

Towards Replacing the Canadian Firearms Act

1. Abstract

Moving forward to form a government, it is essential for the *The Conservative Party of Canada* to quickly fulfill its promise to replace the current *Canadian Firearms Act* with effective firearms legislation which will both improve public safety and be cost effective. Moreover, it is essential for an electable centrist party that all Canadians view the changes as positive.

2. Introduction

In designing effective firearms legislation, two major aspects must be considered. Firstly, the regulatory environment around which responsible and law abiding citizens may keep and use personal firearms. Secondly, the proscribed uses for firearms, which typically include the criminal aspects. In the case of the former, the Liberal's *Canadian Firearms Act* has mistakenly ascribed criminal intent to responsible individuals, and has largely ignored the criminal elements of firearms abuse. The result was an expensive redundant and largely ineffective regulatory morass clearly designed to harass the responsible firearms owners, and ultimately to remove from them their firearms. With all the expense of the regulatory portion of the *Canadian Firearms Act*, there remain "no irritants for the criminals". That must change.

The *The Conservative Party of Canada* faces a difficult job in the face of looming elections. While it has been a central policy that the firearms registry would be dismantled, the registry is the cornerstone of what the Liberals refer to a *gun control* in Canada, and much effort has been expended to confuse Canadians into believing that effective firearms control requires a registry. It does not! There have been no positive alternatives put forward to effectively deal with the two major aspects of firearms law in Canada. This paper will attempt to provide some insight into the practical issues involved in doing so, and change the focus from "gun control" to "crime control".

3. The Stake-holders

Justice Ministry

Currently afforded much discretion by means of Orders in Council and without Parliamentary supervision to enact Draconian and largely useless regulations which have no impact on public safety, are expensive to administer, and serve only to please special interest groups. The C68 enabling legislation left the regulation of firearms to the Justice Minister, with the power to proscribe anything along arbitrary criteria.

Firearms and criminal legislation should be made by Parliament. Changes to the law should be reviewed by Parliament. It too important to leave to the civil service and the whims of the Justice Minister of the day.

The Courts

Courts typically resist minimum sentencing which restrict judicial discretionary powers. We must however, send a clear message that Parliament, and Canadians as a whole, condemn the criminal use of *ANY WEAPON* and will not tolerate the misuse of *ANY* weapon in criminal activity. The balance should be found in the details of the criminal code sanctions.

Penalties deemed too Draconian on the low end might just result in the legislation being viewed as unconstitutional. While the Liberals seem unconcerned about court challenges, *The Conservative Party of Canada* should differentiate their legislation as being able to withstand a Charter challenge, and recognize all elements of due process as befitting a North American democracy.

Another aspect of this legislation would pertain to the Charter. While the Liberals have set the precedent that Charter rights are not "absolute", those rights should be respected, in so far as they do not impinge upon the rights of others.

The Police

While the registry was supposed to alert police to the possibility of firearms at a residence when called to respond, the error rates and non-compliance of criminals work to relegate the data to uselessness.

Licensing data, if provided to police with provincial traffic information could provide strong inference that if the residence is the home of a licensed firearms owner, then there will be firearms present. In the case of unlicensed (criminal) firearms owners, the patrolman is at no disadvantage without the registry, as that data would be missing from any registry of law abiding citizens. What might be useful in this case is a registry of *Persons of Interest to Police*, however that is outside the scope of this document.

Faced with domestic and criminal interventions, police have a requirement to easily, effectively and temporarily remove firearms from an individuals possession. This should be an emergency measure, subject to due process, but requiring only a simple warrant obtained in the same manner as a search warrant.

Women's Organizations

These organizations feel that violence is exacerbated when the victims are women or children. This is true — certainly in a political sense. With a focus on domestic violence, the more radical groups view all men as potential perpetrators of violence, and moreover, responsible firearms owners as particularly odious in a manner akin to the way in which the *Canadian Firearms Act* presumes criminal intent upon law abiding firearms owners. While there are problems with these groups as a whole, they must be viewed as stake-holders, and any replacement must deal with specific issues concerning domestic violence.

Provisions should be made to effect a temporary firearms removal (see above) upon a sworn statement from a spouse or family member. Again, a warrant must be obtained, and due process would apply in terms of providing appeal process, and regular rights afforded to the accused.

In order to prevent undue hardship in the case of mis-use of this provision, it is important to apply privacy provisions in the event that this provision is used improperly.

