

Winner 1999 Cassels Brock & Blackwell Paper Prize**ELAINE M. DAVIES**

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Note: This paper is an abridgement of a more detailed analysis and historical review of gun legislation in Canada. The original article, which received the Maclean Scholarship in Legal History in Criminal Law, is available by contacting *Appeal*.

1 The Firearms Act, An Act Respecting Firearms and Other Weapons Statutes of Canada, 1995, chapter 39, as amended 1996, chapter 19, section 76.1.

2 In Canada these horrific incidents included the massacre of the Gakhal family in Vernon in 1996, the killings of four professors at Concordia University in 1992, and the slayings in the restaurant, Just Desserts, in Toronto in 1994. This should not be understood to be an exhaustive list.

3 An Act to Amend the Criminal Code, Statutes of Canada 1995, chapter 39.

The 1995 Firearms Act: Canada's Public Relations Response to the Myth of Violence

I. Introduction

On February 14, 1995 the federal government of Canada introduced Bill C-68, The Firearms Act, An Act Respecting Firearms and Other Weapons.¹ It received third reading on November 22, 1995 and Royal Assent on December 5, 1995.

Choosing the fifth of December acknowledges the anniversary of the Ecole Polytechnique massacre of 14 women students, which occurred on December 6, 1989. Of all the violent incidents in the 1980s and 1990s involving multiple victims, the massacre in Montreal was the single most important catalyst for the increased legislative control of firearms.² Whatever the merits or faults of the 1995 Firearms Act, it should be understood as the federal government's response to Canadians' demand that something be done to stem the tide of violence. By focussing on a readily identifiable aspect of violence — guns — this legislation demonstrated that the federal government was committed to doing something to stop violence.

The 1995 Firearms Act and the concurrent amendments to the Criminal Code³ made a number of profound changes to criminal law in Canada. They include mandatory minimum prison sentences for firearms offences, registration of all firearms including long guns, and the restriction or prohibition of a number of previously legal firearms. Nearly all of these changes were controversial and pitted legal gun owners, upset by what they perceived as a loss of rights, against groups demanding tighter controls on the use and possession of some firearms and the outright ban of others.

This paper analyses the Firearms Act by placing it within the development of Canada's control of firearms and the social and economic reasons behind each successive change. The first part of this paper sets out the history of Canadian gun control, starting with the pre-Confederation Acts and the introduction of the Criminal Code in 1892. The development of the modern regime is then traced from 1892 up to and including the 1991 legislation.

The second part of this paper explores the 1995 legislation. The reaction to the controls enacted in 1991 is first reviewed, followed by the government's movement towards introducing further legislation. The key changes brought about by the 1995 Firearms Act and the modifications to the Criminal Code are outlined. The section finishes by exploring the debate within Canada, both inside and outside of the House of Commons.

The paper concludes by closely exploring the factors that precipitated these legislative changes. Through a review of the statistics on violence and the most recent report on sentencing, the writer suggests that the federal government was more motivated to allay Canadians' fears than to actually find workable means to reduce violence. Finally, it is proposed that the actual result of this public relations investment could be the ultimate reinforcement of the erroneous perception that Canada is an increasingly violent society.

II. The History of Gun Control in Canada

In the limited debate concerning the 1892 Criminal Code of Canada, the Minister of Justice, Sir John Thompson, defended the severity of the sanctions for the carrying of weapons by stating that "this has been the law for a long time, and we have never heard any objection to it."⁴ Thompson's statement is as true today as it was in 1892: Canada has always controlled its citizens' use of guns. There is no constitutional right to bear arms in Canada and there has never been a national mentality that equates gun ownership with civil liberty. Even

⁴ *House of Commons Debates* (1892) as reproduced by James Crankshaw in, *The Criminal Code of Canada and the Canada Evidence Act, 1893* (Montreal: Whitefore and Theoret Law Publishers, 1894) at 832.

5 An informative discussion of the historical reasons for the difference in mentality between Canada and the United States is in Marilyn Simonds, "Code of Arms: Once There were Guns in Every Cabin and Canoe" (March/April 1996) 116(2) *Canadian Geographic* 44. This article is referred to at some length below but strictly for Simonds' reasons for changes in Canadian firearms laws.

6 An Act to Prevent the Unlawful Training of Persons to the Use of Arms, and the Practice of Military Evolutions; and to Authorize Justices of the Peace to Seize and Detain Arms Collected or Kept for Purposes Dangerous to the Public Peace, S.C. (United Kingdom and Ireland) 1867 (2nd Sess.), chapter 15.

7 An Act to Make Provision Against the Improper Use of Firearms, S.C. (U.K.) 1877 (3rd Sess.), chapter 30.

8 See note 5. This is a quote of the then Minister of Justice, Dominick Blake.

9 See note 7 at sections 1, 2 and 3.

10 Revised Statutes of Canada 1886, chapter 148.

11 Revised Statutes of Canada 1886, chapter 149.

12 The Criminal Code was actually called The Criminal Code of the Dominion of Canada in 1892.

13 See George W. Burbridge, *Digest of the Criminal Law* (Montreal: Carswell & Co., 1890). After the publication of this *Digest*, Burbridge went on to help draft Canada's first Criminal Code. It is interesting to note that while Burbridge's *Digest* is modelled on James Stephen's *Digest of the Criminal Law* 3rd ed. (London: MacMillan and Co., 1883), neither Stephen's *Digest* nor the *Report from the Royal Commission on the Law Relating to Indictable Offences, 1878-79* vol. XX., *British Parliamentary Papers, Criminal Law* vol.6 (Irish University Press, 1971), provides for any regulation or control of firearms or punishment for offences committed using firearms. It appears, therefore, that the form of gun control exerted at this time was not inherited from the British but was legislation made in Canada for Canadians.

14 See Burbridge above at section 102.

today, where passions run high amongst the gun lobby, its membership predominately favours some form of gun control — it is only a very small minority that supports American-style gun ownership rights.⁵

A. The Lead up to the 1892 *Criminal Code* of Canada

What Thompson referred to in 1892 as "the law for a long time," existed at least since 1867 with the passing of An Act to Prevent the Unlawful Training of Persons to the Use of Arms.⁶ The statute's title reflects the legislative concern that precipitated its passage: the prevention of armed rebellion against the government. Thus, it focused on preventing people from coming together for the purpose of military training. Considering the Rebellions in Upper and Lower Canada in 1837 and 1838, the passage of this legislation seemed an obvious remedy.

