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LIVING NEXT TO THE UNITED STATES: RECENT DEVELOPMENTS IN CANADIAN GUN CONTROL POLICY, POLITICS, AND LAW

Christopher D. Ram* **

I. INTRODUCTION

Canada and the United States differ greatly in attitudes and approaches to the role firearms and other weapons play, or should play, in our respective societies. The juxtaposition of two very different policies, their controversial nature, and the close social and geographical proximity of Canada and the United States inevitably lead to comparisons between the two. Correlations between policies, legislation and statistics in one or both countries fuel arguments from interest groups who compare American oranges with Canadian apples and often mistake correlation for causation.

Arguments comparing Canada and the United States or various regions within them almost always over-simplify the factors involved, usually in the interest of scoring debating points for one side or the other. The available evidence suggests that there is a general relationship between our respective policies and laws regarding firearms, the actual rates of ownership or availability of firearms in society, rates of crime, and of homicidal, suicidal and accidental shooting incidents.¹ It seems relatively

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** At the time this paper was written (January 1995), amendments to Canada's gun control legislation, Part III of the *Criminal Code*, were being prepared. Information concerning future amendments, proposed for 1995, is based on THE GOVERNMENT'S ACTION PLAN ON FIREARMS CONTROL and other documents released by the Minister of Justice on November 30, 1994. At that time, the Minister indicated that the proposed amendments, which were being drafted, would be introduced in the House of Commons sometime in February of 1995. The legislation was introduced by the Minister of Justice on February 14, 1995 and is presently before the Canadian House of Commons as Bill C-68.

1. See Martin L. Friedland, *Gun Control in Canada: Politics and Impact*, in PERSPECTIVES IN CRIMINAL LAW 226, 226-29 (Anthony N. Doob & Edward L. Greenspan

clear that Canada enjoys lower rates in all of these areas as well as stricter firearm controls, more conservative attitudes towards firearm acquisition and ownership.² Similar observations have been made in comparisons with other countries, notably Great Britain.³

It seems equally clear that these phenomena are connected, and that some very general policy conclusions can be safely drawn from comparing Canada and the United States. More specific conclusions are much more problematical, however. The complex relationship and large number of related factors make the drawing of specific conclusions risky, if not outright misleading. They also ignore the fact that what goes on in one country affects what goes on in the other. A clear reaction to the impact (real or perceived) of firearms on U.S. society can be seen in the positions taken by successive Canadian governments, and to some degree in Canadian public opinion as well. The reciprocal impact is probably less pronounced since the U.S. is much bigger than Canada, but it should not be overlooked.

Canada's legislation and policies reflect the attitudes of Canadians and their elected officials over time, but it would be an oversimplification to suggest that the legislation was wholly a product of public opinion. The relationship is more in the nature of two separate phenomena, each producing a reciprocal effect on the other. The development of each side of this duet is in turn influenced by external factors such as general political pressures, the media, public opinion or specific reactions to the occurrence of shooting incidents or other newsworthy events involving crime or firearms. One such factor, clearly seen in Canada, is the political and social controversy over firearms in the United States.

This Article will examine the constitutional basis, historical development, and administration of Canada's gun control legislation as an expression of Canadian beliefs and culture in comparison and contrast to

eds., 1985); Martin Killias, *International Correlations Between Gun Ownership and Rates of Homicides and Suicide*, 148 CAN. MED. ASS'N J. 1721, 1721-25 (1993); John H. Sloan et al., *Handgun Regulations, Crime, Assault and Homicides: A Tale of Two Cities*, 319 NEW ENG. J. MED. 1256 (1988); Catherine F. Sproule & Deborah J. Kennett, *Killing with Guns in the U.S.A. and Canada 1977-1983: Further Evidence for the Effectiveness of Gun Control*, 31 CAN. J. CRIMINOLOGY 245 (1989).

2. Canada does not presently register firearms, and the exact number or ownership rate is not known. In its 1994 policy announcement, the government indicates that there are 1.2 million (registered) restricted firearms, and between 6 and 7 million other firearms owned by about 3 million Canadians. Firearms interest groups have suggested far greater numbers exist. See COMMUNICATIONS AND CONSULTATIONS BRANCH, CAN. DEP'T JUSTICE, THE GOVERNMENT'S ACTION PLAN ON FIREARMS CONTROL 14 (1994) [hereinafter ACTION PLAN].

3. See, e.g., *Firing Up*, ECONOMIST, Mar. 26, 1994, at 69.

those prevalent in the United States. In some cases, those beliefs and cultural factors will be seen to have been influenced by developments in American law and society and the way in which those elements are perceived by Canadians and their governments. Particular emphasis will be placed on relatively recent changes to the legislation, enacted during 1976 and 1977 and late 1991, and to further changes being proposed by the present Government for 1995.

II. HISTORY OF CANADIAN GUN CONTROL LEGISLATION

Understanding the different approaches of Canada and the United States to gun control requires an understanding of the historical differences between the two countries. One Canadian author stated that

Both countries came into existence as a result of the American Revolution. But whereas the United States was founded as a result of the defiance of authority, Canada was the result of obedience to the Crown.⁴

American attitudes to firearm ownership, particularly for the purposes of civil defence and self-protection, have been shaped by history, both directly as a result of the impact of the Second Amendment's "right to bear arms," and indirectly by the role played by firearms in American society. It has been suggested that the right to bear arms reflects the views of "an intense minority with a cultural heritage derived from historical conditions now passed," which are not shared by a majority of the American people.⁵ A significant part of the National Rifle Association's [NRA] support probably has less to do with cultural or historical beliefs than the very real fear of crime and the resulting demand for access to firearms.⁶

There seems little doubt, however, that the influence exerted by the NRA and similar groups in the United States is far greater than any which can be attributed to Canadian organizations. As noted below, there is no constitutional or legislative guarantee or protection of the right to obtain, possess, or own firearms in Canada, and access to firearms has been

4. Friedland, *supra* note 1, at 242-43.

5. Steven T. Seitz, *Guns, Politics and Public Policy*, in *STRUCTURE, LAW AND POWER* 83, 103 (Paul J. Brantingham & Jack M. Kress eds., 1979).

6. *Home on the Range: Guns and Freedom*, *ECONOMIST*, Mar. 26, 1994, at 23-25; *Land of the Free*, *ECONOMIST*, Mar. 26, 1994, at 15-16.

limited by legislation since the previous century. Where the American approach is characterized by the Second Amendment, the overall approach of Canadian governments has been to restrict access to firearms in any circumstances for which no demonstrated social need for access could be shown. Such restrictions have at times proven controversial, but have by and large enjoyed the support of the Canadian public, and have generally been upheld by the courts when challenged.

Restrictions take several forms. The most fundamental form, the punishment and deterrence of offenses committed using firearms, is common to the United States and most other countries. Related to this are measures intended to incapacitate those who are believed likely to misuse firearms, usually based either on a history of such offenses, or on characteristics such as mental illness, young age, or substance abuse.⁷ Incapacitation commonly involves the incarceration of convicted offenders for long periods to prevent re-offending, but can also include more specific measures such as laws denying convicted felons licenses to obtain or possess firearms. These too, are common to the United States and Canada, although the Canadian legislation goes further, allowing (and in serious cases, compelling) courts to make specific orders barring the possession of firearms.⁸

Canadian and American legislation have historically differed with respect to more proactive measures, including various requirements for licensing, screening prior to acquisition or possession, controls on use, and restrictions or complete prohibitions on particular types of firearm. These policies, all well-established in Canadian law, are regarded as highly controversial in the United States. As will be seen, the differences may be found, not only in the drafting of legislation and regulations, but with respect to their administration as well. Many Canadians share the view that American gun control laws are drafted more for their political symbolism than any intention to actually reduce access to firearms, and that their effectiveness is further reduced by conflicting state jurisdictions and a general lack of will on the part of officials confronted with what must often seem to be an impossible task.⁹

7. Criminal Code, R.S.C., ch. 40, §§ 93-94 (1991) (Can.) (offenses of transfer to minors, persons impaired or of unsound mind), and § 100 (proactive and reactive court prohibition orders).

8. *Id.* § 100.

9. See, e.g., *Special Committee on the Subject-Matter of Bill C-80 (Firearms), Minutes of Proceedings and Evidence of the Special Committee on the Subject-Matter of Bill C-80 (Firearms)* at 3: 93-94 (13 Dec. 1990) [hereinafter *Special Committee on Bill C-80*]. A commonly cited example is the fact that U.S. legislation barring the transfer of firearms

A. Legislation Prior to 1976

Controls on the carriage and transfer of firearms and other weapons existed in Canadian law prior to the first codification of the criminal law in 1892, at which time they were added to the Criminal Code.¹⁰ Permits to carry firearms under certain circumstances became a requirement for handguns in 1913,¹¹ and for all firearms in 1920, although this was repealed in 1921.¹² The 1919 amendments also distinguished between aliens and British subjects with respect to access to firearms, possibly as a result of concerns about left-wing subversion in the wake of the 1917 Bolshevik revolution and/or veterans returning from World War I.¹³ Even at this stage, media reports about the perceived threat of visiting "foreigners, especially the Americans, who habitually carried weapons" appear to have had an influence on Canadian policies.¹⁴

Another issue involving the United States which emerged at an early stage was the question of how to deal with visiting American hunters who, not surprisingly, wished to bring their firearms into Canada when coming here to hunt or to pass through Canada between the southern United States and Alaska. This problem, which sets the difficulty of screening and licensing visitors with firearms against the economic value of tourism,

to felons or underage recipients applies only to dealers, allowing "straw-man" purchases whereby firearms may be lawfully bought from a dealer and then transferred to a third party who could not lawfully have purchased it directly. Canadian transfer restrictions apply to private transactions (including loans, gifts, inheritance etc.), as well as commercial transactions. See Criminal Code, R.S.C., ch. 40, § 97 (1991) (Can.).