Responsible Firearms Owners

For the most part, the *Responsible Firearms Community* have no issue with reasonable firearms legislation, and moreover, are prepared to maintain a higher duty of care. Typically, they view themselves as law abiding, and they despise the criminal use of firearms. They are frequently supporters of the *The Conservative Party of Canada*, and more-so with the Liberal's *Canadian Firearms Act*

Given the wording and implications in the existing *Canadian Firearms Act*, this group feels unjustly marginalized, and for good reason. Any new legislation which recognizes the rights

of responsible firearms ownership, and which does not treat the responsible owners with suspicion will be viewed as an improvement over the *Canadian Firearms Act*. By obtaining the "**consent of the governed**" so to speak, then impediments to the acceptance of new legislation will be limited to the few radical owners (see below), and ultimately, acceptance will be forthcoming.

In return, firearms ownership must be recognized as a right which is tied to certain responsibilities, and which is afforded in democratic countries. Canada should be proud to continue this tradition. Any replacement act must recognize property rights, legitimate protection of life and acceptable recreational uses.

Victims of Crime

Proceeds of violent crime should be forfeit, with a major portion going towards a fund to assist injured and aggrieved parties who are victims of crime and their families. Restitution, compensation, funeral costs, reparations etc. Victim impact statements at sentencing should also play a role in the Justice system. Perhaps a stronger voice during the sentencing of violent criminals and at bail or parole applications would be appropriate as well.

Taxpayers

Any replacement Act must be both effective and cost effective. The firearms registry has become synonymous with government waste, and for good reason. This proposed new *The Offensive Weapons Act* will offer relief to taxpayers, and will ultimately improve the public safety without impacting responsible citizens.

4. Things the Liberals got Right

In spite of imposing punitive legislation upon the wrong audience, there are several key elements which are fundamental to a successful firearms control legislation. These are itemized as follows:

Safety Training

One cannot learn to use a firearm by watching movies or playing violent video games! Training programs for shooters based on the existing CFSRC curriculum will work well (ACTS/PROVE is a good basis for firearms safety). In addition, we propose community awareness and children's rudimentary safety programs should be funded within the school curriculum to prevent avoidable tragedies.

A major flaw in the current *Canadian Firearms Act* was the granting of Possession Only Licenses (POL's) which did not mandate the safety training. This restricted ownership to the firearms already in the possession of the responsible individual, but did nothing to ensure the rudiments of safety.

Licensing

A major sticking point to a number of libertarian style firearms groups, it still is an entry into the system which notifies police of the potential for firearms at a residence, mandates the safety training and background checks, and is the badge of honour for due diligence. In order to discriminate between responsible and irresponsible owners, we have to have at least one major criteria, and in our opinion, this is it.

The current system is flawed in several respects, we propose revisions (see below), the most significant of which is make background checks mandatory. In the current *Canadian Firearms Act*, background checks are only done on a "discretionary" basis, and therefore are largely ineffective.

This aspect is more than a simple white hat/black hat discrimination process. Responsible firearms owners should not object to licensing the USER, which is similar to motor vehicles, boat and aircraft licensing where a minimum standard of skill and knowledge is necessary to the safe ownership and use.

Safe Storage

Although never clearly defined, a definition must be found which provides for keeping firearms from those not qualified to access/handle them. It need not prevent having firearms handy for those who require them regularly (farmers, ranchers, trappers, hunters) or even for protection of life, but it **must** protect our innocents from unintended harm.

Safe Transport

Clear requirements for transportation of firearms to/from residence and a place where it is legal to discharge a firearm are not particularly onerous. They prevent road rage incidents, and accidental discharges in public. Canadians neither require nor desire the American style concealed carry laws.

5. Things the Liberals got Wrong

The fundamental problem with the *Canadian Firearms Act* is that it was designed by those who do not accept the proposition that responsible citizens should be allowed to own firearms. Most of the disastrous legislation and regulation was designed along these lines, and ignored the key stakeholder in the process — the *Responsible Firearms Community*. **The Liberals failed to obtain the consent of the governed.**

As a result of this egregious omission, Liberals have faced keen opposition to the legislation and civil disobedience among the firearms community over the act from the start. The effect has been that charges under the *Canadian Firearms Act* are rarely levied, and only in the case of other criminal code charges being laid. It is essential to the success of any replacement that the majority of the *Responsible Firearms Community* be receptive to the proposed replacement.

Worse than ignoring a major stakeholder, was to forget the actual purpose of the *Canadian Firearms Act* — as it ignored the criminal element almost entirely! Minimum sentences are typically handed out concurrently, in lieu of time served or not at all, at the discretion of the courts and Justice department. This must change.

