

PolySeSouvient / PolyRemembers

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BRIEF

“Regulations Amending Certain Regulations Made Under the Firearms Act”

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1- Introduction:

PolyRemembers/PolySeSouvient is pleased to finally see the [regulatory process](#) begin in order to start implementing the measures contained in Bill C-71, passed in May 2019, as announced by the [Prime minister](#) and the [Minister of Public Safety Minister](#) on June 2, 2021. However, it should be noted that over two years have passed since the bill received royal assent. The two measures that are in effect as of July 7th – the lifetime background checks and the authorization to transport restricted guns – could have been implemented from the get-go as they require very little in terms of regulations (mainly a coming into force date). In addition, while the proposed regulations enabling the implementation other measures have been published ([Canada Gazette Part I](#)), there are no firm deadlines related to their coming into force and, depending on the context, months or even years can pass before they are fully implemented (regulations regarding international marking for example, were introduced in 2004 in but have not yet been implemented, having been [systematically postponed](#) by successive governments, including the current one). We hope that publication under the Canada Gazette Part II will come swiftly and that implementation can proceed before the end of the year (2021), contrary to [certain predictions](#).

More importantly, an in-depth analysis of the proposed regulations shows that the government has decided to further water down what was already [weak legislation](#). The details provided by the proposed regulations not only highlight the weakness of Bill C-71's signature measures, but they also render some of them virtually toothless. All told, the proposed regulations reinforce our initial assessment of Bill C-71, which is that this legislation – and now its regulations – have been designed in a way that does as little as possible to arouse the ire of the gun lobby while purportedly improving public safety.

2- Verification of validity of licence for non-restricted firearms*:

** As we are not lawyers, we have attempted to validate our interpretation of this section by political, Public Safety and RCMP officials. While contact has been made and questions have been sent, we have not received any response that confirms or negates the following analysis.* 

Verifying the validity of a potential buyer's licence is a fundamental component of any credible gun control regime. Stolen, revoked or counterfeit licences can be used to illegally purchase guns. For example, in [this recent case](#) in British-Columbia, an individual sold his gun to his friend without verifying the validity of his licence. Unbeknownst to the seller, his friend was estranged from his spouse and had his firearms confiscated and (presumably) his licence revoked following threats he made against her. The aggressor bought the gun from his unsuspecting friend who assumed he still has a valid licence. The aggressor used this gun to kill his ex.

The obligation to run a potential buyer's licence number through a government system to confirm its validity within a framework that incentivized sellers to perform such checks is as simple and it is rational, particularly since this was the case from 2001 to 2012 without any notable controversy and since it applies to the purchase of restricted firearms like handguns. There is no doubt that most Canadians expect such a system for all guns after the Liberal party won a majority with the promise to "[require all sellers of firearms to confirm that the license is valid before completing the sale](#)".

The systematic validation by the Registrar of the licences of all buyers and sellers at the time of a gun transfer brought in by Bill C-68 under a Liberal government (passed in 1995 and implemented in 2001) was eliminated by the Conservative government in 2012 via Bill C-19 at the same time as the destruction of the long gun registry. The reinstatement of this requirement through Bill C-71 should have been a positive development. Unfortunately, the details spelled out in the proposed regulations renders this measure arguably *weaker* than the Conservative changes that apply to this day.

No verification of a specific licence

Contrary to the official claim that Bill C-71 will “[require] sellers to verify the validity of a firearms licence before selling a non-restricted firearm”, the final package as spelled out by the proposed regulations will do no such thing, at least not in a way that was understood by many if not all of the stakeholders in this debate. The verification of the validity of a licence normally requires the intervention of the Registrar (Canadian Firearms Center run by the RCMP), since they are the only entity that possesses all the data regarding current holders of “valid” Possession and Acquisition Licences (PAL). Indeed, the “optional” validation that was brought in by the Conservatives in 2012 to replace the mandatory (or integrated) validation process (Bill C-68) consists of the Registrar confirming the validity of a specific licence at the request of a seller who decides to do so. Yet while Bill C-71 eliminates the optional validation of a specific licence via the Registrar, the proposed regulations do not reinstate this verification, not even as an option.