10. *Description of the Development of the Substantive Portion of the Criminal Code 1892-1955* (Working Document) by Yvon Dandurand (Chief Criminologist, Evaluation and Statistics, Department of Justice, Canada, 1982) at 187-258. For further information about the history of Canada's gun control legislation, see Friedland, *supra* note 1; *Special Committee on Bill C-80*, *supra* note 9, at 1:16-18 (5 Dec. 1990) (evidence of Richard G. Mosely).

11. Criminal Code, S.C., ch. 13, § 4 (1913) (Can.), *amended by* S.C. 1919, c. 25, *cited in* Dandurand, *supra* note 10, at 199-201.

12. Criminal Code, S.C., ch. 43, § 2 (1920) (Can.), *cited in* Dandurand, *supra* note 10, at 201 and S.C., ch. 25, § 2(1) (1921) (Can.) *repealing* ¶ 118(1)(aa) and *replacing it with* ¶ 118(1)(d1). See also Martin L. Friedland, *Gun Control: The Options*, 18 CRIM. L. Q. 29, 43 (1975).

13. See Dandurand, *supra* note 10, at 210-11. In 1919, labour unrest in Canada culminated in the Winnipeg General Strike and the shooting of several protestors by police. *Id.*

14. See *Senate Debates* (1921) at 392, *cited in* Dandurand, *supra* note 10, at 221-22.

resulted in amendments to a screening requirement enacted in 1932-33,¹⁵ and continues to be a difficult issue for the Canadian government.¹⁶

B. 1976-77 Amendments (S.C. 1976-77 c.53)

In 1976, the Criminal Code was amended to create a system, still in effect, under which the acquisition (but not ongoing possession) of all firearms was made subject to licensing.¹⁷ The effect, when combined with previous legislation, was that a permit, known as the "Firearms Acquisition Certificate" [FAC] was needed to acquire any firearm. If that firearm was also a "restricted weapon" under the statute, it had to be individually registered with the Royal Canadian Mounted Police [RCMP] and ongoing possession required a license as well.¹⁸ The private or commercial transfer of any firearm in any manner to a recipient without a Certificate was made an offence.¹⁹ As it applied only to acquisition, the new scheme was prospective only: those who already had firearms when the change took effect and did not wish to acquire more did not need to obtain an FAC.

15. See *Senate Debates* (1932-33) at 424, cited in Dandurand, *supra* note 10, at 231-32.

16. See Dandurand, *supra* note 10; Criminal Code, R.S.C., ch. 40, § 97(4)(c) (1991) (Can.). Testimony before a 1990 Parliamentary Committee hearing indicated that the business of guiding non-resident hunters in the province of British Columbia began before 1900, and in 1989, involved 265 licensed businesses generating annual revenues of about \$26 million (Can.). About 70% of visiting hunters were from the United States. Concerns expressed included not only the direct impact of some of the proposed restrictions on visiting hunters, but also the indirect impact should they be misrepresented or misunderstood in the United States. See *Special Committee on Bill C-80*, *supra* note 9, at 10:47-58 (15 Jan. 1991).

17. Criminal Code, R.S.C., ch. 53 (1976-77) (Can.).

18. All handguns, short-barrelled centrefire semiautomatic rifles, and shotguns and firearms manufactured shorter than 470mm (18.5") are restricted weapons. Firearms reduced in length after manufacture (i.e., "sawed-off" rifles or shotguns) are prohibited completely. Criminal Code, R.S.C., ch. 53, § 84(1) (1976-77) (Can.). At the present day, according to the R.C.M.P., slightly more than 95% of the restricted weapons registered in Canada are handguns. See generally RCMP Firearms Registration and Administration Section.

19. *Id.* § 97. Exceptions are provided for transfers to business permit holders, for the use of a firearm under the supervision of its owner, and other circumstances. The offenses apply to both transferor and recipient, and to any form of acquisition, including, gifts, loans, inheritances, and imports. *Id.* Non-residents may temporarily import without a Certificate. *Id.*

The long-term policy of focusing additional controls on specific types of firearm was continued in the 1976-77 amendments which prohibited firearms "capable of discharging bullets in rapid succession during one pressure of the trigger" ²⁰ This amendment is also significant because it set a precedent for the "grandfathering" of the property interests of owners who obtained automatic firearms before they were prohibited. This was done by making automatic firearms registered by the cut-off date of January 1, 1978 "restricted weapons" and all others within the automatic firearm class definition "prohibited weapons." ²¹ Since the import, transfer or possession of a prohibited weapon is an offence, all unregistered weapons became illegal, and future imports were banned as of the effective date. The amendment also limited future registrations of these firearms to those who were "bonafide gun collectors" who already had one or more such firearms in a collection. The amendment effectively created a closed class of owners. It ensured that the "grandfathered" firearms would eventually be forced out of circulation as the number of eligible collectors was diminished by deaths or the disposal of gun collections. ²²

Provisions allowing courts to prohibit specific individuals from possessing firearms were also expanded in the 1976-77 amendments. Prohibition orders, previously limited to those convicted of firearm-related offenses, were expanded to include any offence which involved the use, threat or attempt of violence, and to cases where some danger to safety was established, but no criminal offence was committed or even alleged. Previously, the use of prohibition orders could be seen as a form of punishment, albeit one with a strong component of incapacitation. But, the new purely proactive orders could only be justified as a means of incapacitating potential offenders or suicides. As with reactive orders, the new orders required a court hearing, although not to the same procedural standards as a full criminal trial. ²³ In emergencies, firearms could be seized without a warrant and taken before a court as part of the prohibition process. ²⁴

20. *Id.* § 3(c). of the definition of "prohibited weapon" in what was then § 82(1) of the Criminal Code. The amended text of this provision appears as the same paragraph of § 84(1). *See also* para. (c) of the definition of "restricted weapon" in the same provision.

21. *Id.* § 84(1)(c) of the definition of "prohibited weapon" and § 84(1)(c) of the definition of "restricted weapon."

22. *Id.* § 109(4).

23. *Id.* § 100(4)-(11).

24. *Id.* § 103(2).

It has been suggested that the proactive prohibition powers are under-used by police and the courts. During the debate of the 1991 Criminal Code amendments, the Hon. Kim Campbell, then Minister of Justice, stated that

Under the present law police may also make an application [for a prohibition order] to a court where they have reasonable grounds to believe that allowing a person to keep a firearm or acquisition certificate would endanger the safety of any person. This provision is an important one for domestic violence situations and will be kept unchanged. I will be asking my provincial counterparts to encourage police officers across Canada to use it wherever possible to remove firearms from dangerous situations before they can cause harm.²⁵

Statistics published by the R.C.M.P. indicate that reactive prohibition orders far outnumber proactive ones.²⁶ A 1992 study commissioned by the Canadian Justice Department recommended that police training should place greater emphasis on the use of proactive seizures and prohibitions, especially in the context of domestic violence cases, where police officers are often confronted by repeated calls to the same residence.²⁷

25. *House of Commons Debates* (6 June 1991) at 1251. The setting of police and prosecutorial policies in Canada is a matter for provincial, not federal ministers, except for the Yukon and Northwest Territories.

26. In 1993, the R.C.M.P. reported far higher levels of prohibition resulting from other court actions than those initiated directly by police officers. A total of 8150 mandatory and 2480 discretionary prohibitions resulted from criminal sentences, 49 prohibitions resulted from the refusal of an FAC, and 208 resulted from seizure and prohibition proceedings originated by the police. See *Annual Firearms Report to the Solicitor General of Canada by the Commissioner of the Royal Canadian Mounted Police* 1993. A similar pattern may be found in the numbers given for other years in the late 1980s and early 1990s. The total number of firearms and owners in Canada is not known, but is believed to be between 6 and 7 million firearms in the hands of about 2.5 to 3 million individuals, based on a 1991 survey commissioned by the federal Justice Department and carried out by the Angus Reid survey group.

27. *Police Responses to Domestic Violence: A Study of the Use of Criminal Code Provisions Relating to Firearms* (Working Document) by Colin Meredith & Chantal Paquette (Canada Department of Justice, June 1991).

C. *The 1991 Amendments (S.C. 1991 c.40)*

On the evening of December 6, 1989, a man armed with a centrefire semiautomatic rifle and several 30-shot cartridge magazines entered the University of Montreal's engineering school and shot 28 persons, 14 fatally, before turning the gun on himself. This incident galvanized Canadian public opinion, ultimately resulting in the formation of several lobby groups and the signing of a petition calling for the prohibition of "military or para-military firearms" by over 600,000 Canadians.²⁸ This was a far stronger reaction than was felt in the wake of earlier, similar incidents in Stockton and San Ysidro, California, and Hungerford, England, and served as a reminder that Canada was not immune to what had hitherto been seen as a strictly American phenomenon. Similar reactions had occurred in England (and to a lesser extent in Canada) after the Hungerford shooting incident.

The reaction to the Montreal shooting incident was further magnified by the fact that the killer was motivated by anti-feminism, and that all of the 14 deceased were women.²⁹ One reporter who covered the shootings stated that

[T]hat's the moment in the whole thing that I remember the most, because that's when the impact of it all really hit you. And the fact that it was all women [the victims] hit right then, too. It wasn't delayed. It didn't take awhile to sort out what had happened . . . because you knew that most of the people in there [the engineering school] were men. So if most of the dead were women, there was obviously something different going on here.³⁰

28. The Minister of Justice met with the students of the University in the fall of 1990, at which time the petition had over 500,000 signatures. See *House of Commons Debates* (22 Nov. 1990) at 15,572. The petition was not actually tabled in Parliament until some months later, by which time the number of signatures had passed 600,000. This amounted to a strong statement from Canadians, comparable to about 6 million signatures in the United States. Families and friends of victims also played a major role in setting up organizations and lobbying for stricter legislation. See Bill Trent, *The Medical Profession Sets Its Sights on the Gun Control Issue*, 145 CAN. MED. ASS'N J. 1332; Daphney Bramham, *Both Sides Praise New Gun Control Bill (Victim's Mother Says She Feels Betrayed)*, MONTREAL GAZETTE, May 31, 1991, at A1; Marie-Cloade Lortie, *L'arme utilisée par Marc Lepine n'est toujours pas interdite par la nouvelle loi* [Weapon Used by Marc Lepine Still Not Outlawed by New Law], LA PRESSE, May 31, 1991 at A1.

