Background Paper BP-248E

GUN CONTROL: BILL C-80 AND RELATED MEASURES

William C. Bartlett
Law and Government Division

November 1990

Library of Parliament
Bibliothèque du Parlement

Research Branch

The Research Branch of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Research Officers in the Branch are also available for personal consultation in their respective fields of expertise.

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

GUN CONTROL: BILL C-80 AND RELATED MEASURES

BACKGROUND

Bill C-80 would make a number of amendments to Part III of the *Criminal Code,* entitled "Firearms and Other Offensive Weapons". It is part of a package of statutory amendments and regulatory proposals announced by the Minister of Justice on 26 June 1990. The package would be the first major revision of Canada's gun control regime since 1977. Although Bill C-80 will be the primary focus of this paper, several of the more controversial proposals would take the form of regulations made by the cabinet. Some critical portions of the package thus lie outside the bill. Only general descriptions of these measures are available, and many key questions will remain unanswered until draft regulations appear. Some of the new regulations would flow from changes made by Bill C-80, and would be necessary to implement those changes. Others are quite independent of the bill, and appear to be announcements of government intentions, or perhaps proposals for public discussion.

HIGHLIGHTS OF THE BILL AND REGULATORY PROPOSALS

A. New Restrictions on Fire-Power

The bill and proposed regulations would ban certain weapons and ammunition magazines so that the fire power of weapons available for ownership by private citizens would be reduced (the police, military, and other public officers are exempted). These proposals include the following:

1) Fully-automatic weapons which have been converted to fire only as semi-automatics would be prohibited. Fully-automatic weapons capable of firing as such have been banned since 1977. Further importation of such weapons would be prohibited, as would possession in Canada for anyone other than a "genuine gun collector" who presently owns such weapons and registers them as "restricted" weapons. Such exemptions are referred to as "grandfathering" provisions. This expanded prohibition would be further supported by a new offence, carrying a possible five-year prison term, of altering a firearm or assembling parts so as to produce a fully-automatic weapon.

2) The government has announced its intention to ban specific military and para-military type weapons, following consultations with interested parties. This would be done by cabinet order pursuant to a regulation-making power which has been in the Code since before 1977, although it has until now generally been used to prohibit weapons other than firearms, such as martial arts devices. The effect of a ban by cabinet order would be total, and none of these weapons would be grandfathered, as would be the case with the converted automatics discussed above. The bill would not expand or amend the present power in the Code for the purpose of this proposed ban of specific weapons, although the power as it stands is subject to a significant limitation that might make it legally difficult to prohibit these weapons entirely.

3) The government has also announced an intention to ban by cabinet order large capacity cartridge magazines. The proposed ban would prohibit all handgun magazines that can hold more than 10 bullets, and most magazines for semi-automatic rifles that can hold more than 5 bullets. The ban would be imposed using the same regulation-making power described above, but as this power presently covers only complete weapons, the bill would expand it to cover parts of weapons as well. The expanded power would allow the banning of "devices", which could include parts of firearms other than ammunition magazines, as well as things other than firearms or parts intended for them.

B. Access to All Firearms

The new restrictions on access to firearms would involve changes to the requirements for obtaining the Firearms Acquisition Certificates ("FACs") that everyone must have before acquiring firearms in Canada, whether the weapon is obtained from a firearms dealer or a private person. The process is intended to screen out those with criminal records or histories of mental illness and violence. The additional restrictions would include the following:

1) Proposed changes to regulations would require applicants to provide a photograph to supplement the identification information now required, in order to help ensure that FACs cannot be fraudulently obtained or used by someone else.

2) The bill would require applicants to supply the names of two references who could confirm the other information submitted by them. The class of persons eligible to act as references would be prescribed by regulation, and these persons would have to have known the applicant for at least three years.

3) The bill would impose a new mandatory 28-day waiting period between the application for and the issuance of a FAC. Firearms officers are now and would continue to be allowed to take whatever time is required to vet the application, and the waiting periods that now result from this administrative process range from a few days to a few months, although in larger centres it is more likely to be a matter of weeks than days. The proposed mandatory waiting period is generally regarded as a "cooling off" period to discourage impulsive purchases of firearms in circumstances where the applicant may intend harm to self or others.

4) Applicants would be required to show that they had completed a course or passed a test on the safe handling of firearms and the laws relating to them. A similar requirement has been in the Code since 1977, and

was to have been proclaimed in force province by province as agreements were reached and programs were put in place. No such agreements were ever reached, and the requirement has never been proclaimed in any province. Since for practical reasons the requirement cannot be imposed until programs exist, federal-provincial agreements will continue to be the key to its implementation. If the government is committed to making the requirement a national one, and it could be subject to legal challenge if it were not, the agreement will have to be a comprehensive one, involving all provinces.

THE DEVELOPMENT OF THE BILL

The horror of the tragedy in Montreal, in which Marc Lépine killed 14 women and wounded 13 others in a random massacre, has certainly heightened concern in Canada about the adequacy of our laws controlling the acquisition, possession and use of guns. It must be emphasized, however, the the bill did not arise as a result of this incident, and responds to a broader series of events and developments.

Many of the proposed amendments are of the "housekeeping" variety, or respond to some very particular concerns. Experience with the system put in place in 1977 has led to requests from the Chief Provincial Firearms Officers ("CPFOs") for clarifications and changes. Problems experienced by gun-owners, particularly competition shooters, have led to similar requests. An omnibus bill that would have made a number of *Criminal Code* amendments, including changes related to firearms, was introduced in February of 1984 (Bill C-19) but died on the Order Paper. The changes proposed then, supplemented by others which have accumulated in succeeding years, form much of the content of Bill C-80. Some of the amendments respond to court challenges mounted in recent years based on the *Canadian Charter of Rights and Freedoms.*

Recent events have also produced a concern with the class of firearms known as "assault weapons", which are weapons actually manufactured for military purposes, or having the same or similar capabilities - the Soviet-designed AK-47, the Israeli Uzi, the American

M-16, the Colt AR-15, and others. Concerns about the weapons have been developing among Canadian police authorities for a number of years. Public concern in North America about the destructive potential of these military-design weapons was, however, sharply aroused by an incident in January of 1989, in which a disturbed man wielding a semi-automatic version of an AK-47 assault rifle killed five children and injured 29 others and a teacher in a school yard in Stockton, California. Legislative and regulatory action on the state and federal levels in the United States responded quickly to the incident.

The concern was reflected in Canada as well. Fully-automatic weapons have, as noted earlier, been banned in Canada since 1977 (with the exception of automatics "grandfathered" at that time), but the semi-automatic versions of military assault rifles, whether manufactured as such or converted from weapons originally made as fully-automatics, have been, and are, legal in this country. Some of them fall within the "restricted" category of weapons, but none of them are prohibited entirely (unless, as is explained later in the paper, they are too easily reconvertible to fully-automatic weapons).

Then Minister of Justice Doug Lewis responded in May of 1989 with a limited proposal to ban at least some of these military-design weapons but only those which had been converted from fully-automatic weapons. The primary concern arises from their potential to be reconverted to fully-automatic fire. No action was then publicly proposed against any firearm originally manufactured as a semi-automatic, whether for military or purely hunting and recreational shooting purposes.

After the Montreal massacre, however, the government responded in a matter of months with Bill C-80 and the current package of proposed regulatory measures. Ironically, it is questionable whether the proposed prohibitions would extend to the type of weapon used in the Montreal massacre. They would, however, ban the semi-automatic versions of some military weapons. The package also includes measures that affect access to all firearms, including those produced purely for hunting and recreational shooting purposes. After a brief discussion of certain key terms and the present laws controlling firearms, the proposed reforms will be described and analyzed in detail.

THE SIGNIFICANCE OF "AUTOMATIC" AND "SEMI-AUTOMATIC" WEAPONS

Both the Stockton and Montreal massacres involved "semi-automatic" rifles. Much of the editorial comment in Canada after the tragedy in Montreal called variously for the banning of "automatic" and "semi-automatic" weapons, often confusing the two kinds or assuming that they are equally dangerous.

Fully-automatic weapons ("automatics", which include machine-guns, sub-machineguns, automatic assault rifles and machine pistols) are firearms which are capable of firing bullets continuously with one pull of the trigger. Semi-automatic weapons fire only one bullet with each squeeze of the trigger, but automatically use the firing operation to load another round into the firing chamber. The number of times they will do this depends on the size of the ammunition magazine attached to the weapon. A non-automatic rifle or shotgun requires some sort of manual action to eject the spent cartridge casing and insert another round for firing. This operation obviously takes more time than the almost instantaneous reloading action of the semi-automatic firearm, but with some weapons it nonetheless can be done very quickly. So long as a magazine is attached and the shooter does not have to remove the spent cartridge and insert another round by hand, any modern rifle or shotgun can fire more than one round relatively quickly.

Fully-automatic weapons are obviously dangerous and have been banned in Canada since January 1, 1978. Semi-automatic weapons vary enormously in firepower and destructive potential. This depends on a number of factors, including the size (calibre) of the bullet it fires; how rapidly it will fire and how long it will do so without jamming; the speed (velocity) with which it fires a bullet; the kind of ammunition it uses; and the size of the ammunition magazine attached.

Most military assault rifles are now fully-automatic, although some are semi-automatic. The cost of automatics and the large amount of ammunition which they use are the primary reasons why semi-automatics are still used for such purposes. Those which are

semi-automatic, either manufactured as such or converted from fully-automatic, are generally capable of rapid fire and great destruction, as the semi-automatic AK-47 used at Stockton demonstrated. Semi-automatic rifles include, however, the military-style weapon used at Stockton, the rifle used at Montreal, which is also high-powered but does not resemble a military weapon and is apparently also in common use for hunting, and low-powered, low-velocity, low-calibre standard .22s which are commonly used to introduce young people to firearms - a broad range of weapons.

