

Bill C-359

A private members bill has been presented in the House of Commons, Bill C-359.

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9027996>

Here is the text:

MR. CHAN

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SUMMARY

This enactment amends the *Criminal Code* to establish an offence for the use, carrying or possession of a firearm that has previously been used in the commission of an offence.

Available on the Parliament of Canada Web Site at the following address:
<http://www.parl.gc.ca>

1st Session, 42nd Parliament,
64-65-66 Elizabeth II, 2015-2016-2017
HOUSE OF COMMONS OF CANADA

BILL C-359

An Act to amend the Criminal Code (firearms)

R.S., c. C-46

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1 The *Criminal Code* is amended by adding the following after section 98.1:

Firearm Used in the Commission of an Offence

Use, carrying or possession

98.2 (1) Every person who uses, carries or possesses a firearm that he or she knows or ought to know was used in the commission of an offence under this Part is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.

Sentences to be served consecutively

(2) A sentence imposed on a person for an offence under subsection (1) shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed on the person for an offence under that subsection.

ANALYSIS

This is a proposed new offense being added to the Criminal Code of Canada. IF this bill is directed at criminals for using the same gun for multiple crimes, it will also have the effect of pulling law abiding into the legal system as well. Let me explain.

The amount of used and borrowed firearms is extensive. The history of each firearm is NOT something that is always known. So the section in 98.2(1) "ought to know was used in the commission of an offence" flies in the face of common sense. If a person buys or borrows a firearm, how should they "ought to know" it was used in the commission of a crime? According to the proposed legislation, if "Every person who uses, carries or possesses" a firearm that was, unbeknownst to them, used in a crime, they are now liable to 5 years in jail. Anybody who unwittingly transports or borrows a firearm, used in a crime, could be charged for something that happened with that gun several owners prior.

Any guns that were seized by police, then later released or sold have the potential to cause problems for new owners as well.

On another thought, how do you track guns that are unknown to police, and how will the RCMP be able to tell the difference, if there is not any information in their database telling them a given gun was used in a crime?

If reverse onus is part of this legislation (reverse onus is a part of the Firearms Act), then it opens up a huge legal hole for gun owners to fall into. Police have only to charge someone on suspicion, and then you will have to prove that the gun was NOT used in a crime. If you did not know the gun was used in a crime, you still will not have a defense, because "you ought to have known".

It is never the firearm that commits the crime; it is the person using the firearm that is the problem. This proposed legislation is very problematic in its current form.

Know your rights or you won't have any.

Todd Brown

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