



HOME STORAGE INSPECTIONS ADVICE TO MEMBERS – December 2007

As you may be aware, the Chief Firearms Office has embarked on a pilot program to conduct home inspections to ensure compliance with the safe storage regulations mandated in the Firearms Act. In our opinion, these inspection provisions are a violation of the fundamental rights of Canadians to be free from unreasonable search and seizure and the right to remain free from self-incrimination pursuant to sections 7, 8 and 12 of the Canadian Charter of Rights and Freedoms. We have advised the CFO of our strong opposition to this program but they are continuing with its implementation.

The purpose of this document is to advise you of your options and rights in responding to their inspection request. Please read them carefully as you will have to decide what is best for you in your circumstances.

Before we outline the legal aspects, we highly recommend that you file a **Personal Information Request** through the Privacy Act (if you have not already done so) prior to any inspection taking place. This official request will require the Canada Firearms Centre to send you all the data they have on you, including all the firearms they have registered in your name. It is imperative that you double-check this information with your paperwork to ensure their files are accurate. If they are not, you will have to take steps to correct their database information. Put off the inspection until you have received this paperwork and all errors are corrected. This will ensure that the paperwork held by the inspecting officer is the same as yours.

Included with this mailing, we have provided you with a pre-worded form to file. All you need to do is fill in your personal information (including your PAL or POL number and date of birth) and mail it to:

Canada Firearms Centre
Yves Marineau - Access to Information and Privacy Coordinator
50 O'Connor Street, 10th Floor
Ottawa, Ontario K1A 1M6
Tel.: (613) 993-5162 Fax: (613) 954-9426 atipb@rcmp-grc.gc.ca

This process will only cost you a postage stamp and an envelope. It could prevent a costly appearance in court. **DO IT NOW!!**

If you decide to give your consent to the inspection, ensure your guns and ammunition are stored according to the minimum standards contained in the Firearms Act regulations (attached). Also, double-check your magazines to make sure none of them are over-capacity.

We also advise that as much communications as possible with the CFO or AFO should be in writing.



Following are more detailed legal points provided by our Legal Counsel, Edward Burlew, LLB.

RECOMMENDED RESPONSES TO REQUEST TO INSPECT

Prepared: November-30-07 by EDWARD L. BURLEW, LL.B.

The procedure is begun by a Firearms Officer contacting you to arrange for a date and time to inspect. You are obligated to make the arrangement within a reasonable time. That is when the Firearms Officer contacts you; you get back to him or her in a reasonable time to set the appointment some time in the future **when it is convenient for both of you**. Then the officer will attend and inspect your dwelling. If you consent to this the officer can stay until you revoke consent or until he/she is finished.

ISSUES THAT ARISE ARE:

1. **Is that really a Firearms Officer contacting you?** How do you know? A business card and a uniform can be bought or made anywhere. Impersonation and robbery has already occurred in such a guise in Vancouver. You must be sure that the person contacting you is your Firearms Officer. Do not just give information over a telephone about your guns. This is confidential and private information.

2. **Must you consent to the visit?** No, you do not have to! If you refuse to have the Firearms Officer visit then he/she can obtain a warrant. You can refuse and say that you want notice of any warrant. The Firearms Officer must prepare an affidavit as to why he/she believes you have 10 or more guns and why he/she must visit to inspect. Most importantly, the Firearms Officer must serve you personally with the application for the warrant and give you the opportunity to respond in writing and at the hearing. This is not specifically written in C-68 but it is a requirement of fundamental justice principals. You must be given an opportunity to dispute the warrant application. (more details in the following pages).

Section 7 of The Charter of Rights states that you are not obligated to incriminate yourself. You have a right to silence. This is absolute. You cannot be conscripted into building a case to be prosecuted against you. C-68 provides that you must let the Firearms Officer in (**and no other officers to assist, no other person either!**) and he/she may search anywhere a gun or documents about guns may reasonably be hidden. According to the Firearms Act, you must help by opening up closed places. This requirement is contrary to section 7 of the Charter. No case law supports this requirement.

