Federal Court  Cour fédérale

Date: 20231030

Docket: T-569-20
T-577-20
T-581-20
T-677-20
T-735-20
T-905-20

Citation: 2023 FC 1419

Ottawa, Ontario, October 30, 2023

PRESENT: The Honourable Madam Justice Kane

Docket: T-569-20

BETWEEN:

CASSANDRA PARKER AND
K.K.S. TACTICAL SUPPLIES LTD.

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-577-20

AND BETWEEN:

**CANADIAN COALITION FOR FIREARM RIGHTS,
RODNEY GILTACA, RYAN STEACY,
MACCABEE DEFENSE INC.,
AND WOLVERINE SUPPLIES LTD.**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-581-20

AND BETWEEN:

JOHN PETER HIPWELL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-677-20

AND BETWEEN:

**MICHAEL JOHN DOHERTY, NILS ROBERT EK,
RICHARD WILLIAM ROBERT DELVE,
CHRISTIAN RYDICK BRUHN,
PHILIP ALEXANDER MCBRIDE,
LINDSAY DAVID JAMIESON,
DAVID CAMERON MAYHEW
MARK ROY NICHOL AND PETER CRAIG MINUK**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-735-20

AND BETWEEN:

**CHRISTINE GENEROUX, JOHN
PEROCCHIO AND VINCENT PEROCCHIO**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-905-20

AND BETWEEN:

**JENNIFER EICHENBERG, DAVID BOT,
LEONARD WALKER,
BURLINGTON RIFLE AND REVOLVER CLUB,
MONTREAL FIREARMS RECREATION CENTRE, INC.,
O'DELL ENGINEERING LTD**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

JUDGMENT AND REASONS

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I. Introduction

[1] Six Applications for judicial review, most of which involved several applicants and raised several common issues, were case managed and heard together. This Judgment and Reasons applies to all Applications.

[2] The Applications focus on regulations promulgated by the Governor in Council on May 1, 2020 — the *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted*, SOR/2020-96 [the Regulations]. The Regulations were made pursuant to the authority set out in the *Criminal Code*, RSC, 1985, c

C-46 and have the effect of prohibiting the possession and use of listed firearms, variants or modified versions of the listed firearms, and firearms that have certain physical characteristics.

[3] The Applications raise many issues, several of which are common and some, unique. The common issues include: whether the Regulations are *ultra vires* the delegated authority set out in subsection 117.15(2) of the *Criminal Code*; whether the Regulations infringe section 7 of 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*] due to vagueness, arbitrariness or overbreadth; whether the Regulations infringe other *Charter* rights; and, whether the Regulations violate the *Canadian Bill of Rights*, SC 1960, c 44. All the issues are set out in detail below.

[4] The Attorney General of Alberta was granted leave to intervene with respect to the issue whether the Regulations are *ultra vires* and intervened as of right with respect to the constitutional issues raised by the Applicants.

[5] One of the Applicants questioned whether these Applications were really about the need for further regulation of firearms in Canada. This judgment is not an opinion on whether or how firearms should be further regulated in Canada. The debate on whether and how to reduce the risk posed by firearms has raged on for decades and will no doubt continue. The issue before this Court is a legal issue—whether the Governor in Council acted within its authority to make the Regulations and made a reasonable decision to prescribe as prohibited the firearms that, in its opinion, are not reasonable for hunting and sporting purposes.

[6] The Applicants generally take the position that firearms are not the real threat to public safety, rather people who obtain and/or use firearms illegally pose this threat. The Applicants highlight that their use of firearms is already highly regulated and that they take safety extremely seriously and abide by all the existing laws, licensing and registration requirements. A common theme is that no further regulation is necessary, and more particularly, that the Regulations will not further contribute to the protection of public safety.

[7] The Applicants argue that the focus on public safety as the goal of the Regulations is misplaced because the issue is only whether the now prohibited firearms are reasonable for use in hunting and sport.

[8] The Applicants' position is that the firearms prescribed as prohibited in the Regulations are indeed reasonable for hunting and sport and that the Governor in Council has not respected the constraint on its delegated authority and its opinion is not reasonable. The Applicants point to extensive evidence about the history of use of these firearms for such purposes and submit that these firearms are not "assault-style" or "military-style" as suggested by the Respondent.

[9] The Respondent, the Attorney General of Canada's [AGC] position is that the Governor in Council acted within its authority in forming the opinion that the firearms are not reasonable for civilian use in hunting and sport because of their various attributes, inherent deadliness, potential to cause serious harm and, more generally, their impact on public safety.

[10] The Applicants and the AGC have all provided a “mountain of evidence” (to adopt the Applicants’ own words) in support of their respective positions. A list of the affiants is attached as ANNEX A. Many of the affiants attached several exhibits. An overview of the evidence of some affiants is attached as ANNEX B.

[11] The Applicants made detailed and extensive arguments. Even on the common issues, some of the arguments differ or are nuanced. The AGC responded to all the arguments. The Court has endeavoured to acknowledge all the issues and arguments and to focus on the determinative issues, the relevant jurisprudence, and as much of the relevant evidence as is reasonably possible, particularly, the evidence highlighted in the parties’ submissions. As is often the case, the Applicants and AGC are critical of each other’s evidence and submit that the Court should attribute little or no weight to this evidence.

[12] The extensive arguments and volumes of evidence lead to a long judgment. The relevant statutory provisions, some history of legislative reforms to address firearms, the Order in Council (Regulations) and other background information is first set out for context. An overview of the six Applications and the issues raised in each is also provided. The more detailed submissions made by the Applicants and AGC are set out on an issue-by-issue basis, followed by the Court’s analysis.

[13] The Court finds, for the reasons that follow, that the Applications are dismissed.

[14] The Order in Council and Regulations are not *ultra vires*. The Governor in Council did not exceed the statutory grant of authority delegated to it by Parliament pursuant to subsection 117.15(2) of the *Criminal Code*. The decision of the Governor in Council to promulgate the Regulations is reasonable. The Regulatory Impact Analysis Statement [RIAS], which the jurisprudence establishes is accepted as the reasons for decisions of the Governor in Council to promulgate regulations, explains why the Governor in Council determined that the prescribed firearms are not suitable for civilian use and not reasonable for hunting and sporting purposes due to their inherent deadliness and the serious threat they pose to public safety, including the degree to which they can increase the severity of mass shootings.

[15] The Governor in Council did not sub-delegate its authority to prescribe firearms as prohibited. The prescribed firearms and their variants are prohibited based on the *Criminal Code* and the Regulations. The role of the Royal Canadian Mounted Police's [RCMP] Specialized Firearms Support Service in assessing and classifying firearms as non-restricted, restricted or prohibited and posting the classification on the Firearms Reference Table is not an exercise of legal authority, but rather reflects the opinion of the Specialized Firearms Support Service and provides guidance to firearm owners and others. Where a person is charged with the possession of a prohibited firearm or a variant of a prohibited firearm, the Crown must prove that the firearm is prohibited and the Court will make the ultimate determination.

[16] There was no breach of the duty of procedural fairness in the decision of the Governor in Council to promulgate the Regulations. The jurisprudence is clear that the duty of procedural fairness does not apply to the legislative process.

[17] The Regulations do not infringe section 7 of the *Charter*; the Regulations are not vague, overbroad or arbitrary. Alternatively, if the Court had found that the Regulations infringed section 7 in a manner not in accordance with the principles of fundamental justice, the Court would find that any infringement is justified pursuant to section 1 of the *Charter* as a reasonable limit. The overriding goal of public safety outweighs any possible infringement on the rights of firearm owners who are now more limited in their choice of firearm for hunting and sporting purposes.

[18] The Regulations do not infringe sections 8, 11, 15 or 26 of the *Charter*.

[19] The Regulations do not infringe the *Canadian Bill of Rights*.

II. Background and Context

A. *The Statutory Provisions*

[20] Generally, firearms are categorized as non-restricted, restricted, or prohibited.

[21] Subsection 84(1) of the *Criminal Code* provides definitions that apply to Part III of the *Criminal Code* (Firearms and Other Weapons), including the following:

non-restricted firearm means	***arme à feu sans restriction*** Arme à feu qui, selon le cas :
(a) a firearm that is neither a prohibited firearm nor a restricted firearm, or	**a)** n’est ni une arme à feu prohibée ni une arme à feu à autorisation restreinte;

(b) a firearm that is prescribed to be a non-restricted firearm;

b) est désignée comme telle par règlement. (non-restricted firearm)

prescribed means prescribed by the regulations;

…

[…]

prohibited firearm means

arme à feu prohibée

(a) a handgun that

a) Arme de poing pourvue d'un canon dont la longueur ne dépasse pas 105 mm ou conçue ou adaptée pour tirer des cartouches de calibre 25 ou 32, sauf celle désignée par règlement pour utilisation dans les compétitions sportives internationales régies par les règles de l'Union internationale de tir;

(i) has a barrel equal to or less than 105 mm in length, or

(ii) is designed or adapted to discharge a 25 or 32 calibre cartridge,

but does not include any such handgun that is prescribed, where the handgun is for use in international sporting competitions governed by the rules of the International Shooting Union,

(b) a firearm that is adapted from a rifle or shotgun, whether by sawing, cutting or any other alteration, and that, as so adapted,

b) arme à feu sciée, coupée ou modifiée de façon que la longueur du canon soit inférieure à 457 mm ou de façon que la longueur totale de l'arme soit inférieure à 660 mm;

(i) is less than 660 mm in length, or

(ii) is 660 mm or greater in length and has a barrel less than 457 mm in length,

(c) an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger, or

c) arme automatique, qu'elle ait été ou non modifiée pour ne tirer qu'un seul projectile à chaque pression de la détente;

(d) any firearm that is prescribed to be a prohibited firearm;

d) arme à feu désignée comme telle par règlement. (prohibited firearm)

[Emphasis added]

[Je souligne]

restricted firearm means

arme à feu à autorisation restreinte

(a) a handgun that is not a prohibited firearm,

a) Toute arme de poing qui n'est pas une arme à feu prohibée;

(b) a firearm that

b) toute arme à feu — qui n'est pas une arme à feu prohibée — pourvue d'un canon de moins de 470 mm de longueur qui peut tirer des munitions à percussion centrale d'une manière semi-automatique;

(i) is not a prohibited firearm,

(ii) has a barrel less than 470 mm in length, and

(iii) is capable of discharging centre-fire ammunition in a semi-automatic manner,

(c) a firearm that is designed or adapted to be fired when reduced to a length of less

c) toute arme à feu conçue ou adaptée pour tirer lorsqu'elle est réduite à une longueur de moins de 660 mm par

than 660 mm by folding, telescoping or otherwise, or	repliement, emboîtement ou autrement;
(d) a firearm of any other kind that is prescribed to be a restricted firearm.	**d)** toute arme à feu désignée comme telle par règlement. (restricted firearm)
[Emphasis added]	[Je souligne]

[22] Section 117.15 of the *Criminal Code* provides,

117.15 (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.	**117.15 (1)** Sous réserve du paragraphe (2), le gouverneur en conseil peut, par règlement, prendre toute mesure d'ordre réglementaire prévue ou pouvant être prévue par la présente partie.
(2) In making regulations, the Governor in Council may not prescribe any thing to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition 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.	**(2)** Le gouverneur en conseil ne peut désigner par règlement comme arme à feu prohibée, arme à feu à autorisation restreinte, arme prohibée, arme à autorisation restreinte, dispositif prohibé ou munitions prohibées toute chose qui, à son avis, peut raisonnablement être utilisée au Canada pour la chasse ou le sport.
(3) Despite the definitions ***prohibited firearm*** and ***restricted firearm*** in subsection 84(1), a firearm that is prescribed to be a non-restricted firearm is deemed not to be a prohibited firearm or a restricted firearm.	(3) Malgré les définitions de ***arme à feu prohibée*** et de ***arme à feu à autorisation restreinte*** au paragraphe 84(1), une arme à feu désignée par règlement comme étant une arme à feu sans restriction est réputée ne pas être une arme à feu prohibée ni une arme à feu à autorisation restreinte.

(4) Despite the definition ***prohibited firearm*** in subsection 84(1), a firearm that is prescribed to be a restricted firearm is deemed not to be a prohibited firearm.	**(4)** Malgré la définition de ***arme à feu prohibée*** au paragraphe 84(1), une arme à feu désignée par règlement comme étant une arme à feu à autorisation restreinte est réputée ne pas être une arme à feu prohibée.

B. *Who is the Governor in Council and how do they make Regulations?*

[23] The AGC's affiant, Mr. Randall Koops attached the *Cabinet Directive on Regulation* to his affidavit. The Directive describes the regulatory process and describes the Governor in Council as follows:

> Governor General in Council, or Governor in Council, means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada.
>
> Since December 2003, advice to the Governor General on behalf of the Queen's Privy Council has been provided by the Treasury Board.
>
> Treasury Board ministers consider the regulatory submission and decide whether to recommend that the Governor General make the regulations as presented in their final form.

[24] Treasury Board, in this context, refers to a Cabinet Committee. The Members of the Treasury Board are Cabinet Ministers.

[25] In *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72 [*Canadian Council for Refugees*], the Governor in Council was described in the same way, at para 37:

> [37] The Governor in Council is the "Governor General of Canada acting by and with the advice of, or by and with the advice

> and consent of, or in conjunction with the Queen's Privy Council for Canada": *Interpretation Act*, R.S.C. 1985, c. I-21, subsection 35(1), and see also the *Constitution Act*, 1867, (UK), 30 & 31 Vict., c. 3, s. 91, reprinted in R.S.C. 1985, Appendix II, No. 5, sections 11 and 13. All the Ministers of the Crown, not just the Minister, are active members of the Queen's Privy Council for Canada. They meet in a body known as Cabinet. Cabinet—sitting at the apex of the executive of the Canadian government—is "to a unique degree the grand co-ordinating body for the divergent provincial, sectional, religious, racial and other interests throughout the nation" and, by convention, it attempts to represent different geographic, linguistic, religious, and ethnic groups: Norman Ward, *Dawson's the Government of Canada*, 6th ed., (Toronto: University of Toronto Press, 1987) at pages 203-204; Richard French, "The Privy Council Office: Support for Cabinet Decision Making" in Richard Schultz, Orest M. Kruhlak and John C. Terry, eds., *The Canadian Political Process*, 3rd ed. (Toronto: Holt Rinehart and Winston of Canada, 1979) at pages 363-394. All the levers of government are present at the Cabinet table.

[26] Contrary to the suggestion by one of the Applicants, the Governor in Council is not a group of selected "appointees" influenced by gun control lobbyists; the Governor in Council is comprised of elected members of Parliament that have formed the Government and have been named as Ministers of the Crown by the Prime Minister.

C. *The Order in Council and Regulations*

[27] On May 1, 2020, the Prime Minister announced amendments to existing regulations, (made in 1998) to prescribe additional types of firearms and related devices as prohibited. These amendments were the result of the Order in Council (PC 2020-298): *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted*: SOR/2020-96 [the Order in Council or the Regulations].

[28] The Regulations were made pursuant to the authority granted to the Governor in Council in subsection 117.15(2) of the *Criminal Code*. The scope of the authority granted to the Governor in Council and the interpretation of subsection 117.15(2) is a key issue in the Applications.

[29] The Order in Council states:

> Whereas the Governor in Council is not of the opinion that any thing 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;
>
> Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to the definitions "non-restricted firearm", "prohibited device", "prohibited firearm" and "restricted firearm" in subsection 84(1) of the *Criminal Code* and to subsection 117.15(1) of that Act, makes the annexed *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted.*

[30] The Regulations are lengthy and can be found at https://www.canadagazette.gc.ca/rp-pr/p2/2020/2020-05-01-x3/pdf/g2-154x3.pdf.

[31] In brief, the Regulations prescribe firearms by general "family," make and model, and any variants or modified versions, and by two physical characteristics.

[32] The nine firearm "families" (see sections 83 and 87-94 of the Regulations) are:

1. SG-550 rifle, SG-551 carbine (also referred to as the Swiss Arms Classic Green and Four Seasons series);

2. M16, AR-10, AR-15 rifles and M4 carbine;
3. Ruger Mini-14 rifle;
4. US Rifle, M14;
5. Vz58 rifle;
6. Robinson Armament XCR rifle;
7. CZ Scorpion EVO 3 carbine and pistol;
8. Beretta CX4 Storm carbine; and,
9. SIG Sauer SIG MCX and SIG Sauer SIG MPX carbines and pistols;

[33] Sections 95 and 96 of the Regulations prohibit firearms based on two physical characteristics—firearms with a bore diameter that is 20mm or greater; and firearms with the capacity to discharge a projectile with a muzzle energy greater than 10,000 joules.

[34] The Regulations list approximately 1,500 firearms that are either variants of the nine families or have the two characteristics noted above. This format is generally consistent with the format of the 1998 regulations and its predecessors; the makes and models of firearms are set out plus “any variants or modified versions of them.”

[35] The Order in Council was not pre-published in the Canada Gazette. The Order in Council came into force immediately upon promulgation on May 1, 2020, and was published in final form along with a Regulatory Impact Analysis Statement [RIAS]. The RIAS sets out the background and objectives, describes the Regulations, notes the regulatory development process and describes several considerations related to the regulatory impact.

[36] A related Order in Council, the *Order Declaring an Amnesty Period* (2020), SOR/2020-97 [Amnesty Order] was promulgated on the same day.

D. *The Legislative History*

[37] The Applicants note the extensive law reform over the past several decades, which has incrementally limited their access to many types of firearms. The Applicants suggest that the existing regime is sufficient and that the Regulations at issue do not reflect a balance between protecting public safety and permitting the legitimate use of firearms for hunting and sport. The AGC also points to the long history of gun control legislation to improve public safety. Given the submissions, a brief overview of the legislative history follows.

[38] The affidavit of the AGC's affiant, Professor R. Blake Brown, a legal historian, provides a chronology of gun control legislation in Canada. Professor Brown notes that the current approach to regulating long guns dates back to the late 1960s. He describes the following key legislative reforms, among others.

[39] In 1969, the *Criminal Code* was amended to set out three classifications of weapons: non-restricted, restricted and prohibited weapons. In addition to the definitions of restricted and prohibited weapons, the legislation granted the Governor in Council the authority to declare a weapon to be a restricted weapon. Similarly, the Governor in Council could declare any weapon to be a prohibited weapon that was "not being a restricted weapon or a shotgun or rifle of any kind not commonly used in Canada for hunting or sporting purposes."

[40] Professor Brown notes that this wording was relied on by successive governments to restrict many firearms.

[41] In 1977 the *Criminal Code* was amended to change and expand the definition of restricted and prohibited weapons. This resulted in the restriction of short-barreled semi-automatic firearms. The Minister of Justice of the day, Ron Basford, noted that there was no proper hunting use for these firearms.

[42] The 1977 amendments changed the definition of a restricted weapon to "a weapon of any kind, not being a prohibited weapon or a shotgun or rifle of a kind that, in the opinion of the Governor in Council, is reasonable for use in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a restricted weapon."

[43] The prohibited weapon definition was also expanded to include automatic weapons that were not subject to a grandfathering clause and to modify the authority of the Governor in Council to declare firearms to be prohibited weapons; a firearm "of any kind, not being an antique firearm or a firearm of a kind not commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a prohibited weapon."

[44] In 1991, Bill C-17 slightly modified the definition of prohibited weapon and also prohibited large-capacity magazines for semi-automatic firearms, automatic firearms that had been converted to avoid the previous prohibitions, and rifles manufactured as semi-automatic based on modified fully automatic designs. The Minister of Justice, Kim Campbell, explained the Government's intention to limit access to "modern semi-automatic military assault weapons." Minister Campbell noted that the Government's reliance on regulations would continue to permit

flexibility to protect the public while respecting, to the extent possible, the interests of legitimate firearm owners and users.

[45] Professor Brown notes several Orders in Council that prohibited or prescribed many firearms. The Orders in Council made under the authority of the *Criminal Code* provisions dating back to 1969 and 1977 list many makes and models of firearms as prohibited and "any variants or modified thereof." Similarly, Orders in Council listed firearms as restricted and "any variants or modified thereof."

[46] The 1994 Order in Council prescribed additional firearms as prohibited. The Minister of Justice, Allan Rock, noted that these firearms were "military type weapons" and were not intended for hunting or sport. Many semi-automatic rifles were prescribed as prohibited, rather than as restricted.

[47] In December 1995, Bill C-68 received Royal Assent. Bill C-68 created the *Firearms Act*, SC 1995, c 39 and moved the regulatory aspects of gun control (licensing, registration, possession, transfer, storage and transportation) from the *Criminal Code* into the *Firearms Act.* Bill C-68 also amended the *Criminal Code*, including to add new offences and stricter penalties. The majority of the *Criminal Code* provisions were proclaimed into force three years later, in 1998. Among other amendments, the definitions of prohibited and restricted firearms and the power of the Governor in Council to prescribe firearms as prohibited were revised. Bill C-68 enacted the provision now found in section 117.15 which provides that the Governor in Council may not prescribe any thing to be a prohibited firearm "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."

[48] The 1998 Order in Council made pursuant to section 117.15 prescribed certain firearms as either prohibited or restricted. The Order in Council encompassed several former prohibited weapons orders that set out types of firearms, including long lists of specific firearms and included "any variants or modified version thereof."

[49] In 2012, Bill C-19 (*Ending the Long Gun Registry Act*) came into force, removing the requirement to register non-restricted firearms.

[50] In 2019, Bill C-71 (*An Act to Amend Certain Acts and Regulations in Relation to Firearms*) repealed amendments made in 2015 that permitted the Governor in Council to classify firearms to a less restrictive class.

[51] In 2016, Private Members Bill C-230 was introduced. Bill C-230 sought to define the term "variant" as a firearm "with an unmodified frame or receiver of another firearm." The Bill was not supported by the Government and did not pass. The Government noted that the term "variant" had been used for a long time and the proposed definition was too narrow and would result in the classification of many assault-style rifles as non-restricted.

[52] In 2018 and 2019, the Government engaged in national consultations regarding the civilian ownership and use of handguns and "assault weapons."

[53] On May 1, 2020, the Governor in Council made the Order in Council and Regulations prescribing approximately 1,500 firearms as prohibited. Professor Brown notes that these firearms are similar in capability to the firearms prohibited in the 1990s. Professor Brown also notes that the types of firearms listed have been used by police or the military, although the military generally use versions that can be fired as automatic firearms.

E. *The Firearms Reference Table*

[54] The purpose and influence of the Firearms Reference Table [FRT], a database maintained by the RCMP, is an issue in the Applications.

[55] The RCMP, as the national police service, is responsible for the Canadian Firearms Program [CFP]. The CFP oversees firearms licensing and registration, maintains national firearm safety training standards, assists law enforcement agencies, and enhances public safety by educating the public regarding safe storage, transport and use of firearms.

[56] The Specialized Firearms Support Service [SFSS] is part of the CFP. The SFSS is composed of firearm technicians who collect and assess technical information to classify firearms for the purposes of firearms registration, import/export control and to assist national and international law enforcement agencies with firearm identification and investigations. According to Mr. Murray Smith, the AGC's affiant, the SFSS conducts a technical assessment of firearms and forms an opinion whether a firearm is prohibited, restricted or non-restricted. Mr. Smith explained that the SFSS make assessments on an ongoing basis based on the *Criminal Code*

definitions and the types of firearms prescribed in the 1998 Regulations and the 2020 Regulations.

[57] The FRT is an online firearms database maintained by the SFSS. It lists and describes a wide range of firearms, noting whether the firearm is non-restricted, restricted or prohibited based on the assessment of the SFSS. The FRT database currently includes over 200,000 entries.

[58] The FRT includes the firearms set out in the Regulations (referred to as named variants) and other firearms that have been assessed after the promulgation of the Regulations (unnamed variants) and continue to be assessed.

[59] The AGC explains that since the promulgation of the Regulations, the FRT has been updated only to address new firearms in the marketplace and to update two firearms (the 8-gauge Parker shotgun with a bore diameter over 20mm and the Blaser R8 Rifle with a muzzle energy in excess of 10,000 joules). The AGC states that there were 180 unnamed variants as of June 15, 2020.

[60] The Applicants contend that since May 1, 2020, the SFSS has updated the FRT to list up to 340 more firearms as variants of firearms set out in the Regulations.

[61] Access to the FRT was originally limited to law enforcement. The AGC's affiants explain that the FRT is now publicly available through software available to businesses that provides up-to-date information. It is also available in a downloadable PDF form, which reflects the status as

of the date of the PDF. In addition, the CFP operates a call centre to respond to specific questions from firearms businesses, owners and members of the public.

F. *The Regulatory Impact Analysis Statement*

[62] A RIAS accompanies all Regulations. It is not part of the Regulations or the Order in Council. It is a public statement issued at the time the Regulations are pre-published in the Canada Gazette (where required) and at the time of final publication. Generally, a RIAS describes the regulations, the considerations that led to the development of the regulations and the various impacts.

[63] The RIAS for the Regulations appears to follow a standard approach as similar headings appear in other RIAS's for other regulations. (More specific references to the RIAS are noted in the analysis of the reasonableness of the Regulations.)

[64] The RIAS states that the Regulations amend the previous regulations to prescribe certain firearms as prohibited firearms. The RIAS notes that the Regulations prohibit approximately 1,500 models of assault-style firearms, including current and future variants.

[65] The Background section of the RIAS notes that Canada has experienced mass shootings and that the deadliest mass shootings, in Canada and elsewhere, commonly involve assault-style firearms. The RIAS states:

> Given these events, the growing concern for public safety, the increasing public demand for measures to address gun violence and mass shootings and, in particular, the concern resulting from

> the inherent deadliness of assault-style firearms that are not suitable for civilian use, these firearms must be prohibited in Canada. [Emphasis added.]

[66] The Background section describes the now prohibited firearms as being:

> Primarily designed for military or paramilitary purposes with the capability of injuring, immobilizing or killing humans in large numbers within a short period of time given the basic characteristics they possess, such as a tactical or military design and capability of holding a quickly reloadable large-capacity magazine.

[67] The RIAS acknowledges that these firearms have been used in the past, but concludes that the significant risk to public safety posed by these firearms "outweighs any justification for their continued use and availability within Canada given that numerous types of firearms remain available for lawful ownership for hunting or sport shooting purposes."

[68] The Objective section of the RIAS reiterates the growing public concern about the risk posed by assault-style firearms and states that the intention of the prohibition is to limit their access and reduce the availability of firearms that exceed safe civilian use.

[69] The RIAS explains that the Regulations prescribe "nine principal models and known variants of these principal models." The RIAS notes that the nine principal models (or families) of firearms were prohibited because they "(1) have semi-automatic action with sustained rapid fire capability (tactical/military design with large magazine capacity), (2) are of modern design, and (3) are present in large volumes in the Canadian market."

[70] The RIAS states that "[t]he Regulations apply to all variants of the principal model, current or future, whether they are expressly listed or not."

[71] The RIAS notes that, in addition, two new categories of firearms are prohibited that exceed safe civilian use; firearms with a bore diameter of 20mm or more and firearms with the capacity to discharge a projectile with a muzzle energy greater than 10,000 joules (*e.g.*, a .50 calibre BMG). The RIAS explains that these two categories of firearms are primarily designed to produce mass human casualties or cause significant property damage at long ranges, and that the potential power of these weapons exceeds safe or legitimate civilian use.