Paragraph introduced by C-19 and eliminated by C-71:

“23.1 (1) A transferor referred to in section 23 may request that the Registrar inform the transferor as to whether the transferee, at the time of the transfer, holds and is still eligible to hold the licence referred to in paragraph 23(a), and if such a request is made, the Registrar or his or her delegate, or any other person that the federal Minister may designate, shall so inform the transferor.”

In fact, there is no explicit requirement in the law or the proposed regulations for a seller of a non-restricted firearm to provide the Registrar with any specific information regarding a potential buyer’s licence (nor their own). While the regulations spell out that a potential buyer has to provide “all the information set out on the front of the transferee’s [buyer’s] licence, including the photograph” to a potential seller, nowhere does it state that the seller must provide this information to the Registrar. Yet in the case of the transfer of restricted weapons, the same regulations specify that a seller must “provide the names and the licence numbers of the transferor and the transferee” (subsection 3(1) of the Conditions of Transferring Firearms and Other Weapons Regulations). Bill C-71 only states that a seller can require a potential buyer’s licence information in order to “enable” a request to the Registrar for a reference number. While one would expect the regulations to specify that this “enabling” requires the transfer to the Registrar of a potential buyer’s licence information in order to allow the verification of its validity, they only specify that a buyer has to confirm to the Registrar that they have taken reasonable steps to “verify” that the buyer is the same person in the photo on the licence (ex: by perusing the required licence information from a potential buyer).

Bill C-71 states:

“23 (2) The transferee shall provide to the transferor the prescribed information that relates to the transferee’s licence, for the purpose of enabling the transferor to request that the Registrar issue a reference number for the transfer.”

The proposed regulations state:

“5 The prescribed information for the purpose of subsection 23(2) of the Act is all of the information set out on the front of the transferee’s licence, including the photograph.

6 For the purposes of the issuance of a reference number under section 23 of the Act, the transferor must, when making a request to the Registrar under paragraph 23(1)(b) of the Act, confirm that they have taken reasonable steps to verify that the transferee is the holder of the licence, including...”

(a) in the case of a transfer that is completed in person, whether in whole or in part, by comparing the photograph on the licence with the person presenting themselves as the transferee; and

(b) in all other cases,

(i) by using the method set out in paragraph (a), or

(ii) if the comparison cannot be undertaken using that method, by comparing the information on the transferee’s licence with another piece of photo identification that has been issued by the Government of Canada, the government of a province or a municipality.

The government can argue that the Registrar could reasonably request licence information before granting a reference number. This is true, in the same way that Chief Provincial Firearms officers could decide to conduct community background checks for all licence applicants. The point is that this is discretionary and not required by law. A future government that aligns with the gun lobby could just as well instruct officials to rubberstamp such requests or applications, thus the importance of specifying such details in the law.

It is impossible for us to determine if this is an omission or a deliberate loophole. And yet, the previous Liberal government did not seem to place much importance on the licencing regime when it [chose in 2017 to implement](#) a six-month grace period for gun owners who fail to renew their license — a concession to the gun lobby adopted by the Conservatives in 2015 under [Bill C-42](#) that goes diametrically against public safety, even though the Liberal party voted against that bill and could have chosen not to do so as there was no deadline attached and could easily have been eliminated under a future bill (ex: C-71). Furthermore, the previous section 23.1(2) of the Act, which prohibits the Registrar from “[retaining] any record of a request” under the soon-to-be eliminated optional verification (section 23.1(1) of the Act), is nowhere to be found in Bill C-71. Is this because this other major concession to the gun lobby (via Bill C-19 in 2012) is no longer required, as there’ll be no more transfers of specific licence information to the Registrar? It is not a secret that the gun lobby is vehemently opposed to any official records of any information related to (long) gun sales.

In any case, **we strongly recommend amending the regulations in order to specify that a sellers must provide the licence information of a potential buyer, as well as their own PAL or business licence, to the Registrar who must verify their validity before issuing a reference number greenlighting a firearm transfer**, which is the whole point of [“verifying the validity of a firearms licence \[to\] help to keep firearms out of the hands of people who should not have access to them”](#).