HOW TO RESPOND

There are three ways that a person can respond to a request of the Chief Firearms Office to inspect their storage pursuant to section 104(1) (a) of the *Firearms Act*.

1. You can arrange for the C.F.O. or an A.F.O. to attend and inspect the storage. This is an inspection; that does not mean search and seizure. **The inspector must be a Firearms Officer** (C.F.O. or A.F.O.) and must be so designated pursuant to section 99. The inspection powers are set out in sections 101 to 105 (attached).
2. You can object and still furnish factual evidence of how the firearms are stored by a detailed explanation with diagrams and photographs. As an example, you may say: "*I deny*



your request for inspection. All of my firearms are safely stored according to the Firearms Act Regulations. I have read and reviewed the regulations regarding storage. All my firearms are kept unloaded; they are all trigger-locked; they are kept in a safe or a room that is not easily broken into (use appropriate descriptions); the ammunition is separately stored in another room or locked container. I am enclosing a diagram showing where the firearms are stored and where the ammunition is stored. I enclose photographs of the cabinet/safe/container/trigger-locks. I state that this satisfies your inquiry as to the state of storage of my firearms and ammunition. It shows full compliance with the storage regulations.

If you are still not satisfied, which is not a reasonable position to me, and you are going to seek a warrant to enter my home, I demand that I be given notice of the application for the warrant and that it be on a date convenient to both of us. I also demand that you show this response to the Judge or Justice."

3. The third response can be a full denial and some of the third response can be mixed in with the second type of response at your discretion. You can respond as follows:

I have received your request to inspect the storage of my firearms. This is to confirm that:

- 1. You want to perform an inspection.*
 - 2. You have no complaint that my firearms are not stored according to the Firearms Act, not registered or that I am not appropriately licensed for their possession.*
 - 3. You have no information that I or my firearms were or are involved in a criminal act or event.*
 - 4. You will show this letter of response to a Judge, Justice of the Peace or Judicial Officer if you seek a warrant.*
 - 5. I am not under criminal investigation.*
 - 6. I have not committed a criminal offence to your knowledge.*
 - 7. I have committed no act of violence.*
 - 8. I have no criminal record.*
 - 9. I have a presently valid Possession Only Licence (P.O.L.) or Possession and Acquisition License (P.A.L.) and have been licensed to acquire and possess firearms since*
-
- 10. All of my firearms are appropriately registered pursuant to the Firearms Act.*
 - 11. All my firearms are safely stored in accordance with regulations under the Firearms Act Regulations. (You may give a detailed response with diagrams and photographs, but that is not required.)*
 - 12. All my ammunition is stored according to the Firearms Act Regulations.*
 - 13. You have no reasonable or probable grounds to obtain a warrant to search and seize under section 489 of the Criminal Code or under section 117 of the Criminal Code.*
 - 14. You will give me prior notes of a date and place where you will seek to obtain a warrant to inspect pursuant to section 104(2) of the Firearms Act.*
 - 15. You will provide me with all the materials you intend to present to that Judge or Justice of the Peace at least 30 days prior to your application, including the application.*
 - 16. The date of the hearing will be on a date that is reasonably convenient to both of us. I will do my best to accommodate the court to set a reasonable date.*
 - 17. You will not apply ex-parte (that means without notice to me by personal service) for a warrant to inspect notwithstanding section 104(2) of the Firearms Act.*
 - 18. If a warrant is issued it shall only be to inspect with no ability to seize any item or image of such item.*



