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## A Legal History of the Regulation of Assault-Style Rifles in Canada

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*This article provides the first legal history of the regulation of “assault-style” weapons in Canada. A contentious part of Canada’s gun control regime is the firearms classification system that divides guns into non-restricted, restricted, and prohibited firearms. The sale of semi-automatic firearms, often based on military designs that could be quickly fired and reloaded, sparked concerns since the 1970s, particularly after mass shooting events. Canada adopted a classification regime relying on both statutory provisions that used technical details of firearms and Orders-in-Council to name models of firearms as restricted or prohibited weapons. Critics warned that this system allowed private citizens to possess firearm models that can cause substantial harms. This article describes key changes in firearms technology, discusses the legal and criminal uses of assault-style firearms, explores the history of public concern with such guns, and then surveys the development of Canada’s gun control regime. Finally, it considers proposals for future policy options regarding the availability of assault-style weapons.*

*Cet article présente la première histoire juridique de la réglementation des armes de type d’« assaut » au Canada. Le système de classification des armes à feu, qui divise les armes en armes à feu sans restriction, armes à feu à autorisation restreinte et armes à feu prohibées, est un élément controversé du régime canadien de contrôle des armes à feu. La vente d’armes à feu semi-automatiques, souvent de conception militaire, pouvant être tirées et rechargées rapidement, a suscité des inquiétudes depuis les années 1970, en particulier après des fusillades de masse. Le Canada a adopté un régime de classification reposant à la fois sur des dispositions légales qui utilisent les détails techniques des armes à feu et sur des décrets qui désignent des modèles d’armes à feu comme étant des armes à autorisation restreinte ou des armes prohibées. Les critiques ont mis en garde contre le fait que ce système permettait aux particuliers de posséder des modèles d’armes à feu susceptibles de causer des dommages importants. Cet article décrit les principaux changements intervenus dans la technologie des armes à feu, aborde les utilisations légales et criminelles des armes à feu d’assaut, explore l’histoire des préoccupations du public à l’égard de ces armes, puis passe en revue l’évolution du régime de contrôle des armes à feu au Canada. Enfin, il examine les propositions d’options politiques futures concernant la disponibilité des armes d’assaut.*

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*Introduction*

Gun control has been a persistently controversial subject in Canada for decades. This article provides the first legal history of an especially contentious aspect of Canada's gun control regime: the regulation of semi-automatic, "assault-style" rifles, like the infamous AR-15. Shooters have employed such firearms in many mass casualty events in the United States, Canada, and around the world. Debate over the regulation of such guns has been particularly heated in Canada since 2020, when Prime Minister Justin Trudeau announced that the federal cabinet had issued an Order in Council (PC 2020-298) to ban several models of semi-automatic firearms.<sup>1</sup> This article describes some of the key technological developments in long guns that have spurred debates about the kinds of firearms that should be available in Canada. It identifies weapons employed in mass shootings and

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1. *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, PC 2020-298, (2020) C Gaz II 154, 53 (SOR/2020-96) [*Firearms Order in Council*].

notes the policy responses to those events. It then explains the legislative tools used to address the dangers associated with assault-style firearms and considers the public policy debates about these regulatory approaches. Finally, it identifies the strengths and shortcomings of past legislative approaches and considers future policy options.

This article demonstrates that the federal government has used a somewhat piecemeal approach to regulating assault-style rifles. Efforts to limit the availability of some kinds of firearms have often resulted from their use in domestic and international mass shootings. Changes in firearm technology have contributed to attempts to limit the ownership or use of firearms deemed especially dangerous. The federal government has prohibited some semi-automatic rifles, declared others to be restricted firearms, and left others as non-restricted firearms. This has complicated the enforcement of Canada's gun laws. It has also permitted firearms with the capability to cause substantial harm to remain in circulation.

### *I. Firearm technology*

Changing firearm technology has been an important factor in the history of gun control in Canada. At the beginning of the nineteenth century, long guns were generally single-shot, smooth-bore firearms loaded through the muzzle, which were slow to load, inaccurate beyond approximately 100 metres, and often misfired. More accurate rifled firearms had long existed but tended to build up residue that fouled the barrel, until the introduction of new conical ammunition that expanded upon being fired. In the mid- to late-nineteenth century, breech-loading guns replaced muzzle-loaded weapons. These technological developments made long guns more dependable, faster to load, and more accurate at longer ranges. Gun manufacturers in the nineteenth century also developed firearms with internal magazines that could hold several rounds of ammunition. Typically, these guns used a manual-action system (often "lever-action" or "bolt-action" designs) to load fresh cartridges into the chamber of the barrel. This manual process for putting a new round in the chamber limited the speed with which these guns could be fired (although their fire was much greater than the weapons that preceded them). Lever-action repeating rifles like the Winchester Model 1873 contained internal magazines that had a loading gate on the side of the frame that allowed shooters to reload the rifle by individually inserting new cartridges until the magazine was full. Most Canadian hunters and target shooters long used lever-action or bolt-action rifles. "Semi-automatic" rifles were a major technological innovation in firearm design. Such rifles automatically reload a cartridge into the chamber after discharge. Each pull of the trigger

discharges a single round from a semi-automatic firearm. In comparison, an “automatic” firearm will shoot continuously so long as the trigger is depressed until the weapon runs out of ammunition.<sup>2</sup>

Most militaries employed bolt-action rifle designs well into the twentieth century. For example, the Canadian military used bolt-action firearms as its standard infantry rifle in the First World War (the Ross rifle and Lee-Enfield rifle), Second World War (Lee-Enfield rifle), and the Korean War (Lee-Enfield rifle). From the mid-1950s to the mid-1980s, the Canadian military issued a semi-automatic rifle, the C1A—a Canadian version of the Belgium-designed FN FAL as its standard infantry weapon. Canada did not adopt a standard infantry rifle that had the ability to fire in single-fire, semi-automatic fire, or fully automatic modes until the mid-1980s, when it began using the C7.<sup>3</sup> The ability to adjust a firearm to fire in different modes, including automatic fire, is commonly referred to as a “select fire” capability.

Some Canadian hunters began using semi-automatic rifles after World War II, as reflected in advertisements of major retailers that sold firearms to hunters. Companies like Eaton’s and Sears advertised mostly manual-action firearms into the 1970s and 1980s, and in fact such guns remain popular today.<sup>4</sup> By the 1960s, these retailers sold some small-calibre (“.22 calibre”) semi-automatic rifles that fired rim-fire ammunition. Rim-fire cartridges are limited to low pressures because they require a thin case so that the firing pin can crush the rim and ignite the primer. Rim-fire ammunition was inexpensive, and thus .22 calibre semi-automatic rifles were popular among hunters shooting at small game or for killing animals that farmers deemed pests.

In comparison, few semi-automatic hunting rifles firing “centre-fire” ammunition appeared in the advertisements of major mainstream retailers

2. David Westwood, *Rifles: An Illustrated History of Their Impact* (Santa Barbara: ABC-CLIO, 2005).

3. J L Granatstein, *Canada’s Army: Waging War and Keeping the Peace*, 2nd ed (Toronto: University of Toronto Press, 2011) at 54, 92-93, 339, 378; Doug Knight & Clive M Law, *Tools of the Trade: Equipping the Canadian Army* (Ottawa: Service Publications, 2005) at 29-33.

4. See e.g. *Eaton’s Fall and Winter 1948-1949 Catalogue* (Canadian Mail Order Catalogues), Library and Archives Canada at 459, online: <[www.bac-lac.gc.ca/eng/discover/postal-heritage-philately/canadian-mail-order-catalogues/Pages/item.aspx?PageId=6536&](http://www.bac-lac.gc.ca/eng/discover/postal-heritage-philately/canadian-mail-order-catalogues/Pages/item.aspx?PageId=6536&)> [perma.cc/6W8C-GDMQ]; *Simpson’s Spring and Summer 1965 Catalogue* (Canadian Mail Order Catalogues), Library and Archives Canada at 274, online: <[www.bac-lac.gc.ca/eng/discover/postal-heritage-philately/canadian-mail-order-catalogues/Pages/item.aspx?PageId=11256&](http://www.bac-lac.gc.ca/eng/discover/postal-heritage-philately/canadian-mail-order-catalogues/Pages/item.aspx?PageId=11256&)> [perma.cc/5Y9M-V37G]; “Simpsons-Sears,” *The Calgary Herald* (13 September 1968) 28; “Simpsons-Sears,” *The Ottawa Citizen* (9 October 1970) 12; “Canadian Tire,” *The [Kingston] Whig Standard* (28 August 1974) 17; “Canadian Tire,” *The Ottawa Citizen* (10 September 1974) 53; “Simpsons,” *The Regina Leader-Post* (29 August 1975) 22; “Canadian Tire,” *The Ottawa Journal* (11 October 1977) 29; “Sears,” *The Sault Star* (26 September 1979) 16.

before the 1970s. A centre-fire cartridge has a primer located in the centre of the cartridge case head. Centre-fire cartridges can withstand higher pressures, allowing them to give a bullet greater velocity and energy. Common centre-fire cartridges include the .223 Remington and .308 Winchester. In the 1960s and 1970s some mainstream retailers offered for sale a modest number of semi-automatic centre-fire rifles. These guns tended to use small magazines (for example, the Winchester Model 100 .308 which had a four-round magazine). They were often more expensive than bolt- or lever-action designs.

In the 1970s, semi-automatic, centre-fire rifles that accepted large-capacity magazines and were often based on military designs, such as the AR-15, began to enter the Canadian civilian market. Such firearms were produced without a “select-fire” capability, so they could not fire in a fully automatic mode. These “assault-style” firearms could be reloaded much faster than rifles like the Winchester repeating rifle. They typically accepted large-capacity magazines and could be quickly reloaded by removing an empty magazine and inserting a loaded one. Writing in the mid-1970s, the authors of *Modern Firearms* described the production and marketing of such guns: “Basically these are guns derived from existing assault rifles, called different names, and modified in such a way that they are only semi-automatic.”<sup>5</sup>

Today, there is substantial debate about what to call these firearms. In advertising semi-automatic, centre-fire rifles with large-capacity magazines in the 1970s and 1980s, Canadian retailers and gun owners often referred to firearms such as the AR-15, Mini-14, and FN-FAL as “assault rifles.” This indicates a widely held though colloquial understanding that an assault rifle was a semi-automatic, centre-fire firearm capable of receiving a large-capacity magazine that was often a civilian version of a gun originally designed for military service. A few examples of businesses referring to “assault rifles” in their advertisements illustrate the use of the term by the Canadian gun community.<sup>6</sup> In 1982, an Edmonton company, MilArm, advertised “assault rifles,” including AR-15s and Ruger Mini-14s.<sup>7</sup> Klondike Arms & Antiques of Edmonton sold the “Colt AR-15 Semi Auto Assault rifle” in 1983.<sup>8</sup> In 1986, the Firing Line Ltd Shooting Range Gun Store in Calgary sold “assault rifles,” including the AR-15 and Mini-

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5. Yves Cadiou & Alphonse Richard, *Modern Firearms*, translated by Simon Pleasance (Toronto: McClelland & Stewart, 1977) at 118.

6. *The Montreal Gazette* (7 October 1978) 47.

7. *The Edmonton Journal* (31 March 1982) E12.

8. *The Edmonton Journal* (29 October 1983) E3.

14.<sup>9</sup> Kingsway Firearms of Vancouver sold “assault rifles” such as the AR-15 in 1987.<sup>10</sup> By contrast, firearm owners and retailers did not describe shotguns or bolt- or lever-action hunting guns as “assault rifles.”

However, by the early 1990s, the firearms community developed an aversion to calling any civilian firearm an “assault rifle” (or the synonym “assault weapon”). The gun community instead began to label such rifles “modern sporting rifles,” “black rifles,” or “tactical rifles.” This shift in terminology occurred soon after the murder of fourteen women at Montreal’s École Polytechnique in 1989 by a man armed with a Ruger Mini-14, which was followed by the United States Congress passing an “assault weapons ban” in 1994 (discussed below). Robert J Spitzer explores this shift in how the firearms industry described semi-automatic centre-fire rifles with large detachable magazines in the United States. He concludes that gun manufacturers and retailers often referred to these rifles as “assault rifles” in the 1980s and marketed them by highlighting the military lineage of the guns’ designs. However, by the early 1990s, “both the gun industry and National Rifle Association abruptly changed course in their reference to such weapons as pressure built on Congress and in some states to enact curbs.” This led to the “remarketing and rebranding of such weapons as no different from typical, traditional hunting weapons that also fired in semi-automatic fashion. That effort has persisted to the present, with terms like ‘tactical rifles’ and ‘modern sporting rifles’ typically offered by gun organizations, including the National Rifle Association (NRA) and National Shooting Sports Foundation (NSSF), as preferred terms for such weapons.”<sup>11</sup> A similar effort to rebrand civilian “assault rifles” as “modern sporting rifles” occurred in Canada. This article uses the now commonly employed term “assault-style rifle” to refer to semi-automatic, centre-fire rifles that can receive a detachable magazine and that often originated from a military design. In the debates about gun control in Canada, however, these firearms have at various times been referred to as “paramilitary” rifles, “military-style” rifles, “modern sporting” rifles, “black” rifles, “assault weapons,” and “assault” rifles.

## II. *Legal uses of assault-style rifles*

As noted earlier, some semi-automatic centre-fire rifles have been sold in Canada for decades, but historic sporting literature and advertisements suggest that the majority of hunters and target shooters long used manual-

9. *The Calgary Herald* (11 May 1986) 43.

10. *The Vancouver Sun* (28 February 1987) H3.

11. Robert J Spitzer, *Guns Across America: Reconciling Gun Rules and Rights* (New York: Oxford University Press, 2015) at 81.



action firearms (with the exception of semi-automatic .22 calibre rifles firing low-powered rim-fire ammunition, which seem to have become relatively common by the 1960s).

Target shooters did not traditionally use assault-style rifles. Target shooting has old roots in Canada.<sup>12</sup> Rifled firearms developed in the mid-nineteenth century allowed for participants to aim at targets placed hundreds of metres away. Some military planners believed that a well-trained militia using rifles could effectively defend against a more numerous enemy, and thus encouraged rifle practice.<sup>13</sup> This was a popular idea in British North America given the recurring threat of United States aggression. In the 1860s, rifle shooting competitions became common throughout much of what became Canada. The interest in rifle shooting waxed and waned over time, though Canadians have often participated in local, provincial, and international shooting events. Shooting became part of the modern Olympics games in 1896. The number of Olympic shooting events has varied over the years. In recent Olympics, rifle shooting events involve .22 calibre rim-fire ammunition and require participants to fire at relatively short distances (a maximum of 50 metres).<sup>14</sup> The Olympics do not include competitions that require the use of assault-style rifles.