29. Several survivors indicated that he shouted (in French), "I hate feminists" during the shooting incident.

30. *Man Alive* (Canadian Broadcasting Corp. broadcast, Nov. 27, 1990).

This fact provoked a continuing debate about whether it should be seen as an isolated incident or a manifestation of a more pervasive social misogyny, and served to draw groups concerned about violence against women into the gun control debate. Many would probably have gotten involved even without this stimulus. Firearms in the home have been repeatedly cited as a problem in the context of domestic violence, both by victims and the police. But, the impact of the Montreal shootings probably brought them into the debate sooner and to a far greater extent than would otherwise have been the case.

In 1991, major changes were made to the legislation, although the basic framework combining deterrence, incapacitation, screening and firearm-specific controls was not altered.³¹ The Government had first introduced legislation on June 26, 1990, immediately prior to the recess of Parliament for the summer. The legislation and general subject of gun control were the subject of hearings by a Special Committee of the House of Commons the following winter.³² However, the legislation did not receive Third Reading. It died with the end of the Parliamentary session in early May of 1991, but was immediately revised and re-introduced at the beginning of the following session, at the end of the same month.³³ It was the subject of legislative committee hearings the following fall, and was passed and given Royal Assent on December 6, 1991, the second anniversary of the 1989 mass shooting incident.

The Firearms Acquisition Certificate requirements were enhanced, but still limited to those who sought to acquire firearms, not to ongoing possession. The minimum age for applicants was raised from 16 years to 18 years, and a mandatory minimum 28-day waiting period between application and issuance was imposed. In addition, applicants were required to provide the names of two personal references, and answer an expanded application questionnaire.³⁴ A major focus of the legislation was

31. *House of Commons Debates* (22 Nov. 1990) at 15,572-78 (statement by Hon. Kim Campbell, Minister of Justice). The Minister referred to the three major policies of Canadian gun control as the screening of gun owners, controls on specific types or classes of firearms (those classed as prohibited or restricted weapons), and measures intended to deter firearm-related crime. *Id.*

32. *House of Commons Debates* (26 June 1990) at 13,089 (introduction of legislation numbered as Bill C-80), and 15,566-85 (reference to Special Committee).

33. *House of Commons Debates* (30 May 1991) at 783 (legislation re-introduced and numbered as Bill C-17).

34. Although part of the government's 1991 gun control package, the expanded questionnaire was actually implemented with the prescription of new application forms by the R.C.M.P. Commissioner under the authority of the statute, on January 1, 1993.

the imposition of further firearm-specific controls directed at limiting firepower. These took the form of three elements: prohibiting converted automatic firearms; designating a number of "military or paramilitary" firearms as either prohibited or restricted weapons; and imposing cartridge magazine capacity limits on magazines for centrefire semiautomatic firearms and all handguns. The reasons given for imposing additional controls included both the proliferation of "military and para-military" firearms in Canada in the twelve years since the previous amendments, and the use of a high firepower weapon in the Montreal mass shooting incident.³⁵

As had been the case in the United States and elsewhere, the prohibition of automatic firearms led to the mechanical conversion of firearms to avoid the legislation, ranging from merely cosmetic changes to legitimate attempts to collect former machineguns without breaking the law. During the late 1980s and early 90s, police pressure and conflicting case law about acceptable conversion standards led the Government to act to prohibit converted automatic firearms as well.³⁶ The 1991 amendments expanded the definition of "prohibited weapon" to expressly include every firearm capable of automatic fire "whether or not it has been altered to fire only one projectile with one [trigger] pressure"³⁷ Following the precedent of the 1976-77 amendments, those who had such firearms were allowed to retain them, provided that registration proceedings were commenced or completed by January 1, 1992.³⁸ The 1991 amendments also contained provisions that made producing automatic firearms or

35. *House of Commons Debates* (22 Nov. 1990) at 15,575-77 (statement of Hon. Kim Campbell, Minister of Justice). The firearm involved, Sturm Roger's "Mini-14," was not prohibited by the changes however, a fact for which the Government was criticised in the media. See Lortie, *supra* note 28, at A1.

36. See *R. v. Covin and Covin*, [1983] 1 S.C.R. 725, 8 C.C.C. (3d) 240 (status of "firearm"); *R. v. Global Armaments Ltd.* (1990), 105 A.R. 260 (status of automatic firearm as prohibited weapon retained unless conversion "essentially irreversible"); *R. v. Hasselwander*, [1993] 2 S.C.R. 398, 81 C.C.C. (3d.) 471, rev'g (1991) 67 C.C.C. (3d) 426, 5 O.R. (3d) 225 (C.A.) (holding that prohibited status was retained if reconversion was possible in a relatively short period of time with relative). For Great Britain, see *R. v. Clarke*, [1986] 1 All E.R. 846; 11 HALSBURY'S LAWS OF ENGLAND (4th ed.), para. 221; G. SANDYS-WINCH, *GUN LAW* (5th ed.) (1990).

37. Criminal Code, R.S.C., ch. 40, § 84(1) (1991) (Can.) definition of "prohibited weapon", para. (c).

38. *Id.* § 84(1) definition of "prohibited weapon," para. (c), definition of "restricted weapon," para. (c.1), and § 109(4.1)-(4.3).

converting existing firearms to be capable of fully-automatic fire specific offenses.³⁹

The amendments did not directly affect the status of military firearms or cartridge magazines. The former were designated as either "prohibited weapons" or "restricted weapons" by Orders in Council under delegated legislative powers which were already in the Criminal Code. The effect of "prohibited weapon" status was to impose a complete ban on import, export and domestic possession or transfer,⁴⁰ although the owners of some specific firearm types were allowed to keep them under a legislative "grandfather clause" exemption.⁴¹

The capacity of cartridge magazines was limited by regulations made under an amendment to the definition of "prohibited weapon" so defining any "large-capacity cartridge magazine" of a type prescribed by regulation.⁴² This imposed limits on the firepower of the designated firearms by prohibiting the possession of magazines for those firearms if they exceeded the prescribed capacities. The limits, set at 10 shots for handguns and 5 shots for centrefire semiautomatic rifles and shotguns, were the subject of strong, but unsuccessful opposition from firearm owners and businesses.⁴³

A major focus of gun control opponents was the legislation's lack of emphasis on sentencing and deterrence provisions. Essentially, the argument made was a variation on the popular American argument that "guns don't kill people, people kill people" If the existing legislation did not control gun crime, it was argued, the appropriate response was to focus on measures that would deter offenders, rather than affect the interests of all firearm owners as a general class.⁴⁴ This argument was also heard frequently during the legislative debates.

It seems to me that this bill as it now reads is dealing not with the fundamental issue of controlling the criminal use of guns. It is penalizing people who have proven in the past that they are

39. *Id.* § 95.1.

40. *See Prohibited Weapons Orders No. 9-12*, SOR/92-463, 92-464, 92-465, and 92-466; *Restricted Weapons Order*, SOR/92-467.

41. Criminal Code, R.S.C., ch. 40, § 84(1.2) (1991) (Can.).

42. *Id.* § 84(1) definition of "restricted weapon," para. (f); *Cartridge Magazine Control Regulations*, SOR/92-460.

43. *Ontario Handgun Association v. Attorney General of Ontario* (30 June 1993), (Ont. Ct. Gen. Div.) [unreported].

44. *Gun Control Proposals Draw Mixed Reactions*, TORONTO STAR, May 31, 1991, at A13.

part of the solution and not part of the problem of gun-related deaths in Canada. Does this Bill deal with increased penalties for criminals who use guns in the course of a crime? [I]t was suggested by many of the lobbyists who appeared before the committee that we should increase the penalties for the use of guns in crime. ⁴⁵

The first draft of the legislation, Bill C-80, contained relatively few changes to deterrence provisions, but several were added before it was re-introduced as Bill C-17.⁴⁶ The changes included longer maximum sentence provisions for the offenses of possessing a prohibited weapon, possession of any firearm while prohibited by a court order, and importing or trafficking in prohibited weapons. The length of mandatory court prohibition orders was also doubled, from five to ten years. The provision to which the Honourable Kim Campbell referred was not amended, however. Section 85 of the Criminal Code provides for mandatory sentences of one to fourteen years, where an accused is convicted of having used a firearm in the commission of an indictable offence. This had been criticised as insufficient for failing to set higher minimum terms and for allowing prosecutors to "plea-bargain" charges away in exchange for guilty pleas on the underlying offence charges.⁴⁷

III. ROLE OF THE CONSTITUTION IN CANADIAN GUN CONTROL LAW

Canadian constitutional law dealing with firearms and other offensive weapons differs from that of the United States in two critical aspects. In the United States, the Second Amendment to the U.S. Constitution protects, to some degree, the ownership of firearms.⁴⁸ Much of the

45. *House of Commons Debates* (5 Nov. 1991) at 4589 (statement of J. Peterson, Member for Willowdale).

46. *House of Commons Debates* (6 June 1991) at 1250-51 (statement of Hon. Kim Campbell, Minister of Justice).

47. The application of § 85 is further complicated by the fact that prosecutors and prosecutorial discretion in Canada are under the authority of provincial, not federal governments. At least two federal justice ministers have publicly urged provinces to impose guidelines limiting plea bargains, however, and several have responded.

48. The question of whether or not the right to bear arms actually extends beyond the militia function to which the Second Amendment refers will not be discussed in this paper. The acceptance of the right as more or less unlimited by its proponents and its repeated use in opposing gun control legislation put its effect on U.S. policy beyond question,

authority to make legislation respecting firearms is vested in the state governments, although there may be a tendency towards federal legislation in the field since the enactment of the Gun Control Act of 1968.⁴⁹ In Canada, on the other hand, the ownership or possession of firearms is not, except in the most indirect sense, the subject of any constitutional or extra-legislative protection. Canada's legislation, which is found in Part III of the Canadian Criminal Code, is within the exclusive legislative jurisdiction of the federal government. However, much of its administration is delegated to provincial or local police officials.