Limiting the act to Firearms

While firearms are the weapon of choice for many criminals, violence is no less acceptable when the weapon used is a knife, baseball bat, hand-tool or machete. The law should revile the crime, and not the weapon. The argument of good weapon/bad weapon, good gun/bad gun is specious, and irrelevant to the crime committed. It is suggested that the *Canadian Firearms Act* be renamed *The Offensive Weapons Act*, and its focus shifted from law abiding citizens to criminals, and violent offenders.

The proposed legislation, by its very name pre-supposes that arming oneself for criminal purposes is an offense, regardless of the weapon used. Here lies a problem, and now the definition of weapon will hinge upon not what type of weapon was used, but rather the intent of the suspect, the gravity of the offense, and the resulting harm done to innocent persons.

While Canada does have a provocation defense, criminal upon criminal actions may mitigate the severity of sentencing in the case of current criminal code offenses. Likewise, some leeway needs to be permitted to the judiciary to mitigate offenses under *The Offensive Weapons Act*. It should be noted that criminal charges under *The Offensive Weapons Act* are

in addition to existing criminal code offenses, and any sentences applied to same must also be applied consecutively. Thus if a person undertakes a criminal act using a weapon, he must be sentenced separately for the weapons offenses.

Registration of Firearms

This has been intentionally confused with *gun control*, and some Canadians do not see a distinction between registering individual firearms and controlling their use. Arguably, not even the handgun registry, in existence since 1934 has been useful in solving crimes. We propose that all firearms registration be dropped and the focus be turned toward the human factor — by proper licensing, training, storage and transport requirements. Alternately, the requirement to register restricted firearms (in place since 1934) can remain in place.

Licensing is the key to both ownership, responsibility for, and safe use of firearms in Canada. Registration is fraught with difficulty, error prone and impossible to verify. By putting the duty of care upon the owner of firearms rather than upon tracking the un-trackable, firearms regulation will become simpler, more clear cut and a clear message will be sent to criminals. Registration of all firearms classes should be stopped, and the emphasis placed upon *proper* licensing with all its requisite considerations.

Background Checks

Background checks are currently done on a "discretionary basis". These need to be made mandatory upon application for a firearms license, and moreover need to include Canada wide court orders, prohibitions, FBI, Interpol and other and proper criminal background checks as warranted by the background of the individual. Canada cannot be a safe haven for criminals, and criminals cannot have firearms. Period.

Classes of Firearms

Currently, firearms are classed as *non-restricted*, *restricted*, or *prohibited*. Prohibitions serve no useful purposes, and so we propose that any firearm currently classed as prohibited, should be re-classified as restricted. In this manner, the more stringent storage and transport restrictions would still apply, and in addition, limitations are placed upon where they may be used. Thus, a firearm would be classified simply either un-restricted (long guns), or restricted use (eg: hand guns, military style and high capacity firearms).

In general, the restrictions around use and transport of restricted firearms need not change, other than for Authorizations which are implied with licensing for that class (see below).

Prohibitions

In a misguided attempt to assist police, and in flagrant disregard to property rights in Common Law, the Liberals proscribed certain firearms along arbitrary criteria, and developed the complicated "grandfathering" scheme which has been an irritant to both the CFC, politicians and responsible firearms owners alike. It does not appear to concern the criminal elements, however.

Prohibitions do not appear to have any impact upon criminal activity. The current regulations (12.(x)) pertaining to prohibited firearms, grandfathering and rights to succession, sale, transfer and ownership are confusing, arbitrary, unconstitutional, and should completely disappear with the dropping of the prohibited class of firearm (see above).

This would apply to calibre, barrel length and other arbitrary criteria for imposing these prohibitions. In effect, **reclassifying prohibited firearms as restricted will have no negative effect upon the public safety**, as they are currently treated exactly as restricted

firearms with respect to acceptable use and transport provisions.

Rather than classify firearms as to whether they are "good" or "bad", as is currently the case, a distinction should be made between their owners. One is either a responsible firearms owner, or a criminal. Period.

Authorizations to Transport

Authorizations for restricted and prohibited firearms were an additional restriction placed upon those classes, which clearly spelled out where those firearms could be used, when they could be taken there, and are completely redundant to the graduated licensing of individuals for a particular class of firearms ownership. In addition, managing this particular regulation is labour intensive in the extreme, and needs to be done annually, and in addition, and separately for any *ad hoc* trip to a gunsmith, border or trip to a different province than that of residence.