The weapons which Bill C-80 and the proposed regulations would ban are military-style semi-automatics. Those converted from automatic assault rifles or machine-guns would all be banned by the bill, and some specific semi-automatic rifles, presumably manufactured as such, with military and para-military characteristics and capabilities, would be banned by regulation. Some of these military-style weapons are used for hunting and recreational shooting purposes, but they were not primarily designed for that. On the other hand, some non-military style weapons, including many designed purely for hunting and other sporting purposes, possess formidable fire-power. It remains to be seen whether the government's distinction between military-purpose and other semi-automatic rifles can be logically and legally maintained, and made workable in practice.

THE STRUCTURE OF THE GUN CONTROL REGIME

There are three principal elements to the control of firearms in Canada - prohibitions and restrictions on the availability of certain weapons; screening of those who wish to acquire firearms; and criminal penalties for the misuse of firearms, particularly their use in the commission of other criminal offences. Bill C-80 and its accompanying regulatory proposals would add significantly to the first two elements.

"Prohibited weapons" are defined in section 84 of the *Criminal Code* and, besides switchblades and flick knives, include: silencers; all fully-automatic firearms except those which were grandfathered in 1977; sawed-off rifles and shotguns (presumably because

the purpose of sawing them off is to use them for criminal purposes); and weapons prohibited by cabinet order. The effect of the prohibition is total, except in regard to the police, correctional and other public officers, and the military. The weapons cannot be imported into Canada, or used or possessed in the country, and anyone found in possession of one is liable to a prison term of up to five years.

"Restricted weapons", also defined in section 84, include: all handguns; semi-automatic firearms with barrels shorter than 470 mm. (18.5 in.); any rifle or shotgun which can be fired while its stock is folded or it is otherwise telescoped so that it is shorter overall than 660 mm. (26 in.); those automatic weapons grandfathered in 1977; and any weapon restricted by order (this power has been used at various times to restrict particular models of military or para-military rifles). All such weapons must be individually registered, and the owner must be granted a registration certificate. Such certificates are more difficult to obtain than a simple certificate to acquire a firearm, a FAC, and the weapon may only be possessed if it can be shown that it is required for certain specified purposes - the protection of life; in connection with a lawful occupation; target practice at a recognized club or under controlled conditions; as part of the collection of a genuine gun collector (the most problematic category); and as "relics". Almost 1 million such weapons had been registered in Canada as of the end of 1989.

All other firearms are completely unrestricted, although since the beginning of 1978 a FAC has been required to purchase them. No permit or certificate is required to possess an unrestricted firearm acquired before 1978, of which there may be several million in existence.

DESCRIPTION AND ANALYSIS OF SELECTED ISSUES

PROHIBITION OF CONVERTED AUTOMATIC WEAPONS

Clause 2 (3) of the bill would expand paragraph (c) of the definition in section 84 (1) of the Code of a "prohibited weapon" - the paragraph that deals with fully-automatic weapons. It would expand this

definition beyond a weapon actually having the "capability" of continuous fire, to one "assembled or designed and manufactured" with this capability, "whether it not it ha(d) been altered" to fire only as a semi-automatic. Some of these converted automatics have already been found to come within the definition of a prohibited fully-automatic weapon, because of case law that has interpreted "capability" of automatic fire to include those converted weapons which can be relatively easily re-converted back to full automatic.(1) To that extent the amendment would simply confirm the court judgements, and make it unnecessary to litigate the status of future shipments. The litigation might continue, however, because the question of ease of convertibility would appear to be relevant to the question of which converted automatics would be grandfathered.

Other converted weapons deemed to have been permanently converted might now fall within the class of restricted weapons because of their small size, or because they have been restricted by order (at the moment only the semi-automatic version of the FN-FAL, once a standard NATO and Canadian Forces weapon, is on the Restricted Weapons Order). Still other permanently converted weapons (disregarding for the moment the controversy as to whether any conversion is likely to be permanent) would not come within even the restricted class, and could be legally sold to anyone possessing a FAC.

A. Convertibility

The capacity of weapons manufactured as fully-automatic to be reliably converted to semi-automatic, and the converse, the capacity of weapons not originally manufactured as automatics to be converted to fully-automatic fire, are both matters of controversy. The view of the

---

(1) Notably *R. v. Global Armaments Ltd. et al* (1988), 93 A.R. 77, affirmed by the Alta. Ct. of Appeal, unreported, April 10, 1990, and confirmed by decisions of the Ontario Supreme Court as well, including *R. v. John F. St. Amour and Marstar Armaments International Inc.*, unreported, October 16, 1990, Ont. H.C.J. There have also been decisions where the courts have affirmed the seizure of military-design weapons originally manufactured as semi-automatics, but which had the capacity to be easily converted to fully-automatic fire eg. *P. C. Rowsom v. Bernard Hasselwander,* unreported, January 19, 1990, Provincial Court (Criminal Division), Guelph, Ontario.

government, and that of many police experts, is that it is very difficult to convert an automatic weapon so that it cannot be relatively easily converted back to fully-automatic fire. The government thus proposes to ban all converted automatics as potential automatic weapons, and a danger as such.

Conversely, the government maintains that the basic design of firearms not originally manufactured with this capacity makes any conversion to automatic fire too difficult to pose a significant danger, and that in particular any hunting or recreational shooting rifle or shotgun converted in this way would soon jam. It thus proposes to ban no weapons manufactured as semi-automatic based on a danger of convertibility. The proposed regulatory ban on specific semi-automatic assault rifles is based on their high fire-power.

The views of shooters' organizations differ, but they are all opposed to the government's view of the danger of convertibility. The Shooting Federation of Canada and the Firearms Legislation Committee of the Canadian Wildlife Federation both maintain that some conversions of automatic weapons are reliably permanent, while others are not. They therefore assert that it is not necessary to ban all converted weapons, and that quality control at the border could ensure that those converted weapons allowed entry would not pose a significant danger of being reconverted into prohibited fully-automatic weapons.

The National Firearms Association on the other hand, and many individual gun-owners, maintain that any semi-automatic weapon, including those manufactured as such, and regardless of whether it is of military design or is purely a hunting and recreational shooting weapon, can be converted to fire as an automatic weapon. They thus dismiss the distinction between converted automatics and weapons originally manufactured as semi-automatics as meaningless, and the prohibition as unnecessary and ineffective as a tool to limit the availability of automatic weapons. They are also concerned that if a prohibition based on convertibility were added to the Code, it would be the thin edge of the wedge which could lead ultimately to the banning of all semi-automatic weapons.

The technical arguments may not be resolvable, and to a large extent the expert view accepted by many people on these questions will be dictated by the general view they take of the desirability and justifiability of gun control in general. The technical arguments would continue to be important, however, to the concerns of many gun-owners that the government proposals threaten their continued use of any form of semi-automatic firearm.

B. Grandfathering of Existing Converted Automatics

The technical arguments about convertibility might also bear upon the the interpretation and workability of the grandfathering provision for current owners. Clause 2 (5) of the bill would preserve at least some of these weapons, adding them to the definition of restricted weapons. The same approach was taken in 1977 when fully-automatic weapons were prohibited, but grandfathered to most of the then current owners. Converted automatics would be preserved to the extent that they were registered as restricted weapons by a certain date (for technical reasons a transitional provision is needed because many of these weapons are not now subject to registration as restricted weapons), and if they "formed part of the gun collection ... of a genuine gun collector".

There are a number of potential problems with this provision. The recent battles which have been fought between gun-dealers and owners in possession of converted automatics, and authorities seeking to confiscate such weapons or have them declared forfeit as prohibited automatic weapons, might mean that many of those who now own such weapons would be unwilling to bring them in for registration as grandfathered and restricted weapons. Many gun-owners have asserted that this would indeed be the case. The provision presumably applies only to those weapons which have been permanently converted within the meaning of the recent case law, and firearms officers would presumably continue to confiscate those deemed too easily reconvertible to full automatic fire.

The bill does provide for the power to proclaim amnesty periods in regard to newly prohibited converted automatics. It would allow them to be surrendered without fear of prosecution, but would not deal with the concerns of those who wish to retain their weapons.

This could mean that the exemption provision might simply not be taken advantage of by many current owners, or subjected to continuing litigation, and for either or both reasons would not operate as intended. If significant numbers of converted automatics continue to exist as illegal weapons, the practical workability of the grandfathering provision could be compromised. The police would not have a record of such weapons, and their loss or theft would not be reported. Moreover, respect among many gun-owners for the entire gun control regime, already low in some quarters, could be eroded even further. Declining respect and support for the system among the gun-owing community would further hamper its overall effectiveness. On the other hand, the complete absence of a grandfathering provision would cause a much greater furor among gun-owners.

The answer to these concerns may be that ease of convertibility would cease to be a concern because only those converted weapons in the hands of "genuine gun collectors" would be exempted. After all, "genuine gun collectors" were allowed to keep fully-automatic weapons when these were prohibited in 1977. This would run counter, however, to the litigation which has been conducted in recent years to include easily convertible weapons as prohibited weapons, and could create unjustifiable anomalies. The 1977 grandfathering provision may also not have operated as selectively as the "genuine gun collectors" limitation would seem to suggest.

Some expert observers have suggested that after the 1977 provision came into effect most, or at least many, of those in possession of automatic weapons who brought them in for registration as grandfathered weapons were allowed to declare themselves to be "genuine gun collectors" and keep the weapons, even if they had no previous history as collectors. Despite this, many were apparently never registered because of fear of confiscation or because ownership as a "collector" would entail certain practical restrictions. It has been suggested that this would also be the case with the proposed grandfathering provision regarding converted automatics. The background information released by the Department of Justice with the bill notes that possession of these weapons would be

grandfathered "to current owners as per the 1978 legislation", but does not note that continued legal possession would depend on the owners being "genuine gun collectors".