A. *The Right to Bear Arms and Property Rights*

The "right to bear arms" of the Second Amendment and U.S. jurisprudence seldom arises in Canadian courts,⁵⁰ although some lower-court challenges have discussed the application of the Canadian Charter of Rights and Freedoms to recent legislative changes. The Charter, enacted in 1982,⁵¹ guarantees many fundamental rights and freedoms similar to those found in the American Bill of Rights, but in more modern, less absolute terms.⁵² In drafting the provisions, the government had access to the Bill of Rights and subsequent case law, and generally sought to avoid what were seen as over-extension of many of the rights involved by U.S. courts over the past 200 years. The right to bear arms was omitted completely from the Charter.

In the 1993 case of *R. v. Hasselwander*, the Supreme Court of Canada expressly rejected the application of U.S. cases on the basis of the constitutional distinctions between the two countries stating that

regardless of its exact interpretation by the courts. The Second Amendment to the U.S. Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

49. Pub. L. No. 90-618, 82 Stat. 1213 (1968) (as codified at 18 U.S.C. §§ 921-930 (1988)).

50. See, e.g., *Re Scott* (1979), 3 W.C.B. 181. A British Columbia provincial court rejected an argument based on the infringement of the right to bear arms on the basis that, in Canada, no such right exists. *Id.*

51. *Constitution Act*, Part I, 1982.

52. The rule for excluding evidence which has been obtained illegally or improperly, for example, can only be invoked where the accused shows that "having regard to all the circumstances, its admission in the proceedings would bring the administration of justice into disrepute." *Id.* § 24(2). All *Charter* rights are further limited by the power of the government to make laws which infringe them, provided that this can be "demonstrably justified in a free and democratic society." *Id.* § 1.

The American authorities should not be considered in this case. Canadians, unlike Americans, do not have the right to bear arms. Indeed, most Canadians prefer the peace of mind and sense of security derived from the knowledge that the possession of automatic weapons is prohibited.⁵³

It is possible, however, that where sufficiently pressing circumstances exist, the ownership or possession of a firearm might raise some right which goes beyond one of mere property, so as to raise Charter rights. Significant numbers of Canadians rely on firearms to hunt for food, or for indirect sustenance, most commonly in the context of fur-trapping. In addition, access to firearms is a necessary condition for employment as a police officer, member of the Canadian Forces, and in some cases employment in the private security industry. Charter arguments have been raised in such cases, most commonly on behalf of convicted persons who have been prohibited by courts from possessing firearms, ammunition or explosives as a result of a criminal conviction,⁵⁴ or who have been refused a Firearms Acquisition Certificate for similar reasons.⁵⁵

These challenges have enjoyed only limited success. Occupational users such as soldiers have been almost completely unsuccessful.⁵⁶ A stronger argument can be made on behalf of those such as sustenance hunters or trappers, for whom no other means of income or sustenance is generally available. A number of lower-court decisions have declined to apply mandatory prohibitions in such cases on the basis that to do so would offend the Charter ban on "cruel and unusual treatment or punishment."⁵⁷ A number of such decisions have been overturned on appeal.⁵⁸ The Supreme Court of Canada has upheld an Ontario Court of

53. *R. v. Hasselwander* (1993), 81 C.C.C. (3d) 471. The statement that there is no right to bear arms in Canada must be regarded as *obiter dicta*, however, as the central issue in the case was not the presence or absence of such a right, but whether Mr. Hasselwander's firearm was "capable" of automatic fire and therefore a "prohibited weapon" under the statute. *Id.*

54. Criminal Code, R.S.C., ch. 40, § 100 (1991) (Can.).

55. *Id.* § 106.

56. *R. v. Kenway* (1990), 58 C.C.C. (3d) 414, 74 O.R. (2d) 629 (Ont. C.A.); *cf. R. v. Lusignan* (1993), 79 C.C.C. (3d) 572 (N.S.C.A.). The court held that the 1991 amendments allowing for occupational exemptions applied to the accused, a member of the Canadian Forces.

57. Charter of Rights, § 12. *See R. v. Chief* (1989), 51 C.C.C. (3d) 265 (Y.T.C.A.).

58. *R. v. Tobac* (1985), 20 C.C.C. (3d) 49 (N.W.T.C.A.); *R. v. Smokeyday* (1989), 6 W.W.R. 449 (Sask. C.A.); *R. v. Johnson* (1993), 91 C.C.C. (3d) 21 (Y.T.C.A.).

Appeal decision to the effect that, while the possibility of a Charter exemption from mandatory sentencing provisions exists, mandatory firearms prohibition order do not offend the Charter and were not appropriate for the application of such exemptions.⁵⁹

The Criminal Code was amended in 1991 to allow the courts to opt out of otherwise-mandatory prohibition orders in a case where a firearm is needed for sustenance or the only available means of employment, and would not raise any concerns about the safety of the offender or any other person.⁶⁰ Further amendments allowing for greater flexibility in the application of prohibition orders in such cases are presently under consideration.

Less clear at present is the status of aboriginal rights based on treaty or traditional hunting rights in Canada. Aboriginal rights enjoy some degree of constitutional protection, and could conceivably raise a right to possess firearms suitable for hunting, on the basis that the guaranteed right could not otherwise be exercised. Traditional rights are increasingly being raised, particularly following the 1992 holding of the Supreme Court that section 12 of the Charter (cruel or unusual punishment) did not apply in such cases.⁶¹ Since the application of any such rights will vary according to the facts of individual cases and the terms of each specific treaty raised, it may be some time before any clear pattern in the case law emerges. Aboriginal Canadians, who often live in remote situations where such things as literacy (or facility with English or French) are less common and the need for access to hunting firearms is greatest, pose a particular problem for the government.⁶²

59. *R. v. Sawyer* (1992), 78 C.C.C. (3d) 191.

60. Criminal Code, R.S.C., ch. 40, § 100(1.1)-(1.3) (1991) (Can.).

61. *R. v. Sawyer* (1992), 78 C.C.C. (3d) 191. See *R. v. Luke* (1994), 87 C.C.C. (3d) 121 (Ont. C.A.). The court held § 12 to be unavailable based on *Sawyer*. The question of whether the appellant's treaty rights might include the right to possess a firearm in order to hunt was left open, however. While the treaty in question may have given a right to hunt under certain circumstances, it contained a provision under which the parties agreed to abide by the laws of Canada. Since the appellant had been convicted of an offence, it was therefore not open to him to raise the treaty as a means of avoiding part of the sentence for that offence. *Id.* Presumably, the same ruling will result whenever a treaty with a similar term was involved, but would not apply where traditional rights or issues such as the applicant's eligibility for an FAC (where no offence need be alleged) were raised.

62. The legislation contains an exemption from application fees for those who hunt or trap for sustenance purposes (Criminal Code § 106(12)), but aboriginal and sustenance hunters are otherwise treated as any other applicants under the legislation. Efforts have been made, however, to ease access where this can be done without compromising the

The Charter of Rights also does not speak to the issue of general property rights in the same way that the United States' Constitution does. Section 8 of the Charter protects Canadians against unreasonable seizure, but the courts have generally held that constitutionally protected interests beyond those of mere property interests must be endangered in order to invoke the constitutional protection. In the context of criminal law and search or seizure, these interests most commonly involve privacy rights, not property.

[T]he case law establishes clearly that not all "things" or property are protected by s. 8 of the Charter. Rather, property is protected under s. 8 only if the seizure of the property intrudes into, or tramples on, the interests and values protected by s. 8.

The most important of the protected interests or values is privacy in a law-enforcement context. In case after case, the Supreme Court of Canada has stated that s. 8 protects the bodily integrity and privacy of people, not their property, unless the property being searched or seized relates directly to a privacy interest.⁶³

The absence of a constitutionally protected right to property is, of course, a matter which goes well beyond gun control in its scope. It is, however, one which is supported by Canada's gun control opponents, and has been raised by them in published editorials and other fora. In the fall of 1991, when the Government of Canada raised the possibility of amending the Charter to include property rights, firearms groups were quick to recognize the potential impact on legislation restricting access to firearms, at least insofar as it affected ownership interests.⁶⁴ The proposed constitutional amendment was never proceeded with. A number of the 1991 changes and subsequent Orders in Council adversely affected existing property interests, either by restricting the right to transfer firearms, or by

screening standards. FAC references can include persons such as Band Councillor or Elders, and safety course programs and examinations will eventually be offered in aboriginal languages. See *Firearms Acquisition Certificate Regulations*, SOR/92-461.

63. *R. v. Unishare Investments* (1994), 18 O.R. (3d) 603 at 608 (Ont. Ct.). See also *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *R. v. Dymont*, [1988] 2 S.C.R. 417; *R. v. McKinlay Transport*, [1990] 1 S.C.R. 627, *R. v. Colaruso*, [1994] 1 S.C.R. 20.

64. *Minutes of Proceedings and Evidence of Legislative Committee "H" on Bill C-17, An Act to Amend the Criminal Code and Customs Tariff in Consequence Thereof*, at No.3: 6, 18-19 (25 Sept. 1991) and No.5: 35-36 (1 Oct. 1991) [hereinafter *Legislative Committee H.*].

prohibiting possession altogether.⁶⁵ No successful challenges to these changes have arisen based on property rights, although firearm owners have had some success on other grounds.⁶⁶

B. Roles of the Federal Government and the Provinces in Canadian Gun Control

The second major difference between Canadian and American approaches to gun control is that, while much of the American legislative authority is vested in state legislatures, Canadian gun control legislation is vested in the federal government as part of the government's exclusive power to make criminal law,⁶⁷ which includes laws intended to prevent crime.⁶⁸ The provinces may also enact legislation involving firearms where this is incidental to provincial powers under the Constitution Act, 1867,⁶⁹ but these may not be inconsistent with the federal legislation, and must have some valid purpose other than criminal law.

