

Aiming Arbitrarily: The Flawed Ban on “Assault-Style” Weapons by R Poirier

In order to ensure the safety of Canadian citizens, it is important that Canada maintains thoughtful regulations that control the legal usage of firearms. But for any such regulations to be thoughtful, they cannot be arbitrary. For example, if a government were to attempt to reduce prescription drug addiction by prohibiting the usage of specific shapes and colours of pills, it would certainly be fair to ask how altering the aesthetic appearance of available prescription drugs would prevent those drugs from being abused. Similarly, if a government were to crack down on street racing by prohibiting vehicles from having large spoilers or particularly shiny tire rims, it would be fair to ask how altering a vehicle's cosmetic appearance would reduce its potential to be used in illegal street races. Ultimately, if our regulations only make our society appear safer but do little to ensure that it is safer, then those regulations are likely arbitrary.

Canada's federal government recently placed an immediate ban on 1,500 different models and variants of specific “assault-style” firearms. [1] The ban prohibits citizens with a firearms license from selling, transporting, importing or using any of the numerous variants of the following models:

- M16, AR-10, AR-15 rifles and M4 carbine;
- Ruger Mini-14 rifle;
- US Rifle M14;
- Vz58 rifle and CZ858 rifle;
- Robinson Armament XCR rifle;
- CZ Scorpion EVO 3 carbine and pistol;
- Beretta Cx4 Storm carbine;
- SIG Sauer SIG MCX and SIG Sauer SIG MPX carbines and pistols;
- Swiss Arms Classic Green and Four Seasons series rifles. [2]

For firearms enthusiasts, the portion of the ban that pertains to M16, M4, AR-10 and AR-15 rifles are arguably the most impactful, since it is estimated that there is about 83,572 of these models currently within Canada. [3] It is curious, however, that the ban focuses on specific models of firearms as opposed to their functional criteria. Notably, the term “assault-style” has no legal definition in Canada but appears to include many “styles” of firearms that are traditionally used in warfare. Nevertheless, actual “assault” firearms with the ability to fire fully automatically have been legally prohibited in Canada for decades. [4] This means that among the previously legal “assault-style” weapons just banned in Canada, such as the M16 and AR-15 rifles, none of them had the capability of firing fully automatically anyway. Likewise, semi-automatic weapons such as these have had their maximum magazine capacity legally restricted to 5 rounds since 1991. [5] In other words, actual “assault” weapons, as opposed to “assault-style” weapons, were illegal prior to the recent ban. The effective functionality of these “assault-style” weapons was already limited to serving as somewhat scary looking sports rifles.

Admittedly, it may be comforting for some Canadians to hear that 5-round semi-automatic weapons styled to appear like an AR-15 are no longer legally available to the public. But those same Canadians may yet find it worrisome to learn that other reasonably similar alternatives to the AR-15 are still unprohibited. Such alternatives include the BCL SLR Coyote and the ATRS Modern Sporter. Like the AR-15, both the Coyote and the Sporter are somewhat scary looking 5.56 caliber semi-automatic rifles. [6] Similarly, other semi-automatic rifles such as the Valmet M78 and the SKS, which can use the wider 7.62 x 39-millimeter ammunition, are still legally available in Canada. [7] Meanwhile, semi-automatic shotguns and handguns remain conspicuously absent from the recent “assault-style” firearm ban. [8] This is problematic given that handguns alone accounted for 65% of all firearm-related homicides in Canada during 2018. [9] The truth is

that much of the “assault-style” firearms ban appears to be concerned with a weapon’s popularity and appearance instead of the functional threat that the weapon could realistically pose to Canadians. [10]

To its credit, some select portions of the firearms ban are concerned with functionality as opposed to appearance. Notably, the ban includes any firearms with an interior barrel size larger than 20 millimeters, such as mortars and grenade launchers. It also includes weapons that are capable of discharging projectiles with a muzzle energy greater than 10,000 joules, such as anti-tank rifles and sniper rifles. [11] Beyond these prohibitions, however, it is not clear that the federal government is honestly concerned with prohibiting any particularly deadly characteristics of “assault-style” firearms. Instead, the federal government appears far more concerned with prohibiting specific styles and designs of modern semi-automatic rifles which are otherwise popular in the Canadian firearms market. Indeed, the federal government admitted as much when Prime Minister Justin Trudeau stated that Canada was “closing the market for military-grade assault weapons in Canada” because they “were designed for one purpose, and one purpose only: to kill the largest number of people in the shortest amount of time.” [12] But if this motive were true, why fail to address handguns, shotguns, and other less popular semi-automatic sports rifles of the same caliber?

