

Briefing Paper
On Reclassification of Firearms and Related
Issues

Prepared for

The Government of Canada

by

Canada's National Firearms Association

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Executive Summary

The recent notices sent to owners of registered Norinco Type 97 rifles and High Standard Model 10B advising Police Shotguns ordering them to surrender their firearm(s) and registration certificates violate assurances from former Justice Minister Stockwell Day that the Conservative Government would not prohibit any more types of firearms. The recent decision by the RCMP to arbitrarily prohibit these firearms threatens to seriously erode confidence in the Conservative government, especially since there is no evidence that any of these firearms have been involved in a crime. Heretofore, the Conservatives have been considered to be friendly to firearms owners. This action suggests that the RCMP considers that registering any firearm, regardless of classification allows later confiscation of firearms. If the RCMP has made a mistake and wishes to correct the matter, then it needs to admit and correct the error to prevent further financial loss by the importers and owners of these firearms, and further to compensate these people for their losses. If the RCMP is deliberately attempting to circumvent the parliamentary process, including OIC, then the police appear to be flouting the government's wishes and should be told they are doing so by the government. If the RCMP is acting in accordance with the wishes of the government then Canadians deserve to know that to be the case. Thus the government needs to decide which circumstance it is, and then make its priorities clear. The re-classification of these firearms is taking place in the context of several rounds of legislation which have been harmful to responsible firearms owners without any clear general benefit to society.

A. What is Re-classification and why is it a concern?

Re-classification occurs when a firearm's legal status is changed, normally to put additional limits on its ownership and use and very rarely to remove limits and prohibition on a particular firearm. There are four basic firearms statuses, which may involve additional statutory divisions.¹

1. Non-firearm. This category includes working flintlock rifles, muskets, shotguns, and miniature cannon as well as antique firearms manufactured prior to 1898 for which ammunition is not commonly available. No license is required for ownership, nor for the purchase of powder to shoot muzzle-loading or in-line black powder firearms.
2. Non-restricted firearm. This category includes most commonly available rifles and shotguns, as well as percussion muzzle-loading rifles, muskets, and shotguns. Typical modern actions for these firearms may include bolt, lever, hinge or break action, pump, or semi-automatic.
3. Restricted firearm. This category includes handguns which are not otherwise prohibited due to barrel length or calibre. It also includes some rifles or shotguns which have been included in this category by legislation or order in council. Restricted firearms may only be taken to shooting clubs, carried for protection, or otherwise transported by virtue of

¹ See the Criminal Code of Canada, Firearms Act, Sections 12 (1) – 12(8) inclusive.

federally issued permits called Authorization to Transport (ATT), or Authorization to Carry (ATC).

4. Prohibited firearm. The prohibited class includes a wide range of firearm prescribed by order in council to be prohibited. Some firearms have been prohibited and required to be surrendered and others prohibited with grandfathering which allows current owners to keep them. Grandfathered firearms have included full and converted automatic firearms; some firearms with military history or appearance, regardless of calibre or action type (even some bolt action rifles are listed); some firearms of large calibre, short-barrelled handguns, and handguns of either .25 or .32 calibre. The handgun categories include approximately half of the revolvers and pistols owned in Canada. There are specific provisions listed in section 12 of the firearms act that limit the circumstances of who may possess specific classes of prohibited firearms. Only prohibited handguns may be taken to the range, whereas formerly all firearms could be taken to shooting clubs for demonstration and practice. In recent years increased restrictions have meant that most of these firearms are not able to be used legally at the range and must stay at home locked up.

In effect, the prohibited class takes away the ability of the owner to use the firearm, sell it, or otherwise legally transfer their property to anyone but someone in that class, which is a decreasing number of people. No new people are entitled to join the prohibited class except for those under Firearms Act section 12(7) which applies only to the next-of-kin of persons who owned one or more handguns manufactured prior to 1946. Transfer and ownership of some classes, such as section 12(6) handguns has proven problematic, and many owners have had these firearm confiscated due to legislative loopholes or improper paperwork. The obvious intent of the prohibited category is to eliminate lawful ownership of these firearms.

When the government changes the classification of a firearm from a less-regulated status to a more regulated status, it causes difficulties for the owner. First, the value of the firearm decreases as it cannot be sold to anyone but those in the grandfathering category or a museum. Second, their ability to enjoy their property is severely curtailed as the firearm may no longer be taken to the range to be fired, used for hunting, self-defence, or other perfectly lawful, fair and reasonable purposes, depending on whether it is a handgun or some other type. Third, it causes concern with the firearm owner that their other firearms may be subject to similar increased controls and thus such action builds resentment both for the law generally and for the political party in power which took such action.

