



Court File No. T-577-20

## FEDERAL COURT

COALITION FOR FIREARM RIGHTS, RODNEY GILTACA, LAURENCE  
RYAN STEACY, MACCABEE DEFENSE INC., WOLVERINE SUPPLIES  
LTD., AND MAGNUM MACHINE LTD.

Applicants

and

ATTORNEY GENERAL OF CANADA and CANADA (ROYAL CANADIAN MOUNTED  
POLICE)

Respondents

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

### NOTICE OF APPLICATION

TO THE RESPONDENTS: THE ATTORNEY GENERAL OF CANADA and CANADA  
(ROYAL CANADIAN MOUNTED POLICE)

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by  
the Applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the  
Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested  
by the Applicants. The Applicants request that this application be heard at the Federal Court, 635  
8 Avenue SW, Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the  
application or to be served with any documents in the application, you or a solicitor acting for you  
must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it  
on the Applicants' solicitor WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

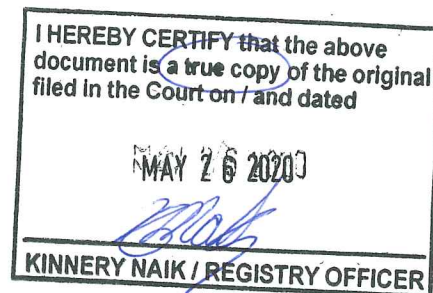
IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date MAY 26 2020 Issued by ORIGINAL SIGNED BY  
KINNERY NAIK  
A SIGNÉ L'ORIGINAL  
(Registry Officer)

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TO: Attorney General of Canada

AND TO: Canada (Royal Canadian Mounted Police)



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## **I. THE PARTIES**

### **A. The Canadian Coalition for Firearm Rights**

1. The Applicant, the Canadian Coalition for Firearm Rights (**CCFR**), is a federally incorporated not-for-profit corporation, which acts as the public relations and education branch of the Canadian firearms community. CCFR membership is composed of individual Canadians, corporations, and industry organizations. The CCFR currently has a membership in excess of 28,300 which continues to grow daily.
2. The objects of the CCFR are to provide a voice for Canadian firearm owners and provide education to the public about the reasonable use and ownership of firearms. The CCFR achieves these objectives through:
  - (a) informing and educating the public about current firearms laws and regulations and their impact on Canadian society;
  - (b) providing provincial and federal Government entities with accurate information about firearm issues;
  - (c) providing information to media and government about policies and regulations including impacts on Canadian society;
  - (d) developing and sharing internal policies and best practices for members; and
  - (e) promoting rights in Canada as they apply to the defence of person and property rights.

The CCFR has a long-standing interest in matters pertaining to the regulation of firearms in Canada.

3. The CCFR has sufficient interest to be granted public interest standing in this Application challenging the *Regulations Amending Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines,*

*Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted*: SOR/2020-96 (**Regulation**). Specifically:

- (a) The validity and the constitutionality of the Regulation is a serious issue.
- (b) The CCFR is directly affected by the Regulation and the CCFR has a genuine interest in whether the Regulation is *intra vires* the *Criminal Code*, RSC 1985, c C-46 (***Criminal Code***) and whether it is constitutionally valid.
- (c) The CCFR has a demonstrated, serious and genuine interest in challenging the lawfulness, validity and constitutionality of the Regulation. Given the CCFR's position and role in the firearms community, it has standing, or it is appropriate to grant the CCFR standing, to challenge the lawfulness, validity and constitutionality of the Regulation.
- (d) If the CCFR is not granted standing in this Application to challenge the validity and constitutionality of the Regulation, there will be no other reasonable or effective way to fully argue these issues before the Court.

## **B. Rodney Giltaca**

- 4. The Applicant Rodney Giltaca (**Mr. Giltaca**) is an individual who resides in Chilliwack, British Columbia. Mr. Giltaca is the sole director and shareholder of Civil Advantage Management Inc., which he incorporated in British Columbia in 2015. Civil Advantage is one of the most recognizable firearm training businesses in Canada. Mr. Giltaca is a founder of and the current Chief Executive Officer and Executive Director of the CCFR.
- 5. Mr. Giltaca is a licensed firearms owner and Canadian Firearm Safety Course Instructor in good standing with the Royal Canadian Mounted Police (**RCMP**) Canadian Firearms Program. He currently owns a number of non-restricted, restricted, and newly prohibited firearms, including several AR-15s (lower and upper receivers) which are now prohibited by the Regulation. Following the enactment of the Regulation, Mr. Giltaca purchased a SLR Coyote rifle to replace his newly prohibited AR-15s. The SLR Coyote has a receiver set called the SLR-Multi. The SLR-Multi is not listed in the Regulation. The SLR-Multi

was also not listed as prohibited by the RCMP on date of purchase. During transport of the SLR-Multi to Mr. Giltaca, the RCMP re-classified it to be prohibited.

6. Mr. Giltaca has suffered, and anticipates he will continue to suffer, significant business losses as a result of the Regulation. Specifically, he expects a 50% reduction in restricted firearm courses. He has also lost the use of high-end, quality firearms which he relied on for business and recreational purposes. Mr. Giltaca was also about to produce the third season of Canada Downrange, a Canadian television production on sport shooting. Season 3 will no longer proceed due to the impact that the Regulation has had on the firearm industry and sport shooting, further impairing Mr. Giltaca's financial interests. The impacts of the Regulation on Mr. Giltaca's identity and way of life are profound.

#### C. **Laurence Knowles**

7. The Applicant Laurence Knowles (**Mr. Knowles**) is an individual who resides in Old Massett, Haida Gwaii, British Columbia. Mr. Knowles is a Status Indian under the *Indian Act*, RSC 1985, c I-5, as amended, and a member of the Haida Nation.
8. Mr. Knowles uses firearms, including some that are now prohibited under the Regulation (**Prohibited Items**, as defined below), for hunting purposes that are protected by section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (***Constitution Act, 1982***). Mr. Knowles currently owns four Prohibited Items, which he purchased at significant expense for particular and specialized hunting, trapping and wildlife management activities within the traditional Haida Nation territory. These activities provide for a significant portion of Mr. Knowles' food, and having the proper equipment, including the Prohibited Items, often means the difference between eating or not. Mr. Knowles' hunting also sustains his family and community.

#### D. **Ryan Steacy**

9. The Applicant Ryan Steacy (**Mr. Steacy**) is an individual who resides in Mission, British Columbia. Mr. Steacy served in the Canadian military from 1995 to 2015 when he retired as a corporal. Mr. Steacy is an accomplished competitive sport shooter. He also worked in the film industry handling firearms until 2017. He is now the Technical Director for

International Barrels Inc., a company in Chilliwack, BC, that manufactures precision barrels, including for the newly prohibited AR-15.

10. Mr. Steacy primarily competes in Service Rifle. Mr. Steacy has competed in and won numerous provincial, national, international and armed forces competitions, including:
  - (a) The Queen Mary Match at Bisley, England, where Mr. Steacy competed against the top shooters from 15 other countries and won the prestigious competition. He also received a gold medal in recognition of his outstanding individual shooting performance.
  - (b) Six-time national champion of the Dominion of Canada Rifle Association (**DCRA**) Service Rifle competition. He holds the record for the highest score ever shot and has the most consecutive championships. Mr. Steacy is one of only seven shooters in the DCRA hall of fame. The DCRA was founded in 1868 and incorporated by an Act of Parliament 63-64 Victoria Chapter 99, assented to July 7, 1900, to promote and encourage the training of marksmanship throughout Canada.
  - (c) Seventeen-time provincial champion in British Columbia Rifle Association Service Rifle competition.
  - (d) Member of the Canadian Forces Combat Shooting Team for many years, which includes the top 16 shooters across all armed forces in Canada. While on the Team he competed in well-known competitions in Arkansas and Australia against shooters from across the world.
11. The Service Rifle competition was designed for the use of accurate semi-automatic firearms, including most notably the AR-15. Mr. Steacy, and all other Canadian competitors, require certain Prohibited Items to train for and compete in Service Rifle competitions. Without the use of Prohibited Items, Mr. Steacy and all other Canadian competitors are effectively precluded from competing in Service Rifle in Canada and internationally, because the Regulation prohibits the ownership and use of the necessary equipment.



12. Among other things, Mr. Steacy intended to compete in the Camp Perry, US National Championships, but he can no longer do that because the Regulation prohibits him from owning and using the necessary equipment. The Regulation also precludes the DCRA Service Rifle competition in Canada, for which Mr. Steacy was training to become a seven-time champion this year.
13. Mr. Giltaca, Mr. Knowles, and Mr. Steacy are referred to as the **Individual Applicants**.