The federal legislation is enacted as Part III of the Criminal Code (Firearms and Other Offensive Weapons). Also falling within the legislative power are a number of delegated authorities, including the making of regulations⁷⁰ and Orders in Council, which are delegated to the Governor-in-Council, a committee of the federal cabinet.⁷¹ The provisions

65. See Criminal Code, R.S.C., c. 40, § 2 (1991) (Can.) (definition of "weapon"); *Cartridge Magazine Control Regulations*, SOR/92-460; *Prohibited Weapons Orders No. 9-12* SOR/92-463, 92-464, 92-465, and 92-466; *Restricted Weapons Order* SOR/92-46; Criminal Code, R.S.C., ch. 40, § 109(4.1)-(4.3) (1991) (Can.).

66. *Alberta v. Simmermon* (1993), 146 A.R. 224 (Alta. Prov. Ct.), (appeal 12 Aug. 1994) (Alta. Q.B.) [unreported]. The court (Q.B.) held that an Order in Council declaring the appellant's firearm to be a "prohibited weapon" was invalid on procedural grounds. The provincial court rejected the applicant's constitutional arguments. The appeal, having found for the applicant/appellant on procedural grounds, did not address them. Other *dicta* concerning property rights have appeared in lower court decisions, but have yet to be heard by appellate courts. See *R. v. Rogan* (1994), (Alta. Prov. Ct) [unreported].

67. *Constitution Act, 1867* § 91(27).

68. PETER W. HOGG, *CONSTITUTIONAL LAW OF CANADA* 133 (3d ed. 1992).

69. See, e.g., Ontario's recent *Ammunition Control Act*, S.O. 1994, c. 20. Municipalities may also control the sale and discharge of firearms through local zoning and licensing powers, and many large Canadian municipalities have by-laws prohibiting the discharge of firearms within city limits.

70. Criminal Code, R.S.C., ch. 40, § 116 (1991) (Can.).

71. *Id.* § 84(1), definitions of "prohibited weapon" (¶ (e)), and "restricted weapon" (¶ (d)). The Governor General in (Her Majesty's Privy) Council exercises the powers of the sovereign in Canada. Most commonly, Orders of the Governor in Council are used

include a number of licensing and other non criminal aspects, but these have been consistently held *intra vires* of the federal Parliament as incidental to an overall scheme which is criminal law in its nature.⁷²

The exclusive federal legislative power avoids what is arguably one of the critical weaknesses of American gun control legislation, that of inconsistencies from one jurisdiction to the next, particularly with respect to basic controls on firearm access and transfers.⁷³ One distinguished Canadian politician stated that

[I]t is laughable when you talk about one [American] state where they have tough gun laws. It is very easy to go from one state to another in the United States. Unless they have national laws, the state laws mean nothing. You need a national system where there are border controls . . . [T]o say that in New York State or another state they have strict laws . . . it means nothing.⁷⁴

Attempting to legislate firearm controls in Canada on a province-by-province basis would seriously weaken the existing system by creating the potential for smuggling illegal firearms from provinces with weak controls into those with strong ones, and by making it necessary to enact legislation in eleven separate jurisdictions in order to give effect to any unitary national policy initiatives. The existing national approach to the legislation also provides less opportunity for regional special interest groups to influence the political process, an important factor in Canada, where public attitudes and pressures with respect to gun control vary along urban-rural, north-south, and east-west lines.⁷⁵

to bring legislation into force or to make regulations under legislative powers delegated by statute. In practice, these powers are exercised by Special Committee of Council, all members of whom are ministers in the cabinet of the government of the day. As in the United States, ministers are appointed, but in Canada, with rare exceptions, ministers are appointed only from the ranks of elected (and sitting) Members of Parliament.

72. See *A. G. v. Pattison* (1981), 21 C.R. (3d) 255, 59 C.C.C. (2d) 138 (Alta. C.A.); *R. v. Northcott* (1980), 5 W.W.R. 38 (B.C. Prov. Ct.).

73. See Friedland, *supra* note 1, at 240-46, citing Zimring, "Firearms and the Federal Law: the Gun Control Act of 1968, 4 J. LEGAL STUD. 133, 191 (1975). See also Sproule & Kennett, *supra* note 1.

74. *Special Committee on Bill C-80*, *supra* note 9, at 3:93 (13 Dec. 1990) (As a minister in the government of Prime Minister Trudeau, Mr. Allmand was partly responsible for the 1976-77 Criminal Code gun control amendments).

75. The exact nature of these differences has been a matter of controversy, but there seems little doubt that they exist. *Special Committee on Bill C-80*, *supra* note 9, at 2:18-19 (12 Dec. 1990), 4:44-45 and 4:70-71 (17 Dec. 1990) and 7:16-17 (19 Dec. 1990).

Much of the firearms control system is actually carried out by provincial and local agencies under the general law enforcement function vested in the police, or under authorities to issue and revoke various permits and licenses which are delegated directly to the provinces or provincially-appointed officials.⁷⁶ This provides some degree of flexibility in the administration of the system to meet local or regional concerns, but it has not generally interfered with the overall, Canada-wide application of the legislation and regulations. The net effect operates to balance federal, provincial, and local factors, and also provides a fairly cost-effective means of operating the system by using existing police agencies and resources already present in most Canadian communities.

In areas of provincial or local authority, a number of structural factors have also operated to maintain national consistency, or failing that, at least a viable balancing of interests. One such factor has been the Royal Canadian Mounted Police (RCMP).⁷⁷ The RCMP has the statutory responsibility for registering restricted weapons,⁷⁸ and operates a national unit to review applications and to maintain the registry system. The authority to prescribe forms for applications, certificates and permits are also delegated to the Commissioner of the RCMP. This is a strong centralizing factor⁷⁹ because the same forms are used across Canada, and applicants must complete them fully before any permit or certificate can

House of Commons Debates (22 Nov. 1990) at 15,574. See generally *Albertans Must Bite Bullet on Gun Law*, CALGARY HERALD, May 31, 1991, at A3; *2 Sides Prepare for Intense Fight Over Gun Bill*, GLOBE & MAIL, June 1, 1991.

76. Note the definitions of "chief provincial firearms officer", "firearms officer" and "local registrar of firearms" in Criminal Code, R.S.C., ch. 40, § 84(1) (1991) (Can.), as well as the powers to issue Firearms Acquisition Certificates (§ 106), registration certificates (§ 109), permits (§ 110), and the enforcement of business controls (§ 105). Powers to regulate businesses are delegated to the federal government (§ 116(1)), but the regulations include inspection and other regulatory powers for provincial officials. Generally, the licensing of firearms businesses in Canada is administered exclusively by the provinces under powers created by the federal statute and regulations.

77. Friedland, *supra* note 1, at 240-41.

78. *Id.*; Criminal Code, R.S.C., ch. 40, §§ 109, 114. For examples of "restricted weapons," see *supra* note 18.

79. Following the 1991 amendments, new forms were developed jointly by the federal Justice Department and the RCMP, following consultations and input from the provinces. All three played a significant role in developing the forms, but since the same forms apply across Canada, their impact in centralizing screening and registration procedures is the same. Some local or provincial agencies have implemented regional policies by demanding additional forms or information beyond what has been federally-prescribed. There is some legislative authority for this. See Criminal Code, R.S.C., ch. 40, § 106(9), (9.1) (1991) (Can.).

be considered.⁸⁰ Another influential aspect of the RCMP's involvement in the administration of the legislation is its publication of a National Firearms Manual, which contains resource materials and instructions for local officers who process certificate and permit applications. This document has no legal authority, but provides local officers, who often have little training or specialization, with access to legal and procedural support. In some provinces, the RCMP also provides municipal and rural police services under a contractual arrangement between the provincial and federal governments.⁸¹ In these provinces, RCMP officers operate under the ultimate control of provincial, not federal authority, but still tend to rely on the federal force for training and advice when needed.

The federal government may also exert influence over provincial and local administrative practices by virtue of the fact that the administration of many of the statutory provisions is federally funded. The statute provides for the making of federal-provincial financial agreements,⁸² which set up a contractual relationship under which to each province agrees to administer specific aspects of the legislation and to collect user fees. These fees are then paid back to the administering province. There are some variations, but for the most part, the terms of these agreements have been the same across Canada.

Even in areas where the legislation leaves matters to provincial or local officials, the provinces or officials involved have often recognized the problems inherent in regional approaches and sought uniformity with respect to interpretation and application of the law. There have been occasional differences of opinion with respect to forms and procedures, but these have been relatively minor when compared with the overall scope of the legislation. Quebec, for example, requires the completion of additional forms or conditions for some permits, but still relies on the federally-prescribed ones.

In the 1991 amendments, Parliament enacted a provision that allowed provincial attorneys general to designate shooting competitions for which participants could possess and use large-capacity cartridge magazines, otherwise unavailable to competitors as "prohibited weapons."⁸³ The

80. *Id.* § 106(8) (firearms acquisition certificate), § 109(1) (restricted weapon registration certificate), and § 110 (permits). *See also id.* § 113, concerning the offense of making false or misleading statements, which applies to both the applicant and to his or her personal references or others contacted by the firearms officer reviewing the application.