Many shooting competitions use small-calibre rim-fire ammunition because it has a low recoil. For example, the Canadian Shooting Sports Association lists several rifle-shooting disciplines on its webpage.<sup>15</sup> Most events do not use semi-automatic, centre-fire rifles.

Shooting competitions that require the use of assault-style rifles, such as “multi-gun” (or “3-Gun”) competitions, are of relatively recent lineage. 3-Gun requires shooters to use three firearms: a handgun, a semi-automatic rifle, and a shotgun. The event replicates battlefield conditions by requiring competitors to aim and fire at targets placed at

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12. Kevin Wamsley, “Cultural Signification and National Ideologies: Rifle-shooting in Late 19th-Century Canada” (1995) 20:1 Soc History 63, DOI: <10.1080/03071029508567925>; R Blake Brown, *Arming and Disarming: A History of Gun Control in Canada* (Toronto: University of Toronto Press, 2013) at 47-52 [R Blake Brown, *Arming and Disarming*].

13. R Blake Brown, “The State and Organized Rifle Shooting in Nova Scotia in the 1860s” (24 August 2020), online (blog): *Borealia* <earlycanadianhistory.ca/2020/08/24/the-state-and-organized-rifle-shooting-in-nova-scotia-in-the-1860s/> [perma.cc/3JVT-LX3Z]; James Wood, *Militia Myths: Ideas of the Canadian Citizen-Soldier, 1896–1921* (Vancouver: UBC Press, 2010) at 44-50; James Wood, “Anglo-American Liberal Militarism and the Idea of the Citizen Soldier” (2007) 62:2 Intl J 403, DOI: <10.1177/002070200706200213>; James Wood, “William Tell Militarism: The Swiss Model for Canada’s ‘Citizen Army’” (2018) 37 War & Society 1, DOI: <10.1080/07292473.2017.1412184>.

14. See “Shooting,” online: *Olympics* <www.olympic.org/shooting> [perma.cc/F5ZA-FTF6].

15. “Rifle Shooting Disciplines,” online: *The Canadian Shooting Sports Association* <cssa-cila.org/shooting-sports/rifle-shooting-disciplines/> [perma.cc/6TZ6-DGGK].



relatively short distances while moving through a course in as little time as possible. The roots of these multi-gun competitions can be traced to matches first organized by the American *Soldier of Fortune* magazine at its annual convention in 1980, which simulated combat with pistols, semi-automatic rifles, and shotguns.<sup>16</sup> Some Canadian gun clubs experimented with 3-Gun in the 1980s, but the activity did not substantially grow in popularity until around 2000. In 2012, the *Edmonton Journal* reported that about three hundred Albertans regularly competed in 3-Gun.<sup>17</sup> PC 2020-298 prohibited some assault-style rifles used in multi-gun competitions, though other non-restricted and restricted semi-automatic rifles that can be used in such events remain on the market.

### III. *Criminal uses of assault-style rifles*

Assault-style rifles have been employed in criminal activity in Canada. Press stories and reported legal cases indicate that individuals involved in the illegal drug trade are sometimes found to possess assault-style firearms. Shooters have also used semi-automatic rifles in several mass shootings, domestic homicides, hostage takings, bank robberies, and police killings.<sup>18</sup> Some of the criminal incidents involving semi-automatic rifles in Canada are well-known; others have largely been forgotten. Here is a sample of some incidents in Canadian history:

- 1962: During a bank robbery in Montreal, three men armed with semi-automatic rifles, including a FN rifle, killed two police officers.<sup>19</sup>

16. See R Blake Brown, "Back in the Holster: Sport Shooting, 3-Gun, and the Ban on Assault-style Rifles" (25 August 2021), online (blog): *Canadian Dimension* <[canadiandimension.com/articles/view/back-in-the-holster-sport-shooting-3-gun-and-the-ban-on-assault-style-rifles](http://canadiandimension.com/articles/view/back-in-the-holster-sport-shooting-3-gun-and-the-ban-on-assault-style-rifles)> [perma.cc/XF59-EJKA]; Philip Alpers & Josh Sugarmann, "Gold Medal Gunslingers: Combat Shooting Targets the Olympic Games" (1999), online (pdf): *Violence Policy Center* <[apo.org.au/sites/default/files/resource-files/1999-07/apo-nid70545.pdf](http://apo.org.au/sites/default/files/resource-files/1999-07/apo-nid70545.pdf)> [perma.cc/UW8W-9BG2].

17. Shelley Bindon, "Black Guns, White Hot," *The Edmonton Journal* (30 June 2012) G1-G2.

18. Semi-automatic firearms are frequently the weapons used for mass shooting events in the United States. See Jack Levin, "The Role of Firearms in Mass Shootings" in Jaclyn Schildkraut, ed, *Mass Shootings in America: Understanding the Debates, Causes, and Responses* (Santa Barbara: ABC-CLIO, 2018) at 4; Christopher S Koper et al "Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources" (2018) 95:3 J Urban Health 313, DOI: <10.1007/s11524-017-0205-7>; Rosanna Smart & Terry L Schell, "Mass Shootings in the United States" (15 April 2021), online: *RAND Corporation* <[www.rand.org/research/gun-policy/analysis/essays/mass-shootings.html](http://www.rand.org/research/gun-policy/analysis/essays/mass-shootings.html)> [perma.cc/3WAN-XKHS].

19. Al Palmer & Paul Dubois, "'Santa' Bandit Team Kills Two for Less Than \$2,000," *The Montreal Gazette* (15 December 1962) 1; "Slaying Weapon Found," *The Montreal Gazette* (18 April 1963) 1; Jana G Pruden, "When the Santa Claus Bandit Struck Montreal in 1962, 'Christmas Was Never the Same'," *The Globe and Mail* (26 December 2021), online: <[www.theglobeandmail.com/canada/article-when-the-santa-claus-bandit-struck-montreal-in-1962-christmas-was/](http://www.theglobeandmail.com/canada/article-when-the-santa-claus-bandit-struck-montreal-in-1962-christmas-was/)> [perma.cc/K8TM-769S].

- 1967: Arthur Towell, 35, armed himself with a Beretta BM 59 semi-automatic rifle and began firing at people from his parents' home in Vancouver. Towell killed two people in their backyard, shot another person across the street, and shot a fourth person walking on the street.<sup>20</sup>
- 1977: A gunman walked into a Montreal bar and murdered two staff and three patrons with an M-1 semi-automatic rifle. The shooter was never identified.<sup>21</sup>
- 1982: Saskatoon police killed an 18-year-old hostage-taker after a lengthy standoff. The shooter was dressed in fatigues and armed with an AR-15 semi-automatic rifle. He fired 50 rounds during the standoff, injuring a hostage.<sup>22</sup>
- 1984: An 18-year-old from Etobicoke dressed in army fatigues and armed himself with a Heckler-Koch HK-91 semi-automatic rifle with the intent of killing his ex-girlfriend. When stopped by police, the teenager opened fire, killing one officer and injuring two others.<sup>23</sup>
- 1989: Marc Lépine used a Ruger Mini-14 semi-automatic rifle to kill 14 women and injure more than a dozen others at the École Polytechnique in Montreal.<sup>24</sup>
- 1990: Harnek Lalli, 33, used his legally owned AK-47 to murder two people attending a cultural event at a Delta, British Columbia secondary school.<sup>25</sup>

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20. See R Blake Brown & Rudy Bartlett, "'A Fusillade of Shots in the Quiet Neighbourhood': The 1967 Vancouver Mass Shooting and Gun Control in the late 1960s" (2022) 213 *BC Studies* 35, DOI: <10.14288/bcs.no213.195959>.

21. Bill Kokesch, "Gunman Kills 5 in North-End Bar," *The Montreal Gazette* (14 March 1977) 1; "Cold Trail and Few Leads in Montreal Bar Shooting," *The Windsor Star* (14 March 1977) 1; "Police Have Gun, No Motive for Gaiete Bar Slayings," *The Montreal Gazette* (15 March 1977) 3.

22. "Sharpshooters Kill Rifle-toting 'Weirdo'," *The Regina Leader-Post* (15 December 1982) 1; "Gunman Had 'Pretty Potent Weapon'," *The Saskatoon Star-Phoenix* (15 December 1982) 3; "Landrie's Gun to be Held until Investigation Finished," *The Saskatoon Star-Phoenix* (17 December 1982) 3.

23. See R Blake Brown, "The Murder of Constable David Dunmore & the Long Debate over whether to Ban 'Military-Style' Rifles" (4 December 2019), online: *Active History* <www.activehistory.ca/2019/12/the-murder-of-constable-david-dunmore-long-debate-over-whether-to-ban-military-style-rifles/> [perma.cc/T764-J6YM].

24. See e.g. Teresa K Sourour, "Report of Coroner's Investigation" (1991), online (pdf): *Diarmani* <www.diarmani.com/Montreal\_Coroners\_Report.pdf> [perma.cc/F9L8-YSFK]; Méliissa Blais, "*I Hate Feminists!*": December 6, 1989, and Its Aftermath, translated by Phyllis Aronoff & Howard Scott (Halifax: Fernwood, 2014).

25. Salim Jiwa, "Mourners Demand Answers," *The Province* (4 December 1990) 5; Tom Watt, "Man Bought AK-47: Witness," *The Province* (10 April 1992) A23; Tom Watt, "Life Sentence for Delta

- 1991: A licensed gun owner purchased a variant of an AK-47 at a Calgary gun store, then murdered three people.<sup>26</sup>
- 2005: James Roszko used a HK-91 semi-automatic rifle to murder four members of the RCMP in Myerthorpe, Alberta.<sup>27</sup>
- 2006: Kimveer Singh Gill, armed with a Beretta Cx4 Storm semi-automatic rifle, a handgun and a shotgun, opened fire at Dawson College in Montreal. One person was killed, and another 19 were injured.<sup>28</sup>
- 2012: Richard Bain attacked a Montreal building hosting the leader of the Parti Québécois on the evening of the provincial election. Bain fired a single shot from his CZ 858 semi-automatic rifle before it jammed, killing one stage technician and seriously injuring another person.<sup>29</sup>
- 2014: Justin Bourque, 24, dressed in camouflage and used a Norinco M305 semi-automatic rifle (a variant of the M14 rifle) to murder three members of the RCMP and injure two others in Moncton.<sup>30</sup>
- 2014: Robbers used an M14 semi-automatic rifle to murder Matthew Anthony Hennigar and Calvin Andy in Anahim Lake, BC.<sup>31</sup>
- 2016: Lionel Desmond legally purchased a SKS semi-automatic rifle, then killed his wife, daughter, and mother (and himself) in Nova Scotia.<sup>32</sup>

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Killer,” *The Province* (30 April 1992) A29.

26. Kim Lunman, “Suspect Bought Gun, Trial Told,” *The Calgary Herald* (22 May 1992) B2; “Man Guilty of Killing Three in Parking Lot,” *The Edmonton Journal* (2 June 1992) A7.

27. Alberta, *Report to the Attorney General: Public Inquiry into the Deaths of Cst Anthony Gordon, Cst Lionide Johnston, Cst Brock Myrol, Cst Peter Schiemann and Mr James Roszko* (Edmonton: Open Alberta, 2011), online (pdf): <[open.alberta.ca/dataset/b1360153-b288-41a3-8637-112e0786d79b/resource/5556b599-6eb2-4ec6-bb79-eb19b7eb3bf8/download/2015-fatality-report-mayerthorpercmp.pdf](http://open.alberta.ca/dataset/b1360153-b288-41a3-8637-112e0786d79b/resource/5556b599-6eb2-4ec6-bb79-eb19b7eb3bf8/download/2015-fatality-report-mayerthorpercmp.pdf)> [perma.cc/SR5H-QM7P].

28. See Stéphanie Marin, “10 Years after Dawson Shooting, Killer’s Weapon Is More Accessible than in 2006,” *CBC News* (11 September 2016), online: <[www.cbc.ca/news/canada/montreal/dawson-shooting-gun-1.3757762](http://www.cbc.ca/news/canada/montreal/dawson-shooting-gun-1.3757762)> [perma.cc/7FWR-LX7M].

29. *Bain c R*, 2019 QCCA 460.

30. Royal Canadian Mountain Police, *Independent Review: Moncton Shooting, June 4, 2014* (Ottawa: Royal Canadian Mountain Police: 2014), online: <[www.rcmp-grc.gc.ca/en/independent-review-moncton-shooting-june-4-2014](http://www.rcmp-grc.gc.ca/en/independent-review-moncton-shooting-june-4-2014)> [perma.cc/2S3L-MHTJ] [Royal Canadian Mounted Police, *Independent Review*].

31. Keith Fraser, “Slayings that Shocked Remote BC Community Result in 10 Years for Accused,” *The Vancouver Sun* (15 March 2018), online: <[vancouversun.com/news/crime/slayings-that-shocked-remote-community-result-in-10-years-for-accused](http://vancouversun.com/news/crime/slayings-that-shocked-remote-community-result-in-10-years-for-accused)> [perma.cc/Z6M8-WPFD]; *R v Jongbloets*, 2018 BCSC 403.

32. Nova Scotia, *The Desmond Fatality Inquiry, 2020-Jan 29 Day 3 of Hearing*, (Halifax: Desmond

- 2017: Alexandre Bissonnette, 27, killed six people at the Islamic Cultural Centre of Quebec City. He was armed with a semi-automatic Vz. 58 rifle. After the rifle jammed, he carried out the murders using a 9-mm semi-automatic pistol.<sup>33</sup>
- 2017: Matthew Vincent Raymond shot and killed four people, including two police officers, in Fredericton, New Brunswick. Raymond possessed a SKS semi-automatic rifle.<sup>34</sup>
- 2019: Bryer Schmegelsky, 18, and Kam McLeod, 19, legally purchased a SKS semi-automatic rifle in British Columbia, killed three people, and sparked a massive manhunt before they died by suicide.<sup>35</sup>
- 2020: A perpetrator, aged 51, killed 22 people in Nova Scotia. The perpetrator possessed several firearms, including a semi-automatic Mini-14 and an AR-15 style rifle.<sup>36</sup>
- 2022: A 22-year-old man armed with a SKS semi-automatic rifle killed two police officers in Innisfil, Ontario, before turning the weapon on himself.<sup>37</sup>
- 2023: Two 22-year-old brothers armed with SKS rifles reportedly sought to kill as many police officers as possible at a Saanich,

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Inquiry, 2020) at 61, online: <desmondinquiry.ca/transcript\_files/2020-Jan-29-Desmond.pdf> [perma.cc/ELB6-99CE]; Laura Fraser, "Lionel Desmond Looked 'Like a Normal Guy' as He Bought a Gun to Kill His Family: Psychiatrist," *CBC News* (5 February 2020), online: <www.cbc.ca/news/canada/nova-scotia/desmond-day-7-1.5452409> [perma.cc/4RFD-SYQE].