**E. Maccabee Defense Inc.**

14. The Applicant Maccabee Defense Inc. (**Maccabee**) is an Alberta company, based in Okotoks. Maccabee is owned by Wyatt Singer and Shaina Singer.
15. Maccabee was first incorporated in 2015 for the specific purpose of designing a semi-automatic firearm, the SLR-Multi Rifle, which would be safe, used for hunting and sporting, and classified as non-restricted (**SLR-Multi**).
16. The SLR-Multi is not a derivative or a variant of, and does not have any direct lineage to, any pre-existing firearm. The SLR-Multi was designed solely for hunting and sporting applications.
17. In 2017, Maccabee submitted a physical model and technical specifications for the SLR-Multi to the RCMP for review, approval and classification. In November 2017, the Maccabee SLR-Multi received approval by the RCMP and was registered and classified by the RCMP Specialized Firearms Support Services (**RCMP SFSS**) as a non-restricted firearm on the Firearms Reference Table (**FRT**). Since 2017, Maccabee has been manufacturing and selling the SLR-Multi as a non-restricted firearm either directly or through certified dealers. To date, Maccabee has sold approximately 1600 SLR-Multi Rifles.
18. The SLR-Multi is not listed as a Prohibited Item in the Regulation and, as of May 1, 2020, it remained classified on the FRT as a non-restricted firearm. However, on May 15, 2020, Mr. Singer received emails and text messages from clients and friends advising that the SLR-Multi had been re-classified on the FRT as prohibited.

19. To date, Maccabee has not been notified by the RCMP SFSS or anyone at the RCMP that the SLR-Multi has been re-classified, nor has it been advised which Prohibited Item the SLR-Multi is purportedly a variant of.
20. The SLR-Multi is the only product Maccabee has in production and for sale. It composes 100% of its inventory and its sales. Maccabee will lose its entire business and sales as a result of the SLR-Multi's re-classification as prohibited.

**F. Wolverine Supplies Ltd.**

21. The Applicant Wolverine Supplies Ltd. (**Wolverine**) is a prominent Canadian retailer and distributor of firearms. Wolverine is a Manitoba company, based in the Assiniboine Valley of Manitoba. Wolverine employs 20 people, in a rural community with limited employment opportunities given the location.
22. Wolverine sells firearms for the purposes of recreational shooting, competitive shooting, and big game hunting. Wolverine is the exclusive distributor for over 12 major firearm, accessory, and optic manufacturers, including Accuracy International Ltd., Barrett, Robinson Armament, and Daniel Defense.
23. Matthew Hipwell is the President and Secretary of Wolverine. Wolverine is a family business that was started in 1989 by John and Pat Hipwell, Matthew's parents, in their home. Over the years the business has grown and is now recognized and relied upon by people across Canada as a leader in the industry.
24. On May 1, 2020, the Order in Council was introduced to Wolverine and all Canadians through the media. Wolverine and other businesses were left guessing as to the implementation and timelines involved. Wolverine received official notification at 3:22 p.m. in the afternoon by a generic e-mail sent to their "Sales" inbox. This e-mail was not addressed to the attention of anyone. The e-mail stated that the Order in Council had been made, however no details were provided.
25. On May 22, 2020, Wolverine received a letter from the Canadian Firearms Program of the RCMP entitled "Announcement of Firearms Prohibition". This generic letter contained

basic information about the Regulation, but no information specific to Wolverine and no information about compliance with the Regulation. Apart from this generic letter, Wolverine received no notice or information about the Regulation from any government authority about how the Order in Council would impact pending transfers, prohibitions, export of inventory, grand-fathering and buy back intentions. Wolverine has submitted several requests for updates but has yet to receive a response.

26. The business of Wolverine has been significantly diminished by a reduction of approximately 40% in sales. The very existence of Wolverine as a business is threatened by the Regulation. Among other things, at least six of Wolverine's product lines, including two of their top five lines, are newly prohibited:
  - (a) The AR-15 class of firearms manufactured by Daniel Defense. This is Wolverine's top product line. It is designed for recreational sport shooting, including 3-gun and Service Rifle competitions.
  - (b) The Robinson Armaments XCR Rifle product line, which is widely used by hunters and sport shooters across Canada and is also one of the most popular firearms for varmint control that is prominent in rural Canada.
  - (c) Barrett REC 7 and REC 10 product lines (which are AR-15 variants), and .50 calibre long range rifles (capable of firing a projectile with more than 10,000 joules of energy). The REC 7 and REC 10 are designed for recreational sport shooting, including 3-gun and Service Rifle competitions. The .50 calibre rifles are used by long range shooters, including in the King of the Two-Mile shooting competition.
27. Since the Order in Council, other firearms sold by Wolverine have been re-classified in the FRT as variants of Prohibited Items listed in the Regulation. Wolverine only became aware of these re-classifications through others in the industry and by checking the FRT.
28. For example, on May 6, 2020 the RCMP SFSS changed the classification of the Angstadt Arms model of firearms from "restricted" to "prohibited". This model was not named in the Order in Council, but arbitrarily changed by the RCMP SFSS without any notification

to Wolverine. Wolverine only came to learn of this change on May 12, 2020, as it was updating a customer about the product line.

29. To date, Wolverine has not been notified that several of its product lines have been re-classified in the FRT or of any changes by the RCMP SFSS or otherwise since May 1, 2020.
30. As a result of the vague definitions in the Regulation, and the ongoing classifications made by the RCMP SFSS without any notice to Wolverine or other members of the public, Wolverine is currently operating in a climate of severe uncertainty. A product that was legal today could be prohibited tomorrow, without any notice. This puts Wolverine and its employees and customers at significant risk of criminal liability, without even knowing it.

**G. Magnum Machine Ltd.**

31. The Applicant Magnum Machine Ltd. (**Magnum**), also known as Alberta Tactical Rifle, is a Canadian manufacturer of firearms. Magnum is an Alberta company, based in Calgary.
32. Richard Timmins is the President and owner of Magnum. Magnum is a family business that Richard started in his home in 1997. In 2008, the business moved into a 7,000 square foot facility that employs 10 people.
33. Two of Magnum's seven product lines are newly prohibited by the Regulation:
  - (a) The ATSHL. This is a lower component that is combined to a modular upper initially intended for an AR-15. It is most suited for hunting and target shooting.
  - (b) The AT-15. This is a customized version of the AR-15. The AT-15 is most suited for 3-gun competitions and sport and target shooting.
34. The prefix "AT" is a reference to Alberta Tactical. Included on the list of Prohibited Items in the Regulation is "AT-50". While this appears to be a reference to a product manufactured by Magnum, it is an error because there is no firearm named "AT-50".
35. After May 1, 2020, three more of Magnum's product lines have been classified as prohibited as a result of FRT changes made by the RCMP SFSS on or about May 15, 2020:

- (a) The Modern Hunter. This semi-automatic hunting rifle is not a variant of any other design. It was designed by, and is proprietary to, Magnum. As the name suggests, the Modern Hunter is most suited for big game hunting.
  - (b) The Modern Varmint. This product is similar to the Modern Hunter but scaled down by 25% and most suited for pest control. The ammunition is less expensive and more readily available. As the name suggests, the Modern Varmint is most suited for long-range varmint control.
  - (c) The Modern Sporter. This product is similar to the Modern Varmint, but more customizable by the consumer. This is by far the most popular and successful product line for Magnum. As the name suggests, the Modern Sporter is most suited for sport shooting.
36. On May 15, 2020, one of Magnum’s suppliers notified Magnum that the Modern Hunter, Modern Varmint, and Modern Sporter had been re-classified in the FRT. The explanation notes for the re-classification are redacted. To date, Magnum has received no explanation for the re-classification.
  37. Magnum received no notice from the RCMP or any government authority about the Regulation or the re-classifications. On May 22, 2020, Magnum received the same generic “Announcement of Firearms Prohibition” as Wolverine, which contained basic information about the Regulation, but no information specific to Magnum and no information about compliance with the Regulation.
  38. The Regulation and the ostensibly related re-classifications have effectively eliminated the business of Magnum, as five of its seven products are now classified as prohibited. The family owners of Magnum have no alternative source of income or expertise. Their livelihoods and retirements depend entirely on their ability to manufacture and sell the newly prohibited items. All of this was taken away from them without any notice from any government authority whatsoever.

## **H. The Attorney General**

39. The Respondents are Her Majesty the Queen (in right of Canada), as represented by the Attorney General of Canada on behalf of the Governor General in Council (**GIC**) and the RCMP.

## **I. RCMP Specialized Firearms Support Services Unit**

40. The RCMP SFSS is a department within the Canada Firearms Centre of the RCMP. The RCMP SFSS purports to classify firearms as non-restricted, restricted, or prohibited. The decisions of the RCMP SFSS are inputted into an administrative document called the FRT. The FRT is not a public document and can only be accessed by law enforcement and other licensed individuals including manufacturers and retailers of firearms.
41. The FRT is the resource that law enforcement uses to determine whether a gun owner is in contravention of the *Criminal Code* with regard to restricted and prohibited firearms. The FRT is continually updated by the RCMP SFSS. On average, 8,000 new firearms records are added to the FRT each year.
42. Since May 1, 2020, the RCMP SFSS has re-classified the Prohibited Items enumerated in the Regulation from their prior classification in the FRT of non-restricted or restricted, to prohibited. In addition, the RCMP SFSS has been identifying purported variants of the Prohibited Items listed in the Regulation and re-classifying those as prohibited.
43. The RCMP SFSS is not authorized by the *Criminal Code*, or otherwise, to classify firearms as restricted or prohibited. Rather, that power is delegated solely to the GIC, pursuant to the constraints detailed below.

