



Department of Justice
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Ministère de la Justice
Canada

Firearms Control and Domestic Violence



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This reference document was developed to help police officers understand and use their powers under the law to prevent as well as deal with domestic violence cases involving firearms.

The document was developed in partnership with the provinces and territories. Therefore, the Department of Justice Canada wishes to particularly thank the police community nationwide and the Chief Provincial and Territorial Firearms Officers for their contribution to its development.

Firearms Control Task Group
Department of Justice Canada

March 1995

NOTE

The information presented in this document reflects firearms legislation in effect in March 1995. The document will be updated as legislative and regulatory changes regarding firearms occur, and police will be informed of any such changes.

As this document was going to print, a firearms act and amendments to the *Criminal Code* were before Parliament.

Adoption of the firearms act would replace the Firearms Acquisition Certificate by a firearms license, and require that every firearm be registered. A registration certificate would be issued for each registered firearm. A Canadian firearms registry would enhance the safety of police and of the people of Canada by:

- facilitating safe interventions of police on domestic calls, since they would know what firearms were in the household;
- improving the incentive to store firearms safely, since firearms would be traceable and owners held accountable;
- facilitating police enforcement of court-ordered prohibitions;
and
- providing information to facilitate criminal investigations, including information about firearms passing from a legitimate owner to someone possessing them illegally.

Adoption of amendments to the Criminal Code would bring a mandatory 4 year minimum sentence and a lifetime prohibition against the possession of a restricted weapon for 10 new violent offences involving the use or threatened use of a firearm, as follows:

- attempted murder
- manslaughter
- criminal negligence causing death
- robbery
- kidnapping
- hostage-taking
- sexual assault with a weapon
- aggravated sexual assault
- extortion
- discharge of a firearm with intent to cause harm.

These penalties would enhance public safety by serving to deter violence with firearms.

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Firearms Control and Family Violence

Background

During the last several years, the Department of Justice Canada has been studying how firearms are used in the domestic violence context. Various research reports¹ examine suicides and domestic homicides, police responses to domestic disputes and firearms related concerns.

This paper draws on the research and links it to the firearms legislation. It provides information about people who are a possible danger to themselves or to others and it suggests prevention strategies that can be used to reduce the number of deaths and injuries occurring in a domestic context.

Introduction

Firearms are powerful, effective weapons. One study found that people who used a firearm to attempt suicide were successful 92 per cent of the time.² A Danish study concluded that wounds caused by a firearm were 15 times more likely to result in death than knife wounds.³

In 1990, firearms were used in more than 30 per cent of all the suicides and homicides that took place in Canada.⁴ In that year, there were 1324 firearms-related deaths.⁵ Of these, 1054 were suicides, 182 were homicides, 66 were accidents and 22 were classified as "other."

In an average year, more than 1,300 people are hospitalized because of the misuse of firearms.⁶

¹ Summaries of the studies are listed at the end of this paper.

² Card J.J., "Lethality of suicidal methods and suicide risk: two distinct concepts", *Omega* 1974; 5: 37 - 45 in A. Chapdelaine *et al*, "Firearm-related injuries in Canada: issues for prevention", *Canadian Medical Association Journal* 1991; 145(10), p. 1218.

³ Hedeboe J. *et al*, "Interpersonal violence - patterns in a Danish community", *American Journal of Public Health*, 1985, 75, 651 - 653, in A. Chapdelaine *et al*, footnote 2.

⁴ Hung, Table 22.

⁵ Hung, C.K., *Firearms Statistics (Updated Tables)*, Department of Justice Canada, Table 20.

⁶ Hung, Table 24.

According to one source, 87 per cent of all spousal⁷ homicides in 1991 occurred in private residences, and 38 per cent were shootings.⁸

In cases of wife assault, husbands may kill their wives as an expression of power in a relationship characterized by control and abuse. In many cases, a husband will kill himself after killing his wife.⁹ When a wife kills her husband, there is significant evidence that she is reacting to past abuse and having been victimized by a violent husband.¹⁰ Because she fears for her life, she kills to defend herself.

The following chart outlines factors identified by research that police officers should take into account when deciding whether to issue a Firearms Acquisition Certificate (FAC) or when responding to cases such as Domestic Violence calls where a decision to remove firearms is required. The chart reflects a study of 93 cases of a husband killing his wife, indicating the percentage of those cases where certain risk factors were involved for the accused and the victim, and where related events were in evidence.

* This table refers to data from 1989 and 1990 on husbands killing their wives. See the report, *Domestic Homicides Involving the Use of Firearms*, Ottawa. Department of Justice, 1992

HUSBANDS KILLING WIVES - FACTORS TO CONSIDER

ACCUSED	%
Abuser of alcohol	65
Under influence of alcohol	64
Has criminal record	53
On unemployment or social assistance	42
Recently unemployed	30
Has bankruptcy or credit problems	25
Involved in love triangle	24
Abuser of drugs	21
Awaiting trial	18

⁷ In this paper, the word "husband" includes common-law husbands and the word "wife" includes common-law wives.

⁸ Wilson, Margo and Martin Daly, "Spousal Homicide" in *Juristat*. Canadian Centre for Justice Statistics. Statistics Canada. Vol. 14., No. 8, Cat. 85-002. March 1994, p. 3.

⁹ In its study of domestic homicides in 1991-92, Dansys Consultants found that a husband killed himself after killing his wife 70 % of the time. Dansys Consultants Inc., *Domestic Homicides involving the use of Firearms*, Department of Justice Canada, March 1992, p. 35.

¹⁰ Dansys Consultants Inc., p. 36 and 37.

VICTIM	%
Involved in love triangle	22
On unemployment / social assistance	16
Abuser of alcohol	14

RELATED EVENTS	%
Victim and accused involved in violent disputes	81
Family, acquaintances aware of violent disputes	73
Separation / divorce negotiations	49
Prior non-reported assaults	43
Money / property disputes	40
Victim and accused recently took separate residences	40
Police aware of violent disputes	22
Illegal possession of firearm by accused	18
Reports to police of prior assault	18
Fear of gun use expressed to another person (not to police)	15
Counsellors aware of violent disputes	13
Fear of gun use expressed to police	11
Child custody disputes	10

It is clear that misuse of firearms can lead to death or serious injury. However, the law provides the police, the courts and the public with opportunities to intervene to prevent the misuse of firearms.