[72] The RIAS further notes that the Regulations also prescribe the upper receivers of certain firearms as prohibited devices.

[73] The RIAS describes the regulatory development process, including that the Government engaged in consultations (online and in-person) with a wide range of stakeholders—including those in support of banning handguns and assault-style firearms and those opposed to further limitations. The RIAS notes that "many participants" called for a ban on assault-style firearms to protect public safety.

[74] The RIAS explains that the Amnesty Order was implemented at the same time as the Regulations because of the possibility of criminal liability associated with possession of a prohibited firearm. The RIAS describes the Amnesty Order as permitting the limited use of the newly prohibited firearms (those previously non-restricted) to hunt for sustenance or to recognize

a right pursuant to Section 35 of the *Constitution Act, 1982* (existing aboriginal and treaty rights). The RIAS also notes that a buy-back program will be implemented, and that firearm owners can deactivate a prohibited firearm and arrange to deliver it to a police officer before the buy-back program is implemented.

[75] The costs, benefits and other impacts of the Regulations are described in the Regulatory Analysis section.

[76] The RIAS acknowledges that 1.4 million Canadians participate in sport shooting and that sport shooting contributed $1.8 billion to Canada's gross domestic product [GDP] in 2018, $868 million in labour income, and supports approximately 14,555 full-time equivalent jobs (citing the Conference Board of Canada).

[77] The RIAS also acknowledges that 1.3 million Canadians participate in legal hunting. Hunting contributes an estimated $4.1 billion to GDP, $2 billion in labour income and supports approximately 33,313 full-time equivalent jobs. The RIAS notes that hunters who have been using firearms that were non-restricted and are now prohibited may be affected.

[78] The RIAS describes the impact on firearms businesses, noting that the buy-back program may mitigate some negative impacts.

[79] The RIAS explains that the Government did not provide advance notice of the Regulations to the World Trade Organization [WTO], but rather relied on an exemption due to

public safety considerations. In addition, no advance notice was provided to avoid "creating a potential run on the market before it is frozen by the prohibition."

[80] The Rationale section of the RIAS restates the considerations set out above, and notes that "[d]ue to the public safety concerns posed by these firearms, they are not reasonable for use in Canada for hunting or sport shooting purposes."

[81] The RIAS also provides the rationale for the accompanying Amnesty Order and again notes the intention to implement a buy-back program and a grandfathering regime for owners of newly prohibited firearms.

[82] The RIAS addresses implementation, compliance and enforcement, noting, among other things, the notice to affected owners regarding their obligations and that compliance will depend on several factors, including compensation to be offered.

[83] The RIAS notes that those who remain in possession of prohibited firearms at the end of the Amnesty period could be subject to criminal liability.

III. Overview: The Applicants, the Intervener, and their Positions

A. *Parker et al v AGC (T-569-20) [Parker Applicants]*

[84] Ms. Cassandra Parker is a licensed firearm owner who, along with her husband, owns a small firearms business, KKS Tactical Supplies. Ms. Parker states that as a result of the

Regulations, she can no longer use several of her firearms for hunting and sport shooting, including her Typhoon F-12 12 gauge semi-automatic shotgun, CZ Scorpion EVO 3 S1 Carbine, or Maccabee SLR (Black Creek Labs Coyote SLR).

[85] The Parker Applicants submit that as a result of the Regulations, KKS has worthless inventory of now prohibited firearms exceeding $80,000.

[86] The Parker Applicants argue that the Regulations are *ultra vires* the authority set out in subsection 117.15(2) of the *Criminal Code.*

[87] The Parker Applicants address the statutory context, describe the *Criminal Code* provisions and definitions, and note the limit on the Governor in Council's authority to prescribe prohibited firearms and other devices pursuant to subsection 117.15(2). They submit these sweeping provisions that expose firearm owners to criminal sanctions should be the result of legislation, not regulations.

[88] The Parker Applicants submit that Bill C-68 was enacted in 1995 in an open and transparent way with full Parliamentary scrutiny and debate. They further submit that the resulting *Criminal Code* amendments, which included subsection 117.15(2), resulted from the Parliamentary process that addressed the need to balance the ability to prohibit additional firearms by way of regulation with the need to respect the use of firearms that are reasonable for use for hunting and sport.

[89] The Parker Applicants characterize the Regulations as breaking the “bargain” with firearms owners. They submit that at the time of Bill C-68, the Government acknowledged that firearms continued to be reasonable for hunting and sport and that the power to prohibit firearms was limited.

[90] The Parker Applicants submit that the notion that the simple possession of commonly used firearms can be changed by regulation to expose owners to criminal charges without a legislative amendment is inconsistent with the “bargain” reflected in subsection 117.15(2).

[91] The Parker Applicants argue that the AGC’s focus on the need to prevent mass shootings and the complexities of gun control do not address the issue on this judicial review, which is whether the Governor in Council formed the requisite opinion and whether the opinion—that the prohibited firearms are not reasonable for use in Canada for hunting and sporting purposes—is a reasonable opinion.

[92] The Parker Applicants submit that if Parliament intended to grant authority to the Governor in Council to prohibit certain firearms to enhance public safety, the wording of subsection 117.15(2) would have so stated, but did not. They argue that the restriction on the Government’s authority to prescribe firearms as prohibited in subsection 117.15(2) must be given meaning.

[93] The Parker Applicants note that reams of evidence have been provided by the Applicants to show that the prohibited firearms are indeed reasonable for hunting and sport.

[94] The Parker Applicants submit that granting the Amnesty, which only permits firearm owners to possess and store—but not to use the prohibited firearms—yet permits indigenous and sustenance hunters to use the prohibited firearms, is inconsistent with the Governor in Council's opinion that these firearms are not reasonable for use due to public safety concerns. If these firearms remain necessary for some hunters, they must also be reasonable for use by other hunters.

[95] The Parker Applicants also argue that the affidavits and research relied on by the AGC regarding the impact of gun control measures on mass shootings should be given little to no weight.

B. *Canadian Coalition for Firearm Rights et al v AGC (T-577-20) [CCFR Applicants]*

[96] The Canadian Coalition for Firearm Rights [CCFR] is a not-for-profit organization that provides advocacy and public relations for the Canadian firearm community. As of October 2021, the CCFR had approximately 31,000 members.

[97] Mr. Rodney Giltaca is the Executive Director of the CCFR. Mr. Giltaca states that several of his firearms are now prohibited.

[98] Mr. Ryan Steacy is a retired corporal of the Canadian Armed Forces now working as the Technical Director at International Barrels Inc, a manufacturer of precision barrels for firearms. Mr. Steacy states that he can no longer use his Armalite Rifle (an AR-15 firearm) or his North

Eastern Arms Rifle (a named variant of the AR-15, or Aero Precision Rifle (a named variant of the AR-15).

[99] Maccabee Defense Inc is an Alberta-based designer, manufacturer and retailer of the SLR-Multi Rifle (SLR-Multi), now prohibited. Maccabee was founded by Mr. Wyatt Singer and his wife, Shaina Singer. Mr. Singer states that Maccabee has lost out in hundreds of thousands of dollars in gross revenue from lost sales and has had to shut down production.

[100] Wolverine Supplies Ltd is a Manitoba-based retailer of firearms, founded by Mr. John Hipwell (the Applicant in T-581-20) and now owned by his son, Mr. Matthew Hipwell. Mr. Matthew Hipwell states that at least six of Wolverine's product lines, including two of their top five lines, were prohibited by the Regulations.

[101] The CCFR Applicants argue that the Regulations are *ultra vires* section 117.15(2) of the *Criminal Code*. They submit that the Court's role is to review the Governor in Council's decision to make the Regulations in the same way as other administrative decisions, by applying the *Vavilov* principles, which will lead to the conclusion that the Regulations are *ultra vires* and are not reasonable.

[102] The CCFR Applicants argue that the Court should draw an adverse inference from the AGC's refusal to provide the material that was considered by the Governor in Council when it formed the opinion that the prescribed firearms were not reasonable for hunting and sport shooting.

[103] The CCFR Applicants submit that the Governor in Council cannot further sub-delegate its authority to prohibit firearms to the RCMP (*i.e.*, the SFSS). They argue that the FRT, which lists variants of prohibited firearms as determined by the SFSS, and which is relied on by law enforcement, reflects an unlawful sub-delegation of the Governor in Council's authority. The CCFR adds that the FRT's listing of variants does not permit firearm owners to challenge such findings and is a breach of the duty of procedural fairness.

[104] The CCFR Applicants also argue that the Regulations violate firearm owners' rights to security of the person and to liberty, contrary to section 7 of the *Charter*.

[105] In addition, they assert that the Regulations violate the *Bill of Rights* because the prohibitions deprive Mr. Giltaca and Mr. Steacy of their property.

C. *Hipwell v AGC (T-581-20)*

[106] Mr. John Peter Hipwell is the founder of Wolverine Supplies (an Applicant in T-577-20), which is now owned by his son. Mr. Hipwell notes his decades of experience using firearms.

[107] Mr. Hipwell states that he has owned, among others, a prized Springfield M1 A1 National Match Target Rifle for over 40 years and has safely maintained and used it for target shooting. His antique Manton Large Bore Rifle, which he has used for hunting large game (including in Africa) is now prohibited. He submits that these, and other now prohibited firearms, were not designed for war or to be used against humans and are suitable for hunting and sport shooting.

[108] Mr. Hipwell provides an overview of the existing laws and regulations, noting the emphasis on public safety.

[109] Mr. Hipwell points to the provisions of the *Firearms Act* and the *Criminal Code*, which he submits comprehensively and sufficiently regulate all aspects of firearms, including classification, possession, licensing, safety, purchase and sale, retention of records by firearms businesses, transportation, use and misuse and offences for those that do not adhere to the regulations and those who use firearms illegally. Among other things, he notes the requirements to take safety courses to obtain a licence (the Canadian Firearms Safety Course or the Restricted Firearms Safety Course), additional safety courses to use a shooting range or become a member of a gun club, and recent amendments to ensure that background checks consider various factors over a much longer period of time.

[110] He submits that firearm owners willingly comply with all the laws and regulations, recognizing that owning a gun is a privilege. He adds that firearm owners are aware that they are already subject to much oversight and that their non-compliance exposes them to criminal sanctions.

[111] Mr. Hipwell argues that the Regulations are *ultra vires*. He submits that the Regulations unreasonably prohibit firearms that are indeed reasonable for hunting and sport shooting. He notes the hundreds of emails he received from firearm owners describing how they have safely used their firearms, which are now prohibited, for hunting and sport shooting. He argues that the Regulations will not have an impact on public safety.

[112] Mr. Hipwell submits that the Court should draw an adverse inference from the AGC's refusal to produce the material considered by the Governor in Council and to assert cabinet confidence.

[113] He further argues that the Regulations infringe section 7 of the *Charter* because the lack of a definition of "variant" renders the Regulations vague to the extent that there is no notice of what will constitute a variant and, in turn, expose a firearms' owner to criminal sanctions.

[114] Mr. Hipwell also argues that the Regulations infringe section 11 of the *Charter*, which sets out the rights of persons charged with offences, including to be informed of the specific offence and to be presumed innocent until proven guilty. He submits that the many variants of prohibited firearms, which are identified by the SFSS and noted in the FRT, and are constantly changing, make it impossible for a person to know that their firearm has been prohibited. He further submits that this violates the presumption of innocence.

D. *Doherty et al v AGC (T-677-20) [The Doherty Applicants]*

[115] Mr. Michael Doherty is a hunter and competitive target shooter. Mr. Doherty and the eight other applicants all note that several of the firearms they own and use are now prohibited, including AR-15 rifles, the Alberta Tactical Rifle Modern Sporter rifle (an unnamed variant) and the Alberta Tactical Rifle Modern Hunter rifle (an unnamed variant).

[116] The Doherty Applicants acknowledge that gun control is a divisive issue. They submit that whether further and specific prohibitions will enhance public safety should be the subject of

Parliamentary debate. They do not dispute that some firearms that are not reasonable for hunting or sport shooting could be prohibited, but such prohibitions should be determined by Parliament, not by the Governor in Council and not by the SFSS.

[117] The Doherty Applicants argue that the Regulations are *ultra vires*, reliance on the FRT reflects an unlawful sub-delegation of authority to the SFSS to prohibit variants, and the Regulations infringe the *Charter*.

[118] The Doherty Applicants submit that the issue on this judicial review is narrow; whether it was reasonable for the Governor in Council to reach the opinion that the firearms prohibited by the Regulations are not reasonable for hunting or sport use in Canada. They submit that it is not. They point to several examples of firearms that have been used for decades for hunting and sport and continue to be reasonable for such purposes, but are now prohibited, without any rationale.

[119] The Doherty Applicants argue that the "sweeping" Regulations, which prohibit approximately 1,500 firearms, plus an unknown number of unnamed variants, is unprecedented and is not supported by any evidence from the AGC.

[120] The Doherty Applicants submit that the AGC's failure to produce the information relied on by the Governor in Council and to assert Cabinet Confidence should lead the Court to infer that the Governor in Council did not have information to support its opinion.

[121] The Doherty Applicants further submit that the Respondent's reliance on the RIAS and on affidavits prepared after the fact and only for the purpose of this litigation, which focus on gun violence, various gun control measures and concerns about public safety, do not assist in informing whether the Governor in Council acted within its authority or made a reasonable decision.

[122] The Doherty Applicants rely on the evidence of their firearms experts and sport shooters who propose criteria to guide whether a firearm is reasonable for hunting or sport shooting and conclude that the now prohibited firearms remain reasonable for hunting and sport.

[123] They add that there are no criteria to guide how the SFSS determines a firearm to be a variant and suggest that it is a "lottery."

[124] The Doherty Applicants adopt the arguments of the CCFR Applicants in support of their arguments that reliance on the FRT to identify variants is an unlawful sub-delegation of authority and that the Regulations infringe section 7 of the *Charter*.

E. *Generoux et al v AGC (T-735-20) [The Generoux Applicants]*

[125] Ms. Christine Generoux hunts and is also involved in shooting competitions. She attests that she can no longer use her firearms of choice, including her AR-15.

[126] Mr. John L. Perocchio previously owned a firearms business which he states he had to close due to Bill C-68. (Bill C-68 received Royal Assent in 1995 but most provisions came into force in December 1998.)

[127] Mr. Vincent Perocchio is the son of Mr. John L. Perocchio. He states that he has lost his inheritance because his father's business has closed and his family's collection of guns is now worthless. He adds that he can no longer use his custom-built AR-15 pattern semi-automatic firearm.

[128] The Generoux Applicants argue that the Regulations are *ultra vires* and that the Governor in Council's decision to list firearms as prohibited is unreasonable. They submit that the Court should draw an adverse inference that the Governor in Council's decision was not informed by supporting evidence.

[129] The Generoux Applicants further submit that a "gun culture" exists and should be protected pursuant to section 15 of the *Charter*.

[130] The Generoux Applicants argue that the Regulations have destroyed the gun culture. They submit that "99% of semi-automatic firearms are banned" and predict that other semi-automatic firearms likely will be banned, leaving no firearms available that are suitable for hunting or sport. They point to the impact on a shooting range that lost 75% of its members due to the Regulations and to Professor Mauser's evidence to show that the number of gun owners in Canada has declined.

[131] The Generoux Applicants note that the RCMP and Canadian Armed Forces [CAF] benefit from practicing their marksmanship skills using their personal firearms and attending on their own time at private gun ranges. The Generoux Applicants argue that the ability of the RCMP, other police, and the CAF to practice their marksmanship is in jeopardy due to the prohibition of certain firearms and the closure of gun ranges. The Generoux Applicants contend that private ranges are needed in order for the police and CAF to fulfil professional training requirements.

[132] The Generoux Applicants argue that the Regulations violate section 7 of the *Charter* due to their vagueness, section 8 due to the unreasonable seizure of property, section 15, due to discrimination against gun culture and section 26.

F. *Eichenberg et al v AGC (T-905-20) [The Eichenberg Applicants]*

[133] The Eichenberg Applicants include Ms. Jennifer Eichenberg, Mr. David Bot, the Burlington Rifle and Revolver Club (BRRC), the Montreal Firearms Recreational Centre Inc., (Centre récréatif d'armes à feu de Montréal inc or CRAFM), and O'Dell Engineering.

[134] Ms. Eichenberg is a firearms owner and avid national and international sports shooter. She states that Regulations prevent her from competing in two types of shooting competitions because the only firearm that is suitable for use in these sports—the Stag Arms Stag-15 rifle (an AR-15 platform rifle)—is now prohibited.

[135] The BRRC is an approved shooting club under the *Firearms Act* for members to carry out target shooting and hunting-related preparation.

[136] The CRAFM operates the Montreal Shooting Club, a federally licensed shooting range under the *Firearms Act*.

[137] O'Dell Engineering is owned by Mr. Philip O'Dell. O'Dell Engineering is an importer and distributor of firearms, ammunition and related gear.

[138] The Eichenberg Applicants note that sport shooters, gun clubs and shooting ranges are exceptionally highly regulated and have been severely impacted by the Regulations. For example, the BRRC's ability to host international competitions and for its members to train for such competitions is curtailed by the new prohibitions and by the uncertainty of what will be prohibited as a variant. Similarly at CRAFM, one third of the rifles owned by members are now prohibited, yet these firearms continue to be used in shooting competitions internationally.

[139] The Eichenberg Applicants argue that the Regulations are *ultra vires*. They argue that the Regulations ignore the objective of subsection 117.15(2) and the constraint on the Governor in Council's authority. They submit that subsection 117.15(2) of the *Criminal Code* is intended to permit—not restrict—the use of firearms that are reasonable for hunting and sport shooting.

[140] The Eichenberg Applicants raise related issues, including the interpretation of subsection 117.15(2), whether the Governor in Council can form an opinion about firearms that do not yet

exist, subdelegation to the SFSS to prohibit firearms and the vagueness of the terms used in the Regulations.

[141] Like the Doherty Applicants, they argue that the Government should have pursued amendments to the *Criminal Code* and engaged in a debate in Parliament rather than relying on and exceeding their delegated authority and avoiding pre-publication of the Regulations in the Canada Gazette. They note that, although the AGC states that Regulations permit flexibility to prescribe firearms as restricted or prohibited, no such regulations were made between the late 1990s and 2020.

[142] The Eichenberg Applicants submit that the AGC's failure to disclose the record before the Governor in Council and to instead rely on section 39 of the *Canada Evidence Act*, RSC, 1985, c C-5 [CEA] to assert cabinet confidence should lead the Court to draw an adverse inference that the Governor in Council either did not have information before it to inform its opinion or had information that did not support its opinion.

[143] The Eichenberg Applicants also argue that the Governor in Council has subdelegated the determination of variants to the SFSS, which has no authority to make such decisions, and they adopt the arguments of the CCFR Applicants. Alternatively, they argue that if the RCMP has such authority, it must be bound by the same restriction in subsection 117.15(2) (*i.e.*, that only a firearm that is not reasonable for hunting and sport shooting can be a variant.)

G. *The Attorney General of Alberta (Intervener)*

[144] The Attorney General of Alberta [Alberta] submits that robust judicial review in accordance with the principles set out in *Vavilov* is called for and will demonstrate that the Regulations are *ultra vires* and unreasonable.

[145] Alberta submits that while Parliament may enact legislation to address public safety, the Governor in Council must respect the authority delegated to it by Parliament.

[146] Alberta argues that the Governor in Council exceeded its authority by failing to apply the "precondition" in subsection 117.15(2) (*i.e.*, of reaching the opinion that the firearms were not reasonable for hunting and sport shooting). Alberta submits that subsection 117.15(2) must be given meaning and should be narrowly interpreted in accordance with the principles of statutory interpretation.

[147] Alberta submits that Parliament is responsible for enacting the criminal law and creating new criminal offences. Alberta argues that Parliament has abdicated its legislative role by permitting the Governor in Council to prescribe anything to be prohibited (citing *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 85 [*Re GGPPA*]).

[148] Alberta argues that if subsection 117.15(2) is interpreted to give unfettered discretion to the Governor in Council, which would permit it to prescribe anything as a prohibited firearm without the guidance of Parliament, the provision is an unconstitutional delegation of authority

and *ultra vires* of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act, 1867*].

[149] Alberta adds that there is no record to support the Governor in Council's decision given the assertion of Cabinet confidence, the RIAS refers to irrelevant considerations, and the Regulations were not pre-published, all of which permitted the Regulations to avoid necessary scrutiny.

[150] Alberta acknowledges that the RIAS refers to considerations that may have informed the Governor in Council's opinion, but submits that these considerations are irrelevant. Alberta argues that the presence of the newly listed firearms in the Canadian market, does not support finding that the firearms are not reasonable for hunting and sport shooting, rather it would support that they are reasonable for these purposes. The potential for misuse of the firearms and the focus on public safety are not considerations informing reasonable use for hunting or sport shooting. Alberta emphasizes that the Governor in Council, in order to act within its delegated authority, must reach an opinion only on whether the firearms are reasonable for hunting and sport shooting. Alberta argues that the RIAS does not set out any analysis regarding whether the newly prohibited firearms are reasonable for hunting and sport shooting.

[151] Alberta argues that the Governor in Council does not have the authority to reach an opinion about an unnamed variant and to prohibit that firearm prospectively. Alberta also argues that the prohibition of variants cannot be further delegated.

[152] Alberta further argues that the Governor in Council was required—but failed—to conduct a discrete analysis of each firearm it prescribed as prohibited to determine its reasonableness for hunting and sport shooting. Alberta submits that the Governor in Council conflated the term "reasonable" with "necessary", which is the wrong interpretation.

[153] Alberta adds that the Regulations are in conflict with Alberta's *Wildlife Act*, RSA 2000, c W-10, which permits the use of firearms now prohibited for specific hunting purposes. Alberta submits that this conflict is inconsistent with the spirit of cooperative federalism.

H. *The Relief Sought by the Applicants*

[154] The Doherty Applicants summarise the relief that they and all Applicants seek as follows:

- A Declaration that the Regulations are *ultra vires* the *Criminal Code* and should be quashed;
- A Declaration that the Regulations infringe the *Charter,* cannot be saved, and are of no force and effect;
- A Declaration that the RCMP has no legal authority to classify firearms and prohibiting them from doing so;
- A Declaration that the FRT is not a legal instrument and that the classifications of firearms in the FRT does not have the force of law;
- A Declaration that the firearms listed in the Regulations are reasonable for hunting and sport; and,

- A Declaration that the Regulations are inoperative for being inconsistent with the *Bill of Rights*.

IV. Overview: The AGC's Position

[155] The AGC submits that the Governor in Council acted well within the authority granted to it pursuant to subsection 117.15(2) of the *Criminal Code* to make the Order in Council prescribing specific firearms and their variants as well as firearms with particular physical characteristics (bore diameter and muzzle energy) as prohibited firearms.

[156] The AGC submits that the Order in Council explicitly states that the Governor in Council is not of the opinion that the firearms prescribed are reasonable for use in Canada for hunting or sport purposes as required by subsection 117.15(2). The AGC points to the RIAS which explains that these firearms pose a serious threat to public safety because they can increase the severity of mass shootings and that due to these public safety risks, these firearms are not reasonable for hunting and sport.

[157] The AGC acknowledges that many of these firearms were previously used for hunting and sport, but contends that past use does not mean that the Governor in Council cannot now be of the opinion that these firearms are not reasonable for hunting and sport. The AGC notes that many firearms remain available that may be used for hunting and sport.

[158] The AGC notes that the views of firearm owners about what firearms are reasonable for hunting and sport are not determinative, but rather the Governor in Council's opinion.

[159] The AGC submits that Parliament has granted broad discretionary authority to the Governor in Council to prohibit firearms in the interest of public safety. The AGC notes that the 2020 Regulations added to an existing list of prohibited firearms that had not been updated in a comprehensive way since the late 1990s, although some amendments had been made to the 1998 Regulations (*Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, SOR/98-462).

[160] The AGC also notes that the firearms industry has since expanded and the previous regulations did not capture the many newer makes and models of "assault-style" firearms.

[161] The AGC submits that there is no basis to draw an adverse inference from the Government's reliance on section 39 of the *Canada Evidence Act*, as the Government was entitled to invoke the privilege, the Applicants did not challenge the section 39 certificate and the Court is not thwarted in its ability to conduct judicial review.

[162] The AGC disputes the Applicants' argument that the Governor in Council subdelegated its authority to prohibit firearms to the SFSS (and to post the prohibited firearms on the FRT). The AGC explains that it is only the Governor in Council that prescribes the firearms as prohibited by way of the Regulations, as well as variants and modified versions of the prescribed firearms. The FRT is only a reference guide without any force of law. The AGC notes that if the FRT did not exist, variants and modified versions of prescribed firearms would still be prohibited.

[163] The AGC submits that the Regulations do not infringe any other *Charter* rights nor the *Canadian Bill of Rights*.

V. The Issues

[164] As noted above, the six Applications raise several common issues and some unique issues. The Court addresses the following issues:

- The standard of review for the judicial review of the Regulations;
- Whether an adverse inference should be drawn from the AGC's failure to disclose the information considered by the Governor in Council in forming its opinion and making the Regulations and on its reliance on section 39 of the *Canada Evidence Act;*
- Whether the Order in Council and Regulations are *ultra vires* subsection 117.15(2) of the *Criminal Code;* whether the Governor in Council formed the requisite opinion and whether the opinion is reasonable;
- Whether there has been an unlawful subdelegation of authority from the Governor in Council to the RCMP's SFSS to prescribe firearms as prohibited by assessing and classifying firearms as variants and listing the variants on the FRT;
- Whether there was a breach of the duty of procedural fairness in the decision of the Governor in Council or in the SFSS's assessment and classification of firearms and their listing on the FRT without notice to firearm owners or a review mechanism;

- Whether the Regulations infringe the Applicant's rights to liberty and security of the person under section 7 of the *Charter* as being vague, overbroad or arbitrary, and if so, whether the infringement is justified by section 1;

- Whether the Regulations infringe sections 8, 11, 15 or 26 of the *Charter*, and if so, whether any infringement is justified by section 1; and,

- Whether the Regulations infringe paragraph 1(a) of the *Canadian Bill of Rights*.

VI. The Evidence

[165] The Applicants and Respondent filed extensive records including affidavits from firearm owners, firearm business owners, gunsmiths, industry-recognized firearm experts, sport shooting champions, academics, medical doctors, criminologists, and historians. As noted, a list of the affiants is attached at ANNEX A. An overview of the evidence of a cross-section of the affiants relied on by the Applicants and Respondent is attached as ANNEX B.

[166] The Applicants challenge the evidence of several of the AGC's affiants, including Professor Chapman, Professor Klarevas and Dr. Najma Ahmed, as irrelevant to the issue of whether the Regulations will impact public safety and question their impartiality and the credibility of their research.

[167] The Applicants are also critical of the Mr. Murray Smith's evidence. They suggest that he is not impartial as he is defending his "life's work." They also argue that he was inconsistent in his responses regarding the criteria for the classification of firearms, whether the SFSS's

classification of firearms was a technical or legal assessment, and how bore diameter is measured.

