

Gun Ban, Armed Resistance and Warrantless Searches by Dr. David Hodson, JD, CD

After Prime Minister Justin Trudeau unilaterally circumvented Parliament to impose gun ban upon law-abiding Canadians, most members of the firearms' community voiced their opposition to the ban. Many others marched in peaceful protest, but a few gun owners have sought legal advice with regard to avoiding compliance with the ban. However, as a lawyer, I can not, nor will not facilitate criminal activity, including advice on how to avoid confiscation should the gun ban become entrenched. The Honourable Peter McKay, M.P., learned this reality when he publicly stated that he would not register his shotgun when the Firearms' Registry was introduced.

The question on everyone's minds is, "What will happen should the legal challenges fail, and/or the Liberal government becomes a majority in a new election, or, as history has revealed, the NDP joins the Liberal crusade to disarm Canadians? Will Canadian firearms' owners voluntarily comply with confiscation, a buy-back program or whatever other means created to make the gun ban a reality? Regardless, it is going to be complicated. For example, the locations of restricted and prohibited firearms are well known to the authorities as a result of registrations, but it's not the same for all the banned non-restricted guns. Private sales and other forms of transfer are not, per se, recorded. The authorities may have some idea where many non-restricted firearms are as a result of previous registration with the Firearms' Registry, but without voluntary compliance, the situation will, again, be complicated.

The American experience, vis-à-vis gun controls and/or confiscation, is worth exploring and may accentuate what will happen in Canada. Before proceeding, and as Canadian gun owners probably know, our American cousins have the Second Amendment, the right to keep and bear arms, the right to form militias, carry firearms both openly and concealed and use same for self-defence. Canadians, generally, do not have these freedoms and privileges. Most recently, these rights and freedoms have been exercised throughout the United States as a result of the protests and political turmoil.



Americans from all walks of life exercise their Second Amendment right, although the Republicans, comparable to Canada's Conservative Party, demonstrate greater respect for the Second Amendment than the Democrats. Further, in addition to "regular people" bearing arms, armed groups abound in the U.S., but there is seldom uniformity between the groups. The one commonality is their respect and adherence to the Second Amendment - a respect that will be protected and nurtured.

Unfortunately, history has demonstrated that the American government, both federal and state, will trample Constitutionally protected rights to further an agenda. However, before elaborating, it is important to clarify some misconceptions about the armed groups referred to.

Recently, the media has focused on President Donald Trump's reluctance to criticize "white supremacists", but not all armed groups supporting the President are grounded upon racism and/or white supremacy. Yes, there are racist groups, such as the Ku Klux Klan, Christian Patriots, Aryan Nation and Christian Identity (more of a religion), but other groups are not racist, per se, but more focused on opposing immigration and preserving traditional American cultural norms. These groups, such as the Canadian Combat Coalition, are opposed to Islam and Muslim immigrants coming to the country. Obviously, there is considerable overlap with racist groups, and the media can be forgiven for labelling these groups as white supremacists.

The third armed group can, broadly, be considered "anti-government" and consists of those within the patriot and militia movements such as Oath Keepers and the Three Percenters (3%ers). The Black Panthers, an armed group active within the United States during the 1960s, and, possibly, Canada's "warriors" of Oka, were opposed to their respective governments, but will not be discussed within the subject patriot or militia realms. Similarly, the Boogaloo movement seeks unfettered gun rights and preaches violence

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in response to government confiscation of guns but considering the Boogaloo contempt for police and any form of law enforcement, the movement is distinguished from the traditional militia and patriot groups and, accordingly, will not be discussed.

The patriot and militia groups are, generally and officially, not racist, welcoming immigrants and visible minorities into their ranks as long as same are concerned about countering government tyranny. These groups are the people often observed openly bearing arms at protests, and members often swear an oath never to relinquish their arms to the government. For example, the 3%ers, active in both Canada and the U.S., and often comprised of military and police personnel, pledge armed resistance against firearm restrictions. Comparably, Oath Keepers, comprised of similar personnel as the 3%ers, and currently not present in Canada, sign a declaration confirming that members will not obey any order to disarm American people, conduct warrantless searches or engage in any activity in support of martial law or a state of emergency imposed by the government.

The media creates confusion by either deliberately or inadvertently labelling the anti-government groups as racist. Sadly, there have been racists within the anti-government ranks, and many of the groups have provided security for far-right protests, but, again, the primary focus is protecting the Second Amendment and other Constitutional Rights. Regardless, it is these

groups, for better or worse, that have the means, structure and commitment to facilitate the right to keep and bear arms.

The American government has grappled with gun control issues for decades, has created the Bureau of Alcohol, Tobacco and Firearms to police the civilian ownership of firearms and, occasionally, has trampled the Second Amendment rights and freedoms of American citizens. Ruby Ridge and Waco are examples of the American government using force to ensure compliance with the law and social norms, but considering the controversy surrounding these events, especially the allegations of criminal activity, this article will not explore or discuss these two events. The better example, vis-à-vis what might happen in Canada, is the actions of the government in response to Hurricane Katrina – a natural disaster conveniently labeled an emergency.