In 1877, the Parliament passed An Act to Make Provision Against the Improper Use of Firearms.⁷ This Act was passed in response to concerns expressed by Canadians that "the practice of carrying firearms was becoming too common" and, as such, the Act shifted the emphasis to controlling the use and possession of firearms.⁸ Under this legislation, it became an offence to carry pistols or air guns without cause or to point a firearm at another person. The Act also punished those arrested with a pistol or air gun upon their person in the commission of an offence or with the intent of doing harm to another.⁹

The Revised Statutes of Canada of 1886 contains two Acts that controlled the use and possession of firearms. The first, An Act Respecting the Improper Use of Firearms and Other Weapons essentially reproduced the 1877 Act.¹⁰ The second statute is entitled An Act Respecting the Seizure of Arms Kept for Dangerous Purposes.¹¹ It duplicates the 1867 Act, except that it deleted the prohibitions preventing the gathering, meeting, and training of persons for military exercises. The purpose of the combined new Acts, therefore, was no longer that of preventing armed rebellions against the government but rather was the earliest form of the modern regime of gun control.

B. The 1892 *Criminal Code* of Canada¹²

As can be seen from the above statutes, Thompson was correct in his assertion that the control of firearms was well-established law in Canada prior to 1892. Thus, though the new Criminal Code added details and constraints to the regime of gun control, it essentially followed the path of its predecessor statutes.¹³ The Code, for instance, did not prohibit the possession or wearing of weapons. If, however, a person possessed a firearm for a "dangerous" purpose, even having it in one's private dwelling was an offence. The open carrying of offensive weapons and that of a concealed pistol or air gun without justification were both prohibited.¹⁴

C. Legislation to Control Firearms, 1892 - 1969¹⁵

Legislation passed in 1913 increased the control of firearms.¹⁶ New provisions made it

mandatory to obtain a permit if one wished to carry a concealed weapon on their person. A permit was not required if the weapon was kept in a dwelling house or business. The Act also made it an offence to sell, give, or lend any concealable weapon to another person who did not hold such a permit. The details of each sale, including the name of the purchaser, the date, and a description of the weapon, had to be recorded.

In 1920, the Code was changed to make it mandatory to have a permit for all firearms, regardless of where they were kept.¹⁷ A notable exception was for the shot guns and rifles already possessed by British subjects.

The 1921 Act to Amend the Criminal Code repealed the 1920 blanket permit requirement. Long guns were now exempted, although pistols and revolvers continued to require a permit. For “an alien” to possess any type of firearm, he or she was still required to first obtain a permit.¹⁸ The permits had one year terms and were to be issued if the officer was satisfied with the applicant’s “discretion and good character.”¹⁹

Legislation passed in 1933 introduced a new principle into the firearms control regime. A prospective owner now had to provide a reason for his or her wish to possess certain types of firearms when applying for a permit.²⁰

The first universal registration system was introduced in the 1934 Act to Amend the Criminal Code.²¹ It required that all pistols and revolvers be registered at a registry located in each province. Long guns, however, remained outside of the system.

This rash of additional firearm controls in the 1920s and 1930s was concluded with legislation passed in 1938.²² It became mandatory that pistols and revolvers be re-registered every five years. The Act also made it an offence for anyone to “alter, deface or remove any manufacturer’s serial number on or from any pistol, revolver or other firearm capable of being concealed upon the person.”²³

It is not easy to explain why successive federal governments were so concerned with firearms in the 1920s and 1930s.²⁴ As national crime statistics were not collected until 1961, it is not possible to ascertain whether the concern arose out of increased crime in Canada. In “Code of Arms: Once There Were Guns in Every Cabin and Canoe,” author Marilyn Simonds proposes that the ownership of firearms began to acquire a moral taint in the 1920s — a change brought about by the urbanization of Canada.²⁵ By 1920, almost half of Canada’s population lived in the cities, and this new urban population had little or no reason to own the guns, which had formed a traditional and necessary part of a rural lifestyle. This change to the nature of Canadian society brought about the increasing control of firearms both in this decade and in ones to come.

Simonds further suggests that, as with all other periods when new firearms controls are introduced, “in times of general anxiety, it seems, we look for ways to feel in control — and set our sights on the gun.”²⁶ Factors increasing Canadians’ anxiety at this time included the return of the World War I veterans to widespread unemployment, economic depression, labour

15 In writing this section, I have benefited from the work of Martin Friedland, *A Century of Criminal Justice: Perspectives on the Development of Canadian Law* (Toronto: Carswell Legal Publications, 1984) at 125-128. I also made use of the “History of Firearms Control in Canada Up to and Including the Firearms Act,” on the Government of Canada Canadian Firearms Centre’s website found at www.cfc-ccaf.gc.ca on January-February 1999. I have, however, primarily relied upon the statutes themselves.

16 An Act to Amend the Criminal Code, Statutes of Canada 1913 (2nd Sess.), chapter 13.

17 An Act to Amend the Criminal Code, Statutes of Canada 1920 (3rd Sess.), chapter 43, section 2.

18 An Act to Amend the Criminal Code, Statutes of Canada 1921 (5th Sess.), chapter 45, section 2.

19 See above at section 2(3).

20 An Act to Amend the Criminal Code, Statutes of Canada 1933 (4th Sess.), chapter 25.

21 Act to Amend the Criminal Code, Statutes of Canada 1934 (5th Sess.), chapter 47, section 121a (1), (2). This 1934 registration is generally described as handgun registration.

22 Act to Amend the Criminal Code, Statutes of Canada 1938 (3rd Sess.), chapter 44, section 6(3).

23 See above at section 4i.

24 The Conservative Party was in power with R. B. Bennett as Prime Minister from 1930 to 1935. The Liberal party returned to power with Mackenzie King as Prime Minister in 1935.

25 See note 5.

26 See above.

27 Professor Friedland notes that there was a complete "absence of pressure groups of victims" amongst the numerous lobbying groups around the passage of Bill C-83, the 1977 legislative changes. See note 15 at 85. This should be compared with the massive mobilization and influence of such groups as CAVEAT and the Coalition for Gun Control in the 1990s.

28 See note 5.

29 An Act To Amend the Criminal Code, Statutes of Canada 1947 (3rd Sess.), chapter 55. This amendment was to section 260 of the Criminal Code and is at section 7(a) of the Act.

30 An Act to Amend the Criminal Code, Statutes of Canada 1950 (2nd Sess.), chapter 11, section 2.

31 An Act to Amend the Criminal Code, Statutes of Canada 1951 (3rd Sess.), chapter 47, section 7 (sections 115-129).

32 Firearms were defined in the 1951 Act as "anything that a person uses or intends to use as a weapon." See above at section 2, paragraph 25 of the Code. In 1954, this definition was repealed and replaced by a "pistol, revolver, or a firearm that is capable of firing bullets in rapid succession during one pressure of the trigger." J.C. Martin, *The Criminal Code of Canada* 1st ed. (Toronto: Cartwright & Sons Ltd., 1955) at section 98(b).