If no real distinctions would, or could, be made between current owners of converted automatics based on whether or not they were "genuine gun collectors", it might be preferable for the grandfathering provision to be re-drafted so as not to further muddy the question of what a "genuine" gun collector is. There is no definition of this term in the Code or in regulations, and the issue is critical because one of the categories of those eligible to own "restricted" weapons are those who are "genuine gun collectors." Guidelines have been developed by the CPFOs in regard to this distinction, but they are oriented to distinguishing between those who are merely gun collectors, and those who are also gun dealers. The National Firearms Association has asserted that anyone who otherwise qualifies to own a firearm can also be a genuine gun collector because any collection has to begin with a single firearm. This is an issue which should be clarified in general, and in the interim the meaning of the grandfathering provision in this bill might benefit from some clarification.

PROHIBITION OF SPECIFIC MILITARY AND PARA-MILITARY WEAPONS

The government's intention to ban, by cabinet order, specific models of military and para-military weapons is purely an announcement at this point. This is also the case with the proposed ban on large capacity magazines, but both these measures are primary features of the package as announced, and must thus be examined. The ban on large capacity magazines will require an amendment to the enabling power, which Bill C-80 would make. The Minister of Justice proposes to use the enabling power as it is presently constituted to ban military-style weapons, so the bill makes no amendments relevant to this proposal. As is suggested below, however, the present enabling power may not be sufficient authority for the action proposed, and the government may have to amend the power if it wishes to carry through on the proposed ban.

Many of the military-design weapons now imported into Canada are converted automatics, and would thus be banned by the bill itself. The proposed object of the regulatory action would be military semi-automatics, and the "civilian" versions of military assault weapons, which are often based on the same design and differ only in that they are manufactured as semi-automatics. Some of these weapons may now fall within the restricted class, either because of their small size or because they have been designated restricted by cabinet order (only one at the present moment, as noted above). Others are now completely unrestricted, however, and none are banned entirely.

Although the power to restrict weapons has been invoked to control the use of specific semi-automatic military and para-military models, this would appear to be the first time that the government has expressly proposed banning any model of semi-automatic firearm because of its military design. The government's view is that they pose a risk to the general public because of their high fire-power, and have no legitimate hunting or recreational shooting purpose.

The Minister of Justice proposes to develop the criteria which would be used to designate the specific models to be banned on the basis of wide-ranging consultations with police, provincial governments, representatives of hunters and recreational shooters, and others. The Minister has, however, already distributed a proposed or working list of criteria to interested parties, based on the criteria used by the American federal government in imposing importation bans on semi-automatic assault rifles after the Stockton incident. The list includes such features as the ability to accept large capacity magazines, folding and telescoping stocks, pistol grips, bayonet mountings and flash suppressors, bipods, grenade launchers, and night sights. These are all features which have obvious military purposes and which the government feels do not have any legitimate hunting or recreational shooting purpose. The criteria, it should be noted, would not appear in the proposed regulations. The order would simply ban specific models by name.

Gun-owners have questioned the distinction which the government proposes to make between military-design semi-automatics and

those not produced for a military purpose or with military characteristics. Whether this distinction can be logically maintained may be a question. The weapons used at Stockton and Montreal may illustrate the problem. The AK-47 used at Stockton has the characteristics identified by the Minister, and is the sort of weapon which would be an obvious candidate for banning. Because they are designed, even as semi-automatics, for continuous fire in combat situations where both rapid-fire and high-velocity power are desirable, they are capable of great destruction in the hands of a deranged person, as the Stockton massacre showed. There is no doubt that they have the high fire-power capability that the government, and many others, feel is a threat to public safety.

On the other hand, hunting and recreational shooting weapons may also have a high fire-power capability, at least on some level. In some cases high-velocity weapons (although not rapid-fire weapons, as military assault rifles must be) are legally required to hunt big game (soft-nosed "mushrooming" ammunition is also apparently commonly used for hunting, but is outlawed by the Geneva Convention for military use). The concern is that low-powered weapons could simply leave a large animal wounded and suffering (a reason also advanced by gun-owners as to why semi-automatic weapons are desirable for hunting - they make it easier to ensure a killing shot). The Ruger Mini-14 used by Marc Lépine at Montreal apparently does not have the military characteristics described by the Minister, although it is a high-velocity weapon that was also obviously capable of reasonably rapid fire, and could be described as a "high fire-power" weapon.

Both the AK-47 and the Ruger Mini-14 can obviously pose a risk to public safety, but it can be argued that military-design weapons are likely to possess high fire-power on all levels, are thus more likely to pose a danger, and are not required for hunting or recreational shooting purposes in any case. That may be a sufficient logical distinction to ground the proposed ban, although if high fire-power alone were the criterion it is difficult to see how the government could take action against all the weapons which could threaten public safety without interfering with weapons that are used for hunting and other purposes.

That may not be a sufficient legal distinction, however, given the present extent of the power to ban weapons by cabinet order.

All of the material distributed so far concerning the proposed action speaks of "prohibiting" military and para-military weapons. At the press conference given after the tabling of Bill C-80, however, the Minister spoke of making specific firearms "prohibited weapons or restricted weapons". There is a significant difference between the two categories (as is outlined in the section of this paper entitled "The Structure of the Gun Control Regime"), and the effect of being classified in one or the other category. There is also a significant difference between the power to ban a weapon by cabinet order and the power to restrict a weapon by order.

The power to restrict weapons by order applies to a weapon of any kind, other than "a shotgun or rifle of a kind that, in the opinion of the Governor in Council, is reasonable for use in Canada for hunting or sporting purposes" (emphasis added). The apparent limit on the power is thus a very narrow one. The test for exemption from the power is a subjective one, and the subjective opinion of the cabinet is all that counts. Barring evidence of clear bad faith, the cabinet is presumed to be of that opinion whenever it places a weapon on the Restricted Weapons Order, and that opinion cannot be challenged.

The power to prohibit weapons by order is subject to a much stricter and more effective limitation. The power does not extend to "a firearm of a kind commonly used in Canada for hunting and sporting purposes". This is a matter of statutory interpretation and objective fact, and the government's "opinion" that a firearm is not "reasonable" for such use is not relevant. Whether or not a particular firearm comes within the meaning of the statutory exemption could be challenged, and it would be the decision of a court whether, in law and in fact, the firearm was beyond the government's power to prohibit by order.

There would appear to be little doubt that the government could restrict the AK-47 used at Stockton, or indeed the Ruger Mini-14 used at Montreal, if in its view these weapons have no "legitimate" hunting or sporting purpose. The power was challenged in 1978 in a case called

Lawrence v. The Queen (2), and the Federal Court simply found that the cabinet's determination was not subject to judicial review. The object of the challenge was a Colt AR-15, the semi-automatic version of the M-16 automatic assault rifles used by American forces in Vietnam and elsewhere, and a likely object of the current proposed ban of military-style weapons.

The government could find itself fighting the Lawrence case again, and this time the government's action would clearly be subject to review by the courts. It is certainly questionable whether the government could include the Ruger Mini-14 on the list. Besides apparently lacking the military-design characteristics described by the Minister, there is considerable anecdotal evidence that it is indeed "commonly used" in Canada for hunting purposes. Whether the AK-47 or Colt AR-15, which do have those military characteristics, might nonetheless fall outside the power, is an open question. Because the power has not been used to prohibit long guns, the meaning of the exemption clause has not been the subject of interpretation by the courts. The meaning in this context of words and phrases such as "of a kind", "commonly" and "sporting" would have to be interpreted. It could be argued, for example, that all kinds of target-shooting, at least on a competitive level, constitute a "sporting purpose", and if specific models of military or para-military weapons are "commonly used" for such a purpose, they are beyond the power to prohibit by order. On the other hand, it could be argued by the government that any shooting activity that uses military-design weapons is not a "sporting" activity within the meaning intended.

The government might well be able to use the power which Bill C-80 would give it (to prohibit "devices" by order) to prohibit some of the military characteristics or accessories which are the indicators that the Minister has suggested might be used to identify the weapons to be banned. The point of these suggested criteria, however, is not to leave these weapons shorn of certain military accessories, but to identify those "high fire-power" military weapons which should be banned entirely because their basic design makes them both dangerous to public safety, and not legitimate for hunting and recreational use. The Minister made much at the

---

(2) (1978), 42 C.C.C. (2d) 230, (1978) 2 F.C. 782 (T.D.).

press conference of the issue of "legitimacy". Military characteristics and accessories, and arguments about legitimate purposes and uses, are more relevant to the government's power to restrict weapons, which is based on its subjective opinion as to what uses are "reasonable." The question of what a "hunting (or) sporting purpose" is within the meaning of the Code may be subject to some interpretation, but in the end it would be more of an objective determination. The question of whether a firearm is "commonly used" for such a purpose would then be primarily a matter of fact.

LARGE CAPACITY MAGAZINES

This regulatory proposal is also still at the general announcement stage, but it has perhaps aroused the most vehement concern on the part of gun-owners and their organizations, and it is linked to Bill C-80. Clause 2 (4) of the bill would amend section 84 (1), paragraph (e) of the definition of "prohibited weapon". It would expand the power to prohibit by cabinet order to include a "device" as well as a "weapon of a kind..".

Although the government has so far proposed to use this power to prohibit only large capacity magazines, the expanded power would potentially cover many other parts and accessories of firearms. The Department of Justice has also indicated that it might be used to prohibit parts and accessories of weapons other than firearms. The word "device" is undefined, and this is apparently intentional so that the power could be used with maximum flexibility. Representatives of gun-owners have sharply criticized the vagueness of the proposed expanded power, and expressed fears as to the extended uses to which it might be put. The dictionary definition of "device" includes any "contrivance, invention, thing adapted for a purpose or designed for a particular function". It is indeed a rather vague, all-encompassing term.

