

## RELEVANT TESTIMONY REGARDING LICENCING

<http://www.parl.gc.ca/content/sen/committee/411%5CLCJC/16EVA-49446-e.HTM>

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**Senator Fraser:** Nonetheless, it seems to me that there is an interesting association of events there.

Professor Jackman, could you clarify things for me in connection with the way the law now works? I do not know if this is exactly your field, but let me try it.

There has been a lot of discussion and a fair amount of concern raised by quite a number of witnesses about the absence, in Bill C-19, of a requirement for the transferor — normally the seller — of a long gun to check the validity of the licence of the transferee, the person getting the gun. As I understand it, the way it works now, under the present law, is that you cannot transfer a gun to somebody until you have gone to the registrar or the chief firearms officer to get a registry certificate and that that will be denied if there is not a valid licence. Is that the way you understand it?

**Ms. Jackman (Professor Martha Jackman, Faculty of Law, University of Ottawa):** Yes. I think this issue illustrates the point that I was trying to make and that the Supreme Court made in the Firearms Act Reference, which is the extent to which these two parts of the legislative scheme function together. As it currently stands, verification is done both through the verification of the registration and through the onus that is placed on the seller.

This bill offloads the responsibility from the Government of Canada to a transferor to ensure that there is no reason to think that the person acquiring the firearm should not be able to do so.

**Senator Fraser:** It does not include an actual obligation to check the validity of the licence.

**Ms. Jackman:** Absolutely not; there is no obligation. I am a constitutional lawyer not a criminal lawyer, but, as to the notion that you could prove beyond a reasonable doubt that somebody transferred the firearm and did not have reason to believe that the transferee was authorized to acquire it, I would not want to be the Crown prosecutor in a case like that.

**The Chair:** Just a supplementary to Senator Fraser's question, that the transferor had reason to believe would be factually determined, would it not? It would depend on the facts of the given case.

**Ms. Jackman:** That is the actus reus. Essentially, what the act now provides is that a person can transfer a firearm if, at the time of the transfer, the transferor has no reason to believe that the transferee is not authorized to acquire it, so the standard is "no reason to believe."

As I say, that is part of the actus reus and it has to be proved by the Crown beyond a reasonable doubt. That is a very high threshold. Since there is not even an obligation to retain records, I am sure the temptation for the transferor is to say, "I checked," and there is absolutely no way of knowing if that is true or not.

This bill illustrates the point the Supreme Court of Canada made, that both the licensing and the registration parts of the legislation were designed to work together and they are inextricably linked; you cannot get rid of one part without compromising the public safety objectives of the other.

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**Rick Hanson, Chief, Calgary Police Service: ...**

First, strengthen the law around possession and acquisition licences. Keeping guns out of the hands of the mentally unstable, the dangerous and the criminals is key. Without a possession and acquisition licence you cannot have access to legal guns. The proposed section 23 in the bill before us today should be far clearer. If a person is selling a firearm to another, the wording must be that the transferee must present a valid possession and acquisition licence and the transferor must check with the registrar to ensure that the licence is valid.

To have the threshold stand, Bill C-19 says:

(b) the transferor has no reason to believe that the transferee is not authorized to acquire and possess that kind of firearm.

That is woefully inadequate. In other words, for the purchasing or selling of firearms we have to be firm in proving that the recipient or buyer of the firearm is properly licensed.