33. Les Perreux, "Quebec City Mosque Shooter Alexandre Bissonnette Confessed during 911 Call, Court Hears," *The Globe and Mail* (12 April 2018), online: <www.theglobeandmail.com/canada/article-quebec-city-mosque-shooter-alexandre-bissonnette-confessed-during-911/> [perma.cc/E4E5-ZWYG]; *Bissonnette c R*, 2020 QCCA 1585.

34. Hadeel Ibrahim, "Firearms Expert Says Rifle Used in Fredericton Shooting Designed 'to Kill,' Mostly Used for Hunting," *CBC News* (30 September 2020), online: <www.cbc.ca/news/canada/new-brunswick/matthew-raymond-first-degree-murder-not-criminally-responsible-defence-1.5743618> [perma.cc/V42V-FENG].

35. Jonathon Gatehouse, "Inside the RCMP's Cross-country Manhunt for Admitted Killers Bryer Schmegelsky and Kam McLeod," *CBC News* (20 December 2019), online: <www.cbc.ca/news/canada/northern-bc-murders-ito-1.5401732> [perma.cc/T8YH-FJCN].

36. Nova Scotia and Canada, Mass Casualty Commission, *Firearms Foundational Document* (Ottawa: Mass Casualty Commission: 2022), online (pdf): <masscasualtycommission.ca/files/foundational-documents/COMM0056215.pdf?t=1677043217> [perma.cc/3USL-TPQP]; Andrew Russell, "Colt Carbine, Ruger Mini-14 among Illegally Obtained Firearms used by Nova Scotia Shooter, Docs Show," *Global News* (20 November 2020), online: <globalnews.ca/news/7474635/nova-scotia-shooting-illegal-firearms-colt-carbine-ruger-mini-14/> [perma.cc/Y5B5-D9XQ].

37. "New details emerge about fatal shooting of 2 police officers in Innisfil, Ont." *CBC News* (13 October 2022), online: <cbc.ca/news/canada/toronto/innisfil-shooting-two-police-officers-dead-investigation-1.6614915> [perma.cc/MBA3-BYWR].

British Columbia bank. The brothers injured 6 police before they were killed.<sup>38</sup>

In the United States, assault-style rifles have also been involved in many mass shootings—too many to list here. Two of the most recent mass shootings involving such firearms in the United States are the 2022 Buffalo Tops Friendly Market shooting in New York in which a shooter armed with a Bushmaster XM-15 semi-automatic rifle (an AR-15 type weapon) killed ten people, and the 2022 Robb Elementary School shooting, Uvalde, Texas, in which a shooter with a Daniel Defense DDM4 V7 (an AR-15 style rifle) killed 21 people, including 19 children.<sup>39</sup>

Mass shootings using semi-automatic rifles have also occurred in other developed nations, though with less frequency than in the United States. Some of the most notable include the 1987 Hungerford school shooting in England (16 fatalities); the 1990 Aramoana shooting in New Zealand (13 fatalities); the 1996 Port Arthur, Australia shooting (35 fatalities); the 2011 Norway shooting (67 fatalities); and the 2019 Christchurch mosque shooting in New Zealand (51 fatalities).<sup>40</sup>

#### IV. *Concerns with assault-style rifles*

The presence of semi-automatic rifles often based on military designs in the Canadian consumer market began to spark concerns in the 1970s. In the early 1970s, reports that the Front de libération du Québec (FLQ) had legally purchased semi-automatic rifles led to calls from several Parliamentarians that the federal government make it more difficult for civilians to acquire such weapons. In 1970, MP Warren Allmand told the House of Commons that the kidnappers of Pierre Laporte “were able to go down to Notre Dame Street and obtain several machine guns and/or repeater rifles.”<sup>41</sup> NDP MP Lorne Nystrom also asked in the House of Commons,

38. Mike Hager, “Brothers behind B.C. bank shootout sought to kill as many officers as possible, police say,” *The Globe and Mail* (20 January 2023), online: <[www.theglobeandmail.com/canada/british-columbia/article-bc-bank-robbery-brothers/](http://www.theglobeandmail.com/canada/british-columbia/article-bc-bank-robbery-brothers/)> [perma.cc/JLM5-FR8F].

39. Mark Follman, Gavin Aronsen & Deanna Pan, “US Mass Shootings, 1982–2021: Data From Mother Jones’ Investigation,” *Mother Jones* (14 February 2023), online: <[motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/](http://motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)> [perma.cc/KX8J-HB97].

40. Bill O’Brien, *Aramoana: Twenty-Two Hours of Terror* (Auckland: Penguin, 1991); Austin Ramzy, Michelle Innis & Patrick Boehler, “How a Conservative-Led Australia Ended Mass Killings,” *The New York Times* (4 December 2015), online: <[www.nytimes.com/2015/12/05/world/australia/australia-gun-ban-shooting.html](http://www.nytimes.com/2015/12/05/world/australia/australia-gun-ban-shooting.html)> [perma.cc/Z4GY-66C4]; Unni Turrettini, *The Mystery of the Lone Wolf Killer: Anders Behring Breivik and the Threat of Terror in Plain Sight* (New York: Pegasus Crime, 2015); New Zealand, Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain on 15 March 2019, *Ko tō tatou kāinga tēne: Report of the Royal Commission*, vol 1 (Wellington: The Office of the Governor-General, 2020) at 40, online: <[www.christchurchattack.royalcommission.nz](http://www.christchurchattack.royalcommission.nz)> [perma.cc/NV29-836T].

41. *House of Commons Debates*, 28-3, vol 1 (9 November 1970) at 994 (Hon Warren Allmand).

"In view of recent activities of the FLQ and the increased sales of M-1 rifles in Montreal, will the Prime Minister inform the House whether the government is planning any amendments to the *Criminal Code* to make it more difficult to purchase fire arms?"<sup>42</sup> In 1971, a Quebec bank robber with a Commando Mark III semi-automatic rifle killed a police constable. The Commando Mark III was a semi-automatic version of the Thompson automatic rifle, which Allied forces used extensively in World War Two. Police urged that access to the Commando Mark III be limited.<sup>43</sup> In 1973, Justice Minister Otto Lang indicated that the government might introduce a *Criminal Code* amendment to address the use of firearms like the M-1 semi-automatic rifle, as he noted concerns about "quasi-machine guns" and the "more exotic types of firearms."<sup>44</sup> Some Canadians expressed apprehension about the introduction of the AR-15 into the civilian market. The *Windsor Star*, for instance, warned in 1975 that criminals "might very well show some interest in the high-powered AR-15."<sup>45</sup> In 1976, a thirteen-year-old boy mail-ordered an AR-15 from an Edmonton gun dealer. The incident drew attention to the availability of the AR-15 and led to calls for stronger gun control.<sup>46</sup> One Alberta columnist asserted, "I don't believe a weapon like the AR-15 should be allowed to be sold in Alberta—or Canada—to anyone, no matter what their age... We don't need AR-15 rifles around any more than we need tanks for the people."<sup>47</sup>

In the early to mid-1970s, increasing crime rates sparked interest in strengthening Canada's gun control regime. Advocates of stronger firearm laws pointed to the substantial number of murders involving long guns and noted that Canada lacked a screening process for those wishing to purchase most firearms. In response, the federal government introduced and passed Bill C-51 in 1977, which required new purchasers to acquire a

42. *House of Commons Debates*, 28-3, vol 4 (25 February 1971) at 3733 (Hon Lorne Nystrom). The semi-automatic M-1 Garand rifle was the standard infantry weapon of the United States Army in the Second World War.

43. "Gunman Frees Girl Hostage after 9 Hours, Gives Self Up," *The Montreal Gazette* (13 October 1971) 1; Eddie Collister, "Probe Demanded of Release System," *The Montreal Gazette* (28 October 1971) 3; "Machinegun Replica No 'Fun Gun' to Police," *The Province* (4 September 1974) 1; "Vancouver Police Wary of Gun," *The Saskatoon Star Phoenix* (5 September 1974) 22.

44. Pat Best, "Lang Poised to Ban More Guns," *The Ottawa Citizen* (19 March 1973) 1; "Semi-automatic Gun Ban Eyed," *The Montreal Gazette* (20 March 1973) 1; "'Exotic-Type' Guns Face Ban," *The Victoria Times* (20 March 1973) 1.

45. Paul Patterson, "The Deadliest Weapon is the Easiest to Buy," *The Windsor Star* (20 September 1975) 3.

46. "Boy's Purchase of Rifle 'Tells Need for Controls'," *The Vancouver Sun* (10 November 1976) 44; "Tougher Federal Gun Laws Urged," *The Fort McMurray Today* (10 November 1976) 2; "13-Year-Old Bought Rifle," *The Regina Leader-Post* (12 November 1976) 24.

47. Eric Denhoff, *The Albertan* (11 November 1976) 8.



Firearms Acquisition Certificate (FAC). As discussed below, Bill C-51 also included efforts to limit access to and use of some assault-style firearms.

The 1989 Montreal Massacre created widespread public awareness of the dangers of assault-style firearms. Students of École Polytechnique helped to organize a petition demanding a ban on the civilian possession of “military or paramilitary weapons,” which garnered over 560,000 signatures.<sup>48</sup> Many federal politicians from all parties expressed concern about the availability of assault-style rifles. Progressive Conservative MP Jean-Pierre Blackburn, for example, stated that “Fourteen young women, in the flower of their youth, killed by a maniac with a semi-automatic weapon. Why are weapons of this kind allowed in Canada?”<sup>49</sup> Progressive Conservative MP Barbara Greene urged her party to “bring forward gun control legislation to prohibit the sale or possession of automatic or semi-automatic weapons with the exception of those required by police forces.”<sup>50</sup>

Many newspapers across Canada advocated for the federal government to take steps to limit access to assault-style rifles after the Montreal Massacre. For example, the *Montreal Gazette* wrote: “What hunter really needs a rifle that can fire 30 rounds in four seconds? Why, in fact, should anyone outside of the military or police need such a weapon, or be allowed to own one.”<sup>51</sup> The *Calgary Herald* urged the federal government to consider “restrictions, if not an outright ban, on the type of weapon used in the Montreal shooting.”<sup>52</sup> In 1990, the *Edmonton Journal* suggested that the federal government should prohibit all semi-automatic rifles, declaring that there was “no rational justification” for allowing people to possess them.<sup>53</sup>

Other organizations also spoke in favour of limiting access to assault-style rifles. For example, in 1990, delegates at a meeting of the Federation of Canadian Municipalities unanimously approved a motion calling on the federal government to “take immediate action to forbid the sale, possession and use of military and paramilitary combat weapons in Canada with the exception of members of the Canadian Forces and law enforcement officers in the fulfillment of their duties.”<sup>54</sup> The Coalition for Gun Control formed

48. Heidi Rathjen & Charles Montpetit, *December 6: From the Montreal Massacre to Gun Control—The Inside Story* (Toronto: McClelland & Stewart, 1999).

49. *House of Commons Debates*, 34-2, vol 5 (8 December 1989) at 6660 (Hon Jean-Pierre Blackburn).

50. *House of Commons Debates*, 34-2, vol 5 (11 December 1989) at 6745 (Hon Barbara Greene).

51. “Control the Guns,” *The Montreal Gazette* (9 December 1989) B2.

52. “Ban Rapid-fire Guns,” *The Calgary Herald* (9 December 1989) A4.

53. “Guns that Massacre,” *The Edmonton Journal* (27 June 1990) 14.

54. Philip Authier, “Municipalities Support Montreal’s Demand for Combat-weapons Ban,” *The Montreal Gazette* (6 June 1990) A5.



after the Montreal Massacre. It brought together many medical, police, and women's organizations to advocate for stronger gun controls, including limits on assault-style firearms. The Canadian Association of Chiefs of Police (CACP) also urged action. The CACP had passed resolutions since the 1970s calling for governments to limit access to potentially dangerous long guns, including automatic firearms and semi-automatic rifles, and it continued to keep up the pressure after the Montreal Massacre.<sup>55</sup> Back in the mid-1970s, the CACP pointed to several especially concerning models of firearms, including the M-1 semi-automatic rifle, and declared that "this type of firearm is of no particular value to hunters."<sup>56</sup> The CACP also worried about the appearance of the semi-automatic version of the M16 rifle (i.e. the AR-15) in Canada, concluding that the rifle "has no place in the civilian world."<sup>57</sup> In 1977, the CACP passed a resolution stating that "semi-automatic firearms are basically designed as an instrument of war" and have "no sporting use either in the cultural or recreational sense." The association urged that all such guns be classified as restricted firearms. Following the Montreal Massacre, the CACP declared that "military assault rifles are manufactured for the sole purpose of killing people in large numbers," and said the minister of justice should "ban all military assault rifles except for law-enforcement and military purposes."<sup>58</sup>

Professionally conducted public opinion polls have shown high levels of support for strengthening gun control laws in Canada. In 2019, Leger found that 77 per cent of Canadians favoured stricter gun controls, while 17 per cent were opposed to stricter gun laws, and seven per cent did not know or refused to answer.<sup>59</sup> Two years later, Leger reported a modest drop in public support for stricter gun control, though a solid majority—66

55. See Canadian Association of Chiefs of Police (CACP), "Resolutions Summaries" (2003) at 34-38, online (pdf): *Canadian Association of Chiefs of Police* <[www.cacp.ca/status-report-government-responses.html?asst\\_id=538](http://www.cacp.ca/status-report-government-responses.html?asst_id=538)> [perma.cc/DT8E-D69T].

56. Canadian Association of Chiefs of Police (CACP), "Supplementary Position Paper on Gun Control Laws, Prohibited and Restricted Weapons" (1974) at 9.

57. *Ibid* at 12.

