



National Association of Women and the Law
Association nationale Femmes et Droit

Brief Submitted to the House of Commons Standing
Committee on Public Safety and National Security
on
Bill C-71 *An Act to amend certain Acts and Regulations
in relation to firearms*

May 25, 2018

Executive Summary

The National Association of Women and the Law (NAWL) is an incorporated not-for-profit feminist organization that promotes the equality rights of women in Canada through legal education, research, and law reform advocacy.

In this submission,¹ NAWL echoes the voices of other women's organizations in supporting the steps the government has taken in Bill C-71 to better protect public safety, and reiterates calls that it be further strengthened to better protect women and children.

We applaud the government for removing the provision included in the *Firearms Act*² that limited the review of the eligibility criteria to a five year period only. NAWL supports the approach that provides for considering a person's entire life history when determining whether they should be deemed eligible to obtain a firearms licence. NAWL also supports both the repeal of the provision allowing the Governor in Council to downgrade the classification of a firearm when it meets a higher criteria prescribed in the *Criminal Code*, and the reinstatement of the prohibited classification of two groups of firearms, CZ-858 rifles and the Swiss Arms family of rifles (which had been downgraded by the previous government in 2015).

While generally supporting Bill C-71, NAWL recommends that it should be further strengthened in the following ways:

1. Provide a mechanism for the police to be able to access the records of gun sales that businesses will be mandated to keep, without the need to apply for a warrant;
2. When sales of firearms are reported to the Canadian Firearms Program (CFP), the CFP must be able to keep a record of that sale;
3. Require that private sellers to keep records of the sale of all firearms and their purchasers; and
4. Include a more thorough screening for gun licences, especially with respect to domestic violence

¹ NAWL gratefully acknowledges the work of Lydia Blois in preparing this brief.

² *Firearms Act*, SC 1995, c 39, s 5(2).

and mental health issues.

These recommendations are needed to further strengthen Bill C-71 so that it is more responsive to the safety concerns of women and children. The time is now to strengthen Canada's gun control laws, and to make Canada safer for women and their children, including those facing domestic violence.

Introduction

The National Association of Women and the Law (NAWL) is an incorporated not-for-profit feminist organization that promotes the equality rights of women in Canada through legal education, research, and law reform advocacy.

In this submission, we echo the voices of other women's organizations that support the steps taken by the government in Bill C-71 to better protect public safety. Canadians are in favour of stricter gun control. A recent poll found that 81% of Canadians agree that "private ownership of semi-automatic assault weapons for recreational purposes should not be legal in Canada," with identical support in urban and rural areas.³ Another recent poll showed 85% in support of "banning personal possession of military assault weapons and sniper rifles by civilians."⁴

NAWL specifically endorses the recommendations of the Coalition for Gun Control (Coalition), an organization that was founded in the wake of the Montreal massacre, and the only national non-profit organization working to reduce gun injury, death and crime in Canada.

How gun control affects women

NAWL also advocates for additional amendments that would further strengthen Bill C-71 so that it will better protect women and children.

³ Environics Research poll1, as referred to in PolySeSouvient, News Release "Victims group condemns bill that provides bare minimum and fails to put public safety first" (March 20, 2018) online: <http://polysesouvient.ca/Documents/PRSS_18_03_20_Reaction_Goodale_Bill.pdf> ["Victims group condemns bill"].

⁴ A poll published by Policy Options, as referred to in "Victims group condemns bill."

While guns and gangs are a threat to public safety, the discourse around the regulation of firearms needs to be broadened to include a gender analysis that takes into account the ways in which firearms disproportionately affect women. As stated by Colette Prevost, Director of Advocacy for the YWCA Canada:

[f]irearms figure prominently in the cycle of violence against women and the evidence is clear – when firearms are present, women and their children are more likely to die. Controls over firearms are associated with a precipitous fall in murders of women with guns, without evidence of substitution effects. A gender lens is critical in advancing progressive firearms legislation in this country – for every woman killed or injured with a firearm, thousands more live with the daily threat of such violence.⁵

The Barbra Schlifer Commemorative Clinic has also emphasized that: “it is critical to understand why women are so vulnerable to firearms. It is not only the intense vulnerability created by victimization in their most intimate relationships and often in their own homes, but also the fact that women are almost always victims, but not owners of firearms.”⁶

The issues that women face in relation to gun violence cannot be addressed simply by focusing on enforcement measures designed to stop illegal gun sales because; “[i]n Canada, the majority of the firearms used to kill women are not smuggled or illegally owned – they are legally owned rifles and shotguns. In cases reviewed by the Ontario Domestic Violence and Death Review Committee, most of the firearms used were legally acquired.”⁷ In Ontario alone, from 2006 to 2010, all of the firearms used in domestic homicides were legally obtained.⁸ The presence of a gun in a house is the top risk factor in determining lethality in cases of domestic violence.⁹ This risk factor could be eliminated, or at least mitigated, by more gun control. Therefore helping to put more safeguards in place in relation to legally purchased weapons is an incredibly meaningful way to help prevent violence against women, and their children.