Beyond the future possibilities of how such a broad power might be used, gun-owners organizations and many individual gun-owners have reacted strongly to the proposed ban on large capacity magazines. The government's view is that there is no legitimate purpose for such

magazines, and this proposal clearly is one element of the response to the Lépine massacre. Although the rifle used by Lépine does not apparently come from the factory equipped with a large magazine, he was able to obtain and use two 30-shot magazines that fitted the weapon, and this may well have contributed to the extent of the carnage. Some gun-owners have responded that this was an isolated incident, and that there have been no other incidents in which large capacity magazines have been shown to pose a particular danger.

Whether or not large magazines have posed a danger to the public in the past is difficult to say. Statistics do not exist that would allow for a definitive judgement to be made as to the role they may have played in general criminal activity, particularly crimes involving gangs. Whatever their role in the past, the Lépine massacre perhaps showed their continuing potential for destruction in the hands of a deranged person. Screening requirements will never be foolproof, and it may be argued that anything that will lessen the danger when such incidents do occur is justifiable, particularly if there is no off-setting need that can be shown for this capacity in any legitimate hunting or recreational shooting pursuit.

The response of gun-owners has been two-fold. They have suggested that the prohibition would be impossible to enforce. They have asserted that magazines of a larger capacity than the proposed limits could easily be obtained in the United States, and that there are already many thousands in the country (there are reports of large demands for such magazines now, although their possession would not be grandfathered if the prohibition were imposed). The possibility that a law can be easily evaded is a questionable argument for not attempting to prevent a potential danger, but any criminal law must be susceptible of sufficiently effective enforcement that it does not simply cause disrespect for the law. The proposed prohibition would at least prohibit further legal sales of such large capacity magazines in Canada.

More importantly, gun-owners argue that there are legitimate sporting uses for magazines larger than the proposed limits. They also assert that the proposed limits are based on assumptions that simply make

them unworkable, and will produce unintended results or unjustifiable anomalies. The proposed limits are on all handgun magazines that can hold more than 10 cartridges, and magazines for semi-automatic rifles than can hold any more than 5 centrefire cartridges (the other variety - rimfire cartridges - are used primarily in inexpensive, low-powered rifles such as the standard .22 calibre rifle).

Gun-owners make a number of arguments in regard to the basis upon which the proposed limits have been constructed. They argue, for example, that magazines are not all exclusively designed for either handguns or semi-automatic rifles, or for specific kinds or models of firearms, and that this interchangeability means that the government's proposal is fundamentally flawed. Magazines with a 7 or 10 round capacity designed to fit W.W.I or II vintage Lee-Enfield rifles could be banned because they might also work on more modern semi-automatic rifles. Handgun magazines with more than 5 but less than 10 rounds would end up prohibited because they would also fit some models of semi-automatic rifles. Valuable firearms with built-in magazines over the limit, or for which no legal magazines could then be obtained, would effectively become worthless.

They also assert that many, if not most, competitive shooting events, for both handguns and rifles, use weapons designed for magazines that could be banned. The ban could be an intentional result, because the magazines are over the limits proposed by the government for that type of weapon, or an unintended and anomalous result, because the magazine, although legal for the type of firearms in which it is used in competitions, is over-capacity for some other type of gun in which it will also fit. Canadian shooters would find it difficult or impossible to engage in competitions which are internationally recognized sports and in which they now engage on both the domestic and international level.

The government disputes all of these contentions to a large extent. In particular, it disputes the assertion that the proposed limits would interfere significantly with the majority of competitive shooting sports. It acknowledges that the limits would affect the viability or value of some individual firearms, and would affect some competitive shooting, but insists that the proposals announced constitute the best

compromise that can be made between the needs of public safety and the legitimate needs of hunters and recreational shooters.

At the press conference following the tabling of Bill C-80 the Minister of Justice concentrated on the lack of any legitimate need for large-capacity magazines for hunting purposes, and the dangers they posed in those situations and in the hands of those who threaten the public. If it can be shown that the proposed limits would have unintended or anomalous results, and in particular would interfere substantially with recognized sporting events, the government might be willing to re-design the basis of the proposed limits, or make exceptions that would allow competitive shooters to continue to use over-capacity magazines, perhaps under controlled conditions. There would be ample opportunity to do so, as the ban would be imposed at the discretion of the cabinet, and there would thus be no time constraints on the design of workable regulations. No doubt this will be the subject of much consultation, although some shooters' representatives appear to have the impression that there will be no further consultations on this issue.

They are also concerned that there will be no opportunity to deal with their concerns before a legislative committee, as the proposed limits would not be imposed by Bill C-80. The bill would grant only the enabling power to impose the limits by cabinet order. The sort of concerns they cite, however, might be easier to deal with in detailed regulations than in a bill. The power to prohibit weapons by order has not been used in the past to produce the sort of detailed regulation that might be necessary in this case, but there would appear to be no reason why the prohibition order could not be crafted in this way.

NEW REQUIREMENTS FOR OBTAINING A FIREARMS ACQUISITION CERTIFICATE

Bill C-80 would make a number of changes to the requirements for obtaining a FAC, the certificate required of anyone who wishes to obtain a firearm of any kind in Canada. In contrast to the proposed restrictions on firepower, all of the changes to the FAC process (but one) are set out in the bill, although a key element of one of the more noteworthy proposals would appear later in the form of regulations. The

new process would require the applicant to submit a photo (this requirement would be imposed by regulation), two references, proof of competency in the safe handling of firearms and knowledge of gun control laws, and to wait a mandatory 28-day period before receiving a certificate.

A. References

This is perhaps the most important of the proposed changes. It is clearly to some extent a response to the Montreal massacre. It would seek to strengthen those provisions of the Code that try to screen out those who may pose a danger to the public from obtaining any kind of firearm, at least legally. The Lépine massacre shows that even if access to the fire-power of military-design weapons is prohibited or restricted, a disturbed person can still go on a murderous rampage using an unrestricted gun which can be obtained with only the most basic level of screening, the FAC.

Clause 16 (4) of the bill would amend section 106 (8) of the Code (section 106 sets out the application process) to require the applicant to furnish the names of two persons who have known him or her for at least three years, and who could confirm that the information submitted with the application was true. Not everyone could be a reference - these persons would have to "belong to a class of persons prescribed by regulation". It seems to be anticipated that the process would operate much like that which requires applicants for passports to furnish references, although the Department of Justice has suggested that the class of person who would be eligible to act as references might be somewhat broader. The passport reference class is restricted to those in certain occupations - doctors, lawyers, engineers, etc. - or those holding certain offices - mayors, etc. The FAC reference class might be defined in such a way as to include any "respected member of the community".

At first blush this would appear to be a good way of helping to ensure that those who should not have access to firearms are screened out. As the only system we have for screening out unreliable people is their past history of violent behaviour, anything that helps to make the information submitted about this past history more reliable should make the

system more effective. There are a number of questions, however, that would be critical to whether the new requirement operated effectively and fairly. The definition of the class of persons eligible to act as references would be one key element. If the prescribed class is too wide, so that applicants could simply get their friends to guarantee their applications, the requirement could have little effect, (although, as is suggested below, these may be the people in the best position to know whether the information submitted by the applicant is true or not). If on the other hand, the class is drawn too narrowly, it could be difficult or impossible for those who are too mobile or too isolated to find two persons who qualify and have known them for three years, and many who would otherwise be eligible for a FAC, may be denied one unfairly.

It may also be questioned how likely it is that those who would be judged sufficiently respectable and impartial to be eligible to be a reference would be in a position to verify the sort of information that the applicant for a FAC must furnish. Those who act as references for passport applications are really only being asked to guarantee that the applicant is who he or she says they are. Those who would "confirm" FAC applications would be asked to verify more problematic, private and possibly subjective matters - such as whether the applicant has been treated for a mental disorder involving violence. Are "respected members of the community" expected to know this kind of information about a broad range and number of their fellow citizens? Close friends and neighbours might be more likely to know, but might be somewhat suspect as guarantors, and would be put in a very difficult personal position if asked to guarantee an application in a borderline case.

Some newspaper editorials have appeared to assume that these references, often referred to as "sponsors", would be attesting to their personal view that the applicant was the sort of person who could be trusted with a firearm. It may be suggested that many of those who hope that the references requirement would add substantially to the screening process may also be hoping that most or at least some of those who would be asked to act as references would see their role in this way. It has been suggested that Marc Lépine, for example, might not have been able to

satisfy such a requirement, although it has not been reported that any of the information he submitted on his FAC application was untrue. It must be emphasized that all the references would be asked to do, and it could be argued that all that could reasonably be expressly asked of them, is to verify the information submitted by the applicant. As noted above, even this responsibility, given the nature of some of the questions asked on a FAC application, could be quite an onerous one.

B. The 28-day Mandatory Waiting Period

Clause 16 (1) of the bill would amend section 106 (1) of the Code to require that there be a mandatory 28-day waiting period between the application for a FAC and its issuance. The press release which accompanied the tabling of the bill suggests that this period would "enable a thorough assessment of the applicant". That opportunity is already available, as there is no time limit in the Code now for the processing of an FAC application. Firearms officers can now take all of the time they feel is necessary, and customarily do, to do all the investigating that they feel is necessary or feasible. Chief Provincial Firearms Officers in some of the provinces have indicated that firearms officers nonetheless sometimes feel under pressure to hurry the assessment of a FAC application, particularly in small-town and rural areas, and that a mandatory waiting period will improve the vetting of some applications by eliminating this feeling of pressure. While this may be true, the same result might be accomplished by administrative tightening up of the vetting process. Although the National Firearms Manual prepared by the RCMP sets out detailed guidelines for procedures to be followed, there have been suggestions that there is not a reasonable level of uniformity across the country in the vetting of FAC applications.