58. For recent statements by police associations for or against prohibiting assault-style rifles, see Ontario Association of Chiefs of Police, "Statement: The Control of Firearms and the Impact of Gun Violence on our Communities" (25 September 2019), online: *Ontario Association of Chiefs of Police* <[www.oacp.ca/en/news/statement-the-control-of-firearms-and-the-impact-of-gun-violence-on-our-communities.aspx](http://www.oacp.ca/en/news/statement-the-control-of-firearms-and-the-impact-of-gun-violence-on-our-communities.aspx)> [perma.cc/WR7J-CV65]; Canadian Association of Chiefs of Police, "CACP Statement: Ban on Assault-Style Firearms" (1 May 2020), online (pdf): *Canadian Association of Chiefs of Police* <[cacp.ca/index.html?asst\\_id=2144](http://cacp.ca/index.html?asst_id=2144)> [perma.cc/6A9N-855H]; National Police Federation, "Gun Violence and Public Safety in Canada" (2020), online (pdf): *National Police Federation* <[npfcontent.ca/wp-content/uploads/2020/11/Gun-Violence-and-Public-Safety-in-Canada-PS-Final-EN.pdf](http://npfcontent.ca/wp-content/uploads/2020/11/Gun-Violence-and-Public-Safety-in-Canada-PS-Final-EN.pdf)> [perma.cc/3KN5-FUPF].

59. "Canadians' Opinions on Key Issues" (26 April 2019), online: *Leger* <[www.leger360.com/surveys/federal-politics-april-26-2019/](http://www.leger360.com/surveys/federal-politics-april-26-2019/)> [perma.cc/D6SZ-DP29].

per cent of Canadians—remained in favour. In comparison, 19 per cent said gun laws should stay the same, ten per cent said gun laws should be less strict, and five per cent did not know or refused to answer.<sup>60</sup> Moreover, several recent polls have shown substantial support for limiting access to or banning assault-style rifles. In 2018, Environics Research Group found that 81 per cent of Canadians supported the statement “Private ownership of semi-automatic assault weapons for recreational purposes should not be legal in Canada.”<sup>61</sup> Angus Reid reported in 2019 that 77 per cent of Canadians agreed that more needed to be done to limit access to assault weapons, and 75 per cent supported a complete ban on assault weapons. (55 per cent of current or former gun owners agreed that assault weapons should be banned).<sup>62</sup> The following year, Angus Reid reported that 78 per cent of Canadians supported a complete ban on civilian possession of assault weapons (45 per cent of current gun owners and 70 per cent of former gun owners supported such a ban).<sup>63</sup> And, in 2020 Ipsos determined that 82 per cent of Canadians supported the federal government’s ban on assault-style weapons.<sup>64</sup>

#### V. *The regulation of assault-style firearms*

Gun control in Canada has a long history. In the pre-Confederation period, some colonies and local governments passed legislation or issued bylaws that regulated when and where firearms could be carried or used.<sup>65</sup> Federal politicians have historically sought to limit access to or regulate the use of firearms that are deemed particularly dangerous. The federal government’s current approach to regulating long guns is rooted in late-1960s policy. As the below analysis of key legislative provisions highlights, the federal government gradually made it easier for the Governor in Council to restrict

60. “Leger’s North American Tracker” (30 March 2021), online: *Leger* <leger360.com/surveys/legers-north-american-tracker-march-30-2021/> [perma.cc/4W98-JCCC].

61. Tim Naumetz, “Canadians Support Ban on Semi-auto Assault Sport Rifles: Environics Poll,” (9 March 2018), online: *iPolitics* <www.ipolitics.ca/news/canadians-support-ban-on-semi-auto-assault-sport-rifles-environics-poll> [perma.cc/G5YE-X9V5].

62. “Amid Concern over Spread of Gun Violence, Majorities Support Ban on Handguns, Assault Weapons” (24 May 2019), online: *Angus Reid Institute* <www.angusreid.org/gun-control-handgun-ban/> [perma.cc/R8CH-2JMJ].

63. “Four in Five Canadians Support Complete Ban on Civilian Possession of Assault-style Weapons” (1 May 2020), online: *Angus Reid Institute* <www.angusreid.org/assault-weapons-ban/> [perma.cc/7JTU-5MSV].

64. “Eight in Ten (82%) Canadians Support Federal Government’s Ban on Military-Style Assault Weapons” (28 May 2020), online: *Ipsos* <www.ipsos.com/en-ca/news-polls/Eight-in-Ten-Canadians-Support-Federal-Governments-Ban-on-Military-Style-Assault-Weapons> [perma.cc/X3UK-K395].

65. R Blake Brown, “‘Possession of Arms among These Men... Might Lead to Serious Consequences’: Regulating Firearms in the Canadas, 1760–1867” in Blaine Baker & Donald Fyson, eds, *Essays in the History of Canadian Law, Volume XI: Quebec and the Canadas* (Toronto: University of Toronto Press, 2013) at 503–537.

or prohibit firearms deemed dangerous and has used its authority to limit the availability to the public of many models of guns, including many assault-style firearms.

1. Criminal Law Amendment Act, 1968–69, *SC 1969, c 38*

In 1969, Parliament passed an omnibus criminal law reform bill that included provisions related to firearms. The changes included the creation of a classification system. Guns were classified as (1) “firearms” (today called “non-restricted firearms”); (2) “restricted weapons”; or (3) “prohibited weapons.” In addition to making all handguns restricted, the 1969 legislation classified as a restricted weapon any firearm that was “capable of firing bullets in rapid succession during one pressure of the trigger” (i.e. automatic weapons) and any firearm that was less than 26 inches (660 millimetres) in length or that was designed to be fired when reduced to a length of less than 26 inches by folding or telescoping. The legislation also provided authority to the Governor in Council to place firearms in the restricted category. A restricted firearm was a “weapon of any kind, not being a shotgun or rifle of a kind commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a restricted weapon.”<sup>66</sup> In other words, the legislation made some firearms restricted weapons based on their physical characteristics, while also allowing Cabinet to declare other firearms to be restricted so long as they were not a shotgun or rifle of a kind commonly used in Canada for hunting or shooting purposes.

The 1969 legislation also allowed the Governor in Council to declare models of firearms to be prohibited. A prohibited weapon was a weapon “not being a restricted weapon or a shotgun or rifle of any kind commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a prohibited weapon.”<sup>67</sup> The 1969 legislation thus established the power of the Governor in Council to classify firearms not commonly used for hunting or sporting purposes as restricted or prohibited. In the early to mid-1970s, the federal government used this authority to classify firearms as restricted or prohibited sparingly.<sup>68</sup> For example, in 1974, the federal government issued an Order in Council making the Commando Mark III (a semi-automatic version of the Thompson 1927A-1, or “Tommy gun”) a restricted weapon.<sup>69</sup> In 1976, the federal government declared the High Standard Model 10 Series “A”

66. *Criminal Law Amendment Act, 1968–69, SC 1969, c 38, s 6.*

67. *Ibid.*

68. ML Friedland, “Gun Control: The Options” (1975) 18:1 *Crim LQ* 29 at 37–38.

69. *Restricted Weapons Order, PC 1974-2186 (1974), C Gaz II 108:20, 2716.*

and the High Standard Model 10 Series "B" semi-automatic shotguns to be restricted weapons.<sup>70</sup>

2. Criminal Law Amendment Act, 1977, SC 1976-77, c 53

In 1977, the federal government addressed the introduction of assault-style rifles into the Canadian consumer market in a revision to the *Criminal Code*. The legislation retained the 1969 classification system for firearms but changed the definition of "restricted" and "prohibited" weapons. Justice Minister Ron Basford explained to Parliament that the changes were part of an effort to prevent dangerous users from acquiring firearms, to encourage responsible gun ownership, and to discourage the criminal use of firearms. One way this would be done was "by prohibiting certain particularly dangerous firearms which have no legitimate sporting purposes, and restricting others."<sup>71</sup>

The "restricted weapon" definition retained the 1969 wording but added that the category included any firearm that was not prohibited that had a barrel of less than 18.5 inches (470 millimetres) and was capable of "discharging centre-fire ammunition in a semi-automatic manner."<sup>72</sup> This did not restrict all semi-automatic firearms, just short-barrelled ones. Long-barrelled semi-automatic firearms remained non-restricted unless otherwise prescribed. Minister Basford made clear to the House of Commons that this provision was intended to make many assault-style firearms restricted:

The purpose of this provision is to restrict rapid-fire, concealable weapons. Obviously, a weapon with a short barrel is easily concealable under a raincoat or a trench coat if the stock has been sawed off. Police records indicate that a large number of short-barrelled guns are being used for criminal purposes. The M1 was developed during the Second World War as a personnel stopper. The AR-15 was designed and produced for use in the Vietnam war and these guns are now being used widely by criminal elements in the United States and in this country. Therefore, as a matter of public policy it seems to me that we should endeavour to restrict their availability and use in Canada as much as possible.<sup>73</sup>

Minister Basford asserted that "there is no proper hunting use for these guns."<sup>74</sup>

The power of the Governor in Council to declare specific firearms as restricted weapons was expanded greatly with the 1977 legislation. It

70. *Restricted Weapons Order (No 2)*, PC 1976-1796 (1976), C Gaz II, 110:14, 2137.

71. *House of Commons Debates*, 30-2, vol 6 (11 May 1977) at 5525 (Hon Ron Basford).

72. *Criminal Law Amendment Act, 1977*, SC 1976-77, c 53, s 3.

73. *House of Commons Debates*, 30-2, vol 7 (30 June 1977) at 7209 (Hon Ron Basford).

74. *Ibid* at 7210.

removed the 1969 *Criminal Code* provision that said a restricted firearm was a “weapon of any kind, not being a shotgun or rifle of a kind commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a restricted weapon.” Instead, the 1977 legislation declared that a restricted firearm was:

a weapon of any kind, not being a prohibited weapon or a shotgun or rifle of a kind that, *in the opinion of the Governor in Council, is reasonable for use in Canada for hunting or sporting purposes*, that is declared by order of the Governor in Council to be a restricted weapon.<sup>75</sup>

This new provision expanded the authority of the Governor in Council to make certain firearms restricted. Henceforth, it was possible for the Governor in Council to act if it was of the *opinion* that a model of firearm was *unreasonable* for use as a hunting or sporting arm. Later governments used this provision to restrict many firearms. Minister Basford explained to Parliament’s Standing Committee on Legal and Constitutional Affairs that it was necessary for the federal government to use Orders in Council to restrict models of firearms. He opposed a proposed amendment to the 1977 legislation that would “force the government to list in the legislation each weapon that is to be restricted. If we are going to list the .30 calibre M1 carbine, there are at least five weapons which should be listed. I suggest that it is not practical to require an amendment each time that a weapon was to be restricted.”<sup>76</sup> He also noted that if legislation included the makes and models of restricted firearms, then the gun industry could avoid the restrictions by slightly altering weapons to create new models that avoided the restricted classification: “To list the .30 calibre M1—this would be easily avoided by having a slightly different calibre. Then it would not be restricted and yet would be readily available on the market, and as I say, readily adapted for criminal purposes.”<sup>77</sup>

The “prohibited weapon” definition was also expanded in the 1977 legislation. All automatic weapons were henceforth prohibited, although owners of automatic weapons could retain them as restricted firearms if they registered them by the time the legislation came into force. Ownership of automatic firearms was thus grandfathered with this provision, but the commercial sale of automatic guns was prohibited.<sup>78</sup> The 1977 ban on

75. *Criminal Law Amendment Act, 1977*, *supra* note 72, s 3 [emphasis added].

76. “Bill C-51, Criminal Law Amendment Act,” House of Commons, Standing Committee on Justice and Legal Affairs, 30-2, No 22 (16 June 1977) at 1020.

77. *Ibid* at 1025.

78. The 1977 legislation also prohibited any rifle or shotgun that was altered so that its barrel was less than 18 inches or had an overall length of less than 26 inches (such as “sawed-off” shotguns). See

automatic firearms is frequently cited by opponents of gun control today as the moment when Canada prohibited “assault rifles,” which they define as including only rifles with a “select-fire” capability allowing them to fire in a fully automatic mode. But as noted earlier, many gun makers in the 1970s had begun producing semi-automatic assault-style firearms that lacked the option of firing with a fully automatic action.

The fact that the legislation made length an important factor in rendering a firearm restricted proved controversial, in part because semi-automatic centre-fire rifles that barely exceeded the statutory provision regarding length were not restricted. In addition, the 1977 legislation did not prevent the introduction of new and potentially dangerous firearms. For example, in 1981 the press reported that a semi-automatic version of the UZI submachine gun had appeared on the Canadian market and had been classified as a restricted firearm.<sup>79</sup> The decision to restrict only semi-automatic centre-fire rifles with barrels less than 18.5 inches became an issue almost immediately. In December 1977, the federal cabinet issued an Order in Council listing five firearms as restricted on the ground that “in the opinion of the Governor in Council” none were “reasonable for use in Canada for hunting or sporting purposes.” The five restricted weapons were listed in the 1977 OIC as:

- (a) the semi-automatic carbine known as the “Commando Mark III”;
- (b) the auto-loading twelve-gauge shotgun known as the “High Standard Model 10, Series ‘A’” or “High Standard Model 10, Series ‘B’”;
- (c) the semi-automatic action rifle known as the “Commando Mark V”;
- (d) the semi-automatic action rifle known as the “Thompson Model 27A-1”; and
- (e) the semi-automatic action rifle known as the “Colt Model AR-15.”<sup>80</sup>

The Parliamentary Secretary to the President of the Privy Council, Yvon Pinard, explained to the House of Commons in January 1978 why the government chose to restrict the AR-15. He said the government made this decision “because it is of the view that the AR-15 has no legitimate sporting use and is closely modelled along military lines. It was felt that

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*Criminal Law Amendment Act, 1977*, *supra* note 72, s 3.

79. Damian Inwood, “Picasso of Guns Hits Market,” *The Province* (7 June 1981) A9; Darcy Henton, “New Gun in Town Worries Officials,” *The Edmonton Journal* (17 June 1981) A3.

80. *Restricted Weapons Order*, PC 1977-3667 (1977) C Gaz II, 112:1 (SOR/78-42).

weapons of this kind should not be readily available to anyone, and that control should be exercised over those who possess them.”<sup>81</sup>

Owners of AR-15 rifles were upset with the classification of this firearm as a restricted weapon, and in 1979 the Progressive Conservative government of Prime Minister Joe Clark issued an Order in Council re-classifying the AR-15 as a firearm rather than as a restricted weapon.<sup>82</sup> Then, in late 1980 a new Order further reduced the list of firearms made restricted by the 1977 OIC, retaining only the High Standard Model 10, Series “A” and High Standard Model 10, Series “B” semi-automatic shotguns as restricted firearms.<sup>83</sup> In 1982, however, the federal government issued a new Order in Council that restricted the semi-automatic FN-FAL rifle (Canada’s standard infantry weapon at the time), “including any reproductions thereof or modifications thereto.”<sup>84</sup> The Canadian Association of Chiefs of Police explained that this addition was a preventive measure, as the FN-FAL was a “military weapon” and “designed for combat.” It had been discontinued by several foreign militaries, which meant that the rifle “could potentially flood the gun market by selling at low cost.”<sup>85</sup>

By the mid-1980s, pressure began to mount on the federal government to address the availability of assault-style rifles. The Progressive Conservative government of Prime Minister Brian Mulroney considered legislation before the Montreal Massacre. In the spring of 1989, the government announced its intention to prohibit firearms that had originally been manufactured as automatic weapons but had been converted to semi-automatics to comply with the 1977 ban on automatic rifles. This proposal stemmed from a fear that criminals could reconvert such semi-automatic rifles to fire automatically.<sup>86</sup> However, before the Progressive Conservatives took this step, the Montreal Massacre occurred on 6 December 1989, highlighting the damage that could be caused by semi-automatic assault-style rifles and drawing attention to their availability in Canada.

