Korean war veteran, 87, dodges mandatory three-year prison sentence over forgotten 1960s-era pistol

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**V**ANCOUVER — Home-care workers were attending the home of an 87-year-old B.C. man recently when they stumbled across a 1960s-era pistol long forgotten in a corner of his apartment.

“I’m 87 years old, I’m not going to go around looking for it,” said Lynn Henshaw, a Korean War veteran who has lived in Sidney, B.C., for the past 15 years.

Regardless, an RCMP visit later and Mr. Henshaw was staring down a mandatory three-year prison sentence, the result of Canada’s recently toughened gun possession laws.

“I knew the gun laws had changed, but I didn’t know it was that bad. At 87, you don’t pay attention to things like that,” he said.

The weapon that landed him in court was a .38 Colt that Mr. Henshaw had purchased when he was the administrator of a college in Maui.

Rather than hire a security guard to shuttle the school’s tuition to a bank, he said, he bought a sidearm to do it himself.

“I was trying to save money; cut the budget down … all it cost me was the price of a .38 Colt,” he said.

The exact details of the gun’s discovery are murky, but the episode began when a trio of home-care workers were dispatched to the apartment of Mr. Henshaw, who was recovering after a recent hospitalization. “Some outfit in town sent them … maybe Veterans Affairs, but I hope not,” he said.

One of the workers reportedly came across the pistol, set it on a chair and alerted the RCMP.

“My main contention is that I was getting paid back for the Korean War, that’s my own assessment of the situation,” he said of the workers, who were apparently of Asian descent.

In 1941 when Mr. Henshaw was 15, he lied about his age to enlist in the Canadian Forces. When the army cracked down on underage soldiers, he sailed with the Merchant Marines in South Asia. A decade later, he was back in the military serving a temporary clerical assignment in Korea when China launched a massive assault from the north.

“We had to drop everything and start fighting them,” he said. After settling into retirement in Sidney, Mr. Henshaw said he divested the rest of his gun collection, a Lee-Enfield .303 and an Ithaca shotgun, but maintains “limited energy” prevented him from tracking down the pistol, which he suspected was stashed away in a drawer somewhere.

Nevertheless, based on the recommendations of the Sidney RCMP, who seized the weapon at Mr. Henshaw’s home, a Crown attorney pressed a battery of firearms charges, including possession of a ready-to-fire “prohibited firearm or restricted firearm.”

If convicted, he faced a prison term lasting until at least his 90th birthday.

“I don’t want to badmouth the police, but … frankly, the police could have simply said ‘buddy, we’re taking this away’ and put a note on his file saying he could never get a possession licence,” said Martin Allen, a Victoria criminal defence lawyer who met Mr. Henshaw while working as duty counsel at local courthouse.

Any “reasonably thorough and conscientious investigation,” he said, would have quickly exposed Mr. Henshaw’s lack of criminal intent.

Judges used to have more discretion in firearms cases until the 2008 passage of the Tackling Violent Crime Act, which ramped up mandatory minimum sentences against holders of prohibited firearms.

Inspired in part by the death of Jane Creba, an innocent teen who was caught in the crossfire of a Boxing Day shootout on a busy Toronto street, judges have often bristled at the measure as “cruel and unusual punishment.”

Last May, an Ontario judge refused to issue a mandatory three-year sentence to a 48-year-old medic who attempted to transport his late father’s unregistered Smith and Wesson by sandwiching it between two licence plates and putting it in his checked WestJet luggage.

In 2012, another Ontario judge refused to impose a three-year sentence on Leroy Smickle, a Toronto man caught taking photos of himself holding his cousin’s loaded handgun.

Luckily, in Mr. Henshaw’s case the issue never went to trial. Mr. Allen took Mr. Henshaw on as a pro bono client and worked out an arrangement with prosecutors: His client pleaded guilty to a lesser charge of careless storage of a firearm, and the stricter charges were stayed.

“He got a discharge, he forfeited the gun and there’s a prohibition order for 10 years, which for him I guess is life,” said Mr. Allen.

Sidney, B.C., is Canada’s third-oldest community, according to 2011 census results, making it entirely likely the city abounds with a higher-than-average proportion of residents holding onto legacy weapons from overseas military service or leftover from the days of looser gun laws.

Growing up in the U.K., Mr. Allen said he remembered his own father keeping a captured Wehrmacht pistol in the attic until he decided to surrender it at a gun amnesty.

“Someone like that, I’m sure there are lots of those people around,” he said.