[168] The AGC notes that contrary to the Applicants' submissions, the evidence of the Applicants' affiants is not unchallenged. The AGC explains that some of the Applicants' affiants were cross-examined on relevant issues, but that the AGC did not cross-examine other affiants on their opinions, which remain opinions.

[169] The AGC submits that Mr. Smith's evidence responded to several of the comments and opinions of several of the Applicants' affiants, including Dr. Caillin Langmann, Professor Gary Mauser, Mr. Travis Bader, Mr. Mathew DeMille, Mr. Rodney Giltaca, Mr. Philip O'Dell, and Mr. Richard Delve. Mr. Smith was also extensively cross-examined by the Applicants.

[170] The AGC is also critical of the evidence of the Applicants' experts as not relevant to the determinative issues and/or tainted by a vested interest.

[171] For example, the AGC notes that Mr. DeMille is employed by the Ontario Federation of Anglers and Hunters, an organization that advocates for hunters, sport shooters and gun collectors. The AGC submits that Mr. DeMille's opinion about what is reasonable for hunting and sport is not relevant to the issues before the Court.

[172] The AGC submits that Mr. Bader's evidence should be given little weight given that Mr. Bader has an economic interest in the outcome as a gunsmith with a firearm training business and website to buy and sell firearms, which casts doubt on his impartiality.

[173] The AGC submits that Mr. O'Dell was not properly qualified to provide expert opinion evidence and that he lacks impartiality and objectivity. In addition, he is one of the applicants.

[174] The ACG had previously sought to exclude the Generoux Applicants' proposed expert witness, Mr. Bruce Gold, on the grounds that he lacked the necessary qualifications, impartiality, independence, and objectivity. The Generoux Applicants disputed the objection, noting that it was raised on the eve of the close of pleadings and the exclusion of Mr. Gold's evidence would prejudice their ability to support their arguments. By the direction of Associate Chief Justice Gagné, this issue was deferred to the hearing of the judicial review.

[175] Mr. Gold is described as a researcher and firearms historian. His professional qualifications indicate that he has a master's degree in Intellectual History and in Public Administration. His purported expertise is not apparent in his work experience. Mr. Gold has provided information about the history of the use of guns in Canada. However, Mr. Gold's evidence does not inform the determinative issues before the Court. It is not necessary to make any determination regarding his professed expertise.

[176] The Court has considered the evidence tendered as it relates to the particular issues. The evidence has provided useful information to varying extents—although not always highly relevant or persuasive.

[177] Many of the Applicants' affiants have vested personal and or economic interests in the outcome of this judicial review, being firearm owners or business owners or advocates for less regulation. Many affiants described their own preferences for the use of their now prohibited firearms and their personal views about what is reasonable for use, but this evidence does not address the issue of whether the Governor in Council's opinion is reasonable. The evidence shows that opinions differ and differ for different reasons.

[178] Generally, the Court finds that, contrary to the Applicants' assertions, Mr. Smith's evidence is helpful and the Court has relied on this evidence, as noted below, on certain issues. Mr. Smith does not show any partiality or defence of his "life's work" and has no vested interest. Mr. Smith was candid and provided detailed answers, with explanations, based on his experience and knowledge.

[179] The assessment of the evidence is described in greater detail below, as related to the issues the evidence addresses.

VII. The Standard of Review

A. *The Applicants' Submissions*

[180] The Applicants submit that the principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] govern the judicial review of the Regulations.

[181] The Parker Applicants submit that the Supreme Court of Canada's decision in *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, 2013 SCC 64 [*Katz*], which addressed the judicial review of regulations, should be interpreted in light of *Vavilov*. The Parker Applicants rely on *Portnov v Canada (Attorney General)*, 2021 FCA 171 [*Portnov*], where the Federal Court of Appeal found that *Katz*, which held that the presumption that regulations are valid can only be rebutted where the regulations are irrelevant, extraneous or completely unrelated to the objectives of the governing statute, cannot be reconciled with the principles set out in *Vavilov* and that *Vavilov* applies to the judicial review of all administrative decisions.

[182] The CCFR Applicants also submit that *Portnov* and *Innovative Medicines Canada v Canada (Attorney General)*, 2022 FCA 210 [*Innovative Medicines*] confirm that *Vavilov* governs how the court should conduct the judicial review of administrative decisions, including those of the Governor in Council. The CCFR Applicants caution that administrative decision makers cannot freely interpret their enabling statute to expand their powers beyond the statutory grant of authority (*Vavilov* at para 68). The CCFR Applicants submit that no greater deference is owed based on who makes the decision, both the outcome and the process must be reviewed, and the decision maker cannot adopt an interpretation to reverse engineer an outcome.

[183] The CCFR Applicants submit that in order to find that the Governor in Council's decision is reasonable, the Court must find that the Governor in Council formed the opinion required (a condition precedent) and that the opinion was formed reasonably. This is a legal test; policy considerations are not at play. They argue that it is not enough to simply rely on the statement in the Order in Council that the opinion was held.

B. *The AGC's Submissions*

[184] The AGC agrees that the *Vavilov* principles govern judicial review of administrative decisions, but suggests that, with respect to whether *Katz* or *Portnov* guides the review of Regulations, some remnants of *Katz* remain. The AGC submits that in *Re GGPPA* at para 87, the SCC "confirmed" that *Katz* continues to be helpful when reviewing regulations and applying the *Vavilov* principles.

[185] The AGC submits that the principle of deference still applies. With respect to the "condition precedent," the AGC submits that the Court should consider whether there is a reasonable basis in fact to support the Governor in Council's opinion that the prescribed firearms are not reasonable for hunting or sport purposes.

C. *The Jurisprudence*

[186] In *Re GGPPA* at para 87, the Supreme Court of Canada stated:

> Any regulation that is made must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object (*Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266 (B.C.S.C.), at p. 292, quoted in *Katz Group*, at para. 24), and it

> must be "within the scope [of] and subject to the conditions prescribed" by that statute (*Re Gray*, at p. 168).

[187] This requirement is not in dispute. However, I do not agree with the AGC's submission that the reference in *Re GGPPA* to *Waddell v Governor in Council* (1983), 1983 CanLII 189 (BC SC), 8 Admin LR 266 (BCSC) at p 292, as cited in *Katz*, suggests that *Katz* continues to guide the review of regulations made by the Governor in Council. This reference does not change or address the finding in *Portnov* (*i.e.*, that the third criterion in *Katz* is not consistent with *Vavilov*.)

[188] In *Portnov*, the Federal Court of Appeal addressed whether the principles governing challenges to Regulations, established by the SCC in *Katz* should be reinterpreted in light of *Vavilov*. The FCA noted the three parts of the *Katz* rule and found that the third part was not consistent with *Vavilov*, noting at para 19:

> [19] There are three parts to the *Katz* rule: (1) when a party challenges the validity of regulations, the party bears the burden of proof; (2) to the extent possible, regulations must be interpreted so that they accord with the statutory provision that authorizes them; and (3) the party must overcome a presumption that the regulations are valid. On the third part, *Katz* suggests (at paras. 24 and 28) that the presumption is overcome only where the regulations are "irrelevant," "extraneous" or "completely unrelated" to the objectives of the governing statute. A leading commentator on Canadian administrative law calls this "hyperdeferential": Paul Daly, "Regulations and Reasonableness Review" in *Administrative Law Matters*, (29 January 2021), <www.administrativelawmatters.com/blog/2021/01/29/regulations-and-reasonableness-review/>. I agree.

[189] The Court concluded, at paras 20-22, that the jurisprudence, particularly *Vavilov*, had overtaken *Katz* and that "the third part of the K*atz* rule is an artefact from a time long since passed."

[190] The Court explained, at paras 23-27, that regulations are binding legal instruments made by administrative officials and should be reviewed in the same manner as other administrative decisions; the framework to review all administrative decision-making is that established in *Vavilov*.

[191] With respect to judicial review of decisions of the Governor in Council, which may not be accompanied by reasons, the Court noted, at para 34, that "reasoned explanations can often be found in the text of the legal instruments it is issuing" and also in prior legal instruments related to it and in any Regulatory Impact Analysis Statements.

[192] In *Portnov,* at para 44, the Court reiterated that the assessment of reasonableness depends on the context and that the context included "the Governor in Council's access to sensitive state-to-state communications, its expertise in international relations, and its role at the apex of the Canadian executive in developing government policy in many disparate areas including international democracy, anti-corruption and accountability. These are matters not normally within the ken of the courts and so courts are reluctant to second guess. [Citations omitted]". The Court added that impact on Mr. Portnov was also part of the context.

[193] In *Innovative Medicines*, the Federal Court of Appeal restated that the *Vavilov* principles guide the review of the validity of regulations, including regulations made by the Governor in Council. The Court noted, at paras 28-29 of *Innovative Medicines*, that *Portnov* had been applied by several other Courts, although the Alberta Court of Appeal had declined to do so and instead

found that *Katz* applied to the review of Regulations made by the Governor in Council, distinguishing such Regulations because they were "law making."

[194] The Court noted the distinction between the two approaches and explained why *Katz* should not apply despite that regulations are "law making," stating at para 38:

> [38] That view also overlooks the fact that orders-in-council enacted by the Governor in Council, municipal by-laws, administrative rules and some administrative rulings on the merits are all instances of "law-making." And, as mentioned in paragraph 33 above, the Supreme Court has said that each of these instances of "law-making" are to be reviewed using *Vavilov* (or its predecessor, *Dunsmuir*), not *Katz*.

[195] The Court acknowledged the Alberta Court of Appeal's reasoning, but explained, at para 39, that *Vavilov* was equally responsive to the context, which includes that the decision maker is the Governor in Council.

[196] In *Innovative Medicines,* at para 40, the Court again noted that with respect to regulations made by the Governor in Council, that they are at the "apex of the executive," their power is "often relatively unconstrained," and the limiting statutory language is key, adding that "*Vavilov* goes straight to that key, focussing on what meanings the language of the regulation-making power can reasonably bear. *Katz* doesn't."

[197] With respect to determining whether a decision of the Governor in Council is reasonable, the Court noted, at para 48, that a court must "discern a reasoned explanation of the decision."

The Court found the explanation in the RIAS, noting that "[s]tatements such as these are a commonly accepted source of reasons behind decisions made by the Governor in Council."

[198] *Portnov* and *Innovative Medicines* clearly establish that *Vavilov* applies to the judicial review of Regulations. The Federal Court of Appeal's guidance is particularly applicable in the present case. Of note:

- The framework to review Regulations promulgated by the Governor in Council is that established in *Vavilov*.

- The reasons for decisions of the Governor in Council may be found in the Regulations themselves, prior legal instruments and the associated RIAS. The RIAS is a commonly accepted source of reasons for decisions made by the Governor in Council.

- The assessment of reasonableness depends on the context. The context would include the Governor in Council's "role at the apex of the Canadian executive in developing government policy in many disparate areas…"(*Portnov* at para 44).

- Courts should not lightly interfere with decision-making by the Governor in Council, especially when its policy content is high.

- The Governor in Council's regulation-making power "is often relatively unconstrained" but the statutory language guides. *Vavilov* focuses "on what meanings the language of the regulation-making power can reasonably bear" (*Innovative Medicines* at para 40).

[199] The *Vavilov* principles are not in dispute. There are many guiding principles; the most relevant to the judicial review of the Governor in Council's decision include:

- Courts should intervene in administrative matters, "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process." The principle of judicial restraint and respect for administrative decision makers remains, but judicial review remains robust (at para 13).

- Administrative decision makers do not have "free rein" to interpret their enabling statutes or enlarge their powers beyond the intention of the legislature. The governing statutory scheme operates as a constraint and limit on the authority of the decision maker (at para 68). The statutory limits on the decision maker's authority should be applied rigorously. What is reasonable will depend on the constraints imposed by the factual and legal context of the decision under review (at para 90).

- To determine if a decision as a whole is reasonable, the Court considers "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (at para 99).

- The statutory scheme that gives administrative decision makers their authority is "the most salient aspect of the legal context" (para 108). Administrative decision makers cannot disregard or rewrite their enabling authority. Their exercise of discretion "must accord with the purposes for which it was given" (at para 108).

- A decision maker's interpretation of its statutory grant of authority is "generally entitled to deference," but must justify the interpretation. In addition, "an administrative body cannot exercise authority which was not delegated to it" (at para 109).

- The decision maker cannot interpret the authority to "reverse-engineer" a desired outcome (at para 121).

- Where no reasons for a decision are provided, the court must look to the record as a whole (at para 137) and "the reviewing court must still examine the decision in light of the relevant constraints on the decision maker." Reasonableness review remains robust "only that it takes a different shape" (at para 138).

VIII. Should an adverse inference be drawn from the AGC's assertion of Cabinet confidence and failure to produce the record before the Governor in Council?

A. *The Applicants' Submissions*

[200] The Applicants argue that judicial review should not be thwarted by the AGC's refusal to produce the information relied on by the Governor in Council and the reliance on section 39 of the *Canada Evidence Act* [CEA] to assert Cabinet confidence.

[201] The Applicants submit that the Court should draw an adverse inference from the AGC's refusal to provide the information or documents that were considered by the Governor in Council when it formed the opinion that the list of firearms was not reasonable for hunting and sport shooting. In other words, the Court should infer that the Governor in Council either did not have

evidence before it to support its opinion, or that the Governor in Council had information that did not support its opinion.

[202] The Applicants rely on *RJR-MacDonald Inc v Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 [*RJR MacDonald*], at para 169, to argue that a court can draw an adverse inference from the Government's reliance on section 39 of the CEA. They also submit that in *Babcock v Canada (Attorney General)*, 2002 SCC 57 [*Babcock*], the Supreme Court of Canada found that section 39 of the CEA was constitutional, based on the fact that an adverse inference was possible.

[203] The Doherty Applicants submit that given the constraints on the Governor in Council's authority as set out in subsection 117.15(2) and the impact of the Regulations on firearm owners, if the AGC had credible evidence to support the Governor in Council's determination that the prohibited firearms are not reasonable for hunting and sport shooting, this evidence would and should have been produced.

[204] The Generoux Applicants note the Applicants' collective efforts to obtain information relied on by the Governor in Council, the Court's Order requiring the AGC to produce documents, and the AGC's ultimate reliance on section 39 of the CEA. The Generoux Applicants note that the AGC refused to provide even the public documents that were allegedly relied on, for example, the results of the government's public consultations. They submit that the Court should infer that the results of the consultation were not relied on.

[205] The Eichenberg Applicants submit that the "bare bones" summary produced at the time the section 39 certificate was filed does not provide information that contributes to meaningful judicial review and does not inform whether the Governor in Council held the requisite opinion. They submit that such summaries are designed to balance the need for confidentiality with meaningful judicial review and this one does not.

[206] The Eichenberg Applicants submit that, as in *RJR MacDonald*, there was selective disclosure via the "bare bones" summary. They submit that this summary and the record before this Court, including the RIAS and affidavit evidence tendered by the AGC, do not shed any light on the Governor in Council's opinion.

B. *The AGC's Submissions*

[207] The AGC submits that the Section 39 certifice—stating that the material before the Governor in Council is a cabinet confidence—is not a factor in the judicial review. The AGC submits that the Clerk of the Privy Council properly exercised her powers; the documents at issue fall squarely within the categories of confidence in section 39. Moreover, the Applicants did not challenge the section 39 certificate.

[208] The AGC submits that *RJR MacDonald* and *Babcock*, relied on by the Applicants, can be distinguished from the present circumstances. The AGC submits that there was no selective disclosure by the Governor in Council given that the section 39 certificate applied to all the information considered and the Governor in Council's discussions.

C. *No adverse inference should be drawn*

[209] The Applicants have not challenged the section 39 certificate (*i.e.*, they have not sought judicial review of the decision to issue the section 39 certificate).

[210] In any event, as the AGC notes, there is nothing to suggest that the Clerk of the Privy Council exceeded her authority in issuing the certificate or that the information covered by the certificate does not fall within the scope of section 39.

[211] The section 39 certificate was issued on December 3, 2020, with a summary, titled "Description of materials constituting a confidence to the Queens Privy Council for Canada". This summary notes that a submission was made by the Minister of Justice to the Governor in Council in April 2020, that the nature of the information includes proposals to Council and relates to the making of government decisions or the formulation of policy or draft legislation and, as such, falls within the meaning of subsection 39(2) of the CEA. This summary also states that the information is a record of the deliberations of the Governor in Council, which also falls within the meaning of subsection 39(2).

[212] In *Babcock* the Supreme Court of Canada explained the requirements for certification at paras 21-26 and concluded at para 27:

> [27] On the basis of these principles, I conclude that certification is generally valid if: (1) it is done by the Clerk or minister; (2) it relates to information within s. 39(2); (3) it is done in a *bona fide* exercise of delegated power; (4) it is done to prevent disclosure of hitherto confidential information.

[213] The Court explained that although subsection 39(1) leaves little room for judicial review of the certificate, this is not impossible (paras 38-41, 57-61).

[214] The Court noted, at para 60, that judicial review of the Clerk's determination was not "entirely" excluded, adding that "A court may review the certificate to determine whether it is a confidence within the meaning provided in s. 39(2) or analogous categories, or to determine if the certificate was issued in bad faith. Section 39 does not, in and of itself, impede a court's power to remedy abuses of process."

[215] Contrary to the Applicants' submissions, in *Babcock*, the Supreme Court of Canada did not find that section 39 was constitutional only because an adverse inference could be drawn. The Court found that it was constitutional for the reasons set out in para 60 (and the Court's preceding analysis), in particular, that the courts could judicially review the certificate.

[216] In *RJR MacDonald*, Justice McLachlin noted, in her reasons, among many other issues addressed, that the respondent had not produced all survey results, but had claimed privilege pursuant to section 39, and that this could lead to an inference, noting at para 166:

> [166] This omission is all the more glaring in view of the fact that the government carried out at least one study of alternatives to a total ban on advertising before enacting the total ban. The government has deprived the courts of the results of that study. The Attorney General of Canada refused to disclose this document and approximately 500 others demanded at the trial by invoking s. 39 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5, thereby circumventing an application by the tobacco companies for disclosure since the courts lack authority to review the documents for which privilege is claimed under s. 39. References to the study were blanked out of such documents as were produced: Reasons at Trial, at p. 516. In the face of this behaviour, one is hard-pressed

> not to infer that the results of the studies must undercut the government's claim that a less invasive ban would not have produced an equally salutary result.

[217] In *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 [*Tsliel-Waututh*] the Federal Court of Appeal considered a motion seeking further production and challenging the respondent's reliance on section 39 of the CEA. The Court found that the passage in *RJR MacDonald* at para 166, cited above, "arguably" supported the view that an adverse inference could be drawn from the issuance of a section 39 certificate. However, the Court did not draw such an inference, noting that there was information on the record before it to permit judicial review. The Court went on to note the importance of an evidentiary record for judicial review.

[218] In *Canadian Council for Refugees*, the Federal Court of Appeal addressed the broader issue of the assertion of privileges in the context of the production of documents. The Court noted that courts may be able to issue production orders that strike a balance between protecting confidentiality and providing access to information to facilitate judicial review (at para 109).

[219] The Court explained, at para 114, that a summary is an option that could be employed even without waiving the privilege. The Court cited *Coldwater First Nation v Canada (Attorney General)*, 2020 FCA 34 [*Coldwater*], noting that in that case, a section 39 certificate was issued, but the Governor in Council had provided a "summary of its decision-making" in the preamble to the Order in Council. In *Coldwater*, the Federal Court of Appeal found that this preamble was sufficient to permit meaningful and fair judicial review.

[220] The Eichenberg Applicants' criticism of the "bare bones" summary provided with the section 39 certificate appears to conflate the requirements for the Clerk to describe the nature of the information covered by the section 39 certificate with the type of summary noted in *Canadian Council for Refugees*, or the summary found in the preamble to the Order in Council in *Coldwater*.

[221] The "bare bones" summary provided with the section 39 certificate fulfilled its purpose; it was not intended to set out a summary of the information considered by the Governor in Council, as that would defeat the confidential nature of the information asserted, but rather to describe the type of information considered by the Governor in Council to explain why the information fell within section 39.

[222] In the circumstances of this case, the Court does not find that an adverse inference—that the Governor in Council did not have any information that would support its opinion that the prescribed firearms are not reasonable for hunting or sport or had information that contradicted its opinion—should be drawn. As explained above, the jurisprudence has established that regulations promulgated by the Governor in Council are subject to the same robust judicial review as other administrative decisions and that the reasons for such decisions can be found in the Regulations, prior legal instruments, and the RIAS (*Vavilov*, at paras 68, 106, 108, 109, 137, 138; *Portnov* at paras 23-27, 34).

[223] Contrary to the concerns of the Applicants, the Governor in Council's decision is not immune from judicial review and the failure of the AGC to produce the information considered

by the Governor in Council and the assertion of Cabinet confidence does not thwart the Court's ability to conduct judicial review in accordance with the *Vavilov* principles.

IX. Are the Order in Council and Regulations *ultra vires* subsection 117.15(2) of the *Criminal Code*? Are the Governor in Council's opinion and decision reasonable?

A. *The Submissions of the Intervener, Alberta*

[224] Alberta argues that the Governor in Council exceeded its authority by failing to apply the "precondition" set out in subsection 117.15(2), of the *Criminal Code, i.e.*, of reaching the opinion that the firearms were not reasonable for hunting and sport shooting.

[225] Alberta submits that regulations must be consistent with the overriding purpose of the enabling statute and with the specific statutory provision (relying on *Re GGPPA* at para 87). Alberta regards the enabling statute as Bill C-68, which Alberta submits was intended to balance public safety with the legitimate uses of firearms (for hunting and sport). Alberta submits that the specific statutory provision - subsection 117.15(2) - is intended to permit the use of firearms that are reasonable for hunting and sport shooting and is not intended to protect public safety or to achieve the other goals set out in the RIAS.

[226] Alberta argues that the Regulations are not consistent with either the overriding purpose of Bill C-68 or the specific statutory provision. Alberta points to the statements made by the Minister of Justice, Allan Rock, in support of Bill C-68, acknowledging the use of firearms for hunting and sport shooting and stating that these legitimate interests "must be carried on in a context that is consistent with public safety."

[227] Alberta submits that even if public safety is the overriding purpose of the *Criminal Code* as a whole, this does not override the specific statutory provision. Parliament may enact legislation to address public safety, but the Governor in Council must respect the limits on the authority delegated to it by Parliament.

[228] Alberta argues that if subsection 117.15(2) is interpreted to give unfettered discretion to the Governor in Council, which would permit it to prescribe anything as a prohibited firearm without the guidance of Parliament, the provision is an unconstitutional delegation of authority and *ultra vires* of the *Constitution Act, 1867*.

B. *The Applicants' Submissions*

(1) The Regulations are *ultra vires* and the opinion and decision of the Governor in Council are not reasonable

[229] The Applicants argue that the Regulations are *ultra vires* of the Governor in Council's authority and that the Governor in Council's decision to prescribe specific firearms as prohibited is not reasonable. The arguments overlap to some extent but all share the view that the Regulations should not stand.

[230] The Parker Applicants submit that the Governor in Council's opinion is not justified in relation to the facts and law constraining the decision maker, transparent or intelligible. There are no reasons provided, and resort to the record as a whole does not show a rational chain of analysis. The Parker Applicants add that the Regulations do not respect the "bargain" made by the enactment of subsection 117.15(2) in Bill C-68.

[231] The CCFR Applicants submit that the Regulations should be declared to be *ultra vires* or alternatively, that a subset of the prohibited firearms should be declared reasonable for hunting and sport.

[232] The CCFR Applicants argue that subsection 117.15(2) conveys that not all firearms can be prescribed—only those that in the opinion of the Governor in Council are not reasonable for hunting and sport. These constraints on the Governor in Council's authority pursuant to subsection 117.15(2) cannot be rewritten. The Governor in Council must form the opinion and its opinion must be reasonable. They submit that the AGC's focus on public safety is not a relevant consideration; if the Governor in Council were authorized to prescribe firearms as prohibited for public safety reasons, subsection 117.15(2) would have been drafted accordingly. Moreover, if the Governor in Council could base its opinion on public safety considerations, it could prohibit all firearms, which is contrary to the statutory constraint.

[233] The CCFR Applicants note that although the Court may look to the whole record, where there are no reasons, the whole record consists largely of the RIAS, which does not reflect what the Governor in Council considered at the time it made the decision. They submit that the RIAS does not address the Governor in Council's opinion about the reasonableness of the firearms now prohibited for hunting or sport. The RIAS states only that assault-style firearms are not suitable for hunting or sport because of their inherent danger. However, all firearms pose the same danger in the wrong hands. The fact that some firearms have been and can be misused is not sufficient to prohibit their possession and use.

[234] The CCFR Applicants add that the AGC has not provided any evidence to support the opinion of the Governor in Council or the reasonableness of the Regulations, but rather incorrectly focuses on whether the now prohibited firearms are necessary for hunting and sport, which is not the test.

[235] The CCFR Applicants argue that necessity and availability of other firearms are not relevant considerations or justifications for the Regulations and have no bearing on whether the prohibited firearms are reasonable for hunting and sport.

[236] The CCFR Applicants add that by including an Amnesty the Governor in Council has undermined its own opinion that the prohibited firearms are not reasonable for hunting and sport.

[237] The CCFR Applicants submit that the Applicants have collectively established that the Governor in Council did not form the opinion that the now prohibited firearms are not reasonable for hunting and sport shooting or that the Governor in Council's opinion is unreasonable.

[238] The Doherty Applicants also argue that the AGC has provided no evidence to show that the prohibited firearms are not reasonable based on any objective criteria. They submit, on the other hand, that the Applicants have provided extensive evidence to show that the prohibited firearms are reasonable for hunting and sport.

[239] Like the CCFR Applicants, the Doherty Applicants argue that the AGC's affiants focussed on irrelevant considerations, including whether certain firearms are necessary for hunting or sport.

[240] The Doherty Applicants note that several of the firearms listed in the Regulations were already prohibited because of their characteristics. They argue that the Regulations are an attempt to link existing firearms with those already prohibited, although they differ. They note that cosmetic appearance is not an indicator of a connection. They also submit that the prohibited firearms are not assault-style or military-style as stated in the RIAS; they are not automatic and do not have large-capacity magazines and would not be used in combat.

[241] Mr. Hipwell alleges that the Government relied on the Regulations in order to avoid Parliamentary scrutiny; he submits that these prohibitions would not have been supported by Parliament. He points to an exchange of email between an MP and a constituent, suggesting that the Government could not achieve unanimous consent to introduce such legislation.

[242] The Generoux Applicants also argue that the Regulations are *ultra vires.* They submit that the Governor in Council based its opinion on irrelevant factors and sensational claims. They suggest that the Governor in Council is an appointed group that are lobbied and influenced by gun control advocates.

[243] The Generoux Applicants note that the AGC repeatedly refers to alternatives to the prohibited firearms, rather than whether the now prohibited firearms are reasonable for hunting

and sport shooting. They note that the RIAS describes features of the prohibited firearms that in fact benefit hunting and sport shooting performance. They state that fast shooting capabilities enhance their performance and safety, interchangeable parts are ergonomic features, the presence of firearms in large volumes means these are popular, and that muzzle energy exceeding 10,000 joules permits use for big game.

