

Greetings from Ontario, Canada. By the time you read this article your ATA shooting season should be well underway. Whether you are a Canadian shooter or are a visitor traveling in Canada with non-restricted firearms in a motor vehicle, I believe the contents of this article will be of interest. Our criminal laws are complex and convoluted as they relate to firearms and the purpose of this article is not for giving you legal advice, but to familiarize you with some interpretation issues.

I am often retained to defend firearm owners on a variety of firearm-related charges. Make no mistake about it, whether the charges are laid under the Criminal Code or the Firearms Act (as a breach of its regulations for instance) they are all “criminal charges”. A conviction can have very serious consequences with the potential even on a first offence for such things as “careless storage” of a firearm for a criminal record, a firearms prohibition for five to ten years (usually), denial of a passport or ban on entry to other countries (e.g. United States of America), a fine, possible jail time, probation and the list goes on. Some in law enforcement have been known to candy-coat or trivialize the consequences. Consequently, more individuals charged with offences are copping plea-bargains in situations where they could probably have won their case if it went to trial. But lawyers are expensive and results unpredictable so the path of least resistance is tempting for many people.

As a lawyer I do my utmost best to know the law in areas in which I practice and give the best advice I can. I am a huge advocate of “preventative” law – in other words, in helping firearm owners understand the law and avoid getting into trouble in the first place.

When the Firearms Act was proclaimed in force, a series of Regulations were incrementally enacted that set out a “prescribed” set of measures that dictated what firearm owners were required to do in given situations

The “Storage, Display, Transportation and Handling of Firearms by Individuals Regulations” is one of the many regulations with the force of “criminal law” sanctions that dictates minimum standards in given circumstances.

In this article I will be referring only to those aspects of that regulation that relate to “non-restricted” firearms (such as most rifles and shotguns). And I will further restrict this article to

(1)Transportation of Non- Restricted Firearms
and (2)Storage of Non-Restricted Firearms

Prior to his untimely death in 2006, David Tomlinson of the National Firearms Association and myself regularly chatted about firearm legislation, the regulations, and the emerging and settled caselaw. We shared notes and caselaw.

Since David’s death there appears to be a huge information “void”. David did a great job in collecting and disseminating caselaw and defence arguments and strategies to assist defence lawyers and firearm owners. He was not a lawyer but knew more about the firearm laws than most lawyers that practice in the field of firearm defence work. David

and I did not always agree on interpretation and strategy but we certainly did agree on one thing and that is that when a non-restricted firearm entered a vehicle, the Transportation of Non-Restricted Firearms Regulation applied until the firearm left the vehicle, irrespective of the length of time it was present in the vehicle.

There is an alarming increase in the number of charges being laid against individuals because the police are being instructed to investigate how long a firearm was present in a vehicle and under what circumstances and if they believe the firearm is being “stored” in the vehicle as opposed to being “transported” charges are being laid if they deem it appropriate.

In other words, law enforcement is taking the position that the firearm owner can't rely on the “transportation” regulation and that the “storage” regulation applies or S.86(1) of the Criminal Code of Canada applies (careless storage). A conviction for either has the same consequences.

When the transportation regulation ends and the “storage” regulation or S.86(1) kicks in is anybody's guess. I have seen cases recently where a firearm left in a vehicle overnight and in complete compliance with the transportation regulation has attracted charges under the storage regulation for unsafe storage. I have had two clients charged with careless storage inside the last six months in the same judicial district who reported the theft of a single firearm from their locked vehicle. The “transportation” regulation was complied with in each case and the firearm had been left in the vehicle for a short time period only (one case overnight and the other case – while the person worked at his day job.). With myself as defence counsel the Crown Attorney(s) can expect a fight. I believe I am right on the law but there is no telling what a judge will do. As one can appreciate it is very difficult for any lawyer to give good advice to individuals as to which regulation applies and when it ends and other takes over when multiple interpretations are possible and there is no binding case law.

In a recent discussion with the legal advisor to the Chief Firearms Officer for the province of Ontario, she is pretty steadfast in her position that the “transportation” regulation may not apply to firearms in an “unattended vehicle” – it depends on the circumstances and police are being instructed to investigate the circumstances (and lay charges in situations where the police officer believes it appropriate)

Each fact situation may be different. Consider the following for instance

- a competitive shooter, or a hunter is away from home and has a hotel room. Is the firearm more secure in a locked vehicle, unloaded and not visible from the outside (i.e. in basic compliance with the transportation regulation) or in the hotel room where chamber maids etc. have regular access?
- A person who shares accommodation in an apartment (for instance) where others living there, or invited there, or even the landlord or service providers have access as opposed to it being unloaded and locked in a car trunk?
- A farmer leaves his firearm in his vehicle 24/7 for predator control in total compliance with the transportation regulations rather than “temporarily” storing it

for predator control under the "storage" regulations where under the later it need not be rendered inoperable (e.g. trigger lock) nor stored in a container or receptacle kept securely locked (etc.)?

Some Crown Attorneys take the position that once the trip is over, the firearm must be taken out of the vehicle and placed in one's secure storage lock up. Perhaps an alternate is to construct a "storage" facility in an automobile that meets the strictest requirements of both the "transportation" and "storage" regulations? Whatever you chose to do and how you chose to do it, just remember that some day you may be required to defend your choice(s) in front of a Judge.

Note: Part of the confusion and uncertainty may emanate from the "restricted" firearm (e.g. handguns) rules where these firearms must be stored at the person's residence and transported between the residence and an approved range and back again usually by the most direct route. There is no such requirement for non-restricted firearms.

I have taken the liberty of transcribing verbatim the two portions of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations as they relate to "storage of non-restricted firearms" and "transportation of non-restricted firearms". The full regulation can be found at →

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-209/FullText.html>

Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, SOR/98-209, (Firearms Act)

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) Paragraphs (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.

TRANSPORTATION OF NON-RESTRICTED FIREARMS

10. (1) An individual may transport a non-restricted firearm only if

(a) except in the case of a muzzle-loading firearm that is being transported between hunting sites, it is unloaded; and

(b) in the case of a muzzle-loading firearm that is being transported between hunting sites, its firing cap or flint is removed.

(2) Subject to subsection (3), an individual may transport a non-restricted firearm in an unattended vehicle only if

(a) when the vehicle is equipped with a trunk or similar compartment that can be securely locked, the non-restricted firearm is in that trunk or compartment and the trunk or compartment is securely locked; and

(b) when the vehicle is not equipped with a trunk or similar compartment that can be securely locked, the non-restricted firearm is not visible from outside the vehicle and the vehicle, or the part that contains the non-restricted firearm, is securely locked.

(3) If, in a remote wilderness area that is not subject to any visible or otherwise reasonably ascertainable use incompatible with hunting, an individual is transporting a non-restricted firearm in an unattended vehicle that is not equipped with a trunk or similar compartment that can be securely locked, and the vehicle or the part of it that contains the non-restricted firearm cannot be securely locked, the individual shall ensure that the non-restricted firearm

(a) is not visible; and

(b) is rendered inoperable by a secure locking device, unless the individual reasonably requires the non-restricted firearm for the control of predators.

A final note: Most people that get charged with careless (unsafe) storage offences voluntarily provide to the police all the circumstances the police need to convict them. It is not an offence to keep your mouth shut – do it.

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