## **II. THE GROUNDS FOR THE APPLICATION**

### **A. Introduction**

44. On May 1, 2020, Prime Minister Justin Trudeau announced immediate amendments to Canada's gun laws which criminalize the use of certain types of firearms and related devices. The change was effected through the Regulation, made by the GIC through Order in Council P.C. 2020-298.

45. Regulations made by an Order in Council are done through the Executive branch of the Government, not the Legislative branch. As such, the Regulation was not subject to the process that proposed legislation receives, including Parliamentary debate and readings in the House of Commons and the Senate.
46. This is an Application for Judicial Review; and is a constitutional and quasi-constitutional *vires* challenge in relation to the Regulation in respect of the *Constitution Act, 1867*, 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 (***Constitution Act, 1867***), the *Constitution Act, 1982*, and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (***Charter***), and on the bases that:
  - (a) The Regulation has been created and promulgated in a manner, means and in a form which is incorrect, unreasonable, an impermissible sub-delegation of authority, tainted by preconceived notions and consideration of extraneous and irrelevant factors, lacking in natural justice, and otherwise *ultra vires* the enabling statute, the *Criminal Code* and, or in the alternative, the *Constitution Act, 1867*;
  - (b) The Regulation breaches the rights afforded to the Applicants by section 7 of the *Charter* and section 35 of the *Constitution Act, 1982*; and
  - (c) The Regulation is inconsistent with and contrary to the *Canadian Bill of Rights*, SC 1960, c 44 (***Bill of Rights***).
47. In addition to criminalizing a specific enumerated list of firearms and devices, the Regulation also purports to include “variants or modified versions” of those firearms. The phrase “variant or modified versions” is undefined and nondescript, creating the risk of attracting exposure to criminal liability, arrest and detention for persons who have no ability to ascertain which firearms may fit within that classification, all as determined by the RCMP SFSS without notice to the public.
48. Since May 1, 2020, the RCMP SFSS has re-classified an estimated additional 255 firearms and devices as prohibited, apparently on the basis that those items are variants of the

firearms and devices set out in the Regulation. This number of re-classified items continues to grow.

49. This Application challenges the lawfulness of those re-classifications on the bases that:
  - (a) The RCMP SFSS does not have the authority to classify or re-classify firearms as prohibited or restricted, and their classification of firearms as prohibited is incorrect, impermissible, lacking in natural justice, and otherwise *ultra vires* the enabling statute, the *Criminal Code* and, or in the alternative, the *Constitution Act, 1867*;
  - (b) If the RCMP SFSS does have the authority to classify or re-classify firearms as prohibited or restricted, which is denied, the current and previous exercise of that authority is inconsistent with the enabling legislation, the Regulation, and is in any event irrational, capricious and contrary to existing law;
  - (c) The RCMP SFSS' re-classification of firearms as prohibited or restricted breaches the rights afforded to the Applicants by section 7 of the *Charter* and section 35 of the *Constitution Act, 1982*; and
  - (d) The RCMP's re-classification of firearms as prohibited or restricted is inconsistent with and contrary to the *Bill of Rights*.

**B. The *Criminal Code* and the Hunting and Sporting Restriction**

50. Part III of the *Criminal Code* creates the criminal laws relating to Firearms and Other Weapons.
51. A number of offences under Part III are indictable offences, leaving individuals liable to imprisonment, and sometimes on a strict liability basis for mere possession. For example, section 91 of the *Criminal Code* makes it an indictable offence, liable to imprisonment for a term not exceeding five years, to possess a prohibited or restricted firearm without a licence and registration certificate for it.



52. Section 84(1) of the *Criminal Code* defines certain items which fall within three categories of firearms: non-restricted, prohibited, and restricted. The definitions of both restricted and prohibited firearms allow for certain firearms to be prescribed.
53. The GIC may make regulations prescribing categories of firearms according to the definitions of restricted and prohibited items. Section 117.15(1) of the *Criminal Code* provides:

Regulations

(1) Subject to subsection (2), the Governor in Council may make regulations prescribing anything that by this Part is to be or may be prescribed.

54. That regulation-making authority is expressly restricted by a fundamental constraint on the types of items that may be prohibited. Section 117.15(2) provides:

Restriction

(2) In making regulations, the Governor in Council may not prescribe any thing to be a prohibited firearm ... [or] a prohibited device... if, in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes.

55. In authorizing the GIC to prescribe certain items, Parliament expressly provided that nothing can be prescribed as prohibited or restricted if, in the opinion of the GIC (the **Necessary Opinion**) it is reasonable for use in Canada for hunting or sporting purposes (the **Hunting and Sporting Restriction**).

**C. Content of the Regulation**

56. The Regulation significantly expands the list of prohibited firearms. These newly prohibited items attract prohibitions and criminal penalties associated with their use, ownership, sale or possession.

57. Generally, the Regulation has added approximately 1,500 additional firearms to the prohibited list and includes specific variants of firearms which were previously classified as either non-restricted or restricted, including:
- (a) Firearms of the designs commonly known as the SG-550 rifle and SG-551 carbine, and any variants or modified versions of them, including the SAN Swiss Arms firearms particularized in the Regulation;
  - (b) Firearms of the designs commonly known as the M16, AR-10, and AR-15 rifles, and the M4 carbine, and any other variants or modified versions of them, including those particularized in the Regulation;
  - (c) Firearms of the design commonly known as the Ruger Mini-14 rifle, and any variant or modified version of it, including those particularized in the Regulation;
  - (d) Firearms of the design commonly known as the US Rifle M14, and any variant or modified version of it, including those particularized in the Regulation;
  - (e) Firearms of the design commonly known as the Vz58 rifle, and any variant or modified version of it, including those particularized in the Regulation;
  - (f) Firearms of the design commonly known as the Robinson Armament XCR rifle, and any variant or modified version of it, including those particularized in the Regulation;
  - (g) Firearms of the designs commonly known as the CZ Scorpion EVO 3 carbine and CZ Scorpion EVO 3 pistol, and any variants or modified versions of them, including those particularized in the Regulation;
  - (h) Firearms of the design commonly known as the Beretta Cx4 Storm carbine, and any variant or modified version of it;
  - (i) Firearms of the designs commonly known as the SIG Sauer SIG MCX carbine, SIG Sauer SIG MCX pistol, SIG Sauer SIG MPX carbine and SIG Sauer SIG MPX

pistol, and any variants or modified versions of them, including those particularized in the Regulation;

- (j) Any firearm with a bore diameter of 20mm or greater, including those particularized in the Regulation; and
- (k) Any firearm capable of discharging a projectile with a muzzle energy greater than 10,000 joules, including those particularized in the Regulation.

The Regulation also prescribes the upper receivers of M16, AR-10, AR-15 and M4 pattern firearms as prohibited devices. Collectively the firearms and devices now classified as prohibited as a result of the Regulation are referred to as the **Prohibited Items** and individually as a **Prohibited Item**.

- 58. The Regulation also purports to include unknown “variants and modified versions” of the Prohibited Items.
- 59. The Prohibited Items have been traditionally used and regulated for sport shooting and hunting. As a result of the Regulation, anyone in possession of a Prohibited Item must immediately cease using it, subject to certain limited exceptions described below. A prior lawful owner of a Prohibited Item is now subject to all of the associated penalties stipulated in the *Criminal Code*, including imprisonment and prohibition orders.
- 60. The Regulation significantly impacts hundreds of thousands of Canadians, including (1) lawful owners of the Prohibited Items, (2) retailers, training facilities, and target and shooting ranges, (3) manufacturers, (4) sport shooters, and (5) hunters.
- 61. These affected individuals and businesses have been deprived of their rights, including liberty, security of their person and property.
- 62. Further, anyone in possession of a firearm or device that the RCMP SFSS unilaterally deems to be a variant of a Prohibited Item, whether or not that act of deeming is promulgated or capable of being known by the public, must immediately cease using it, subject to certain limited exceptions, or become subject to all of the associated penalties stipulated in the *Criminal Code*, including imprisonment and prohibition orders.

**D. The Amnesty Order**

63. Section 117.14 of the *Criminal Code* provides:

Amnesty period

117.14 (1) The Governor in Council may, by order, declare for any purpose referred to in subsection (2) any period as an amnesty period with respect to any weapon, prohibited device, prohibited ammunition, explosive substance or component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm.

Purposes of amnesty period

(2) An order made under subsection (1) may declare an amnesty period for the purpose of

(a) permitting any person in possession of any thing to which the order relates to do anything provided in the order, including, without restricting the generality of the foregoing, delivering the thing to a peace officer, a firearms officer or a chief firearms officer, registering it, destroying it or otherwise disposing of it...