Make no mistake, in Canada, the ownership of firearms is far more akin to a legal privilege rather than a legal right. [13] In this respect, firearm ownership is entirely comparable to driving, which is also a legal privilege. As held by the Supreme Court of Canada in *Galaske v O'Donnell*, driving a motor vehicle is not a constitutional right but is instead a licensed activity subject to a number of obligations and responsibilities, such as demonstrating a minimum standard of skill and knowledge. [14] Firearm ownership in Canada is no different. Nevertheless, if a law-abiding driver were to have the use of her Toyota RAV4 immediately prohibited because someone else in a Toyota Corolla used their vehicle to commit an act of domestic terrorism, it is understandable that she would be upset. She has not done wrong here. She has complied with the laws. Should she be punished for her taste in Toyotas? Also, why are Honda CR-Vs not being banned too? Would it be fair for her to accuse her government of acting arbitrarily?

Luckily for firearms enthusiasts, the federal government has granted the current owners of these “assault-style” firearms until April 30, 2022 to comply with the new regulations. Nevertheless, those owners are immediately prohibited from using any such firearms or trading them to other Canadians. [15] In the world of COVID-19, this is frustrating for lawful firearms owners and merchants. The Canadian Sporting Arms and Ammunition Association estimates that as a result of this decision, there is now between \$200-million and \$300-million worth of “assault-style” firearms in store inventories which can no longer be sold. [16] Although the federal government has promised to buyback any “assault-style” weapons that cannot be returned or legally exported abroad, this means that taxpayers are liable to finance the enforcement of certain prohibitions on a firearm’s cosmetic style. The Liberals have previously estimated that doing so could cost the federal government between \$400-million and \$600-million dollars. [17] Dr. Gary Mauser, a Professor Emeritus of Simon Fraser University, however, estimates that the true cost could actually be between \$1.6-billion and \$5-billion dollars. [18] Regardless of which estimate is more accurate, if the goal of the federal government is to ensure public safety, could this money not be better spent elsewhere? It arguably could. Handguns are still by far the greatest source of firearm violence in Canada. [19] Furthermore, most firearms used in crimes within Canada are still illegally obtained from sources inside the United States. [20] Indeed, a 2018 report from the Toronto Police’s Firearm Enforcement Unit found that about 70% of firearms used in crimes within Toronto originated from the United States. [21] Yet in 2018, the federal government announced that it would only be spending \$86 million over the course of five years to prevent firearms from being smuggled into Canada. [22] A more targeted and fiscally responsible approach would prioritize using taxpayer funds to intercept illegal firearms imports while also working to reduce handgun violence. How to reduce handgun violence is itself a complicated issue, but it is undoubtedly where the federal government ought to begin its discussion.

With respect, the prohibition on “assault-style” firearms is arbitrary and does little if anything to address the real sources of firearm violence. Instead, it merely forces law-abiding firearms enthusiasts to buy different models of semi-automatic firearms than they otherwise would. These licensed owners of “assault-style” weapons are not a realistic threat to public safety. The federal government ought to put its money where it matters and instead divert fiscal resources to addressing the primary sources of firearm violence. This would require a focus on increased border security, better community policing, reduced handgun violence, and accessible mental health care. The idea that hundreds of millions of dollars should be spent enforcing certain aesthetic prohibitions, however, should receive considerable scrutiny. It is not the purview of good government to regulate the cosmetic preferences of citizens without good reason, regardless of whether those preferences relate to vehicles or firearms. A good government ought not waste public resources on arbitrary prohibitions. Canadians deserve so much more than just the appearance of safety.

[1] Rachel Aiello, “More than 1k Models of assault-style weapons now prohibited in Canada: PM Trudeau”, *CTV News* (1 May 2020), online: <<https://www.ctvnews.ca/politics/more-than-1k-models-of-assault-style-weapons-now-prohibited-in-canada-pm-trudeau-1.4920528>> [Aiello].

[2] John Paul Tasker, “Trudeau announces ban on 1,500 types of ‘assault-style’ firearms – effective immediately”, *CBC* (1 May 2020), online: <<https://www.cbc.ca/news/politics/trudeau-gun-control-measures-ban-1.5552131>>.