33 See above at section 7 [new Code section 125(4)].

34 Criminal Law Amendment Act, 1968-69, Statutes of Canada 1968-69 (1st Sess.), chapter 38 section 6 (repeal and replacement of sections 82-98). The changes had been originally introduced as Bill C-142 on June 28, 1967 by Pierre E. Trudeau, then Minister of Justice in the Liberal Government of Lester B. Pearson. This Act died on the order paper with the election. The new Minister of Justice, John Turner, re-introduced the gun control measures as part of a very large number of criminal law changes in Bill C-150 Criminal Law Amendment Act which received royal assent on June 27, 1969.

35 See above at new section 99(4).

36 See note 5. This is a reference to the bombings that preceded the October crisis in 1970 and the declaration of the War Measures Act. See note 15 at 127.

strikes such as the 1919 Winnipeg General Strike, as well as the pervasive 'Red Scare' following the Russian Revolution. Professor Martin Friedland, another commentator on these changes, suggests that an additional reason may have been the influence of the United States during an era when President Roosevelt was making a number of gun control proposals.²⁷

Changes to the Code's firearms provisions after World War II placed more emphasis on offenders. Simonds suggests that the relaxation of gun control measures at this time was a natural post-war phenomenon:

Guns traditionally regain respectability in times of war, when economies are strong. After every war, there is an upsurge of interest in firearms, as men who are trained in their use return to society and war surplus is added to the commercial market.²⁸

Thus, in 1947, constructive murder provisions were expanded to include the causing of a death if the offender had upon his or her person any weapon and death ensued therefrom, regardless of a lack of intent to cause the death.²⁹ In 1950 the requirement that firearms owners re-register their firearms (all types except long guns) every five years was dropped.³⁰ Instead, registration certificates became valid for an indefinite period.

In 1951, all of the sections in the Criminal Code involving firearms were rewritten.³¹ Besides simplifying the firearms offences, the key changes enacted in 1951 were the setting up of a central registry system under the Commissioner of the RCMP, the inclusion of automatic weapons in the definition of firearms, and the requirement that they be registered for the first time.³² The Act also reintroduced annual handgun permits and defined, once again, the reasons that one might obtain such a firearm: to protect life or property, for use in connection with one's profession or occupation, and for use in target practice at a shooting club.³³

The federal government turned its attention to the laws governing firearms again in the late 1960s. The Criminal Law Amendment Act passed in 1969 divided firearms into categories of prohibited, restricted, and permitted weapons.³⁴ The enumerated reasons for possessing a restricted weapon, specifically handguns, remained the same. However, there was a new provision that allowed the Commissioner to refuse to issue a certificate if notice was given "of any matter that may render it desirable in the interests of the safety of other persons that the applicant should not possess a restricted weapon."³⁵

Friedland and Simonds agree that the federal government brought forward these legislative changes at this time to alleviate the heightened anxiety of Canadians who perceived that Canada was becoming increasingly violent. Simonds and Friedland, however, disagree as to the cause of this anxiety. Simonds suggests it was caused by the ongoing political violence in Quebec while Friedland points to the influence of events in the United States, particularly the shootings of Robert Kennedy and Martin Luther King.³⁶ It is possible that the government also wished to alleviate any concerns generated by legislative changes that had reduced the application of the death penalty.³⁷

D. The 1977 Legislation

In 1977, the Liberal Government introduced Bill C-51, the Criminal Law Amendment

Act, 1977, which became law on August 5, 1977.³⁸ The new legislation made it mandatory for a firearms acquisition certificate (FAC) to be obtained prior to acquiring any new firearms.³⁹ A FAC could be refused if the issuing officer decided it was not in the interests of the safety of either the applicant or others to provide one, if the applicant had been convicted of an indictable offence involving violence (this type of prohibition was in itself not new, but the targeting of violent offences was), had been treated for a mental disorder, or had a history of violent behaviour. This certificate had a term of five years. The new Act also eliminated the protection of property from the short list of reasons one could proffer to obtain a certificate for a restricted weapon.⁴⁰ There was also a new provision designed to limit the ownership of restricted weapons to “*bona fide* gun collectors.”⁴¹ Fully automatic weapons were also prohibited. Finally, mandatory minimum sentences were re-introduced for the use of a firearm in the commission of an offence.⁴²

There was no clear statement by the federal government as to why it felt that stricter gun controls were required in 1977. One oft-cited reason is that the legislation was designed to calm the fears of Canadians stemming from the elimination of the death penalty.⁴³ Yet, it is interesting to note that statistics collected by the government at this time indicated that the primary concern of Canadians was inflation (57%).⁴⁴ Only 15% of the survey’s respondents identified crime/personal security/violence as a primary concern.

E. The 1991 Legislation

As outlined in the introduction, the murder of fourteen women in Montreal on December 6, 1989, provoked a huge outcry amongst Canadians. The singling out of women by the gunman resulted in the issue of violence against women becoming central to a wide-ranging discussion about violence. Faced with this demand to halt violence against women and violence in Canada generally, the federal government responded by enacting new firearms controls.

A newly formed victims’ rights lobby certainly helped to push the federal government to decide to respond to the massacre in this manner.⁴⁵ A number of women’s groups and female students in Montreal banded together following the slaying of the women. Two of these groups, Ecole Polytechnique Gun Control Committee and the Canadian Coalition for Gun Control, were devoted solely to achieving stricter firearms legislation. Support for such changes ultimately broadened to include medical associations, church groups, police organizations, and similar organizations. It was a lobby with tremendous popular support — a fact which did not go unnoticed by successive governments.⁴⁶

The 1991 legislation, Bill C-17, An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof, was passed into law on December 5, 1991 — an acknowledgment of the Montreal massacre which had started the process.⁴⁷ Notwithstanding its short legislative life, it was a significant piece of legislation designed to more harshly penalize the

37 The Code was changed in 1967 to confine the use of the death penalty as a punishment for the murders of police officers and prison guards.

38 Criminal Law Amendment Act, 1977, Statutes of Canada 1977 (2nd Sess.), chapter 53. This was the government’s second attempt. Its first was Bill C-83 introduced in 1976, and would have instituted a licensing requirement for persons possessing long guns, similar to the 1995 registration requirements. This bill died on the order paper in July of 1976.

39 This brought the purchase of long guns within a system of control. However, people who already owned such firearms were not required to obtain a FAC.

40 See note 38 at new Code section 106.1 (3)(c).

41 See above at new Code section 106.1(4).

42 See above at new Code section 83(1)(c) and (d). Mandatory minimum sentences had been in the Code for the misuse of firearms prior to 1947. This was then dropped as the 1947 Criminal Code set out the penalty of capital punishment for deaths caused by guns. See note 15 at 127.

43 See note 15 at 136. At this time Parliament, also as part of a compromise in eliminating the death penalty, created first and second degrees of murder. This was new to Canadian criminal law. See Don Stuart, *Canadian Criminal Law: A Treatise* 3rd ed. (Toronto: Carswell, 1995) at 220.

44 Ministry of the Solicitor General, *National Attitudes Towards Crime and Gun Control* (Ottawa: Supply and Services, 1977) at 3-5.