It may in any case be suggested that there is little more that firearms officers can do other than what they now do in processing an application. As noted above, all that they can do is check out an applicant's history, and their sources of information for doing this are limited. Alternatives such as psychological questionnaires would probably not be administratively feasible or would be prohibitively expensive, and

would raise questions of legal propriety. The Code instructs firearms officers to look at whether the applicant has a criminal record or history of mental disorder involving violence, or any other history of violent behaviour (at least within the preceeding five years). Criminal records are computerized, and it is thus relatively easy for a check to be made of criminal convictions. Histories of mental disorder are not available from a central and easily accessible source, and are protected by laws and principles of confidentiality of medical information in any case.

The only really accessible sources of information about past violent behaviour, including criminal behaviour that has not resulted in a conviction (for reasons of plea bargaining or otherwise), and mental disorder associated with violence, are the local records of the police force in the community in which the applicant lives, and those of the communities in which the applicant has resided in the previous five years (assuming that the police have been involved in investigating a violent incident involving the applicant, which is often the case). In particular cases where the firearms officer is suspicious (and the personnel are available) an investigator may contact by phone or visit neighbours, spouses or ex-spouses, etc., but these cases will be relatively rare, particularly when it is only a FAC and not a Restricted Weapon Registration Certificate that is being applied for. It would simply not be administratively possible, and would certainly be prohibitively expensive, to carry out such extended investigations of the close to 200,000 FAC applications received each year.

It is thus questionable whether a mandatory waiting period would enable the police to make a more thorough assessment of FAC applications than is now the case. The other reason advanced by the government for this requirement does not, however, relate to the adequacy of the assessment process. The period has been described as a "cooling-off" period, to discourage those whose motivation for wishing to acquire a firearm is an emotionally-motivated desire to harm themselves or others. It is hoped that the passions that might otherwise lead them to use a firearm for such a purpose will not survive the mandatory waiting period. While this would seem to be a sensible requirement, and has been

reflected in a number of proposals in Private Member's bills over the years, the proposed period of 28 days may merit some study. It has been suggested that 28 days is longer than is needed to act as a cooling off period, and could create hardship for those whose livelihood depends on access to firearms. There would appear to be no magic to the 28-day period, and another period, for example 14 days, might be shown to be equally likely to be effective, or might, as is suggested below, be substituted in appropriate circumstances.

C. Mandatory Safety Courses

Clause 16 (2) would repeal the present section 106 (2) (c) of the Code and replace it with a virtually identical provision. The present provision (which has never been proclaimed) requires applicants for a FAC to show evidence that they have either successfully completed a course or passed a test in the safe handling and use of firearms. The replacement provision would add only that the course or test must include knowledge of gun control laws. While this may be a useful addition to the requirements, the new provision would also seem to be designed to signal the government's commitment to act on implementing the requirements enacted in 1977.

It would appear that all parties, shooters and their organizations, provincial governments, and the federal government - are now prepared to work together to create a system of firearms safety training programs that will allow for the proclamation of this important aspect of the 1977 screening process. Implementation will not be easy, however, and it has only begun. The plan appears to be to adapt the hunter safety courses that are available (and required) in most provinces to create firearms competency programs that could be used to train all shooters. Hunter safety courses will not translate exactly, particularly since the training involves firearms safety only in part, and only for rifles and shotguns. A national safety training program would have to involve instruction on all types of firearms, including handguns. Hunter safety programs in different provinces also vary greatly in content. For example, it has been suggested that an effective firearms safety program should involve actual hands-on training at a firing range, but not all hunter

safety courses include this element. Proclamation of this requirement could take some time yet, and will depend more on the development of the necessary programs than on the fate of Bill C-80.

Failure to make progress on the implementation of the training course requirement enacted in 1977 appears to have been the result of a number of factors, but the primary problem appears to have been a matter of cost. The federal government after 1977 prepared some resource materials and went to work to develop national standards for such courses, as it is doing now, but the provinces were apparently unwilling to undertake responsibility for administering a federally-mandated program without the federal government covering all of the costs, and the provinces were apparently not satisfied with the federal government's past proposals for cost recovery. As part of the current package of proposed reforms, the federal government is, however, planning to raise the fee for a FAC from $10 to $50, and the additional funds raised will presumably be used, perhaps among other things, to cover the costs of setting up and administering safety training courses. Unless the federal government is willing to transfer the necessary funds, however, the provinces may not ultimately be willing to cooperate to the extent necessary, as there is no indication that they are any more willing now to bear any more significant a portion of the costs than they were after 1977.

D. Different Requirements for Northerners and Previous FAC Holders?

Shooters' organizations have for a number of years expressed support, and even actively lobbied, for mandatory safety courses. There has therefore been support expressed for this aspect of the government's current reform package by many gun-owners, but they have also criticized the fact that the requirement would apply each time someone applied for a FAC. FACs are good for five years, and for an unlimited number of unrestricted firearms, but firearms need to be replaced from time to time for various reasons, and for certain technical reasons many shooters require a current FAC at all times. There are therefore a significant

number of applicants for FACs who have been approved in the past, but whose FAC has expired.

Gun-owners' representatives have thus argued that there should be a renewal process whereby those who have previously held a FAC would be able to get another one without going through the full approval process, and they are disappointed that Bill C-80 does not provide for one. It may be necessary to ensure that someone seeking a new FAC has not had criminal or other violent behaviour problems since last being approved, public, but there would certainly appear to be a strong argument that they do not need another firearms safety course, or at least a complete course. Gun-owners make the same argument about the proposed requirements for references and the mandatory 28-day waiting period. Generally they are unhappy about the references proposal in any case, but some have expressed approval for a mandatory waiting period for first-time FAC applicants. The case for a renewal procedure that does not require those who have previously held FACs to provide references, take a safety course, and wait a full 28 days would appear to merit some study.

The same argument has been made on behalf of those from rural or northern areas, particularly those whose livelihood depends on having a firearm - hunters, trappers, those who must defend their livestock against predators, etc. Their mobility or isolated location may make getting references from two persons who are in the prescribed class and have known them for three years very difficult or impossible; those who use firearms all the time may have less or no need for safety training courses; and a 28-day waiting period could be a real hardship for someone who loses his or her firearm during a hunting or trapping season and has to wait a mandatory month to get a new FAC. Perhaps even some first-time applicants in rural areas - those who have been using guns in the course of earning a living for years but may never have needed a FAC because they had firearms acquired before the FAC requirement was imposed in 1978 - should not be subject to the full range of the proposed new requirements.

Ironically, the requirements for references and a mandatory waiting period may be primarily designed for more anonymous urban areas where FAC applicants are less likely to be known to the police and checking

them out may be more difficult, but the mandatory waiting period at least may be unnecessary in such areas because volume and the attendant administrative delays now result in a waiting period that is often longer than the proposed 28 days. The effects on rural and isolated areas where the need for such requirements is arguably less may, on the other hand, be much greater. The government case is built on the need to protect the public, an assessment that the effects of the measures needed on "legitimate hunters or sporting shooters" will be minimal, and the lack of any offsetting "needs" on the part of gun-users that would be impaired by these measures. There may thus be a case for different or alternative reference or information verification requirements in rural, northern, or other isolated areas, particularly where some sort of occupational need can be demonstrated. The same case might be made for a shorter mandatory waiting period, particularly in cases where it can be shown that it may produce hardship, or at least for a discretion vested in someone in authority to make exceptions in appropriate cases.

OTHER CHANGES TO THE FAC PROCESS

A. Fees

There are two other changes which Bill C-80 would make to the FAC process that have been strongly criticized by gun-owners. One of these is to the process by which the fee for a FAC would be set. Clause 16 (5) would amend section 106 (11) of the Code to remove the reference to a $10 fee, and replace it with a reference to the "fee prescribed by regulation". While gun-owners acknowledge that some increase is justified, as the fee has not risen since it was set in 1977, they charge that the proposed increase to $50 (this is a proposal only at this point - it could be higher and is unlikely to be lower) is too big a jump. More importantly, they are concerned that it could be raised even higher in the future.

It is certainly true that the fee could go higher in the future. The government's announced intention is to set the various fees provided for in the gun control regime so as to provide sufficient revenue

to administer the system. Gun-owners argue that the full burden of the cost of the system should not fall on them, while others argue that that the fee should be set much higher - $100 or $200 - to act as a deterrent to unnecessary gun ownership. In any case, there would appear to be a strong argument for sufficient cost recovery to make the system viable. As noted above, the safety training requirement in particular may well be difficult or impossible to implement unless the system itself raises sufficient revenue to cover the costs.

In addition, it should be noted that it is most unusual now for fees of this nature to be set out in a statute. Most such fees are now prescribed by regulation, and can thus be adjusted more regularly to reflect inflation, changing costs, and other relevant factors.

B. Revocation of FACS

The other change which the bill would make is the addition of a power to revoke FACs. Clause 24 (1) would add a new subsection (2.1) to section 112 of the Code to allow a firearms officer to revoke a FAC where the officer had notice of information that indicated that this was desirable in the interests of the safety of the FAC-holder or anyone else. Section 112 now provides for the power to revoke restricted weapons registration certificates, permits to carry, etc.