[244] The Generoux Applicants submit that the RIAS focusses only on the inherent dangers of firearms, although all firearms are dangerous in the wrong hands, and on the costs of the Regulations rather than the benefits of fewer restrictions on firearms. They add that the RIAS only noted the results of the consultation process that support the prohibitions rather than those that do not.

[245] The Generoux Applicants submit that the Regulations will not improve public safety. They point to the statistics provided by their affiant, Mr. Allan Harding, that 90% of firearms used in violent crimes originate from abroad and that a grey market exists from guns that predate the registration and licensing requirements.

[246] The Generoux Applicants also advance the theory that the Regulations were based on fraudulent reasons as reflected in the RIAS, which have resulted in devaluation of the now prohibited firearms. They suggest that this is contrary to the fraud provisions of the *Criminal Code*.

[247] Like the other Applicants, the Eichenberg Applicants argue that the Regulations are *ultra vir*es. They submit that the Governor in Council erred in opining that the firearms are not reasonable for hunting and sporting use, noting that the majority of these firearms have been used for such purposes for decades.

[248] Similarly to the Parker Applicants' argument, the Eichenberg Applicants submit that subsection 117.15(2) of the *Criminal Code* was intended to strike a balance between preventing the criminal misuse of firearms and permitting their legitimate use.

[249] With respect to the history of subsection 117.15(2), the Eichenberg Applicants note that the wording was changed by Bill C-68. Previously, the definition of prohibited weapon included a weapon "not being… of a kind commonly used in Canada for hunting or sporting purposes." The Eichenberg Applicants submit that the focus of subsection 117.15(2) following the change of wording was on military type firearms. They submit that the Regulations at issue prohibit firearms that are neither military type nor that would fall into the "loophole" as described by Minister Rock as the reason for the change in wording. They add that many of the now prohibited firearms have been around for over 50 years, yet they were not banned by the 1994 Order in Council that was intended to ban military-style assault weapons.

[250] The Eichenberg Applicants also submit that in assessing the reasonableness of the Governor in Council's opinion the Court should consider how the Government proceeded. They note that rather than amending the *Criminal Code* to identify prohibited firearms, the Government relied on Regulations, failed to pre-publish the Regulations, avoided the notice

requirement of the World Trade Organization [WTO] by relying on a public safety exemption, and asserted Cabinet confidence to shield the considerations that informed the Governor in Council's opinion from any scrutiny.

[251] They submit that the AGC's rationale for the clandestine Regulations is not credible. They suggest that there was no need for the Governor in Council to proceed without notice to the WTO in order to avoid "a run on the market" given that the Government had made previous announcements that it would further prohibit firearms and this did not cause any run on the market.

[252] The Eichenberg Applicants add that the rationale advanced by the Minister of Justice in 1994 for reliance on the regulatory process to prescribe prohibited firearms, which was to permit flexibility and responsiveness, is only theoretical. They note that no regulations were promulgated as a quick response in the past 25 years.

[253] The Eichenberg Applicants submit that if the RIAS is akin to the reasons of the Governor in Council, the RIAS does not support the Governor in Council's opinion. The RIAS sets out broad policy statements, includes inaccurate information and is not the evidence that was before the Governor in Council; it does not show how the Governor in Council reached its opinion. The Eichenberg Applicants submit that, in contrast, the Applicants' evidence shows that the now prohibited firearms were and remain reasonable for hunting and sport shooting.

[254] Several of the Applicants argue that the Amnesty Order is inconsistent with and undermines the Governor in Council's opinion. The Applicants argue that if these same firearms can be used by Indigenous people to respect their section 35 *Constitution Act, 1982* rights, then the Governor in Council cannot hold the opinion that these firearms are not reasonable for use in hunting and sport by others due to their inherent risks.

[255] The Generoux Applicants add that they believe that the Governor in Council did not follow advice provided in 1996 by legislative drafters to Government lawyers indicating that there was no authority to provide an amnesty where firearms are prescribed as not reasonable for hunting and sport. They allege that a memo obtained in response to an access to information request shows that the Government has "fraudulently" acted in contravention of this advice by making the Amnesty Order while at the same time asserting that the firearms are not reasonable for use.

(2) The now-prohibited firearms are reasonable for use in hunting and sport

[256] The Applicants submit that their evidence demonstrates that the now prohibited firearms are reasonable for use in hunting and sport and, therefore, the Governor in Council could not have reasonably reached the opinion that the now prohibited firearms are not reasonable.

[257] The CCFR Applicants point to the extensive evidence from firearm owners and experts about their own use of now prohibited firearms (both named and unnamed variants) and their explanations about why these firearms remain reasonable for hunting and sport.

[258] The CCFR, Eichenberg and Doherty Applicants all rely on the evidence of Mr. DeMille, the Director of the Ontario Federation of Anglers and Hunters (OFAH), who reported on the survey conducted by OFAH. The survey of firearms owners of 64 previously non-restricted firearms found that 82.8% were used for hunting prior to the Regulations and 92% were used for shooting sports. In addition, Mr. DeMille identified several objective criteria to assess whether firearms are reasonable for hunting and sport, including calibre, gauge, shot restrictions, accuracy, recoil, action, round capacity, barrel and choke, and ergonomics. Mr. DeMille concluded that many of the now prohibited firearms have a long history of use in hunting and that many, if not all, of the prohibited firearms remain reasonable for hunting and sport.

[259] The CCFR Applicants dispute that the now prohibited firearms are military or assault weapons, noting that Mr. DeMille explains, among other things, that some firearms, now identified as variants, share cosmetic traits with military firearms, but their functionality differs.

[260] The CCFR Applicants also note the evidence of Mr. Matthew Hipwell, Mr. Singer, and Mr. O'Dell who explain that certain now prohibited firearms do not trace their lineage to any military purpose, for example, the BCL Coyote, SLR Multi and Derya MK-12.

[261] The Doherty Applicants rely on Mr. Bader's evidence regarding the considerations that should determine what constitutes reasonable use for hunting. Mr. Bader identifies safety (to the user), ethical considerations, performance considerations, reliability and durability, and personal considerations, including ergonomics. Applying these considerations, Mr. Bader concludes that all the prohibited firearms are reasonable for hunting and or sport.

[262] The Doherty Applicants also rely on Mr. Bader's evidence, which notes several firearms that, in Mr. Bader's assessment, are not variants; for example, the Derya MK-12 and the Maccabee Defence SLR Multi. Mr. Bader states that these and others are not related to the AR-15.

[263] With respect to reasonableness for sport shooting, the CCFR, Doherty and Eichenberg Applicants rely on the evidence of Mr. Ryan Steacy, Mr. Keith Cunningham, and Ms. Linda Miller, sport shooters who explain that firearms traditionally used in international competitions are now banned. As a result, they will be required to train and compete abroad with firearms that they can no longer possess or use in Canada.

[264] The Applicants note that Mr. Cunningham, a well-known sport shooter, member and former match director of the Dominion of Canada Rifle Association (DCRA) and trainer of police, competitive shooters and hunters, attests that the AR-15 is used in training for DCRA competitions and was previously excluded from prohibitions due to this use.

[265] Mr. Hipwell also disputes the prohibitions on the AR-15. He submits that the AR-15 is suitable for highly regulated target shooting, noting that it has the same shooting capability of many other semi-automatic rifles. He suggests that the AR-15 was not prohibited in 1998 because Parliament recognized its use for target practice and competition and it should not be prohibited now.

C. *The AGC's Submissions*

(1) The Regulations are not *ultra vires* and the Governor in Council's decision is reasonable

[266] The AGC submits that the Governor in Council satisfied the condition in subsection 117.15(2) by forming the opinion that the prescribed firearms were not reasonable for hunting and sport and that the Governor in Council's opinion is reasonable.

[267] The AGC submits that the Applicants have not met their burden to show that the Governor in Council's decision is invalid or unreasonable (*i.e.*, that there is no factual basis). The AGC submits that if there is an interpretation that reconciles the Regulations with the enabling statute, that interpretation should govern (relying on *Katz* at para 25; *West Fraser Mills Ltd v British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para 12; and *Portnov* at paras 19-20).

[268] The AGC submits that the *Criminal Code* definitions in subsection 84(1) and section 117.15 give the Governor in Council broad discretion to pass regulations to prescribe firearms as prohibited or restricted—subject to subsection 117.15(2). The AGC further submits that Parliament envisioned few constraints on what constitutes a reasonable decision pursuant to subsection 117.15(2).

[269] The AGC disputes the Parker Applicants' submission that there was some "bargain" made in 1998 between Parliament and gun owners. Moreover, one Parliament cannot bind future Parliaments.

[270] The AGC submits that, contrary to the Eichenberg Applicants' submission, there was no requirement for pre-publication of the Regulations; the lack of pre-publication has no bearing on the reasonableness of the decision. In addition, there is no requirement for heightened scrutiny of regulations made pursuant to section 117.15. Unlike the *Firearms Act*, the *Criminal Code* does not require regulations to be tabled in Parliament.

[271] The AGC argues that the Governor in Council was entitled to rely on the exception to the WTO agreement regarding notification requirements based on valid public safety concerns, including a possible run on the market by persons buying up firearms before they could be prohibited.

[272] The AGC submits that the reasonableness of the Governor in Council's decision to promulgate the Regulations is supported by the statutory context; the language of section 117.15; the high policy role of the Governor in Council; the rationale set out in the RIAS; the record before the Court; the public safety purpose of the *Criminal Code*; and the Regulations and the Order in Council. The AGC adds that the assessment of reasonableness does not involve assessing the policy to determine if the Regulations will succeed at meeting their objectives.

[273] The AGC submits that the Regulations are consistent with the purpose of the *Criminal Code*, in particular the public safety purpose of gun control laws (*Reference re Firearms Act (Can)*, 2000 SCC 31 at paras 21-22 [*Re Firearms Act*]).

[274] The AGC further submits that the Regulations are consistent with the legislative purpose of section 117.15; the Governor in Council can use the authority granted to prohibit firearms in the interests of public safety based on the Governor in Council's assessment of whether the firearms are reasonable for use in hunting and sport—even if the firearms were previously used for those purposes.

[275] The AGC points to the statements by the Minister of Justice, Kim Campbell, in 1991 explaining that Regulations allow for flexibility that the statute alone does not.

[276] The AGC notes the expansion of the Governor in Council's authority in 1995, with the enactment of subsection 117.15(2) to prohibit firearms based on the Governor in Council's opinion regarding their unreasonableness for hunting and sport. The AGC notes that the wording was changed from "common use" and as a result, firearms that had been in common use for hunting and sport before 1995 could be prohibited if the Governor in Council was not of the opinion that they were "reasonable" for such use.

[277] The AGC also points to the comments of the Minister of Justice, Allan Rock, in 1995 explaining the change of wording from "common use" to close a loophole or tactic that a competition would be set up and firearm owners would then rely on "common use."

[278] The AGC submits that the RIAS is the key document to determine whether the decision is reasonable. The RIAS provides an explanation for the opinion and the evidence shows that there was a reasonable basis for it. The evidence on the record supports that the prescribed firearms pose a risk to public safety.

[279] The AGC relies on the RIAS and the evidence of Mr. Koops and Professor Brown regarding the incidents of mass shootings, the firearms used in mass shootings, including assault-style firearms, the resulting need for the police to increase their firepower, the overall increase in firearm violence, and that the previous restrictions on magazine capacity did not prevent the danger posed by semi-automatic firearms, noting their use in mass shootings and the ability to circumvent the restriction.

[280] The AGC submits that the Governor in Council considered the public safety risks and reached the opinion that the prohibited firearms are not reasonable for hunting or sport shooting given the risks to public safety and that other firearms remain available. The AGC argues that this conclusion is reasonable and is supported by the record.

[281] The AGC submits that to the extent that the Applicants argue that the Governor in Council cannot prohibit firearms that they currently use for hunting and sport, this undermines the clear wording of subsection 117.15(2). The AGC notes that the Applicants focus on what they believe to be reasonable or preferable for their use—which is not the test—and they do not consider the overriding public safety concerns.

[282] The AGC acknowledges that careful gun owners are not responsible for the mass shootings noted, but licensed owners and registered firearms have been responsible for some harmful incidents. Moreover, it is the firearm that is the danger.

[283] The AGC notes that the Applicants' affiant, Professor Mauser, concedes that 9% of homicides in the period 1998-2012 involved legal firearms. Mr. Giltaca also acknowledged that lawful gun owners have committed homicide.

[284] With respect to shooting competitions, the AGC notes that the now prohibited firearms would be used primarily in tactical competitions, and as explained by Mr. Smith, these mimic warfare.

[285] The AGC responds that the Amnesty Order is not inconsistent with the Governor in Council's decision. It is a temporary measure to permit firearm owners to comply with the Regulations. The Amnesty permits limited use during the transition period and responds to immediate concerns about survival (for sustenance hunters). Although the Amnesty permits some use for sustenance hunting, this is not inconsistent with the public safety objective of the Regulations.

(2) The now-prohibited firearms are not reasonable for hunting and sport

[286] The AGC notes that this is not a judicial review of the classification of particular firearms. Regardless, the AGC responds to the Applicants' allegations that various firearms have been unreasonably classified as variants of prohibited firearms.

[287] For example, with respect to the criticism that the Alberta Tactical Modern Hunter should not be a variant, the AGC notes that Mr. Smith explained that while it may not have been traced to a prohibited firearm in 2017, it is a variant of the AR-10, which is now prohibited.

[288] With respect to the Mossberg 715T, the AGC notes that Mr. Smith explained on cross-examination that the firearm was marketed as an AR-15, has AR-15 characteristics, and will accept AR-15 accessories.

[289] The AGC also notes that, although the Applicants state that the Maccabee SLR Multi was built from scratch and does not trace its lineage to a prohibited firearm, Mr. Smith explained that it was built to mimic a now prohibited firearm.

[290] With respect to the Derya MK-10 and MK-12, the AGC submits that, contrary to the Applicants' submission that Mr. Smith could not explain its classification, Mr. Smith stated that he could not provide specific details and would need to review the inspection notes.

D. *The Regulations are not ultra vires* and *the Governor in Council's opinion and decision are reasonable*

[291] The Court finds that the Governor in Council did not exceed the statutory grant of authority delegated by Parliament.

[292] The Governor in Council formed the opinion that the prescribed firearms are not reasonable for hunting or sporting purposes and this opinion is reasonable. The RIAS and other

affidavit evidence supports the reasonableness of the opinion. The Governor in Council's focus on public safety and of prohibiting firearms that have the capacity to inflict significant harm and to permit mass casualties is not inconsistent with the overriding purpose of the Criminal Code or with the specific statutory provision (subsection 117.15(2)), which constrains the Governor in Council's delegated authority.

(1) Judicial Review of Regulations

[293] As noted above, the *Vavilov* principles apply to the judicial review of the Regulations. In *Portnov* and *Innovative Medicines,* the Federal Court of Appeal explained how to apply the many *Vavilov* principles to the review of regulations made by the Governor in Council. The Court has applied the relevant principles, while noting that the jurisprudence sends some mixed messages.

[294] For example, in *Innovative Medicines,* the Federal Court of Appeal states that courts should not lightly interfere with the Governor in Council's decision-making in matters of high policy content. On the other hand, in *Vavilov* the Supreme Court of Canada reminds courts that judicial review must be robust.

[295] *Vavilov* states that reasonableness "takes its colour from the context" (at para 89). *Portnov* states that the context for Governor in Council made Regulations includes that the Governor in Council is "at the apex of the Canadian executive in developing Government policy" (at para 44).

[296] In *Innovative Medicines*, the Federal Court of Appeal explains, at para 39, that there are "good reasons" based on the separation of powers between the judiciary and the executive for courts to not lightly interfere with the Governor in Council's decision-making. The Court adds, at para 39:

> Under *Vavilov*, the broader the regulation-making power in a statute, particularly in matters of policy that are quintessentially the preserve of the executive, the less constrained the regulation-maker will be in enacting the regulation: *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 F.C.R. 374 at para. 28 (applying *Vavilov* and earlier cases consistent with it), aff'd 2022 SCC 30.

[297] While the regulation-making power is "often relatively unconstrained," the limiting statutory language "is key" and a court must focus on "what meanings the language of the regulation-making power can reasonably bear" (*Innovative Medicines* at para 40). However, *Vavilov* instructs that the statutory limits on the decision maker's authority should be applied rigorously.

[298] *Vavilov* also cautions that the decision maker cannot interpret their authority to expand their own powers. On the other hand, the decision maker's interpretation is owed deference, but the decision maker must justify their interpretation.

[299] As noted in *Vavilov* at para 110:

> Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using

> precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. Other language will fall in the middle of this spectrum. All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.
>
> [Emphasis added]

[300] Given that the Federal Court of Appeal has considered how the many *Vavilov* principles may be applied to the review of regulations made by the Governor in Council, their guidance has been followed, as has the fundamental principle set out in *Vavilov*—that the Court must consider whether the decision bears the "hallmarks of reasonableness," which are justification, transparency and intelligibility, and whether the decision is justified in relation to the factual and legal context. In the present case, the context is important, as is the statutory language.

[301] The Court finds that the language chosen by Parliament to describe the Governor in Council's authority in subsection 117.15(2) of the *Criminal Code* is broad and highly qualitative, which signals that the Governor in Council has greater flexibility in interpreting its meaning. The language conveys that in order to prescribe a firearm as prohibited pursuant to subsection 84(1) the Governor in Council must form an opinion that the firearm is not reasonable for use in Canada for hunting or sporting purposes. Or stated in the words of the statutory provision, the

Governor in Council "may not prescribe any thing to be a prohibited firearm […] 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." [Emphasis added]

[302] If this language is not "highly qualitative" it is certainly "qualitative." In this case, although the Applicants argue that a very narrow interpretation should apply, the grant of authority is not narrowly drafted. The question is whether the Governor in Council has justified its interpretation of its grant of authority. The Court finds that it has.

[303] The qualitative language in subsection 117.15(2) gives the Governor in Council discretion to interpret the constraint on its authority more broadly. The issue of the reasonableness of certain firearms for hunting and sport can be looked at from different perspectives, but it is the perspective and opinion of the Governor in Council that counts.

[304] The Court cannot find any fatal flaw in the decision or in the process to reach the decision, to the extent that the process can be gleaned from the Order in Council, the summary provided to justify the reliance on section 39 of the CEA, and the considerations noted in the RIAS, which the Court assumes were among the considerations of the Governor in Council.

(2) The relevant factual and legal context does not include the manner in which the Government proceeded

[305] The manner in which the Government proceeded in promulgating the Regulations is not a relevant consideration to determine the *vires* of the Regulations or the reasonableness of the

Governor in Council's decision. There is no requirement in the *Criminal Code* for regulations to be tabled in advance to the Standing Committee on the Scrutiny of Regulations. The Governor in Council relied on an exception to pre-publication in the Canada Gazette based on public safety considerations. Although the Applicants suggest that pre-publication would have permitted stakeholders to note their concerns and would have avoided the need for later revisions to address glitches, the lack of pre-publication does not impact the determination of the reasonableness of the Governor in Council's decision to make the Regulations. It should not have been a surprise to firearm owners or the public in general that the Government would pursue further restrictions on firearms given the election platforms, references in the Speech from the Throne and the public engagement process. There was no statutory or other requirement to provide advanced notice of the details.

[306] With respect to the Applicants' submissions that the "sweeping" prohibitions should have been the result of an amendment to the *Criminal Code* made by Parliament following debate, the Governor in Council acted within the authority granted to it pursuant to sections 84 and 117.15. As noted below, Parliament intentionally enacted subsection 117.15(2) to delegate to the Governor in Council the authority to prescribe additional firearms as prohibited (*i.e.*, additional to those described in paragraphs 84(1)(a)-(c) and pursuant to paragraph 84(1)(d)).

(3) Parliament has not abdicated its legislative role

[307] In *Re GGPPA* at para 85, the Supreme Court of Canada considered the jurisprudence dating back to 1883 and concluded that "[t]his Court has consistently held that delegation such as

the one at issue in this case is constitutional. Even broad or important powers may be delegated to the executive, so long as the legislature does not abdicate its legislative role."

[308] The Court added, at para 86:

> Indeed, it is common for a statute to "set out the legislature's basic objects and provisions", while "most of the heavy lifting [is] done by regulations, adopted by the executive branch of government under orders-in-council": B. McLachlin, P.C., *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online).

[309] Contrary to the submission of Alberta, Parliament has not abdicated its role in enacting criminal law. Subsection 117.15(2) of the *Criminal Code* gives the Governor in Council the authority to prescribe firearms as prohibited. This authority was granted by Parliament in 1995, but the origins of the wording date back to 1977. The legislative history demonstrates that the Governor in Council has had the authority to prescribe firearms as restricted or prohibited for decades.

[310] As described by Professor Brown, with reference to statements made by Minister Kim Campbell, Parliament clearly turned its mind to delegating the authority to the Governor in Council to prescribe firearms as prohibited, noting that Regulations would permit greater flexibility and responsiveness. The fact that the Regulation making power was not extensively relied on between 1998 and 2020 does not take away from the clear intention of Parliament to grant the Governor in Council this authority and do the "heavy lifting."

[311] The change in wording with respect to prohibited firearms made in 1995 with the enactment of subsection 117.15(2) was intentional. Parliament clearly turned its mind to the authority of the Governor in Council to prescribe firearms as prohibited based on their reasonableness for use in hunting or sport.

[312] As noted by Professor Brown in the description of the legislative history, the provisions granting the Governor in Council the authority to prescribe a restricted weapon initially differed from the authority to prescribe a prohibited weapon. In 1977, the authority to prescribe a prohibited weapon referred to a firearm "of any kind, not being an antique firearm or a firearm of a kind not commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a prohibited weapon." That form of words remained until the amendments made by Bill C-68 enacted subsection 117.15(2) which abandoned the reference to "commonly used" and crafted the Governor in Council's authority in a negative way—that the Governor in Council may not prescribe anything to be a prohibited firearm […] if in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sport purposes.

[313] The Minister of Justice, Allan Rock, explained that the change in the wording from "not commonly used" to "reasonable for use" was made to address a "tactic" whereby a firearm would be brought into Canada and an event would be created for its use in order for it to be considered "commonly used."

[314] Contrary to Alberta's submission, the Governor in Council has not been granted unfettered discretion. The Governor in Council's discretion is governed by the language of subsection 117.15(2) and the reasonable meanings that this qualitative language can bear.

(4) Consistency with the overall purpose of the legislation and the specific statutory provision

[315] As noted, the Applicants argue that the constraint on the Governor in Council's authority must be "given meaning" and that the Regulations must be consistent with both the overriding purpose of the legislation and with the specific statutory provision. The Applicants view the overriding purpose differently than the AGC.

[316] In *Re GGPPA* at para 87 the Supreme Court of Canada stated:

> Any regulation that is made must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object (*Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266 (B.C.S.C.), at p. 292, quoted in *Katz Group*, at para. 24), and it must be "within the scope [of] and subject to the conditions prescribed" by that statute (*Re Gray*, at p. 168).

[317] The enabling statute is the *Criminal Code*, and not Bill C-68 (*An Act Respecting Firearms and Other Weapons*, also referred to by the short title, *The Firearms Act*). As Professor Brown notes, legislation to control the possession and use of firearms did not begin and end with Bill C-68, which enacted the *Firearms Act* and amended the firearm-related provisions of the *Criminal Code*.

[318] The jurisprudence establishes that the purpose of gun control legislation is public safety, which is consistent with the overall purpose of the *Criminal Code*. The specific purpose of subsection 117.15(2) is an issue in dispute, but the jurisprudence supports that public safety is the purpose of all gun control laws.

[319] In *Reference re Firearms Act (Can)*, 2000 SCC 31at paras 21-22, the Supreme Court of Canada considered the purpose of the *Firearms Act* or the "mischief" it aimed to address, noting:

> 21 […] Whether or not one accepts Gabor's conclusions, his study [research commissioned by the Department of Justice] indicates the problem which Parliament sought to address by enacting the legislation: the problem of the misuse of firearms and the threat it poses to public safety.
>
> 22 Finally, there is a strong argument that the purpose of this legislation conforms with the historical public safety focus of all gun control laws. […]

[320] The Parker Applicants allege that a purported "bargain" made at the time of Bill C-68 and, more particularly, by the enactment of subsection 117.15(2) has now been broken. This "bargain" appears to be a theory crafted in hindsight to support the Applicants' arguments that further prohibitions on firearms used for hunting and sport are not reasonable because this does not reflect concessions made between firearm owners opposed to gun control and legislators. Even if there were deliberations and concessions made to firearm owners over 25 years ago at the time of crafting Bill C-68 (and there is no such evidence), the landscape has evolved, Parliament is not bound by previous Parliaments, and Parliament responds to current issues.

[321] The Eichenberg Applicants similarly submit that subsection 117.15(2) was enacted to strike a balance between preventing the criminal misuse of firearms and permitting their legitimate use.

[322] However, the Applicants agree that all firearms can be criminally misused. In addition, the wording of subsection 117.15(2) is not new as it was used with respect to restricted firearms since at least 1969 and the change in wording regarding prohibited firearms signalled a different approach.

[323] Moreover, the current Regulations also seek to strike a balance. Non-prohibited firearms remain available for hunting and sport. Firearms that have certain characteristics that make them inherently dangerous are prohibited to reduce the impact of mass shootings and to enhance public safety. The two sides of the balancing scale have changed. There are many more types of firearms on the market with the characteristics described in the RIAS and public safety has been tragically impacted by the use of such firearms.

(5) The Governor in Council formed the opinion

[324] There is no reason to doubt that the Governor in Council formed the opinion that the firearms listed in the Regulations (by characteristics or by family and their variants) are not reasonable for hunting and sporting purposes. The Order in Council states, “[w]hereas the Governor in Council is not of the opinion that anything prescribed to be a prohibited firearm […] in the Annexed Regulations, is reasonable for use in Canada for hunting and sporting purposes;

Therefore […].” The Order in Council specifically refers to subsections 84(1) and 117.15(2) of the *Criminal Code* as the underlying authority to make the Regulations.

(6) The Governor in Council’s opinion is reasonable

[325] The jurisprudence noted above acknowledges the challenges of judicial review where there are no formal reasons for the decision. As the Applicants note, there is no way to know exactly what information was considered by the Governor in Council in forming its opinion. As in the present case, the deliberations and the documents considered by the Governor in Council will customarily be matters of Cabinet Confidence. However, it is well established that the RIAS is an accepted source of reasons for Governor in Council decision-making resulting in regulations (*Portnov* at para 34; *Innovative Medicines*, at para 48).

[326] Contrary to the Applicants’ submission that even the RIAS does not provide a rationale for the Governor in Council’s decision, the RIAS does explain why the Governor in Council exercised its delegated authority to make the Regulations and to prescribe the firearms described “and any variants or modified versions of them including” those specifically listed. The RIAS provides a rationale that is justified, intelligible and transparent for the Governor in Council’s opinion and decision.