45 See Friedland at note 15 at 84.

46 Throughout the late 1980s and 1990s, up to eighty percent of Canadians favoured stricter gun legislation. For a selection of articles discussing the public support for gun control, see “The Gun Debate: Gun Control Bill Enjoys Wide Support” *Montreal Gazette* (30 September 1998) B3; “Ontario Big on Gun Control: Poll Shows Huge Support for Firearms Registry” *Toronto Star* (16 March 1998) A6; “Gun Control Typifies Urban-Rural Split in Canada” *Vancouver Sun* (12 February 1997) A9; “Most Want Gun Control: Opponents Out of Step, Poll Indicates” *Montreal*

Gazette (23 December 1996) A8; "Search For a Law: As Violent Crimes Involving Guns Escalates in Canada, Opposing Sides Battle Over a Proposed Gun-Control Law" (October 1991) 57(2) *Canada and the World* 8 at 9. This last article indicates that, in 1991, 79% of Canadians supported stricter gun control legislation. The gun lobby has vehemently argued that Canadians are ill-informed, and that when questioned on an individual basis, many people who support gun control demonstrate an ignorance of what the current laws are, how one can obtain a gun, what constitutes a "gun," and the like. See H. Taylor Buckner [Professor at Concordia University], "Sex and Guns: Is Gun Control Male Control?" Found on National Firearms Association website at www.nfa.ca/reports on January-February 1999.

47 An Act to Amend the Criminal Code, Statutes of Canada 1991 (3rd Sess.), chapter 40. Minister Campbell's first attempt was withdrawn after pressure from the government's own backbenchers. Bill C-80, An Act to Amend the Criminal Code, 2nd Sess., 34th Parl., June 26, 1990.

48 See above at new Code sections 106(1) and (1.1).

49 See above at new Code section 106(9.1).

50 See above at new Code section 100(12)(a). See also, new Code section 103(10) which increased the maximum penalty from 5 to 10 years for possession when the individual, due to safety concerns, was prohibited by a court order from owning firearms.

51 See above at new Code section 100(1)(a) and (b).

52 See above at new Code section 84(1).

53 See above at new Code section 84(1)(f).

54 See above at new Code section 2(c.1).

55 See above at new Code section 84(1).

56 Bill Trent, "The Medical Profession Sets its Sights on the Gun-Control Issue" (1991) 145 (10) *Canadian Medical Association Journal* 1332-1340 at 1334.

57 See above. The NFA, an Edmonton based organization, is one of the leading voices of the Canadian gun lobby.

misuse of firearms, to make it harder to obtain firearms, and to remove certain kinds of weapons from legal possession.

One of the most important modifications was to the Firearms Acquisition Certificate system. After an application for a FAC was submitted, it was subject to a delay of a minimum of twenty-eight days prior to being issued.⁴⁸ Screening could potentially include interviewing an applicant's "neighbours, community/social workers, spouse, dependents" or anyone who the firearms officer thought might be able to "provide information pertaining to whether the applicant has a history of violent behaviour, including violence in the home."⁴⁹ Mandatory safety courses were also expanded to include instruction on the firearms laws.

The misuse of firearms was dealt with more strictly and penalties for firearms-related offences were generally doubled in the new Act. For instance, the penalty for being caught in possession of a firearm or ammunition when prohibited to do so was increased from a maximum of five years imprisonment to that of ten years.⁵⁰ If a first time offender was convicted of an indictable offence with a punishment of ten years of imprisonment and, in the commission of the offence, had "used, threatened or attempted" violence against another, he or she was prohibited from possessing any firearm for ten years.⁵¹ For second time offenders, the prohibition was for life.

The 1991 Act also expanded the categories of prohibited and restricted weapons. Specifically responding to the Montreal massacre, new controls were introduced on military, paramilitary, and high-firepower guns.⁵² This included the prohibition of large capacity cartridge magazines⁵³ and firearms that had been converted to avoid the 1977 legislative prohibitions.⁵⁴ A definition of a "genuine gun collector" was also added:

an individual who possesses or seeks to acquire one or more restricted weapons that are related or distinguished by historical, technological or scientific characteristics . . . has consented to periodic inspections . . . has complied with such other requirements as are prescribed by regulation respecting knowledge, secure storage and the keeping of records in respect of the restricted weapons.⁵⁵

III. The 1995 Firearms Act

A. Reaction to the 1991 Act

The 1991 Act had been intended as a "grand compromise" between those who demanded greater restrictions and those who feared such changes.⁵⁶ However, it rapidly appeared that no one was happy with the new Act. The National Firearms Association (NFA) described the 1991 legislation as "abysmally stupid."⁵⁷ On the other end of the spectrum, the Coalition for Gun Control described the 1991 Act as only a "step in the right direction" and argued that real control of firearms could only be accomplished through a universal registration system.⁵⁸

This wide-spread and vocal criticism of the 1991 legislation laid the groundwork for further legislative change. It is noteworthy that the federal governing party also changed from

the Conservatives to the Liberals in 1993 — another explanation for the enactment of new legislation. Based on the fact that popular support for stricter controls stayed at roughly 80% throughout this period, while a number of violent incidents involving firearms continued to generate pressure for changes, it would have taken a brave government not to bring forward its own prescription for preventing further firearms violence in Canada.

B. The New Liberal Government

In 1993 a Liberal majority government was elected, led by Jean Chrétien, with Allan Rock appointed as the Minister of Justice. Prior to this election, the Liberal Party had set out their vision of governance in their “Red Book.” Amongst a number of other goals, this platform proclaimed the Liberals’ intention to reform the justice system and to be tougher on crime and criminals. This rather vague ideal eventually translated itself into the 1995 Firearms Act and the concurrent changes to the Criminal Code.

This transformation began at the 1994 biannual convention of the Liberal Party, wherein the Women’s Commission presented a resolution asking for tighter gun control laws. It was adopted by a unanimous vote. In his address to the convention, Prime Minister Chrétien made the resolution a centrepiece of his speech:

... I believe that the time has come to put even stricter measures in place . . . I will be asking my Minister of Justice to examine your resolution very closely and to draft tough gun control legislation. . . What Canadians want and what we must provide is tough action.⁵⁹

C. The 1995 Act

1. The Firearms Act and Concurrent Changes to The Criminal Code

The Firearms Act of 1995, though the most recent development on a continuum of increasing firearms control, is, nonetheless, unique on a number of grounds.⁶⁰ For instance, the regulation of firearms is now administered by a separate piece of federal legislation though the punishment for offences involving firearms remains within the Criminal Code.⁶¹ Secondly, the control of firearms stretches across a staggering 135 sections. It is an enormous piece of legislation, particularly when one considers that many of the specific rules have been developed through regulations. The most notable features in the 1995 Act are its purpose, its broadly based registration system, its inspection powers, the penalties for non-compliance, and its complex “grandfathering” clauses.⁶² Equally important but less noticed changes were made to the Criminal Code wherein many mandatory minimum sentences were introduced for firearm related offences.