19. *I will oppose the application for the warrant as unreasonable use of search and seizure powers.*
20. *If you do not give me notice and apply ex parte, I will seek to quash the warrant to inspect.*
21. *I put you on notice that the inspection powers are a breach of my right to be free from unreasonable search and seizure and right not to remain silent pursuant to sections 7, 8 and 12 of the Canadian Charter of Rights and Freedoms.*
22. *I am innocent of any criminal allegation and rely on my right to be presumed innocent pursuant to section 11 of the Canadian Charter of Rights and Freedoms.*
23. *You have not presented me with any good reason to make an inspection except that I am either a person who possesses more than 10 firearms, possesses a prohibited firearm (note that I am legally "grandfathered" to be licensed, which I am, to have that firearm registered (which it is) and it is lawfully in my possession) or that I am a certified firearms collector.*
24. *You have full access by use of the government databases to my firearms licence history, firearms registry history. You have not informed me of any irregularity in the government databases that you are seeking information in respect of.*
25. *You have not asked me for any information regarding any "real" irregularity in my licenses, registrations or storage.*
26. *You have not presented me with any evidence by way of a statement of a witness or a printout from the government-run databases regarding licensing and registration of firearms that indicates any irregularity in my licence, registrations or storage.*
27. *Aside from issuing licenses and registrations for my firearms, you have not inquired of my licenses, registrations since December 1, 1998 when the Firearms Act came into effect.*

This response has many points that you may wish to keep in, elaborate on or not, or omit with the discretion and circumstances of the situation of the firearm's owner.

The Supreme Court of Canada believes you have a right to privacy in your home, your office and your car when it is parked in your driveway. **Cherish that right to privacy and fight to maintain it.**

If you have any questions or concerns, please do not hesitate to contact us.

FIREARMS ACT REGULATIONS

STORAGE

Interpretation

1. The definitions in this section apply in these Regulations.

"Act" means the *Firearms Act*.

"muzzle-loading firearm" does not include a handgun.

"non-restricted firearm" means a firearm that is neither a prohibited firearm nor a restricted firearm.

"post" has the same meaning as in subsection 2(1) of the *Canada Post Corporation Act*.

"secure locking device" means a device

(a) that can only be opened or released by the use of an electronic, magnetic or mechanical key or by setting the device in accordance with an alphabetical or numerical combination; and

(b) that, when applied to a firearm, prevents the firearm from being discharged.

"transmit by post" has the same meaning as in subsection 2(1) of the *Canada Post Corporation Act*.



"unattended", in respect of a vehicle, means that the vehicle is not under the direct and immediate supervision of a person who is 18 years of age or older or to whom a licence has been issued under the Act.

"unloaded", in respect of a firearm, means that any propellant, projectile or cartridge that can be discharged from the firearm is not contained in the breech or firing chamber of the firearm nor in the cartridge magazine attached to or inserted into the firearm.

"vehicle" means any conveyance that is used for transportation by water, land or air.

Storage of Non-Restricted Firearms

5. (1) An individual may store a non-restricted firearm only if

- (a) it is unloaded;
- (b) it is
 - (i) rendered inoperable by means of a secure locking device,
 - (ii) rendered inoperable by the removal of the bolt or bolt-carrier, or
 - (iii) stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into; and
- (c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into.

(2) Paragraph (1)(b) does not apply to any individual who stores a non-restricted firearm temporarily if the individual reasonably requires it for the control of predators or other animals in a place where it may be discharged in accordance with all applicable Acts of Parliament and of the legislature of a province, regulations made under such Acts, and municipal by-laws.

(3) Paragraph (1)(b) and (c) do not apply to an individual who stores a non-restricted firearm in a location that is in a remote wilderness area that is not subject to any visible or otherwise reasonably ascertainable use incompatible with hunting.

Storage of Restricted Firearms

6. An individual may store a restricted firearm only if

- (a) it is unloaded;
- (b) it is
 - (i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or
 - (ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked; and
- (c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in
 - (i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or
 - (ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked.

Storage of Prohibited Firearms

7. An individual may store a prohibited firearm only if

- (a) it is unloaded;
- (b) it is
 - (i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, and, if the prohibited firearm is an automatic firearm that has a removable bolt or bolt-carrier, the bolt or bolt-carrier is removed and stored in a room that is different from the room in which the automatic



- firearm is stored, that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or
- (ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked; and
- (c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in
 - (i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or
 - (ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked.