B. Why converting firearms to full automatic is a misleading test to prohibit a firearm.

Often police or other groups who favour increased controls upon firearms will argue that a factor to consider is whether or not a particular firearm is “easily converted” to “full-auto,” a capability which means that cartridges or shot shells may be fired continuously with a constant pressure of the trigger. This is a misleading test for at least three reasons. First, almost all

firearms capable of holding more than one round of ammunition could be converted to this status by someone with adequate training, knowledge and tools, or simply an inventive mind. Examples of this fact include the Lee Enfield bolt action rifles converted to fully automatic in late World War I (Howell Automatic Rifle), and those made in World War II to address a shortage of Bren guns (Charlton Automatic Rifle).² Another well-known example is John Moses Browning's afternoon conversion of an 1873 lever action rifle into full auto; in addition Remington Arms converted a model 1100 shotgun to full automatic.³ If "easily converted to full auto" is somehow a significant test, then an argument could be made that most firearms in Canada are in that circumstance – does the government really want to ban firearms because of what they could be? Second, if a full-auto capability is a legal concern, then the status of a firearm as it is should be the issue, not what it may be if tampered with. The act of tampering should thus be the issue, not the potential for tampering. In comparison, one does not receive a speeding ticket for owning a vehicle capable of exceeding the speed limit, but merely for operating that vehicle in excess of posted speeds – an activity which is statistically far more dangerous than any activity involving firearms. Third, using fully automatic firearms correctly and accurately requires training and practice. It is a skill not likely to be indulged in by criminal elements which may choose to use firearms of whatever type for acts of violence. Notwithstanding these points, there is no evidence that widespread conversion of firearms to full-automatic is a problem in Canada.

C. How are the Type 97 and High Standard Model 10B Police Shotguns Affected?

The concern about classification of these firearms is directly related to the resulting change in status as discussed above. These are registered firearms whose transfer was approved by RCMP/Firearms Center to licensed individuals. Type 97A Carbines were approved for import into Canada by Lever Arms and assigned a Firearms Registration Table (FRT) number by RCMP/Firearms Center. The first shipment was classified as "restricted" due to barrel length. Examples were transferred to restricted firearms license holders. A second shipment of non-restricted examples (18 1/2" Bbl) was arranged and RCMP/Firearms Center issued a FRT number for those firearms.

A subsequent shipment for Lever Arms of Vancouver, and another importer, was seized by CBSA who asked RCMP to inspect it. Examples were removed from the shipment and sent to RCMP firearms forensics for testing. RCMP claims that they were able to modify the Type 97A Carbines to fire full auto. The FRT was amended shortly after this showing all Type 97A

² See Ian D. Skennerton, *The British Service Lee*, (London: Arms and Armour Press, 1982).

³ The Remington model 1100 shotgun was converted to the full-auto Model 7188 for the US Department of Defense by Remington. See Thomas F. Swearingen, *The World's Fighting Shotguns*, (Alexandria, VA: TBN Enterprises, 1978), 329- 336. John M. Browning's first fully automatic design was a Winchester model 1873 lever action that used muzzle gases to cock the action by installing a flapper on the muzzle and running a wire from that flapper to the lever.

variants as "prohibited". The RCMP now asserts that the Type 97A firearms are "easy to convert to full auto". RCMP has refused to demonstrate how, and access to information requests have been censored to remove the methods used. RCMP has informed Lever Arms that if a firearms "expert" is provided by the company, RCMP will instruct that person on how this conversion was achieved, but he will not be allowed to share that information with Lever Arms.

RCMP/CFC have advised licensed owners of registered Type 97A carbines that their registrations will be revoked, and that they should either surrender their property to police or transfer them back to Lever Arms/Vancouver and ask for compensation from the store owner. Canada's National Firearms Association is advising owners of Type 97A carbines to start reference hearings in their provincial courts to have a judge to rule on the legality of the RCMP/CFC demand.

This is a private property issue, not only for those licensed individuals who hold registrations for these firearms, but also for the importers who had shipments approved and cleared for importation into Canada, and then had those shipments arbitrarily seized for political reasons. The potential financial loss incurred by both individuals and businesses cannot go unchallenged. The Type 97A debacle proves that licensing and registration equal confiscation. Each individual "restricted" Type 97 Carbine retailed for \$1400.00 Canadian. Each of the seized shipments is worth in excess of a couple hundred thousand dollars. The businesses involved and firearms owners affected are looking to the Conservative government for redress of this significant grievance.

The High Standard Model 10B Police shotgun has been around for over thirty years and the reasons for its re-classification while just as obscure are no less significant. In keeping with the publication of firearms prohibited by order in council, with its images taken from a contemporary *Guns and Ammo Firearms Annual* from the 1990s, the reason for choosing these firearms for prohibition status is unclear. The main consideration is that the RCMP does not appear to have followed the rules: there has been neither Order-in Council nor parliamentary vote on prohibiting these firearms.

Re-classification of these firearms is a grievance which has implications far beyond the small numbers of people directly affected, as many others in the firearms community see the re-classification of these firearms by the bureaucracy as something that could easily affect any firearm or firearm owner. It is another addition to the many problems with the Firearms Act.