64. The Regulation was accompanied by the *Order Declaring an Amnesty Period* (SOR 2020-97) (***Amnesty Order***).
65. The *Amnesty Order* allows for the continued legal possession of the Prohibited Items by a legal owner for the limited purpose of coming into compliance with the Regulation through disposal of the firearm (deactivation, delivery to a police officer, legal export, return by a business to the manufacturer, or transportation for those limited purposes). The amnesty period expires April 30, 2022.
66. The *Amnesty Order* also allows for the continued use of a Prohibited Item, which was previously classified as non-restricted, for hunting in the exercise of a right recognized and

affirmed by section 35 of the *Constitution Act, 1982* or to sustain the person or their family, until they are able to obtain another firearm for those purposes.

67. In short, the Regulation immediately criminalizes the use of the Prohibited Items, except for disposal or hunting by Indigenous persons or sustenance hunters (until they can replace the Prohibited Items).

### **III. THE PARAMETERS THAT CONSTRAIN THE EXERCISE OF AUTHORITY**

68. A delegate may only act within the parameters of the authority conferred to it. There are fundamental constraints that apply to the GIC's enactment of the Regulation and any related sub-delegation, which the GIC has violated.

#### **A. Division of Powers**

69. The GIC is constrained by the division of powers in sections 91 and 92 of the *Constitution Act, 1867*. Parliament has exclusive legislative authority over the criminal law. To be valid, the Regulation must have a valid criminal law purpose and be backed by a criminal prohibition and penalty.
70. The GIC is not authorized to regulate firearms as items of property. Rather, its authority is inherently limited to addressing those aspects of gun control which relate to danger or harm of the type governed by the criminal law and the need to reduce misuse within the scope of the criminal law.
71. Any subordinate legislation passed under section 117.15(1) of the *Criminal Code* must be fundamentally criminal, not regulatory or in the nature of property and civil rights. The GIC is only empowered to prescribe prohibitions that independently serve the purpose of public safety of the type governed by the criminal law and the GIC may not confer undue discretion on an official charged with implementing such regulations.
72. The regulation of firearms that are reasonable for use for hunting and sporting purposes falls within the authority of the Provinces to make laws in relation to property and civil rights. To the extent that any federal law purports to regulate items that are reasonable for hunting and sport, it becomes colourable and contrary to the *Constitution Act, 1867*.

**B. The Requirement to be Reasonable**

73. The GIC does not have free rein in interpreting the scope of its regulation-making authority. Rather, the Regulation has to be: (i) tenable in light of the relevant factual and legal constraints; and (ii) based on internally coherent reasoning.

**(i) Relevant Constraints**

74. In enacting regulations, the GIC is constrained by the governing statutory scheme, the principles of statutory interpretation, the relevant information before it, its past practices, and the potential impact of the Regulation on the individuals to whom it would apply.
75. The limits on the criminal law power, and the Hunting and Sporting Restriction in particular, operate as constraints on the GIC's authority. The GIC is required to take those constraints seriously and apply them rigorously. It is not free to amend, expand, or re-write the Hunting and Sporting Restriction or colourably encroach on provincial authority over property and civil rights.

**(ii) Reasoning Process**

76. The GIC is also prohibited from enacting regulations based on irrational or illogical reasoning. The GIC's mandate to form the Necessary Opinion does not give rise to an absolute or untrammelled discretion, or one that is contrary to actual fact. Rather, the Necessary Opinion has to be reached in accordance with the purposes for which it was given, and it can only be reached by the GIC and can not be fettered.
77. Further, in forming the Necessary Opinion, the GIC is not entitled to simply repeat the applicable statutory language, state a peremptory conclusion, rely on irrelevant or extraneous factors, engage in circular reasoning, or reverse engineer a desired outcomes of the GIC, the RCMP SFSS, the Minister of Public Safety, the Prime Minister, a political party, a special interest group, or anyone else. Rather, the GIC's interpretation of what constitutes an item that is reasonable for use in hunting and sporting has to be consistent with common law principles of statutory interpretation.

**C. The Requirement to be Fair**

78. To the extent that its conduct impacts the rights and interests of known or identifiable individuals or groups, the GIC and any purported sub-delegate are under a duty to be fair. The more important or the greater the impact a given delegated decision has, the more stringent are the procedural protections required to ensure fairness. The legitimate expectations of affected individuals are relevant. In making decisions that impact known or identifiable individuals or groups, the GIC and any purported sub-delegate has a duty to make decisions that are free from actual or apprehended bias and to allow impacted individuals to be heard.

**D. The Requirement to be Constitutional**

79. The GIC is constrained by the *Charter*, the *Constitution Act, 1982*, and the *Bill of Rights*. The GIC cannot:
- (a) Deprive any individual of their rights to liberty or security, except in accordance with the principles of fundamental justice;
  - (b) Deprive any individual of their rights to enjoyment of property, except by due process of law; or
  - (c) Unreasonably infringe upon rights which are protected by section 35(1) of the *Constitution Act, 1982*.

**E. Limits on Sub-Delegation**

80. The only legislated process by which a firearm can be prescribed as restricted or prohibited is by sections 84(1) and 117.15 of the *Criminal Code*. No other source of authority to define and prescribe these classifications exists.
81. Section 117.15 of the *Criminal Code* vests the authority to prescribe firearms solely to the GIC and requires the GIC to prescribe based on its formation of the Necessary Opinion, and the exercise of its judgment over a matter that is regulatory in nature. The GIC is not authorized to delegate the authority to reach the Necessary Opinion or prescribe firearms

to anyone else, including a senior official or office of civilians with the RCMP or otherwise. The authority to prescribe firearms by the GIC is not a delegable power.

82. In the alternative, to the extent the GIC had any authority to sub-delegate the formation of the Necessary Opinion and the prescription of firearms, which is denied, the exercise of that sub-delegated authority would remain constrained by: (i) the division of powers; (ii) the Hunting and Sporting Restriction; (iii) the requirements of administrative validity including the need to be reasonable and fair; (iv) the *Charter*; (v) the *Constitution Act, 1982*; and (vi) the *Bill of Rights*.

#### IV. THE APPLICATION FOR JUDICIAL REVIEW

83. The Regulation and any related sub-delegation are *ultra Vires* the *Criminal Code* or the *Constitution Act, 1982* and are otherwise unlawful and unreasonable for the following reasons.

##### A. Internally Inconsistent Reasoning

84. The GIC's logic is internally inconsistent.
85. In the Regulation, the GIC gave lip service to the Necessary Opinion. Conversely, the *Amnesty Order* provides that Indigenous peoples may continue to use the Prohibited Items to hunt in the exercise of a section 35 constitutional right and any individual may continue to use the Prohibited Items to hunt to sustain the person or their family (**Permitted Hunting**).
86. Permitted Hunting is not materially different from any other kind of hunting. The Permitted Hunting carve-out reflects the GIC's opinion that the Prohibited Items are reasonable for use for hunting by some people but not by others. That is not an opinion that was open to the GIC. The Prohibited Items are either reasonable for use for hunting and sporting or they are not. There is no evidence cited (and none could be cited) to support the opinion that the same item used for the same purpose is reasonable when done by one Canadian but unreasonable when done by another. The Regulation may distinguish between classes of persons only where that is authorized by the *Criminal Code*, expressly or by necessary implication. Together, the Regulation and *Amnesty Order* create distinctions between



types of hunters. Those distinctions are not necessary to the proper functioning of the scheme of the *Criminal Code*, much less connected to that scheme in any rational way.

87. Further, the GIC implemented the Regulation “expeditiously” and without any notice. The GIC did not engage in any additional regulatory consultations specific to the Regulation or comply with World Trade Organization notification requirements. The GIC cited the use of the less transparent and time-consuming regulatory process as a justifiable means to reduce the possibility of newly prohibited firearms being diverted to illegal markets.
88. This process and reasoning claims urgency. That urgency is contradicted in other aspects of the GIC’s process and reasoning, such as the *Amnesty Order* and the suggested grandfathering provision.

#### **B. Extraneous Considerations and Circular Logic**

89. While the GIC recognized that the Prohibited Items have been historically used for hunting and sporting, it purportedly formed the opinion that they are no longer reasonable for those purposes because they are inherently dangerous. This assertion does not withstand a reasoned analysis.
90. Every firearm used for hunting and sporting may be abused, as is the case with endless other items possessed by Canadians such as knives and motor vehicles.
91. The GIC’s regulation-making authority is necessarily limited to only those items that are not reasonable for hunting or sporting purposes. The fact that an item can be used for something else is an improper and irrelevant consideration in terms of the scope of the delegation.
92. It is intrinsic to firearms that are reasonable for hunting and sporting that they pose certain inherent dangers. Firearms are, by definition in the *Criminal Code*, weapons that are capable of causing serious bodily injury or death to a person. It is irrational and circular to form the opinion that hunting and sporting firearms are no longer reasonable for those purposes on the basis of characteristics that have always been integral to those items.