The law provides opportunities to:

1. prevent a person from acquiring a firearm (Firearms Acquisition Certificate process);
2. limit access to restricted firearms;
3. prohibit the possession of a firearm as part of a sentence.
4. prohibit the possession of a firearm as a condition of a recognizance (peace bond);

5. search, seize and apply for a prohibition order; and
6. enforce safe storage regulations.

1. Firearms Acquisition Certificate Process

The research on firearms and domestic violence has identified several factors that were present in a significant number of cases of domestic homicide. These risk factors should be considered when deciding whether or not to issue a Firearms Acquisition Certificate.

When is a person's safety at risk?

One study found that 47 per cent of people accused in domestic homicides had a criminal record; 14 per cent were awaiting a court appearance and 6 per cent were on parole.¹¹

There is also a strong relationship between substance abuse and the misuse of firearms. In one study, 49 per cent of people accused of murdering their husband or wife with a firearm were identified abusers of alcohol and 24 per cent were known to abuse drugs.¹² A person who abuses alcohol or drugs is more likely to use a firearm to commit suicide¹³ than to use another means.

Most female homicide victims are killed by their current or former male partner, including husband, common-law husband or boyfriend. Moreover, family breakdown is a factor in a significant number of firearms-related domestic homicides. In half the cases in which a wife was murdered by her husband, the couple was in the process of negotiating a divorce or separation. In 40 per cent of the cases, the couple had recently established separate residences.¹⁴

Stressful life events can also be a factor in firearms-related deaths. Research has found that 30 per cent of husbands who killed their wives were recently unemployed; 25 per cent were bankrupt or had credit problems, and 24 per cent were involved in a love triangle.¹⁵ Many

¹¹ Dansys *Firearms*, p. 33.

¹² Dansys *Firearms*, p. 32.

¹³ Moyer S. and Carrington P., *Gun Availability and Firearms Suicide*, Department of Justice Canada, July 1992, p. 33.

¹⁴ Dansys *Firearms*, p. 35.

¹⁵ Dansys *Firearms*, p. 35.

suicides were not attributed to poor health or mental disorder (depression, schizophrenia, etc.) but to the occurrence of a stressful life event.¹⁶

Research shows that people who used a firearm to kill or injure someone often have one or more of these characteristics.

Characteristic	Source of information
a criminal record involving violent offences	CPIC* and Local Indices**
a history of alcohol or drug abuse	hospital records, court records, impaired driving charges, other charges
a history of domestic violence	domestic complaints, Local Indices
a recent stressful life event, such as large debts, bankruptcy, job loss, separation or divorce	interviews with family, friends, neighbours
a recent court appearance for a criminal offence	record of assaults, weapons offences, domestic disturbances, driving while impaired, recognizance (peace bond), bail release order

* Canadian Police Information Centre

** Local police records

What does the law say?

A Firearms Acquisition Certificate (FAC) is required to acquire firearms by any means, whether from a dealer or through a private transaction.

The *Criminal Code*, as referenced in the following, restricts who can acquire an FAC.

Section 106(1) A firearms officer can decide not to issue an FAC when it is "desirable in (see ss 104(4) the interests of the safety of the applicant or of any other person that the (a)(b)(c) and (d) applicant should not acquire a firearm." Without an FAC, a person cannot legally obtain a firearm.

¹⁶ Nadeau L. with Dr. Pierre Maurice and Dr. Marie-Claude Messely, *Analyse critique des questions pouvant faire partie du formulaire de demande d'Autorisation d'acquisition d'armes à feu (A.A.A.F.)*, 1992, p. 21.

A firearms officer cannot issue an FAC to a first-time applicant until 28 days after the date of the application. This gives the firearms officer time to conduct an investigation. A firearms officer can renew a valid FAC without delay (Section 106(1.2)), provided there is no safety reason to refuse the renewal (Section 106(1)).