81. RCMP Act, ch. 54, § 20 (1959) (Can.).

82. Criminal Code, R.S.C., ch. 40, §§ 108, 111 (1991) (Can.).

83. *Id.* § 90(3.2).

provinces subsequently decided not to designate any competitions under this provision, thereby avoiding any inter-provincial inconsistencies. In such cases, provinces are left to make their own policy decisions. Since these are all made in more or less the same circumstances, and provincial ministers are generally aware of one another's positions, however, consistent decisions are likely unless specific political or situational considerations dictate otherwise.⁸⁴

The 1976-77 amendments imposed a requirement⁸⁵ that all FAC applicants take a course or test in firearm safety. This requirement was not put into effect until 1994⁸⁶ as part of a series of administrative changes following the 1991 amendments. This provision requires the course or test to be approved by the Attorney General of the province in which it was taken, necessitating a province-by-province approach to implementation as the necessary approvals were obtained. A substantial degree of national consistency was obtained by the federal funding and development of the program, in consultation with the various provincial authorities, as well as some of the firearms interest groups from whom the instructors are drawn.⁸⁷ The jointly developed Canadian Firearms Safety Course was the only one approved by the provinces, until Quebec approved its own hunter safety courses in late 1994. This weakened the consistency of the system to some degree, and attracted media coverage accusing the government of caving in to the interests of firearm owners immediately before a provincial election.⁸⁸

Even where provincial autonomy is exercised in this way, the overall impact is minimized by the large number of safeguards built into the legislation. For example, while Quebec applicants may rely on approved provincial courses, they must still meet the other requirements, including

84. Court challenges to the decisions were unsuccessful. See *Ontario Handgun Association v. A.G.* (30 June 1993), (Ont. Ct. Gen. Div.) [unreported] (leave to appeal denied by Ont. C.A.). Other unsuccessful challenges were launched against Saskatchewan and the Attorney General of Canada (Northwest Territories).

85. Criminal Code, R.S.C., ch. 40, § 106(2)(c) (1991) (Can.).

86. The requirement was proclaimed in force on a province-by-province basis pursuant to Criminal Code subsection 106(3). It took effect in Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and the Yukon Territory on January 1, 1994, and in Manitoba, New Brunswick, Newfoundland and Nova Scotia on April 1, 1994. By the end of 1994 it was in effect in every part of Canada except for the Northwest Territories.

87. CANADIAN FIREARMS SAFETY COURSE: STUDENT'S HANDBOOK, (Can. Dep't of Justice), (1993) (Acknowledgements).

88. *Caving in on Gun Safety in Quebec*, MONTREAL GAZETTE, August 26, 1994, at B2; Peggy Curran, *Dead Wrong: Province Shouldn't Tamper with Gun Control Legislation*, MONTREAL GAZETTE, Aug. 25, 1994, at B3.

a twenty-eight day waiting period, the furnishing of two personal references, a background and criminal record check, and completion of the prescribed form before a Firearm Acquisition Certificate can be issued.

A much greater potential for regional inconsistencies lies not with government but the courts. Some proceedings challenging decisions made with respect to the various applications involve the federal government directly and are heard by the Federal Court of Canada.⁸⁹ Challenges to firearm seizures or forfeitures and criminal prosecutions, however. Many of these cases require judicial determinations that a particular item is a "weapon", "firearm", "restricted weapon", or "prohibited weapon" as defined by the Criminal Code or the determination of criminal charges. In such cases, the Code vests jurisdiction in provincial criminal and appellate courts. In these cases, a Canada-wide precedent is not set until a particular issue reaches the Supreme Court of Canada, a process which may take several years. Many of these challenges require judicial determinations that a particular item is a "weapon", "firearm", "restricted weapon" or "prohibited weapon," as defined by the Criminal Code, or the determination of criminal charges. In such cases, the Code vests jurisdiction in provincial criminal and appellate courts. In these cases, a Canada-wide precedent is not set until a particular issue reaches the Supreme Court of Canada, a process which may take several years. The recent litigation concerning the status of converted automatic firearms is an example of what can occur. After the Alberta Court of Appeal held that a very high standard of conversion was required,⁹⁰ the Ontario Court of Appeal held that a much lower standard applied.⁹¹ The conflicting rules in the two provinces set inconsistent standards and led to uncertainty in the rest of Canada, until the matter was resolved by the Supreme Court.⁹²

At the local level, the legislation is administered by police agencies and officers, who for the most part, are strong supporters of strict gun control particularly at the more senior levels.⁹³ Police agencies also tend

89. Federal Court Act, R.S.C., ch. F-7, §§ 17-18 (1985) (Can.).

90. *R. v. Global Armaments Ltd.* (1990), 105 A.R. 260 (Alta. C.A.) (holding that automatic firearms were prohibited weapons retained unless the conversion was "essentially irreversible.").

91. *R. v. Hasselwander* (1991), 67 C.C.C. (3d) 426, 5 O.R. (3d) 225 (Ont. C.A.).

92. *R.v. Hasselwander*, [1993] 2 S.C.R. 398, 40 C.R. (4th) 277, 81 C.C.C. (3d) 471. The problem of inconsistent case law from one province to the next is, of course, by no means limited to firearm-related issues.

93. The Canadian Association of Chiefs of Police supported the 1991 amendments. See *Legislative Committee H*, *supra* note 64, at 5:5-24 (1 Dec. 1991). The police community has also expressed support for proposals to make further changes in 1995. See

to resist inconsistencies or interpretations which may differ from one part of the country to another.⁹⁴ Some police officers have expressed opposition to strict gun control policies. However, what structural or institutional resistance exists in the police community appears to result more from concerns about the administrative demands placed on personnel and resources than from any fundamental policy concerns.

Police officers may in some cases see the processing of firearms applications as a low priority in comparison with other police functions, but most officers appear to be sympathetic to the overall policy that no one should have access to a firearm without first being screened. The result is the exact opposite of what occurs in the United States. Under the U.S. Brady Handgun Violence Prevention Act, for example, police failure to block a handgun purchase results in automatic approval. Canadian legislation, on the other hand, completely blocks access to any handgun unless police approval is given and the handgun is registered, regardless of how long the process takes, or why it is delayed.

IV. CULTURAL AND POLITICAL DIFFERENCES

As suggested above, the law neither leads nor follows national culture. In any democratic society, however, the law is profoundly influenced by public opinion and the efforts of those who lobby governments to enact legislation reflecting their views or preferences, particularly if these are fairly consistent over long periods of time. In Canada, public opinion consistently supports strict gun control legislation,⁹⁵ and to some extent, rejects the ownership or use of firearms

Tougher Gun Laws Sought by Metro [Toronto] Police Board, TORONTO STAR, Apr. 8, 1994, at A6; *Police Chief [of Edmonton, Alberta] Seeks Ban on Handguns*, EDMONTON J., Aug. 24, 1994, at B1. The federal Justice Minister spoke to the annual meeting of the Canadian Association of Chiefs of Police about firearms control proposals on August 25, 1994. Campbell Clark, *I'll Toughen Gun Control- Minister; Police Hail Pledge*, MONTREAL GAZETTE, Aug. 26, 1994, at A1.

94. See the remarks of Mr. Tom Flanagan, speaking on behalf of the Canadian Association of Chiefs of Police, *Special Committee on Bill C-80*, *supra* note 9, at 7:16-17 (19 Dec. 1990).

95. See Friedland, *supra* note 1, at 245. Since 1990, support for stricter legislation has ranged from about 50-80%, depending upon region and the specific issues raised by pollsters. In April of 1990, four months after the 1989 University of Montreal shootings, an Environics poll found that 52% of Canadians favoured banning the sale and possession of all firearms, while only 44% opposed the idea. Support was highest in central Canada (Quebec and Ontario) and lowest in the western provinces. Support for controls on semiautomatic firearms was much higher. One poll found 92% support for this in Quebec

as weapons. Allowing for some structural differences between the Canadian and American political systems, the nature of the pressures brought to bear and the tactics used would appear to be fairly similar. The relative strengths of the two fundamental positions with respect to gun control and the outcome of the process, are quite different in Canada.

Many of the cultural and historical differences have been raised before.⁹⁶ The different histories, legal and constitutional frameworks, racial and cultural heritages and other factors affect attitudes toward firearms. The portrayal of crime in the media is also probably a factor, although one which acts more or less equally on anglophone Canada and the United States, which both share many of the same television and print media.⁹⁷ One economist, examining American gun control, stated the problem in terms of supply and demand.

The purpose of [gun control] laws would be both to restrict the supply and to put that supply, from the production line onwards, in more responsible and accountable hands. Yet guns, it is said, cannot be treated this way. Demand for guns is huge and, at present, insensitive to price. Supply cannot be held down until demand is checked, too—until, that is, Americans begin to believe that they do not need guns to protect themselves.⁹⁸

Also of great influence on the attitudes and opinions of Canadians towards firearms and gun control, is the very existence of the United States and the position of its politicians and citizens. The perceived effect may vary according to one's own support or opposition to gun control, but

at about the same time (Léger et Léger, *Journal de Montréal*, Feb. 17, 1990, at 4). More recently, an Angus Reid poll (May 2, 1994) found that 73% of Canadians favoured the prohibition of privately-owned handguns. The results of an Environics survey (October 1994) were consistent with this: 90% favoured registering all firearms, 67% favoured banning the private ownership of handguns, and 75% wanted controls on ammunition sales. An Angus Reid poll taken at the same time found that about 70% of those surveyed favoured stricter controls generally.

96. Friedland, *supra* note 1 at 240-47. See *infra* notes 1-9 and accompanying text.

97. Canadian pollsters routinely indicate that Quebec, which does not share those media to the same extent, often exhibits different opinions on a number of social issues. Support for strict gun control tends to be higher in Quebec than in any other province, a phenomenon which may also be attributable, in part, to the fact that the 1989 mass-shooting incident took place in Quebec. *Quebecers Turn in Fewer Firearms; Ontario Residents Hand Over Six Times More Weapons*, MONTREAL GAZETTE, Dec. 17, 1992, at A5; see also polls *supra* note 94.

