



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Request to protect the data on non-restricted firearms registered to Ontarian owners

Date:	July 10, 2012
To:	City Council
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report provides information with respect to Member Motion 23.12, passed by City Council on May 8 and 9, 2012, supporting the continued registration of all firearms, and which also includes a request that the City Solicitor seek ways to intervene to stop the deletion of gun registry data on the more than 287,000 non-restricted firearms currently registered in the Greater Toronto Area.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations in Confidential Attachment 1 to the report from the City Solicitor; and
2. the recommendations in Confidential Attachment 1 be made public once adopted by Council with the balance of Confidential Attachment 1 to remain confidential.

FINANCIAL IMPACT

The financial impact is set out in the confidential attachment.

DECISION HISTORY

On May 8 and 9, 2012, City Council adopted Member Motion 23.12, supporting the continued registration of all firearms, and which included a request that the City Solicitor seek ways to intervene to stop the deletion of gun registry data on the more than 287,000 non-restricted firearms currently registered in the Greater Toronto Area.

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13190.pdf>

COMMENTS

BACKGROUND:

The *Firearms Act* was created by Bill C-68, which received Royal Assent in 1995. This Act set up the federal firearms registry. The deadline for gun owners to register their non-restricted firearms was January 1, 2003.

This Act was subject to a reference question submitted to the courts by the government of Alberta. The government of Alberta argued that the law essentially dealt with personal property and thus was a matter within the jurisdiction of the province. In 2000, in *Reference re Firearms Act*, in a unanimous decision, the Supreme Court of Canada held that the *Firearms Act* was an Act in relation to public safety and morality, which are matters within the exclusive criminal law power of the federal government.

On April 5, 2012, Bill C-19 received Royal Assent. Bill C-19 modified sections of the *Firearms Act* to delete the requirement to register non-restricted firearms and ordered all records related to non-restricted firearms be destroyed by the Commissioner of Firearms "as soon as feasible". The registration of non-restricted firearms has ended in all provinces except Quebec due to the operation of a temporary court order from the Quebec Superior Court. The Canadian Firearms Program has confirmed that it is currently sorting restricted from non-restricted firearms records and will begin destroying the latter in September, 2012.

In May, 2008, City staff released a report entitled "City-Based Measures to Address Gun Violence" which at section 4 set out the extent and limitations of municipal jurisdiction to pass by-laws regulating the ownership and use of guns within city boundaries.

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13190.pdf>

THE DIVISION OF POWERS:

The *Constitution Act, 1867* sets out the division of legislative powers between the federal government and the provinces. The federal government has responsibility for the criminal law, while the provinces have jurisdiction over property and civil rights and the administration of justice within their territory.

Municipalities have no constitutional standing of their own and derive all their powers from provincial statute. The City of Toronto is created by the *City of Toronto Act, 2006*, which sets out the matters for which it may pass laws, including the "health, safety and well-being of persons" and the "protection of persons and property, including consumer protection." These general grants of power give the City broad discretion to enact by-laws concerning local affairs and matters of municipal interest using various enforcement mechanisms, but such by-laws may not conflict with either federal or provincial areas of jurisdiction.

CURRENT LEGAL ACTION:

There are currently two challenges to Bill C-19 before Canadian courts.

The first challenge is an application before the Ontario Superior Court brought on behalf of the Barbara Schiffler Clinic, a group which provides counseling and legal assistance to female victims of violence. It seeks an injunction to ensure that the registry continues to operate throughout Canada and no data is destroyed until the case is heard. In addition, the clinic seeks to have large portions of Bill C-19 declared unconstitutional on the basis that it infringes women's rights to security and gender equality under the Canadian Charter of Rights and Freedoms. The injunction motion will be heard on August 8, 2012 while the full case will go to the court in March, 2013.

The second challenge is an application before the Superior Court of Quebec brought by the Attorney General of Quebec. It seeks an injunction to ensure the registry continues to operate in Quebec and that registry data is not destroyed until the case is heard. The application also seeks to have the portion of Bill C-19 that requires the destruction of all records related to the registration of non-restricted firearms declared unconstitutional on the basis that it intrudes on provincial jurisdiction over public security and protection and the administration of justice. The Attorney General of Quebec also argues that its right to the records derives from the monetary and administrative partnership for its creation between that province and the federal government and the operation of provincial privacy legislation, which applies to the registry records.

This temporary injunction to maintain the registry's operations and records was granted on April 20, 2012, and remains in effect until June 13, 2012. The case is currently being heard in court. Owners in Quebec remain obligated to register their non-restricted firearms, while the collection of such records ceased as of April 5, 2012 in all other provinces

POSITIONS OF OUTSIDE STAKEHOLDERS:

On May 14, 2012, the City Clerk wrote to the Premier of Ontario, the Attorney General of Ontario and the Minister of Community Safety and Correctional Services, informing them that Council adopted Member Motion 23.12 which restated its support for the continued registration of all non-restricted firearms. Council received replies from the Premier and the Ministers in two letters dated June 12, 2012 and June 13, 2012, respectively (Attachments B and C).

The letters state that on February 10, 2012, Ontario's Attorney General and Minister of Community Safety and Correctional Services wrote to the federal Minister of Public Safety opposing the destruction of all records in the registry related to the registration of non-restricted firearms. The letters also state the government's belief that a provincial registry is not comprehensive enough to be a useful tool and that it will not create such a registry in the future. The letters urge the City to address its concerns to the Minister of Public Safety directly, as the *Firearms Act* is legislation under federal jurisdiction.

To date, the government of Ontario has not sought a temporary court injunction to continue the operation of the firearms registry or to prevent the destruction of records relating to the registration of non-restricted firearms in Ontario.

Further, confidential information is contained in Attachment 1.

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information

Attachment A – Verdict of Coroner's Jury (Hearst Inquiry Report)

Attachment B – Letter from Dalton McGuinty, Premier to Marilyn Toft, Council Secretariat Support (June 12, 2012)

Attachment C – Letter from Madeleine Meilleur, Minister of Community Safety and Correctional Services to Ulli S. Watkiss, City Clerk (June 13, 2012)