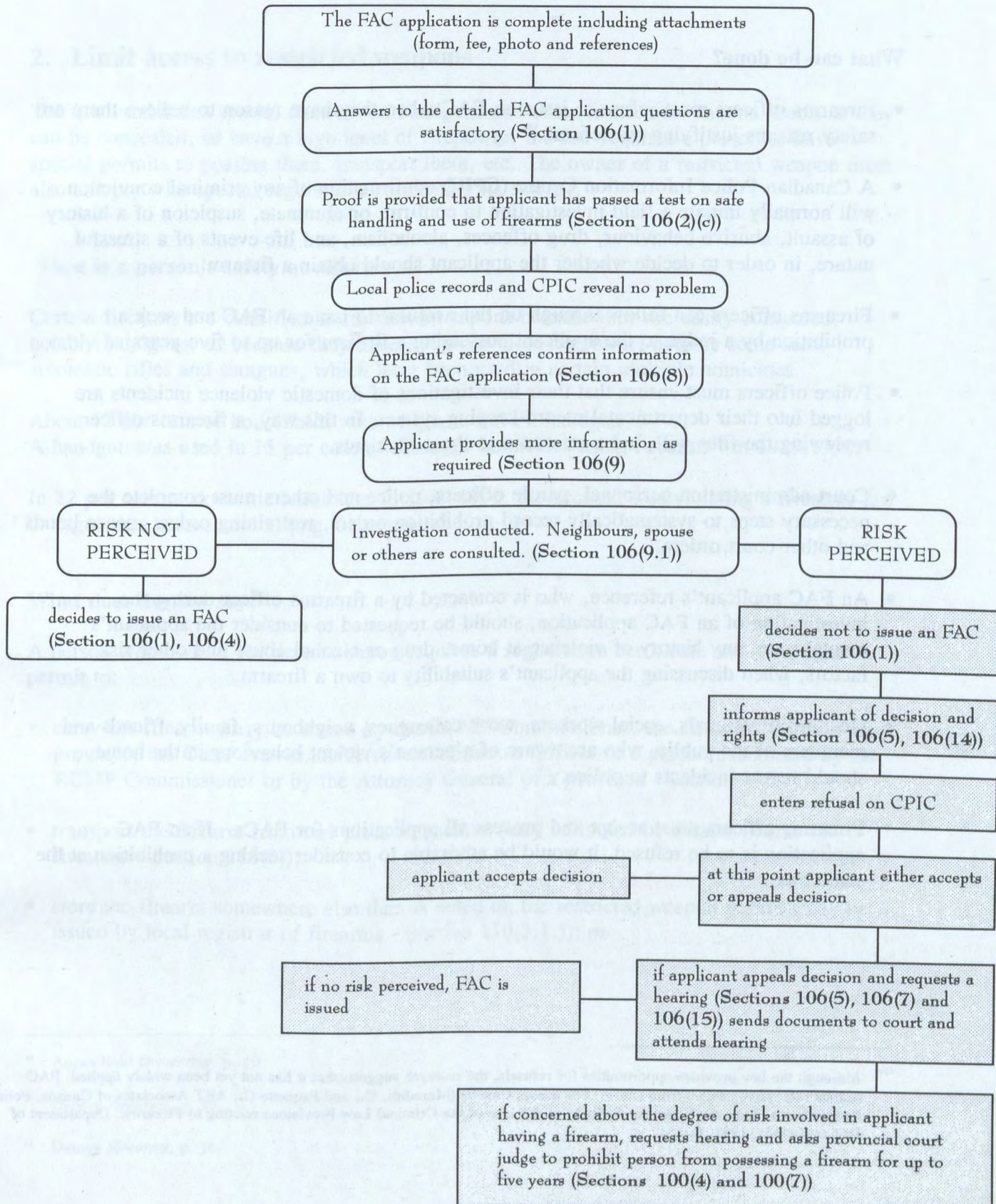
- Section 106(8) The FAC application form asks 16 questions about an applicant's personal history and requires the applicant to give the names and addresses of two references, as prescribed by regulation, who have known the applicant for at least three years and can confirm the information on the application. By contacting the references, the firearms officer can obtain additional information about the applicant. In this way the community is involved in firearms acquisition decisions.
- Section 106(9) A firearms officer who has received an FAC application can ask the applicant for more information to determine the degree of risk involved in issuing an FAC.
- Section 106(9.1) A firearms officer who has received an FAC application can investigate the applicant's background. A firearms officer can interview the applicant's neighbours, community/social workers, spouse, dependents, references or anyone else who can tell the firearms officer if the applicant has a history of violent behaviour, including violence in the home.¹⁷
- Section 100(4) and
Section 100(7) When a firearms officer or a peace officer believes that a person's safety is at risk, he/she can consider asking the court for a prohibition order. A provincial court judge can prohibit a person from having a firearm, ammunition or explosive substance for a period not exceeding five years.

Conclusion

The police, crown attorneys, judges, parole officers, other criminal justice system personnel and social workers may have already been in contact with a significant number of people who might commit murder in a domestic context. By being alert to safety factors, they may be able to intervene to prevent a person who is a safety risk from acquiring an FAC.

¹⁷ If a firearms officer refuses to issue an FAC, the applicant has 30 days to ask the firearms officer to refer the decision to a provincial court judge for a hearing (Sections 106(5), 106(7), and 106(15)). At the hearing, the applicant has to convince the provincial court judge that the refusal to issue an FAC was not justified (Sections 106(16) and 106(17)). The provincial court judge can confirm the refusal if there was a "good and sufficient reason" for it or if, within the last five years, the applicant has been convicted of a firearms offence, has been treated for a mental disorder or has a history of behaviour that includes violence or threatened or attempted violence against a person (Section 106(4)). The judge can also prohibit the applicant from possessing any firearm for up to five years (Section 100(7)).

FIREARMS ACQUISITION CERTIFICATE PROCESS



What can be done?

- Firearms officers must refuse to issue an FAC when they have reason to believe there are safety reasons justifying the refusal.¹⁸
- A Canadian Police Information Centre (CPIC) confirmation of any criminal conviction will normally initiate a field investigation to confirm, or eliminate, suspicion of a history of assault, abusive behaviour, drug offences, alcoholism, and life events of a stressful nature, in order to decide whether the applicant should obtain a firearm.
- Firearms officers can follow through on their refusal to issue an FAC and seek a prohibition by a judge to the applicant possessing a firearm for up to five years.
- Police officers must ensure that their investigations of domestic violence incidents are logged into their departmental record-keeping system. In this way, a firearms officer reviewing the files will find a reference to those incidents.
- Court administration personnel, parole officers, police and others must complete the necessary steps to systematically record prohibition orders, restraining orders, peace bonds and other court orders.
- An FAC applicant's reference, who is contacted by a firearms officer during the investigation of an FAC application, should be requested to consider the applicant's mental state, any history of violence at home, drug or alcohol abuse and other risk factors, when discussing the applicant's suitability to own a firearm.
- Health professionals, social workers, work colleagues, neighbours, family, friends and members of the public, who are aware of a person's violent behaviour in the home, should report incidents to police.
- Firearms officers must accept and process all applications for FACs. If an FAC application is to be refused, it would be advisable to consider seeking a prohibition at the same time.

¹⁸ Although the law provides opportunities for refusals, the research suggests that it has not yet been widely applied. FAC refusal rates have ranged from 0% to .8% across Canada (Meredith, C., and Paquette C., ABT Associates of Canada, Police Responses to Domestic Violence: A Study of the Use of the Criminal Law Provisions relating to Firearms, Department of Justice Canada, 1991, p. 16).

2. Limit access to restricted weapons

The law establishes special controls on handguns and other restricted weapons. Because they can be concealed, or have a high level of firepower, the law requires a person to have special permits to possess them, transport them, etc. The owner of a restricted weapon must also comply with special regulations concerning its storage.

When is a person's safety at risk?