98. *Land of the Free*, *supra* note 6, at 15-16.

it exists either way. The availability and demand for firearms in the United States triggers wistful envy on the part of some Canadian firearm owners, particularly those who subscribe to American beliefs about the right to bear arms and the ownership of guns for personal and self-defence. American examples where firearms are alleged to have been successful in deterring or preventing crime are sometimes cited in the public debate in Canada.⁹⁹

The reaction of the majority of Canadians, who support gun control policies, is quite different. Canadians and the media tend to emphasize, if not exaggerate, both American crime rates and the role played by firearms in producing those rates. A recurring theme in recent Canadian public debate has been the use of U.S. shooting incidents by gun control advocates as an example of what could happen in Canada if Canadian laws were not maintained. Meanwhile, gun control opponents scramble to develop theories which explain higher U.S. crime and shooting rates which do not involve high rates of firearm ownership.¹⁰⁰ The resistance of Canadians to the use of firearms as weapons, whether for personal defence or civil defence, has also weakened the arguments of gun control opponents by dividing them into a number of factions. While the National Rifle Association has been described as one of the most effective lobbying organizations in the United States, there is no single parallel Canadian organization. During legislative deliberations over proposed gun control amendments in 1990-91, fourteen major groups appeared on behalf of firearms interests. There was much common ground between them, but there were also substantial differences, particularly those based on the various types of firearms and the uses to which they could or should be put.¹⁰¹ At the same time, legislators and members of the public tended to view the various representatives collectively, leaving the more moderate interests and groups tarnished by the views of their more radical counterparts.

Any suggestion that U.S. organizations were intentionally intervening in the Canadian debate would be seen as outside interference,¹⁰² but

99. *Legislative Committee H, supra* note 64, at 5:32-33 (1 Oct. 1991).

100. *Id.* at 5: 33 (1 Oct. 1991); *Special Committee on Bill C-80, supra* note 9, at 3:67-68 (13 Dec. 1990).

101. *Report of the Special Committee on the Subject-Matter of Bill C-80 (Firearms)*, Parliament of Canada, 1991, App. "A". Major firearms groups included the Shooting Federation of Canada, the Dominion of Canada Rifle Association and I.P.S.C. Canada (target-shooting), as well as organizations representing collectors, hunters, and commercial interests. *Id.*

102. This makes interest groups in Canada unwilling to acknowledge any direct

Canadian firearms interest groups commonly employ the same arguments and in some cases, the same tactics as those used by their American counterparts. The National Rifle Association has, in at least one case, funded research in Canada,¹⁰³ but the American gun lobby probably exerts far more influence in the form of publications and advertisements than any type of direct intervention. Many individual Canadian firearm owners are either members of the NRA or subscribe to its publications, and American firearms magazines and other periodicals containing advertising and editorial content opposing gun control and extolling the virtues of the Second Amendment are freely available on Canadian news stands. It is also likely that the marketing of firearms for recreational and other purposes and the indirect but extensive placement of firearms in magazines, television, motion picture and other media originating from the United States have an impact on attitudes and the demand for firearms in Canada.¹⁰⁴

On the other side, the general popular support for gun control and the aftermath of the University of Montreal murders has served as a unifying force. Between the time of the murders, in December of 1989, and the passage of the 1991 Criminal Code amendments exactly two years later, gun control advocates formed a single group, the Coalition for Gun Control which combined the police community, religious groups, public health and medical groups and some victims groups. Some of the precursors of the coalition were sponsors of the 1990-91 petition, and the coalition, once it was set up, vigorously lobbied Members of Parliament while the 1991 Criminal Code amendments were before the legislature. It continues to play a similar role to the present day.

There is also overlapping and comparative academic research linking Canada and the United States, particularly in medical and public-health

linkages with similar U.S. groups, and their opponents eager to try to establish such links. See *Special Committee on Bill C-80*, *supra* note 9, at 3: 89-90 (13 Dec. 1990).

103. Gary A. Mauser, *A Comparison of Canadian and American Attitudes Towards Firearms*, 32 CAN. J. CRIMINOLOGY 573, 588 n.1. (1990).

104. Firearm advertising in Canada is not limited to American firms. Manufacturers from other countries and Canadian wholesale and retail firms also advertise. There is almost no manufacturing of firearms in Canada, however, and many Canadian interests rely at least partly on brochures and other material furnished by manufacturers. Federal regulations bar the use of violence in firearm-related advertising, but do not otherwise limit what may be advertised or how. See *Restricted Weapons and Firearms Control Regulations*, SOR/78-670. This has not been interpreted as restricting the advertising of firearms for home or self-defence, and such content routinely appears in U.S.-based magazines sold in Canada.

literature most of which tends to support arguments for strict gun control.¹⁰⁵ The medical community in Canada has become increasingly active in support of strict legislation, probably following the lead of many American physicians and academics who have written and spoken on the subject. As a major cause of death and injury in the United States, firearms have long attracted the attention of doctors, who have advocated restrictions on availability as a means of prevention.¹⁰⁶ The Canadian Medical Association and many of its members have adopted a similar position since the University of Montreal shooting incident.¹⁰⁷

V. THE PRESENT DAY: THE PROPOSED 1995 AMENDMENTS

The 1993 federal election radically altered the Canadian political landscape, reducing the former Progressive Conservative government to only two seats in the House of Commons. The same election gave the new Liberal government a substantial majority, and created significant minorities for the right-wing Reform Party and the separatist Bloc Québécois. Of the parties now represented, only the Reform Party opposes stricter gun control legislation,¹⁰⁸ although some individual Government (Liberal) Members have also expressed reservations.¹⁰⁹ There is also opposition to some of the proposals from provincial politicians in some parts of Canada.¹¹⁰

105. See, e.g., Sproule & Kennett, *supra* note 1; Sloan et al., *supra* note 1; John H. Sloan et al., *Firearms Regulations & Rates of Suicide: A Comparison of Two Metropolitan Areas*, 322 NEW ENG. J. MED. 369 (1990).

106. Susan P. Baker, *Firearms and the Public Health*, 1 J. PUB. HEALTH POL'Y 224, 228 (1980).

107. Trent, *supra* note 28. See also Chapdelaine & Kimberley, *Firearm-Related Injuries in Canada: Issues for Prevention*, 145 CAN. MED. ASS'N J. 1217 (1991). Messrs. Chapdelaine and Kimberley also served on the Canadian Advisory Council on Firearms which was set up to provide policy advice to the Minister of Justice on gun control issues.

108. During 1994, at least one prominent opponent of firearms legislation was elected as a Reform Party riding president, and editorials in a Canadian firearms publication have been supportive of the Party. Party members passed a resolution calling for the repeal of all gun control legislation passed since the 1976-77 amendments during the summer of 1994, although it is not clear whether this is official party policy.

109. *Every Gun Will Be Registered [Prime Minister] Chretien Vows*, TORONTO STAR, Oct. 22, 1994, A1. A small group of government members also appeared at a rally opposing further gun control amendments (which the author attended) in Ottawa during August of 1994.

110. *Gun Registry Won't Reduce Crime, Says New [Provincial] Minister*, EDMONTON SUN, Oct. 22, 1994, at N2.

Some gun control opponents have argued that the enactment of the 1991 amendments led to the 1993 election defeat of the former Conservative government which developed them. Gun control may have affected voters in a few ridings, but it is a minor issue in comparison with the other political and economic factors raised during the campaign. To the extent that gun control did play a role, moreover, it may have been more significant in electing candidates who support gun control, than in defeating those who opposed it. The position of the victorious Liberal Party favouring even stricter legislation was made clear during the debates surrounding the 1991 changes and was well known to interest groups on both sides of the issue. It was raised in the Liberal campaign as part of a general crime control package, but was not made a major issue.

The Reform Party opposed gun control as part of a more general attack on government regulation, a position which proved popular in some western and northern ridings, but not in large urban centres or the east.¹¹¹ The votes of firearms enthusiasts may actually have backfired in some ridings, where a split of the right-wing vote between the Conservative and Reform Parties allowed Liberal candidates to win by default. On the whole, however, whether the gun control issue played into the hands of supporters or opponents, it is unlikely to have played a decisive role either way.

The new government has since moved to deliver on its promises. Following preliminary indications that further gun control legislation might be pending,¹¹² lobbying activity has also increased, particularly for firearms enthusiasts, who staged a series of public rallies opposing more restrictive legislation during the spring and summer of 1994. On November 30, 1994, a package of legislative and other proposals was announced by the Minister of Justice, who indicated that the necessary legislation would be placed before Parliament early in 1995.¹¹³

111. The Reform Party took seats from the Conservative Party in Manitoba, and Alberta, and from the socialist New Democratic Party in northern British Columbia. It won only one seat in Ontario, in a largely rural riding, and no seats in Quebec or the Atlantic provinces. See Charles Trueheart, *Canada's Voters Awake to New Political Order*, WASH. POST, Oct. 27, 1993, at A1.

112. Both the Minister of Justice and the Prime Minister made a number of comments in the legislature and to the media suggesting that measures ranging from the registration of all firearms to the prohibition of all handguns were under consideration. Those two proposals in particular received extensive media coverage. *Every Gun Will be Registered [Prime Minister] Chretien Vows*, *supra* note 108, at A1.

113. ACTION PLAN, *supra* note 2, tabled in the House of Commons, Nov. 30, 1994. See also David Vienneau, *Ottawa to Ban Deadly Firearms*, TORONTO STAR, Dec. 1, 1994, at A1; Stephen Bindman & Doug Fischer, *Gun Owners Get 8 Years to Register*, OTTOWA

The *Action Plan*, tabled in the House of Commons, makes it clear that the changes will continue the fundamental policies pursued by earlier governments with respect to deterrence, incapacitation, screening and firepower or firearm-specific controls. The major changes announced included the prohibition of most semiautomatic variants of assault rifles, which had been restricted in the 1991 changes, and the prohibition of non-sporting handguns,¹¹⁴ both with the proviso that those already in possession could keep the firearms, but not transfer them to new owners.¹¹⁵ The proposals also include increases in the mandatory sentences for using a firearm to commit an offence, increases in the scope and application of court prohibition orders, and setting up a system to register and track all firearms in Canada.¹¹⁶ Given the strong majority of the government in the House of Commons, it is likely that these proposals will become law sometime in 1995, although full implementation will take longer than that.¹¹⁷

VI. FUTURE IMPACT OF THE U.S. ON CANADIAN POLICY

The differences in legislation, policy and public attitudes with respect to firearms between Canada and the United States will no doubt continue to raise Canadian concerns. These may become more acute in an era of freer international trade and more open borders with respect to

CITIZEN, Dec. 1, 1994, at A1; *Gun Plan Final, [Minister of Justice] Rock Declares*, GLOBE & MAIL, Dec. 1, 1994, at A1. The legislation was introduced by the Minister of Justice on February 14, 1995 and is presently before the Canadian House of Commons as Bill C-68.

