



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

FIREARMS REGISTRATION OFFENCES

[NOTE: On April 5, 2012 the Long-Gun Registry was abolished, thus removing the requirement that non-restricted firearms be registered.]

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

FIREARMS REGISTRATION OFFENCES

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To utilize valuable prosecution resources responsibly and effectively, it is essential that these resources be focused on the prosecution of substantive criminal offences. Only rarely would it be in the public interest to expend prosecution resources in the pursuit of alleged offences arising from the registration scheme relating to rifles and shotguns, unless the possession or use of such firearms was connected to other unlawful activity.

I hereby direct that:

1. Offences under the Firearms Act are not to be prosecuted by members of the Nova Scotia Public Prosecution Service.
2. Where an option exists as to whether a charge should be laid under the Firearms Act or under the Criminal Code, and the contemplated charge arises from an incident not involving any other unlawful activity, prosecutors should advise the police to lay the charge under the Firearms Act.
3. If a Criminal Code registration offence [Section 91(1) or 92(1)] is laid by the police or any other informant, the matter will be referred to the Deputy Director of Public Prosecutions. The Deputy Director will refer the matter to the Federal Prosecution Service for prosecution. If the Federal Prosecution Service declines to prosecute, the charge will not be prosecuted by the provincial prosecution service unless public interest circumstances exist for doing so. Public interest circumstances which may justify proceeding would include such matters as a history of firearms offences, or the blatant disregard of police warnings. Prosecution of such charges will only occur with the approval of the Chief Crown Attorney for the region where the charge arose.

June 3, 2003.

FIREARM REGISTRATION OFFENCES - PRACTICE NOTE

The purpose of this Practice Note is to provide clarification in regard to the Directive issued on June 3, 2003 by the Attorney General relating to firearm registration offences.

Legislative Background

In 1995, Parliament enacted legislation creating the Firearms Act and amending certain provisions in Part III of the Criminal Code relating to firearms (see S.C. 1995, Chapter 39). The Firearms Act, among other things, requires that anyone who uses or possesses a firearm be in possession of a firearms license. The Firearms Act establishes an administrative scheme for such licenses, and the licences are issued under the authority of a Chief Firearms Officer. In order to obtain a firearms license, an individual must complete a firearms safety course and the Chief Firearms Officer (through background checks by local police agencies) must be satisfied that the individual who seeks a license does not pose a threat to public safety.

The Firearms Act also requires a firearm owner to register every firearm with the Canadian Firearms Centre. The Firearms Act establishes a detailed and complex scheme for the registration of firearms. The registration provisions are in force as of July 1, 2003.

The Firearms Act, the Criminal Code amendments, and the previously existing Criminal Code provisions combine to create a complete spectrum of offences relating to firearms. At one end of the spectrum are the relatively minor, technical offences created under the Firearms Act and under Part III of the Criminal Code to ensure compliance with the licensing and registration schemes. At the other end of the spectrum are the more serious, substantive offences (some of which carry minimum penitentiary sentences) relating to such matters as the use of firearms in the commission of criminal acts.

Context for the Directive

Although the creation of the firearms registration scheme has been found by the Supreme Court of Canada to be a valid exercise of the criminal law power given to Parliament under the Constitution Act, 1867, the registration offences are essentially administrative and technical in nature. The nature of a charge i.e. whether it is of a “technical nature only”, has always been a factor to be considered by PPS prosecutors in determining whether a case should be prosecuted – see the DPP Directive entitled “The Decision to Prosecute”. In regard to the registration offences which might be laid under sections 91 or 92 of the Criminal Code, the Directive notes that it would only rarely be in the public interest to pursue such charges unless they are accompanied by other criminal activity, or certain other unusual public interest factors are present.

The Directive reflects the view of the Attorney General that the prosecution resources of Nova Scotia should be focused on the substantive firearms offences and not on the technical/administrative offences.