Certain firearms are classified as restricted weapons because they are easily concealed, notably handguns, or because they have a high level of firepower, notably some semi-automatic rifles and shotguns, which have been used in certain multiple homicides.

About 12 per cent of households with a firearm have a handgun.¹⁹
A handgun was used in 15 per cent of domestic homicides using firearms²⁰ in 1989-1990.

In 22 per cent of domestic homicides in 1989-1990, the accused was violating a firearms law or regulation before committing the murder.²¹

What does the law say?

A person who owns a restricted weapon requires a registration certificate and a separate permit to:

- carry the firearm (may be issued by the RCMP Commissioner, the Attorney General of a province, the Chief Provincial/Territorial Firearms Officer or a person designated by the RCMP Commissioner or by the Attorney General of a province - Section 110(1));
- transport the firearm from one place to another (may be issued by local registrar of firearms - Section 110(3));
- store the firearm somewhere else than is noted on the restricted weapon permit (may be issued by local registrar of firearms - Section 110(3.1.)); or

¹⁹ Angus Reid *Ownership*, p. 10.

²⁰ Dansys *Firearms*, p. 25.

²¹ Dansys *Firearms*, p. 26.

- bring the firearm to a local registrar of firearms (may be issued by local registrar of firearms - Section 110(4)).

Section 91(1) It is a crime to possess a restricted weapon without a registration certificate.

Section 91(2) It is a crime to have a restricted weapon in a place not authorized by permit.

Section 91(3) It is a crime to be in a vehicle in which there is a restricted weapon, unless someone in the vehicle has the appropriate permit with him/her.

Section 102(1) The police can seize a restricted weapon if the person who has it cannot produce a permit that indicates lawful possession.

Section 109(3) A person must have an FAC in order to apply for a registration certificate.

Section 112(2) Any person who is authorized to issue a permit may revoke the permit, if a person's safety is at risk.

Section 112(4) A firearms officer can refuse to issue a permit, if a person's safety is at risk.

Conclusion

The careful enforcement of the legislation can ensure that only people in compliance with the law own restricted weapons.

Limit Access to Restricted Weapons

General Duty Police Officer
Patrol Officer
Police Investigator

encounters person in possession
of restricted weapon

CHECKS FOR:

- registration certificate
- permit to carry
- weapon in location authorized
by permit
- if weapon in a vehicle, some
person in vehicle must have permit
(Section 101(1))

Police officer who finds:

- a person in possession of a restricted
weapon who fails to provide a registration
certificate or permit

Seizes weapon

Allows 14 days for person to
produce required certificate
or permit

if certificate/permit produced
within 14 days weapon
returned

if certificate/permit not
produced, traces weapon

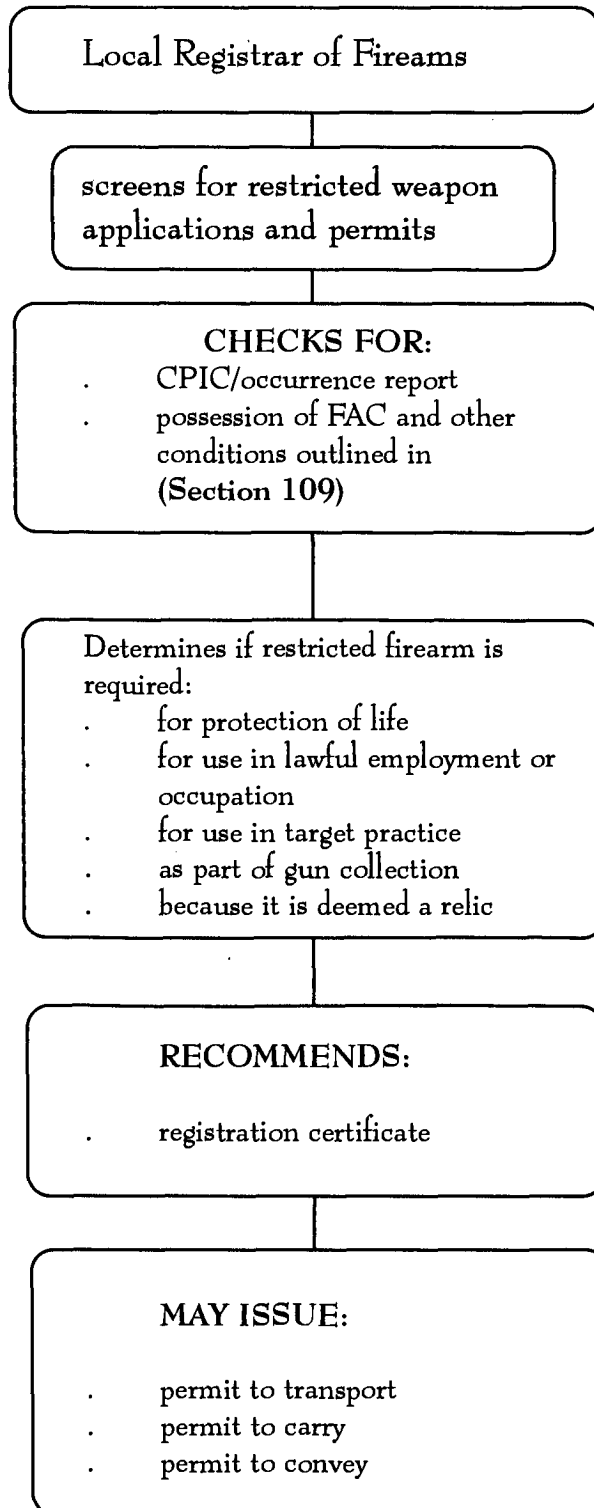
Charges person for
violation

If police officer is
concerned for safety of
a person

Reports concern to the local
registrar of firearms

Makes application to court
for an order of prohibition

Limit Access to Restricted Weapons



What can be done?