114. Handguns with barrels shorter than 4.14 inches (105mm) or non-sporting calibres (.25 or .32 calibre) were prohibited. *Total Gun Registration, Broad Bans Proposed*, BERGEN REC., Feb. 15, 1995, at A18.

115. This follows the precedent of earlier "grandfather" clauses used in the 1976-77 and 1991 changes, but is more restrictive. The earlier provisions created closed classes of pre-existing owners, who could transfer the firearms within the classes. The proposed 1995 change allows continued possession, but no future transfers of any kind. Can. Dep't of Justice, News Release, Nov. 30, 1994, at 2.

116. The initial setting up of the registration system will be a large undertaking. The exact number of non-restricted firearms in Canada is not known, but is estimated at between 6 and 7 million, in addition to the 1.2 million restricted firearms already registered under the 1969 and earlier requirements. The system is also expected to handle about 500,000 transactions (imports, exports, transfers etc.) per year once in place. See ACTION PLAN, *supra* note 2, at 13-14.

117. *Gun Owners Get 8 Years to Register*, OTTAWA CITIZEN, Dec. 1, 1994, at A1. This is slightly misleading, since the proposal would actually have completed the last registration by the end of the seven to eight year period.

commodities other than firearms. One of the justifications given for the 1995 proposal to register all firearms was the need to control the "theft, diversion and smuggling" of firearms into Canada. The 1994 *Action Plan* points out that

Canada's relatively strict legislation and the easier availability of firearms in the United States raise concerns about smuggling, and past Parliamentary committees and the Auditor General of Canada have both recommended legislative and administrative controls.¹¹⁸

Smuggling is almost certainly a significant problem for Canada, although it is difficult to quantify because of the illegal and covert nature of the activities involved. The problem is also complex, potentially ranging from large-scale international small-arms trafficking passing through Canada, to smaller-scale operations in which firearms are smuggled across the border for illegal resale or personal use.¹¹⁹ Customs personnel have indicated that many import offenses are committed by visiting Americans who bring personal firearms across the border out of ignorance or disrespect for Canadian law.¹²⁰

Recommendations that steps be taken both to quantify the problem of smuggling and to control it figured prominently in the debates surrounding the 1991 amendments and subsequent recommendations,¹²¹ and have since become a major focus of the 1995 initiative.¹²² The urgency of the problem is probably exaggerated somewhat by the fact that attacks on smuggling appeal to both sides of a very polarized debate, albeit for

118. ACTION PLAN, *supra* note 2, at 11.

119. All of these activities are criminal offenses in Canada unless the proper permits are obtained. See Criminal Code, R.S.C., ch. 40, § 97(3) (1991) (Can.). Under this provision, any acquisition of a firearm without an Acquisition Certificate (FAC) (or in the case of a commercial acquisitions, a business permit) is an offence, and importation is included as a form of acquisition. Private non-resident importers, such as visiting hunters are exempted from this requirement by § 97(4)(c).

120. *Special Committee on Bill C-80, supra* note 9, at 10:9-10 (15 Jan. 1991).

121. See *Report of the Special Committee on the Subject-Matter of Bill C-80 (Firearms)* (House of Commons, February 1991) at 42-43. See also *Tenth Report of the Standing Committee on Justice and the Solicitor-General* ("Consideration of the draft regulations on gun control tabled in the House by the Minister of Justice on Tuesday, March 31, 1992") (House of Commons, June 1992) at 33.

122. See *Heat on Firearms at Border: [Minister of Justice] Rock Vows Smuggling Crackdown*, WINNIPEG FREE PRESS, June 9, 1994, at A3; *Smugglers Swell Gun Numbers*, TORONTO STAR, Oct. 22, 1994, at A15. See also ACTION PLAN, *supra* note 2, at 11-13.

different reasons. Gun control opponents argue that legal owners are not part of the crime problem and urge the government to pursue anti-smuggling legislation and programs instead of more general restrictions on access or possession which affect their interests directly. Those who support strict legislation tend to agree that illegal importation must be addressed as part of the problem, but do not accept the "either-or" arguments of their opponents. They support smuggling controls, but only in addition to strict domestic controls.

Further attention may have been focused on smuggling by the decision of the Canadian government, early in its mandate, to reduce domestic tobacco taxes as a way of controlling tobacco smuggling. Alcohol producers subsequently asked for the same treatment, and the policy could be seen as a precedent for easing domestic firearm restrictions as well. As with other smuggling problems such as alcohol, tobacco, and narcotics,¹²³ firearm smuggling will be difficult to control as long as the Canada-U.S. border remains open and there are significant legislative discrepancies between the two jurisdictions. The Canadian Government has indicated that it will intensify enforcement efforts, but some smuggling will probably always be present as long as firearms are easier to obtain in the U.S. than in Canada, a fact which may eventually lead Canadians and their media to become critical of U.S. domestic policy and legislation. This trend could well become more pronounced if media crime reporting begins to focus on the origins of smuggled guns used in actual offenses in Canada.¹²⁴

Less direct in its impact on public opinion, but no less significant than smuggling is the general fear of crime and the fear that the perceived higher levels of crime in the United States will be imported into Canada with American firearms and cultural attitudes towards firearms. Crime rates in the United States are seen as being linked to firearm ownership and availability and the public reaction is often that if availability is reduced, the crime problems can be avoided. In the words of a former Minister of Justice:

123. Concerns about the smuggling of weapons are linked to other smuggling activities, often because weapons kept for protection or smuggled as a sideline are seized from those whose primary activities involve other commodities. Following the 1992-93 crackdown on tobacco smuggling and tax-cut on tobacco, police also expressed concerns that those involved would maintain their operations by switching from tobacco to firearms. *Guns Replace Cig Smuggling*, OTTAWA SUN, Aug. 28, 1994, at A5.

124. The proposed 1995 changes may actually make this more likely, both by further limiting the access of criminals to non-smuggled guns and by making it possible, as guns are registered, for police and the media to determine their immediate origins once seized.

Canadians have seen the extent of the problem of uncontrolled firearms in the United States and there is the fear that the same situation could arise in Canada if effective controls are not maintained Comparisons are difficult, but it is common knowledge that Canada enjoys a much lower rate of firearms incidents than the United States, and I believe that this is at least partly due to the stricter gun control regime here.¹²⁵

VII. CONCLUSION

The existence and proximity of the United States has had a pronounced effect on the public debate concerning gun control policies in Canada for as long as the debate has existed. The effect differs from one side to the other, but it clearly affects both sides. The influence on gun control opponents in Canada is most easily seen, although it may be ultimately the less significant in terms of its impact on policy-makers and the law.

The effect of American phenomena on advocates for stricter gun controls is less obvious, but probably more significant in its impact in Canada. The U.S. gun control lobby, having had relatively little success at home, exerts little influence in Canada, but none has been needed. There is an element of cultural resistance to American values in Canada which causes many of the arguments of gun control opponents, particularly those based on self-protection, to trigger more or less the opposite reaction to what those arguments generally produce in the U.S. Where the arguments of gun control opponents have tended to mimic American positions, the arguments of gun control supporters have often responded by holding up the United States as an unpleasant example of what could happen in Canada if strict controls are not adopted.

A spokesperson for the leading Canadian gun control advocate, the Coalition for Gun Control, recently responded to claims about the need for self-protection by observing that if firearm ownership for self-protection actually worked, the United States' high ownership rates would make it the safest country in the world.¹²⁶ A similar argument has been made by the present Government in support of the proposed 1995 amendments.

125. *Special Committee on Bill C-80*, *supra* note 9, at 3:36-37 (13 Dec. 1990) (Hon. A. Kim Campbell).

126. Ms. Wendy Cukier, at a seminar at Queens' University, Kingston, Ontario, on December 6, 1993 (unpublished).

Canadians do not want to live in a society where they feel they need to own a gun for protection. We value living in a safe and peaceful society, a society that shuns crime and violence.¹²⁷

The overall effect of American influence on both sides of the Canadian debate is that the arguments of gun control opponents in Canada often play into the hands of its supporters. Arguments which in the United States play to the fears of potential firearm customers that remaining unarmed will leave them vulnerable to crime, here play to the fears of many Canadians that, without gun control programs, the U.S. crime phenomena might spread north. The success of such arguments in Canada can be attributed partly to the fact that crime and firearm-related mortality really are higher in the U.S. than in Canada. The effect is probably because most Canadians no doubt believe that crime in the United States is far worse than it actually is, and are frequently subjected to fictional and non-fictional media reports that tend to confirm their worst fears.

The very different histories, social and political cultures of Canada and the United States have played a significant role in determining gun control policies. These factors have been stable in their existence and influence for a very long time, and are not likely to change in the foreseeable future, with the possible exception of some erosion of the more hard-line positions favouring firearm ownership in the United States. The social and cultural differences and the close links between Canada and the United States are such that it would be surprising if each did not exert some influence on the other. The American influences on Canada described in this paper can perhaps be more clearly seen because of the relative sizes of the two countries, but reciprocal influences are also likely to exist.

The reactions of American politicians, voters and interest groups to developments in Canada have been limited thus far, although this could change if Canada's legislation is seen as setting a precedent for the United States and one or both sides in the American debate hold up specific Canadian policies in an attempt to motivate their supporters. As with every argument in this controversial debate, the Canadian reaction to such a turn of events would be mixed. The majority of Canadians regard this country's restrictive policies and legislation as reasonable and entirely warranted, and would probably find it rather ironic if their chosen policies

127. Allan M. Rock, Minister of Justice, quoted in *News Release*, Canada Department of Justice, November 30, 1994.

were used as a scare tactic by American lobby groups.

