 at Section 84(2)(e).
35. In *R. v. Global Armaments Ltd.* (1988), 93 A.R. 77, affirmed by (1990), 105 A.R. 260 (Alta. C.A.) for example, an Alberta Provincial Court held that modifications to automatic weapons must be "totally effective and not subject to reversal" before they lose their capability to fire automatically. On the other hand, in a split decision the Ontario Court of Appeal ruled recently in *R. v. Hasselwander* (1991), 5 O.R. (3d) 225 that a weapon capable of firing automatically if adapted, is not a prohibited weapon unless adapted-capability refers to capability in its present condition.
36. As noted *supra* under the section "Discretionary Access Restrictions," *Bill C-17* now allows courts to bar persons convicted of drug trafficking offences from possessing firearms (Section 100 (2)(c)).
37. *An Act Respecting the Exporting, Importing, Manufacturing, Buying or Selling of or Dealing with Certain Weapons*, S.C. 1991, c.28 (proclaimed 3 October, 1991).
38. *Ibid.*, at 3393.
39. *Ibid.*, at 3389.
40. *Supra*, note 4 at Section 84(3)(f).
41. The killer was frequently characterized as being an "unusual" and "anti-social" person, one who, as noted in *The Globe and Mail*, *supra*, note 1, for example, "fraternized with men in army fatigues."
42. RCMP Annual Firearms Report to the Solicitor General of Canada, 1989.
43. *Supra*, note 30 at 119-120.
44. *Supra*, note 4 at Section 85(1) use of a firearm during the commission of an offence; Section 87 possession of a weapon for a purpose dangerous to the public peace; Section 86(1) pointing a firearm—careless use.
45. *Supra.*, note 30, at 72.
46. R.J. Mundt, "Gun Control and Rates of Firearms Violence in Canada and the United States" (1990) 32 *Cdn. J. Crim.* 137 at 150.
47. *Ibid.*, at 149-150.
48. *Ibid.*
49. *Ibid.*, at 142.
50. *Ibid.*
51. *Ibid.*, at 147.
52. See G. Mauser, "A comparison of Canadian and American attitudes towards firearms" (1990) 32 *Cdn. J. Crim.* 573 at 579.
53. See P. C. Stenning and S. Maron, *Firearms Ownership and Use in Canada: A Report of Survey Findings, 1976* (Centre of Criminology, University of Toronto, 1981) at 11.
54. This rate is forty-five per cent. See *Ibid.*, at 72.