No structural incentives to comply

In addition to this glaring flaw, the regulations provide no structural mechanism to oversee the requirement for private sellers to verify the validity of a buyer’s licence – whatever type of verification that may be. (Commercial sellers, on the other hand, will have to keep sales records once C-71 is fully implemented. This means that in the case of sales via businesses there will be traces of such transactions, and therefore a structural framework that incentivises compliance.) As was the case since the weakening of the law in 2012, the new process will continue to solely rely on the good faith of private sellers to “verify” a licence (“[take] reasonable steps to verify that the transferee [buyer] is the holder of the licence” by comparing the photo with the buyer’s face and telling this to the Registrar), just as the current (2012) system relies on the good faith of all sellers to ensure they “23(b) ... [have] no reason to believe that the transferee [buyer] is not authorized to acquire and possess that kind of firearm” (for example by “verifying” their licence).

For private sales, which represent a substantial proportion of gun transfers, there is very little difference between the two, other than dialing a phone number and claiming one did what the law requires one to do. In both cases, this has little or no value in cases where a private seller simply decides not to verify a potential buyer’s licence. This is precisely why we advocated for a mandatory systemic validation process (via the Registrar).

Indeed, the current system is not set up to detect such illegal sales. Sales of non-restricted firearms are basically off the radar: non restricted firearms are not registered¹ nor traceable². Neither seller nor buyer needs to keep

¹ This does not apply in Quebec since all guns are registered in this province under provincial law.

² Once C-71 is fully implemented, commercial sales of non-restricted guns will be recorded at the store. While information on newly commercially sold guns will be helpful in tracing guns in some cases, sales records will not be centralized nor accessible without a search warrant and do not apply to subsequent private sales, thereby providing only limited value for tracing purposes.

any record of the transaction, be it the gun or the parties involved. Transaction take place in a systemic void that leaves no traces. There is little chance that anyone engaging in sales without licence verification will get caught. Having a new legal offence on the books sounds good but it is only effective if it actually acts as a deterrent. Since deterrence is linked to the [probability of getting caught](#) - not the weight of the punishment – the “new” obligation to verify a buyer’s licence will certainly prod many more honest sellers to verify a buyer’s licence, but not the dishonest ones – the very individuals that the new law should be targeting.

We therefore recommend that the regulations be amended in order to specify that, should our previous recommendation be followed, licence information provided by a seller to the Registrar to authorize the transfer of a firearm be indefinitely stored by the Registrar.

The exception to the lack of a structural framework is of course Quebec, which has implemented its own long-gun registry. In this province, if a gun owner sells their gun without verifying the buyer’s licence, subsequent tracing could help detect failure to fulfill this federal requirement, but only during the period that a reference number remains valid.

Excessively short period of validity for a reference number

In either case, the excessively short period during which the reference number authorizing the sale provided by the Registrar remains valid (90 days) means that police can only require “evidence” that a seller legally sold a gun (by obtaining a reference number) for approximately three months after a transfer took place. It is difficult to understand why legislators chose such a short timeline for police to be able to investigate previous sales of a gun (notwithstanding the feeble information that a reference numbers provides). Illegally purchased guns can remain in circulation for years before they may be seized at the scene of a crime.

We recommend amending the regulations to require sellers to keep a record of the reference number - as well as the licence number of the buyer - for at least five years.

No more voluntary licence checks?

At least the current (soon-to-be eliminated) voluntary option to consult the Registrar about a specific PAL (section 23.1(1) of the Act) allows a seller to be 100% certain that a buyer has a valid licence. Yet with C-71 and the proposed regulations, this option will no longer be legally available to sellers. That is why, given the equivalence between the old and the new “verification” requirements, we can state that in terms of public safety benefits the new licencing verification process will be weaker than the current one.

3- Sales records

It is very positive development that stores will have to keep inventories and sales records for all guns. However, important questions remain.

Questions remain

For example, will police be able to access this data in a meaningful way? According to the [official summary of the regulations](#), “Law enforcement would only be able to access business records on reasonable grounds, and upon presentation of a judicial authorization.” This is a significant setback from the easily accessible sales records that existed from 1979 to 2012.