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81. *House of Commons Debates*, 30-3 (24 January 1978) at 2178 (Hon Yvon Pinard).

82. *Restricted Weapons Order, Amendment*, PC 1979-2893 (1979), C Gaz II, 113:21 (SOR/79-779).

83. *Restricted Weapons Order*, PC 1980-3372 (1980), C Gaz II, 114:24, 4220 (SOR/80-954).

84. *Restricted Weapons Order, Amendment*, PC 1982-3964 (1982), C Gaz II, 117:1, 345 (SOR/83-69); *Restricted Weapons Order, Amendment*, PC 1983-1888 (1983), C Gaz II, 117:13, 2674 (SOR/83-550).

85. “Restricted Weapons Order,” *Canadian Police Chief Magazine* 2:2 (February 1983) 7. See also John Picton, “Police Fear Growth of Weapons Influx,” *The Vancouver Sun* (4 May 1983) A11.

86. Blake Brown, *Arming and Disarming*, *supra* note 12 at 203; Paul McKeague, “Canada Considers Assault Rifle Ban,” *The Windsor Star* (20 May 1989) B1; “Ottawa to Introduce Ban on Assault Weapons,” *The Vancouver Sun* (28 October 1989) A12.



3. An Act to Amend the Criminal Code and the Customs Tariff..., *SC 1991, c 40*

The government of Prime Minister Mulroney responded to the Montreal Massacre with new gun controls. Its first legislative effort, Bill C-80, died on the Order Paper, but many of the proposals in Bill C-80 were subsequently included in Bill C-17. Bill C-17 made several meaningful changes to Canada's gun laws. These included strengthening background checks, imposing a mandatory 28-day waiting period for a Firearms Acquisition Certificate (FAC), requiring mandatory safety training, and increasing penalties for firearm-related crimes. Bill C-17 also targeted the use of some assault-style rifles in Canada.<sup>87</sup> Parliament sought to mitigate the dangers of assault-style rifles by prohibiting large-capacity cartridge magazines for such firearms (discussed below). Further, Parliament prohibited automatic firearms that had been converted to avoid the 1978 prohibition, though allowed genuine gun collectors to retain them.

The Progressive Conservative government targeted rifles manufactured as semi-automatics that used designs based on modified fully automatic firearms. Minister of Justice Kim Campbell carefully explained the government's desire to limit access to what she called "modern semi-automatic military assault weapons." Minister Campbell's remarks demonstrated the concerns about the availability of semi-automatic firearms based on military designs, and the perceived appropriateness of using Orders in Council to restrict or prohibit models of firearms. Minister Campbell addressed the growing problem of assault-style rifles in civilian hands and asserted that Parliament needed to focus on more strictly regulating "types of firearms associated with the greatest risk to public safety, and relatively few, if any, legitimate sporting uses."<sup>88</sup> She explained that this meant more stringently regulating assault-style firearms:

There have been concerns raised about the increasing prevalence of military and high fire-power firearms in Canada since the law was last amended in 1978. Hon. members will recall that effective controls on fire power were a major component of my earlier legislative proposals.

87. See Samuel A Bottomley, "Locked and Loaded: Gun Control Policy in Canada" in Robert M Campbell, Leslie A Pal & Michael Howlett, eds, *The Real Worlds of Canadian Politics: Cases in Process and Policy* (Peterborough: Broadview Press, 2004) at 30-33; *An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof*, SC 1991, c 40 (Bill C-17 slightly revised the "prohibited weapon" definition, providing that a prohibited weapon was a "weapon of any kind, not being an antique firearm or a firearm of a kind commonly used in Canada for hunting or sporting purposes, or a part, component or accessory of such a weapon, or any ammunition, that is declared by order of the Governor in Council to be a prohibited weapon" s 2(3) [emphasis added]).

88. "Bill C-17, An Act to amend the Criminal Code and the Customs Tariff," 2nd reading, *House of Commons Debates*, 34-3, vol 1 (6 June 1991) at 1253 [Bill C-17 Debates].

There are still serious concerns about these firearms that this House must address, and they remain a key element of the current proposals. These firearms represent a much greater danger to the public than others and they are dealt with accordingly.

Those who own military or paramilitary firearms, fully automatic or converted fully automatic firearms face a much greater degree of restriction than others because their guns are much more dangerous. They are designed and intended for military, not sporting uses.<sup>89</sup>

However, the Progressive Conservative government was interested in not only more strictly regulating automatic firearms that had been converted to semi-automatics. Minister Campbell told the House that the government also intended to target the use of other semi-automatic rifles:

What I am concerned about, and what the legislation seeks to control, are *modern military firearms that contain high firepower, fast-firing mechanisms, large capacity cartridge magazines, and other characteristics that make them very dangerous weapons, and have little or no place in legitimate sporting activities*. Where there are relatively few legitimate uses for these firearms, they would be prohibited altogether.

Where they are used for some forms of legitimate target shooting, they may be designated as restricted weapons, which would allow the activity to continue, but protect the public by registering and tracking the guns and their owners.

I want to reassure those who own obsolete military firearms such as the Lee Enfield that this proposal is intended to reduce access to the most *modern semi-automatic military assault weapons*.<sup>90</sup>

Minister Campbell then explained why the government would continue to use Orders in Council to restrict or prohibit models of firearms rather than use legislation: “As Canadian firearms owners are aware, a portion of the gun control system is enacted by a combination of regulations and Orders in Council made under the legislative authority of the Criminal Code.” She believed this “combined approach makes for a better system for all concerned because it allows for flexibility and clarity which would not be possible using the statute alone.”<sup>91</sup> Minister Campbell noted that the government’s bill did not include a list of firearms to be restricted or prohibited because the existing legislation already allowed

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89. *Ibid.*

90. *Ibid* at 1254 [emphasis added].

91. *Ibid* at 1256.

the government to act through Orders in Council: “[t]he prohibition or restriction of military or paramilitary firearms is not in the Bill. This is because the power to do this by Order in Council already exists in the statute itself. No statutory amendment was necessary.”<sup>92</sup> Cabinet subsequently issued Orders in Council prohibiting or restricting many assault-style rifles (as well as some long-range sniper rifles, shotguns, and handguns). In the “Explanatory Note” regarding the prohibition of many firearms that accompanied Prohibited Weapons Order, No 11, the federal government indicated that this classification was made under the *Criminal Code* provision allowing for firearms to be prohibited if not normally used for hunting or sporting purposes. The prohibition orders were “an important component of the policy of limiting firepower to levels that are reasonably required for hunting or sporting purposes in Canada.”<sup>93</sup> The federal government explained that firearms “form a continuum ranging from common hunting and target-shooting guns to high-powered, military or para-military guns having little or no legitimate sporting purpose. Canada’s gun control scheme places increasing restrictions on access to firearms, up to and including complete prohibition, as firepower increases and sporting utility declines.”<sup>94</sup> Prohibited Weapons Order No 11 listed 17 models of rifles “and any variant or modified version thereof” as prohibited weapons. The order also prohibited three models of shotguns and their variants or modified versions, and 15 models of semi-automatic pistols and their variants and modified versions. An additional three models of rifles and three models of pistols (plus variants) were also prohibited in Prohibited Weapons Order No 12, although they could be retained if they had been registered as restricted weapons by 1 October 1992.<sup>95</sup> Some of the prohibited semi-automatic firearms were based on military designs that had been limited to semi-automatic functioning, such as the Steyr AUG rifle and UZI, and their variants. The prohibition orders also included some long-range sniper/anti-material rifles, such as the .50 calibre Barrett “Light Fifty” Model 82A1. Another Order in Council classified 24 models of firearms (and their variants and modified versions) as restricted. Many of these models were semi-automatic versions of standard military assault rifles, such as the AK-47 and M-16 (including the AR-15).<sup>96</sup>

Bill C-17 and the subsequent Orders in Council were significant steps in limiting access to assault-style firearms. However, critics noted that the

92. *Ibid* at 1257.

93. *Prohibited Weapons Order No 11*, PC 1992-1668 (1992), C Gaz II, 126:17, 3446 (SOR/92-465).

94. *Ibid*.

95. *Prohibited Weapons Order No 12*, PC 1992-1669 (1992), C Gaz II, 126:17 (SOR/92-466).

96. *Restricted Weapons Order*, PC 1992-1670 (1992), C Gaz II, 126:17, 3446 (SOR/92-467).

actions of the Progressive Conservative government still left some models of centre-fire semi-automatic rifles as non-restricted firearms, including the Ruger Mini-14 model used in the Montreal Massacre. This meant that potentially dangerous rifles remained widely available, either as non-restricted or restricted firearms. A 1990 study prepared on Progressive Conservative legislative proposals by the Research Branch of Library of Parliament concluded: "It must be acknowledged that even weapons designed and manufactured as semi-automatic hunting and recreational shooting rifles and shotguns can be used to create carnage. The Montreal tragedy bears dramatic witness to this potential."<sup>97</sup>

#### 4. *Liberal gun controls*

After the 1993 federal election, the new Liberal government pursued additional gun control measures. The Cabinet issued a new Order in Council in 1994 declaring more models of long guns to be prohibited firearms.<sup>98</sup> Minister of Justice Allan Rock announced that the government intended to prohibit a "wide variety of military type weapons," including "several types of military and paramilitary firearms that are designed to imitate weapons used by the army and the police and are intended not for hunting or farming but for combat."<sup>99</sup> In the "Regulatory Impact Analysis Statement" that accompanied the 1994 Order in Council, the federal government indicated that the Order would move "23 semi-automatic variants of assault rifles" from the list of restricted weapons to the list of prohibited weapons.<sup>100</sup> The impact statement explained that this would affect approximately 10,000 firearms. Owners of the newly prohibited rifles could retain them, but the firearms could not be transferred, meaning that when the existing owner died or wanted to dispose of the prohibited firearm, the firearm had to be destroyed, deactivated, exported, or given to a museum. The 23 firearms and their variants that became prohibited under 1994 OIC (effective 1 January 1995) included the AK-47, FN-FAL, and Thompson Submachine gun. The 1994 OIC was the last major order prohibiting models of assault-style rifles prior to PC 2020-298, though the regulations listing restricted and prohibited firearms were consolidated in 1998.<sup>101</sup>

97. William Bartlett, *Gun Control: Analysis of the Government's 1989 Proposal* (Ottawa: Research Branch, Library of Parliament, 1990) at 7.

98. *Prohibited Weapons Order No 13*, PC 1994-1974 (1994), C Gaz II, 128:25 (SOR/94-741).

99. *House of Commons Debates*, 35-1, No 134 (30 November 1994) at 8484 (Hon Allan Rock).

100. *Prohibited Weapons Order No 13*, *supra* note 98.

101. *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, PC 1998-1662, (1998) C Gaz II, 132:20 (SOR/98-462).

The Liberal government also passed a major new piece of gun control legislation, Bill C-68, which received Royal Assent on 5 December 1995.<sup>102</sup> Bill C-68 included *Criminal Code* amendments affecting firearms and created the *Firearms Act* to take many administrative and regulatory aspects of firearm licensing and registration out of the *Criminal Code*. Bill C-68 included a universal licensing system and a requirement that the registration system be expanded to include all long guns (handguns had been registered since the 1930s). In addition, the legislation provided harsher penalties for certain serious crimes using firearms.

Bill C-68 made an important change in the definitions of “restricted firearms” and “prohibited firearms” in the *Criminal Code*, removing the qualifier about hunting or sporting purposes. Instead, a “prohibited firearm” became “any firearm that is prescribed to be a prohibited firearm.” Similarly, a “restricted weapon” became “a firearm of any other kind that is prescribed to be a restricted weapon.”<sup>103</sup> However, Bill C-68 also included a provision (which became section 117.15 of the *Criminal Code*) indicating that in making regulations, the Governor in Council

may not prescribe any thing to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition if, in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes.<sup>104</sup>

Section 117.15 thus significantly expanded the authority of the Governor in Council to prohibit firearms by adopting the same language that had allowed the government to restrict firearms. Henceforth, the Governor in Council could prohibit firearms if it was of the *opinion* that a firearm was *not reasonable* for use in Canada for hunting or sporting purposes.

The government’s intention in expanding the authority to prohibit firearms was explained to the House of Commons Standing Committee on Justice and Legal Affairs by Minister Rock. He noted that the provision would address a loophole in the legislation that had allowed an individual to bring a new model of firearm into Canada, create a shooting event in which to use the firearm, and then rely on that event as evidence that the firearm was used for sport in order to defeat the power of the Governor in Council to prohibit the firearm. He said the legislation change was important because “We don’t want to have military-type assault weapons in this country that are justified only because someone has invented a

102. Bill C-68, *An Act respecting firearms and other weapons*, 1st Sess, 35th Parl, 1995.

103. *Firearms Act*, SC 1995, c 39, s 139.

104. Bill C-68, *supra* note 102, s 117.15(2). See also *Criminal Code*, RSC 1985, c C-46, s 117.15(2).

shooting contest to rely upon as evidence that they can't be prohibited." The statutory provision was thus intended to allow government to prohibit more easily "military-type assault weapons designed only for the purpose of combat and killing." Section 117.15 would provide that if a firearm was "not reasonable for use in hunting and sporting purposes, then it can be prohibited."<sup>105</sup>

#### 5. *Post-1995 legislative action*

Following the passage of Bill C-68, much of the political debate and public discussion about gun control concerned the new licensing regime and, especially, the long-gun registry. While the governments of Prime Ministers Jean Chrétien and Paul Martin defended the long-gun registry, the Conservative government of Prime Minister Stephen Harper passed legislation in 2012 to eliminate it.<sup>106</sup>

The use of Orders in Council to identify some semi-automatic models of rifles as restricted or prohibited firearms rather than classifying all semi-automatic centre-fire rifles the same proved increasingly problematic as more models of guns entered the Canadian market. As a result, new models of assault-style rifles with barrels longer than 470 millimetres or that were more than 660 millimetres in total length were often classified as non-restricted firearms, unless they were deemed variants of a restricted or prohibited model of firearm. Gun control advocates pressed the federal government to take steps to prohibit or restrict new firearm models that were functionally the same as guns that had been restricted or prohibited in the 1990s. The governments of Prime Minister Martin and Prime Minister Harper, however, did not take this step. In fact, the government of Prime Minister Harper issued an Order in Council in 2015 that downgraded the classifications of two models of semi-automatic rifles (the CZ 858 rifle and certain Swiss Arms firearms) after gun owners complained about the classification of these rifles as prohibited firearms. In 2014, the federal government first provided an amnesty period for these prohibited firearms, then in 2015 passed the *Common Sense Firearms Licensing Act*.<sup>107</sup> This legislation amended section 84(1) of the *Criminal Code* to stipulate that a non-restricted firearm was "a firearm that is neither a prohibited firearm nor a restricted firearm" or was "a firearm that is prescribed to be a non-

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105. "Bill C-68, An Act respecting firearms and other weapons," House of Commons, Standing Committee on Justice and Legal Affairs, *Minutes of Proceedings and Evidence*, 35-1, No 147 (19 May 1995) at 0955.