This was a misguided attempt to track in real time the restricted and prohibited firearms owned by an individual, as is an example of state supervision of the individual taken to an extreme. It further serves no purpose for the public safety over and above the licensing of responsible individuals. We propose that this regulation should be scrapped immediately, as it is both odious and effectively redundant to the proposed licensing and criminal code provisions.

Magazine Limits

Confusion reigns supreme over the current regulations, even among those who should know them. In simplifying the regulations, we propose that ammunition capacity should be limited to the natural capacity of the firearm, or in the event of a detachable magazine, ten (10) rounds. Magazines with capacities higher than this will be considered restricted use magazines, and the locations and conditions of their use will be limited to that of restricted firearms. Further, to own high capacity magazines, the owner must be licensed for the *Restricted* class of firearm.

The use of higher capacity magazines quite simply will reclassify a firearm as restricted, and therefore all restricted use regulations would apply, even if the firearm were not otherwise restricted. Local hunting regulations could impose further limits upon firearms used for hunting game.

While this would simplify regulations greatly, it would also allow the higher capacity magazines to be used only for sporting purposes on restricted shooting ranges. Possession of such magazines, while formerly (under C17) both legal and common-place, under the current *Canadian Firearms Act* will lead to felony charges. Under the proposed *The Offensive Weapons Act*, they will be restricted in both ownership and acceptable use.

As criminals have never abided by magazine limitations, this will have a **net zero impact upon public safety**, and greatly enhance the acceptance of the new provisions by the sporting community. It will also eliminate the commission of paper felonies for those who owned "pre-*Canadian Firearms Act*" magazines, turning owners of what were once perfectly legal magazines into criminals.

Possession Only Licenses

In an attempt to increase compliance by a highly resistant responsible firearms community, the current legislation enacted a special license, which would require no safety training, but that would allow continued possession though not newly acquired firearms. This is just so wrong on so many levels, and was a sign of the desperation that the Justice department was operating under in the months leading up to the *Canadian Firearms Act* coming into effect.

We propose that these licenses be converted to a full license of the appropriate class upon completion of the requisite safety course, and subject to background checks within a period of 24 months after *The Offensive Weapons Act* comes into effect.

As a possible alternative to the CFSRC curriculum, one might consider the Hunting Safety course as a plausible alternative for the safety course requirement in converting the POL. This would mean that the majority of POL holders would be recognized as full licensees, as they currently hold valid hunting licenses. The remaining former POL holder would need to be trained and certified safe.

The Youth Criminal Justice Act

One might argue that the *Youth Criminal Justice Act* is not directly related to firearms legislation. Given the propagation of unlicensed firearms among youth and young gang members in our urban areas, we argue that this act goes hand in hand with a *The Offensive Weapons Act*. See below.

The Initial Consultation Process

While the Liberals went through the motions of soliciting input from the *Responsible Firearms Community*, it studiously ignored almost all of what was proffered, and instead focused upon the input from anti-firearms groups. As the *Canadian Firearms Act* was entirely about regulating the law abiding, and not at all about combatting firearms crime, they badly missed the boat on both scores. By acting in bad faith with those whom the *Canadian Firearms Act* was designed to impact they designed and implemented a law which in essence has no value, and has no impact.

Much can be learned from this.

6. What Canadians Want

While there are between 4 and 8 million responsible firearms owners in Canada, the vast majority of Canadians neither understand, nor care about firearms legislation, other than it exists, it is effective, and it is affordable. Beyond this, Canadians are unconcerned about the responsible use of firearms, and this activity remains below the radar screen for the most part.

Criminal activity with firearms is another story. The *Canadian Firearms Act* truly has no impact upon this, and yet the media is telling Canadians that violence is on the rise. While the Liberals continue to point to their broken legislation as bringing about a "Culture of Safety", the changes brought about in the proposed *The Offensive Weapons Act* will actually improve safety.

Canadians are looking towards a meaningful replacement for the existing legislation. This replacement must offer increased public safety and real safeguards against both criminal and accidental firearms deaths and injuries in particular with respect to our youth.

7. What The Special Interests Want

7.1 Responsible Firearms Owners

Firearms owners as a group, are the most part are extremely law abiding, and conscientious. Far from the idea that they are mostly rednecks and survivalists, they come from all walks of life, and include some of your neighbours. Their ownership of firearms is generally not of concern to either the public, nor law enforcement officials. Arguably, this group is not so much a special interest group, as a stakeholder in the process of legislating. They should be treated with the respect that they deserve.