In addition, will police be able to require a search warrant to investigate and/or pool sales records of various stores in order to confirm or detect suspicious acquisition patterns, like amassing arsenals or straw purchasing? Or are they limited to investigating one specific crime gun? In other words, can sales records be used to conduct preventative actions in addition to investigative/punitive (post-crime) ones?

Also, if police wish to trace a crime gun, can their search warrant apply to *all* stores in a region, a province or even across the country, as there is no other way to know which of the over [four thousand licensed gun businesses](#) in Canada could have sold the gun in question?

As we understand it, Chief provincial Firearms officers can conduct conformity checks within specific businesses to generally ensure rules are followed and inventories are complete (e.g., no diversions). If these checks detect suspicious patterns, can criminal investigations be launched as a result? Otherwise, it is hard to see how authorities will be able to spot and follow-up on high volume purchases of non-restricted guns. It is only by examining an overall picture of a gun store's data or by combining the data from many or all stores that such patterns can be detected. In 2016, police discovered an arsenal of [500 guns](#) only because they happen to be on a house call to check in a 72 year-old Pickering (Ontario) man who was known to have previous medical issues, not through sales records.

Arbitrary period for sales records retention

Once again, legislators chose to arbitrarily limit the time these records need to be maintained: they can be destroyed after 20 years. Why 20 years and not indefinitely as was the case before 2012? In the U.S., gun dealers are required to maintain records of all transactions indefinitely, and when a business is terminated, all sales records [must be turned over](#) to the government. Guns can remain functional for decades. The rifle used in the October 2014 shooting on Parliament Hill was not a modern gun but a [ubiquitous hunting rifle](#) that could easily have been more than 20 years old. Its source remains unknown, as police were [unable to trace it](#).

We recommend amending the regulations to eliminate the time limit for the maintenance of sales records by gun businesses, with the requirement to transfer this information to the RCMP in the event a gun store closes its doors.

4- Lifetime background checks

As there are no pending proposed regulations related to this measure, the following comment seek only to put it into the wider context of the C-71 package.

Lifetime background checks will ensure firearms officers do not limit their inquiries to the last five years when conducting required criminal background checks for licence applicants. However, in terms of more thorough community background checks, nothing prevented firearms officers from looking further back in time and, more importantly, conducting community background checks remains optional. Here as well, it is a positive development to broaden the scope in time of potential background checks.

Unfortunately, the C-71 fails to address the much greater issue of police or courts ignoring actual known risks by prioritizing gun ownership over prevention. There are too many such documented cases, including numerous domestic murders where police were notified of risks but decided to allow an aggressor or potential aggressor to possess guns seriously (some high profile examples: [Mark Jones](#), [Gabriel Wortman](#), [Lionel Desmond](#), [Cory Lewis](#),

[Kevin Runke](#)). The wide discretion of police and courts to act or not act (refusing a license or removing guns) when confronted with an individual displaying risk factors stays the same.

We therefore reiterate our oft-repeated request to beef up the criteria in the law and to invest more resources in order to guarantee systematic and thorough background checks for all licence applicants and to better train police and the courts to ensure decisions err on the side of public safety when there are demonstrable public safety risks associated with gun ownership. (Incidentally, the “red flag” measure in Bill C-21 fails to address these flaws and creates a greater burden for victims or potential victims.)

5- Authorization to transport restricted weapons (ATT)

In the case of authorizations to transport restricted weapons (i.e., handguns), there are no proposed regulations as well and here again we wish to place the measure in the greater C-71 context.

The point of controlling the transportation of handguns is to prevent owners from having them in their possession outside of the strict legal circumstances for which they are allowed. The presence of handguns circulating in the community represents a public safety risk: it can lead to [theft](#) as well as impulsive illegal use such as [road rage incidents](#)³.

Authorizations to transport restricted weapons have [existed in Canada since 1913](#). Under Bill C-68 and its regulations, an authorization for the transportation of handguns and other restricted or prohibited weapons (ATTs) was required to move restricted guns between an owner’s home and his or her specific gun club where the weapon could be legally used.

