

THE QUEBEC BAR'S ANSWERS TO THE SENATE'S QUESTIONS ABOUT BILL C-19, AN ACT TO AMEND  
THE CRIMINAL CODE AND THE FIREARMS ACT

1. Clause 11 of Bill C-19 creates new sections relating to the transfer, including the sale[1], of non-restricted firearms. In particular, the transferor must have “no reason to believe that the transferee is not authorized to acquire and possess that kind of firearm,” and the transferor may ask the Registrar whether the transferee “holds and is still eligible to hold” the necessary licence.

**In your opinion, is the transferor required to ask to see the transferee's licence?**

No.

**Do you believe Bill C-19 should be amended to make that requirement explicit?**

This requirement may be useful, but it will not guarantee the validity of the licence.

**Is the transferor required to verify with the Registrar that the transferee's licence is valid?**

It is our understanding that Bill C-19 eliminates this requirement. Section 23 of the current *Firearms Act* makes it clear that the transferor must inform the Registrar of the transfer, and the Registrar may then confirm if the transferee holds a valid licence. Furthermore, according to regulations made pursuant to paragraph 23(1)(f), which will be repealed if Bill C-19 is passed, the transferor must provide the Registrar with “the names of the transferor and the transferee, as well as their licence numbers”, which ensures that the transferee holds a valid licence and that the transferor is indeed authorized to possess the firearm in question (*Conditions of Transferring Firearms and Other Weapons Regulations*, SOR/98-202, section 3).

**If not, are there other safeguards that could ensure that non-restricted firearms are transferred only to licensed individuals? Please elaborate.**

Yes. Bill C-391, as well as Bill C-301, the predecessors of Bill C-19, required the transferor to “verif[y] the validity of the transferee's Firearms Licence with the Canada Firearms Centre” and obtain “a reference number for the inquiry” (Bill C-391, clause 7(2)). This requirement would ensure not only that the transferee is in fact permitted to possess the firearm, but also that the transaction is documented, by way of the reference number of the transferor's inquiry. Another safeguard could be requiring by law that the transferee's licence be verified with the chief firearms officer, who is in fact responsible for issuing licences.

The absence of a clear requirement to check the validity of the firearms licence with an appropriate government authority (the Registrar, the Canada Firearms

Centre or the chief firearms officer) is likely to create uncertainty in court cases and trials involving the illegal transfer of a non-restricted firearm. Section 101 of the *Criminal Code* provides that every person commits an offence who transfers a firearm to any person “otherwise than under the authority of the *Firearms Act*”. People found guilty of this offence are liable to imprisonment for a term not exceeding five years. However, the criteria outlined in the new section 23(b), together with the transferor having merely the option of verifying the validity of the licence with the Registrar, as outlined in the new section 23.1(1), would make assessing whether an offence had been committed very subjective. Furthermore, the new section 23.1(2) prohibits the Registrar from retaining any record of a request made by the transferor, which would deprive both the Crown of evidence to convict and the accused of evidence in his or her defence.

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2. Some supporters of Bill C-19 have stated that businesses that sell non-restricted firearms will be required to keep records of the transactions, which may be of use to the police in tracing a non-restricted firearm if it is used in a crime. The RCMP has reportedly stated, however, that the record-keeping requirements for businesses were eliminated because they became redundant once the Act came into force[2].

**If businesses are required to keep records of these transactions, what Act or regulation sets out this requirement?**

Businesses are no longer required to keep records of documents detailing transactions for non-restricted firearms, nor must they collect information on these transactions. Under section 105 of the *Criminal Code*, which was repealed by operation of the *Firearms Act* in 1998, businesses had to keep a record of transactions for all firearms, including non-restricted firearms. Furthermore, the *Firearms Licences Regulations* provided that one of the conditions of issuing a business licence was that the business be required to “keep records of transactions entered into by the business in relation to firearms”. This regulatory requirement was repealed when the *Firearms Licences Regulations* were amended in 2004 (SOR/2004-274). These requirements were no longer necessary, as it was mandatory to register all firearms, including non-restricted firearms.

**What information are businesses required by law to record when they transfer firearms to individuals (e.g., make, model, and serial number; transferee’s name and contact information)?**

Currently, to the best of our knowledge, none.

**In your opinion, will business records be as useful to the police as the registry in tracing a non-restricted firearm if it is used to commit a crime? If not, do you have any recommendations?**

Even if businesses were required to collect information on transactions involving non-restricted firearms, this information would certainly not be as useful as the firearms registry, as the information would not be centralized.

The Quebec Bar is concerned about Canada's ability to meet its international obligations, given that the transferor would not be required to inform the Registrar, the Canada Firearms Centre or the chief firearms officer of the transfer of a non-restricted firearm; that the new section 23.1(2) prohibits the Registrar from collecting any information relating to a request regarding the validity of the transferee's licence; and that businesses would not be required to collect information on such transactions; in addition to the fact that the firearms registry for non-restricted firearms would no longer exist.

Canada is a signatory of the *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials* (CIFTA), as well as the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*. The signatories of these two treaties agreed to ensure that all types of firearms be marked and traceable. No exception was made for long guns. However, year after year, the federal government has pushed back the coming into force of the *Firearms Marking Regulations* (SOR/2004-275, which have now been pushed back to December 1, 2012, by the *Regulations to amend the Firearms Marking Regulations*, SOR/2010-276). Furthermore, the elimination of the firearms registry and the absence of any obligation for businesses to collect information on their transactions, or for the transferor to inform an appropriate authority that the transaction is taking place, appear to compromise Canada's ability to ensure the "traceability" of non-restricted firearms. Canada has yet to ratify these two treaties. Pushing back the coming into force of the *Firearms Marking Regulations* has increased the impact of eliminating the long-gun registry on the ability of police forces to trace the source of a non-restricted firearm involved in a crime.

As stated in the *Regulatory Impact Analysis Statement* accompanying the regulations that delayed the coming into force of the *Firearms Marking Regulations* to December 1, 2012 (*Canada Gazette*, Part II, Vol. 133, No. 25, p. 2368):

"Law enforcement and a number of provincial governments support implementing the Regulations as they are now drafted, recognizing that additional markings support the more timely, effective tracing of crime guns. The marking information could enable law enforcement to more quickly establish the origin of firearms and combat the trafficking and smuggling of firearms and other gun crimes."