Under the current legislation, this group was treated very badly. Any legislation which targets criminal use of firearms, and eliminates needless restrictions and intrusions upon responsible use will be generally viewed positively by the *Responsible Firearms Community*. This group is not a problem, and the new legislation should reflect that.

7.2 Radical Firearms Owners

There are a number of organizations which arose in direct response to the *Canadian Firearms Act*, and they include among their ranks organizations which have grown to distrust the government, and are actively seeking to challenge the existing legislation in the Supreme Court (CUFO, LUFA etc). Alas, this group, while not criminal (indeed, they are very well intentioned), is dedicated to a more anarchistic style of firearms legislation which will not play well to urban Canada.

As this group vehemently opposes and has resisted both licensing and registration, provisions must be made to provide an amnesty period, and an effective way for this group to be brought under the new legislation. Their civil disobedience is toward an unjust government and an unfair and ineffective law. They should not be penalized for their stance, but respected for their convictions and courage!

Since these groups will resist licensing (at least initially), they are both an impediment to a new act and, ironically, the validation for a successful legislative approach. This group will vocally oppose any licensing requirements upon responsible owners, and the majority of Canadians will view their vocal opposition as an indicator that the legislation is strict enough. In the event that the *The Offensive Weapons Act* is **written in good faith to address criminal and irresponsible use of firearms rather than law abiding citizens**, this group will come around, and ultimately support the replacement act.

The civil libertarians are balanced by those who would ban all civilian ownership of firearms in Canada, and are the other side of the coin to the group described below.

7.3 Firearm Prohibitionists

As a "femleft" issue, a number of organizations (the Coalition for gun Control, CAVEAT, MADD, Canada Safety Council) have come out against civilian ownership of firearms for any purpose. Again, a radical fringe, while vocal, they do not make up the majority of Canadian's opinions.

This group will vocally oppose the closure of the firearms registry, but the majority of Canadians by and large won't care as it has been shown to be a symbol of government waste, corruption and mismanagement. Prohibitionists are typically not concerned about criminal use of firearms except as a domestic violence issue. They will also vocally oppose the transition of the proscribed firearms class to restricted use class of firearms. Again, this will not be viewed as a problem by most Canadians.

8. Considerations for *The Offensive Weapons Act*

Firearms law requires two major components to be successful; firstly a regulatory regime to govern acceptable use, responsible ownership and to differentiate between responsible and irresponsible possession/use/ownership, and secondly, criminal code elements to give teeth to the misuse of firearms through criminal use or careless storage, misuse or handling.

While it is important to require a minimum duty of care from responsible individuals, it is equally important to send out a strong message that the irresponsible use of firearms, or any weapon for that matter in a criminal offense will not be tolerated.

In the event, we recommend a complete repeal of the existing *Canadian Firearms Act*, the entirety of pursuant regulations (particularly the proscribed firearms and devices list) and its

corresponding criminal code elements with *The Offensive Weapons Act*.

8.1 Regulation of Responsible Firearms Ownership

A Preamble to the Act

In a stark contrast to Mr. Rock's admission that he was entirely against civilian ownership of firearms, a preamble to *The Offensive Weapons Act* which sets the tone for reasonable firearms legislation will do much to insure its acceptance by those who are directly affected. We have already seen the consequences of passing "bad laws", and we do not wish to repeat the errors made by the Liberal firearms "lawmakers". An sample preamble follows:

The Government of Canada recognizes that the right of responsible citizens to own and use firearms is a cornerstone of democratic principles and has played an important part in Canada's heritage. In keeping, this act will ensure that Canadian citizens who are not otherwise disqualified from ownership and use of firearms be free to do so in a peaceful and lawful manner.

Criminal use of firearms, or any other weapon will not be tolerated in Canada.

Licensing

Conditions of licensing should include age of majority, mental fitness, criminal history, competence, and family acquiescence as appropriate. A mandatory pre-requisite shall be the successful completion of a recognized safety training program with both written and practical examination. If any of these requisite characteristics were to change, then the license should be reviewed.

Licenses will reflect a graduated ability to own either non-restricted firearms or both restricted and non-restricted firearms. This is in recognition that there are additional use, safety, storage, handling and transport restrictions placed upon the restricted use class of firearm which might not necessarily apply to sporting long guns.