**C. Not Supported by Evidence**

**(i) The Prohibited Items are Reasonable for Hunting and Sport Shooting**

93. The preamble to the Regulation states the Necessary Opinion:

Whereas the Governor in Council is not of the opinion that anything prescribed to be a prohibited firearm or a prohibited device, in the Annexed Regulations, is reasonable for use in Canada for hunting or sporting purposes...

94. That opinion is unsupported by evidence and otherwise unreasonable.

95. Contrary to the preamble of the Regulation, in the Regulatory Impact Analysis Statement (**Impact Statement**) issued with the Regulation, the GIC expressly recognized that the Prohibited Items “are sometimes used for hunting or sport shooting”.

96. The Impact Statement also contains statistics on the anticipated impact on Canadian Gross Domestic Product (**GDP**), labour income and employment in both the hunting and fishing industries.

97. The Prohibited Items that were previously characterized as restricted firearms were most often used for sport shooting and have been regulated for that purpose. As the GIC noted, sport shooting contributed nearly \$2 billion to Canada’s GDP in 2018, and \$868 million in labour income. Before the Regulation, it supported over 14,000 full-time equivalent jobs.

98. In addition, 1.3 million Canadians participate in legal hunting. Before the Regulation, hunting contributed an estimated \$4.1 billion to Canada’s GDP and \$2 billion in labour income and supports about 33,313 full-time equivalent jobs.

99. Plainly, the Prohibited Items have been, until now, used in hunting or sporting. The characteristics, design, and purpose of the Prohibited Items did not materially change before May 1, 2020, nor did the manner in which those items were used for hunting or sport shooting.

100. It is unreasonable for the GIC to declare that the Prohibited Items are no longer reasonable for their long-recognized uses. In the alternative, that opinion constitutes a re-writing or amendment of the Hunting and Sporting Restriction. That Restriction is contained in the enabling statute and its amendment is beyond the authority of the GIC.

**(ii) Fully Automatic Weapons are Already Prohibited in Canada**

101. In justifying the Regulation, the GIC repeatedly described the Prohibited Items as “assault-style” firearms primarily designed for military purposes.
102. “Assault-style” is not a readily recognized term and is not a prescribed category of firearm under the *Criminal Code* or associated regulations. In the firearms industry the term “assault-style” firearm is equated with a fully automatic firearm, which is predominantly what militaries use. In response to an access to information request made in 2018, the RCMP stated that “[t]he term “assault rifle” is used to describe a... full automatic capable... intermediate calibre carbine size firearm”.
103. None of the Prohibited Items are fully automatic. Fully automatic firearms have been prohibited in Canada for many years.

**(iii) High Capacity Weapons are Already Prohibited in Canada**

104. The GIC also justified the Regulation on the basis that the Prohibited Items have “large magazine capacity”.
105. In fact, many of the Prohibited Items use a detachable magazine and, therefore, do not have an inherent ammunition capacity.
106. Further, unlike other countries, where magazine capacity for comparable firearms is 25 or 30 rounds, Canada has for many years regulated magazine capacity at a maximum of five rounds.

**(iv) Not all Semi-Automatic Firearms are Prohibited**

107. The GIC further stated that the purpose of the Regulation is to prohibit the use of firearms which possess semi-automatic action. The Prohibited Items include a number of semi-

automatic firearms, but other semi-automatic firearms currently in Canada are not the subject of the Regulation, are not prohibited, and can still be legally used.

**(v) The Regulation Will Not Enhance Public Safety**

108. The GIC cited mass shootings as the primary basis upon which the Regulation was urgently required, because such shootings “are commonly perpetrated with assault-style firearms”.
109. This statement is unsubstantiated in fact and is intended to sensationalize.
110. Generally speaking, mass shootings in Canada have been perpetrated by the unlawful use of items that are not included in the list of Prohibited Items. The Prohibited Items, when owned by licensed individuals and subject to regulation, do not pose a material threat to Canadian society. The Prohibited Items are already subject to strict and robust regulations. Among other things, the owners of the Prohibited Items, such as the Individual Applicants, are subject to a stringent licensing regime which includes a criminal record check every 24 hours.
111. The Regulation is arbitrary as there is no persuasive evidence that re-classification of the Prohibited Items will achieve the desired purpose of decreasing mass shootings or otherwise increasing public safety. Rather, the Regulation is most likely to create an increase in illegal importing, and thus unregistered and untraceable firearms.
112. Contrasted against that arbitrariness and those negative consequences is the fact that, owned and operated legally, the Prohibited Items are a source of livelihood, identity, and expression for sport shooters and a source of sustenance for hunters. The use and enjoyment of the Prohibited Items for those previously authorized and reasonable purposes contribute materially to the Canadian economy.
113. The Regulation threatens the viability of hundreds of businesses, a material part of Canada’s GDP, and the liberty and security of hundreds of thousands of law-abiding Canadians. It was enacted without notice and without legislative transparency. It was passed in this extraordinary way, despite the lack of any real emergency that would warrant such immediate executive action.

114. In summary, there is not a reasonable line of analysis that could lead the GIC from the available evidence to the opinion it reached that the Prohibited Items are not reasonable for use in hunting or sport.

**D. The Regulation Constitutes Impermissible Sub-Delegation**

115. Parliament delegated the regulatory authority to prescribe firearms to the GIC. The definitions of “restricted firearms” and “prohibited firearms” are found in section 84(1) of the *Criminal Code* and are prescribed by the GIC only in accordance with section 117.15, subject to the GIC forming the Necessary Opinion about the Hunting and Sporting Restriction. It is only the GIC that is authorized to prescribe firearms and required to form the Necessary Opinion.
116. There is no further authority in the *Criminal Code* or elsewhere for the GIC to regulate the classification of firearms.
117. Any purported sub-delegation by the GIC under section 117.15 of the *Criminal Code* is *ultra vires*.
118. In the alternative, if the GIC was entitled to sub-delegate at all, it could do so only expressly and within the bounds of the authority granted to it.
119. Any sub-delegation to the RCMP SFSS is not apparent on the face of the Regulation and can only be inferred from the GIC’s use of the terms “variant or modified version”.
120. The words “variant” and “modified version” are open to discretionary interpretation. In sub-delegating its authority in this manner, the GIC conferred undue discretion on the RCMP SFSS, the exercise of which creates impermissible and unfair criminal liability for honest, otherwise law-abiding Canadians.
121. In the alternative, the RCMP’s manner of exercising that discretion has been unlawful. Since May 1, 2020, the RCMP SFSS has re-classified an estimated 255 firearms from non-restricted or restricted, to prohibited. These newly prohibited firearms are not enumerated in the Regulation and therefore appear to be items that the RCMP SFSS has concluded are variants or modified versions of items specifically listed in the Regulation. The RCMP

SFSS did not, and was not authorized to, form the Necessary Opinion before purporting to prescribe those firearms as prohibited and, therefore, acted in excess of any properly delegated authority. Further, they failed to tell the owners of the affected firearms of their actions, despite the criminal law consequences of possessing these newly prohibited firearms.

**E. The Regulation and the Ostensibly Related Re-Classifications are Unfair**

122. The re-classification of a firearm from non-restricted or restricted to prohibited is quasi-judicial in nature. It impacts the rights and interests of identifiable people or groups of people. Classification decisions inputted into the FRT are used by law enforcement agencies to enforce offences under Part III of the *Criminal Code*. They engage liberty and security of the person, in addition to property and financial interests. The RCMP SFSS' conduct therefore squarely engages the duty to act fairly, including the obligation to act without bias, and to provide impacted persons with notice and the right to be heard.
123. Contrary to those obligations, RCMP SFSS re-classification decisions are made without notice or transparency. The FRT is changed *ad hoc* and any changes are not published to the public at large. Any re-classifications done by the RCMP SFSS since May 1, 2020 are unfair and therefore *ultra vires* and invalid.
124. Those re-classifications also offend the doctrine of legitimate expectations. The Applicants, based on past practices, held a legitimate expectation of receiving a benefit or entitlement, and those expectations have been defeated by conduct of public officials.
125. The Regulation and the subsequent conduct of the RCMP SFSS in re-classifying purported variants of Prohibited Items extinguishes entitlement to the use and ownership of the Prohibited Items previously enjoyed by the Applicants and other Canadians. The Regulation, promulgated by the executive without consultation or notice, and the arbitrary and surreptitious re-classification by the RCMP SFSS, are contrary to the legitimate expectations doctrine.

126. Further, or in the alternative, the passing of the Regulation and the subsequent conduct of the RCMP have not been made in good faith and are tainted by a reasonable apprehension of bias.
127. The RCMP SFSS has re-classified certain firearms contrary to their prior technical conclusions and opinions.
128. Many firearms that have been re-classified by the RCMP SFSS as prohibited are substantially similar to non-restricted firearms. Firearms with essentially the same function, ammunition, magazines, firing rate and effective range are therefore simultaneously prohibited and non-restricted firearms.

**F. Conclusion Regarding Administrative Invalidity**

129. The Regulation is unreasonable and therefore *ultra vires* the *Criminal Code* and, or in the alternative, a colourable attempt to regulate property and civil rights.
130. Further, the GIC's apparent sub-delegation and the related conduct and decisions of the RCMP SFSS are contrary to the principles of procedural fairness and natural justice.