(a) *The RIAS provides the reasons*

[327] The RIAS repeatedly makes the connection between prohibiting certain firearms, described as "assault style" for use by civilians in hunting and sport because of the inherent danger and the threat these firearms pose to public safety.

[328] The RIAS states:

> The Regulations address gun violence and the threat to public safety by assault-style firearms. The Government of Canada recognizes that their inherent deadliness makes them unsuitable for civilian use and a serious threat to public safety given the degree to which they can increase the severity of mass shootings.
>
> [Emphasis added]

[329] The RIAS notes that mass shootings in Canada and elsewhere have commonly involved assault-style firearms.

[330] The RIAS again states:

> Given these events, the growing concern for public safety, the increasing public demand for measures to address gun violence and mass shootings and, in particular, the concern resulting from the inherent deadliness of assault-style firearms that are not suitable for civilian use, these firearms must be prohibited in Canada.
>
> [Emphasis added]

[331] The RIAS elaborates on why assault-style firearms are not suitable and not reasonable for hunting or sport shooting purposes, emphasizing that the significant risks posed to public safety outweigh any justification for their use for hunting and sport. The RIAS states:

> Assault-style firearms are not suitable for hunting or sport shooting purposes given the inherent danger that they pose to public safety. The newly prescribed firearms are primarily designed for military or paramilitary purposes with the capability of injuring, immobilizing or killing humans in large numbers within a short period of time given the basic characteristics they possess, such as a tactical or military design and capability of holding a quickly reloadable large-capacity magazine. While some of these newly prohibited firearms were previously used by individuals for hunting or sporting purposes, it is the view of the Government that those firearms are unreasonable and disproportionate for such purposes. The significant risk that these firearms pose to the public's safety outweighs any justification for their continued use and availability within Canada given that numerous types of firearms remain available for lawful ownership for hunting or sport shooting purposes.
>
> [Emphasis added]

[332] The RIAS reiterates the growing public concern about the risk posed by assault-style firearms and states that the intention of the prohibition is to limit the access to firearms "that are characterized by their design and their capability of inflicting significant harm to Canadians," to reduce the availability of firearms that exceed safe civilian use, and to reduce the possibility of diversion to the illegal market.

[333] The RIAS explains (twice) why the nine principal models (or families) of firearms were prohibited, noting that they: have semi-automatic action with sustained rapid-fire capability and which are able to receive a quickly reloadable, large-capacity magazine (tactical/military design

with large magazine capacity); are of modern design; and are some of the most prevalent firearms within the Canadian market.

[334] The Rationale section of the RIAS reiterates many of the same considerations noted above, including:

- The Regulations address the threat to public safety by assault-style firearms.
- Their inherent deadliness makes them unsuitable for civilian use and a serious threat to public safety given the degree to which they can increase the severity of mass shootings.
- The Regulations respond to public safety concerns that these firearms "are not suitable for civilian use as they can and have been used in mass shootings in Canada and internationally."
- The Regulations reflect the Government's mandate to ban assault-style firearms and reduce the risk of diversion of firearms to the illegal market.
- The prohibited firearms are tactical and/or military-style firearms and are not reasonable for hunting or sport shooting.
- Although some of the now prohibited firearms have been used for hunting or sport shooting, this "does not supersede the fact that they were built with the intent to be used by the military and are capable of killing a large number of people in a short period of time. Due to the public safety concerns posed by these firearms, they are not reasonable for use in Canada for hunting or sport shooting purposes."

[335] The RIAS conveys that the rationale for the Regulations and the decision to prescribe the firearms set out (and variants) and described by characteristics is that because of their inherent dangerousness and their risk to public safety, the firearms are not reasonable for use in hunting or sport. This rationale is transparent, intelligible and justified. This rationale is also linked to the constraints on the Governor in Council's authority in subsection 117.15(2).

[336] There are two sides to every coin. The RIAS does not focus on identifying firearms that are reasonable for hunting and sport, but rather those firearms that are not. The RIAS focusses on the characteristics of firearms that make them not reasonable for use by civilians for hunting and sport—not the characteristics that firearm owners regard as making firearms more effective from their own perspectives. The RIAS clearly explains the emphasis on public safety and the inherent dangers of the prescribed firearms, due to their characteristics and capacity to inflict severe harm, which supports the Governor in Council's conclusion that the firearms are not reasonable for use for hunting and sport.

[337] The evidence of Mr. Koops, although it reiterates the explanation in the RIAS to some extent, also supports the reasonableness of the Governor in Council's decision. He explains that the Governor in Council concluded that the prohibited firearms were not suitable for civilian use because "their potential destructive power enables casualties or property damage at long range."

[338] Mr. Koops noted that the Regulations prohibit the firearms that were used in the mass shootings that occurred at l'École Polytechnique, Dawson College, Moncton, Quebec City and

Nova Scotia. He also noted several examples of firearms used in mass shootings in the US, New Zealand and Australia, that are now prohibited.

[339] Mr. Koops noted the public reaction to these events and the calls for prohibitions on handguns, assault rifles, and semi-automatic firearms. For example, as early as 1994, the Canadian Association of Chiefs of Police advocated for bans on military assault type rifles except for law enforcement and military.

[340] Mr. Koops also noted the concerns of the police due to the risks they face from persons armed with assault type firearms, citing as examples the shootings in Mayerthorpe, Alberta in 2005 and Moncton, New Brunswick in 2014.

[341] Mr. Koops also cited a presentation made by Statistics Canada to the Standing Senate Committee on National Security and Defence in 2019. Statistics Canada reported that firearms related violent crime in 2017 was 42% higher than in the previous four years, whereas the overall police reported crime was only 3% higher. In 2017, there were over 7,700 victims of police-reported violent crime involving firearms. Between 2013 and 2017 the number of shooting homicide victims more than doubled and gang-related firearm homicides almost doubled.

[342] Mr. Koops explained that the Department of Public Safety conducted a national public engagement process from October 2018 to February 2019, which included a questionnaire, written submissions, roundtables and discussions with provinces, territories and Indigenous communities. Mr. Koops noted that the participants were highly polarized in their views. The

Report, “Engagement Summary Report - Reducing Violent Crime: A Dialogue on Handguns and Assault-Style Firearms,” was publicly released in April 2019.

[343] Mr. Koops also noted that stakeholders made submissions to the Standing Committee on Public Safety and National Security in 2019 in its study of Bill C-71 (*An Act to Amend Certain Acts and Regulations in relation to firearms*). He stated that although the submissions varied, concerns about the safety risks of assault-style firearms were raised by several organizations, including the Canadian Association of Chiefs of Police [CACP], Coalition for Gun Control, National Association of Women and the Law, Canadian Paediatric Society, and PolySeSouvient, all calling for bans or restrictions on assault-type firearms.

(b) *“Military” and “Assault-style” are General Descriptions*

[344] The Applicants argue that the RIAS is inaccurate; the now prohibited firearms are not assault-style, were not designed for military purposes given that the military use automatic firearms, and that large-capacity magazines were already prohibited. They argue that if the Governor in Council regards the now prohibited firearms as assault-style or military-style and for these reasons has prescribed them, they got it wrong and the Governor in Council’s decision is unreasonable. As noted in the Applicants’ submissions and evidence of their affiants, they point to several specific firearms that, in their view, do not meet this description.

[345] The Applicants focus on the terms “assault-style” and “military-style” overlooks that these terms are not used in the Regulations (although they acknowledge this). The Regulations refer to firearms by make, model, specific name, and characteristics (and also refer to variants).

The RIAS explains why the nine families and their variants are prohibited citing their characteristics (semi-automatic action, modern design and high volume in the Canadian market). The RIAS uses the generic terms to describe the style or type of firearm prohibited. These terms are also used in research reports and other publications as general descriptors.

[346] In Professor Brown's description of the legislative history, he notes that governments have been incrementally restricting and prohibiting assault-style and military-style deadly firearms for civilian use since the late 1960s.

[347] Professor Brown uses the term "assault-style rifle" in his affidavit, noting that his use of this term refers to semi-automatic, centre-fire rifles that can receive a detachable magazine that originated from a military design. He explains that at various times, these firearms have also been referred to as "paramilitary" rifles, "military-style" rifles, "modern sporting rifles," "black-rifles," "assault weapons," and "assault-rifles." (In other words, there are several descriptors.)

[348] Professor Brown also addresses the criticism noted by some of the Applicants' affiants that firearms were described as assault-style firearms because of their cosmetic appearance. He explains that the appearance is due to the "design following function" and that specific features were designed to provide a specific combat function.

[349] Professor Brown acknowledges that the military use automatic weapons, but notes that assault-style firearms have been used for criminal activity and that the use of semi-automatic firearms (which are the focus of the Regulations) in mass shootings is well documented.

Professor Brown lists incidents in Canada involving semi-automatic firearms from 1962 to 2020. These examples included a few attacks by licensed gun owners and legally purchased guns. Mass shootings involving semi-automatic firearms in the US and other developed nations are also listed.

[350] Mr. Koops also explained that the terms “assault-style firearms” or “assault weapon” are commonly used. He explained that the Government used the terms to avoid other terms that have been specifically defined in other countries.

(c) *Reasonable for hunting or sporting purposes*

[351] Many of the Applicants appear to argue that the prohibited firearms are necessary for their use or more suitable for their use—*i.e.*, more effective for certain types of hunting or sport shooting or certain types of competitions, or more ergonomically suited to them personally, or because they own and often use these firearms. However, this does not determine what is “reasonable” for use in hunting and sport.

[352] Mr. Bader, a gunsmith and RCMP accredited firearms verifier, provided a detailed report addressing several issues and provided his opinion on what constitutes the reasonable use of a firearm for hunting or sport. He noted that there is no general legal definition of reasonable use.

[353] Mr. Bader relied on the dictionary definitions of “reasonable” as “having sound judgment; fair and sensible,” “based on good sense,” “being in accordance with reason,” and “not extreme or excessive.”

[354] Mr. Bader offered his definition of “reasonable use of firearms in the hunting and sporting context” as that of “a sensible hunter or sportsman, exercising good judgment, would put his or her firearm to for the purposes of achieving a specific hunting or sporting objective.”

[355] Mr. Bader explained that his definition of reasonable use includes five components or considerations: safety; ethical; performance (accuracy and repeat shot capability); reliability and durability; and personal (ergonomics and modularity). Of note, with respect to safety, Mr. Bader explained that this consideration is “on the inherent safety of specific firearm designs, rather than safe uses of firearms.” He also acknowledged that any firearm could be used unsafely by someone acting negligently.

[356] Mr. Bader concluded, based on his proposed definition and the considerations he noted, that none of the firearms listed in the Regulations are unreasonable for hunting or sporting use in Canada.

[357] The Court notes that Mr. Bader’s definition focusses only on the perspective of “a sensible hunter or sportsman” and on the achievement of a hunting or sporting objective. If the dictionary definitions relied on by Mr. Bader are applied to the Governor in Council’s opinion to prescribe the now prohibited firearms, the Governor in Council’s decision reflects that same definition; it is “based on good sense,” is “in accordance with reason” and “is not extreme or excessive,” as explained in the RIAS.

[358] Mr. DeMille provided the Report of the OFAH, which he describes as an examination of previously restricted firearms, now prohibited by the Regulations. The Report sets out the firearms that the OFAH regards as reasonable and proportionate for hunting in Canada and concludes that nearly all of the newly prohibited firearms are used for hunting and sport in Canada.

[359] The Court notes that the OFAH Report does not address the issue of reasonableness for such use in the broader context, including the public safety risks.

[360] As noted, the Applicants dispute the prohibition of particular firearms (both named and unnamed variants) as not being military or "assault-style" or as not tracing their lineage to a military firearm; in other words, that these firearms are reasonable for hunting and sporting purposes. However, this judicial review is of the Governor in Council's decision to make the Regulations, not of the classification of each firearm. In any event, the AGC's affiant, Mr. Smith responded to several of the Applicants' specific points to the extent he could without conducting on-the-spot assessments.

[361] Mr. Smith explained, with respect to some variants, that these were similar or "reminiscent" the AR-10 and AR-15 families. He also explained that cosmetic similarities go much deeper (as noted by Professor Brown) and reflect the intention to produce a firearm of one of the target families.

[362] Mr. Smith also responded to Mr. Delve's preference for using his BCL 102 semi-automatic, noting that this firearm is a variant of the AR-15 and that there are alternatives to address Mr. Delve's personal needs.

[363] Regarding the impact of the Regulations on sport shooting and the DCRA competitions, Mr. Smith acknowledged that the service rifle competition is long-standing and connotes the battle rifle that was in the current service of the military at the time of the competition. Mr. Smith explained that the only sport shooting competitions of the DCRA that are affected by the Regulations are the service rifle type competitions and only the civilians using civilian versions of military firearms would be affected. Mr. Smith noted that there are alternatives that can be used.

[364] With respect to the Applicants' objections to the AR-15 being prohibited, Mr. Smith explained that while some of the features of the AR-15 may be useful for sport, this usefulness has little to do with how dangerous the AR-15 is, noting that it inherits its characteristics from the M16, a military firearm.

(d) *Past use of the now-prohibited firearms does not support finding that they are now reasonable for use in hunting or sport*

[365] Many of the Applicants' affiants attest to their use of now prohibited firearms in hunting and sport and the benefits or effectiveness of the firearms. They question why these firearms are now prohibited. As noted above, the RIAS squarely addresses this.

[366] The RIAS acknowledges that the listed firearms may have been used for hunting or sport shooting if previously classified as non-restricted or restricted, but that this does not "supersede" that these firearms are capable of killing a large number of people in a short period of time. The RIAS reiterates that the Government's view (*i.e.*, opinion) is that the newly prohibited firearms are unreasonable and disproportionate for hunting and sporting purposes and that the risk to public safety outweighs any justification for their continued use for such purposes. The RIAS concludes: "Due to the public safety concerns posed by these firearms, they are not reasonable for use in Canada for hunting or sport shooting purposes."

(e) *The Governor in Council did not consider irrelevant factors*

[367] Public safety is not an irrelevant factor. The use of now prohibited firearms in mass shootings in Canada and elsewhere is not an irrelevant factor. Nor is the proliferation of firearms in the market an irrelevant factor. The Applicants' arguments suggest that the only factors that the Governor in Council should consider are the suitability, benefits or effectiveness to hunters and sport shooters—from their perspective alone—of the now prohibited firearms and that the Governor in Council's consideration of other factors is an error.

[368] As noted above, Courts should not lightly interfere with decision-making by the Governor in Council especially when its policy content is high (*Innovative Medicines* at para 39). The Governor in Council is at the "apex of the Canadian executive in developing government policy in many disparate areas …" (*Portnov* at para 44). Given its role, the Governor in Council can and should consider a range of relevant factors in exercising its delegated authority.

(f) *"Not necessary for hunting and sport" is not the test*

[369] The Applicants' contention that the AGC focussed on an incorrect test or irrelevant factor to determine whether the Governor in Council reasonably exercised its delegated authority to make the Regulations, by stating that the prohibited firearms are not necessary for hunting or sporting purposes, is misplaced. The AGC does assert that the now prohibited firearms are not necessary for hunting and sport. Their affiants, Mr. Smith and Mr. Baldwin state that the prohibited firearms are not necessary for any technical aspect of hunting and that other firearms remain available. However, the AGC's submission and evidence does not conflate the notion of "reasonable for use […] for hunting or sporting purposes," which is the statutory language, with necessity for such use. Moreover, the Court acknowledges that this is the statutory language, that the Governor in Council's authority is found in this statutory language, and that the standard of review of the Governor in Council's decision is reasonableness.

[370] The fact that other firearms are available for hunting and sport is one of many factors noted in the RIAS as the rationale for the Regulations, but it is not the determinative factor. The small percentage of the firearms affected by the Regulations (although apparently a large number) suggests that there still remains a large number of firearms on the market and available for hunting and sporting purposes.

[371] Relying on a report by the Parliamentary Budget Officer in June 2021, Mr. Smith stated that the CFP estimated that 100,000 to 110,000 firearm owners (which represents only 5% of the 2.2 million firearm licensees) and 150,000 firearms were affected by the Regulations.

(g) *Reasonableness is a broader concept*

[372] "Reasonable" does not mean "preferable" or "necessary." Reasonableness is a more flexible concept that is informed by various factors that depend on the context. The RIAS notes that the prohibited firearms are not "suitable" for use in hunting or sport, but goes on to explain why the "unsuitable" firearms are also not reasonable for such use. The Applicants' focus is on suitability or effectiveness of now prohibited firearms for particular hunting and sporting activities, without the countervailing concerns about the inherent dangerousness of the same firearms.

[373] While it is true, as the Applicants note, that Parliament could have drafted subsection 117.15(2) in a different way to focus on firearms that are inherently dangerous for civilian use, or that have the capability to cause significant harm to several people, or could have set out criteria for determining what is "reasonable for hunting and sport" to more narrowly circumscribe the Governor in Council's delegated authority, Parliament chose not to do so. Parliament chose its words deliberately, as noted above.

[374] Parliament's delegation of authority to the Governor in Council to prescribe firearms as prohibited—but not those firearms that in the opinion of the Governor in Council are reasonable for use in Canada for hunting or sporting purposes, or stated the other way, to prescribe firearms as prohibited where the Governor in Council is of the opinion that the firearms are not "reasonable for use in Canada for hunting or sporting purposes" —is sufficiently broad to cover the legitimate reasons set out in the RIAS. The delegated authority permits the Governor in

Council to determine that the firearms are not reasonable for civilian use in hunting and sport because of their characteristics which makes these firearms inherently dangerous, as described in the RIAS and as supported by the evidence of their use in mass shootings.

[375] The Applicants argue that the AGC has not provided any evidence that the prohibited firearms are not reasonable based on any objective criteria. However, the RIAS describes the broader criteria or characteristics and addresses why the prohibited firearms are not reasonable. The objective criteria offered by the Applicants' affiants (*e.g.*, Mr. Bader) do not address the other side of the issue of "reasonableness" for hunting and sporting purposes at all. The Applicants view safety as safety to the user of the firearm from design flaws and other such things—not the danger that the firearm can cause to others.

[376] The Applicants provided evidence about the impact of the Regulations to them personally and more broadly, including to the economy and to sport shooting. This impact was not ignored. The RIAS acknowledges and describes the costs, benefits and other impacts on firearm owners and on the economy. All legislation and regulations have impacts. The impact on firearm owners, competitive sport shooters, businesses and the overall economy must be placed in the larger context and the overall goal of the legislation and the Regulations and their intended objective for public safety.

[377] The preferences of the Applicants and other firearm owners and the Applicants' interpretation of the constraint on the delegated authority are not determinative of what is

reasonable for use for hunting and sport. It is the opinion of the Governor in Council—elected members of Parliament and Cabinet Ministers—that counts.

(h) *The Amnesty Order does not undermine the Governor in Council's opinion*

[378] The Amnesty Order does not undermine the reasonableness of the Governor in Council's opinion. The Amnesty is time limited and focussed on the preservation of rights pursuant to section 35 of the *Constitution Act, 1982*.

[379] Without an Amnesty, all firearm owners in possession of firearms prescribed as prohibited would have been at risk of criminal charges as of May 1, 2020. The Amnesty provides a period of time (now extended) to comply with the Regulations.

[380] The Amnesty Order is not the subject of judicial review. The Generoux Applicants' reference to advice provided to Government lawyers in 1996 regarding an amnesty does not—as they allege—show that the Government failed to heed this alleged advice and acted fraudulently. Any advice that may have been provided in 1996 related only to reforms under consideration at that time. An outdated internal memo provided in a different context is not relevant to any issue under consideration in these Applications.

X. Is there an unlawful sub-delegation of authority from the Governor in Council to the SFSS to classify firearms as prohibited?

A. *The Applicants' Submissions*

(1) Only the Governor in Council has the authority to prescribe firearms as prohibited

[381] The Applicants submit that only the Governor in Council has the authority to prescribe firearms as prohibited; sections 84 and 117.15 of the *Criminal Code* govern.

[382] The Applicants acknowledge that named variants listed in the FRT that are set out in the Regulations are based on the authority of the Governor in Council to prescribe them (but only where the Governor in Council is of the opinion that the firearms are not reasonable for hunting and sport and where this opinion is reasonable). They submit that classification decisions regarding unnamed variants made by the SFSS and listed on the FRT that are not set out in the Regulations, and which are relied on by law enforcement, reflect an unlawful sub-delegation of the Governor in Council's authority to enact criminal law.

[383] The Applicants argue that if Parliament intended that the authority to prescribe additional firearms as variants be granted to the SFSS, it would have said so in the legislation.

[384] The Applicants more generally argue that there should be no unnamed variants at all; all variants should be set out in the Regulations based on the Governor in Council forming an opinion that the variants are not reasonable for hunting and sport.

(2) The FRT is a *de facto* regulatory regime

[385] The Doherty Applicants argue that there was never any delegation of authority to the SFSS to classify firearms and to list these on the FRT. They suggest that the establishment of the FRT in 1996 was on Mr. Smith's own initiative, without any mandate from the RCMP. They argue that despite the lack of authority, the FRT has become a *de facto* regulatory scheme.

[386] The Eichenberg Applicants submit that the FRT is a “go-to” resource for law enforcement, used to make decisions about charges and arrests. They note that Mr. Smith stated that the SFSS assigns a “legal classification” to firearms (including as variants) and that law enforcement relies on the FRT to formulate criminal charges.

[387] The CCFR Applicants dispute that the FRT is an internal, informal policy or “indoor management,” as described in *Greater Vancouver Transportation Authority v Canadian Federation of Students—British Columbia Component*, 2009 SCC 31 at para 63ff [*Greater Vancouver*], and relied on by the AGC. They dispute that the FRT is simply an administrative tool to guide law enforcement and is non-binding. They submit that the FRT sets a standard of general application that is relied on by law enforcement and impacts the legal rights and obligations of individuals.

[388] Mr. Hipwell argues that there is no authority for additional or unnamed variants to be prohibited based on the opinion of the SFSS. However, Mr. Hipwell notes that the opinion of the SFSS is just that—an opinion that a firearm is a variant—and this can be challenged in court if the firearm owner is charged with possession of a prohibited firearm. He submits that the Courts will determine if a variant is a prohibited firearm.

(3) The constraints of subsection 117.15(2) should also apply to the SFSS

[389] The CCFR and Eichenberg Applicants alternatively submit that if the SFSS has the authority to classify firearms as prohibited variants, it should be constrained by the same condition as the Governor in Council, *i.e.*, that only firearms that are not reasonable for hunting

and sport can be prohibited as an unnamed variant. They submit that the open-ended reference to variants in the Regulations permits the SFSS to prohibit a range of firearms without regard to whether they are reasonable for hunting or sport.

(4) No criteria to determine a "variant"

[390] The Doherty Applicants submit that there are no criteria to guide how the SFSS determines a firearm to be a variant and that, according to a former SFSS classification officer, the process is "essentially a lottery" due to the lack of a clear definition and objective criteria.

(5) All variants should be named in the Regulations; no unnamed variants

[391] The Doherty Applicants submit that if the Regulations are found to be *intra vires*, the only way to prescribe additional firearms (variants) as prohibited is by amending the Regulations (*i.e.*, an Order in Council) and not by the SFSS identifying unnamed variants and listing them on the FRT.)

[392] The Eichenberg Applicants argue that there is no authority in the *Criminal Code* to prescribe unnamed variants as prohibited firearms, noting that subsection 117.15(2) does not refer to variants at all.

[393] As discussed below, in the context of whether the Regulations infringe section 7 of the *Charter* due to the alleged vagueness of the term "variant," the Applicants again submit that there should be no unnamed variants. They argue that the Regulations' use of the phrase "and

any variants or modified version of them, including […]" followed by a list should be interpreted as an exhaustive list.

(6) Future variants cannot be prescribed as prohibited

[394] The Eichenberg Applicants argue that the authority of the Governor in Council to prescribe firearms as prohibited is limited to firearms that are not reasonable for hunting and sport only at the time the Governor in Council makes the Regulations and not to future firearms. They point to the wording of subsection 84(1), "is prescribed."

[395] They acknowledge that the RIAS states, "The Regulations prohibit approximately 1,500 models of assault-style firearms, including current and future variants," but note that the RIAS is not the law.

[396] The Eichenberg Applicants further submit that the classification of unnamed variants after the May 2020 Regulations results in retroactive application of the law. They submit that the effect is that an unnamed variant identified after the promulgation of the Regulations would have been prohibited as of May 1, 2020 although the firearm owner would have had no knowledge that they possessed a prohibited firearm—and that this cannot be permitted.

B. *The AGC's Submissions*

(1) There is no sub-delegation to the SFSS; the Regulations prohibit variants

[397] The AGC submits that the Governor in Council has the authority to prescribe firearms as prohibited and has acted on this authority. The Regulations prohibit variants—not the SFSS or the FRT. The prohibition against possessing prohibited firearms is based on the *Criminal Code* and the Regulations, regardless of the existence of the FRT.

[398] The AGC submits that the purpose of the FRT is to assist (but not legally bind) law enforcement, judges or other administrative decision makers (*e.g.*, under the *Firearms Act*).

[399] The AGC argues that an interpretive policy or administrative resource is not law (*Greater Vancouver* at paras 63-65). The AGC submits that the Governor in Council prescribes firearms as prohibited, including their variants, and the Governor in Council's decision is implemented by administrative decision makers (*e.g.*, under the *Firearms Act*) assisted by reference to the FRT and by judges in criminal proceedings.

[400] The AGC adds that it is a question of fact whether a firearm is a variant. The AGC submits that while the assessment and opinion of the SFSS and the listing on the FRT may have an impact on the ultimate factual assessment, it has no legal force. The use of the FRT by law enforcement does not mean that the FRT is legally binding.

[401] The AGC notes the disclaimer in the FRT website indicating that the FRT is not a legal instrument.

[402] The AGC reiterates that if the FRT did not exist, firearm owners would face the same risk of legal consequences if their firearm is a variant of a prohibited firearm. The AGC notes that it is up to the courts to interpret the Regulations—*i.e.*, with or without the FRT, the court will determine whether the firearm at issue is a variant.

[403] The AGC points to *R v Henderson*, 2009 ONCJ 363 [*Henderson*] where the Court found that there was no delegation of authority to the RCMP and that listing a firearm on the FRT did not have legal effect. The AGC notes that this case was appealed to the Ontario Superior Court of Justice and subsequently to the Ontario Court of Appeal, which restored the Registrar's decision that the firearm at issue was a variant of a prohibited firearm, but did not overturn the lower court's finding that there was no delegation of authority to the RCMP.

[404] The AGC submits that the "takeaways" from *Henderson* are that: the FRT is not delegated authority; the FRT has no legal effect; the Courts are not bound by the FRT; and that there is guidance from the Ontario Court of Appeal about how to interpret the Regulations and determine whether a firearm is a variant.

(2) Both named and unnamed variants are prohibited

[405] The AGC notes that the Regulations apply to "any variants or modified versions" of the prohibited heads of family. The AGC points to Mr. Smith's evidence explaining that this

inclusion is necessary because the Regulations prescribing prohibited firearms and listing them is quickly out of date due to the addition of new and evolving firearms on the market.