With the advent of a rational firearms regime, it is likely that the co-operation of the provinces will be forthcoming. As a result, it may become possible to handle licensing as an endorsement of the provincial motor vehicle license, and renewal to be handled automatically every five years. In addition to the financial savings, this would serve also to rescind ownership rights where medical impediments prevent one from driving for medical, mental or other safety reasons, and presumably might also impact firearms safety. There are ancillary benefits to law enforcement with this approach as well.

It is likely that a well written *The Offensive Weapons Act* could and should respect the Provincial jurisdiction and authority to license property, and agreement with each Province and territory to license according to Federal standards. That being the case, the *The Offensive Weapons Act* could be used to normalize relationships between the Federal and Provincial governments, and particularly Quebec and the Western Provinces. Care must be taken that Provincial governments not unreasonably withhold licenses in that case.

Revocation and Review

As per the requirements of police and family safety, the ability to revoke the license or authorization to own firearms, and the immediate removal of firearms needs to be spelled out. This provision must be subject to due process, property rights, subject to appeal, and be done with all due recognition of privacy rights of both the accused and accuser.

It should be possible for the family, physician or employer to request a judicial *firearms license*

review should there be sufficient cause to do so. This is an important aspect of the public safety, and while due process and rights to appeal should be included in the process, the public safety aspects must be paramount.

Misuse of this provision should be subject to criminal and civil sanctions. Not unlike slander, or mischief laws, anyone who conspires to accuse someone unfairly under these provisions should be subject to prosecution, and to pay costs and restitution to the wrongfully accused. On the other hand, in the case of a successful application for review, the applicant should be held blameless.

Storage

Owners have a duty of care to others in their absence from the place of storage and must ensure that no persons who are not authorized to do so gain possession of their firearms. In the event of firearms theft, the burden of care will immediately transfer to the thief in the event that firearms are stolen from a legitimate owner, and the responsibility for any resulting harm shall accrue to the possessor rather than the original owner in that event, even in the event that the firearms are subsequently re-sold illegally (see criminal code).

Transport

As indicated above, firearms must be transported safely in order to protect the public. Regulations currently in place can be utilized with little modification.

Transfer of Ownership

Pursuant to the possession of a valid license, ownership of firearms can proceed according to the class of firearm for which an individual is licensed. Commercial and private transfers can proceed in a similar manner. If at some time there exists a *Persons of Interest to Police* database, then an instant check can be made of a potential buyer's *bona fides*. That remains outside the scope of this document (and a good idea).

Regulation of Businesses

This is an area which will be greatly simplified by *The Offensive Weapons Act*, and will amount to the requisite inventory control checks and the verification that the transfers are done legally and in accordance to all laws.

Regulation of Sporting Ranges

In general, it is in the interest of all to increase access to safe shooting areas, and in general, a regulatory environment should be conducive to the creation and maintenance of firearms ranges, training facilities and the promotion of safe shooting environments. A Provincial jurisdiction.

Regulation of Hunting

A Provincial jurisdiction.

Duty of Care

Acceptable use for firearms should include hunting, target shooting, pest control, and protection of life. The requirement that the firearm owner not put others at risk, cause property damage or be careless in their use must be paramount, and moreover, he/she must be trained to be aware of the risks inherent in their use. Those not licensed must be under

the direct and immediate supervision of one who is licensed, and the licensed person then takes on the responsibility for the actions of the other.

8.2 Criminal Code Offenses

In general, the criminal component of *The Offensive Weapons Act* will be confined to offenses committed with respect to illegal possession or transfer of firearms, illegal or careless use, or the commission of a crime while in the possession of a firearm or other weapon.

In the case of simple Unauthorized Possession, it should be determined whether the transgression is a "paper crime" subject to civil penalties or an intentional criminal act. For instance, in the case where a suspect is found to have on his possession a loaded restricted firearm without authorization, and not being transported in a legal manner, then clearly the criminal charge of "Possession with Intent" might be applicable even in the absence of other criminal offenses.

Criminal Offenses

We do not presume to indicate what sentences should be applied in the case of the following escalating offenses. It is recommended, however that a reasonable minimum sentence and a relatively harsh maximum sentence be applied, and moreover, where other offenses apply, and particularly with felonies, that the sentences need be added consecutively and must not be applied concurrently.

In order to find acceptance within the judiciary, the minimums should be set relatively low in order to afford some discretion to the bench. The parameters which must not be variable are the requirement for the punishment to apply consecutive to any additional sentencing.