The Act’s purpose very clearly indicates that the possession of any firearms in Canada is now de facto illegal unless the proper licences, permits, and registration are obtained. The Act also prescribes the mechanism for the manufacture, sale, and importation and exportation of all firearms.

The new registration system requires all firearms to be registered. An individual

58 Heidi Rathjen [Executive Director of the Coalition], “Gun Control: An Analysis of Bill C-17” (Winter 1992/1993) 10(1) *Women’s Education* 47-48 at 47. See also, Susan Riley, “Ms Representing Feminism? The Troubling Ascent of Kim Campbell” (May 1993) 26(8) *This Magazine* 11-15.

59 *House of Commons Debates* (16 February 1995) at 9719. During the debate on Bill C-68, Mr. Lincoln, an Ontario Liberal MP who supported the Act, quoted Mr. Chrétien’s speech. Two comprehensive studies were undertaken for the government: Thomas Gabor, “Impact of Availability of Firearms on Violent Crime, Suicide and Accidental Death” (June 1994), and, Terence Wade and Roger Tennuci, “Technical Report: Review of Firearms Registration” (Ottawa: RES Policy Research Institute: November 1994). Both reports are at the Canadian Firearms Centre Website found at www.cfc-ccaf.gc.ca in February 1999.

60 See note 1.

61 The idea for this division was to take all the administrative, regulatory, and registration sections out of the Code. There were also changes to the Code itself, which are discussed below.

62 “Grandfathering” is defined by the federal government in the following manner: a term used to describe the legal right of an owner to keep a firearm that was once restricted or non-restricted, but is now prohibited. Canadian Firearms Centre (March 13, 1998) “How the Law Applies to Me If . . . I Own ‘Grandfathered’ Prohibited Firearms” *Information Bulletin* at 1.

registration certificate is issued for each firearm. This is in addition to the requirement that an individual first obtain a license (essentially a FAC) prior to acquiring any firearms. The license is valid for five years for an individual, one year for a business, and three years for museums.⁶³ The term of a firearm's registration certificate is as long as the current owner possesses it, or until it ceases to be a firearm.⁶⁴ The Canadian Firearms Registry maintains records on every license, registration certificate, and authorization, as well as refusals for any of these.⁶⁵ The registry is administered by the federal government's new Canadian Firearms Centre.

The Act provides for a wide range of search and seizure powers to ensure that firearms are properly stored. An inspector can at any "reasonable time . . . inspect any place" where he or she has reasonable grounds to believe a business is being carried on and where there is a gun collection.⁶⁶ The owner or person in charge of a business is under a duty to assist the inspector by providing him or her with all relevant information and "all reasonable assistance to enable him or her to carry out the inspection."⁶⁷ An inspector does not have such a broad range of immediate powers in regard to a dwelling house and can only enter and search if he or she has the permission of the owner or a warrant.⁶⁸

The Firearms Act creates a broad range of new offences that an owner of firearms can be charged with. If an individual does not assist a firearms inspector, he or she can be charged with an indictable offence or a summary conviction offence punishable by up to two years imprisonment.⁶⁹ The same penalty also applies to an individual who fails to comply, without lawful excuse, with the conditions of his or her licence, registration certificate, or authorization.⁷⁰ Further, anyone who does not register all their firearms, refuses to produce a firearm to an inspector, or fails to return a revoked license, registration certificate, or authorization can be convicted of a summary offence.⁷¹

Part of the complexity of the Firearms Act is its "grandfathering" clauses. This creation of exceptions is not new to firearms legislation; however, the new Act is particularly complicated. A firearm can be restricted for one owner yet be prohibited for another based on such factors as the date of acquisition, when it was manufactured, the date it was registered, and, in some instances, when it was converted to become a less lethal weapon.

The Firearms Act does not include any mandatory minimum prison sentences; however, concurrent with its introduction, the Criminal Code was amended to provide for such sentences for offences carried out with a firearm. This expanded the number of mandatory minimum sentences that judges are required to prescribe from nine to twenty-nine within the Code. The new mandatory minimum prison sentences mainly provide for one year for a first offence and three or more for a second offence, yet it is noteworthy that these sentences are, for the most part, to be served consecutively with the sentence for the main offence. In addition, mandatory minimum sentences of four years were added to ten violent offences undertaken with a firearm, including criminal negligence causing death, manslaughter, murder, sexual assault, and the causing of bodily harm with intent, amongst others.⁷²

63 See Firearms Act, note 1 at section 64(1), (3) and (4). The licensing of museums and their staff was a new concept introduced in the 1991 legislation.

64 See above at section 66(a) and (b).

65 See above at section 83(1).

66 See above at section 102(1).

67 See above at sections 102, 103(a)-(b), and 104(1)(a)-(b).

68 See above at section 104(1) and (2).

69 See above at section 103.

70 See above at section 110.

71 See above at sections 112, 113 and 114.

72 An Act to Amend the Criminal Code, Statutes of Canada 1995, chapter 39 at new Code sections 85, 86, 92, 95, 96, 99, 100, 102, 103, 220, 236, 239, 244, 272, 273, 279, 279.1, 344 and 346.

2. Bill C-68: Its Objectives as Outlined by the Government

In introducing the legislation and later responding to questions, Minister Rock repeatedly emphasized that the legislation was essential to protect what he described as “our Canadian approach”:

From time to time issues and questions arise which permit the legislature of a country to define what kind of future it wants for the country. It seems to me that on the subject of the regulation of firearms we have just such an issue. We have an opportunity for Parliament to make a statement about the kind of Canada that we want for ourselves and for our children, about the efforts we are prepared to make to ensure the peaceful and civilized nation that we have and enjoy . . .⁷³

The centrepiece of Bill C-68, and the element which caused most of the controversy, was the introduction of a central registry system for all firearms. Universal registration was described as the means to choke off the source of firearms used in crimes by making firearms owners more responsible in their firearms storage. It was also designed to prevent people who should not have access to a firearm from obtaining one.

3. The Larger Canadian Debate On the Firearms Act

(a) Support for the 1995 Firearms Act

Supporters of the 1995 Act were drawn from a wide range of backgrounds including those from the medical profession, police organizations, city mayors, victims-rights groups, and other groups specifically organized to promote tighter firearms controls. Support coalesced primarily around two key elements: (i) the Act would reduce access to firearms, which would lower the rates of accidents, suicides, and murders carried out with firearms and (ii) the universal registration system would make gun owners more accountable, provide necessary information to police as to the ownership of firearms at a particular location, and control the circulation of firearms in Canada by recording all sales and imports.