**V. THE CONSTITUTIONAL CHALLENGE**

**A. Unjustifiable Infringement of Section 7 of the *Charter*: Right to Life, Liberty and Security of the Person**

131. The Regulation and the conduct of the RCMP SFSS are also contrary to section 7 of the *Charter* as they unduly impair the rights of liberty and security of the person and are contrary to the principles of fundamental justice.
132. Section 7 of the *Charter* guarantees that:

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**(i) Infringement of Section 7 of the *Charter***

133. The Regulation and any ostensibly related re-classifications engage criminal penalties for those who use, own, possess, or sell the Prohibited Items. The criminal penalties include arrest, imprisonment and firearm prohibition orders, invoking the section 7 right to liberty.
134. The right to security of the person is also infringed by the Regulation, because it creates a state-imposed prohibition on the use of the Prohibited Items even when they are relied upon for hunting for sustenance or protection from wildlife. The Regulation will cause a loss of liberty and security for individuals, especially for rural or northern Canadians, and Canadians who rely on hunting with Prohibited Items for sustenance and to protect against wildlife, such as Mr. Knowles.
135. The Individual Applicants are deprived of their section 7 rights to life, liberty, and security of the person by state action as a result of the existence and operation of the Regulation.
136. This deprivation is more than trivial. Through the Regulation and re-classifications, the GIC and RCMP SFSS have restricted Canadians from owning, possessing, using, transporting, or selling the Prohibited Items and have subjected them to the possibility of criminal sanction, including imprisonment and prohibition orders. The Regulation and re-classifications create serious harmful effects that negatively impact liberty and security of the person.

**(ii) Principles of Fundamental Justice**

137. Section 7 *Charter* rights can only be infringed in accordance with the principles of fundamental justice. The principles of fundamental justice require that the impugned legislation not be grossly disproportionate, arbitrary, or overly broad.
138. The Regulation does not accord with those principles of fundamental justice. In particular:
  - (a) There is no rational connection between the infringement of rights and what the Regulation seeks to achieve, demonstrating that the Regulation is arbitrary and overbroad; and



- (b) The deprivation of rights is grossly disproportionate to the objective of the Regulation.
139. The effect of the Regulation undermines the GIC's stated objective of decreasing gun violence and mass shootings. Gun violence and mass shootings are not perpetrated by lawful, registered firearm owners; rather, they are generally perpetrated by illegal possession and use of firearms which are illegally acquired from other countries, illegally possessed by an unlicensed individual, or through the use of firearms which are not the Prohibited Items.
140. The detrimental impacts to the liberty rights of legal gun owners are grossly disproportionate to any negligible gains to the public.
141. The Regulation makes more firearms illegal, unregistered, and untraceable. The Regulation violates basic norms because there is no connection between its effect and its stated objective, and its effect is therefore unnecessary.
142. Instead of achieving any of the rationales expounded by the GIC, the Regulation has instantly subjected many thousands of law-abiding Canadians to the uncertain threat of criminal sanction. Until the Regulation was made, these individuals lawfully owned and used the Prohibited Items for legitimate purposes such as hunting or sporting. These individuals will be criminalized, unless and until they take positive, mandated actions imposed by the Regulation.
143. Nothing has changed with respect to the Prohibited Items in terms of construction, functionality, or otherwise. The Prohibited Items therefore continue to be reasonable for use in hunting and sporting, as they were considered to be prior to the Regulation. The re-classification of the Prohibited Items is arbitrary and overly broad.
144. Further, the Regulation purports to prohibit:
- (a) Any variants or modified versions of the Prohibited Items;
  - (b) “[A]ny firearms with a bore diameter of 20 mm or greater”; and

- (c) “[A]ny firearm capable of discharging a projectile with a muzzle energy greater than 10,000 joules”.
145. The GIC did not provide any definition or guidance regarding the words “variant or modified versions”. It did not specify whether bore diameter should be measured before or after the choke. Many 10- and 12-gauge shotguns that are reasonable for and ubiquitously used for hunting would be prohibited under the Regulation if the bore diameter is measured after the choke. Similarly, many firearms that are reasonable for use in hunting and sport and ubiquitously used for those purposes are capable of discharging a projectile with a muzzle energy greater than 10,000 joules even if they are not used in that way in practice. Further, an ordinary firearm owner will not have the tools to measure joules at discharge.
  146. For all of these reasons, the Regulation is devoid of specificity and void for vagueness. The Applicants and others cannot know which firearms are captured under the Regulation.
  147. Similarly, the re-classification decisions by the RCMP SFSS are being made without notice, transparency, principle or consistency, rendering it impossible for gun owners to know in advance whether they are complying with the *Criminal Code*.
  148. If that conduct by the RCMP SFSS comports with the GIC’s intended scope of sub-delegation, then the sub-delegation itself offends the vagueness doctrine as it sub-delegates extensive discretion that allows for the impermissible arbitrary imposition of criminal sanctions.
  149. In the alternative, if the GIC’s sub-delegation was intended to be properly constrained then the RCMP SFSS’ exercise of that authority has been in excess of its powers.
  150. Further, it is unclear whether the *Amnesty Order* applies to the firearms re-classified by the RCMP SFSS after May 1, 2020.
  151. The effects of the Regulation and the re-classifications by the RCMP SFSS are vague, disproportionate, arbitrary, and overly broad, and not in accordance with the principles of fundamental justice. They infringe on the section 7 *Charter* rights of the individual Applicants and thousands of other Canadians.

**(iii) The Infringement Is Not Justified Under Section 1: Oakes Test**

152. Section 1 of the *Charter* provides:

1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

153. The state's infringement of section 7 cannot be justified under section 1.

154. The Regulation has not been implemented and the RCMP SFSS re-classifications have not been made in response to any exceptional conditions or extraordinary situations (such as war or epidemic) and therefore a breach of the principles of fundamental justice cannot be justified.

155. Further, the deleterious and negative impacts of the Regulation and ostensibly related re-classifications on section 7 rights are not proportional to the minimal or non-existent benefits that the Regulation may have.

156. The Regulation is not in the public interest. The benefits of sport shooting and hunting are significant, contributing to the well-being and sustenance of Canadians, and many billions of dollars to the Canadian economy.

157. The Regulation is not a rational means to pursue the stated objective. There is no evidence to show that the legal possession of the Prohibited Items has resulted in illegal use, gun violence, or mass shootings.

158. The Regulation does not cause minimal impairment to the rights of the Applicants. There are alternative measures that can achieve the purpose and that would be more appropriate, such as laws, provisions, and increased regulations targeted at the illegal sale and smuggling of guns into Canada.

159. Further, the deleterious and negative impacts of the RCMP SFSS re-classifications on section 7 rights are not proportional to the minimal or non-existent benefits that they may

have. The re-classifications are not in the public interest, nor are they rational or minimally impairing of the Applicants' rights.

160. The Regulation and ostensibly related re-classification decisions violate section 7 of the *Charter* and are not justified under section 1.

**B. Contravention of Section 35(1) of the *Constitution Act, 1982***

161. Section 35(1) of the *Constitution Act, 1982* provides:

35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

162. Hunting and trapping have been consistently recognized as protected aboriginal rights. In issuing the *Amnesty Order*, the GIC acknowledged that Prohibited Items may be used in activities protected by section 35(1) of the *Constitution Act, 1982*.
163. Mr. Knowles' hunting, trapping and wildlife management activities occur within the traditional territories of the Haida Nation. Any legislative action infringing upon Mr. Knowles' rights to engage in these activities must be justified by the Crown as reasonable, as not imposing undue hardship, and as not interfering with Mr. Knowles' preferred means of exercising these rights.
164. Mr. Knowles uses the Prohibited Items for specialized purposes. Firearms of the type newly prohibited by the Regulation are not simply a luxury; their specialized uses are vital to the exercise of Mr. Knowles' rights, including, but not limited to:
- (a) When seal hunting from a canoe, it is extremely important to be able to take multiple shots in quick succession. A failure to do so can result in the loss of the prey and cause critical damage to the animal, resulting in protracted, inhumane suffering for the animal and a waste of scarce food resources.
  - (b) When hunting on land, protection from bears is of critical importance. Many bears are conditioned to approach the sound of a gunshot as a reliable way to find food. A quick multi-shot, semi-automatic rifle is thus important to both complete the kill

in a timely fashion, and to protect the hunter from the bear itself. A bolt-action rifle is unsuited to this task as multiple warning shots in quick succession are often needed to deter the bear.

- (c) There are no natural predators of certain wildlife populations in Haida Gwaii, including raccoons and deer. This can result in overpopulation of these species, and damage to the delicate ecosystem of this area. Semi-automatic rifles such as the newly Prohibited Items used by Mr. Knowles are ideal for controlling populations of these species.

(collectively, the **Specialized Activities**).

