

PROHIBITED HANDGUN SUMMARY

Firearms Act

Update – February 28, 2008-02-28

Following is a short summary of the prohibited handgun situation in relation to grandfathering and subsequent court actions. The CSSA has been active in the Yellowknife Appeal as well as the consolidated action in Toronto (122 individuals represented). As part of this summary, we are providing all the legal papers, factums, statements of fact, arguments, etc. for use by anyone who needs them.

As of this date (February 28) there has been no decision rendered on the Toronto appeal. Any information on this appeal will be posted as soon as we receive information.

Thank you.

Larry Whitmore
Executive Director

As It All Began

Handguns Prohibited - all .25 and .32 calibre handguns - all handguns with a barrel length of 4.14" (105mm) or less

Government Rational - declared as 'Saturday Night Specials' and deemed to be cheap and inaccurate firearms used only in crimes and for self defence

Actual Reason - to seize as many handguns as possible and complete the first step to the eventual confiscation of all handguns

- *during the debates and Justice Committee hearings, the OHA was approached by a group of Liberal Backbench MPs who were very concerned about the prospect of firearm confiscations*
- *they were suggesting to Minister Rock that the barrel length be changed to an overall length instead, thereby prohibiting the pocket pistols which seemed to be the target of the legislation*
- ***this suggestion was turned down with the comment that it would not ban enough handguns***
- *in light of this comment, we can only conclude that public safety was not the purpose of the prohibition, it was imposed only to ban as many handguns as possible*

Numbers Involved - an estimated 58% of all registered handguns (over 500,000)

Grandfathering (individuals) - those who owned this class of handgun as of February 14, 1995 and on December 1, 1998, may keep and use their property as well as buy, sell and trade within the 'grandfathered' class

Grandfathering (handguns) - to be considered grandfathered, the handguns in this class must have been registered to a private individual before February 14, 1995 - if they were in dealers stock, they are not considered grandfathered and will be subject to confiscation, no matter who owns them now (may be amended if and when Bill C-17 is passed)

Other Complicating Factors - since C-68 did not come into effect until December 1, 1998, the government had no other choice but to continue to allow the importation, purchase and registration of over 120,000 of these handguns since February 14, 1995 - an estimated 50% of these new registrations will be subject to confiscation at the end of the amnesty period (Dec. 31, 2000)

Exemptions – the legislation allows for 'exemptions' to the prohibition if the firearm is suitable (in the opinion of the government) for international bullseye competition (CC Sec. 84). The list currently includes only 37 models of very expensive target handguns.

- *After Bill C-68 was tabled, Minister Rock was informed in the House of Commons that the centre fire calibre of choice for target shooting was the .32 cartridge*
- *As a result of this information, an exemption was put in place allow the government to declare by order in council certain 12(6) handguns to be exempt from the prohibition*
- *The criteria set for these exemptions was that the handguns must comply with International Shooting Union (ISU, now changed to ISSF, International Shooting Sports Federation) rules for competitions sanctioned by the ISU, mostly Olympic type competitions – all other types of competition for handguns were ignored*
- *The ISU rules limit maximum dimensions and weight, not minimum, therefore most if not all the firearms prohibited would comply with ISU rules*
- *The shooting organizations, including the Canadian Shooting Sports, were asked for a list of handguns that our members use for match shooting – the organizations refused to supply such as list*
- *The government then approached the ISU office in Europe for a list and received information concerning some of the handguns used in high level competition – these were the handguns exempted by order in council*
- *Here we have an international organization based in Europe, not subject to the laws of Canada or any of the provinces, determining what type of property Canadians can legally own and use*
- *The way the legislation is written, any changes in ISSF rules will affect the Criminal Code provisions and could possibly result in more prohibitions*
- *Other courses of fire sanctioned by the Shooting Federation of Canada or any other Canadian organization, were ignored*

Other Comments – *there is no evidence that these types of handguns are more prevalent in crime than any others*

- *most of the police issue handguns over the last 50 years fall into the 12(6) category (hardly cheap and inaccurate)*
- *the 4.14" barrel restriction prohibits a large number of handguns as 4" barrels are very common in both self-loaders and revolvers*
- *the criteria for determining barrel length discriminates against the revolver – in the case of self-loading handguns, the cartridge chamber is included in the barrel length measurement*
- *with a revolver, the cylinder is the cartridge chamber, but is excluded from the barrel measurement thereby prohibiting a large number of this class of firearm*
- *retroactive legislation and prohibitions are a violation of our rights*
- *tens of thousands of legally registered firearms owned by government approved (licensed) Canadians, will be subject to confiscation*
- *confiscation without compensation is a violation of the constitution*
- *both Justice Ministers promised publicly that no firearms would be confiscated as a result of C-68*
- *local police forces will be very reluctant to seize these firearms*
- *local police services boards will not want to waste their limited resources in collecting these handguns*
- *thousands of Canadians will be at risk of serious criminal charges merely by the possession of their legally obtained, registered, private property*
- *the court systems will be clogged with the criminal charges, seizure orders and compensation law suits*