(i) Reduction of Firearms

The Conférence des Régies Régionales de la Santé et des Services Sociaux, the Canadian Public Health Association, and the Canada National Safety Council, as well as other medical associations from across Canada, were front and centre in their support for the 1995 Act. The organizations argued, both before the Standing Committee reviewing Bill C-68 and in the media, that the presence of a firearm in a home greatly increased the risks of suicide, murder, and accidents and that the “universal link” in this chain of violence was access to firearms.⁷⁴ These associations maintained that educational programs were not sufficient and that a universal registration system would be more effective.

Mayor Barbara Hall, speaking on behalf of all city mayors in the Federation of Canadian Municipalities, applauded the firearms legislation and described it as essential to “ensure a more sustainable, safer urban environment.”⁷⁵ Hall, however, stated that the restriction of access to firearms was only a first step and that a more comprehensive anti-violence strategy should be developed to include programs that address the roots of crime and

⁷³ See note 59 at 9711.

⁷⁴ It was the Standing Committee on Justice and Legal Affairs that reviewed Bill C-68. This review and hearings lasted from April 24, 1995 to June 12, 1995. CD-ROM, House of Commons, 1st Sess., 35th Parl., *Committee Minutes of Proceedings and Evidence*, (27 April 1995) at 945 (Mr. Florian Saint-Onge).

⁷⁵ See above (4 May 1995) at 945.

76 This is an indication that, while supporters of the Act had been brought together in a shared commitment to reducing violence in Canada, there was not complete harmony whether the Act in itself would achieve that goal. See for instance, the split of CAVEAT from other victims-rights groups when CAVEAT issued report cards on each province's crime fighting from a perspective that incorporated support or opposition to the gun registration and overall social programs. "Caveat on CAVEAT: A Victims-of-Crime Group Transforms Into a Social Spending Hobby" (December 4, 1995) 10(46) *Western Report* 31.

77 See note 74 (4 May 1995) at 945.

78 See above at 1535.

Wendy Cukier, President of the Coalition and a professor at Ryerson University, described the Coalition in the following manner to the Standing Committee on May 11, 1995: We were founded in 1990 and we're a non-profit organization aimed at reducing firearms death and injury. Since 1990 the Coalition for Gun Control has advocated possession permits and registration of all firearms, controls on the sale of ammunition, further restrictions on handguns, a ban on military weapons and large-capacity magazines, stiffer penalties for firearms misuse and measures to counter illegal importation. Based on that position, over 300 organizations from across country have endorsed the position of the Coalition for Gun Control. Beyond speaking on behalf of a large number of victims-rights and anti-violence groups, the Coalition's visibility as an advocate of tighter controls, and particularly that of Wendy Cukier herself, partly came about because those

violence.⁷⁶ Nonetheless, in her view, this Act was a "significant part of the solution" in regard to crimes and violence.⁷⁷

The most visible supporter of the 1995 Act was the Coalition for Gun Control.⁷⁸ This organization's sole reason for coming into existence was to obtain tighter legislative controls on the use and possession of firearms. The Coalition argued that controls on access to firearms would reduce gun-related deaths and injuries. They also asserted that the investment required by the legislation was far less than the costs of not passing it.⁷⁹

(ii) Universal Registration System

Medical groups applauded the Act's universal registration system. They saw it as a means of making gun owners more responsible, which would ultimately make Canadian society safer. Police organizations added that the tighter control over firearms that would be exerted through the registration system was "critical to the safety of our communities" and that law enforcement agencies required these changes in order to work to prevent future violence.⁸⁰

Deputy Chief David Cassels of the Edmonton Police Department stated that the universal registration system would help the police protect communities more effectively.⁸¹ This protection would include better enforcement of court orders prohibiting the ownership of firearms, alert police to the existence of firearms when responding to an emergency in a domestic situation, promote more careful storage of firearms and a better reporting of firearm thefts, as well as aid the police solve crimes involving firearms.

(b) Opposition to the 1995 Firearms Act

In opposition to this legislation and the concurrent changes to the Criminal Code were members of Parliament — primarily those of the Reform Party, but also some back bench Liberals and members of the Bloc Quebecois. Outside of the House of Commons, the groups that opposed the legislation included the National Firearms Association; provincially based firearms groups; wildlife conservation interests; Métis and Aboriginal organizations; and the governments of the Northwest Territories, the Yukon, Manitoba, Alberta, and Saskatchewan. This diverse opposition resulted in a range of arguments against the Act: (i) that universal registration is an ineffective and expensive program, (ii) that non-compliance with the registration system will punish law-abiding citizens without affecting criminals' use of firearms, (iii) that the legislation erodes guaranteed rights and is a step towards the confiscation of all firearms, and (iv) that the new mandatory minimum sentences attached to offences with firearms would eliminate judges' discretion and result in overly harsh punishments.⁸²

(i) The Universal Registration System

Opposition parties, particularly Reform members of Parliament, challenged the basis of the government's assertion that universal registration would lead to a reduction in violence. They pressed the government for further evidence to demonstrate how the registration of legally owned firearms of law-abiding citizens would actually reduce violence:

The hon. member [Mr. Lincoln] refuses to deal with real numbers. He says that he

thinks registration will be a deterrent. Those were his words. We do not pass legislation of this magnitude simply because we think something.⁸³

I fail to see, and I have tried very hard to understand, how a registered gun is any less lethal than an unregistered gun.⁸⁴

Reform MPs were particularly offended by the cost of the new registration system, which, they argued, was being hugely underestimated by the government. Even at the proposed \$85 million they argued it was an enormous amount of money to be spent on one single, and possibly ineffective, anti-violence scheme.

Likewise, groups that made presentations at the Committee hearings expressed their concern that the government was focussing too much of its efforts to counter violence into a costly and potentially ineffective measure. It was repeatedly argued that the existing requirement for the registration of hand guns had not prevented their increased use by criminals, yet the government was proceeding to implement an even more expensive and complex registry system.⁸⁵

The Bloc Quebecois (BQ), the then Official Opposition, also expressed concerns as to the effectiveness of the Firearms Act. Contrary to the thrust of arguments made by Reform Party members, the BQ believed that the changes did not go far enough to actually achieve a reduction in violence.⁸⁶ Members of the BQ specifically objected to the long phasing in of the requirements of the registration system, that safety catches were not mandatory on firearms, and to the absence of specific regulations in the legislation as to the storage and transportation of firearms.⁸⁷

(ii) Punishment of 'Law-Abiding' Canadians

Another concern raised by persons opposed to the legislation was that the changes might result in the punishment of law-abiding Canadians. Opponents argued that the sheer complexity of the Act and concurrent regulations could result in law-abiding Canadians being harshly punished for mistakes made in registration or by inadvertently neglecting to register a firearm, while leaving criminals undisturbed in their continued use of firearms.⁸⁸

(iii) Loss of Rights; Move Towards Confiscation

Another focus of opposition to the Firearms Act was the belief that it undermined constitutionally guaranteed rights. Concern was expressed over the way in which the new Act appeared to reverse the burden of proof, increase the search and seizure powers of the state, and potentially strip a gun owner of the right to silence.

