

Association nationale
de la femme et du droit



National Association
of Women and the Law

**Submission to the Standing Committee
on Justice and Legal Affairs on**

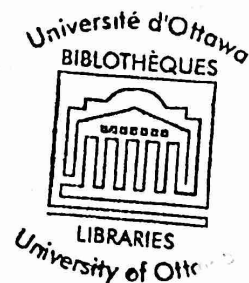
**Bill C-68: An Act Respecting
Firearms and Other Weapons**

May 30, 1995

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Addendum

Since the publication of this brief,
the Native Women's Association of
Canada have determined that they do
not support Bill C-68.



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INTRODUCTION

The National Association of Women and the Law (NAWL) is a national, non-profit, feminist organization active in legal research, law reform and public education. The membership is comprised of lawyers, academics and other people from a variety of fields, all of whom share a commitment to gender equality. NAWL and its local caucuses have appeared before parliamentary committees, task forces and royal commissions to speak to such issues as the sexual assault provisions of the Criminal Code (the Code), the equality provisions under the Canadian Charter of Rights and Freedoms (the Charter), income security for women, and custody and child support. NAWL has a particular interest in the reform of laws pertaining to violence against women, and as a result, in 1990, NAWL presented a brief to a special parliamentary committee on Bill C-80. Given our interest and expertise in issues pertaining to women's legal equality, we are pleased to be making this presentation to this Committee.

NAWL sees gun control as one important component of a multi-faceted strategy to reduce violence against women and children in our society, and commends the Minister of Justice for taking this important initiative towards ending domestic violence.⁷ In our brief, we will identify the policy considerations which make the issue of gun control an important one for women, and we will address the major provisions of Bill C-68.

POLICY CONSIDERATIONS

Violence against women in Canada continues to be a well-documented, unacceptable phenomenon, of which domestic violence is one troubling component. A November 1993 Statistics Canada Survey revealed that one-quarter of all women have experienced violence at the hands of a current or past marital partner (including common-law unions). The same study showed that one-half of all Canadian women have experienced at least one incident of violence since the age of 16. (Statistics Canada, "The Violence against Women Survey", The Daily, November 18, 1993, catalogue no. 11-001E.)

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These and other studies maintain that such violence is derived from systemic inequalities between women and men in our society. All are unanimous in their call for government intervention to address this problem.

Gun control is an important component of any such plan.

The statistics reveal that gun control legislation could curb the incidence of wife abuse in Canada. Homicide victims usually know their assailant and in most cases, that assailant is a spouse. Domestic and other intimate assaults are 12 times more likely to end in death if a gun is involved. (Salzman, Mercy, O'Carroll, Rosenberg and Rhodes, "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults", Journal of American Medical Association, June 10, 1992, vol. 267, No. 22.)

Moreover, firearms are the weapon most often used in wife-killing; almost half of the women killed by their partners are shot. Eighty-five percent of these deaths are committed with a hunting rifle or shot gun and 78 percent of the guns used are legally owned (Dansys Consultants Inc., Domestic Homicides Involving the Use of Firearms, March 1992 WD 1992-20e). The fact that these guns are legally owned and that more than half of the homicides are committed by men with no criminal records, (Dansys Consultants Inc., *ibid.*, pp. 26, 32) refutes the argument of the anti-gun-control lobby that "law-abiding" gun owners are bearing the brunt of the inconvenience of gun control.⁷ These incidents of domestic violence occur with roughly the same frequency in rural settings as in the city.

A study carried out for the Department of Justice on domestic homicides involving guns concluded that females were 56 percent of the victims and 18 percent of the accused. The vast majority of domestic homicides involving firearms are committed by males. Since 1975, a male was identified as the accused in 78 percent of the incidents. Incidents involving husbands killing wives have typically outnumbered incidents of wives killing husbands by a ratio of five to one. (Dansys Consultants Inc., *ibid.* p. ix)

Some firearms enthusiasts have promoted gun ownership as a means of self-defence. The reality is however, that the very weapons purchased by women to protect themselves have been turned against them by their assailants. A. Kellerman and D. Rea, in their study, "Protection and Peril: An Analysis of Firearms Related Deaths in the Home" found that for every case of self-protection homicide, there were 1.3 accidental shootings, 4.6 criminal homicides and 3.7 homicides (New England Journal of Medicine, p. 314, volume dated June 12, 1986). This same study shows that homes with guns are five times more likely to be the site of a suicide and three times more likely to be the site of a homicide than homes without guns. At the very least, the presence of a firearm in the home of a woman who is a victim of wife abuse is a serious psychological threat.

However, NAWL supports the legitimate use of firearms, particularly for aboriginal peoples where hunting/harvesting is a fundamental part of their lives. In fact, NAWL would support special exemptions determined through a negotiation process between government and aboriginal peoples, which includes the full and equal participation of aboriginal women. It is important to bear in mind however, that the Native Women's Association of Canada

(NWAC) which represents on-reserve, and off-reserve, status and non-status aboriginal women, as well as Metis and Inuit women has endorsed the key aspects of this legislation, including the mandatory registration and licensing requirements, and the inspection powers of the police. NAWL commends their views on Bill C-68 to this Committee.