(3) Updates to the FRT since May 2020

[406] The AGC explains that the FRT has been updated since the May 2020 Regulations to include the named variants set out in the Regulations and the firearms that constitute unnamed variants (*i.e.*, variants of now prohibited firearms). The FRT was updated on June 15, 2020, and subsequently to address firearms introduced since that date plus two others based on the Regulations due to their bore diameter and muzzle energy. (According to the AGC, as of June 2020, 1,500 firearms are listed as named variants of the nine families and 180 firearms are listed in the FRT as unnamed variants.)

(4) Criteria for the classification of firearms

[407] The AGC disputes the Applicants' contention that there are no criteria to classify a firearm as a variant and no review process or mechanism to challenge the SFSS's classification of a variant and inclusion on the FRT.

[408] The AGC points to Mr. Smith's evidence regarding how the SFSS makes the technical assessment whether a particular firearm is a variant of a prescribed firearm based on several factors and a peer-review process.

(5) Classification is not immune from review

[409] The AGC disputes the Applicants' contention that the only way to challenge the assessment of a firearm is once a criminal charge is laid, noting that Mr. Smith explained that assessments can be reviewed on request and that the FRT is not "closed."

[410] The AGC also disputes the Doherty Applicant's submission that a letter received by Magnum Machine from the Registrar of Firearms demonstrates the legal consequences of sub-delegation to prohibit unnamed variants and the lack of recourse. The AGC submits that this letter does not indicate that the FRT has affected Magnum Machine's legal rights; the impact arises from the Regulations.

[411] The AGC adds that where the FRT is relied on by an administrative decision maker with legal consequences, that decision may be subject to judicial review. For example, the AGC notes that if the Registrar of Firearms makes a decision affecting the legal rights of a firearm owner, the owner could seek judicial review of that decision.

C. *There is no sub-delegation of the Governor in Council's authority pursuant to subsection 117.15(2)*

(1) The statutory provisions

[412] Subsection 117.15(1) of the *Criminal Code* provides that "the Governor in Council may make regulations prescribing anything that by this Part is to be or may be prescribed." The limit or constraint on the Governor in Council's authority is set out in subsection 117.15(2); "the

Governor in Council may not prescribe any thing to be a prohibited firearm […] 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."

[413] The Order in Council clearly states that the Governor in Council has formed this opinion and makes the Regulations pursuant to the definitions in subsection 84(1) (prohibited firearm) and section 117.15.

[414] As noted, the Regulations prescribe nine families of firearms plus firearms that exceed limits on bore diameter or muzzle energy. The head of the family is described in a similar manner with reference to the name or make and model; *i.e.*, "the firearms of the designs commonly known as [model, make or name] and <u>any variants or modified versions of them, including</u>…" followed by a list of firearms (the named variants) [Emphasis added].

[415] As the Applicants argue and as the AGC agrees, it is only the Governor in Council that has the authority to make the Regulations. The Governor in Council has exercised the authority, which includes prescribing "any variants or modified versions" of the firearms identified as "designs commonly known as [the heads of family]."

[416] The Court agrees with the AGC that "any variants or modified versions" are prohibited in accordance with and due to the Regulations. The source of the prohibition of all variants, named and unnamed, is the Regulations. The Court notes that this form of wording was used in previous regulations [that predate the expansion of the FRT].

[417] An unnamed variant is a prohibited firearm because of the Regulations, not because of its possible listing on the FRT. A variant would be a variant even if the FRT did not exist.

[418] As explained by Mr. Smith, it is not possible for the Regulations to name all variants given that new firearms continue to be designed and manufactured or enter the Canadian market. These firearms would not be captured by the Regulations if the Regulations did not provide for "any variants or modified versions of them."

(2) The FRT is not a *de facto* regulatory regime

[419] The Applicants argue that the FRT is a *de facto* regulatory regime because, according to the Applicants, the FRT is relied on by law enforcement, there are no objective criteria for the SFSS's classification of firearms and listing on the FRT, and there is no review mechanism. All these arguments overlook that variants would be prohibited with or without the SFSS's posting of their assessment on the FRT. In any event, there are criteria to assess firearms, classifications made by the SFSS can be reviewed, and the classification listed on the FRT does not prove that the firearm is prohibited.

[420] The Eichenberg Applicants' suggestion that the RCMP had no authority to create the FRT overlooks that the RCMP, as a national policing organization, can establish its own internal divisions to fulfill its mandate. As noted below, the FRT is a database. The Eichenberg Applicants have not established why some legislative authority would be required in order for the RCMP to establish and maintain a database.

[421] Mr. Smith explained on cross-examination that he co-developed the FRT beginning in 1996 as a collaboration between two branches of the RCMP. From 2000 on, the FRT was located in the CFP. He explained that the first FRT entries were entered by firearm technicians based on a variety of open source information, the majority being publications by firearm manufacturers and distributors.

(3) The FRT is a database and administrative resource

[422] The FRT is a firearms database maintained by the SFSS. It does not reflect the legal classification of a firearm as restricted or prohibited. A listing on the FRT does not constitute proof in criminal or quasi-criminal proceedings regarding the status of a firearm.

[423] Mr. Smith describes the FRT as a database maintained by the SFSS "to assist law enforcement officers, customs officers, and officials responsible for the regulation of firearms with the identification and classification of firearms. It is not intended to legally bind law enforcement, judges or administrative decision makers under the *Criminal Code*, *Firearms Act*, or other relevant statutes. It is intended to be a non-binding administrative tool."

[424] Mr. Smith explains that the FRT lists and describes firearms and reflects the opinion of the SFSS whether the firearm is non-restricted, restricted or prohibited. He notes that assessments are based on the definitions in the *Criminal Code*, the types of firearms set out in the 1998 Regulations, the 2020 Regulations, and the *Firearms Act*.

[425] As noted, Mr. Smith was extensively cross-examined, including about whether the SFSS makes a legal classification or a technical assessment of the firearm. The Doherty and Eichenberg Applicants allege that Mr. Smith's evidence was inconsistent. However, questions were put to him in different ways, and Mr. Smith answered the specific questions. He noted several times that the role of the SFSS is to make technical assessments of firearms and reach an opinion on their classification.

[426] On cross-examination, Mr. Smith reiterated that because the FRT is non-binding, administrative decision makers under the *Firearms Act, Import and Export Permits Act*, and other government users could reach a different opinion on the classification of a firearm, as could firearm businesses and individual firearm owners. He noted that the FRT is an important resource for law enforcement officers to formulate charges, but that it is not the only resource.

[427] On cross-examination, Mr. Smith explained that the SFSS provides training to Crown Attorneys to familiarize them with the FRT and how to use it. He noted that although the SFSS hopes that users regard the FRT as a credible resource, "the use of the FRT database is nonetheless voluntary."

[428] Mr. Smith noted that in his experience, the police and Crown Attorneys use the FRT to assist their decision-making and to present evidence in Court, but clarified that the FRT is only used as an information source.

[429] With respect to how Crown Attorneys establish that a firearm is prohibited, Mr. Smith stated:

> It seems to me Crown [A]ttorneys rely on the services of expert witnesses, from forensic laboratories and elsewhere. They may rely on their own personal information. They may rely on information supplied by the police.
>
> So Crown attorneys, in my experience, collect information from just about anywhere they can get it and from sources which they view as being reliable.

[430] Although the FRT has greatly expanded since 1996, is well known and is relied on to varying extents by law enforcement, firearms businesses and firearms owners, it remains an informational and administrative resource.

[431] The Applicants argued that the AGC selectively cited *Greater Vancouver* in support of the AGC's submission that the FRT is analogous to an internal or administrative policy and does not set out legal rights or obligations. The Applicants relied on other passages to argue that the FRT is "a standard of general application" and therefore, law.

[432] The Court finds that the relevant passages of *Greater Vancouver* support the AGC's characterization. At paras 63-64, the Supreme Court of Canada stated:

> [63] What *Committee for the Commonwealth of Canada* and *Little Sisters* demonstrate is a concern about the administrative nature of the policies and guidelines of the government entities in question. Administrative rules relate to the implementation of laws contained in a statutory scheme and are created for the purpose of administrative efficiency. The key question is thus whether the policies are focussed on "indoor" management. In such a case, they are meant for internal use and are often informal in nature; express statutory authority is not required to make them.

> Such rules or policies act as interpretive aids in the application of a statute or regulation. They cannot in and of themselves be viewed as "law" that prescribes a limit on a *Charter* right. An interpretive guideline or policy is not intended to establish individuals' rights and obligations or to create entitlements. Moreover, such documents are usually accessible only within the government entity and are therefore unhelpful to members of the public who are entitled to know what limits there are on their *Charter* rights. No matter how broadly the word "law" is defined for the purposes of s. 1, a policy that is administrative in nature does not fall within the definition, because it is not intended to be a legal basis for government action.
>
> [64] Where a policy is not administrative in nature, it may be "law" provided that it meets certain requirements. In order to be legislative in nature, the policy must establish a norm or standard of general application that has been enacted by a government entity pursuant to a rule-making authority. A rule-making authority will exist if Parliament or a provincial legislature has delegated power to the government entity for the specific purpose of enacting binding rules of general application which establish the rights and obligations of the individuals to whom they apply (D. C. Holland and J. P. McGowan, Delegated Legislation in Canada (1989), at p. 103). For the purposes of s. 1 of the *Charter*, these rules need not take the form of statutory instruments. So long as the enabling legislation allows the entity to adopt binding rules, and so long as the rules establish rights and obligations of general rather than specific application and are sufficiently accessible and precise, they will qualify as "law" which prescribes a limit on a *Charter* right.

[433] The FRT is best characterized as an "interpretive aid" for the application of the Regulations. It is a guide that is related to the implementation of the law, but as noted above, the law would be implemented regardless of the FRT. The FRT is not intended to, nor does it, establish an individual's rights or obligations.

(4) Courts ultimately determine whether a variant is a prohibited firearm

[434] The Applicants' concerns about facing and defending charges of possession of a prohibited firearm, which they dispute is prohibited or which they may not know to be prohibited, are valid concerns. However, the onus is at all times on the Crown to prove every element of a criminal offence, which would include proving that the firearm at issue is prohibited. As noted by Mr. Smith, the FRT may be a resource for police and Crown Attorneys, but other information would also be relied on. Whether an unnamed variant is a prohibited firearm is a determination that will be made by the Court.

[435] The Applicants dispute the AGC's reliance on *Henderson*; however, *Henderson* demonstrates that this determination can and will be made by the Court.

[436] *Henderson* was an appeal of the Registrar of Firearms' decision to refuse a registration certificate to Mr. Henderson for his Armi Jager AP80, an unnamed variant of the AK-47. The issue was whether the unnamed variant was a prohibited weapon. The Ontario Court of Justice found that despite the listing of the firearm on the FRT, the firearm was not a variant. The Ontario Court of Justice found that there was no delegation of the authority to prescribe firearms as prohibited to the SFSS, the listing of the firearm on the FRT had no legal effect, and that it is for the court to determine whether the firearm is a prohibited variant.

[437] On appeal to the Ontario Superior Court of Justice and then to the Ontario Court of Appeal, the Court of Appeal restored the Registrar's decision (*i.e.*, that the firearm was a

prohibited variant) but did not address (and therefore did not disturb) the lower court's decision that there was no subdelegation of the authority to the SFSS to prescribe firearms as prohibited. The Court of Appeal found that the Ontario Court of Justice had erred by not applying the reasonableness standard of review to the Registrar's decision and the Ontario Superior Court of Justice had erred in not applying the appellate standard of review to the appeal. Regardless of these errors, the Ontario Court of Appeal concluded that the Ontario Court of Justice erred in failing to find that Mr. Henderson's firearm is a prohibited firearm given that the AP80 was identical to the AK-22, which is a named variant of the AK-47. The Ontario Court of Appeal concluded that the AP80 must also be a variant of the AK-47.

[438] The Ontario Court of Appeal noted, at para 46:

> [46] This Order-in-Council prescribes in its Schedule firearms that are prohibited for the purposes of the *Criminal Code*. Section 64 of the Schedule prescribes the AK-47 rifle and "any variant or modified version of it", including the Mitchell AK-22. In other words, the Governor General in Council has declared the AK-22 to be a variant of the AK-47. If, as is clear, the legislative intent is that the AK-22 is a variant of the AK-47, the same must be true of a weapon which is the same as the AK-22, namely, the AP80. The correct interpretation of the Order-in-Council is therefore that the AP80 is a variant of the AK-47. In finding otherwise, the Provincial Court erred in law.

[439] The Eichenberg Applicants relied on *R v Bako*, 2016 SKPC 83, as an example of how the FRT was relied on to support a conviction for the offence of possession of a prohibited firearm, suggesting that the FRT reflects an unlawful subdelegation to the SFSS to prohibit firearms. However, it is clear from the decision that the accused consented to the information from the FRT being admitted to establish that the firearm was a variant of a prohibited firearm. The

decision notes that the Crown must prove, among other things, that the firearm was prohibited at the relevant time.

[440] Mr. Hipwell, an Applicant, acknowledges that the FRT reflects the opinion of the SFSS regarding the classification of a firearm and that it will ultimately be up to a court to determine if the firearm is prohibited, where such charges are laid.

(5) Criteria for classification

[441] Contrary to the Applicants' allegation that there are no criteria to determine whether a firearm is a variant, the AGC's affiant, Mr. Smith was extensively cross-examined on this issue and explained that there is no single checklist, but rather the assessment takes into account many considerations or factors. Each firearm is assessed on a case-by-case basis and the relevant factors are considered.

[442] Mr. Smith responded to the "lottery" allegation arising from a comment by a former SFSS employee. The Court notes that there is no evidence from this former employee on the record, only the allegation put to Mr. Smith on cross-examination. Mr. Smith explained that:

> [the employee] was well known for being dramatic in his statements, so... he's simply pointing out that the determination of variant is something that needs to be applied uniformly and consistently. A lottery is just a dramatic way of saying that. […] I don't disagree with the meaning of his statement. But I would not want to suggest that the determination of classification in the FRT is done through a lottery process.

[443] On cross-examination, Mr. Smith explained that classifying variants is "a process which requires knowledge of firearms and the application of that knowledge to determine the lineage of a firearm and whether or not it is related to another firearm." Mr. Smith emphasized that many factors are considered and that it is the "collective weight of the information that determines whether a firearm is considered to be a variant or not."

[444] Mr. Smith added that when classifying variants, a common physical design or appearance with a prohibited head of family is one factor that may indicate that a firearm is a variant. He noted that this involves more than looking at pictures and may include measurements where these are common for the interchangeability of parts. He noted that cosmetic appearance does not affect the lethality of the firearm. Mr. Smith also noted that common patents and interchangeable parts with a head of family can indicate—but do not determine—whether a firearm is a variant. He stated:

> The important criterion in establishing whether a firearm is a variant or not is the lineage of the firearm, whether it is derived from the original firearm or not. And the fact that some manufacturer who independently designs and manufactures a firearm might take advantage of the vast supply chain of AR platform components as an economy measure or efficiency measure does not make—or does not necessarily make—that firearm a variant.

[445] Mr. Smith noted that if the firearm is marketed as a variant, the SFSS will usually list it as a variant in the FRT. He noted that the advertising material is considered, but is not the only consideration. If not marketed as a variant, the SFSS will consider several things, including the design, in particular the appearance and position of user controls, the manufacturer's description,

patents, interchangeability of parts and the purpose of the firearm. He noted that no single characteristic is definitive.

(6) Quality assurance for classification and listing on the FRT

[446] Mr. Smith also explained that there is a quality assurance system to ensure the accuracy of the information included in the FRT. He noted that all new entries and material changes to existing entries are separately reviewed and confirmed by different SFSS firearms experts before the FRT is updated. He stated that no one person can materially change the FRT entry.

[447] On cross-examination, Mr. Smith elaborated, noting that SFSS technicians make classification determinations on firearms (*i.e.*, whether they were non-restricted, restricted, or prohibited) beginning with one technician making an assessment, a second equally qualified technician reviewing, and if both technicians agree, then the information would be posted on the FRT. He added that if the technical issues are more complex, there is an escalation process where the determination can be reviewed by more senior and more experienced SFSS officers. He further stated that for more complex or new firearms under review, a more senior technician would be tasked with the classification.

[448] When asked about resolving disagreement within the SFSS, Mr. Smith stated that debate is encouraged, but that multiple opinions arose in very few cases.

(7) A review process exists

[449] Mr. Smith also explained that the SFSS's assessment of firearms may be reconsidered where the owner or business makes a request and provides a rationale and supporting material.

[450] On cross-examination, Mr. Smith noted that people have contacted the SFSS and FRT entries had been downgraded in their classification and that in other instances, law enforcement had contacted the SFSS and classifications had been upgraded.

[451] Counsel for Mr. Hipwell noted that he had made such requests for reviews of the classification of firearms to the SFSS with some success.

(8) Prohibition of "future" variants

[452] The Eichenberg Applicants' argument that variants identified after the promulgation of the Regulations result in the retroactive application of the law does not make sense. They submit that such unnamed variants would have actually been prohibited as of May 1, 2020 although the firearm owner would have had no knowledge that they possessed a prohibited firearm- and that this cannot be possible. This argument ignores the wording of the Regulations that prohibits "any variants or modified versions" of prohibited heads of families and the rational for this inclusion- i.e.,, to address variants that are identified, or are designed, manufactured, or enter the market subsequently, but would otherwise avoid prohibition despite being the same or highly similar to prohibited firearms.

[453] On a practical level, no one could be charged for possession of a variant until they actually possessed it. Law enforcement could not enforce prohibitions of firearms before they exist, arrive on the market or are possessed by an individual, or before law enforcement is aware that the firearm is a variant. As for firearms that already existed, but are only later identified as variants, as Mr. Smith noted, many such variants are obvious to the firearm owner. Moreover, it is a basic principle that the criminal law does not operate retroactively.

[454] The Eichenberg Applicants' argument (shared by Alberta) that "future" variants listed on the FRT after May 1, 2020, cannot be prohibited because the Governor in Council could not have formed the requisite opinion about their reasonableness for hunting or sport, is based on a misinterpretation of the Regulations. At the time of the Order in Council, the Governor in Council is of the opinion that the prescribed firearms are not reasonable for use in hunting or sport and the Regulations set out these firearms by make, model, name or head of family. As noted above, the wording of the Regulations is "the firearms of the designs commonly known as [e.g. model, make, name, head of family] and any variants or modified versions of them, including…." The variants subsequently identified are variants of "them"—meaning variants of the firearms that the Governor in Council opines are not reasonable for use for hunting or sport and has prescribed.

[455] The Eichenberg Applicants' other statutory interpretation arguments that focus on the verb tenses used in subsections 84(1) and 117.15(2) of the *Criminal Code* do not support their argument that all variants must be identified at the time of the Regulations. The wording in subsection 117.15(2), "is to be or may be prescribed," does not convey an action in the past or

only at a specific point in time. The Eichenberg Applicants' interpretation would strip away the Governor in Council's authority to prescribe firearms as prohibited, contrary to the clear wording of section 117.15.

[456] As noted, the Applicants more generally argue that there should be no unnamed variants at all, rather all variants should be set out in the Regulations and reflect the opinion of the Governor in Council that these firearms are not reasonable for use in hunting or sport. This argument stems from the Applicants' position that the SFSS cannot prescribe unnamed variants. As the Court has found and explained above, the FRT does not reflect a legal classification of a variant, rather the opinion of the SFSS based on a technical assessment. Variants are prohibited whether the FRT exists or not. Moreover, the Applicants' desired interpretation is contrary to the clear words of the Regulations (and the previous Regulations).

[457] The Applicants' related argument, that the list of named variants is exhaustive is addressed below with respect to section 7 considerations.

XI. Was there a breach of the duty of procedural fairness in the decision of the Governor in Council or in the assessments of firearms made by the SFSS?

A. *The Applicants' Submissions*

[458] The Applicants argue that any sub-delegation of the Governor in Council's authority to prescribe firearms as prohibited to the SFSS requires that the SFSS—as an administrative decision maker—meet the duty of procedural fairness owed to firearm owners.

[459] The CCFR and Eichenberg Applicants argue that the SFSS adds unnamed variants to the FRT without reasons or notice and without any review mechanism, yet their inclusion exposes firearm owners to criminal liability. They argue that reliance on the FRT is a breach of procedural fairness.

[460] The Eichenberg Applicants note that, unlike the process where a firearm owner's registration certificate is revoked by the Registrar or Chief Firearms Officer (CFO) and a challenge can be brought to the provincial courts, there is no way to challenge the classification of their firearm as a prohibited variant due to the Regulations and the resulting nullification of their registration.

B. *The AGC's Submissions*

[461] As noted above, the AGC disputes that the assessment and classification of firearms by the SFSS reflects an unlawful sub-delegation of the Governor in Council's authority. The AGC also disputes that there is a duty of procedural fairness owed by the SFSS to firearm owners.

[462] The AGC notes that the Applicants continue to raise procedural fairness arguments despite that this is not a judicial review of the technical assessments of specific unnamed variants. The AGC explains that the Applicants attempt to seek such a judicial review was refused by Associate Chief Justice Gagné. Instead, the Applicants were permitted to argue that there was an unlawful sub-delegation to the SFSS and they have done so.

[463] The AGC explains that when the Registrar of Firearms revokes a registration certificate, notice and reasons are provided and the decision may be challenged in provincial court. This process does not apply to the Regulations; the Regulations nullified the registration certificates for previously restricted firearms that are now prohibited. Firearm owners were notified of the Regulations and their impact, but this notification did not constitute a revocation decision by the Registrar.

[464] In any event, the AGC submits that the common law duty of fairness does not apply to legislative decisions, to the promulgation of the Regulations or to the SFSS and the listing of variants on the FRT (*Green v Law Society of Manitoba* 2017 SCC 20 at paras 53-56).

[465] The AGC adds that for any decisions made in reliance on the FRT—*e.g.*, where the Registrar notes that a firearm is an unnamed variant and some legal proceedings result—the duty of procedural fairness would arise in that proceeding. In addition, if criminal charges were laid, the duty of procedural fairness and all applicable *Charter* rights and protections would apply.

C. *There was no breach of procedural fairness*

[466] The Applicants seek judicial review of the Regulations, not of specific classifications of firearms set out as variants or unnamed variants. Although the Applicants dispute the classification of many variants, the Applications are about the Regulations. The Court is not conducting a review of the SFSS's assessment and identification of the disputed variants.

[467] The Governor in Council acted in a legislative capacity in promulgating the Regulations. The Governor in Council does not owe a duty of procedural fairness to individual firearm owners who may be affected by the Governor in Council's exercise of its authority to prescribe firearms as prohibited.

[468] In *Green v Law Society of Manitoba*, 2017 SCC 20, at para 54, the Supreme Court of Canada found that the duty of fairness is engaged only with respect to a "decision that affects the "rights, privileges or interests of an individual" by, for example, imposing a suspension, not when it acts in a legislative capacity to make rules of general application in the public interest" [Citations omitted].

[469] There is no duty on the Governor in Council to notify potential stakeholders in advance of the intention to make Regulations (and there was no requirement for pre-publication). In any event, the Applicants' arguments that they had no notice overlooks that the Government repeatedly publicly stated its intention to pursue further restrictions on firearms and that a public engagement process preceded the Regulations.

[470] As noted above, the Court has found that there is no sub-delegation of the Governor in Council's authority to prescribe firearms as prohibited to the SFSS. The SFSS is not exercising any legal authority and it does not owe a duty of procedural fairness to the owners of the firearms that the SFSS may assess and classify.

[471] Moreover, there is a process for a firearm owner to request a review of the classification of a firearm, as explained by Mr. Smith and as acknowledged by Mr. Hipwell, an Applicant. As noted by the AGC, in the event that a firearm owner is charged with an offence or faces other consequences arising from final decisions made by other administrative decision makers, the firearm owner would be afforded all the procedural and *Charter* rights that arise in that context.

XII. Do the Regulations infringe section 7 of the *Charter* as vague, overbroad or arbitrary, and if so, is the infringement justified by section 1?

A. *The Applicants' Submissions*

[472] The Applicants argue that the Regulations, which prohibit "variants" and "modified versions" of firearms and also prohibit firearms based on bore diameter and muzzle energy, infringe section 7 of the *Charter* contrary to the principles of fundamental justice that require the law not to be vague, arbitrary, overly broad, or disproportionate. They submit that the infringements cannot be saved pursuant to section 1.

[473] The Applicants submit that the Regulations expose owners of prohibited firearms to criminal charges, which could lead to detention and incarceration, which engages their liberty interest.

[474] The CCFR Applicants argue that the Regulations also infringe the right of owners of prohibited firearms to security of the person. They point to Mr. Giltaca's evidence asserting that he cannot provide effective security for his own person if he must defend himself.

(1) The term “variant” is vague

[475] The CCFR Applicants argue that the Regulations are impermissibly vague because the “risk zone” for criminal liability is imprecise.

[476] They argue that the inclusion in the Regulations of the terms “variants” and “modified versions” is vague and that the unnamed variants identified by the SFSS and listed on the FRT provide no clarity or “intelligible standard” to a firearm owner. They also note the long-standing concern about the lack of a definition. As noted above, they submit that Mr. Smith’s evidence was inconsistent and that he could not provide a workable definition of “variant,” first stating that it was based on a comparison to the head of family and later stating that there could be variants of variants. They dispute Mr. Smith’s evidence that a variant is often obvious.

[477] The CCFR Applicants submit that firearm owners are in the untenable position of being in possession of prohibited firearms without sufficient certainty whether their firearm is an unnamed variant.

[478] They point to *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4, at para 177 [*Canadian Foundation for Children*], where Justice Arbour (in her dissent, although the principle is not disputed) explained that vague laws violate the principles of fundamental justice because they fail to provide fair warning about the legality of a person’s actions and they increase discretion to law enforcement that may lead to arbitrary enforcement.

[479] They also point to *R v Levkovic*, 2013 SCC 25 at para 1, where the Supreme Court of Canada stated that impermissibly vague laws mock the principles of fundamental justice and "no one may be convicted or punished for an act or omission that is not clearly prohibited by a valid law."

[480] The CCFR Applicants argue that *Henderson*, relied on by the AGC, does not address the issue of the vagueness and that this Court is not precluded from finding that the term "variant" is unconstitutionally vague—or alternatively, reading down "variant" to "named variant."

[481] Mr. Hipwell makes many of the same arguments. He points to the evidence of Mr. Zackary Wittamore, who operates Armalytics (a web application that is described as a way to reliably search the public version of the FRT), noting that as of July 6, 2020, 400 firearms not listed in the Regulations were listed as unnamed variants in the FRT and suggested that this would not be known to many firearm owners.

[482] The Doherty Applicants submit that the vagueness of the Regulations is evident given the confusion among gun owners about whether their firearms are unnamed variants of the now prohibited firearms. They note the many inquiries reported by Mr. Andre Perreault, who operates Gunpost.ca, questioning whether certain firearms were variants of prohibited firearms. The Doherty Applicants submit that there is no accepted definition of variant in the industry and no consensus on its meaning. They prefer Mr. Bader's definition of variant as a firearm that has the same frame or receiver as the parent firearm—a definition that differs from the definition referred to by Mr. Smith.