There was also opposition to the Act on the grounds that it was effectively a form of expropriation without compensation. The Act made a number of firearms illegal, transforming previously valuable property into something that could not be legally sold or passed on as part of an inheritance, making it essentially worthless.⁸⁹

Another source of opposition was the fear that the legislative changes were a step towards the full confiscation of all legal firearms. This fear was largely a product of a public statement made by Rock, to the effect that only the police and military should own firearms.

opposing the legislation focused their attacks on the organization and Cukier. See for instance, Mark Milke, "Still the Murder Weapon of Choice: Funny How Little Effect 60 Years of Pistol Registration Have Had" (July 14, 1997) 24(31) *Alberta Report* 32. Cukier, however, also directed strong words towards her critics. See for instance, her presentation to the Committee at 1550-1600.

79 See above at 1540.

80 See above at (3 May 1995) at 1535.

Presentation by Chief Brian Ford, Ottawa-Carleton Regional Police Service and Canadian Association of Chiefs of Police.

81 See above (11 May 1995) at 1545.

82 Another argument against Bill C-68, as raised by the provincial and territorial governments opposed to the legislation, is that its pith and substance falls outside the federal government's legitimate authority under section 91(27) of the *Constitution* by intruding upon the provinces' property and civil rights under section 92(13). See, Allan C. Hutchinson and David Schneiderman, "Smoking Guns: The Federal Government Confronts the Tobacco and Gun Lobbies," (1995) 7(1) *Constitutional Forum* 16 at 19. This particular opposition resulted in the *Firearms Reference* (Alberta Court of Appeal) [1998] Alberta Journal No. 1028 (QuickLaw). In a three-two decision, the Court upheld the legislation as being within the federal government's section 91(27) powers. This decision is now on appeal to the Supreme Court of Canada. See also, Shafer Parker, "The Gun Fight Rages On: Bill C-68 Barely Survives a Court Ruling, but Opponents of Gun Control Vow to Stay the Course" (October 12, 1998) 25(43) *Alberta Report* 12.

83 See note 59 (16 February 1995) at 9720 (Mr. Lee Morrison, Saskatchewan Reform).

84 See above at 9735.

- 85 For instance, see above (8 May 1995) at 955 (John Hardy, Legal Counsel, Saskatchewan Responsible Firearms Owners).
- 86 It is important to note that gun control is extremely popular in Quebec and it would not be inaccurate to suggest that the movement for gun control really began in Quebec. This is not surprising when one reflects that many violent incidents with multiple victims have occurred in Quebec: Denis Lortie at the Legislative Assembly in 1984, Ecole Polytechnique, the Fabrikant killings at Concordia University, and the ongoing problems with gangs.
- 87 See note 59 (16 February 1995) at 9711 (Mrs. Pierrette Venne), (16 February 1995) at 9738-9739 (Mr. Osvaldo Nunez) and (27 February 1995) at 10063 (Mr. Marchand).
- 88 For instance, see above (16 February 1995) at 9744 (Jay Hill).
- 89 See, Joshua Avram, "Rock's Latest Victim, Property Rights: The Minister Admits that Owners of Prohibited Firearms Will Get No Compensation" (April 28, 1997) 24(20) *Alberta Report* 30-31. A discussion of the validity of this argument is difficult due to the number and complexity of grandfathering sections in the Act. Also, some prohibited and restricted firearms can be sold within groups of such licensed gun owners, though they can not be sold publicly. In regards to newly prohibited firearms that were purchased after certain dates, there has been some limited confiscation (voluntary) to date.
- 90 For instance, see note 59 (16 February 1995) at 9750 (Mr. Raymond Bonin, Ontario Liberal MP).
- 91 See above (13 June 1995) at 13691-13692 (Hon. Lucien Bouchard).

Though this early and rather hasty comment was no doubt much regretted by Rock, it had a lasting impact on those opposed to the Act, and the Liberal Government was forced repeatedly to deny that the confiscation of all firearms was a long term goal.⁹⁰ The denials, however, did not allay the fear.

(iv) Mandatory Minimum Sentences

The final concern raised about the legislative changes were those made to the Code — specifically the new mandatory minimum terms of imprisonment for firearm offences. The particular opposition was confined to members of the BQ:

Let us take the example of an 18-year old committing his first offence. . . There is no possibility of the judge looking into the case, making distinctions, taking circumstances into account, or trying to give that young man a chance. When you are 18, you can be rehabilitated after a first offence and become a very good citizen. . . Incarceration becomes the only means of rehabilitating young offenders, of reintegrating them in society. That is serious. . . I am truly astonished because I believe that the forces which impel us to adopt this bill are progressive forces, but not in this case.⁹¹

Mandatory minimum prison sentences are, however, very much in tune with the philosophy of the Reform Party, not to mention with the majority of Canadians for whom long prison terms are popular. The BQ's concerns, therefore, did not receive support nor generate discussion outside of their own speeches in the House of Commons.

IV. Conclusions

As the section detailing the history of firearms control in Canada demonstrates, new and stricter gun control legislation has been put into place whenever social and economic changes occur. This pattern was repeated with the 1991 and 1995 legislative changes. The late 1980s and the 1990s are periods in which, along with the visual images of deaths shown immediately and repeatedly on the nation's television screens, numerous economic and social changes occurred. To many Canadians, this has been a violent era, a perception enlarged and entrenched by the numerous incidents in the United States and elsewhere.

It is too soon to judge whether the Firearms Act and the changes to the Criminal Code will achieve the objectives set out by Minister Rock. One conclusion can be reached: the government has been seen to be doing something about violence in Canada. The Liberal Government has, therefore, succeeded at a further objective. This objective was neither spoken, acknowledged, nor even possibly identified, but it nonetheless was very real: to allay the fears of Canadians by acting on the issue of violence.

The massacres of multiple victims of the late 1980s and 1990s provoked Canadians to demand stricter gun control to curb the violence. The federal government's legislation answered this call. Yet, in doing so, the government's action inadvertently confirmed Canadians' fear that violence is increasing. While violent incidents engendered a very human reaction amongst Canadians, the reality is that these types of killings in Canada are not the norm. The legislation, therefore, acted only to confirm in the minds of Canadians that

incidents involving multiple victims are a common occurrence and that violence overall is on the rise in Canada.⁹²

The irony is that the reverse is the truth. Even though the 1980s and 1990s were decades of rapid social and economic change in Canada, violent incidents have actually been decreasing. In 1998, Statistics Canada reported that the crime rate in the 1990s had been falling steadily, with 1997 having the lowest crime rate since 1980.⁹³ Violent crime declined by 1.1% in 1997, the fifth consecutive year for such a decrease.⁹⁴