⁵ “Federal Government Takes Important First Step.”

⁶ Factum for the applicant, Barbra Schlifer Commemorative Clinic, (April 10, 2014) in the case of *Barbra Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140, 121 OR (3d) 733, at para 161, footnotes omitted [Barbra Schlifer Factum].

⁷ Barbra Schlifer Factum, at para 41, footnotes omitted.

⁸ Barbra Schlifer Factum, at para 41, footnotes omitted.

⁹ *Ibid*, at para 32, footnotes omitted.

To illustrate the issue, the following are the stories of some of the women and children who have been affected:

1. In April 2006, Francine Maily and her three children; Jessica, Brandon and Kevin, were shot by her estranged husband with a .22-calibre rifle in Cumberland (ON). Police had been repeatedly called to the family home.
2. In October 2006, Mila Yoynova and her two daughters; Iva, 17, and Alice, 10, were killed in Beaconsfield (QC), by her husband who used a legally owned handgun.
3. In December 2006, in Brockville (ON), Stefanie Stevenson was shot with a rifle used by her estranged husband who had previously been convicted of uttering threats against her.
4. In December 2009, in Saguenay (QC), Marie-Josée Desmeules was fatally shot by her husband, who then committed suicide.¹⁰

The government's obligations under section 15 of the *Canadian Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms*¹¹ calls for an equality rights analysis of public safety issues, such as gun control. Section 15(1) of the *Charter* specifically states: “[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...”¹² As detailed above, women are unequally affected by gun violence, and it is men, not women, who disproportionately own guns. Section 15 of the *Charter* “imposes a duty on government to ensure that the formulation of law and policy takes into account potentially differential impacts on different groups in society and to ensure that government actions do not exacerbate pre-existing disadvantage”¹³

¹⁰ “The Case For Gun Control.”

¹¹ *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

¹² The *Charter* at s 15(1).

¹³ Barbra Schliker Factum at para 150, referring to *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, 1997 CanLII 327 at para 64.

Bill C-71 is a good start but it does not yet go far enough

NAWL supports the approach that a person's entire life history should be considered before they are determined to be eligible to obtain a firearms licence. Therefore, we applaud the government for removing from the *Firearms Act*¹⁴ the reference to reviewing only a five-year period when considering whether or not someone should be eligible to have a gun licence.

NAWL also supports the government's repeal of the provision allowing the Governor in Council to downgrade the classification of a firearm when it meets a higher criteria as prescribed in the *Criminal Code*, as well as the reinstatement of the prohibited classification of two groups of firearms, CZ-858 rifles and the Swiss Arms family of rifles, that were downgraded in 2015 by the previous government.

While generally supporting Bill C-71, NAWL recommends that it be further strengthened in the following ways:

1. Provide a mechanism for the police to be able to access the records of gun sales that businesses will be mandated to keep, without the need to apply for a warrant;
2. When sales of firearms are reported to the Canadian Firearms Program (CFP), the CFP must be able to keep a record of that sale;
3. The requirement to verify the validity of the firearms licence of the recipient of a non-restricted firearm sale with the CFP must be extended to private sales, and private sellers must be required to keep records of the sale of all firearms and their purchasers; and
4. Include more thorough screening for gun licences, especially with respect to domestic violence and mental health issues.

1. Provide a mechanism for the police to be able to access the records of gun sales that businesses will be mandated to keep, without the need to apply for a warrant

¹⁴ *Firearms Act*, SC 1995, c 39, s 5(2).

Prior to the long gun registry system, police were able to access the business records of gun sales without the need to apply for a warrant. This system must be put back in place. In many situations, including but not limited to those involving domestic violence, the police need to be able to access business records to determine ownership of the gun used to commit a crime. In a situation of domestic violence, this is critical in order to be able to alert a person about how many guns might be in the home. For instance, a woman who has had police come to her house because her partner has been threatening her with a gun, needs to be sure that all of his guns are seized. The police are only able to do that if they can access business records quickly and efficiently.