There's no question Katrina was a natural disaster, but the situation was compounded by looting and other criminal activities. Armed or not, law-abiding citizens were at risk from the storm, looters and, on occasion, law enforcement. Government officials decreed that only the police should have guns, and, subsequently, gun bans were imposed throughout New Orleans, with confiscation of guns actively pursued. In essence, the governments actions resulted in the disarmament of citizens, preventing people from defending themselves, their loved ones and owned property.

Comparably, during the 2013 flooding of High River, Alberta, Canada's RCMP conducted warrantless searches and firearms seizures without judicial oversight. Although this trampling of Canadian rights will not be explored, per se, homes were forcibly entered by breaking windows and kicking in doors to take guns. Sadly, during Katrina and in High River, regular law-abiding citizens were struggling to survive a natural disaster, while subject to military and police officers conducting warrantless searches of their homes, random door-to-door searches for "weapons", and roving checkpoints. Confiscation of weapons and disarmament of the population were the objectives of the government activities. In the process of realizing these objectives in New Orleans, police shot and killed at least two unarmed citizens and wounded four others. More importantly, in both locations, constitutional rights and freedoms, the legal foundations for American and Canadian democracy, were trampled.

In Canada, we have the Canadian Charter of Rights and Freedoms, which Charter enshrines the right of all Canadians to "life, liberty and security" of the person, as well as to be free from unreasonable search and/or seizure. Very generally, if the police want to enter and search a home, the consent of the owner or a search warrant will be required. With regard to the latter, "reasonable grounds to believe", vis-à-vis a search for evidence of criminal activity, is a necessity.

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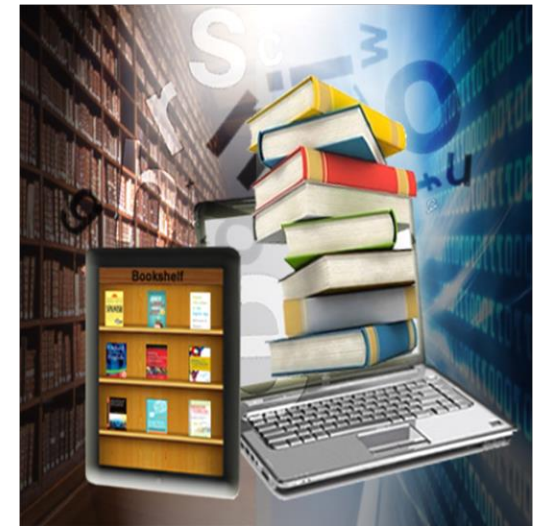
As indicated, Canada does not have a Second Amendment. Regardless, there are millions of law-abiding gun owners, with many likely to be criminalized as the Liberal gun ban evolves. For example, it is a criminal offence not to report a lost or stolen firearm, and if restricted firearms are not turned in, well, addresses of said firearms are known and the “reasonable grounds to believe” for a search warrant is evident. A valid search warrant will be a *no brainer* and criminal charges are likely to result. However, it is the owners of non-restricted firearms or even P.A.L. holders without any firearms, that are likely to be targeted. Warrantless searches of their homes or random stops by police after matching vehicle license plates with P.A.L. records will become real possibilities. Yes, there is the possibility of CFO inspections, primarily for collections and requiring notice, but the magnitude and volume of firearms throughout Canada, not to mention the nuanced parameters of such an inspection, severely limits this possibility. In essence, far too many guns, unknown locations, costs and legal restraints will prevent adherence to The Canadian Charter and related laws.

In closing, the State of Virginia’s motto is *sic semper tyrannis*, which translates to thus always to tyrants – basically, bad outcomes will inevitably befall tyrants. Timothy McVeigh, the Oklahoma City bomber, wore the motto on his person and many within the armed anti-government movement consider the motto to be a rallying cry against the government’s abuse of power.



In 2016, President Donald Trump, the Commander-in-Chief of the U.S. armed forces, told America that the Democrats will impose gun control laws upon the nation. He went on to tweet, “nothing you can do folks ...although the Second Amendment people – maybe there is – I don’t know?”. Canada is not the United States, but the American experience with gun bans, confiscation and trampling of the law offers many insights for Canadian politicians as well as members of the Canadian firearms’ community. Without vigilance, the Canadian gun ban has the potential to jeopardize Canada’s democracy and rule of law.

David Hodson is a criminal defence attorney specializing in Canadian firearms law. He has served in Afghanistan and elsewhere within the Middle East. As well, his academic, military and professional experiences have provided him with insight into the American, and to a lesser extent, the Canadian armed undergrounds



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