CSSA Goes to Court

Prohibited Handgun Grandfathering - Another Fine Mess

Background - The story of the prohibited handgun grandfathering is a sad tale of more government incompetence. You may recall that the original grandfathering date for the short barrel handguns was February 14, 1995. But C-68 did not pass and come into effect until December 1, 1998. There were thousands of legal transfers and registrations between two dates, enough so that the government recognized that it would be very difficult to confiscate the affected guns. They then implemented a series of amnesties until they could fix the problem by changing the grandfathering date to December 1, 1998. Bill C-10a was supposed to resolve this situation.

According to the legislation, an individual must have continuous possession of a valid registration certificate in order to be eligible for grandfathering. Unfortunately, all of the old registration certificates expired on January 1, 2003 and the individuals under the amnesty were not allowed to re-register their prohibited handguns. Since Bill C-10(a) wasn't proclaimed until **after** January 1, 2003, the affected individuals were declared ineligible for grandfathering as they were not in continuous possession of a valid certificate. A ridiculous situation and one that they claim they cannot fix without another amendment to the Firearms Act.

The current amnesty expires on Dec. 31, 2005. When asked what will happen on that date, the reply was that those affected will have to dispose of their guns. We insisted that would not happen and that the situation must be rectified.

Looks like another one for the courts.

The only good news out of this is that all the guns that were in dealer stock at the time are now grandfathered and can be sold to eligible firearms owners.

PROHIBITED HANDGUN (12-6) UPDATE (March 2006)

There are now hundreds of section 74 appeals taking place in Provincial Courts across the country in relation to the CFC refusal to abide by the sections of Bill C10A. You may recall that the CSSA launched a class action suit last November in Federal Court to declare an amnesty (to protect owners from arbitrary confiscation) and to decide the grandfathering refusals in one hearing for all those affected. The Federal judge ruled that since there was already an appeal process in place (Firearms Act section 74) that the matter should be referred to Provincial Court. This forced hundreds of us (me included) to trek down to our local courthouse and file the appeal papers. The majority of the court clerks, crown attorneys and even judges shocked at the number of appeals and had no idea how to handle them. Hearing dates have been delayed and delayed again while the court system tries to make sense out of a nonsensical situation.

Now, the Chief Crown in Ontario has asked that all the Ontario cases be combined at a hearing in Toronto court (didn't we already try to do this in November?) to facilitate the process. As a result, we are asking all Ontario prohibited handgun owners who have filed appeals in their local court to download a special form from our website (www.twelvesix.ca/12_6_rep_form.pdf), fill it out and mail the original signed form to our lawyer, Ed Burlew LLB. This will allow us to represent you at the hearing in Toronto. There is no cost to you (other than voluntary donations) as the CSSA is covering the fees. Non-members can also be part of this hearing. Please send the form in to Ed as soon as possible. His mailing address is on the form (please do not fax the form as we need an original signature).

As for those outside of Ontario, delay, delay, delay your hearings until we see what is happening in Toronto.

COURT ACTION UPDATE (December 2006)

Prohibited Handgun Action (12-6) - The "Consolidated 12(6) Action" hearing has now been delayed to begin July 23, 2007 for 2 weeks. The February 5 to 16, 2007 court dates have been cancelled. The action has evolved as factual and legal issues have arisen and developed.

The most important issue presently is that the Chief Firearms Office for Ontario (C.F.O.) has taken the firm position that only 6 of the 130 participants have specifically applied for a "12(6)" designation on their firearms license. Some people never applied for the

12(6) designation; some applied for 12(2), 12(3), 12(4) or 12(5). Some once applied for 12(6) designation but forgot to apply again when renewing. Even for those 6 who did apply, the C.F.O. never gave a "refusal letter", only issuing a Possession & Acquisition License (P.A.L.) without mentioning 12(6) in the endorsement.

The problem arising now is that without a "refusal letter", the Ontario Court of Justice Judge lacks jurisdiction under sections 74 to 76 of the Firearms Act to order that a P.A.L. with 12(6) status be issued. The issuance of a 12(6) license has become critical because without a 12(6) endorsement on a P.A.L., the Registrar of Firearms can say the gun owner applicant has no standing to ask for registration of the 12(6) handgun. One would logically assume that one would automatically result in the other but not in the minds of the bureaucrats.