- Any police officer may seize a prohibited weapon in the possession of a person not authorized to possess the weapon.
- Any police officer may seize weapons and proceed with charges when apprehending offenders for not producing the necessary permits for restricted weapons within 14 days, such as permit to transport, permit to convey, storage permit, carry permit and business permit.
- Any police officer may seize any firearm in the possession of a person under the age of 18 who fails to produce a permit to possess the firearm.
- A local registrar of firearms can ensure that an applicant for a registration certificate or other permit (i.e., permit to transport, permit to convey, storage permit, permit to carry and business permits) is knowledgeable about the law on firearms, including safe storage regulations, before recommending a certificate of registration or issuing permits.
- A police officer who believes a person's safety is at risk may seize restricted weapons, with or without warrant as conditions dictate, and apply for an order of prohibition.
- A police officer who believes that a person's safety is at risk can discuss this with the officer authorized to issue FACs or permits. A permit may be revoked by any person authorized to issue such a permit. On recommendation of a police officer, the Commissioner of the RCMP has the power to revoke a registration certificate.

3. Prohibition order for possession of a firearm as part of sentence

When a person fails to respect the law and becomes involved in criminal activity - whether or not a firearm is used - it may be appropriate to prohibit that person from having a firearm, FAC and other permits for some time. A prohibition order may be included in the sentence as an additional punishment for some offences, or as a preventive action when a person's safety is at risk.

When is a person's safety at risk?

According to a study of domestic homicides in 1989-1990, 53 per cent of the accused had a criminal record or were on probation; their previous sentence could have prohibited them from possessing a firearm and so reduced the risk to other people.²²

²² Dansys *Firearms*, p. 27 and 53.

What does the law say?

Section 100(1) - indictable offences involving violence

As part of a sentence, a judge must prohibit an offender from possessing any firearm or any ammunition or explosive substance for, in the case of a first conviction, not less than 10 years, and in any other case, for life. The offender must have been found guilty or been given a discharge for an indictable offence involving violence, or threatened or attempted violence, and for which the offender could be sentenced to 10 years in prison (for example, for aggravated sexual assault).²³

This section also applies to offenders who are convicted of, or discharged for, using a firearm during the commission of an offence (Section 85).

Section 100(1.3)

The judge has to give reasons for failing to make a prohibition order under Section 100(1).

Section 100(2) - other offences

The court that sentences an offender has the power to prohibit the offender from possessing any firearm or any ammunition or explosive substance when a person's safety is at risk. The offender must have been found guilty of, or discharged for:

- an offence relating to the use, carriage, possession, handling or storage of a firearm or ammunition;
- an offence in which violence was used, threatened or attempted - other than an offence in Section 100(1); or
- an offence for trafficking, or possessing for the purposes of trafficking, a controlled drug, a restricted drug or a narcotic.

Section 100(2.1)

The prohibition order under Section 100(2) cannot be for more than 10 years, beginning at the time the order was made or at the time the offender is released from prison.

Section 100(7.1)

The offender's FAC is automatically revoked when a prohibition order is made under Section 100(1), 100(2) or 100(7).

²³ Sections 100(1.1) and 100(1.2) set out the situations in which the court does not have to make the prohibition order, for instance when the offender needs a firearm in order to be employed or to hunt for food to eat.

Conclusion

Judges can prohibit certain offenders from possessing firearms. Judges, magistrates and Justices, may also consider a prohibition order and the appropriate disposal of firearms, weapons, explosives and FAC in the possession of the offender as a condition for probation or condition of a recognizance or peace bond.

As a condition of parole, parole boards should automatically prohibit access to firearms, ammunition or explosives in all cases for violent offenders.

PROHIBITION ORDER FOR POSSESSION OF FIREARMS AS PART OF SENTENCE

MANDATORY ORDERS

conviction/discharge for an indictable offence involving violence
(Section 100(1))

first conviction - prohibition order for not less than 10 years
other cases - prohibition order for life
(Section 100(1) (a) and (b))

if no prohibition order, judge must give reasons
(Section 100(1.3))

FAC automatically revoked
(Section 100(7.1))

DISCRETIONARY ORDERS

conviction/discharge for other offences when a person's safety is at risk
(Section 100(2))

prohibition for up to 10 years

FAC automatically revoked
(Section 100(7.1))

if concerned about a person's safety, a police officer can ask
a provincial court judge for a prohibition order, prohibiting
a firearms owner from possessing a firearm or ammunition for up to five years.
(Section 100(4))

RECOGNIZANCE (PEACE BONDS)

Under Section 810(3.1), as a condition of recognizance, a Justice or provincial court judge can prohibit a person from possessing a firearm, ammunition or explosive substance, and order the surrender of an FAC.

individual fears injury to any person or damage to property

lays an information before a Justice
(Section 810(1))

Justice orders parties to appear before Justice or provincial court judge
(Section 810(2))

if the Justice or provincial court judge finds that the informant has reasonable grounds to be afraid, the Justice or provincial court judge can set the conditions of the recognizance (peace bond) and order that a person:

- . must keep the peace and comply with any other conditions (Section 810(3)(a));
- . can be under recognizance for up to one year (Section 810(3));
- . can be prohibited from possessing a firearm, ammunition or explosive substance (Section 810(3.1); or
- . can be ordered to surrender his or her FAC (Section 810(3.1)).

A person who violates the recognizance (peace bond)
is guilty of a summary conviction offence. (Section 811)

What can be done?

- Individuals can inform police about the presence of a firearm in the home when they fear for their safety and want the firearm removed.
- Police officers can seek a prohibition order in circumstances where a person's safety is at risk.
- Judges can consider the appropriateness of an order of prohibition when deciding on a sentence. For example, judges can use this power when sentencing an offender for assault, for failure to follow safe firearms practices, for illegal possession of a restricted weapon or for drug-related offences.
- Crown attorneys can present arguments for a prohibition when speaking to sentence.

4. Search, seizure and application for a prohibition of a firearm

Many domestic homicides are not necessarily premeditated, although they often occur as a culmination of abusive and violent behaviour.

"The evidence indicates that potential murderers are usually not persons engaged in premeditated homicidal acts, but rather, participants in family quarrels, arguments between acquaintances, brawls, clashes of personality and so on."²⁴

In these situations, preventing access to firearms can make a critical difference.

When is a person's safety at risk?