Most of the concern has been the result of a misunderstanding occasioned by the fact that the bill does not itself provide for an appeal procedure from such a revocation. Gun-owners have thus charged that this would allow a firearms officer to negate the overturning by a court of a refusal to issue a FAC (such a refusal is appealable) and that there would be no recourse to the FAC-holder. In fact the power to revoke would be subject to the full right of appeal given by the existing section 112 (8) to anyone "who feel himself aggrieved by (a) <u>any action or decision</u> taken under this section", which would include a revocation made pursuant to the new section 112 (2.1). The officer would thus be empowered to act only on information which came to light, or more likely an incident which occurred, after the FAC was issued, and the revocation would be subject to an appeal to a provincial court judge.

RESTRICTED WEAPONS CERTIFICATES - PROOF OF SAFE STORAGE

The press release from the Department of Justice concerning Bill C-80 lists "proof of safe storage facilities before a restricted weapons registration certificate could be granted" as one of the highlights of the public safety measures which it would introduce. The bill would indeed introduce a requirement that proof of ability of comply with safe storage requirements be shown before a restricted weapons certificate could be granted, but only when the certificate was sought for one specific purpose - where the restricted weapon would form part of the gun collection of a "genuine gun collector".

Section 116 (g) of the Code authorizes the cabinet to make regulations "prescribing conditions relating to the storage, display, handling and transportation of restricted weapons that form part of the gun collections of genuine gun collectors". Pursuant to this authority, Section 14 of the Restricted Weapons and Firearms Control Regulations (SOR/78-670) prescribes these conditions. Clause 19 (3) of Bill C-80 would amend section 109 (3) (d) of the Code (which provides for the issuance of registration certificates for restricted weapons to "genuine gun collectors") to require that these gun collectors show that they have complied with these conditions.

The theft of weapons legally possessed by legitimate gun-owners, particularly gun collectors, is cited by many police sources, including the Association of Chiefs of Police, as a prime source for guns used in the commission of criminal offences. Because of the quantity and range of weapons in the possession of some collectors, including grandfathered automatic weapons, the security of this class of ownership is of particular concern. It might, however, be suggested that the significance of the new requirement - that proof of ability to comply with safe storage regulations be shown - will depend on the adequacy of those regulations. Several police sources have suggested that these requirements need strengthening. They provide, for example, for locks on display cases, but do not require that any glass and other materials used in such a

display case, which one would presume would be a prime target for theft, be reasonably unbreakable or otherwise secure.

Police sources have also asserted that stolen handguns are the weapons most often used in criminal offences, and it might be suggested that safe storage requirements, and proof of compliance with them before a restricted weapons certificate was granted, should be required of other classes of gun-owners, particularly those who own handguns. The other government concern in regard to the security of gun collections relates to the potential for accidental misuse by children, and the tragedies that have resulted from children gaining access to these weapons. It might be suggested that the same rationale applies equally to other kinds of gun ownership, including the possession of unrestricted hunting and recreational shooting rifles and shotguns.

SEARCH AND SEIZURE WITHOUT A WARRANT

One example of the changes which the bill would make that are in response to Charter challenges involves the power of warrantless search and seizure. Sections 101(1) and 102(2) presently allow police officers to search, without warrant, persons, vehicles or places, other than dwelling-houses. They may do this whenever they have reasonable grounds to believe that an offence involving weapons has been committed, or that someone's possession of a firearm or ammunition poses a danger to public safety, and may seize weapons and other materials. Clauses 10 and 12 would amend these sections to tighten the powers of both warrantless searches and seizures by defining the circumstances in which such a power could be used.

The constitutionality of section 101(1) was challenged in the case of *R.* v. *McDonough* (3), and it was criticized as appearing to authorize an arbitrary power of warrantless search. The judge thus found the section as drafted to be contrary to section 8 of the Charter.

---

(3) (1988), 65 C.R. (3d) 245 (Ont. Dist. Ct.).

What Bill C-80 would do in response would be to insert a test into each section as to the circumstances in which a warrantless search or seizure would be authorized. The test would require in each case that the conditions for obtaining a warrant would have to exist, but because of "exigent circumstances" or "by reason of a possible danger to ... safety" it would not be practical to obtain one. Although the power basically would remain intact, it is to be hoped that setting out such a test would act as a deterrent to any unreasonable use of the power by a police officer. Although the test itself would not impose any conditions that should not already be understood by all police officers, expressly placing it in the Code might strengthen that understanding. In any case, the test would give the courts an express statutory basis upon which to review any exercise of the power which was challenged, and this should ultimately act as a deterrent to abuse.

PROVISIONS THAT RELAX CERTAIN ASPECTS OF THE GUN CONTROL REGIME

A. Relaxed Transportation Restrictions and Other Changes

There are a number of provisions in the bill that would relax restrictions that many gun-owners have seen as simple red-tape or as being unnecessarily strict. Parts of the bill would thus make changes requested by gun-owners.

1. Clauses 4 and 21 - These amendments to sections 91 and 110 of the Code would make it easier for restricted weapons to be transported for such purposes as storage, repair, or sporting events, by allowing for the issuance of special "carry permits" to persons other than the registered owner of the weapon. The applicant for such a permit would still require a FAC in good standing to be legally eligible to possess a firearm for any purpose, but firearms officers would have the discretion to allow, for example, the spouse of a registered owner of a handgun to transport the weapon to a firing range for a shooting event involving the owner.

2. Clause 7 - This clause would make a number of amendments to section 97 of the Code that would expedite the return to their lawful owners of lost or stolen firearms which have been recovered by the police. These amendments would provide express authority for a police officer to return the weapon.

3. Clause 11 - This amendment to section 102 of the Code would permit a person under the age of 16 to use a firearm under the immediate supervision of an adult so long as that adult was lawfully in possession of the weapon.

4. Clause 16 (6) - This clause would expand section 106 of the Code, which deals with the issuance of FACs, to provide for an express procedure for any appeal of a refusal to issue a FAC (the right of appeal itself has existed since the requirement was first imposed in 1977). In particular, the new section 106 (17) would expressly provide that in such a hearing the burden of proof would be on the firearms officer to justify the refusal to the provincial court judge.

5. Clause 21 (2) - This would add a new provision to section 110 of the Code (new section 110 (2.1)) which would allow non-residents of Canada to bring restricted weapons into the country for the purposes of a competition held under the auspices of a recognized shooting club.

B. New Provisions Regarding Prohibition Orders

The bill would also relax some of the requirements put in place in 1977 for the imposition of mandatory orders prohibiting those convicted of criminal offences involving violence, or who have been refused a FAC, from being in possession of any firearm or ammunition.

1. Clause 9 (1) - This clause would amend section 100 of the Code (adding new sections 100 (1.1) to (1.3)) to allow the court some discretion in regard to prohibition orders even in cases of criminal involving violence. Such orders are now mandatory if the offence involves

the use of a firearm in the commission of an offence, or the offence involved bears a possible prison term of ten years or more. This amendment might not have the support of many gun-owners, who have often complained of a lack of strict enforcement of the power to prohibit those convicted of a criminal offence from possessing firearms, but it would respond to the concerns of many in northern areas that such orders are not always necessary, and can impose great hardship on those whose livelihood depends on the use of firearms. The government is apparently responding to a finding by the Yukon Territorial Court of Appeal (although there have been contrary decisions) that a mandatory order could, in a very few cases, constitute cruel and unusual punishment contrary to section 12 of the *Canadian Charter of Rights and Freedoms* .(4)

The discretion would be limited to cases where the court was satisfied that public safety would not thereby be endangered, and where special circumstances existed. The court would be instructed to have regard to the nature of the offence and the offender, and in particular whether the offender needed a firearm for the sustenance of his or her family, or would be effectively precluded by such an order from earning a living in the only way open.

2. The other changes which the bill would make in regard to prohibition orders should have the support of most gun-owners, as they would relax the requirement that a prohibition order be imposed by a judge whenever the refusal of a firearms officer to issue a FAC is upheld. Clause 9 (4) would amend section 100 (7) of the Code to give the court a discretion not to make such an order. Section 100 (7) now instructs the judge to prohibit the applicant from possessing firearms or ammunition for a period of up to five years. Clause 9 (5) would also amend section 100 (10) (b) to provide that only the Attorney General (which in practice means Crown counsel) could appeal a judge's overturning of a refusal to issue a

---

(4) *R. v. Chief* (1989), 51 C.C.C. (3d) 265, (1990) 1 W.W.R. 193, 39 B.C.L.R. (2d) 358 (Y.T.C.A.).

FAC, or a denial of a prohibition order, rather than the firearms officer who refused the FAC application or applied for the order.

COMMENTARY

Although the preceding sections of this paper have described an analysed the reaction to particular parts of the government's gun control package where appropriate, there are some general issues regarding the overall package that need to be addressed.

OVERALL OPPOSITION TO THE BILL

A. The "Legal" Versus the "Criminal" Use of Firearms

While individual gun-owners and their organizations have criticized many of the proposed measures contained in Bill C-80 and its accompanying package of regulatory proposals, much of their reaction has focused on the overall application of the package. They charge that it is aimed solely at the use of guns by "legitimate" gun-owners and makes no effort to target the criminal misuse of guns. To a certain extent they make the same criticism of the existing gun control regime, and it is thus the whole approach taken by successive governments to gun control that they object to.

As noted above, however, one of the three elements of that regime is comprised of provisions designed to penalize the use of firearms in criminal offences, so as to act as a deterrent, and to prohibit those who do demonstrate that they are dangerous from acquiring or possessing guns. Aside from making it an offence to convert a firearm to fully automatic, which is primarily a companion measure to the proposed extended ban on automatic weapons, the bill does not add to the penalties for the criminal misuse of firearms.

The spokespersons for gunowners do not, however, propose that additional penalties be enacted; they argue that existing laws are not adequately enforced. They are particularly concerned that the mandatory

penalties, beginning with one year in jail for a first offence, which section 85 of the Code would apply to anyone convicted of using a firearm while committing or attempting to commit an indictable offence (additional to the sentence imposed for the offence itself), are often not imposed because the charge is plea-bargained away or otherwise not pursued. They also charge that the mandatory prohibition order provided for under section 100 of the Code, which should result in anyone involved in a violent offence being barred from possessing firearms or ammunition for a period of up to five years, is often not imposed because Crown lawyers do not always ask for them and judges do not always advert to the requirements of section 100.