FIREARMS ACT - INSPECTIONS:

Inspection

Definition of "inspector"

101. In sections 102 to 105, "inspector" means a Firearms Officer and includes, in respect of a province, a member of a class of individuals designated by the provincial minister.

Inspection

102. (1) Subject to section 104, for the purpose of ensuring compliance with this Act and the regulations, an inspector may at any reasonable time enter and inspect any place where the inspector believes on reasonable grounds a business is being carried on or there is a record of a business, any place in which the inspector believes on reasonable grounds there is a gun collection or a record in relation to a gun collection or any place in which the inspector believes on reasonable grounds there is a prohibited firearm or there are more than 10 firearms and may

- (a) open any container that the inspector believes on reasonable grounds contains a firearm or other thing in respect of which this Act or the regulations apply;
- (b) examine any firearm and examine any other thing that the inspector finds and take samples of it;
- (c) conduct any tests or analyses or take any measurements; and
- (d) require any person to produce for examination or copying any records, books of account or other documents that the inspector believes on reasonable grounds contain information that is relevant to the enforcement of this Act or the regulations.

Operation of data processing systems and copying equipment

- (2) In carrying out an inspection of a place under subsection (1), an inspector may
 - (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the system;
 - (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and remove the print-out or other output for examination or copying; and
 - (c) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

Use of force

- (3) In carrying out an inspection of a place under subsection (1), an inspector may not use force.

Receipt for things taken

- (4) An inspector who takes any thing while carrying out an inspection of a place under subsection (1) must give to the owner or occupant of the place at the time that the thing is taken a receipt for the



thing that describes the thing with reasonable precision, including, in the case of a firearm, the serial number if available of the firearm.

Definition of "business"

(5) For greater certainty, in this section, "business" has the meaning assigned by subsection 2(1).

Duty to assist inspectors

103. The owner or person in charge of a place that is inspected by an inspector under section 102 and every person found in the place shall

- (a) give the inspector all reasonable assistance to enable him or her to carry out the inspection and exercise any power conferred by section 102; and
- (b) provide the inspector with any information relevant to the enforcement of this Act or the regulations that he or she may reasonably require.

Inspection of dwelling-house

104. (1) An inspector may not enter a dwelling-house under section 102 except

- (a) on reasonable notice to the owner or occupant, except where a business is being carried on in the dwelling-house; and
- (b) with the consent of the occupant or under a warrant.

Authority to issue warrant

(2) A justice who on *ex parte* application is satisfied by information on oath

- (a) that the conditions for entry described in section 102 exist in relation to a dwelling-house,
 - (b) that entry to the dwelling-house is necessary for any purpose relating to the enforcement of this Act or the regulations, and
 - (c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry will be refused
- may issue a warrant authorizing the inspector named in it to enter that dwelling-house subject to any conditions that may be specified in the warrant.

Areas that may be inspected

(3) For greater certainty, an inspector who is carrying out an inspection of a dwelling-house may enter and inspect only

- (a) that part of a room of the dwelling-house in which the inspector believes on reasonable grounds there is a firearm, prohibited weapon, restricted weapon, prohibited device, prohibited ammunition, a record in relation to a gun collection or all or part of a device or other thing required by a regulation made under paragraph 117(h) respecting the storage of firearms and restricted weapons; and
- (b) in addition, in the case of a dwelling-house where the inspector believes on reasonable grounds a business is being carried on, that part of a room in which the inspector believes on reasonable grounds there is ammunition or a record of the business.

Demand to produce firearm

105. An inspector who believes on reasonable grounds that a person possesses a firearm may, by demand made to that person, require that person, within a reasonable time after the demand is made, to produce the firearm in the manner specified by the inspector for the purpose of verifying the serial number or other identifying features of the firearm and of ensuring that the person is the holder of the registration certificate for the firearm.