D. Why Re-classification is a Problem for the Conservative Government

The Canadian firearms owning public would like to count the Conservative Party as a political ally in supporting property rights and the ability to enjoy their firearms in a fair, equitable, and reasonable fashion in accordance with the principles of natural justice. Successive

Conservative and Liberal governments have enacted legislation such as the Mulroney-Campbell Bill C-17 and the Chretien-Rock Bill C-68. These bills have brought much distress to firearm owners by removing the ability of citizens to use their property in a safe and responsible manner. In many cases firearms were confiscated from people, not due to any offence, but merely because the government changed its mind that a particular firearm was no longer deemed suitable for ownership by Canadians. There is no evidence that these firearms are any more or less likely to be used by criminals than any other type of firearm.⁴ Canada's NFA is concerned that the RCMP and the CFOs are exceeding the boundaries of administrative control, by arbitrarily expanding the scope of their powers. Re-classification is an extension of other administrative abuse that concern responsible firearms owners. Some problems that stand as examples of the growth of the problem include:

1. Ownership and possession of standard capacity ammunition magazines holding in excess of five cartridges for semi-automatic centre-fire long arms or ten cartridges for semi-automatic pistols has become an offence equivalent to owning an unregistered machine gun.
2. Persons owning prohibited long arms of whatever status are unable to enjoy them in practice or competition at the range with the removal of the Special Authority to Possess (SATP) license.
3. Some government officials argue that, in order to honour international agreements, that all imported firearms require additional and technically difficult markings. Some even want these markings on firearms already in this country. Carrying out these tasks would create an expensive and unnecessary logistical burden for firearms businesses and individual owners.
4. Chief Firearms Officers are arbitrarily requiring potential restricted firearms purchasers have both a restricted firearms license for purchase of the registered restricted firearm, and a valid long term authorization on file with that CFO before the restricted transfer will be approved. In addition, a valid gun club membership must be provided before the ATT will be processed. This is disturbing in that the CFOs appear to be arbitrarily inventing additional policy. These additional requirements are not specified in law and merely complicate the bureaucratic process involved in responsible firearms ownership. Not only does this burden law abiding Canadian citizens, but it arbitrarily increases the costs to taxpayers, for no obvious benefit to public safety. Neither a membership nor an ATT are required in the Firearms Act for purchase of restricted firearms; the only legal requirement is a restricted Possession and Acquisition Licence (PAL).

⁴ The Calico Carbine and the Franchi SPAS shotgun are examples of firearms confiscated from owners.

5. Firearms owners have reported that CFOs are demanding that expiring restricted PAL license holders also apply for the long term ATT, or else CFO will refuse to renew the firearms license and will confiscate the owners' firearms. A long term ATT is not required either for ownership or possession of a restricted firearm in the Firearms Act. The law requires only the restricted firearms license and a valid registration for the firearm.
6. Canadian Firearms Center is currently refusing to re register short barrelled and .25/32 cal 12(6) handguns that have been re-barrelled and re-calibered to fit the restricted category. Owners of prohibited handguns, understandably, would prefer that their guns were "restricted" so that they could be more widely transferred and used. For example, a .32 calibre handgun with a 4" barrel can be re-barrelled with a 4 1/4" barrel in .380 calibre, taking it from prohibited to restricted. It appears that the bureaucracy of the RCMP and the Canadian Firearms Centre want these guns locked into the prohibited category so that they can be more easily targeted and confiscated.

These are a few of the firearms issue problems that are occurring on the watch of the Conservative government, matters which we believe may be dealt with without a parliamentary vote. The Minister need only give instructions.

The present conservative minority government may be better than the previous Liberal government, but it has so far done little in terms of supporting firearm owners. It has demonstrated a reluctance to make things worse rather than to right previous wrongs. The bill C-301 by MP Garry Breitkreuz would have begun to fix some of the problems; however, this bill was withdrawn and MP Candice Hoepfner's private member's bill C-391 to simply end the registration of non-restricted firearms has been the replacement. It must be emphasized that ending registration of non-restricted firearms does not resolve the litany of problems with the firearms act that have been identified in this short paper.

The Conservative Party should be a natural fit for most responsible firearms owning Canadians. Issues of smaller government, fewer taxes, enforcement of law rather than increasing laws, enhanced freedom and individual responsibility tend to resonate well with the firearm owning demographic which tends to have higher than average incomes, high levels of education, a strong sense of patriotism, and strong respect for law and order.⁵ Despite the efforts of firearms organizations to encourage their members to vote for Conservative Party candidates, we have received many complaints from members that the minority government has not been effective in supporting firearms owners. The Re-classification issue is clearly one in which this government has the power to either support firearms owners, or to support a regime of additional

⁵ See Philip C. Stenning and Sharon Moyer, *Firearms Ownership and Use in Canada; A Report of Survey Findings, 1976*, (Toronto: Centre of Criminology, University of Toronto Press, 1981). As well, see the extensive work of Gary Mauser on these issues with several of his papers provided at <http://www.garymauser.net/papers.html>.

control. The NFA has been proud to support the Conservative Party in the past because of our shared commitment to smaller government, lower taxes, enforcement of existing laws, enhanced freedom and individual responsibility. We see this current situation a natural opportunity for the Minister to act in a manner consistent with this tradition. We are confident that the Minister will rescind the arbitrary actions of the RCMP.