106. *Ending the Long-gun Registry Act*, SC 2012, c 6.

107. *Common Sense Firearms Licensing Act*, SC 2015, c 27.

restricted firearm.”<sup>108</sup> The *Common Sense Firearms Licensing Act* amended section 117.15 of the *Criminal Code* by adding subsections stating:

(3) Despite the definitions “prohibited firearm” and “restricted firearm” in subsection 84(1), a firearm that is prescribed to be a non-restricted firearm is deemed not to be a prohibited firearm or a restricted firearm.

(4) Despite the definition “prohibited firearm” in subsection 84(1), a firearm that is prescribed to be a restricted firearm is deemed not to be a prohibited firearm.<sup>109</sup>

In other words, the Conservative Government allowed for the overriding of the statutory definition of restricted and prohibited firearms through Orders in Council. The federal government then issued an Order in Council that reclassified the CZ 858 and Swiss Arms rifles from prohibited and made them either non-restricted or restricted firearms depending on the length of the firearms.<sup>110</sup>

The Liberal Party under Justin Trudeau declared a desire to limit the availability of assault-style firearms. In 2015, the Party’s election platform included a promise to “get handguns and assault weapons off our streets.”<sup>111</sup> In 2019, the federal government passed Bill C-71, *An Act to Amend Certain Acts and Regulations in Relation to Firearms*.<sup>112</sup> Bill C-71 repealed the parts of the *Common Sense Firearms Licensing Act* that had provided authority to override the firearms classification definitions in section 84 of the *Criminal Code*. Bill C-71 also allowed for the reversal of the regulations that had revised the classification of the Swiss Arms rifles and CZ 858 rifles. However, the Bill included a provision allowing for current owners to retain some models of the CZ 868 and Swiss Arms.

Another controversial topic related to the classification of firearms has been the use of the term “variant” in the Orders in Council listing restricted and prohibited firearms. Some gun owners have complained that “variant” is not defined in Canada’s firearms legislation. However, reliance on a common understanding of the term “variant” is a deliberate feature of the statutory scheme. As noted earlier, since the late 1970s the federal government has expressed concern that listing prohibited or

108. *Ibid.*, s 18.

109. *Ibid.*, s 34.

110. *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, PC 2015-1177 (2015), C Gaz II, 149:16 at 3446 (SOR/2015-213).

111. “A New Plan for a Strong Middle Class” (2015) at 54, online (pdf): *Liberal Party of Canada* <liberal.ca/wp-content/uploads/sites/292/2020/09/New-plan-for-a-strong-middle-class.pdf> [perma.cc/S75V-EDPZ].

112. *An Act to Amend Certain Acts and Regulations in Relation to Firearms*, SC 2019, c 9.



restricted models of firearms in legislation would allow gun manufacturers to circumvent the rules by slightly altering firearms, thereby avoiding the higher classification assigned to those guns. The same concern has led federal authorities listing restricted and prohibited firearms in Orders in Council to include variants of those weapons.<sup>113</sup> In October 2018, Prime Minister Trudeau tasked Minister of Border Security and Organized Crime Reduction Bill Blair with conducting a national consultation to consider prohibiting civilian ownership of handguns and “assault weapons.”<sup>114</sup> The consultation process included roundtables and bilateral meetings with various organizations representing gun owners, victims of violence, provincial and municipal governments, police, Indigenous Peoples, and medical professionals. Many of these people or groups tended to be either strongly in favour of or opposed to gun control. The government also solicited written feedback and launched an online consultation process to allow anyone to complete a survey and offer comments on the idea of banning handguns and assault-style rifles. The design of the consultation process produced results suggesting that banning handguns and assault-style rifles was a polarizing idea.<sup>115</sup> The online questionnaire results largely reflected the views of gun owners, who reportedly filled out the questionnaire in large numbers. The consultation received almost 135,000 completed questionnaires. However, one firearms owner admitted that he submitted up to 35,000 responses using a computer program.<sup>116</sup>

The government did not use an Order in Council to prohibit more models of firearms before the 2019 election, despite pressure to do so by gun control advocates.<sup>117</sup> Instead, the Liberal Party made gun control

113. A comprehensive list of firearm descriptions and classifications is provided by the RCMP in the Firearms Reference Table (FRT), which is available to law enforcement, gun retailers, and, since 2019, the public. See Royal Canadian Mounted Police, “Firearms Reference Table” (2023), online (pdf): [RCMP <mpfirearmspublicstore.blob.core.windows.net/firearms-reference-table/firt-traf-eng.pdf>](https://mpfirearmspublicstore.blob.core.windows.net/firearms-reference-table/firt-traf-eng.pdf) [perma.cc/QL89-CM29]; Tim Naumetz, “RCMP Decisions on Restricted, Prohibited Firearms Going Public,” *iPolitics* (23 May 2019), online: [www.ipolitics.ca/news/rcmp-decisions-on-restricted-prohibited-firearms-going-public/](https://www.ipolitics.ca/news/rcmp-decisions-on-restricted-prohibited-firearms-going-public/) [perma.cc/A8LV-T55W].

114. Public Safety Canada, *Reducing Violent Crime: A Dialogue on Handguns and Assault Weapons* (Ottawa, Public Safety Canada: 2018), online (pdf): *Public Safety Canada* <[www.publicsafety.gc.ca/cnt/cnslttns/hndgn/\\_fls/rdcng-vlnt-crm-en.pdf](https://www.publicsafety.gc.ca/cnt/cnslttns/hndgn/_fls/rdcng-vlnt-crm-en.pdf)> [perma.cc/NL87-92G4].

115. Public Safety Canada & Hill & Knowlton Strategies, *Reducing Violent Crime: A Dialogue on Handguns and Assault-Style Firearms: Engagement Summary Report* (Ottawa: Public Safety Canada, 2019) at 1, online: [www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-rdcng-vlnt-crm-dlg/2019-rdcng-vlnt-crm-dlg-en.pdf](https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-rdcng-vlnt-crm-dlg/2019-rdcng-vlnt-crm-dlg-en.pdf) [perma.cc/9LZ9-YN9N].

116. Patrick White & Tom Cardoso, “Critics Question Ottawa’s Online Survey that Found Strong Opposition to Gun Limits,” *The Globe and Mail* (24 March 2019), online: [www.theglobeandmail.com/canada/article-critics-question-ottawas-online-survey-that-found-strong-opposition/](https://www.theglobeandmail.com/canada/article-critics-question-ottawas-online-survey-that-found-strong-opposition/) [perma.cc/CD69-A9EZ].

117. R Blake Brown, “The Ghost of the Long-Gun Registry: Prime Minister Justin Trudeau and Gun Control in Canada, 2015-2019” (2020) 89 *Études canadiennes / Canadian Studies* 125 at 141, DOI:

a plank of its 2019 election platform, thus allowing Canadian voters to weigh in on whether assault-style rifles should be prohibited. The Liberals promised to “ban assault rifles and crack down on gun crime” and to target “military-style assault rifles,” saying these guns were “designed to inflict mass casualties and have no place in Canada.”<sup>118</sup> The Liberal Party indicated that it would “move forward with a ban on all military-style assault rifles, including the AR-15” and take other steps to keep people safe from gun violence, such as providing more resources for law enforcement, including ensuring that the Canada Border Services Agency and RCMP had the resources needed to mitigate the flow of firearms at Canada’s borders.<sup>119</sup>

On the thirtieth anniversary of the mass shooting at École Polytechnique in December 2019, the Liberal government indicated that it would act. Prime Minister Trudeau said that his government would “strengthen gun laws and ban the type of weapons used at Ecole Polytechnique.”<sup>120</sup> On 1 May 2020, shortly after the mass casualty in Nova Scotia, Prime Minister Trudeau announced PC 2020-298, which banned nine models and their variants (encompassing at the time approximately 1,500 versions) of semi-automatic centre-fire rifles, as well some other firearms, including some long-range rifles and shotguns. The government offered arguments in favour of prohibiting these models of firearms and their variants consistent with the concerns about the availability of assault-style firearms offered by previous Liberal and Progressive Conservative governments since the 1970s. The Regulatory Impact Assessment Statement that accompanied PC 2020-98 noted that such firearms posed “a serious threat to public safety given the degree to which they can increase the severity of mass shootings.”<sup>121</sup> The Statement also noted that the prohibited firearms primarily originated in military designs and expressed an intent to prevent their use in mass shootings or diversion into the illegal market.

PC 2020-298 essentially revised the list of prohibited models of firearms, which, as noted earlier, had not been substantially updated by Orders in Council since the mid-1990s. The models banned included the AR-15, the Vz58, M14, Ruger Mini-14, Beretta Cx4 Storm carbine,

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<1.4000/eccs.4015>.

118. “Forward: A Real Plan for the Middle Class” (2019), online (pdf): *Liberal Party of Canada* <[www2.liberal.ca/wp-content/uploads/sites/292/2019/09/Forward-A-real-plan-for-the-middle-class.pdf](http://www2.liberal.ca/wp-content/uploads/sites/292/2019/09/Forward-A-real-plan-for-the-middle-class.pdf)> [perma.cc/VWJ5-NGHF].

119. *Ibid* at 38.

120. “Feds Vow to Ban Guns Similar to One Used in Ecole Polytechnique Shooting,” *The National Post* (6 December 2019), online: <[nationalpost.com/pmn/news-pmn/canada-news-pmn/feds-vow-to-ban-guns-similar-to-one-used-in-ecole-polytechnique-shooting](http://nationalpost.com/pmn/news-pmn/canada-news-pmn/feds-vow-to-ban-guns-similar-to-one-used-in-ecole-polytechnique-shooting)> [perma.cc/Q5HY-A9DV].

121. *Firearms Order in Council*, *supra* note 1.

Robinson Armament XCR, CZ Scorpion EVO 3 carbine and pistol, SIG Sauer SIG MCX and SIG Sauer SIG MPX carbines and pistols, and SG-550 rifle and SG-551 carbine, including SAN Swiss Arms.<sup>122</sup> The government added assault-style rifles to the prohibited list that legislators had either not included in earlier prohibitions or had entered the Canadian market since the mid-1990s. The newly prohibited firearms were similar in capability to the firearms prohibited in the 1990s. They shared certain characteristics, including that they can receive a detachable magazine, generally use centre-fire ammunition, and can fire with a semi-automatic function.

#### 6. *Prohibition efforts around the world*

Just as mass-shooting incidents are not unique to Canada, neither are efforts to limit access to semi-automatic assault-style firearms. Legislators in many nations have identified assault-style rifles as potentially dangerous if misused and have taken steps to regulate their use or even to prohibit them.

Mass shootings have contributed to concerns over assault-style rifles in the United States, though the American government has been unable to pass a gun law that permanently limited the availability of such firearms across the United States. Congress passed the *Violent Crime Control and Law Enforcement Act* in 1994, which became known as the federal Assault Weapons Ban.<sup>123</sup> The Assault Weapons Ban prohibited the manufacture, transfer, or sale of a limited number of semi-automatic firearms. The legislation specifically named some models as banned, such as the UZI and AR-15. The act also banned semi-automatic rifles that could use detachable magazines and possessed at least two of several characteristics, including a collapsible stock, a pistol grip, a bayonet mount, a flash suppressor, or a mount for a grenade launcher. Gun control advocates critiqued the ban as incomplete, and firearms manufacturers began to redesign firearms to avoid the assault weapons classification. Firearms already in civilian hands could also remain in circulation and be used. In addition, the Assault Weapons Ban had a ten-year sunset provision, and the legislation was allowed to expire in 2004.<sup>124</sup>

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122. Information on these models of firearms can be found in Richard D Jones, ed, *Jane's Weapons: Infantry, 2018–2019* (Coulson: IHS Global, 2018); Cadiou & Richard, *supra* note 5; FWA Hobart, ed, *Jane's Infantry Weapons, 1975* (London, UK: Jane's Yearbooks, 1975); Terry J Gander & Ian V Hogg, *Jane's Infantry Weapons, 1995–96* (Coulson: Jane's Information Group, 1995).

123. *Violent Crime Control and Law Enforcement Act of 1994*, Pub L No 103-322, 108 Stat 1796 (1994).

124. William Briggs, *How America Got its Guns: A History of the Gun Violence Crisis* (Albuquerque: University of New Mexico Press, 2017) at 127-128; Peter Squires, *Gun Culture or Gun Control?*

Three prominent Commonwealth countries—the United Kingdom, Australia, and New Zealand—have aggressively limited the availability of semi-automatic centre-fire rifles. While Canada has prohibited particular models of such firearms, these Commonwealth jurisdictions have implemented more systematic bans. The 1987 Hungerford Massacre in Britain led to the *Firearms (Amendment) Act 1988*, which banned most semi-automatic and pump-action centre-fire rifles. Small-calibre rifles, such as those that fired .22 rim-fire ammunition, were unaffected.<sup>125</sup> The Port Arthur Massacre in Australia in 1996 was committed by a gunman with semi-automatic rifles. Shortly after, Prime Minister John Howard pressed the Australian states to adopt the National Firearms Agreement. This was necessary because the Constitution of Australia does not give the Commonwealth direct power to enact gun laws. The National Firearms Agreement included a ban on semi-automatic rifles and all semi-automatic and pump-action shotguns, and a system of licensing and ownership controls. A federally financed gun buyback scheme was introduced, and almost 700,000 guns were bought back and destroyed.<sup>126</sup> Following the mosque shootings in Christchurch in 2019, the New Zealand government passed the *Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019*, banning most semi-automatic firearms, magazines, and parts (firearms designed to discharge rim-fire cartridges of .22 calibre or less were excluded).<sup>127</sup> The government also announced an amnesty and buyback scheme for prohibited firearms and components.<sup>128</sup> The steps taken by the United Kingdom, Australia, and New Zealand highlight that the concern in Canada with the availability of assault-style rifles is not unique. These countries have all taken steps to strictly limit the availability and use of such guns. So, too, have some other democratic and economically advanced nations, including Japan and South Korea, which prohibit civilian ownership of assault-style rifles.<sup>129</sup>

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*Firearms, Violence and Society* (London, UK: Taylor & Francis, 2002) at 79-80.