[3] *Ibid.*

[4] Matt Gurney, “The Liberals’ useless ‘assault weapons’ ban”, *National Post* (1 May 2020), online: <<https://nationalpost.com/opinion/matt-gurney-the-liberals-useless-assault-weapons-ban>>.

[5] Patrick Cain, “Packing heat: How gun law loopholes tripled Canada’s rifle magazine limits”, *Global News* (11 June 2013), online: <<https://globalnews.ca/news/619165/packing-heat-how-gun-law-loopholes-tripled-canadas-rifle-magazine-limits/>>.

[6] Daniel Fritter, “Almost Rifles: The ATRS Modern Sporter vs M+M M10X” (6 February 2019), online: *Calibre* <<https://calibremag.ca/almost-rifles-the-atrs-modern-sporter-vs-mm-m10x/>>; “The SLR Coyote” (last visited 2 May 2020), online: *Black Creek Labs* <https://blackcreeklabs.com/portfolio_page/the-slr-coyote/>.

[7] “Soviet SKS Semi-Automatic Rifle w/ Tapco Stock” (last visited 2 May 2020), online: *Cabela’s* <<https://www.cabelas.ca/product/96077/soviet-sks-semi-automatic-rifle-w-tapco-stock>>; “There is a way for Canadians to own a non-restricted AK-47” (last visited 2 May 2020), online: <<https://hoplitetactical.com/articles/215-there-is-a-way-for-canadians-to-own-a-non-restricted-ak-47>>.

[8] *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, online: <<https://assets.documentcloud.org/documents/6880974/Canada-Gazette-May-1-2020-Part-II.pdf>> [*Firearms Regulations*].

[9] “Number and percentage of homicide victims, by type of firearm used to commit the homicide” (last visited 2 May 2020), online: *Statistics Canada* <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510007201&pickMembers%5B0%5D=3.2>> [*Firearm Statistics*].

[10] *Firearms Regulations*, *supra* note 8 at 55.

[11] *Ibid* at 56.

[12] The Guardian, “Trudeau: assault-style weapons banned ‘effective immediately’” (1 May 2020) at 00h:00m:42s, online (video): *YouTube* <<https://www.youtube.com/watch?v=cJ88x7cNXwo>>.

[13] *R v Wiles*, 2005 SCC 84 at para 9; *Hudson v Canada (Attorney General)*, 2009 SKCA 108 at paras 17, 23.

[14] *Galaske v O'Donnell*, [1994] 1 SCR 670 at para 23, [1994] SCJ No 28.

[15] Aiello, *supra* note 1.

[16] Patrick White, “Liberals’ assault-rifle ban leaves both sides in gun-control debate unhappy”, *The Globe and Mail* (1 May 2020), online: <<https://www.theglobeandmail.com/canada/article-liberals-assault-rifle-ban-leaves-both-sides-in-gun-control-debate/>>.

[17] Kathleen Harris, “Liberals promise to prohibit semi-automatic assault rifles, allow cities to ban handguns”, *CBC* (20 September 2019), online: <<https://www.cbc.ca/news/politics/liberal-gun-control-trudeau-2019-1.5290950>>.

[18] Gary Mauser, “Trudeau government’s ‘buy back’ gun program likely a multi-billion boondoggle” (21 January 2020), online (blog): *Fraser Forum* <<https://www.fraserinstitute.org/blogs/trudeau-governments-buy-back-gun-program-likely-a-multi-billion-boondoggle>>.

[19] Firearm Statistics, *supra* note 9.

[20] John Paul Tasker, “Federal government’s gun strategy won’t work without a border crackdown, experts say”, *CBC* (1 May 2020), online: <<https://www.cbc.ca/news/politics/tasker-us-border-illegal-firearms-1.5551432>>.

[21] Robyn Urback, “Ottawa’s proposed firearm ban is an American solution to a Canadian problem”, *The Globe and Mail* (8 January 2020), online: <<https://www.theglobeandmail.com/opinion/article-ottawas-proposed-firearm-ban-is-an-american-solution-to-a-canadian/>>.

[22] Kathleen Harris, “Liberals will spend \$86 million to tackle rise in gang and gun violence”, *CBC* (8 November 2018), online: <<https://www.cbc.ca/news/politics/gang-gun-violence-funding-1.4896844>>.