The Directive assumes that peace officers will not refrain from laying the more technical offences. The Directive, however, has the effect of transferring to federal officials the prosecution of the registration offences laid under the Firearms Act and most registration charges laid under the Criminal Code. It should also be noted that the Criminal Code permits prosecution of these offences by the informant (or counsel for the informant) if the Attorney General does not intervene.

Scope of the Directive

Having regard to the wide range of issues relating to firearms which are included in the Firearms Act and in various provisions of the Criminal Code, the scope of the Directive of the Attorney General is relatively narrow and restricts discretion only in regard to a small group of offences at the lower end of the spectrum described above.

- As indicated by the heading to the Directive (“**Directive Regarding Firearms Registration Offences**”), the Directive focuses on **registration** offences i.e. the legislative provisions requiring that firearms be registered; the Directive does not affect the prosecution of licensing offences and offences relating to provisions requiring the obtaining of authorization to transport, carry, import or export firearms.
- Registration offences which arise from an incident involving other criminal activity are to be considered for prosecution in the usual way. “Other criminal activity” includes offences under all parts of the Criminal Code, and would include such matters providing false information to obtain a registration certificate or licence.
- Even if a registration offence is laid under Section 91 or Section 92 of the Criminal Code and the FPS declines to prosecute, it may still be prosecuted by the PPS (with the approval of the Chief Crown Attorney) if public interest considerations require that the case be prosecuted e.g. where the accused has a history of firearms offences.
- In regard to rifles and shotguns, the Directive is intended to apply only to the rifles and shotguns which fall outside of the definitions in the Criminal Code and the Firearms Act for “restricted firearms” and “prohibited firearms”.

Practical Considerations

Most Criminal Code firearms offences are to be handled as usual i.e. they should be prosecuted if there is sufficient evidence, and prosecution is in the public interest. This

would include offences involving the use of firearms, careless firearm storage, possession offences, trafficking and smuggling offences, defacing and destruction offences, offences against prohibition orders, and licensing offences.

In regard to firearm registration offences, the following approach should be taken:

- If a Crown Attorney receives a file which involves registration charges laid under sections 91 or 92 of the Criminal Code, and no other Criminal Code charges arise from the investigation, the file should be delivered promptly to the regional Chief Crown Attorney for instructions. An appropriate adjournment of proceedings should be sought from the court, if necessary.

The Chief Crown Attorney will forward the file to the Deputy DPP. The Deputy DPP will deliver the file to federal officials with a fiat permitting federal officials to prosecute the matter or to discontinue proceedings.

If federal officials decline to deal with the file and it is returned to the PPS, the Chief Crown Attorney will review the file to determine whether or not the available evidence provides a realistic prospect of conviction. This may involve an assessment of the strength of the documentary evidence relating to the registration process and identification of the accused. If there is no realistic prospect of conviction, and there is no expectation that the evidence will be strengthened, the charge must be withdrawn.

If there is a realistic prospect of conviction, the Chief Crown Attorney will then determine whether or not unusual public interest factors are present which require the matter to be prosecuted. If such factors are present, the case will be prosecuted in the usual way. If there are no unusual public interest factors, the charge is to be withdrawn.

- If a Crown Attorney receives a file which includes registration offences laid under the Criminal Code as well as other offences under the Criminal Code arising from the same incident, the case should be handled in the usual way. This will involve a review of the available evidence (see above) in regard to each charge, and those charges for which there is no realistic prospect of conviction shall be withdrawn. In regard to public interest considerations, the existence of related Criminal Code charges will tend to support prosecution of the registration offences, assuming that the evidential threshold is met.
- If a Crown Attorney receives a file which includes registration charges laid under the Firearms Act and no other charges, the file should be returned to the police with instructions for the police to deliver the file to federal officials or others who may be designated to prosecute such offences.
- If a Crown Attorney receives a file containing Firearms Act registration

charges along with Criminal Code charges or charges under the Firearms Act other than registration charges, the file should be handled in the usual way (see above).