The number of homicides is commonly used as an indicator of the level of violence in a given society. In 1997, there were 581 in Canada.⁹⁵ Combined with attempted murder (861 incidents), these crimes accounted for less than one percent of all reported violent crimes. Moreover, the homicide rate has been on the decline since the mid-1970s, and is currently (1997) at its lowest point since 1969.⁹⁶

As for incidents with multiple victims, of the 581 homicides, 533 victims were killed in separate incidents. Therefore, 94% of all homicides involved a single victim.⁹⁷ The thirty-five multiple victim incidents, down from forty in 1996, are described as “consistent with the average for the previous ten years.”⁹⁸ In other words, as awful as each incident is, homicides with multiple victims are not on the increase in Canada. Further, when one considers the image of a stranger taking the lives of numerous victims, it is important to note that over half (55%) of these multiple-victim incidents were situations where the victims and the killer were related. This can be compared to the number of homicides overall, wherein just over one-third of the victims and killers were related (34%).⁹⁹

In regard to the use of firearms in violent crimes, contrary to public perception, their use was not increasing in the 1980s and 1990s. Figures from Statistics Canada indicate that homicides “account for a relatively small portion of all firearm-related deaths.”¹⁰⁰ In 1996, the majority of the 1131 firearms deaths were suicides (78%), while homicides with firearms accounted for 16%.¹⁰¹ In 1974, 47.2% of all homicides were caused by firearms.¹⁰² However, since 1979, the number of homicides with a firearm has consistently remained at one-third of the number of overall homicides.¹⁰³

These statistics about violence in Canada create a very different picture from the one that may be drawn by viewing the 1995 legislative changes in isolation. Contrary to Canadians’ belief, violent crime is decreasing. In fact, it has been decreasing steadily for the last twenty-five years. The use of firearms in the commission of violent crimes has also decreased significantly over the last twenty-five years. Arguably, these downward trends will continue. If creating stricter regulations of firearms may have little impact on the already downward trend of violence in Canadian society, what about the mandatory minimum sentences introduced concurrently in the Criminal Code? This popular measure, which received very little public negative comment from any group other than the Bloc Quebecois, was introduced without any comprehensive research to refute the findings of the 1987 Archambault Report,

92 Added to this is a perception that violent acts are carried out by strangers. This will be discussed below, but it should be noted that two of the four violent, multiple victim, incidents in Canada did not involve strangers: the killings of the professors at Concordia University and the slaying of the Gakal family in Vernon.

93 Statistics Canada, *Juristat* 18 (11) Catalogue No. 85-002-XPE at 3 (hereinafter “Crime in Canada”). In 1997 there were 296,737 violent crimes reported, with violent crime defined as homicide, attempted murder, assault, sexual assault, other sexual offences, abduction, and robbery (at 5).

94 See above at 5. There were 2.5 million reported incidents in 1997 (excluding traffic incidents). Of these violent crimes make up 12%, 58% were property crimes, and 30% were other crimes such as prostitution, mischief, arson, etcetera (at 3).

95 See above.

96 See above. In real numbers, in 1961, the number of homicides in Canada was 233; in 1975, it was 701; in 1996, it was 635; and in 1997, 581. Robberies, sexual assaults, and property crime were all down by varying degrees. Robberies decreased 8%, sexual assaults by 0.9% (this seems a small reduction but it is 26% lower than in 1992), and property crime by 8% (at 6-7).

97 See above at 4.

98 See above.

99 See above.

100 See above at 5.

101 See above. Accidents accounted for 4% while the rest, 2%, are just described as other types.

102 See above at 6. This can be compared to 29% by stabbings, 20% by beatings, 9% by strangulation and suffocation, 4.6% through smoke inhalation or burns, and 1% by poisoning.

103 See above.

which had stated that mandatory minimum prison sentences do nothing to reduce violent crimes.¹⁰⁴ Rather, the Report argued, they place a straight-jacket upon judges' ability to make sentencing decisions, and ultimately create more problems than they resolve.¹⁰⁵ In ignoring the little sound research that existed, the federal government's actions were again, arguably, directed toward fulfilling Canadians' wish for something to be done to stem violence.

Despite this statistical and research evidence, successive federal governments' legislative actions were in response to a public concerned by an apparently increasingly violent society. However, the question remains: should the Canadian Government have responded to the concerns of Canadians about violence in society in this manner?

In order to consider this question fairly, one has to begin by sidestepping the kind of emotion-based argument that says even if only one life is saved, there is sufficient justification for the legislative changes. Getting caught in that trap ignores the fact that the implementation of the registration system in the Firearms Act will cost at least eighty-five million dollars. Even if the cost of the program remains at that figure, this is a very large amount of funding that has been absorbed by one anti-violence program. More significantly, whether universal registration has a positive effect on reducing violence in society, which is questionable, these are real dollars, which are no longer available for other forms of anti-violence programs.¹⁰⁶ Moreover, the Firearms Act and revised provisions in the Criminal Code have made profound changes in Canadian society. Judges' discretion has been fettered by mandatory minimum sentences, the right to privacy, and the freedom from unreasonable searches and seizures. As well, entrenched property rights have been potentially undermined. Again, one comes back to the central question: by acting to allay the fears of Canadians about violence, what have the government's legislative changes actually achieved?

Governments are political creatures. Obviously, it is not "wrong" for a popularly elected government to respond to the electorate's wishes. Granted that reality, however, one can not help but question a government that chose to respond to violence in this manner. It is unlikely that anything could have erased the images of December 6, 1989. Yet, the legislative changes in 1991 and 1995 only momentarily calmed people's fears, if at all. More significantly, by reacting in this manner without regard to the decreasing rate of violence in Canada, the government's actions have arguably actually confirmed and reinforced the fears of Canadians. The belief that violence is increasing in Canada and that broad new measures are absolutely essential to defend Canadian society has been essentially corroborated by the government.

The ironic conclusion is that when the next crisis occurs, be it economic, social, or the inevitable massacre, the Federal Government, trapped by its own past responses, will likely again be forced to introduce even tougher and increasingly expensive firearms control measures. Canadian history indicates that this is a recurring pattern. Whether or not these measures will reduce violence is unknown, but what is clear is that by reacting in this manner to

104 Canada, The Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (Ottawa: Ministry of Supply and Services Canada, 1987) [The Archambault Report].

105 It should be noted that this report recommended that all mandatory minimums be abolished, excepting for the offences of murder and high treason, on the basis that they were neither just nor effective. Prior to the 1995 changes there were nine mandatory minimum prison sentences in the Code.

106 In *The Firearms Act - Annual Report* (December 2, 1999) the costs to date are described as having cost \$124.4 million since 1995, while operating costs per year are estimated at between \$50 and \$60 million. The report states that all these costs are expected to be recovered by user fees charged by the program and indicates that \$6.3 million has been recovered to date. Found at www.cfc-ccaf.gc.ca/general_public/news_releases/default.html, on January 11, 2000.

a false perception that violence is increasing in Canada, this fear is confirmed and ultimately re-enforced.