Enforcement of the *Criminal Code* is, however, a provincial matter, and there is relatively little that the federal government can do to respond to these complaints. The Department of Justice advises that they have been noted, however, particularly during the consultations that preceded the introduction of Bill C-80, and federal concerns about the adequacy of the enforcement of existing gun control provisions have apparently been communicated to the provinces.

These opponents of the gun control regime are asking for much more, however, than more concentration on enforcement of those provisions of the Code aimed at actual criminal use of firearms. They are also opposed to anything more than minimal regulation of the sale of firearms to anyone who does not have a criminal record. They argue that "criminals", by which they mean those who either have criminal records or have records that indicate that criminal behaviour may be expected of them, will always be able to get hold of guns illegally. The bulk of our gun control provisions are thus in their view aimed at the "legal" trade in guns, as opposed to arms smuggling or other aspects of the "illegal" trade in firearms. Some go so far as to argue that since little can be done about the illegal trade in firearms, or about access to guns by "criminals", that the primary aim of gun control is to restrict access by honest citizens, and the system should thus be scrapped (and replaced by a system that would emphasize proper training, but otherwise allow more or less wide-open access).

The government, police, and others who support the approach presently taken to gun control (many of whom would like to see it expanded even more than Bill C-80 and its accompanying regulatory proposals would do), argue in response that the effort to regulate the legal trade in firearms is even more important because of the difficulties involved in prohibiting the illegal trade. They assert that reasonable efforts are being made to interdict the illegal trade, but that if indeed the criminal trade in guns is difficult or impossible to restrict adequately, it makes sense to do as much as possible to restrict and regulate the legal trade in firearms, so as to limit the possibilities for theft, accidental misuse of legal firearms, and criminal misuse by those with no previous criminal history.

It is thus argued that the protection of the public requires that the screening process for any legal access to firearms must be as effective as possible, and that particularly because no such process will ever be foolproof, there must be strict regulation of the sort of guns to which legal access is allowed. Those who are not "career criminals", and may not even have any previous criminal record, can and do use guns to commit crimes such as assault and murder, particularly in the course of domestic disputes, and in a demented state can go on murderous rampages, as Marc Lépine demonstrated. To say that such incidents cannot be prevented entirely is not to say that nothing can be done. There is a strong argument that the maximum effort possible should be made to limit the possibilities of such incidents occurring, and to minimize the effects when they do occur.

As difficult as it may be to do anything effective about the criminal misuse of firearms by those who have been previously law-abiding, the government feels it must try, and this package of additional gun controls is part of that effort. Gallup polls taken after the massacre in Montreal showed that a strong majority of Canadians - 72% of respondents supported an expansion of controls on the legal trade in guns. The package thus seeks to limit the fire-power of weapons to which access would be allowed, and strengthen the screening on basic access to any gun. Accidental misuse of guns, particularly by children, is often the cause of

tragedy, and the proposals regarding mandatory safety training, and proof of ability to comply with safe storage requirements affecting collectors of restricted weapons, are aimed at reducing this problem.

The question of theft of legally-owned firearms is of particular concern. Police authorities allege that most guns used in criminal offences, particularly handguns, are in fact stolen from those in legal possession of the guns. They cite a particular problem with the inadequate security of many gun collectors who have large numbers of guns, many of them handguns or military-style weapons. They argue that restricting the number and fire-power of such legal guns thus restricts the availability of guns for criminal use.

Representatives of some gun-owners' organizations deny that stolen guns are a major factor in crime, and suggest that most of the guns used for criminal purposes are smuggled in from countries such as the United States. The major weakness in the police argument that weapons stolen in Canada are the primary source of weapons for criminal use is that it is not documentated. There are no comprehensive statistics available concerning the origin of weapons used in crimes, and generating such statistics would require police time needed for law enforcement. There is a great deal of anecdotal evidence available in support of the claim, however, including from the Association of Chiefs of Police and some of its individual members. Much of this evidence involves automatic weapons and converted automatics, and handguns, stolen from gun collectors. Measures aimed at restricting the fire-power of weapons that can be stolen, and tightening up the security of gun collections in particular, could thus have a significant, if indirect, effect on the number and range of weapons available for the criminal trade.

B. The Dangers Presented By Converted Automatics, Military and Para-military Weapons, and Large Capacity Magazines

Those opposed to these particular proposals allege that the government is responding to misplaced public fears based on American public "massacres," and the single recent such tragedy in Canada, the Lépine massacre in Montreal. They allege that these incidents are isolated,

particularly in Canada, and that they have lead to an overemphasis on the firearms available in the legal trade, while the more widespread but less dramatic use of firearms by those committing violent crimes is ignored. They assert that the weapons which are the primary targets of the government's package have been available in Canada in large numbers for many years, but have not been the subject of significant misuse. They point out that there are thousands of fully automatic weapons which were grandfathered in 1977, up to 50,000 converted automatics imported before and since 1977, and countless numbers of military-style weapons originally manufactured as semi-automatics already here - more importantly they point out that none of these weapons has been used in a Stockton-style massacre.

It must be acknowledged that Marc Lépine did not use a military-style weapon. His gun is also apparently commonly used in Canada for hunting purposes. The lesson of the Montreal tragedy in the view of the government, however, and one that is shared by many others, is that the tragic massacres that have become much too common in the United States in recent years can and will happen in Canada as well. The focus of much of our present gun control laws is certainly preventive, and the dangers of the particular firearms and magazines which this package would prohibit may be more a matter of potential than a large-scale history of criminal misuse or massacres in Canada involving such weapons. Nonetheless, the availability of these weapons in the United States has clearly created widespread problems of both kinds, and the government and police are concerned that they could be experienced in the future on a much greater scale in Canada.

There is some evidence that military-style weapons and large capacity magazines, both because of their fire-power and their military symbolism (which was clearly at work in Stockton), are more likely to be the weapons of choice for psychopaths or deranged people on a rampage. The potent fire-power which is a basic element of their design then creates the potential for a greater loss of life and serious injury in such incidents. Although the Lépine massacre shows that other weapons can also possess dangerous fire-power, the government's argument is that banning military-style weapons and magazines may minimize the potential for such destruction, while having the least restrictive effect on the availability

of firearms legitimately used for hunting and recreational shooting purposes.

While the large numbers of these weapons already in the country would mean that the prohibitions would have a limited effect (assuming that the proposed grandfathering provision regarding converted automatics meant that few such weapons would be confiscated), they would at least prevent further legal importations. Confiscation of those weapons already here would not likely be feasible, but that does not mean that banning further imports and restricting the trade in those now available would not ultimately have a significant effect on the numbers available in the country. These steps are thus worth taking if there is reason to fear the potential for the misuse of these weapons.

What's more, police authorities cite anecdotal evidence that it is not purely a question of future potential. They assert that there have been incidents of shootings of police officers and others, if not large-scale massacres, by disturbed people using military-style weapons - in at least one case involving an unregistered restricted converted automatic, taken by a family member from a gun collection in Toronto.

Nor is it solely a matter of use of these weapons by disturbed individuals. Police and government officials are concerned about their use by criminal gangs, particularly drug gangs. While this clearly has been a disturbing development in recent years in the United States, there is some controversy as to whether it is happening in Canada as well. The critics cited above allege that few crimes are committed in Canada using such weapons, either by gangs or individual criminals. They assert that criminals more commonly use ordinary sporting rifles or shotguns - possibly sawn-off, which would make them prohibited weapons already. Even some police authorities agree that non military-style weapons, particularly handguns, are presently more likely to be the weapons of choice for criminals, including those involved in gang and drug wars in cities such as Toronto.

There is evidence, however, that more shipments of converted automatics and other military-style weapons have been arriving in Canada in recent years. Police authorities are concerned that import bans on the

entry of such weapons into the United States may result in arms dealers looking even more to Canada as a market. If such weapons become more widely available in the legal trade, there is concern that they will be more likely to make their way into the underground trade as well. Although a prohibition here could be evaded by the smuggling of these weapons in from the United States (where they are still available in large numbers, and will continue to be despite any import bans), a ban on the legal importation of these weapons would at least cut down the total numbers available for misuse, either by their legal owners or in the event that they are stolen, and might make it easier to monitor and interdict the smuggling trade.

There is undoubtedly much support among the general public for a ban on military-style weapons and large capacity magazines. At its meeting in June of 1990, the Federation of Canadian Municipalities passed a resolution asking the federal government to prohibit the "use, possession and sale" of "combat weapons". The Association of Chiefs of Police passed a similar resolution in September of 1988, and in the aftermath of the Montreal massacre many private citizens have signed petitions supporting bans of this nature (and more extensive measures).

CALLS FOR EVEN TOUGHER MEASURES THAN THOSE PROPOSED BY THE GOVERNMENT

After the horror of the tragedy in Montreal, there were many calls for much stricter controls on both the range of firearms which should be legally available, and on the screening of those who wish to acquire any kind of firearm. Two measures in particular have been advocated - a ban on all semi-automatic weapons, and more access to the psychiatric records of prospective gun purchasers.

A petition circulated by the students of École Polytechnique in Montreal in the wake of the tragedy garnered support from more than 500,000 Canadians for a ban on all semi-automatic rifles. The government has declined to go this far, however, and both opposition critics have agreed that such a ban is neither necessary nor feasible at this time. A ban on all semi-automatics would simply appear to be politically

impossible, even if it could be shown to be necessary or desirable. Such a measure would make illegal millions of firearms designed and used for hunting and other recreational shooting purposes. As described earlier, some of these would be high-powered weapons and others would be considerably less dangerous.