Several studies have linked domestic homicides to preceding acts of abuse and violence. A 1989 review of more than 100 studies found that spousal homicide is frequently a dynamic of family violence and an outcome of wife battering.²⁵

More than one half of the 93 domestic homicides in Canada in 1989-1990 involved a husband killing his wife. Violent disputes preceded the murder in 80 per cent of these cases. Twelve of these 93 domestic homicides involved a wife killing her husband. In every one of these

²⁴ Stenning, P., *Firearms and their Control in Canada*, Solicitor General Canada, 1978, p. 13, in *Dansys Firearms*, p. 6.

²⁵ ABT Associates of Canada for the Ministry of the Solicitor General.

cases, the wife had been the victim of past abuse and there was a history of violence between the parties.²⁶

Research also shows that most victims of domestic violence endure many episodes of abuse before making their first call to the police for assistance.²⁷ Sometimes there have been a number of calls to police and an escalation in violence before a homicide occurs.²⁸

The National Safety Council estimates that alcohol abuse is a significant contributing factor in 50 per cent of firearms accidents and suicides.²⁹

Researchers have concluded that, in some cases, suicide is an impulsive act, particularly when the victim is alcohol-impaired, and that the inaccessibility of a firearm may prevent a death from occurring.³⁰ Potential firearms suicide victims will rarely substitute another method of suicide.³¹

What does the law say?

The law provides that police may take action in three separate situations. In each case, the police may wish to initiate the action, although the support of crown counsel and a justice is necessary for the action to be completed.

First, police may make an application to a provincial court judge to prohibit a person from having a firearm. This usually occurs when the person is attempting to obtain a firearm and the police believe, for reasons of public safety, that the person should not possess a firearm. This may occur when the police are aware of mental health problems, domestic trouble or major stresses in the applicant's life - reasons that make it unsafe for the person to possess a firearm.

In the second situation, the police believe that a criminal offence has been committed and they may search for, and seize, firearms, weapons, ammunition, firearms certificates and permits, with or without warrant. They must refer this case to the court for a prohibition order and direction on the disposition of the firearms, weapons or ammunition.

²⁶ Dansys *Firearms*, p. 32 - 37.

²⁷ Meredith and Paquette, p. 2; Dansys Consultants Inc., p. 52.

²⁸ Meredith and Paquette, p. 2.

²⁹ National Safety Council, *Accident Facts*, 1988 - 1991.

³⁰ Nadeau, Table 2, p.18.

³¹ Moyer and Carrington, p. 19.

In the third situation, a person is currently in possession of a firearm, and police believe that a person's safety is at risk as a result. The police may then search for and seize firearms, ammunition, weapons, firearm certificates and permits, with or without a warrant, depending on the circumstances. Again, they must refer this matter to the court for a prohibition order and direction on the disposition of the firearms, weapons or ammunition.

PROHIBITION

Section 100(4) Any peace officer who has reasonable grounds to believe that, for safety reasons, a person should not possess a firearm, has the right to ask a provincial court judge to prohibit the person from having a firearm. The judge can prohibit the person from possessing a firearm and that person's FAC is automatically revoked (Section 100(7)).

AN OFFENCE

Section 101(1) *search and seizure with or without a warrant*
When a police officer believes that a *Criminal Code* offence relating to a firearm, restricted weapon, prohibited weapon or ammunition is taking place or has taken place and that evidence of the offence is likely to be found, the police officer can search a person, vehicle or any other place - except a home - for evidence. The search and seizure can take place without a warrant if, under the circumstances, it would not be practicable to get the warrant first.³²

NO OFFENCE - A PERSON'S SAFETY IS AT RISK

Section 103(1) - warrant for search and seizure
A police officer can ask a justice for a warrant to search for and seize a firearm. The justice can issue the warrant if there are reasonable grounds to believe that a person's safety is at risk.

Section 103(2) - search and seizure without a warrant
A police officer can search for and seize a firearm without a warrant. The police officer must have reasonable grounds to believe that a person's safety is at risk. Although the grounds for obtaining a warrant exist, it would not be practicable, in the situation, to get one first.