Each charge will have a minimal sentence, and at the discretion of the police, prosecution and judiciary will be as to whether the charges are to be laid. If several charges are laid, upon conviction, the penalty for each will be applied consecutively. Sentencing for weapons offenses will be specifically applied in addition to and consecutive to any other Criminal code offenses.

Unauthorized Transfer of a Firearm — Knowingly

Obtaining Possession — Making false representations

Unauthorized Possession — Simple

Unauthorized Possession — Theft

Unauthorized Possession — Purchase of Stolen

Unauthorized Possession — While under Prohibition Orders

Unauthorized Use — Un-Restricted Firearm

Unauthorized Use — Restricted Firearm

Careless Storage/Use/Transport — Simple

Careless Storage/Use/Transport — Property damage

Careless Storage/Use/Transport — While Impaired

Careless Storage/Use/Transport — causing Injury

Careless Storage/Use/Transport — causing Death

Possession with Intent**Uttering Threats****Commission of a Felony —while in Possession****Commission of a Felony —Brandishing while****Commission of a Felony —Discharge while****Commission of a Felony —causing Injury****Commission of a Felony —causing Death**

While this list of offenses is not complete, it does add to the existing criminal code a number of issues which might extenuate sentencing. The range of minimum sentences might be from temporary removal of the right to own firearms, to extended prison terms. While it should send a clear message to criminals, there should be checks and balances to allow some discretion for the Police, the Judiciary, as well as the Crown.

8.3 The Youth Criminal Justice Act

The current *Youth Criminal Justice Act* (YCJA), the badly re-worked version of the completely broken **Young Offender's Act** is problematic to say the least. Like many well intended but badly implemented provisions in law, a youth "get out of jail free card" is not necessarily a bad thing, under certain circumstances that is.

Who among us cannot remember the rebellion of the teen years which brings even the most conscientious of youth into conflict? The ability to discriminate between a youthful misdeed and an habitual criminal tendency is an important tool for the courts, but that's not what the current *Youth Criminal Justice Act* is all about. It basically amounts to a complete abrogation of personal responsibility for both the parent(s), and the troubled youth, and worse, the sentencing provisions actually rewards repeated violent criminal behaviours by ignoring them.

Provisions protecting the privacy of those charged should be immediately removed from the act. The "shaming" aspect is an important step in taking responsibilities for one's actions. Further, this act should not be a shield for violent habitual criminals, as it is currently. By implementing a graduated protection mechanism along the lines of **three strikes, and you are an adult!** would be useful, in our opinion.

Finally, for felony crimes, and particularly for those offenses involving violence, injury and death, or involving the use of firearms or weapons in a crime should nullify all provisions of the YCJA. Let us protect the kids who deserve protecting, and err on the side of protecting the public in the case of those who can't or who refuse to be helped.

8.4 Notes

Provocation Defense

A person, in the process of committing a crime with a weapon must not be allowed to use a provocation defense with respect to fear of injury from his victims. The Liberals were careful to point out regularly that "Rights are not absolute" (a particular favourite of Madame McLellan). We propose that in the case of a criminal doing harm to his innocent victims, he/she has relinquished the right to personal safety, whereas his victims have the rights to security of person, and these would trump the rights of the accused.

Right to Safety of Person

A person, and particular in the sanctity of his/her own home has a right to Security of Person. Given that the state shall be blameless for its inability to provide safety for all citizens at all

times, it should not remove from its citizens the means to protect themselves from harm in the absence of any government agency to protect them.

Freedom from frivolous Prosecution

Under the current regime, the responsible firearms owner runs the risk of facing prosecution for such infractions as improper storage when they report the loss of firearms by theft. As it is in the interest of the public safety to inform police of any such loss, it is felt that provisions protecting the lawful owner who has taken reasonable steps to ensure safe storage would be in order, and would therefore encourage the prompt reporting of any firearms thefts.

Due Process

Whether under criminal prosecution, or under the licensing and revocation provisions of the proposed *The Offensive Weapons Act*, it is important to respect and ensure the Privacy, Common Law and Due Process rights of the responsible firearms owner

Unreasonable Search and Seizure

Provisions under the existing *Canadian Firearms Act* grant extraordinary powers to police and government officers for reasons of inspection and ensuring safe storage. These run counter to the Charter, and should be subject to search warrant provisions. This is as upheld by the Supreme Court of Canada. By the same token, a police officer with reasonable cause, or in hot pursuit should be able to take the steps necessary to ensure public safety.