2. When the sale of firearms is reported to the Canadian Firearms Program (CFP), the CFP must be able to keep a record of those sales

Registration attaches a name to a particular firearm, and thereby creates accountability in firearm owners about how they handle their firearms.¹⁵ In an RCMP report from 2010, “it was explicitly recognized that ‘without registration there is a failure of accountability on behalf of the owner, and it is registration that drives that accountability.’”¹⁶ The Alberta Court of Appeal’s *Reference re: Firearms Act* the Court “similarly highlighted the link between registration and accountability.”¹⁷ As stated by the factum prepared by the Barbra Schlifer Commemorative Clinic’s in their fight to stop the previous government from repealing the long-gun registry:

This sense of accountability is what contributed to preventing unlawful transfer i.e. because a firearm can be traced back to an original owner and firearms owners conducted themselves with this in mind. Without the accountability of a name attached to a particular firearm, owners can transfer firearms without regard for legal requirements because the transfer is unlikely to be traced back to them. For women in situations of domestic violence, this means that men who should not possess firearms, either because they are unlicensed or for other public safety reasons, are more easily able to acquire firearms, putting the safety of women at greater risk.¹⁸

¹⁵ Barbra Schlifer Factum at para 67, footnotes omitted.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, referring to *Reference re: Firearms Act (Can.)* [1998] AJ No 1028 (CA) at paras 188, 189, 197, 213.

¹⁸ Barbra Schlifer Factum at para 68, footnotes omitted.

3. Private sellers must keep records and verify licences

Private sellers are an important part of how guns in Canada are sold. In Quebec, private sales represent almost a third of all gun sales.¹⁹ The purpose of the sales records is to enable the police to systematically track any firearm used in the commission of a crime. The police will be unable to do so if they are restricted to only tracking guns purchased at a business. This will create a loophole for people who wish to commit a crime and not be traced. This loophole must be closed.

4. Include more thorough screening for licences, with respect to domestic violence and mental health issues

When screening takes place, additional and more effective means are required to identify people who have the potential to commit assault, to commit domestic violence, and to commit suicide. Screening requirements are stronger when spousal notification is required when a person is making an application to get a licence.

In relation to identifying relevant mental health issues, the current system that is based on self-reporting is fraught with problems, especially as some individuals don't realize they are a threat to themselves or others. In Ontario, physicians must report to the Ministry of Transportation if someone has a medical condition that may make it unsafe for them to drive a car. A similar system should be put in place for physicians to provide this information to the government before a gun licence is given, or a gun purchase is made. Physicians, or family members should be able to report whether someone in the household has an active mental illness and should require a more thorough assessment before obtaining a firearm licence, or to have existing firearm licences removed.

The government needs to pursue a thorough study of the issue in order to create better tools to identify and assess people who wish to get a licence and purchase a gun.

¹⁹ "Victims group condemns bill."

Conclusion

While much more remains to be done to address the situation faced by the countless women and children in Canada who are threatened, injured and even killed by guns, the adoption of the recommendations proposed in this brief would make an important contribution by helping to further strengthen Bill C-71.

In addition, a comprehensive review of the guns that are listed as restricted or prohibited should be undertaken. The federal government must ban military assault weapons and sniper rifles. The AR-15, the gun used in repeated mass shootings in the United States, is available as a restricted weapon in Canada, and the Ruger Mini 14 is sold as an unrestricted firearm. The availability of both must be prevented. The government should also consider implementing innovative approaches. For example, listing what is permitted, rather than what is prohibited, would help reduce the ability of manufacturers to circumvent the regulations.

Women continued to be threatened and killed with guns, including in their own homes. They cannot and should not have wait any longer for stronger and more effective gun controls. The time is now to strengthen Canada's gun control laws, and to make Canada safer for women and their children.

Bibliography

Legislation

Bill C-71, *An Act to Amend Certain Other Acts and Regulations in Relation to Firearms*, 1st Sess, 42nd Parl, 2018.

Firearms Act, SC 1995, c 39.

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Jurisprudence

Barbra Schlifer Commemorative Clinic v Canada, 2014 ONSC 5140, 121 OR (3d) 733.

Reference re: Firearms Act (Can.), [1998] AJ No 1028 (CA).

Secondary Materials: Articles

Coalition for Gun Control, Press Release, “Federal Government Takes Important First Step with New Federal Gun Regulations but Stronger Measures Still (or Gun Sale Controls) Needed” (March 20, 2018).

Press Release, “The Case for Gun Control: Reducing Domestic Homicide,” (2015), online:

<http://guncontrol.ca/wp-content/uploads/2015/03/domestic_hom.pdf>.

Factum for the applicant, Barbra Schlifer Commemorative Clinic, (April 10, 2014) in the case of *Barbra Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140, 121 OR (3d) 733.

PolySeSouvient, News Release “Victims group condemns bill that provides bare minimum and fails to put public safety first” (March 20, 2018) online:

<http://polysesouvient.ca/Documents/PRSS_18_03_20_Reaction_Goodale_Bill.pdf>.