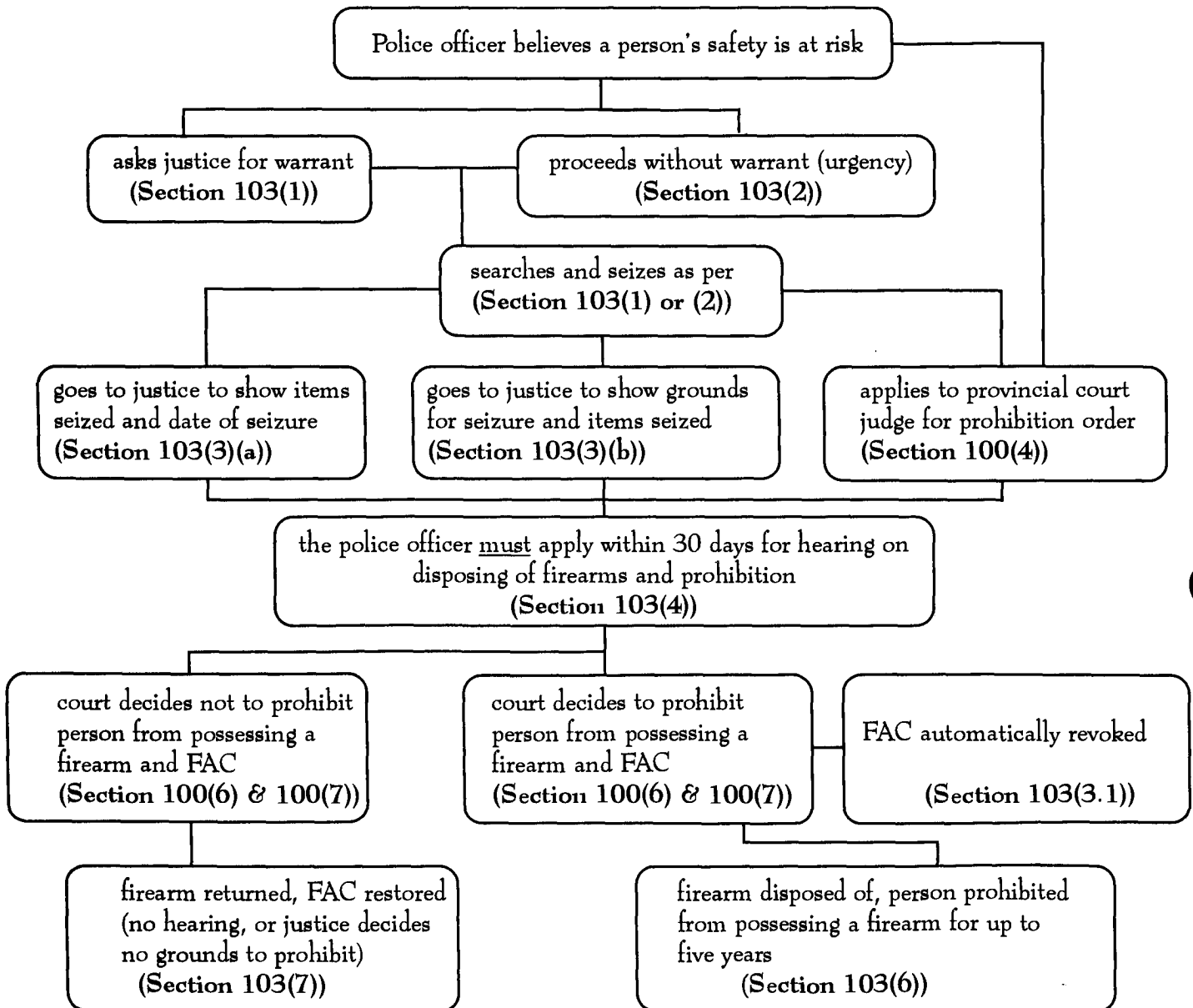
³² The seized firearm or other items can be brought to a justice who will decide if the firearm should be returned or kept for an investigation, hearing or trial. (Section 490)

- Section 103(3)* The police officer must bring the firearm seized to a justice.
- Section 103(3.1)* A person's FAC and all other firearms certificates and permits are automatically revoked when a police officer carries out a seizure with or without a warrant under subsections 103(1) or 103(2).
- Section 103(4)* The police officer must apply to a justice, within 30 days of seizing a firearm, for a hearing to decide on how to dispose of it.
- Section 103(6)* The justice can decide that, in the interests of a person's safety, the seized firearm should not be returned and should be disposed of.
- Section 103(7)* The firearm, FAC and other firearms certificates and permits must be returned to the person from whom they were seized, if the police officer does not apply for a hearing or if the justice decides that a person's safety is not at risk.
- Section 103(7.1)* The justice can reverse the revocation of the FAC.

Conclusion

Family, friends, neighbours and the police often are aware of situations of wife battering that, in some cases, may escalate to serious injury or death. Such injuries, homicides, and some suicides, may be averted by prohibiting abusers from possessing firearms.

SEARCH, SEIZURE AND APPLICATION FOR A PROHIBITION OF A FIREARM



Section 103(1) authority also applies to any other weapon or any ammunition, explosive, FAC or registration certificate

Prohibition hearings are not a trial and relaxed rules of evidence apply. The justice may hear all relevant evidence including hearsay evidence.

What can be done?

- Police officers who are aware of situations that put a person's safety at risk should consider using their power under Section 100(4) to ask the court for an order prohibiting the person posing the risk from possessing a firearm for up to five years.
- Police officers should log their investigations of domestic violence incidents into their police services record-keeping system. This enables other police officers to assess whether complaints they are investigating have escalated over time.
- Police officers can search for and seize firearms outside the home, if they believe a firearms-related offence is being or has been committed. This power may be used against a person who is under a prohibition order for possession of a firearm, as a condition of his or her bail or recognizance, and in some stalking situations.
- Police officers who investigate a complaint about a domestic dispute or other disturbance (e.g., alcohol or drug related) should decide if anyone is at risk due to the presence of a firearm in the home.
- Police officers can ask if there have been threats of violence, and if there is a firearm in the home or available elsewhere. They can check for a criminal record, a history of violence, alcohol or drug abuse, and whether the person is subject to a recognizance or on conditional release.
- When police officers believe that a person's safety is at risk, they should take the necessary steps to remove firearms from the home.
- When police officers have seized a firearm, they should follow up the seizure by applying for a hearing to get a prohibition order.
- Citizens who are aware of a person's violent behaviour can report incidents to police.
- Doctors and other health professionals who are concerned about a person's safety could consider asking about the presence of a firearm in the home and reporting their concerns to the police.³³

³³ "Physicians are often aware of suicidal ideation or spousal abuse. They have an important role to play with regard to firearms. For physicians to systematically investigate the accessibility of guns in a depressed patient's home, a home with family violence or even a home with children and have the firearms removed or made inoperable (e.g., with the use of gunlocks) is an act of medical prevention." Chapdelaine et al, p. 1221.

5. Enforcement of safe storage regulations

Some suicides, homicides and shootings causing injuries occur as the result of impulsiveness, carelessness, anger or loss of control.³⁴ Keeping firearms unloaded and locked may make them inaccessible at a crucial moment and thus prevent injury or death.

When is a person's safety at risk?

homicides Access to a firearm and the use of alcohol or other drugs often result in a domestic homicide. According to one study, the accused was under the influence of alcohol at the time of a domestic homicide 50 per cent of the time, and under the influence of drugs 11 per cent of the time.³⁵

assaults Assaults may become deadly when a person has access to a firearm.

suicides Researchers have found that people were more likely to use a firearm to commit suicide if they had access to a firearm and were impaired by alcohol.³⁶

accidents From 1979 to 1988, accidental firearms-related deaths were highest among young people: 25 per cent were among children under 15, and 30 per cent were among youths between 15 and 24 years of age.³⁷

What does the law say?