125. *Firearms (Amendment) Act* (UK), 1988, c 45.

126. Simon Chapman, Philip Alpers & Michael Jones, “Association Between Gun Law Reforms and Intentional Firearm Deaths in Australia, 1979–2013” (2016) 316:3 *J American Medical Association* 291 at 292, DOI: <10.1001/jama.2016.8752>; Tom Frame, *Gun Control: What Australia Got Right (and Wrong)* (Sydney: University of New South Wales Press, 2019).

127. *Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019* (NZ), 2019/12.

128. Karen Zraick, “New Zealand Ban on Most Semiautomatic Weapons Takes Effect,” *The New York Times* (20 December 2019), online: <[www.nytimes.com/2019/12/20/world/australia/new-zealand-gun-ban.html](http://www.nytimes.com/2019/12/20/world/australia/new-zealand-gun-ban.html)> [perma.cc/696A-VUYW].

129. Philip Alpers & Michael Picard, “Japan: Gun Facts, Figures, and the Law” (24 September 2021), online: *GunPolicy.org* <[www.gunpolicy.org/firearms/region/japan](http://www.gunpolicy.org/firearms/region/japan)> [perma.cc/5FXT-KEM8]; Philip Alpers & Michael Picard, “South Korea: Gun Facts, Figures, and the Law” (24 September 2021), online: *GunPolicy.org* <[www.gunpolicy.org/firearms/region/south-korea](http://www.gunpolicy.org/firearms/region/south-korea)> [perma.cc/6PGN-G3WS].

### 7. *Magazine capacity restrictions*

Mass shootings have highlighted the lethality of assault-style firearms when paired with large-capacity magazines. The shooter in the 1989 Montreal Massacre, for example, was armed with a Ruger Mini-14 semi-automatic rifle loaded with 30-round capacity magazines.<sup>130</sup> To mitigate the potential harm caused by the criminal use of semi-automatic rifles and handguns, some restrictions on the size of magazines have been introduced.

Following the Montreal tragedy, the Progressive Conservative government of Prime Minister Mulroney introduced magazine limits. Minister of Justice Campbell explained to the House of Commons in discussing Bill C-17 that because the “addition of a large magazine can convert almost any ordinary semi-automatic hunting rifle into an assault weapon,” the government would “designate large capacity magazines to be prohibited weapons.”<sup>131</sup> The government’s legislation would allow the Governor in Council “to specify the types of magazine that will be limited and the capacity limits to be applied.”<sup>132</sup> This was necessary, Minister Campbell explained: “Limiting the size of magazines will supplement the other measures by placing effective limits on the firepower of guns that are on the borderline between military and sporting applications.”<sup>133</sup> That is, the government hoped that limiting the size of magazines for semi-automatic centre-fire rifles would mitigate the damage that could be done by shooters, even if the government did not restrict or prohibit such rifles.

In 1991, Bill C-17 included the provision that a prohibited weapon included “a large capacity cartridge magazine prescribed by regulation.”<sup>134</sup> The Progressive Conservative government subsequently issued an Order in Council that limited the capacity of magazines for most semi-automatic handguns to ten rounds and limited the capacity of most semi-automatic centre-fire rifle magazines to five rounds. No magazine size restrictions were imposed for manual-action firearms or rim-fire .22 calibre semi-automatic rifles. The government also made exceptions to the magazine rule for some semi-automatic centre-fire rifles, particularly guns that could not be used without the magazines designed for them. For example, the regulations did not apply to the M-1 Garand rifle, which used a specific 8-round internal magazine.<sup>135</sup> Many magazines for assault-style rifles were

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130. Sourour, *supra* note 24.

131. Bill C-17 Debates, *supra* note 88 at 1255 (Hon Kim Campbell).

132. *Ibid.*

133. *Ibid.*

134. *An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof*, SC 1991, c 40, s 2(3).

135. *Cartridge Magazine Control Regulations*, SOR/92-460 (1992).

made to conform to these regulations by “pinning” the magazine with a rivet to prevent them from accepting more than five rounds.

Three major weaknesses in the restrictions on magazine capacity have undermined the goal of the government of Prime Minister Mulroney to make assault-style rifles less dangerous. First, gun owners have taken advantage of legal loopholes that allow for the use of oversize magazines in some rifles. Second, some magazines can be altered to hold more than the permitted five rounds. And, third, large-capacity magazines are illegally acquired in Canada.<sup>136</sup> Groups representing the firearms community have frequently highlighted these issues, though they do so to urge the repeal of the magazine limitations, not to strengthen the law. For example, in its official policy position, the Canadian Coalition for Firearm Rights (CCFR), a prominent gun lobby organization, states that one of the rationales for its opposition to magazine restrictions is that “pinned” magazines are easily altered so that they can accept more ammunition. The CCFR states that if a person “has a criminal intent to use a firearm and wishes to use a standard capacity magazine [i.e. a magazine larger than the current legislated limit], one merely has to use a power drill to remove the rivet that pins it at the legal capacity.”<sup>137</sup> The CCFR also notes that legal gun owners have identified loopholes that allow a semi-automatic rifle to use a large-capacity magazine. Some legal magazines that can hold more than five rounds are compatible with semi-automatic rifles, thus substantially increasing the number of rounds such rifles are allowed to hold. For example, the CCFR notes the existence of magazines designed for pistols that can legally hold ten rounds, which also fit into AR-15 rifles.

Some criminals have taken advantage of the loopholes in the magazine rules or altered magazines to allow the magazines in their assault-style rifles to hold more rounds of ammunition. In 2006, the perpetrator at the Dawson College shooting in Montreal was armed with a Beretta Cx4 Storm semi-automatic rifle that could use a ten-round magazine. In 2017, a man allegedly armed with a semi-automatic Aero Survival Rifle (which

136. See e.g. Chris Lambie, “Halifax Gun Dealer Facing Criminal Charges,” *Saltwire* (20 September 2021), online: <[www.saltwire.com/atlantic-canada/news/halifax-gun-dealer-facing-criminal-charges-100636368](http://www.saltwire.com/atlantic-canada/news/halifax-gun-dealer-facing-criminal-charges-100636368)> [perma.cc/UGY2-6HWP]; Amy Luft, “RCMP Arrests Sherbrooke Man, Seizes 249 Guns near Quebec–US Border,” *CTV News* (9 March 2021), online: <[montreal.ctvnews.ca/rcmp-arrests-sherbrooke-man-seizes-249-guns-near-quebec-u-s-border-1.5339719](http://montreal.ctvnews.ca/rcmp-arrests-sherbrooke-man-seizes-249-guns-near-quebec-u-s-border-1.5339719)> [perma.cc/GG6R-P9Y8]; *R v Manuge*, 2016 BCPC 68; *R v Haus*, 2016 BCPC 11.

137. “Policy Memorandum No 15-11: Magazine Capacity Restrictions” (16 July 2019), online: *Canadian Coalition for Firearm Rights (CCFR)* <[firearmrights.ca/en/15-11-magazine-restrictions/](http://firearmrights.ca/en/15-11-magazine-restrictions/)> [perma.cc/H5UQ-3V4X]. See also National Firearms Association, “Petition re Magazine Restrictions” (2015), Ottawa, Library and Archives Canada (Public Petitions of the 41st Parliament, sessions 1 and 2, RG2, BAN 2018-00028-4, box 15, file 412-5852).



can legally hold a ten-round handgun magazine) shot at several vehicles in British Columbia and shot a hiker.<sup>138</sup> The man who attacked the Montreal Metropolis nightclub in 2012 to stop premier-designate Pauline Marois from celebrating her victory in the Quebec election had a magazine for his CZ 858 rifle that had been illegally modified so that it could hold 30 rounds of ammunition.<sup>139</sup> Similarly, the shooter in Moncton in 2014 who killed three RCMP members modified magazines that had been pinned to five rounds so that they could hold 20 rounds of ammunition.<sup>140</sup> And the man who attacked the Islamic Cultural Centre of Quebec City had two illegal magazines that each could hold 30 rounds of ammunition for his semi-automatic Vz 58 rifle.<sup>141</sup>

#### VI. Policy options

While PC 2020-298 has updated the list of prohibited firearms, it has banned only some of the weapons that could be defined as “assault-style” rifles. Again, this stems from the current system of firearm classification that uses both statutory provisions to classify rifles based on their characteristics (length and firing system) and Orders in Council to name individual models of firearms (and their variants) as either restricted or prohibited. The federal government indicated that it chose the firearms to prohibit in 2020 based on three considerations. They “(1) have semi-automatic action with sustained rapid-fire capability (tactical/military design with large magazine capacity), (2) are of modern design, and (3) are present in large volumes in the Canadian market.”<sup>142</sup> The number of models that did not qualify using this analysis is unknown.

Other assault-style rifles remain classified only as restricted or non-restricted firearms. For example, the WK180-C is a non-restricted rifle. It is a semi-automatic rifle that fires 5.56 NATO ammunition and uses a

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138. Patrick White, “Three Years Ago, Loopholes in Canada’s Gun Laws Paved the Way for a Highway Rampage in BC. Why Has Nothing Changed?” *The Globe and Mail* (8 August 2020), online: <[www.theglobeandmail.com/canada/article-three-years-ago-loopholes-in-canadas-gun-laws-paved-the-way-for-a/](http://www.theglobeandmail.com/canada/article-three-years-ago-loopholes-in-canadas-gun-laws-paved-the-way-for-a/)> [perma.cc/9MXT-5NWZ].

139. Jaela Bernstien, “Richard Bain murder trial: Gun magazine was illegally altered,” *CBC News* (23 June 2016), online: <[www.cbc.ca/news/canada/montreal/richard-bain-trial-day-11-1.3648313](http://www.cbc.ca/news/canada/montreal/richard-bain-trial-day-11-1.3648313)> [perma.cc/YR7X-PR3W]; Jaela Bernstien, “What we know so far about Quebec’s deadly election-night shooting,” *CBC News* (24 June 2016), online: <[www.cbc.ca/news/canada/montreal/richard-bain-trial-weekend-recap-1.3649664](http://www.cbc.ca/news/canada/montreal/richard-bain-trial-weekend-recap-1.3649664)> [perma.cc/B6ST-QH3U].

140. Royal Canadian Mounted Police, *Independent Review*, *supra* note 30.

141. Andy Riga, “Quebec Shooting: Court hears killer fretting in 911 call about whether anyone injured,” *The Montreal Gazette* (12 April 2018), online: <[montrealgazette.com/news/local-news/quebec-mosque-shooting-courtroom-shown-images-of-weapons-blood-stained-walls](http://montrealgazette.com/news/local-news/quebec-mosque-shooting-courtroom-shown-images-of-weapons-blood-stained-walls)> [perma.cc/Y959-AKH2].

142. *Firearms Order in Council*, *supra* note 1.



detachable magazine.<sup>143</sup> In 2019, an author in a Canadian periodical catering to gun owners described the WK-180-C as “a very nice Canadian-made non-restricted black rifle that functions much like an AR-15 but doesn’t come saddled with firearm registry paperwork and restrictions.”<sup>144</sup> Another example of a modern assault-style rifle that remains a non-restricted firearm is the IWI Tavor. The Tavor is a semi-automatic rifle based on a design with a select-fire capability used by the Israeli military. A third example of a modern assault-style rifle that remains non-restricted is the Norinco Type 97. The Norinco Type 97 uses a detachable magazine, fires .223 ammunition, and is based on a rifle designed for the Chinese military.

Most supporters and opponents of gun control in Canada agree that the classification system needs systematic reform. Opinion diverges widely, however, over how best to revise the classification system. Several options are available. The most radical is to abandon the firearms classification system. For example, the former president of the National Firearms Association, Sheldon Clare, frequently expressed the view that Canada should repeal its firearm classification, registration, and licensing systems.<sup>145</sup> This position is extreme, and its adoption would represent the abandonment of most of the key gun control efforts in Canada introduced since the nineteenth century. It would allow consumers to legally purchase dangerous weapons, including fully automatic firearms.

Some groups representing gun owners advocate for the “simplified classification system.” Under the simplified classification system, automatic rifles would remain prohibited. Restricted weapons would include handguns, as well as firearms that can be fired when reduced to less than 660 millimetres in length. All other firearms would be non-restricted. In other words, if a firearm is not an automatic weapon, a handgun, or a short, concealable weapon it would be non-restricted.<sup>146</sup> Gun lobbyists have advocated for a simplified classification system because it

143. Patrick White, “Critics Say Canada’s Gun Classification System Out of Step with Modern Assault Weapons,” *The Globe and Mail* (31 May 2019), online: <[www.theglobeandmail.com/canada/article-critics-say-canadas-gun-classification-system-out-of-step-with-modern/](http://www.theglobeandmail.com/canada/article-critics-say-canadas-gun-classification-system-out-of-step-with-modern/)> [perma.cc/5M9Y-GRS3].

144. Daniel Fritter, “Kodiak Defense WK180-C: Best Black Rifle Deal?” *Calibre* (7 January 2019), online: <[calibremag.ca/kodiak-defense-wk180-c/](http://calibremag.ca/kodiak-defense-wk180-c/)> [perma.cc/7DWU-DGZ4].

145. See e.g. “NFA Talk S1E24 Wrap Up Show” (31 December 2020), online (video): *National Firearms Association (NFA)* <[nfa.ca/2020/12/31/nfa-talk-s1e24-wrap-up-show/](http://nfa.ca/2020/12/31/nfa-talk-s1e24-wrap-up-show/)> [perma.cc/SDA6-U36L].

146. “Policy Memorandum No 15-5: Classification of Firearms” (16 July 2019), online: *Canadian Coalition for Firearm Rights (CCFR)* <[firearmrights.ca/15-5-classification-of-firearms/](http://firearmrights.ca/15-5-classification-of-firearms/)> [perma.cc/N7KF-8YF3]; Daniel Fritter, “CPC Convention 2016: The Firearms Policy Proposal,” *Calibre* (27 May 2016), online: <[calibremag.ca/cpc-convention-2016-firearms-policy-proposal/](http://calibremag.ca/cpc-convention-2016-firearms-policy-proposal/)> [perma.cc/E9N3-NPH9].

could lower the classification of many assault-style rifles like the AR-15, meaning they would be much easier to acquire and use. These guns would also no longer be registered, making them more difficult to track.