Other jurisdictions have taken this step, but comparisons with other countries and societies must take account of different histories, and differences in present social, political and cultural circumstances. For example, all semi-automatic firearms, and most pump-action guns as well, have been banned in Great Britain. It would appear, however, that hunting and other shooting pursuits do not involve as large a proportion of the British population, and attitudes toward firearms have always been different than those in many other countries, including Canada. On the other hand, the private possession of fully-automatic weapons is allowed in some other countries, and attitudes toward the private ownership of firearms are considerably more liberal in those countries than they are in Canada. Given Canada's historical and cultural background, the possession and use of firearms for hunting and recreational shooting is very common, although perhaps not as common as in other countries such as the United States.

If not all semi-automatics can or should be banned, the question remains whether distinctions can be made that restrict or prohibit some semi-automatics but not others. As noted earlier, it remains to be seen whether the government's proposed distinction between military-purpose and other semi-automatic weapons can be maintained. It is difficult to see what other criteria could be used to make further distinctions among semi-automatic weapons.

The question of access to psychiatric records of applicants for FACs is an even more difficult dilemma. Screening of would-be firearms owners is a critical element of the gun control regime, and section 106 (4) (b) bans anyone who has a history within the preceding five years of mental disorder involving violence from being issued a FAC. Critics have complained, however, that principles of medical confidentiality prevent

firearms officers from checking out these records, and screening out those who should not have access to guns because of such a history.

In some cases the police are aware of incidents involving mental disorder and violence, because the incidents have been public and they have been involved in investigating them. In other circumstances, the issue of access to otherwise confidential medical records raises privacy concerns and questions of possible infringement of Charter rights. Beyond these legal and ethical considerations is the practical problem of accessibility. Unlike criminal records, which are centrally recorded in computer form and easily available to all police forces, records of treatment for a mental disorder, whether involving violence or not, are not available in any similarly accessible way. Assuming that extensive investigations of every applicant for a FAC are simply not feasible, access to psychiatric records would only be material in a very few cases where the police not only had a particular reason to believe that such a history might exist, but also had some idea of where to look for it.

There are such cases, however, and there have been discussions among police authorities, particularly the Chief Provincial Firearms Officers, about the concept of a waiver of medical confidentiality by anyone applying for a FAC. While there is an argument that those who wish access to potentially deadly weapons should be willing to give up rights to confidentiality of information that may bear on whether they can be trusted with such weapons, the sort of general waiver that has been discussed might involve the routine disclosure of sensitive information that would have no bearing on the issue of whether a FAC should be issued. If a waiver system was to be considered, it might be necessary to filter the information to be released though a mental health professional, either the applicant's own doctor or a professional working on behalf of the firearms officer requesting the information. The former approach could involve a conflict of interest, and the latter approach would involve more expense and an additional element to the bureaucratic process.

There is at least one precedent for allowing police authorities access to psychiatric records when someone wishes to acquire certain firearms. New York State law requires that in the case of a

handgun application the records of the state department of mental hygiene must be available to the investigating officer. This law also takes a very strict approach to the entire matter of handgun ownership (although the laxness of laws in other states makes it difficult or impossible to enforce the law according to its intent), and provides for a waiting period of up to six months for the investigation of a handgun permit application.

Other additions to the gun control scheme that have been proposed include severe limitations on the access permitted by the FAC system. FACs presently are good for a period of five years and can be used to purchase an unlimited number of unrestricted firearms. It has been proposed that the certificate should be valid for a much shorter period - everything from 1 to 3 years has been suggested - and that each FAC should allow the purchase of only one firearm. While a separate FAC for each purchase may not be necessary or administratively feasible, a limit could be put on the number of weapons which could be acquired with a single certificate. This would require some sort of enforcement mechanism, however, and could increase the administrative complexity of the FAC process.

THE CRITICAL ROLE OF REGULATIONS IN THE GOVERNMENT'S PROPOSED PACKAGE

Much of the government's proposed package will take the form of regulations to be enacted at a later date. Some of these regulations will stand or fall on their own, but others will be essential to the implementation of some of the initiatives contained in the bill. The production of draft regulations, if only in a tentative form subject to later change, would enable a more meaningful assessment to be made of the possible ramifications of those initiatives.

For example, Bill C-80 would empower the cabinet to ban large capacity magazines by order. Opponents of this proposal assert that, because of interchangeability and the other factors discussed earlier, the proposal is simply unworkable. It could be difficult to assess this challenge in the absence of the proposed regulations themselves. If draft regulations are unfeasible at this stage, some sense of how the proposed

prohibition orders would deal with the technical problems alleged by these opponents, and the question of how they would affect competition shooters, could be dealt with in some sort of discussion paper.

It should certainly be possible to produce draft regulations, at least for the purposes of discussion, in regard to the proposal that every applicant for a FAC provide the names of two people to act as references. These people would have to "belong to a class of persons prescribed by regulation" and, as discussed earlier, the nature and range of the prescribed class would be critical to the effectiveness and workability of the proposal.

THE PROPOSED CANADIAN ADVISORY COUNCIL ON FIREARMS

The Minister has proposed the establishment of an advisory council which would have both a broad mandate to advise on firearms policy and legislation, and several immediate tasks which would be essential to the implementation of key parts of the government's proposed package. The council would be set up administratively, with its members appointed and its mandate prescribed by the Minister of Justice. It is not clear how many members the Council would have, but the proposed range of interests which it would represent is quite wide. There would be individuals interested in firearms policy, who might be chosen because of their personal expertise or because they were considered representative of specific segments of the general public; people "representative of, but not representing" interest groups such as arms dealers, hunters, competitive and recreational shooters, wildlife and aboriginal organizations; and a range of others, including social scientists, medical doctors, police, and others reflecting the "broad spectrum of Canadian society".

While the proposed Council might be asked to help develop further expansion, contraction or reform of the present gun control regime, its immediate job would be to advise on such matters as national standards for firearms safety training courses and the criteria to be used in identifying the specific military and para-military weapons that would be banned by cabinet order. It might also be consulted on such matters as the make-up of the prescribed class of persons who could act as references on

FAC applications. If the technical problems cited by opponents to the proposed bans on large capacity magazines turned out to be as much of an impediment as these opponents contend, the Council might be asked to help sort those problems out as well.

Clearly the proposed Council would have a number of very difficult questions to deal with. Although the Minister has apparently stated that it is hoped that the proposed national firearms safety program would be in place by next spring, some Chief Provincial Firearms Officers have suggested that it could take the new Council a year or two to work out all of the problems involved in both setting standards, and ensuring that programs can be set up on the ground across Canada that could meet these standards.

Given the significance of the role of the proposed Council, its make-up would appear to be very important to the implementation of the government's announced package of measures. It would almost certainly be critically important that the Council have the cooperation of the gun-owning community. In that regard it is unfortunate that at least some segments of this community have advocated that the proposed Council be boycotted. The National Firearms Association in particular has urged that its members refuse to have anything to do with such a body. The Association says that a similar body was set up after the present gun control regime was established in 1978, but that it met only a few times and that its advice was ignored. The problem would appear to be that the views of this segment of the shooting community, and those of the government, police and others who support the present gun control laws, are so far apart that there is no consensus, compromise or cooperation possible. Other shooters organizations have, however, indicated a desire to nominate members to, and participate in the work of, the proposed Council.

PRESS REACTION

Press reaction to Bill C-80 and the other proposed measures has generally been supportive, although some reporting and editorial comment have damned the package with faint praise or demanded far more sweeping measures. There has been much misunderstanding evident in a great deal of the journalistic comment, however, concerning both the current regime and the proposed package of changes. The area is a technically difficult one, and much editorial comment both for and against the proposed measures reflects a number of particular misconceptions, and a questionable overall understanding of the ramifications of what is being proposed, and what is possible.

Overall, however, the reactions of the media have indicated strong support for strict gun control. If these reactions are representative of the feelings of the majority of Canadians, and at least some poll results would appear to indicate that they are, the government's proposed package should enjoy strong general support.

REACTION OF THE OPPOSITION PARTIES

The opposition critics have also been generally supportive of the government's proposals, and both opposition parties have indicated that they would support Bill C-80 on second reading. There are a number of individual members of all three parties, however, who have concerns about the bill and the other proposed measures, and some are generally critical of the package as a whole.

At the press conference following the tabling of the bill in June, 1990, the opposition critics cited particular support for the proposed bans on converted automatics, specific military and para-military weapons, and large capacity magazines. They agreed with the Justice Minister, however, that not all semi-automatic firearms should be banned at this time. They also noted that a requirement for firearms safety training before acquisition of a FAC has been on the books but unproclaimed for 12 years, and advocated that it be implemented as soon as possible.

Both spokespersons cited a concern, however, with the proposed date of June 30th, 1991, as the cut-off date for the grandfathering of converted automatics, and urged that the prohibition be implemented sooner. The grandfathering provision requires, however, that the weapons to be protected must be registered as restricted weapons, both so that their further possession and use can be controlled, and so that those weapons that are covered by the exemption are clearly identified. The difficulty is that many of the converted automatics now in the country are not restricted weapons under present law, and are thus not required to be registered.

A transitional provision might have to be added to the bill to provide for a registration period after the bill was passed for the specific purpose of the grandfathering provision. A significant time period would have to be allowed so that firearms officers could cope with a large number of new registrations, particularly if decisions had to be made as to whether a converted weapon could be left with the owner as part of the grandfathering exemption, or whether it could be too easily reconverted to fully-automatic and thus came within the case law concerning weapons already prohibited. Depending on when the bill was finally passed, the cut-off date might have to be extended past June 30th, 1991.