The Youth Criminal Justice Act

We propose that all provisions of the YCJA be suspended for those minors who commit an offense while in possession of a firearm/weapon. This would eliminate the problem of criminals subverting young people for high risk criminal activities, and dissuade young gang members from picking up a firearm/weapon to commit crimes. See the section above.

Mitigating Circumstance

A balance must be found with respect to recognizing mitigating circumstances in the cases where the laws just don't fit. This relates to the Judicial discretionary powers, and this must be only used in extenuating circumstances.

If, for example, a known criminal used an illegal weapon in order to defend his/her own life against another criminal, then the provocation defense would mitigate the crime of inflicting injuries to that other criminal, but NOT the offense of possessing an illegal weapon, and the minimum sentencing WOULD apply to the illegal weapon possession charge, but NOT necessarily the resulting action (a provocation defense does not mitigate against unlawful weapons possession).

In the case of a peaceful homeowner clearly defending his person or his family against a violent intruder with a lawfully owned firearm, then no criminal action could be attributed to the homeowner regardless the outcome of that action.

An Activist Judiciary

It must be recognized that the Courts at all levels perform an important role in protecting the rights of the individual. Certainly the rights of the individual should not trump that of a democratic society to public safety, and again, the courts must be respected.

Parliamentary Supervision

The current *Canadian Firearms Act* places the entire regulatory framework within the purvey of the Justice Minister of the Day through orders in Council. By establishing a legal framework with Parliamentary oversight, it will be difficult for the provisions of *The Offensive Weapons Act* to be quietly overturned by successive governments. This is deemed to be highly desirable.

Replica Firearms

Replica firearms for the purpose of *The Offensive Weapons Act* shall be treated in all respects as firearms. Criminal code infractions involving replicas shall be treated as if the person were carrying with intent. The fact that a criminal was carrying a replica firearm shall not be a mitigating factor in sentencing. Non-firearms (bb-guns and pellet guns) used in criminal acts will be treated as firearms/weapons. We propose that this act be otherwise silent upon the responsible ownership of replica firearms.

Persons of Interest to Police

Currently, there exists no Canada-wide registry which would contain the pertinent information on people who have outstanding arrest warrants or deportation orders, have restraining orders against them, dangerous offenders, parolees, pedophiles, or those with firearms exclusion orders against them. This has been referenced a number of times within this text, and might serve as a means of instant disqualification from firearms ownership (instant background checks).

In order to enact such a registry, Privacy Rights (not absolute) would have to be balanced against the public safety. Further, due process and other safeguards would require that persons on the list are informed of the fact, and have a right to due process and appeal to have their names removed. Further, after a successful re-habilitation period, one might successfully petition to have one's name eventually removed from the registry.

Corporal Punishment

This act should remain silent on the issue of corporal punishment.

9. Summary

The two components of any successful firearms legislation in Canada will address the peaceful ownership of firearms and the criminal use of firearms as separate issues.

Public safety provisions will use Licensing as a key mechanism to allow ownership rights to be granted and/or rescinded in accordance with due process and Charter Rights provisions.

While ownership of Firearms is a Right, it is not an absolute right, and it hinges upon a minimum duty of care, and certain eligibility criteria to which the applicant is subjected. By the same token, and for the purpose of public safety, the Right may be withheld.

A poisoned regulatory environment in previous legislation has resulted in widespread opposition and resistance to the *Canadian Firearms Act*, and the government must act in good faith with the *Responsible Firearms Community*. It must allow the firearms community to develop the safety standards and guidelines with which to govern itself, and to assist them in the education and safety regulations for responsible shooters. Moreover, the government should not treat the law abiding with suspicion at every turn, as does the current act, which flies in the face of presumption of innocence.

Prohibitions of the current act should be substituted by usage restrictions. This will do much to gain the "consent of the governed", will have no tangible safety consequences, and removes the constitutionality concern of the Federal government impinging upon the Provincial jurisdiction over property rights.

While the Judiciary must be respected, a clear and unequivocal message from the government and Parliament concerning the treatment of those who intentionally or otherwise commit crimes with firearms/weapons that the people of Canada will no longer allow lenient treatment for same.

Resources previously wasted upon inefficient and ineffective control measures should be re-directed towards police efforts and resources to combat criminal use of firearms.

By acting in good faith with the various stake-holders who have an interest in firearms regulations in Canada, *The Conservative Party of Canada* can lead the way in promoting Safety, Responsibility and Respect which are necessary for a peaceful and democratic society.

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Towards Replacing the *Canadian Firearms Act*

a proposal for — *The Offensive Weapons Act*

Submitted to The Conservative Party of Canada

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