However, contrary to what the government’s talking points implies, C-71 generally maintains the “automatic authorization” brought in by the Conservative government in 2015 under Bill C-42, which automatically allows the transportation of restricted weapons without any specific authorization. Indeed, under C-71, trips between the owner’s residence and guns club or shooting ranges are exempt from the requirement to obtain authorization to transport, in addition to bringing home a new gun. C-71 requires specific permits only for the transportation of restricted guns for going to a gun show and going to a gunsmith which, according to public safety bureaucrats, [represent barely 3.5% of all transport purposes!](#)

Mr. Rob O'Reilly (Director, Firearms Regulatory Services, Canadian Firearms Program, Royal Canadian Mounted Police):

The only thing I would add in relation to your question is that prior to 2015, when the regime existed, where there were no authorizations to transport automatically added as a condition on the firearms licence, everyone was required to apply for an authorization to transport for many purposes, but including the two purposes that you've given, namely, transportation to a gunsmith and transportation to a gun show.

[In 2015, we issued approximately 143,000 authorizations to transport, and 96.5% of those were for the two purposes that remain under Bill C-71.](#) We had approximately 250 ATTs issued for going to a gun show and 131 issued for going to a gunsmith, so it did not represent a significant number of authorizations to transport that were issued

This means that for 96.5% of transfers, the changes eliminating control on the transportation of handguns brought in by the Conservative government still apply. This goes squarely against the Liberal Party’s 2015 promise to

³ Transporting restricted firearms entails complying with safe storage requirements. While these serve to reduce the risk of impulsive/illegal use, they do not prevent it.

“[repeal changes made by Bill C-42 that allow restricted and prohibited weapons to be freely transported without a permit](#)”.

More importantly, the loophole brought in by Bill C-42 which renders the disingenuous nature of this ineffective measure even more egregious [still remains](#): it allows the transportation without authorization to and from ANY gun club and ANY gun range in a province, even if one is not a member and one has no legitimate reason to be there. Historically, ATTs allowed the transportation of a restricted weapons solely between a gun owner’s home and a specific place where there was a legitimate reason to have the gun such as the gun club of which the owner is a member.

Automatic authorization to transport — licence renewal

(2.1) Subject to subsection (2.3), an individual who holds a licence authorizing the individual to possess prohibited firearms or restricted firearms must, if the licence is renewed, be authorized to transport them [within the individual's province of residence](#)

- **(a)** [to and from all shooting clubs and shooting ranges](#) that are approved under section 29

This means that as long as handgun owners (in possession of their gun) are somewhere between their home and ANY of gun clubs/ranges in their province, they are technically not in violation of the law as they can claim to be on their way to “Gun Club X” or “Gun Club Z” or whichever club can be used to as a destination in a made-up itinerary. There are [approximately 1,400](#) shooting ranges in Canada.

As the current regulatory process cannot amend the law, there is little that can be done to rectifying this abysmal non-measure which continues to be promoted by the government as “*Reinstating the requirement to seek ATT for most locations*” that will “*safeguard the movement of these firearms within a community and give CFOs greater information about transportation patterns and confidence that these firearms are being transported for a ‘good and sufficient reason’ as required by the Firearms Act.*”

6- Conclusion

The proposed regulations enabling the implementation of Bill C-71 highlight the weakness of measures adopted in 2019. The verification of a potential buyer’s licence by the Registrar is no longer an option and relies solely on the good faith of seller, as before; it is also undermined by the inability to detect failures to comply. The usefulness of the sales records is undermined by the need for police to obtain a search warrant in order to have access to them, a requirement that never existed before. The lifetime background checks remain discretionary and do not address more important flaws in the screening process, such as known risks which are dismissed or ignored. And finally, the authorization to transport handguns doesn’t apply in 96.5% of cases while maintaining the loophole that can be invoked by anyone transporting their handgun almost anywhere in a province. While C-71 and the proposed regulations may move gun control [in the right direction](#), it does so in a way that can only be described as baby steps riddled with concessions to the gun lobby.