FEATURES OF BILL C-68

Registration

NAWL is of the view that the proposed registration requirements contained in Bill C-68 are a constitutionally valid exercise of authority by Parliament of its criminal law power under Section 91(27) of the Constitution Act, 1867.

NAWL accepts that the registration of firearms outlined in Bill C-68 is integral to the government strategy of crime prevention. A registry will permit police arriving at the scene of a domestic dispute to be aware of the presence of a firearm at the premises and thus be better equipped to respond appropriately. A registry will also allow police to be aware of convicted or suspected wife batterers' and stalkers' possession of firearms and to remove them if appropriate.

Registration will also assist police to locate and remove firearms from those against whom prohibition orders are issued where there has been a determination that such persons present a danger to society. NAWL further recommends that where there is evidence of

domestic violence among parties to which a gun is registered, that such evidence should be sufficient for a judge to issue a prohibition order; the threat of a firearm would not be required evidence before such a prohibition order is issued.

It is estimated that there are approximately 5,000,000 guns in Canada for which governments have no way of establishing ownership. (Angus Reid Group Inc., Firearm Ownership in Canada, March 1991, TR 1991-8a). This makes it virtually impossible to trace lost or stolen firearms and thus makes it difficult to ensure that safety measures are being employed, or to prevent illegal sales.

NAWL sees the licensing scheme for the possession of firearms contained in the Bill as the complement to the registration of firearms. However, we accept the submission of the Canadian Bar Association that principles of natural justice require further clarification of the time period allowed for the decision whether to grant a licence and the conditions that may be attached to approved licences.

Although NAWL supports the requirement of mandatory registration and licensing, NAWL also cautions this Committee that the cost of registration should not be downloaded onto the budgets of police forces; little would be accomplished if, for example, police staff would have to be cut in order for police services to absorb the costs of registration. We therefore recommend that the registration scheme should be a self-financing one, which would not require resources from existing police services.

Finally, in view of the overwhelming stake that the public has in ensuring that this legislation is comprehensive and effective, NAWL also recommends to this Committee that any amendments to the deadline for registration should not be effected by regulation, but should be passed by legislation and that implementation time is not extended beyond five years.

Inspection

There has been some suggestion that the inspection powers afforded to police officers - to enter and inspect any place, other than a dwelling house, in which the officer believes on reasonable grounds that there is a firearm - are too broad and as such, may offend the rights against unreasonable search or seizure under Section 8 of the Charter.

NAWL is of the view that the search and seizure provisions can withstand such a constitutional challenge. We do note however, that the constitutional standard for a reasonable search or seizure is, "reasonable and probable grounds", and out of an abundance of caution, we suggest that the words "and probable grounds" be inserted into sections 99(1), 117.02(1), and 117.04(1).

Mandatory Minimum Sentences

Recent research conducted by the Department of Justice suggests that Section 85 of the Code which provides for a minimum one year sentence for using a firearm to commit an indictable offence, has not achieved its deterrent effect. According to the results of a

Department of Justice survey, in up to two-thirds of the cases where Section 85 was laid, convictions do not result because the charges are either dismissed, stayed or withdrawn by the prosecutor.

Given the ineffectual impact of Section 85, NAWL supports a new mandatory minimum sentence of four years in order to send a strong deterrent message regarding the consequence of using a firearm in the commission of a crime. Because the court has recognized the constitutionality of the preventative aspect of gun control legislation, see A.G. of Canada v. Pattison; A.G. of Canada v. Metcalf and Metcalf (1981) 59 C.C.C. (2d) 138, NAWL is of the view that this provision will not contravene the Charter.

Criminal Penalties for Failure to Register

Bill C-68 has proposed measures which would make gun owners subject to criminal prosecution for violations of the requirement to register a firearm. NAWL supports this Government's contention that criminal penalties for a failure to register are necessary as part of their strategy to ensure that authorities will know whether someone who has a gun has it lawfully and to provide information to police about the presence of a firearm in a home which is the scene of a domestic dispute. We also note that this provision has been supported by the Canadian Association of Chiefs of Police.

The Supreme Court of Canada has also affirmed the advantage of gun control, of which criminal penalties for failure to register are a component. In the case of R. v. Zeolkowski,



(1989) 50 C.C.C. (3d) 566. Sopinka J., speaking for the Court said at pp. 570-1 of the decision:

"The pre-emptive prohibition created by Section 98(4) and (6) is in keeping with this purpose. As the results of a review of Canada's gun control legislation indicate, the prohibition can be useful, particularly in recurring domestic or neighbourhood confrontations."

CONCLUSION

Since 1978, when peace and security measures (including gun control) of the Code were passed, the number of victims of domestic firearms incidents has steadily declined; the number of victims of domestic homicide in 1990, was the lowest number reported in all years since 1975.⁷ (See Dansys Consultants Inc., supra, p. ix)

NAWL believes that Bill C-68, as amended by the changes proposed in this brief will improve the safety of women and children, and will equitably balance the need to control the criminal use and acquisition of firearms with respect for their legitimate use and acquisition by law-abiding Canadians.

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