The *Storage, Display, Handling and Transportation of Certain Firearms Regulations* require that:

- all firearms must be stored unloaded;
- non-restricted firearms must be stored with the bolt removed, rendered inoperable by a secure locking device, or stored in a locked container, receptacle or room;
- restricted firearms must be stored with a secure locking device *and* be in a locked case or a locked room; and

³⁴ Kimberley, M.D., p. 1213.

³⁵ Dansys Consultants Inc., p. 32 and 33.

³⁶ Moyer and Carrington, p. 41.

³⁷ Chapdelaine, p. 1219.

- ammunition must be stored separately from the firearm, unless stored with the firearm in a securely locked container, safe, vault, or room specifically constructed or modified for the safe storage of firearms.

Conclusion

When safe storage regulations are observed, firearms are not as quickly accessible. Deaths and injuries from accidents and impulsive acts may therefore be prevented.

Secure storage is probably the most effective single method to reduce the misuse of firearms. Firearms and ammunition should not be accessible to unauthorized users.

In storing firearms, owners should not provide others with the key or the lock combination of the storage area or case. Locking up firearms and ammunition is important since many suicides and homicides are impulsive acts. Making unauthorized access to firearms and ammunition difficult could delay a depressed or violently angry person long enough for the impulse to lessen or for someone to intercede.

Most other weapons or means of violence that might be substituted for a firearm, cannot as easily do the same drastic harm.

ENFORCEMENT OF SAFE STORAGE REGULATIONS

CONSIDERATIONS FOR POLICE

Charge with offence for failing to follow regulations
(Section 86(3)) (*the Storage, Display, Handling and
Transportation of Certain Firearms Regulations*)

CONSIDERATIONS FOR CROWN ATTORNEY

present prohibition possibility at
sentencing hearing

CONSIDERATIONS FOR JUDGE

prohibit firearms possession for up to ten years as part
of sentence when a person's safety is at risk
(Section 100(2))

automatically revoke an FAC
(Section 100(7.1))

CONSIDERATIONS FOR PUBLIC

insist that *family, friends and neighbours* follow safe
storage regulations, and report at-risk situations to police

What can be done?

- Police can charge firearms owners who fail to follow the safe storage and handling regulations (Section 86(3)). Such a charge would normally follow when an officer has reasonable and probable grounds to pursue an investigation for a breach of the safe storage regulation.
- In the case of accidental shootings, police can investigate how the firearm was stored and consider laying charges against the owner for failing to comply with the safe storage regulations.
- A judge sentencing an offender for failing to follow safe storage and handling regulations can prohibit the offender from owning a firearm for up to 10 years, if the judge believes a person's safety is at risk (Section 100(2)).
- Members of the public can encourage their family, friends and neighbours to comply with the law and store their firearms properly.

Conclusion

Recent research provides insight into the circumstances in which firearms are used in a domestic context. The firearms legislation provides opportunities for action. Health professionals, social workers and members of the public should be aware of the law and contact the police if they believe a person's safety is at risk.

Police officers, firearms officers, local registrars of firearms, justices and judges must use their discretion to decide when to prevent a person from acquiring a firearm, or from continuing to possess a firearm. By being alert to the combination of factors that often lead to fatal violence in a domestic context, homicides, suicides and accidents can be prevented.



APPENDICES

Appendix I

Summary of Research Studies

Here are brief summaries of the six research studies, completed by the Department of Justice Canada, that form the basis of this paper.

Analyse critique des Questions pouvant faire partie du formulaire de demande d'Autorisation d'acquisition d'armes à feu (AAAF)

Lucie Nadeau's research provides insight into the value of detailed personal questions in the FAC application form. She put together a team of experts to consider the kinds of questions that might be effective in identifying high-risk applicants. They looked at 125 questions and recommended 13 particularly pertinent ones. Ms. Nadeau's report concludes that denying an FAC to high-risk applicants is one measure to reduce firearms-related homicides and suicides.

Firearms Ownership in Canada

The Angus Reid Group conducted a national telephone survey of 10,103 households between February 4th and 19th, 1991. The survey found that there is a firearm in 23 per cent of Canadian households. Men own 82 per cent of the firearms. The people answering the survey were also asked about their income and education, about the number and type of firearms in the household, and whether they had firearms safety training.

Firearms Statistics (Updated Tables), C.K. Hung, Senior Statistician, Department of Justice Canada, 1992.

Kwing Hung compiled 25 tables with statistics on firearms, firearms permits, FACs, prohibitions, homicides, weapons offences, etc.

Police Responses to Domestic Violence: A Study of the Use of Criminal Law Provisions relating to Firearms

One-day site visits took place in nine police jurisdictions across Canada in April and May, 1991. The researchers interviewed samples of police officers who regularly respond to domestic calls and spoke to officers who process FAC applications. The study found that police officers often knew about the history of violence at a residence, and about the presence of a firearm when responding to a call. However, few had used their search and seizure powers or had applied to the court for a prohibition order. Researchers Colin Meredith and Chantal Paquette concluded that, when responding to a call about a domestic matter, police should be encouraged to consult record systems and assess the escalating nature of the domestic violence, to assist their decision-making at the scene.

Domestic Homicides involving the Use of Firearms

Dansys Consultants studied domestic homicides that took place between 1975 and 1990 and surveyed some of the police officers who investigated the 93 domestic homicides involving firearms that took place in 1989 and 1990. The researchers found that certain factors are common in cases of domestic homicides involving a firearm: a history of violent disputes with limited police intervention, a history of substance abuse or drunkenness, an existing criminal record, separation or pending separation, and employment or financial problems. The researchers suggest that, in certain cases, refusing to issue an FAC, seizing firearms and making prohibition orders could be effective preventive measures.

Gun Availability and Firearms Suicide

The researchers, Sharon Moyer and Peter Carrington, conducted a detailed study of the relationship between firearms control, firearms availability, suicide rates and the methods used to commit suicide. They concluded that some people contemplating suicide may have time to reconsider if a firearm is not accessible, and will not generally substitute another method to kill themselves. The desire to commit suicide may be a short-lived impulsive idea, particularly when the victim is alcohol-impaired.

Appendix II

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