[483] The Doherty Applicants submit that Mr. Smith's evidence, including his response that many factors are considered, without enumerating these factors, shows that the meaning of a variant is adaptable. They submit that this broad discretion results in *ad hoc* decision-making by the SFSS and arbitrary law enforcement.

[484] The CCFR and Doherty Applicants note that they challenged Mr. Smith on cross-examination about several specific firearms identified as variants. They argue that if Mr. Smith could not clearly indicate the features that resulted in the classification, it would be impossible for gun owners to know whether their firearm is possibly prohibited as an unnamed variant.

(2) The prohibitions on bore diameter and muzzle energy are vague

[485] The CCFR and Doherty Applicants and Mr. Hipwell also argue that the prohibitions based on bore diameter and muzzle energy are impermissibly vague, relying on the evidence of Mr. O'Dell and others who complain of the challenges of measurement. They submit that the average firearm owner could not measure bore diameter and that even experts would have difficulty and would need further clarification about what part of the barrel should be measured and whether the measurement is done with the choke in or out.

[486] The Doherty Applicants also point to the confusion regarding the bore diameter of 10 and 12 gauge shotguns, noting that the Minister of Public Safety stated in a tweet that the Regulations do <u>not</u> prohibit 10 or 12 gauge shotguns and that the bore measurement is after the

chamber but before the choke. However, other information from the Canada Border Service Agency [CBSA] and on the FRT suggests otherwise.

[487] The Doherty Applicants note that Mr. Bader stated that the measurement is from the throat to the muzzle, which accords with the CBSA's approach, but added that the measurement will depend on whether the choke is in or out and that different definitions would lead to different results. Mr. Bader stated that a 10 or 12 gauge shotgun, if measured at its widest point, would exceed the 20mm limit.

[488] The Applicants also allege that there is confusion about which firearms would be prohibited based on their muzzle energy. They argue that this is not a simple calculation, muzzle energy varies, including due to the type of ammunition used, and it can be changed by a firearm owner.

(3) The Regulations set out an exhaustive list of variants

[489] The Applicants submit that the Regulations, which name many variants after the description of the "head of family" should be interpreted as a complete list. They argue that the term "including" does not mean that unnamed variants identified subsequently are also prohibited. In other words, all variants should be named in the Regulations to avoid vagueness and arbitrary enforcement.

[490] They submit that the high number of variants listed in the Regulations supports the interpretation that it is a complete list.

[491] They also argue that the jurisprudence has not clearly decided the meaning of "including," noting that in *Cochrane v Ontario (Attorney General)*, 2008 ONCA 718 at para 51 [*Cochrane*], the Ontario Court of Appeal stated that the term "includes" was susceptible to vagueness.

(4) The Regulations are arbitrary and overbroad

[492] The CCFR Applicants argue that the identification of unnamed variants is arbitrary, the inclusion of an unnamed variant on the FRT is the result of *ad hoc* decision-making by the SFSS, and the reliance by law enforcement on the FRT leads to arbitrary enforcement of the law. They again point to the comment of a former SFSS employee who referred to the identification of variants as a "lottery."

[493] The CCFR Applicants argue that there is no rational connection between the purpose of the Regulations and some of its impacts. They submit that the Regulations are overbroad because the Governor in Council has prohibited thousands of firearms that were previously non-restricted and commonly used and that remain reasonable for hunting and sport. They argue that many named and unnamed variants are not assault- or military-style firearms and that their prohibition will not enhance public safety.

(5) The infringement is not saved by section 1

[494] The Applicants argue that the AGC has not met its burden to show that the infringement of section 7 is demonstrably justified. They submit that the AGC has not produced any evidence of the impact of gun control in Canada.

[495] As described earlier, the CCFR Applicants argue that little or no weight should be given to the evidence of the AGC's three experts because they are not impartial or their opinions are not reliable.

[496] The CCFR Applicants argue that their experts have established that the Regulations will not reduce homicide rates in Canada.

B. *The AGC's Submissions*

[497] The AGC submits that the Regulations do not infringe section 7; there is no violation of the right to security of the person and any violation of the right to liberty is in accordance with the principles of fundamental justice. If any infringement is found, the AGC submits that it is saved by section 1.

(1) The right to security of the person is not infringed

[498] The AGC submits that the jurisprudence has established that self-defence through the use of firearms is not a basis to assert a right to security of the person (*R v Montague*, 2010 ONCA 141 at para 18-20 [*Montague*]).

(2) The right to liberty is engaged, but is in accordance with the principles of fundamental justice

[499] The AGC acknowledges that the right to liberty is engaged by the Regulations because a firearm owner who does not comply with the Regulations at the expiration of the Amnesty could potentially face charges for the possession of a prohibited firearm and the consequences that ensue. The AGC acknowledges that there is a sufficient causal connection between the Regulations and the "rights infringement" on owners of prohibited firearms (*Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 75-76 [*Bedford*]). However, the AGC submits that the potential deprivation of liberty is in accordance with the principles of fundamental justice.

(3) The Regulations are not impermissibly vague

[500] The AGC disputes the Applicants' argument that the prescription of "variants and modified versions of them [the prohibited firearms] including […]" is vague. The AGC submits that the term "variant" has long been used by and understood in the firearms industry, including in publications (*e.g.*, *Jane's Weapons: Infantry*) and that many firearms are marketed as variants.

[501] The AGC acknowledges the ongoing debate about whether the term should be defined and that the Standing Committee on the Scrutiny of Regulations favours a definition. The AGC notes that the Minister of Justice responded to the Standing Committee and explained that a definition would not add clarity to the plain meaning and would produce unintended consequences. For example, Mr. Bader's definition, preferred by the Applicants, would exclude many named variants.

[502] The AGC submits that *Henderson* demonstrates that Courts can and do interpret the term "variant" and determine whether a firearm is a variant.

[503] The AGC submits that the Regulations articulate with sufficient specificity the firearms that are prohibited and the area of risk is "sufficiently delineated" (*Canadian Foundation for Children*, at para 15).

[504] The AGC notes that the full interpretive context must be considered (*Levkovic*, at paras 47-48) and supports the view that the Regulations provide sufficient specificity for firearm owners and firearm businesses to know if the possession of their firearm exposes them to risk of criminal sanction.

[505] The AGC submits that firearm owners can ascertain whether their firearm is a variant of a prohibited firearm in various ways, including by consulting the FRT or relying on other resources.

[506] The AGC notes that firearm owners are expected to know the law and have been provided with ample notice of these Regulations. In addition, persons are expected to refrain from testing the boundaries of the criminal law (*Levkovic*, at para 35).

(4) The Regulations do not set out an exhaustive list of variants

[507] The AGC disputes the Applicants' interpretation of the Regulations that the list of variants of the nine families is an inclusive list (*i.e.*, only named variants). The AGC notes that the Applicants' interpretation is contrary to principles of statutory interpretation (Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 69-70 [*Sullivan on the Construction of Statutes*]) and would be contrary to the Ontario Court of Appeal's decision in *Henderson.*

(5) Prohibitions on bore diameter and muzzle energy are not vague

[508] The AGC submits that the prohibitions based on the characteristics of bore diameter and muzzle energy provide enough guidance about the scope of legal risk (*Canadian Foundation for Children* at para 15).

[509] The AGC notes that the SFSS follows the industry standard to measure bore diameter, as described on the CFP website. The AGC notes that the position of the SFSS is clear; 10 and 12 gauge shotguns do not exceed 20mm in bore diameter.

[510] The AGC notes that firearm owners only need to know the type of ammunition to determine muzzle energy. The AGC adds that muzzle energy greater than 10,000 joules would be found in military and sniper rifles, not in firearms used for hunting or sport in any event. The AGC also disputes the Applicants' contention, based on Mr. O'Dell's evidence, that muzzle energy could easily be converted.

(6) The Regulations are not arbitrary or overbroad

[511] The AGC submits that the Applicants have not established that there is no connection between the Regulations and the purpose of the Regulations (*Bedford* at para 119). The AGC points to the RIAS, which describes several mass shootings and the inherent dangerousness of the prohibited firearms. The prohibition on the firearms is certainly connected to the objective. The AGC notes that the effectiveness of the Regulations is not a factor in the arbitrariness analysis.

[512] The AGC submits that the past use of some of the firearms for hunting and sport or the Applicants' preferences to use these firearms for various reasons does not support an arbitrariness argument. The AGC also submits that the Applicants' argument—that lawful firearm owners are not responsible for gun violence—does not establish arbitrariness or overbreadth. There is evidence that licensed firearm owners have engaged in gun violence. The Applicants also acknowledged that all firearms are inherently dangerous.

[513] The AGC also disputes that the Regulations are overbroad. The AGC notes that prohibitions on firearms can prevent certain acts that lesser measures cannot.

[514] The AGC again notes that there is evidence of lawful firearm owners engaging in gun violence. There is also evidence that lawfully owned firearms are stolen and used in crime.

(7) Any infringement of the *Charter* is justified by section 1

[515] The AGC submits that in the event that the Court finds that the Regulations infringe the *Charter*, any infringement is justified under section 1.

[516] The AGC notes that the Court can consider a range of evidence in the section 1 justification, including social science evidence, academic literature and the experience of other countries. The AGC further submits that the broader impacts of the law on society as a whole are proper considerations under section 1 and that this broader focus can lead to a different conclusion than under section 7 (*Carter v Canada (Attorney General)*, 2015 SCC 5 at para 95 [*Carter*]).

[517] The AGC submits that the Regulations reflect a "complex regulatory response" to address a social problem (*R v Safarzadeh-Markhali*, 2016 SCC 14 at para 57 [*Safarzadeh-Markhali*]). The competing social interests and the protection of the public good must be considered and justify any infringement of the liberty interest.

[518] The AGC argues that the purpose of the Regulations is to stem the threat to public safety posed by gun violence and the severity of its consequences, in particular, by the use of assault-style and other prescribed firearms. The AGC submits that this purpose is pressing and substantial.

[519] The AGC also submits that the rational connection between the objective of responding to the public safety risks posed by gun violence and the prohibition on firearms that can result in significant harm (such as mass shootings) is clear. The AGC points to the RIAS and the research on the impact of bans on various types of firearms in other countries.

[520] The AGC submits that it need only establish that there is some evidence that supports that the Regulations would be effective, noting that the Regulations are part of a broader response to gun violence.

[521] The AGC argues that the Regulations minimally impair any infringement of the liberty interest of firearm owners, noting that the public safety objective cannot be achieved if assault-style firearms are permitted to remain on the market and be used by civilians. The government is not required to pursue less effective options to achieve their objective. The AGC adds that the Regulations impact only a small percentage of firearms in Canada and there are many other firearms available for use in both hunting and sport.

[522] The AGC notes that in considering whether the law is a proportionate means to achieve its objective, perfection is not required and the legislator's approach is owed deference, particularly where the legislator is addressing a complex social problem (*Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at para 78 [*Whatcott*]).

[523] The AGC submits that the benefits of enhancing public safety by prohibiting specific firearms that can inflict significant harm outweigh the deleterious effects on the firearm owners impacted by the Regulations.

C. *The Regulations do not infringe the section 7 right to security of the person. To the extent that the Regulations infringe the section 7 liberty interest, they are not vague, overbroad or arbitrary.*

(1) The section 7 right to security of the person is not engaged

[524] There is no constitutionally protected right to possess and use the now-prohibited firearms for any purpose, including self-defence. In *Montague* at paras 16-21, the Ontario Court of Appeal found, based on the jurisprudence, that there is no constitutionally protected right to possess and use any firearm; this is a privilege.

[525] In *Montague*, the accused argued that he had a constitutional right to possess firearms in his home for self-defence. The Ontario Court of Appeal noted, at para 20, that the firearms legislation at issue did not prohibit the right to possess and use firearms for self-defence, but rather, the legislation regulates the "circumstances under which such possession and use are permissible."

(2) The section 7 liberty interest is engaged

[526] As noted, the AGC agrees that the liberty interest of firearm owners would be engaged if they do not comply with the Regulations at the expiry of the Amnesty period. The issue is

whether the restriction on the firearm owners' rights is in accordance with the principles of fundamental justice.

(3) The Regulations are not impermissibly vague, overbroad or arbitrary

(a) *The Jurisprudence on vagueness*

[527] The Supreme Court of Canada explained what makes a law vague in *R v Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 SCR 606 at pp 626-627, 643 [*Nova Scotia Pharmaceutical*]. The Court noted several considerations and summarized at page 643:

> The doctrine of vagueness can therefore be summed up in this proposition: a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate. This statement of the doctrine best conforms to the dictates of the rule of law in the modern State, and it reflects the prevailing argumentative, adversarial framework for the administration of justice.
>
> [Emphasis added]

[528] In *Canadian Foundation for Children* the Supreme Court of Canada cited its previous decision in *Nova Scotia Pharmaceutical*, and reiterated at para 15:

> [15] A law is unconstitutionally vague if it "does not provide an adequate basis for legal debate" and "analysis"; "does not sufficiently delineate any area of risk"; or "is not intelligible". The law must offer a "grasp to the judiciary": *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, at pp. 639-40. Certainty is not required.
>
> As Gonthier J. pointed out in *Nova Scotia Pharmaceutical*, supra, at pp. 638-39,
>
> > conduct is guided by approximation. The process of approximation sometimes results in quite a narrow

> set of options, sometimes in a broader one. Legal dispositions therefore delineate a risk zone, and cannot hope to do more, unless they are directed at individual instances.
>
> [Emphasis in the original]

[529] In *Levkovic* at paras 10-11, 37 and 47-48, the Supreme Court of Canada again explained vagueness in the context of the criminal law, noting at para 10, "[i]n a criminal context, the impugned provision must afford citizens fair notice of the consequences of their conduct and limit the discretion of those charged with its enforcement."

[530] The Court added, at para 37, "[t]he rule against unconstitutional vagueness is primarily intended to assure the intelligibility of the criminal law to those who are subject to its sanctions and to those who are charged with its enforcement."

[531] *Levkovic* provides guidance about how to determine whether a law is vague, at paras 47-48:

> [47] A court can conclude that a law is unconstitutionally vague only after exhausting its interpretive function. The court "must first develop the full interpretive context surrounding an impugned provision": *Canadian Pacific*, at paras. 47 and 79.
>
> [48] To develop a provision's "full interpretive context," this Court has considered: (i) prior judicial interpretations; (ii) the legislative purpose; (iii) the subject matter and nature of the impugned provision; (iv) societal values; and (v) related legislative provisions: *Canadian Pacific*, at paras. 47 and 87.

(b) *The evidence regarding the term "variant"*

[532] The Applicants' affiants all take the view that there is no clarity or certainty in the term "variant." Mr. Bader noted that there is no legal definition of variant and opined that there is no generally accepted definition. He opined that the term is not widely understood by gun owners. He explained that in the firearms industry, "variant" is understood to be a firearm that has an unmodified frame or receiver of another firearm.

[533] Mr. Perreault stated that the Regulations and subsequent additions to the FRT had created widespread confusion and uncertainty. He also noted the lack of clarity regarding what is a variant. Mr. Perreault stated that since the promulgation of the Regulations, Gunpost.ca had been inundated with inquires from its members asking whether the guns they wished to sell or purchase were variants or modified versions of prohibited firearms.

[534] The AGC's affiant, Mr. Smith, acknowledged that the term "variant" is not defined in legislation but noted that it is not a new concept as it has been in the predecessor regulations since 1992. He also noted that manufacturers use the term in their marketing, and pointed to several examples. On cross-examination, Mr. Smith pointed to three common firearms publications that use the term "variant" but do not define it. In addition, gun literature uses the term, for example, "Shooters Bible Guide to AR-15s."

[535] Like Mr. Bader, Mr. Smith noted that there was no standard industry definition.

[536] Mr. Smith explained that the RCMP relies on the ordinary meaning of "variant." The term generally refers to a firearm with a design derived from an original firearm (head of family).

[537] Mr. Smith noted that the definition proposed by Mr. Bader, would mean that variants of seven of the nine families would only include fully automatic firearms, since the semi-automatic variants explicitly listed in the Regulation do not have the same frame or receiver as the original fully automatic version. He added that fully automatic firearms are already prohibited in Canada. Mr. Smith pointed to *Jane's Weapons: Infantry's* assessment of variants of the AR-15, and the CCFR's policy on magazine restrictions as acknowledging AR-15 variants. He noted that Mr. Bader's definition would exclude some named variants.

[538] On cross-examination, Mr. Smith explained that a variant is a firearm whose design was derived from a parent of the nine families; however, he clarified that he is not proposing this as a definition. He reiterated that the working definition of variant used by the CFP and SFSS is the dictionary meaning. He noted that the Oxford Dictionary definition of variant used by the CFP and SFSS is "[a] form or version of something that differs in some respect from other forms of the same thing or from a standard." Mr. Smith noted that the dictionary definition is not the sole factor relied on by the CFP in the classification of variants.

[539] Mr. Smith stated that classifying variants is "a process which requires knowledge of firearms and the application of that knowledge to determine the lineage of a firearm and whether

or not it is related to another firearm." He stated that this assessment is based on information and logic.

[540] Mr. Smith explained how firearm owners can ascertain whether their firearm is a variant. When asked about the best way for a firearm owner to identify whether they have an unnamed variant, Mr. Smith noted that most variants in circulation are "obvious to everyone as variants," noting that owners typically purchase a firearm because it is a variant (e.g., of the AR platform). He explained that "for the vast majority of these firearms and their variants, the lineage, history, and relationship of these firearms to the original firearm is well-known" and "straightforward."

[541] Mr. Smith added that for the small percentage of firearms that are not "obvious and self-evident" variants, firearm owners could contact the CFP via phone or email, the local Chief Firearms Officer, firearm retailers or other resources.

[542] Mr. Smith noted that firearm owners do contact the CFP to inquire about the classification of their firearms. He stated that for the first six months of 2021, 1,568 phone inquiries were made (averaging 224 per month) and 4,111 email inquiries (averaging 587 per month) were received.

(c) *"Variant" as used in the Regulations provides an intelligible standard*

[543] The Applicants' affiants all express the view that the term "variant" is not sufficiently understood to delineate an area of risk or to permit a firearm owner to ascertain the classification of their firearm (*i.e.*, whether it is a variant of a prohibited firearm). However, the Court does not

agree that the evidence establishes that the term “variant” as used in the Regulations is impermissibly vague.

[544] The Applicants' contention that there is no intelligible standard to determine a variant is countered by the evidence of Mr. Smith who explained the several considerations that inform the opinion of the SFSS. While the Applicants may prefer a narrower approach and a legislated definition, the definition they propose would exclude existing named variants.

[545] The jurisprudence regarding vagueness notes that certainty is not required; the issue is whether the law is intelligible or sufficiently delineates an area of risk.

[546] The use of the term “variant” remains contentious, but it is far from impossible to know or to find out whether a firearm is a variant. Although it may not be obvious in some cases, it is not unknowable—as the Applicants contend. There is a common meaning to the term “variant” and Mr. Smith noted the dictionary definitions that are considered by the SFSS, along with other considerations in classifying a variant. The term “variant” has been in the legislation for at least thirty years. The limited jurisprudence regarding its meaning suggests that the common sense and common understanding have been workable. The term is also used in the firearms industry and in publications, despite that the Applicants (and Mr. Smith) state that there is no consensus in the industry on a definition in this context.

[547] The named variants set out in the Regulations do not raise vagueness concerns. The *Criminal Code* and the Regulations are accessible and clear. The Regulations were

communicated directly to registered firearm owners and more broadly. Firearm owners and businesses are expected to know the law. In addition, the Applicants have repeatedly noted that they are "over-regulated" but emphasize that they are law abiding.

[548] With respect to unnamed variants, the evidence does not support finding that the standard is unintelligible or that the area of risk is not sufficiently delineated. Absolute certainty is not required.

[549] Mr. Smith explained that many variants are obvious and manufacturers use the term in marketing. He also explained how a firearm owner could determine whether they possessed a variant, including by contacting or emailing the CFP call centre, or the retailer or manufacturer of the firearm. In addition, the reference to the head of family and the list of firearms specifically named as variants would provide guidance to inform an owner whether their firearm is an unnamed variant.

[550] Firearm owners, if in doubt, could turn to a range of resources for guidance, including the FRT. The existence of the FRT assists firearm owners to know if their firearm is—in the opinion of the SFSS—a variant of a prohibited firearm. As noted above, the FRT is accessible in PDF form and online for firearm businesses. Although the Applicants' affiants commented that it is difficult to navigate due to its volume, there is no suggestion that it is inaccessible as a resource.

[551] The Applicants' affiant, Mr. Perreault, noted the inquiries made to Gunpost.ca, which demonstrate that firearm owners do inquire about whether their firearm is prohibited. Mr. Smith also provided statistics on the inquiries made to the CFP.

[552] The solution to the concerns of firearm owners about unnamed variants is not to limit the Regulations to only named variants. If all variants were named in the Regulations, every new variant would escape inclusion as prohibited until the Regulations were amended. While the Regulations could be amended more frequently, as this appears to have been contemplated by Parliament, there would still be a gap given that many new firearms may enter the market well before the Regulations could be updated.

(d) *"Firearms of the design…. and any variants or modified versions of them including… [list]" is not an exhaustive list*

[553] The Applicants' argument that the Courts have not definitively interpreted the term "including" is based on an interpretation of *Cochrane* at para 51, that focusses on words isolated from the broader context. In *Cochrane*, the Ontario Court of Appeal did not find that the term "includes" was always susceptible to vagueness, as the Applicants suggest. The Ontario Court of Appeal first noted, at para 51, that "[t]he test for vagueness is unintelligibility, not redundancy, and the inclusion of repetitive language does not render the definition constitutionally infirm." With respect to the term "includes," the Court of Appeal stated, "[t]o the extent the word "includes" is susceptible of importing an unacceptably vague definition, giving it narrow import as exhausting the definition is preferable to striking it down."

[554] The Regulations use of the term “including” in the context of “variants or modified versions of them including […],” is not susceptible of importing an unacceptably vague definition. The wording, read in context, is intelligible, and intelligibility is the test.

[555] Moreover, the term “includes” or “including” is generally interpreted as non-exhaustive. As the AGC noted, in *R v McColman*, 2023 SCC 8 at para 38, the Supreme Court of Canada SCC relied on the oft cited *Sullivan on the Construction of Statutes:*

> Exhaustive definitions are generally introduced using the verb “means,” while non-exhaustive definitions are introduced with the verb “includes”: (Sullivan at pp 69-70)
>
> (See also *Canada (Attorney General) v Igloo Vikski*, 2016 SCC 38 at para 50; *United Taxi Drivers’ Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 at para 14.)

[556] The Court finds that this explanation of “includes” accords with the common understanding of the term—that a list is not exhaustive. In the overall context, the use of the term “including” in the Regulations conveys that other variants could be identified that are not listed and would also be prohibited.

[557] If the Governor in Council had intended to prescribe as prohibited only the firearms named in the Regulations, different words would have been used. The current wording has been used in the Regulations since 1992.

[558] Contrary to the Applicants' submission, the length of the list of named variants of some heads of family is not an indicator that the list is exhaustive; there is no authority for such a proposition.

[559] As noted, if the list were interpreted as exhaustive, it would strip the notion of variants from the Regulations as all prohibited firearms would be listed and any new firearms, ostensibly the same, entering the market would not be captured until the Regulations were next amended.

(e) *Prohibitions on Bore diameter and muzzle energy are not vague*

[560] The Applicants' affiant, Mr. O'Dell, stated that the concept of bore diameter is not understood by most civilians and is not easily measured as it requires the use of precision instruments and skill. He explained that bore diameter can vary even within the same type of firearm.

[561] Mr. O'Dell opined that it is nearly impossible for a firearms owner to know whether their 10 or 12 gauge shotgun has a bore diameter over 20mm. He stated that whether a firearm will fall within the prohibition based on bore diameter will depend on where and how the bore diameter is measured.

[562] Mr. Bader also noted the complexity of measuring bore diameter and noted that the average firearm owner would not have access to the precision tools required.

[563] Mr. Bader's view is that most—if not all—10 and 12 gauge shotguns are now prohibited because the chamber diameter exceeds 20mm.

[564] Mr. Perreault also stated that bore measurement requires specialized tools and skills. He added that bore diameter can vary, including due to the use of chokes and stated that there was no guidance whether the bore is measured with or without the choke.

[565] Mr. Smith disputed the Applicants' affiants' opinions that bore diameter is complicated or confusing to measure.

[566] Mr. Smith noted that the CFP measures the bore in accordance with the Association of Firearm and Tool Mark Examiners' definition for bore diameter (the interior dimensions of the barrel forward of the chamber but before the choke). He noted that this definition is on a notice posted on the CFP website. Mr. Smith acknowledged that the glossary on the FRT may give the reader an indication that the choke is part of the bore, but the glossary is not determinative. The CFP website explains how bore is measured and this is the approach taken by the SFSS.

[567] Mr. Smith stated that Mr. Bader and O'Dell's assumptions that the 20mm limit applies at every point along the bore is incorrect based on the historical definition of bore diameter.

[568] On cross-examination, Mr. Smith stated that he understands the bore of a firearm to mean the interior surface of the barrel exclusive of the chamber, the forcing cone, the choke, and other features. (In other words, the CFP does not consider the choke to be part of the bore.)

[569] Mr. Smith explained how the bore measurement can be determined and that the larger the gauge of a shotgun, the smaller the bore. He explained that the gauge is linked to bore (as explained in the Canadian Firearm Safety Course). He noted that any gauge less than 10 will have a nominal bore diameter larger than 20mm. Mr. Smith stated that for shotguns, a firearm owner need only look at the data stamp to know the gauge.

[570] Mr. Smith explained that for rifles, the bore diameter is based on the calibre. He noted that a firearm will usually be stamped with the calibre, but in the exceptional case where it is not stamped, a firearm owner would need assistance to determine or measure the bore, which could be obtained from other sources, such as the manufacturer's website, the vendor, a gunsmith, or the CFP.

[571] Mr. Smith explained that firearms of all types used for hunting will have a bore diameter of less than 20mm. Calibres of 20mm or greater are almost exclusively for military use.

[572] With respect to the prohibition on firearms based on muzzle energy, Mr. O'Dell, Mr. Bader, and Mr. Perreault noted that to calculate the muzzle energy it is necessary to know both the mass of the projectile and the velocity at which it leaves the muzzle. They explained that both variables are difficult to calculate, and several factors, including temperature, humidity and elevation affect the calculations.

[573] Mr. Smith responded that firearm owners could determine the muzzle energy of ammunition, including from manufacturers' websites or other firearms' websites.

[574] Mr. Smith also explained that he was not aware of any calibre close to the 10,000-joule limit that could become capable of producing a muzzle energy of over 10,000 joules due to the variables noted by Mr. O'Dell (for example, temperature). He stated that any variations would be very small.

[575] On cross-examination, Mr. Smith explained that some military weapons exceed 10,000 joules of muzzle energy, as do a few hunting rifles for large African game, like elephants and rhinoceroses. He noted that such energy is not required for hunting in Canada.

[576] The Court finds that the prohibitions on bore diameter and muzzle energy are not vague; the prohibitions are intelligible and provide sufficient guidance for legal debate (*Nova Scotia Pharmaceutical*) and fair notice.