165. The Specialized Activities comprise a significant proportion of the sustenance and food security of Mr. Knowles, his family, and his community. By way of example, the salmon run, which typically forms a sizeable portion of the diet of the Haida Nation, is very small in 2020, and has been the subject of fishing restrictions in order to maintain and protect salmon populations. Mr. Knowles and others in the Haida Nation, and other similarly situated First Nations, will have to replace this significant source of sustenance with increased hunting activities.
166. The Regulation and *Amnesty Order* unjustifiably interfere with Mr. Knowles' rights, including with the Specialized Activities, in that they:
  - (a) Are unreasonable;
  - (b) Impose undue hardship;
  - (c) Deny Mr. Knowles his preferred means of exercising his constitutionally protected rights;
  - (d) Infringe on Mr. Knowles' Aboriginal rights more than is necessary to achieve their objective; and
  - (e) Have not been the product of sufficient consultation, or any consultation at all, between the Crown and Aboriginal peoples.

167. The Regulation and *Amnesty Order* are therefore an unjustifiable infringement of Mr. Knowles' Aboriginal rights protected by section 35 of the *Constitution Act, 1982*, and are of no force and effect to the extent of the infringement.
168. The GIC has, through the *Amnesty Order*, acknowledged that the Regulation will have the effect of infringing upon Aboriginal peoples' rights to hunt and trap with the use of the Prohibited Items. However, the *Amnesty Order* is not sufficient to discharge the Crown's obligation to enact legislation consistent with section 35(1) of the *Constitution Act, 1982*, its fiduciary duties to Aboriginal peoples, and to uphold the honour of the Crown. The GIC may not avoid compliance with its obligations by merely promising to engage in consultation in the future.
169. The *Amnesty Order* states that it applies to constitutionally recognized and affirmed Aboriginal rights that involve the use of Prohibited Items. Whether activities constitute rights recognized and affirmed by section 35 of the *Constitution Act, 1982* is complex and legalistic, and laypeople cannot be expected to interpret it. It is vague and unclear whether all of Mr. Knowles' Specialized Activities would attract the protection of the *Amnesty Order*, thereby exposing Mr. Knowles to potential criminal liability in exercising his Aboriginal rights.
170. Further, the *Amnesty Order* applies only until Mr. Knowles is able to obtain another firearm, and it ends on April 30, 2022. At either point, Mr. Knowles' Aboriginal rights will be infringed. All the *Amnesty Order* can do is merely delay the inevitable infringement.
171. The Regulation and *Amnesty Order* constitute an unjustifiable infringement of section 35(1) of the *Constitution Act, 1982*.

**C. Contravention of the *Bill of Rights***

172. The *Bill of Rights* has among its objects the affirmation of the dignity and worth of the human person and the position of the family in Canadian society, and the respect for spiritual values and the rule of law. It is paramount to other federal legislation and regulations and is quasi-constitutional in nature. The *Criminal Code* and the Regulation must be construed and applied as not to abrogate, abridge or infringe, or to authorize the

abrogation, abridgment or infringement, of the rights and freedoms recognized and declared in the *Bill of Rights*.

173. Section 1(a) of the *Bill of Rights* provides:

1 It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination and by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) The right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law...

**(i) The Regulation and Ostensibly Related Re-Classifications Are Inconsistent With and Contrary to the *Bill of Rights***

174. The Regulation and the ostensibly related re-classification of firearms unduly impair the Applicants' rights to enjoyment of property under section 1(a) of the *Bill of Rights*, because these state actions restrict the Applicants' economic interests and property rights vested in the Prohibited Items.

175. The Applicants are all owners of the Prohibited Items. They have at all times adhered to and conformed with the applicable licensing and regulatory regime. In compliance with those regulations and licensing requirements, they established their professions and livelihoods, which are contingent upon their ability to legally own, use, and possess the Prohibited Items.

176. The effects of the Regulation and the ostensibly related re-classifications are severe violations of their property rights. The Applicants are no longer able to own or enjoy the Prohibited Items or continue with their professions and their livelihoods and have had their property expropriated without compensation.

**(ii) The Regulation Was Not Enacted in Accordance with Due Process**

177. The Regulation was not made by due process of law. Among other things:
- (a) The Regulation was enacted by Executive action and therefore was not subject to the legislative controls customarily applied to the introduction of new law. As a result, Canadians did not receive the benefit of multiple readings or parliamentary debates and scrutiny.
  - (b) The seizure and forfeiture of the Prohibited Items will occur without individualized hearings or tribunals.
  - (c) The GIC has enacted the Regulation in an overly broad manner, without due consideration of the property rights of the owners of Prohibited Items.
  - (d) The GIC implemented the Regulation “expeditiously” and without any notice whatsoever.
  - (e) The Regulation deprives the Prohibited Item owners of their property without appropriate compensation.
  - (f) There was no, or insufficient, stakeholder engagement or consultation prior to the enactment of the Regulation.
178. The Regulation was effected without any due process whatsoever and is therefore contrary to section 1(a) of the *Bill of Rights*.

**(iii) The Re-Classification by the RCMP SFSS Was Not Completed in Accordance with Due Process**

179. The RCMP SFSS re-classification of certain firearms from non-restricted or restricted, to prohibited, cannot be challenged by internal review or appeal. Under section 74 of the *Firearms Act*, other delegated and discretionary authority has a process for challenge and appeal. No right of reference has been afforded with respect to the re-classifications by the RCMP SFSS.



180. The Applicants have suffered a deprivation of property without any notice, opportunity to be heard, explanation, or accountability. The deprivation of property by the RCMP SFSS was therefore undertaken without due process of law and contrary to section 1(a) of the *Bill of Rights*.

## **VI. RELIEF REQUESTED**

### **A. Relief**

181. The Applicants respectfully request:

- (a) An order in the nature of a declaration that the Regulation is invalid, unlawful and *ultra vires* the *Criminal Code* and, or in the alternative, the *Constitution Act, 1867*, and is of no force and effect.
- (b) An order in the nature of *certiorari* quashing the Regulation.
- (c) An order in the nature of prohibition instructing the GIC that it is prohibited from delegating the authority to:
  - (i) Prescribe firearms as restricted or prohibited under section 117.15(1) of the *Criminal Code*, including as variants or modified versions of specifically restricted or prohibited items; or
  - (ii) Form the opinion that a firearm is or is not reasonable for use for hunting or sporting purposes.
- (d) An order in the nature of a declaration that no one other than the GIC, including the RCMP SFSS, has any authority to:
  - (i) Prescribe firearms as restricted or prohibited;
  - (ii) Form an opinion about the reasonableness of firearms for use in Canada for hunting or sporting purposes; or

- (iii) Classify a firearm as restricted or prohibited in the FRT or otherwise on the basis that it is a variant of or otherwise related to an item listed in any regulation made by the GIC under section 117.15(1) of the *Criminal Code*.
- (e) An order in the nature of a declaration that the Prohibited Items are reasonable for use in Canada for hunting or sporting purposes or, in the alternative, that a subset of the Prohibited Items as proven during the hearing of this Application are reasonable for use in Canada for hunting or sporting purposes, and that the firearms so declared, and all variants and modified versions of them are classified as non-restricted for all purposes.
- (f) An order and declaration under section 52 of the *Constitution Act*, 1982, that:
  - (i) The Regulation and the ostensibly related re-classifications unjustifiably infringe on section 7 of the *Charter*, and are, to that extent, of no force and effect; and
  - (ii) The Regulation and the ostensibly related re-classifications unjustifiably infringe on section 35 of the *Constitution Act*, 1982 and are, to that extent, of no force and effect.
- (g) Further, or in the alternative, such remedy or remedies under section 24(1) of the *Charter* that this Honourable Court considers appropriate and just in the circumstances, including declarations that:
  - (i) The Regulation and the ostensibly related re-classifications by the RCMP SFSS are void for vagueness;
  - (ii) The GIC is prohibited from delegating the authority to:
    - (A) Prescribe firearms as restricted or prohibited under section 117.15(1) of the *Criminal Code*, including as variants or modified versions of specifically restricted or prohibited items; or

- (B) Form an opinion about the reasonableness of firearms for use in Canada for hunting or sporting purposes;
  - (C) Classify a firearm as restricted or prohibited in the FRT or otherwise on the basis that it is a variant of or otherwise related to an item listed in any regulation made by the GIC under section 117.15(1) of the *Criminal Code*;
- (iii) The Prohibited Items are reasonable for use in Canada for hunting or sporting purposes or, in the alternative, that a subset of the Prohibited Items as proven during the hearing of this Application are reasonable for use in Canada for hunting or sporting purposes, and that the firearms so declared, and all variants and modified versions of them, are classified as non-restricted for all purposes; and
- (iv) An order for:
  - (A) An interlocutory injunction staying the legal effect of the Regulation pending the final determination of this Application; and
  - (B) An order for a permanent injunction staying the legal effect of the Regulation.
- (h) An order in the nature of a declaration that the Regulation is inconsistent with and contrary to the *Bill of Rights* and is of no effect and is inoperative;
- (i) An order in the nature of a declaration that any re-classifications of firearms carried out by the RCMP SFSS under the Regulation are inconsistent with and contrary to the *Bill of Rights* and are of no effect and inoperative;
- (j) Pursuant to Rule 373 of the *Federal Courts Rules*, SOR/98-106 (***Federal Courts Rules***) and section 18.2 of the *Federal Courts Act*, RSC 1985, c F-7, an order for an interlocutory injunction staying the legal effect of the Regulation pending the final determination of this Application;

- (k) An order for a permanent injunction staying the legal effect of the Regulation to issue concurrently with the remainder of the relief sought herein;
- (l) The Costs of this Application; and
- (m) Such further and other relief as counsel may request and this Honourable Court may permit.