Yes, it does seem to be a Catch-22 and sort of silly but that is the argument. To eliminate that argument, ALL 130 MEMBERS OF THE CONSOLIDATED ACTION (in Toronto) MUST RE-APPLY FOR A P.A.L.. Notices and instructions have been issued to all affected participants. If you did not receive the package, please let us know.

And we all wonder why the court system in this country is so overloaded.

COURT ACTION UPDATE (March 2007)

Prohibited Handgun Action (12-6) – We are now fighting the Prohibited Handgun Grandfathering case on 2 fronts; the main test case in Toronto with 130 participants; and now another case in Yellowknife, NWT. Why NWT you might ask. Well, it seems a gun owner, Patrick Ehnes, was successful in convincing a Territorial Court Judge to order the CFC to issue a registration for his 12 (6) handgun. The judge's comments were very interesting and ended up with the following:

“Knowing this position of the Canadian Firearms Registry, the effect of the eventual refusal of Mr. Myers’ registration application is akin to him being told: “your continuous registration lapsed because we, the Registry, delayed.”

*Were I to find, in this situation, that the Registrar’s discretionary decision was justified and Mr. Ehnes’ only remedy was a further legislative amendment, it would bring to mind the famous words of the Mr. Bumble character in Charles Dickens’ Oliver Twist: “**If the law supposes that, the law is a[n] ass.**”*

We could not agree more. The crown has filed an appeal (surprise, surprise) and we have decided to assist Mr. Ehnes by taking over the case. Ed Burlew will be traveling to Yellowknife on September 24 to fight the appeal in Superior court.

I would like to offer my appreciation to the Canadian Gun Nutz for their financial support of this additional court action. We posted a notice on the Gun Nutz website to help with this appeal. Within days, we received enough to cover our extra expenses. I would also like to particularly thank the National Firearms Association for their generous offer to fund half the NWT appeal. United we stand.

The Toronto court action has taken a bit of a turn. The hearing was all set to go in February but the crown determined that the license refusal must be appealed as well. However, when the license re-applications were sent in, someone did not get the memo at the CFC and no refusals were issued. We are told that the refusal letters will be issued sometime in the spring. The new hearing date is now January 2008 and hopefully there will be a legislative fix prior to that.

Some of you involved in this case may have noticed that your new gun purchases are taking an extraordinary long time to approve. It seems that the CFC has put all of us on the FIP list resulting in secondary investigations on all purchases. After protests by Ed Burlew, the flags are supposed to be removed shortly.

COURT UPDATE (January 2008)

The CSSA has initiated a number of court challenges in an effort to protect our rights and sport. Following is a brief update on the cases as of November 26, 2007.

Yellowknife Prohibited Handgun Appeal

You may recall that we are assisting, with legal representation, an individual in Yellowknife who won his Territorial Court Appeal on the prohibited handgun (12-6) grandfathering. The Crown, of course, appealed the decision to Superior Court and we sent our esteemed legal expert, Ed Burlew LLB to fight the appeal. The hearing took place in September and a decision was rendered a couple of weeks ago.

The judge in this case admitted that the government messed up the implementation of the grandfathering provisions. Then he went on to say basically, too bad, the refusal stands. So much for judicial protection of our rights.

We are examining the decision to see if there are grounds for a further appeal.

Toronto Prohibited Handgun Test Case

After much huffing and puffing, the Toronto 12(6) grandfathering case is set to start January 28, 2008. Over 120 individual appeals have been combined from across Ontario to be heard in Toronto. Ed Burlew is again heading the case and is bringing in constitutional arguments.

Hearing Update (posted on Gun Nutz Feb. 11, 2008)

Sorry for the delay in reporting on the hearing. It was an interesting session, to say the least. The judge was trying very hard to understand a complex issue and made

comments about how absurd the situation is. There are piles of documents, factums, affidavits, etc. as well as at least 10 boxes of other material.

The hearing went all day Monday and Tuesday (Jan 28/29). At the end of Tuesday, all the arguments were completed. At the end of the hearings, he asked the two government lawyers if anyone qualified to benefit from the passage of C-10a. Of course, they had to answer 'no, no-one qualified under the current interpretations'. He was quite disbelieving that Parliament would pass a law that no one would benefit from.

On Wednesday morning, the judge announced he would take more time to render his decision (reserved decision). We have no idea when the decision will come down but it will be emailed to us.

We will be making all of our material (factums, agreed facts, constitutional arguments) available for posting on the website, hopefully this week.

Larry Whitmore
Executive Director

To Be Continued