Another option is to change the classification of all currently non-restricted semi-automatic centre-fire rifles to restricted weapons. This would improve recordkeeping by requiring the registration of these guns. It would also discourage “straw purchasing”—that is, the purchase of firearms by a person with a Possession and Acquisition License with the intent of illegally transferring those weapons to someone without a licence—because the legal purchaser could be traced if such weapons were subsequently used for illegal purposes. However, this would not stop all straw purchasing, as evidenced by the fact that handguns are sometimes legally purchased in Canada and then illegally transferred.<sup>147</sup> Changing the classification of all currently non-restricted semi-automatic, centre-fire rifles to restricted firearms would probably also discourage the purchase of such weapons, as there are limits on the use of restricted firearms for hunting. The tougher rules governing transportation and storage of restricted firearms might lessen the likelihood of these guns being stolen and used for criminal activity.

Canada could also follow the example of jurisdictions such as the United Kingdom, New Zealand, and Australia and ban the civilian possession of semi-automatic centre-fire rifles. This approach would treat similar weapons consistently. Police authorities and the public could easily identify prohibited weapons since the classification system would no longer be based on models named by Orders in Council, the determination of variants, or firearm length. However, a buyback program for all such firearms would be expensive.<sup>148</sup> Some firearm owners would also resist this measure, but, as in the United Kingdom, Australia, and New Zealand, gun owners would still be able to purchase manual-action firearms as well

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147. Josee St-Onge, “Straw Purchasing Puts More Legally Bought Guns in the Hands of Alberta Criminals: ALERT,” *CBC News* (14 June 2018), online: <[www.cbc.ca/news/canada/edmonton/straw-purchasing-domestic-weapons-trafficking-increase-1.4704987](http://www.cbc.ca/news/canada/edmonton/straw-purchasing-domestic-weapons-trafficking-increase-1.4704987)> [perma.cc/T6QA-A7VK]; Anna Junker, “Three Men Facing 26 Charges in Straw Buying, Firearms Trafficking Operation,” *The Edmonton Journal* (7 January 2021), online: <[edmontonjournal.com/news/crime/three-men-facing-26-charges-in-straw-buying-firearms-trafficking-operation](http://edmontonjournal.com/news/crime/three-men-facing-26-charges-in-straw-buying-firearms-trafficking-operation)> [perma.cc/V32H-BHCR].

148. The Parliamentary Budget Office estimates that the buy-back of the firearms prohibited on 1 May 2020 will cost between 47 and 756 million dollars. This wide range stems from uncertainty concerning the number of affected firearms, the take-up rate for the buy-back program, and the pricing structure used to value firearms. Prohibiting additional firearms would of course increase costs further. See Parliamentary Budget Officer, *Cost Estimate of the Firearm Buy-Back Program* (Ottawa, Office of the Parliamentary Budget Officer, 29 June 2021), online: <[www.pbo-dpb.ca/en/publications/RP-2122-011-M--cost-estimate-firearm-buy-back-program-evaluation-cout-programme-rachat-armes-feu](http://www.pbo-dpb.ca/en/publications/RP-2122-011-M--cost-estimate-firearm-buy-back-program-evaluation-cout-programme-rachat-armes-feu)> [perma.cc/F87M-2M9Z].

as small-calibre semi-automatic rifles to participate in hunting and target shooting. Finally, Canada could address the use of oversize magazines in assault-style rifles. This could be done by prohibiting any magazine that can be modified to hold more than five rounds of ammunition. The federal government could also make it illegal to use a magazine that can accept more than five rounds. This would mitigate the risk of shooters using assault-style rifles to inflict high numbers of casualties.

### *Conclusion*

Canada has a long history of regulating the ownership and use of firearms. Concern with the ownership of assault-style rifles has grown since they first began to enter the Canadian civilian market. For example, the Canadian Association of Chiefs of Police first objected to the presence of such firearms in the 1970s. The Montreal Massacre, as well as other mass shootings in Canada, the United States, and around the world, highlighted for many citizens, organizations, and elected officials the potential dangers of assault-style firearms if misused. This public awareness has contributed to high levels of support for stronger gun controls in Canada, including limits on the availability of assault-style firearms, as reported by professional public polling.

Canada has adopted a legislative framework for regulating semi-automatic centre-fire rifles that is less restrictive than that used in some other nations, including the United Kingdom, Australia, and New Zealand, where such firearms have largely been prohibited. Instead, Canada's Parliament has sought to legislatively restrict or prohibit firearms with certain characteristics, while intentionally using the flexible tool of Orders in Council to restrict or prohibit models of firearms deemed more dangerous than those necessary for legal hunting and target shooting purposes. The legislative history of the provisions allowing for the use of Orders in Council shows that Parliament has moved towards expanding its ability to restrict or prohibit firearms. Governments have used this authority to restrict or prohibit many models of firearms since the 1970s. The historical context of gun control in Canada demonstrates that PC 2020-298 (SOR/2020-96) reflects a continuation of the firearm policies employed by the federal government since the 1970s. This has seen the use of Orders in Council alongside legislation to restrict or prohibit many firearms that are deemed dangerous, while still allowing widespread civilian firearm ownership.

In late 2022, the Liberal government of Prime Minister Trudeau proposed a major reform the firearms classification system. The Liberals introduced amendments to its proposed new firearms legislation, Bill

C-21, at the Standing Committee on Public Safety and National Security. These amendments would have prohibited many semi-automatic weapons capable of carrying large amounts of ammunition by introducing a new “evergreen” firearm classification system. The amendments to Bill C-21 would have declared as prohibited any rifle and shotgun “capable of discharging centre-fire ammunition in a semi-automatic manner and that is designed to accept a detachable cartridge magazine with a capacity greater than five cartridges of the type for which the firearm was originally designed.”<sup>149</sup> This would have prohibited most assault-style firearms. The amendments to Bill C-21 also would have codified the lists of guns prohibited by order in council by adding them as a schedule in the *Criminal Code*. This schedule would have included the firearms prohibited in the 1990s and those banned by the 2020 Order-in-Council. The government also proposed adding hundreds of makes and models not named in previous Orders-in-Council, including some semi-automatic weapons that the evergreen definition would not have prohibited.

Firearms owners protested that these amendments would prohibit some models of semi-automatic rifles that had been non-restricted and used for hunting. Critics also claimed the government had introduced the amendments for political reasons—that is, that the Liberals introduced them not out of desire to implement good policy, but to gin up political support.<sup>150</sup> The opposition led the federal government to withdraw these amendments to Bill C-21 in early 2023, though the Liberals did not preclude re-introducing revised versions of the amendments after further committee study and public consultations.<sup>151</sup>

On 30 March 2023, the Mass Casualty Commission investigating the April 2020 mass shooting in Nova Scotia that left 22 people dead issued its final report, making several recommendations to change Canada’s gun laws, including banning assault-style rifles.<sup>152</sup> The commission’s seven-volume report addressed its broad mandate, which included considering the causes, context and circumstances giving rise to the tragedy, the police

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149. Trevor Pritchard, “Gun bill amendment is ‘nonsense,’ say Ottawa-area hunters,” *CBC News* (4 December 2022), online: <[cbc.ca/news/canada/ottawa/liberal-gun-bill-amendment-semi-automatic-rifle-shotgun-ban-1.6671188#amendment](https://www.cbc.ca/news/canada/ottawa/liberal-gun-bill-amendment-semi-automatic-rifle-shotgun-ban-1.6671188#amendment)> [perma.cc/QN].

150. Matt Gurney, “Memo to David Lametti. You didn’t ‘get it right’ because it’s impossible,” *The Line* (6 February 2023), online: <[theline.substack.com/p/matt-gurney-memo-to-david-lametti](https://theline.substack.com/p/matt-gurney-memo-to-david-lametti)> [perma.cc/8B4B-A6ML].

151. John Paul Tasker, “Ottawa withdraws controversial amendments to firearms law,” *CBC News* (3 February 2023), online: <[cbc.ca/news/politics/ottawa-withdraws-firearms-law-amendments-1.6735828](https://www.cbc.ca/news/politics/ottawa-withdraws-firearms-law-amendments-1.6735828)> [perma.cc/M6SE-GXAN].

152. See the Associated Press, “Nova Scotia shooting: 22 confirmed killed in Canada’s deadliest mass shooting” *NBC News* (21 April 2020), online: <[www.nbcnews.com/news/world/18-confirmed-killed-canada-s-deadliest-mass-shooting-officials-expect-n1188471](https://www.nbcnews.com/news/world/18-confirmed-killed-canada-s-deadliest-mass-shooting-officials-expect-n1188471)> [perma.cc/CEV6-PKC3].

response to the shootings, the role of gender-based and intimate partner violence, and access to firearms.<sup>153</sup> The Commission identified many “lessons learned” that informed its recommendations about firearms. It concluded that priority “should be placed on reducing access to the most dangerous, high-capacity firearms and ammunition.”<sup>154</sup> It also determined that current firearms laws do not adequately protect against the unlawful transfer of guns upon the death of owners, and that effective border control requires a collaborative and co-ordinated approach among border agencies to potential weapons smuggling. The commission further determined that the safety of women survivors of intimate partner violence is “put at risk by the presence of firearms and ammunition in the household.”<sup>155</sup> And, it noted that firearm laws are inconsistently enforced, and that the current approach to gun control is hampered by inadequate community engagement with those involved in addressing gender-based violence and implementing firearms policy. The Mass Casualty Commission found that the public often lacks accurate knowledge about gun laws. It warned that Canadian beliefs are “influenced by the United States discourse centred on a right to bear arms,” which “does not exist in our constitutional and legal structure.”<sup>156</sup> Finally, the commission found that there is a lack of community knowledge about the impact of firearms-related harms, and that some people do not have safe and accessible ways to report concerns over guns.

These lessons learned shaped the commission’s many recommendations, which included calling for better data collection to limit gun smuggling, setting limits on the stockpiling of ammunition by individual firearms owners, and undertaking a nationwide public education program to increase public awareness of firearm laws. The lesson that a priority “should be placed on reducing access to the most dangerous, high-capacity firearms and ammunition” led the commission to recommend that Ottawa “Prohibit all semi-automatic handguns and all semi-automatic rifles and shotguns that discharge centre-fire ammunition and that are designed to accept detachable magazines with capacities of more than five rounds.”<sup>157</sup> If implemented, this recommendation would impose the kind of wide-

153. See Mass Casualty Commission, “Our Mandate,” online (pdf): <masscasualtycommission.ca/about/mandate> [perma.cc/9UWC-HBDC].

154. Nova Scotia and Canada, Mass Casualty Commission, *Turning the Tide Together: Final Report of the Mass Casualty Commission*, vol 4 (Ottawa: Mass Casualty Commission, 2023) at 590, online (pdf): <masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Volume-4-Community.pdf> [perma.cc/9RGQ-GW6Z] [Mass Casualty Commission, *Turning the Tide Together*].

155. *Ibid* at 591.

156. *Ibid* at 597.

157. *Ibid* at 590.

scale ban on assault-style firearms introduced by amendment to Bill C-21. The Mass Casualty Commission's recommendations are significant for two reasons. First, it was the most ambitious, open, and thorough study of a mass shooting in Canadian history, and thus its conclusions and recommendations should carry substantial weight. Second, it was also non-partisan, which counters any claim that its gun control recommendations were driven by political considerations.<sup>158</sup> The Commission developed its recommendations after thorough study and analysis. It collected and made publicly available an extensive set of primary source documents and it shared "foundational documents" containing key facts and events.<sup>159</sup> It also examined and summarized national and international reports prepared in response to similar mass shootings.<sup>160</sup> It commissioned and published 23 expert reports and technical reports to help the commissioners better understand the issues related to its mandate.<sup>161</sup> And it broadcast, recorded, transcribed and published its proceedings. Groups for and against gun control received status as participants in the commission. The Coalition for Gun Control was a participant, as were the National Firearms Association and Canadian Coalition for Firearm Rights.<sup>162</sup> These groups provided written submissions, examined documents, and spoke before the commission. In the end, the commission found the evidence presented by those who support stronger gun laws more persuasive. Its final report asserts the importance of "affirming that gun ownership is a conditional privilege," not a right.<sup>163</sup> In response, the Liberals introduced new amendments to Bill C-21 that will partially implement the Mass Casualty Commission's recommendations. The amendments will ban

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158. See Mass Casualty Commission, "The Commissioners," online: <masscasualtycommission.ca/about/the-commissioners/> [perma.cc/VNK8-3LZT].

159. Mass Casualty Commission, "Foundational Documents" (2023) online: *Mass Casualty Commission* <masscasualtycommission.ca/documents/foundational-documents/> [perma.cc/JXA3-Y4TQ].

160. Nova Scotia and Canada, Mass Casualty Commission, *Environmental Scan of Prior Recommendations* (Ottawa: Mass Casualty Commission, 2023) online: <masscasualtycommission.ca/files/documents/COMM0063226.pdf> [perma.cc/57Q4-BQYL].

161. Mass Casualty Commission, "Research and Commissioned Reports" (2023) online: *Mass Casualty Commission* <masscasualtycommission.ca/documents/commissioned-reports/> [perma.cc/D583-NDR5].

162. Nova Scotia and Canada, Mass Casualty Commission, "Re: Final Written Submissions of the Canadian Coalition for Gun Control" (10 October 2022), online (pdf): <masscasualtycommission.ca/files/documents/Final-Written\_CCGC.pdf> [perma.cc/EUN2-6RMM]; Nova Scotia and Canada, Mass Casualty Commission, "Final Submission: Access to Firearms & Regulatory Impacts, Prepared by: Canadian Coalition for Firearm Rights (CCFR) & Canada's National Firearms Association (CNFA)," (7 October 2022), online (pdf): <masscasualtycommission.ca/files/documents/Final-Written\_CCFR-CNFA.pdf> [perma.cc/8BUL-GSUP].

163. Mass Casualty Commission, *Turning the Tide Together*, *supra* note 154 at 598.

rifles that discharge centre-fire ammunition in a semi-automatic manner that were originally designed with detachable cartridge magazines with a capacity of six cartridges or more. However, this prohibition will only apply to models designed and manufactured on or after the day on which the legislation comes into force. If this proposal becomes law, existing assault-style rifles will thus remain legal unless they have been prohibited previously through legislation or orders in council. As a result, Canadian firearms law will remain complicated and continue to allow gun owners to purchase some models of assault-style rifles.