182. The Applicants rely on the following legislation, regulations and enactments:

- (a) *The Federal Courts Act*, RSC, 1985, c F-7;
- (b) *The Federal Courts Rules*, SOR/98-106;
- (c) *The Criminal Code*, RSC 1985, c C-46;
- (d) *Regulations Amending Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted*: SOR/2020-96;
- (e) *The Order Declaring an Amnesty Period* (SOR 2020-97);
- (f) *The Canadian Bill of Rights*, SC 1960, c 44;
- (g) *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
- (h) *The Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, ss 91 and 92;
- (i) *The Firearms Act*, SC 1995, c 39; and
- (j) Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

183. This Application will be supported by:

- (a) The following Affidavits, to be filed:
  - (i) Rodney Giltaca;
  - (ii) Laurence Knowles;
  - (iii) Ryan Steacy;
  - (iv) Wyatt Singer;
  - (v) Shaina Singer;
  - (vi) Matthew Hipwell;
  - (vii) Richard Timmins; and
  - (viii) Other affidavit evidence, including affidavits from experts and fact witnesses, to be filed.
- (b) The return, consisting of all records before the GIC at the time of making the Regulation.
- (c) Such further and other materials as counsel may advise and this Honourable Court may accept.

**B. Rule 8: Motion for Extension**

184. The Applicants apply to the Court for an extension of time to file and serve their supporting Affidavits and documentary exhibits pursuant to Rule 8 of the *Federal Courts Rules*, for the following reasons:

- (a) Pursuant to Rule 306 of the *Federal Courts Rules*, the Applicant shall serve its supporting Affidavits and documentary exhibits within 30 days of filing its Notice of Application;

- (b) The matters raised in this Application are of national importance, are complex, and require significant factual and expert evidence. Accordingly, additional time is required to prepare the necessary Affidavits;
- (c) The Applicant has issued but is yet to receive a response to access to information requests, pursuant to the *Access to Information Act*, RSC, 1985 c A-1, to obtain information necessary for this Application;
- (d) The COVID-19 pandemic has created and will continue to create obstacles to the Applicants in preparing all of the Affidavit and documentary evidence they intend to rely upon;
- (e) The Applicants fully intend to pursue this Application;
- (f) The Application has merit;
- (g) There will be no prejudice to the Respondent as a result of the delay; and
- (h) An extension of time is required to allow the Applicants to present their case and provide this Honourable Court with all relevant evidence and full argument.

**C. Rule 384: Motion For this Application to be Continued as a Specially Managed Proceeding**

185. The Applicants also apply to the Court for this Application to be continued as a Specially Managed Proceeding pursuant to Rule 384 of the *Federal Rules of Court*, for the following reasons:

- (a) The issues raised in this Application are of national importance, are complex, and will require significant factual and expert evidence by all parties;
- (b) Cross-examinations will be extensive and will be impacted as a result of COVID-19 social distancing requirements;
- (c) The COVID-19 pandemic creates logistical and practical problems for all of the parties in proceeding with their cases in an expedited fashion;

- (d) There may be interlocutory applications with respect to both evidentiary and procedural issues, which will impact the progression of the Application; and
- (e) Special management of this Application and a scheduling and timing order governing all steps to take place in the advancement of this proceeding will facilitate the expeditious resolution of interlocutory issues and the overall progress of this Application.

**D. Rule 317: Request for Material from the Tribunal**

186. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request from the Attorney General of Canada and the Governor in Council to send a certified copy of the following materials that are not in the possession of the Applicants, but are in the possession of the Attorney General of Canada, the Governor in Council, the RCMP and departments of the Government of Canada, collectively referred to as the **Government of Canada**, to the Applicants and the Registry.

All records, including but in no way limited to research, analysis, policy papers, briefing reports, studies, proposals, presentations, reports, memos, opinions, advice, letters, emails and any other communications that were prepared, commissioned, considered or received by the Government of Canada in relation to:

- a. The Order in Council.
- b. The Regulation.
- c. The *Amnesty Order*.
- d. The public engagement referenced on page 59 of the Order in Council on the issue of banning handguns and assault-style firearms that took place between October 2018 and February 2019, including but in no way limited to:
  - i. The use, and the effects of the use of handguns and assault-style firearms in Canada.

- ii. The potential for a run on the market, as referenced on pages 59 and 63 of the Order in Council.
  - iii. Roundtables held in Vancouver, Montreal, Toronto, and Moncton, and any other Canadian municipalities, as referenced on page 59 of the Order in Council.
  - iv. The results and all discussion, research, analysis, policy papers, briefing reports, studies or reports generated in part or in whole from the online questionnaire referenced on page 59 of the Order in Council.
  - v. All 36 written submissions, and any further written submissions whether formal or informal, as referenced on page 59 of the Order in Council.
  - vi. All consultations in bilateral meetings with 92 stakeholders, as referenced on page 59 of the Order in Council, and any further stakeholders whether formal or informal.
  - vii. All participants in the public engagement, as referenced on page 59 of the Order in Council, who expressed their views that a ban on assault-style firearms is either (a) needed, or (b) not needed, in order to protect public safety.
  - viii. All engagements and consultations by the Government of Canada with Indigenous groups in Canada regarding the Order in Council, Regulation, and *Amnesty Order*.
  - ix. The possibility that firearms may be diverted to illegal markets, as referenced on page 60 of the Order in Council.
- e. The regulatory analysis referenced on page 60 of the Order in Council, including but in no way limited to:
- i. The costs associated with implementing a buy-back program and grandfathering regime, as referenced on page 60 of the Order in Council.



- ii. The impacts on approximately 2.2 million individual firearms license holders in Canada that are affected by the Order in Council, Regulation, and *Amnesty Order*.
- iii. The impacts and costs of the Order in Council, Regulation, and *Amnesty Order* on:
  - 1. The hunting industry in Canada.
  - 2. The sport shooting industry in Canada.
  - 3. Other private businesses in Canada including businesses that manufactured or sold the firearms restricted by the Regulation.
- iv. The 'one-for-one' rule, as referenced on page 62 of the Order in Council.
- v. The Government of Canada's decision not to give advance notice under the World Trade Organization's Technical Barriers to Trade Agreement, as referenced on page 62 of the Order in Council.
- vi. The fact that Indigenous persons are victims of homicides involving firearms at a much higher rate than the Canadian population and that this figure appears to be increasing, as referenced on page 63 of the Order in Council.
- f. The rationale for the Regulation, as referenced on page 63 of the Order in Council, including but in no way limited to:
  - i. The Government of Canada's objective to ban assault-style firearms and reduce the risk of diversion to illegal markets for criminal use, as referenced on page 63 of the Order in Council.
  - ii. The conclusion that the prohibited firearms are tactical and/or military-style firearms and are not reasonable for hunting or sport shooting, as referenced on page 64 of the Order in Council.

- g. Implementation, compliance and enforcement, and service standards, as referenced on page 65 of the Order in Council, including but in no way limited to:
  - i. The amount of compensation to be offered per firearm listed in the Regulation, as referenced on page 65 of the Order in Council.
  - ii. Interactions with affected owners regarding the Regulation and compliance with the Regulation as referenced on page 65 of the Order in Council, including any script or directions provided to public officials or firearms officers for communications with affected owners.
  - iii. The addition of makes and models of firearms to the list of prohibited firearms in the near future, as referenced on page 65 of the Order in Council.
  - iv. Decisions made since May 1, 2020 by the SFSS and RCMP in relation to the Regulation, including at least 255 changes to the classification or determination of variants or modified versions of firearms listed in the Regulation, and all Firearms Reference Tables and Reports in connection with same.
- h. All records that were put before Parliament or any Parliamentary committee which concerned the Order in Council, Regulation, and the *Amnesty Order*.
- i. All correspondence, letters, emails, and any other communications related to the Order in Council, Regulation, and the *Amnesty Order* between the Government of Canada and:
  - i. The municipalities of Canada.
  - ii. The Provinces and Territories of Canada, including the Chief Firearms Officer of each Province and Territory.
  - iii. The elected or appointed representatives of First Nations and Indigenous people of Canada.

- iv. Crown Indigenous and Northern Affairs Canada.
- v. Global Affairs Canada.
- vi. The Department of Justice.
- vii. The RCMP, including the SFSS.
- viii. The Privy Council Office.
- ix. The Governor General in Council.
- x. The Prime Minister of Canada.

Dated: May 26, 2020 at Calgary, Alberta



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