[577] The Court is also not persuaded that firearm owners do not know or would not inquire about the bore diameter or muzzle energy of their firearm. If they were unaware, they could ascertain these characteristics in several ways.

[578] The Applicants focussed extensively on the issue of the whether the bore is measured with the choke in or out and the confusion arising from a tweet by the Minister of Public Safety regarding 10 and 12 gauge shotguns.

[579] The CFP's definition of bore diameter is consistent with that of the Association of Firearms and Tool Mark Examiners—to measure forward of the chamber but before the choke.

Mr. Smith explained that this definition is used by the CFP, which is the same definition noted by Mr. Bader. He explained that the definition in the glossary of the FRT was not used. Mr. Smith addressed whether 10 and 12 gauge shotguns would be prohibited, noting that a firearm with a bore greater than 20mm would not be used for hunting in any event.

[580] With respect to muzzle energy, the prohibition is not unintelligible as muzzle energy can be determined. The evidence suggests that this prohibition would not impact firearms used for hunting and sport in Canada in any event. In addition, muzzle energy could not be changed without significant effort and time.

[581] Mr. Smith responded to Mr. O'Dell's contention that several factors impact muzzle energy. In his view, the impact of any variables would be very small. In addition, contrary to Mr. O'Dell's opinion, the conversion to a capability of muzzle energy exceeding 10,000 joules would require much more than a few hours of work and would not be easy, which is the applicable standard. As the AGC noted, in *R v Hasselwander*, 1993 CanLII 90 (SCC), [1993] 2 SCR 398 at 416 the Supreme Court of Canada considered the meaning of "capable" and found that "it should mean capable of conversion to an automatic weapon in a relatively short period of time with relative ease." The evidence suggests that the conversion of muzzle energy would not fall within this standard.

(f) *The Regulations are not overbroad*

[582] In *Bedford* at para 125, the Supreme Court of Canada explained arbitrariness, overbreadth and disproportionality, noting that all compare the rights infringement with the objective or

purpose of the law, the analysis is qualitative, not quantitative, and that "a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach of s. 7."

[583] In *R v Ndhlovu*, 2022 SCC 38, at para 77, the Supreme Court of Canada explained:

> A law is overbroad when it is so broad in scope that it includes some conduct that bears no relation to its purpose, making it arbitrary in part (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 112). In other words, overbreadth addresses the situation where there is no rational connection between the purpose of the law and some, but not all, of its impacts (para. 112).

[584] The Regulations' use of the phrase "variants and other modified versions of them including […]" is not so broad as to include conduct that bears no relation to the purpose of the Regulations in restricting the possession of the prescribed firearms in order to stem the severe harm that could ensue from their use, including mass shootings, and more generally to better protect public safety (as described in the RIAS).

[585] The RIAS and the evidence of Mr. Koops describes several mass shootings involving firearms now prohibited or of the type now prohibited and describes the inherent dangerousness of the prohibited firearms. The prohibition on these types of firearms is rationally connected to the objective of the Regulations.

[586] As noted by AGC, there is some evidence that licensed firearm owners have engaged in gun violence. Mr. Giltaca, the Applicants' affiant, agreed on cross-examination that lawful

firearm owners had committed violent crimes. The Applicants also acknowledged that all firearms are inherently dangerous.

[587] The Applicants' contention that there is already enough regulation, that they are law abiding and careful, and that some of the now prohibited firearms are not assault-style or military-style firearms, does not establish that the Regulations are overbroad. The Regulations target the firearms because the firearms are capable of causing significant harm, regardless of who owns them.

(g) *The Regulations are not arbitrary*

[588] In *AGC Canada v Bedford*, 2013 SCC 72 [*Bedford*], the Supreme Court of Canada explained arbitrariness at para 111:

> [111] Arbitrariness asks whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on life, liberty, or security of the person (Stewart, at p. 136). A law that imposes limits on these interests in a way that bears *no connection* to its objective arbitrarily impinges on those interests. Thus, in *Chaoulli*, the law was arbitrary because the prohibition of private health insurance was held to be unrelated to the objective of protecting the public health system.
>
> [Emphasis added]

[589] The Applicants assert that the lack of a definition, or an uncertain definition of variant, leads to *ad hoc* decision-making and arbitrary law enforcement. However, the Court has found that the term "variant" in the Regulations is not impermissibly vague. In addition, the listing of a

variant on the FRT reflects the opinion of the SFSS. The determination of whether a firearm is a prohibited variant is for the court to make, in the event that a person is charged. Various factors inform whether charges will be pursued.

[590] There is a rational connection between the goal of the Regulations and the limit on the firearm owners' liberty interest. The same reasons as stated regarding overbreadth apply to the issue of arbitrariness.

(4) Any infringement of section 7 is a reasonable limit pursuant to section 1

[591] Alternatively, in the event that the Court is wrong in finding that the Regulations do not infringe section 7 (*i.e.*, that the Regulations may infringe the liberty interest of firearm owners in a manner that is not in in accordance with the principles of fundamental justice), the Court finds that any such infringement is justified as a reasonable limit on that right pursuant to section 1

[592] In *Bedford*, the Supreme Court of Canada explained, at para 126, how section 7 and section 1 work differently, noting:

> [126] As a consequence of the different questions they address, s. 7 and s. 1 work in different ways. Under s. 1, the government bears the burden of showing that a law that breaches an individual's rights can be justified in having regard to the government's goal. Because the question is whether the broader public interest justifies the infringement of individual rights, the law's goal must be pressing and substantial. The "rational connection" branch of the s. 1 analysis asks whether the law was a rational means for the legislature to pursue its objective. "Minimal impairment" asks whether the legislature could have designed a law that infringes rights to a lesser extent; it considers the legislature's reasonable alternatives. At the final stage of the s. 1 analysis, the court is required to weigh the negative impact of the law on people's rights

> against the beneficial impact of the law in terms of achieving its goal for the greater public good. The impacts are judged both qualitatively and quantitatively. Unlike individual claimants, the Crown is well placed to call the social science and expert evidence required to justify the law's impact in terms of society as a whole.

[593] The Supreme Court of Canada reiterated the same analysis in *Carter*, at para 94:

> [94] In order to justify the infringement of the appellants' s. 7 rights under s. 1 of the *Charter*, Canada must show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the right in question; and (3) there is proportionality between the deleterious and salutary effects of the law: *R. v. Oakes*, [1986] 1 S.C.R. 103.

[594] The Supreme Court of Canada has cautioned that it is difficult to justify an infringement of section 7—but not impossible.

[595] In *Carter*, the Court stated, at para 95:

> [95] It is difficult to justify a s. 7 violation: see *Motor Vehicle Reference*, at p. 518; *G. (J.)*, at para. 99. The rights protected by s. 7 are fundamental, and "not easily overridden by competing social interests" (*Charkaoui*, at para. 66). And it is hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed (*Bedford*, at para. 96). However, in some situations the state may be able to show that the public good — a matter not considered under s. 7, which looks only at the impact on the rights claimants — justifies depriving an individual of life, liberty or security of the person under s. 1 of the *Charter*. More particularly, in cases such as this where the competing societal interests are themselves protected under the *Charter*, a restriction on s. 7 rights may in the end be found to be proportionate to its objective.

[596] The Court reiterated this in *Safarzadeh-Markhali*, citing *Carter* and adding, at para 57, that a law may be saved if there are "public goods or competing social interests that are themselves protected by the *Charter*" and that "[c]ourts may accord deference to legislatures under s. 1 for breaches of s. 7 where, for example, the law represents a "complex regulatory response" to a social problem: *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 SCR 567, at para. 37."

(a) *The Goal or objective of the Regulations is pressing and substantial*

[597] The objective of the Regulations is described in the RIAS, which has been referred to extensively above at paragraphs 62-83. In brief, the Regulations prescribe firearms that are not reasonable for use in Canada for hunting and sporting purposes because of the firearms characteristics and capability to cause significant harm, including harm to many people in a short period of time. The RIAS and the evidence of Mr. Koops and Professor Brown notes the mass shootings that have involved the use of the type of firearm now prohibited.

[598] In addition to the information provided in the RIAS regarding mass shootings, and Professor Brown's evidence which included a chronology of the mass shootings in Canada and abroad, with reference to some of the types of firearms used, Mr. Koops cites a presentation made by Statistics Canada to the Standing Senate Committee on National Security and Defence in 2019, that establishes an increase in firearm-related violence in Canada. The evidence supports that firearm-related violence including mass shootings is a significant public safety issue.

[599] The evidence of Mr. Koops also notes the calls for further reform and the Government's commitment to pursue measures to enhance public safety.

(b) *The means chosen are proportional to the objective*

[600] In *Whatcott,* the Supreme Court of Canada explained that proportionality does not demand perfection, stating at para 78:

> [78] It is next necessary to consider whether s. 14(1) (b) of the *Code* is proportionate to its objective. Here perfection is not required. Rather the legislature's chosen approach must be accorded considerable deference. As McLachlin C.J. explained in *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610 ("*JTI*"), at para. 41, "[e]ffective answers to complex social problems . . . may not be simple or evident. There may be room for debate about what will work and what will not, and the outcome may not be scientifically measurable." We must ask whether Parliament has chosen one of several reasonable alternatives: *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, at pp. 781-83; *Irwin Toy*, at p. 989; *JTI*, at para. 43.

(c) *Rational connection*

(i) The evidence

[601] The Applicants' affiant, Dr. Caillin Langmann is an emergency physician. He has studied the causes of and possible ways to mitigate and reduce firearms violence in Canada.

[602] Dr. Langmann opines that there is no reliable evidence to support the objective of the Regulations that prohibiting certain firearms will reduce the frequency or severity of mass shootings. Based on his own research on mass homicides that found no relation between firearm

legislation and mass homicide events in Canada from 1974 to 2010, Dr. Langmann opines that Canadian legislation to regulate and control firearm possession and acquisition does not have a corresponding effect on homicide and suicide rates. He notes that there are several factors associated with homicide and suicide rates, none of which are related to whether the firearm is legally accessible. He adds that firearm regulations do not appear to be a bar to a person obtaining a firearm and committing a crime.

[603] Dr. Langmann also points to the experience of Australia with respect to buy-back programs and the United States with respect to bans on assault-style weapons. He concludes that these measures have not had any large effects on homicide rates and victimization.

[604] Dr. Langmann is critical of Professor Chapman's research for several reasons, including that the data is not statistically significant and the authors he cites used their own characteristics to define mass shootings as five or more deaths, rather than three or more deaths.

[605] Professor Mauser, a criminologist, also opines that public safety and violent firearm crime will not be affected by the Regulations. He provides his statistical analyses in support. Among other things, Professor Mauser notes that gun crime is less than one half of all police-reported crime and guns are involved in only 3% of violent crime.

[606] Professor Mauser attributes gun crime to gang crime, pointing to statistics that indicate that 47% of gun crime is gang related and 87% of gang crime is gun related. He adds that most guns used in homicides are illegally possessed.

[607] Professor Mauser states that there is no statistical evidence that the firearms subject to the Regulations or long guns of any kind are “disproportionately” used in criminal offences. Professor Mauser states that licensed owners of legally owned guns do not pose a risk to public safety. He points to data from Statistics Canada (2016) that firearms licence holders are less likely to commit murder than are other Canadians.

[608] The AGC’s affiant, Professor Chapman, provides information on Australia’s firearms measures and the related social changes and health outcomes. He notes that in the two decades following Australia’s firearm law reform there had been no firearm-related homicides where five or more persons died (excluding the perpetrators). He compared this to the 18 years before the law reform, where 13 such homicides occurred.

[609] With respect to Dr. Langmann’s criticism that Professor Chapman used a different definition of “mass shooting,” Professor Chapman explained that there was no standard definition when he released his first study (on the first decade), and that he maintained the same definition (five or more) that he had previously used in his subsequent study (on the first two decades) despite that the more commonly held notion of a mass shooting had changed to include four or more victims. He clarified that if he had adopted the four or more definition, his finding of no firearm-related homicides would change to one firearm-related homicide in the first two decades following the law reform.

[610] Professor Chapman added that the US Federal Bureau of Investigation (FBI) has never used three or more deaths as the definition. Professor Chapman noted that Dr. Langmann had not

properly adhered to the three or more definition in his own research as he had included the perpetrator in one incident, referred to another that was not caused by firearms and another incident where a death was accidentally caused by a police officer.

[611] Professor Chapman noted that an incidental finding to his research is that the declining rate of deaths from firearm-related homicide and suicide declined more quickly following the law reform.

[612] Professor Chapman responded to Dr. Langmann's criticism of the studies published in the Journal of the American Medical Association. Professor Chapman agreed that a ban on handguns or assault-style rifles may not reduce death from mass shootings enough to reduce overall firearm-related deaths in Canada, noting that in Australia deaths from mass shootings only accounted for 0.71% of intentional firearm deaths before the law reform.

[613] Professor Chapman explained that it can be difficult to compare the impact of interventions in different countries. He acknowledged that it is difficult to pinpoint exactly which part of Australia's law reform contributed to its success, but opined that the substantial reduction in exposure to semi-automatic long guns capable of accepting large-capacity magazines was "likely to have been key." Professor Chapman noted that the law reform was intended to reduce the risk of mass shootings, not overall homicides or suicides. He added that although mass shootings in Australia were rare before the law reform, it is statistically highly improbable that the reduction in mass shootings since the law reform is merely chance.

[614] Professor Klarevas provided information about the measures taken in the US and stated that the use of assault-style firearms in mass shootings in the US is disproportionate to their ownership.

[615] Among other findings, Professor Klarevas noted that mass shootings with assault weapons are more deadly, and have been used in seven of the ten deadliest mass shootings in the US. He described assault-style as associated with an increase in the average death toll from mass shootings in the US by over 70% from 1980 to 2019 and by over 140% from 2010 to 2019.

[616] Professor Klarevas stated that assault firearm bans primarily work by deterring perpetrators from committing mass shootings because their weapon of choice is not available or preventing perpetrators from committing mass shootings with more lethal weapons.

[617] Professor Klarevas noted that most—but not all—scholarly studies on the US Federal ban and the state bans (where such bans are in place) have found significant reductions in mass shooting violence and fatalities.

[618] Professor Klarevas stated that of the 152 mass public shootings in the US from 1980 to 2019, 82 involved firearms that were legally acquired or taken from residences to which the shooters had legal access (29 were illegally acquired, and 41 were from unknown sources). Professor Klarevas concluded that the tendency of mass murderers to use legal firearms suggest that the prohibition of assault-style firearms can reduce mass shootings.

[619] Professor Klarevas disputed Professor Mauser's claim that no study outside of Canada has found that gun control legislation reduces violent crime or suicide. Professor Klarevas noted that there are studies that show reductions in the United States.

[620] Professor Klarevas also disagreed with Dr. Langmann's definition of mass shooting as involving three or more deaths. Professor Klarevas noted that he is only aware of one study that uses that definition and that US scholarship uses a threshold of either four or six victims.

(ii) The Applicants' criticism of the AGC's affiants is unpersuasive

[621] The Applicants dispute the evidence provided by the AGC to show that the Regulations will have an impact. The AGC disputes the Applicants' evidence that seeks to show that the Regulations will not have an impact on public safety or more specifically on reducing mass shootings. As previously noted, both the AGC and Applicants allege that the others' experts are biased advocates.

[622] The Applicants' affiants appear to overlook the broader findings by focusing their criticism of the AGC's affiants on narrow aspects of their research, more specifically that of Professors Chapman and Klarevas. Whether the research uses three or more victims to define a mass shooting is not a reason to discredit the research as long as the research is internally consistent. Professor Chapman explained why he used the same definition in his own studies over different time periods. Moreover, whether three or five victims are harmed in a mass shooting downplays the harm of an incident involving fewer victims. The Regulations are aimed

at reducing the harm from mass shootings—not just homicides—and regardless of how many persons are harmed. The goal is ideally that there are no victims.

[623] The Applicants' concerns about the statistical significance of Professor Chapman's findings are microscopic criticisms of a finding that he noted was incidental.

[624] The Applicants affiants are also critical of different understandings of "assault-style" firearms, but again, this is not a reason to discredit the research. The Regulations prescribe firearms by make and model or name, not generically. The RIAS and other publications use the term "assault-style" as a general description. It is apparent the type of firearm that is being referred to in the studies and that it is similar in type to the firearms prescribed in the Regulations.

[625] Professors Chapman and Klarevas responded to the criticisms regarding the definitions of "mass shootings" and the reference to "assault-style" and maintained that the reforms they studied had an impact.

[626] The Applicants' allegation that Dr. Ahmed is biased appears to be based on her advocacy role, which she disclosed and which is supported by many medical doctors. Dr. Ahmed's interest is as a doctor treating victims and wanting to see fewer of such victims; she does not have any personal or economic interest in the outcome of this Application.

[627] Many of the Applicants' affiants also appear to have vested interests as gun owners or advocates for lesser gun control. The Applicants' experts' research tends to focus on homicide and suicide rates more narrowly and on the users of the firearms. The Applicants' affiants did not focus on the reduction in the severity of harm from mass shootings.

[628] Ultimately, none of the experts' evidence conclusively establishes that the Regulations will or will not achieve their objective.

(d) *The rational connection is established*

[629] In *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 77 [*Harper*]), the issue was whether the provision at issue infringed freedom of expression and whether any infringement was justified. The Supreme Court of Canada explained, with respect to the supporting evidence, at paras 77-78:

> 77 The legislature is not required to provide scientific proof based on concrete evidence of the problem it seeks to address in every case. Where the court is faced with inconclusive or competing social science evidence relating the harm to the legislature's measures, the court may rely on a reasoned apprehension of that harm.
>
> 78 This Court has, in the absence of determinative scientific evidence, relied on logic, reason and some social science evidence in the course of the justification analysis in several cases; see *R. v. Butler*, [1992] 1 S.C.R. 452, at p. 503; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 768 and 776; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 137; *Thomson Newspapers, supra*, at paras. 104-7; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2. […]

[630] In the present case, the social science evidence relied on by the experts differs. Differently focussed studies or research leads to different conclusions. None of the evidence is directly on point as it is likely impossible to find research showing the specific reason for a reduction or an increase in firearm violence as so many factors are at play.

[631] The AGC's evidence, provided by Dr. Ahmed, Professor Chapman and Professor Klarevas, does not prove that the Regulations will achieve their desired objective in reducing the severe harm resulting from the use of inherently dangerous firearms, including in mass shootings. Nor does the evidence provided by the Applicants' affiants, Professor Mauser and Dr. Langmann, prove that the Regulations will not achieve their objective—or that the Regulations are not rationally connected to the objective.

[632] However, the AGC has provided sufficient evidence about how further restrictions on certain types of firearms have had some correlation with reducing the harm from mass shootings and more generally on public safety. It is not disputed that isolating the specific reason for such reductions among many measures taken over a period of years is not possible. As noted by Professor Chapman, it is also difficult to draw comparisons between countries with differing laws.

[633] There is no need for conclusive proof that the Regulations will achieve their objective. As noted in *Harper* at para 77), conclusive proof is not required and the Court may rely on "logic, reason and some social science evidence." The Court has done so. Waiting for proof of the effectiveness of a specific measure that may impair the rights of other persons before acting

would paralyze governments in responding to complex social issues in a manner reflecting the public good.

[634] Firearms laws are a complex web of responses to the ongoing concern of the impact of the use of firearms on public safety. The Regulations are part of the response. The available social science evidence supports the rational connection between the Regulations, which will prohibit the possession and use of prescribed firearms (and limit access to those firearms) and the objective of the Regulations. Logic and reason buttresses finding the rational connection between prohibiting the use of dangerous firearms and curtailing the significant harm they cause.

(e) *Minimal impairment*

[635] The Regulations minimally impair the liberty interest of firearm owners. Although the Regulations prohibit approximately 1,500 specific firearms and their variants, plus others that bear certain characteristics, many other firearms remain available for hunting and sport.

[636] Lesser measures in this context—*i.e.*, to reduce the significant harm resulting from the use of inherently dangerous firearms—would not address the objective. The Government has taken a range of measures over many years, yet the evidence on the record shows that firearm violence and mass shootings occur and cause significant harm, both in Canada and elsewhere and that the types of firearms prohibited are involved in such events. Less restriction could not be expected to achieve the objective.

(f) *The balancing*

[637] In *Carter*, at para 122, the Supreme Court of Canada stated that the third stage of the section 1 analysis "weighs the impact of the law on protected rights against the beneficial effect of the law in terms of the greater public good."

[638] The Regulations—like all gun control legislation—aim to protect public safety, which is a "competing social interest" and a right in itself. The minimal infringement on firearm owners, who now have less choice in the firearms that they can possess and use and who could face criminal charges if they continue to use the now prohibited firearms, is outweighed by the beneficial impact of the Regulations in terms of reducing the harm from mass shootings and the inherent danger posed by the now prohibited firearms, and achieving the broader objective of enhancing public safety. As noted in *Safarzadeh-Markhali* at para 57, "courts may accord deference to legislatures under section 1 for breaches of section 7 where, for example, the law represents a "complex regulatory response to a social problem."" In *Whatcott*, the Court noted that the legislature's approach must be accorded deference.

[639] In conclusion, any infringement of the liberty interest of firearm owners is justified; the Regulations have a pressing and substantial objective and are a proportional response to that objective. The Regulations' restriction on the now prohibited firearms—that are inherently dangerous and have the capacity to inflict severe harm and, as a result, are not reasonable for use in hunting and sport—is rationally connected to the objective and minimally impairs the section 7 rights of firearm owners . The benefits of the Regulations outweigh the impact on firearm

owners who can no longer use the prohibited firearms for hunting or sporting uses but who can use other firearms that are not prohibited for such uses.

XIII. Do the Regulations infringe sections 8, 11, 15 or 26 of the *Charter*, and if so, is any infringement justified by section 1?

A. *The Applicants' Submissions*

[640] Some Applicants argue that the Regulations infringe their rights pursuant to sections 8, 11, 15, or 26 of the *Charter*.

(1) Section 8

[641] The Generoux Applicants submit that the Regulations deprive them and other firearm owners of their property, which they argue infringes section 8 of the *Charter*.

[642] The Generoux Applicants note that the RIAS contemplates compensation to owners of now prohibited firearms, but no compensation has been provided. Ms. Generoux adds that no amount of compensation would be sufficient because she can no longer use her preferred firearms to hunt or compete in sports.

[643] The Generoux Applicants also submit that "grandfathering" for current owners of the prohibited firearms should have been provided. They point to excerpts from a Briefing Binder prepared for the Minister of Public Safety, obtained in response to an Access to Information Request regarding the 2018 proposed amendments to the *Criminal Code* and the *Firearms Act*

(Bill C-71) that allowed for grandfathering of the now prohibited CZ 858 and Swiss Arms family of rifles.

(2) Section 11

[644] Mr. Hipwell argues that the Regulations infringe section 11 of the *Charter* because a firearm owner has no way of knowing or no clarity whether their firearm is prohibited as an unnamed variant. He submits that a firearm owner has poor access to the FRT and would not be aware that their firearm may be prohibited and, as such, would not be "informed" of the offence committed, contrary to section 11. He adds that the firearm is not prohibited until the Court makes this determination.

[645] Mr. Hipwell submits that the FRT, which lists unnamed variants based only on the opinion of the SFSS, is relied on by law enforcement.

[646] Mr. Hipwell argues that the inclusion of unnamed variants also infringes the presumption of innocence because a firearm would have to prove that their firearm was not a variant.

(3) Section 15

[647] The Generoux Applicants argue that firearms owners are part of the "gun culture" that has a long history and deep roots in Canada. They argue that the gun culture should be protected.

[648] The Generoux Applicants submit that the Regulations violate section 15 of the *Charter*. They argue that gun culture should be considered as an analogous ground to groups protected from discrimination in section 15. The Generoux Applicants argue that the Regulations target members of the gun culture, discriminate against them, and stigmatize them, despite that they are law abiding. They also allege that the political messaging about firearm use is discriminatory and stigmatizing of firearm owners.

[649] In support of the Generoux Applicants' submission that the gun culture and cultural objects and activities should be protected under the *Charter*, they point to various statutes and conventions, including the *Canadian Multiculturalism Act*, RSC, 1985, c 24 (4th Supp); the *National Hunting, Trapping and Fishing Heritage Day Act*, SC 2014, c 26, the *Cultural Property Export and Import Act*, RSC, 1985, c C-51; the *Firearms Act*, SC 1995, c 39; provisions of the *Criminal Code* that create offences against mischief to cultural property, and the *UN General Assembly, International Covenant on Economic, Social and Cultural Rights*.

[650] The Generoux Applicants note that cultural property is protected by the *Cultural Property Export and Import Act*, RSC 1985, c C-51, ss 2, 4. They note that military objects have special protection under that Act. They submit that because some prohibited firearms are cultural property, meaning that they are essential to the history of Canada, the newly prohibited firearms would be similarly classified if examined in accordance with the Act.

[651] The Generoux Applicants add that it is an offence under the *Criminal Code* to commit mischief against property (section 430) or mischief against cultural property (subsection 7(2.01))

as defined by the C*onvention for the Protection of Cultural Property in the Event of Armed Conflict* and incorporated into Canadian law via the *Cultural Property Export and Import Act*.

[652] The Generoux Applicants rely on *R v Van Der Peet*, [1996] 2 SCR 507, 137 DLR (4th) 289, where the Supreme Court of Canada addressed aboriginal rights and their customary origins, as an analogy to guide the Court about how to define gun culture, cultural property, protections at law, and the evolution of cultural rights. The Generoux Applicants acknowledge that they do not have rights under section 35 of the *Constitution Act, 1982*, but suggests that an analogy can be drawn.

[653] The Generoux Applicants point to the dictionary definitions of "culture" and relies on several articles that comment on gun culture and subcultures in Canada and the US. They explain that hunting has its own moral code and is a culture of conservation and safety. They submit that Canada has distinct sporting, hunting and self-defence cultures, all of which are documented and demonstrated in various firearm publications.

[654] The Generoux Applicants submit that the gun culture in Canada is inclusive and its members are a larger group than other groups protected by the *Charter*, for example, people of various ethnic origins.

[655] The Generoux Applicants point to historical drawings and writings in support of their submission that a gun culture has existed in Canada since its origins, from explorers and settlers, and in Canada's Indigenous people. They note the early Canadian Olympic participation in sport

shooting. They add that participation in sport shooting and hunting was common among Canada's soldiers that fought in and survived the World Wars.

[656] The Generoux Applicants rely on the affidavit of Mr. Bruce Gold, who is described as a firearms historian. In his affidavit, Mr. Gold traces the history of firearms in Canada and opines that without this long history and encouragement of the careful and legitimate uses of firearms, Canada would not exist as it does today.

[657] The Generoux Applicants note that the AGC's affiant, Professor Brown, and their affiant, Mr. Gold, both noted the history of guns in Canada, including that trained civilians were an asset to the military in past years.

[658] Ms. Generoux acknowledges that her use of firearms is not engrained in her DNA and is not an immutable characteristic, but submits that firearms are a part of her life.

[659] The Generoux Applicants submit that their personal choice to own and use firearms—and firearms of their preference—should not disqualify them from the protections of section 15 of the *Charter*. They point to *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, 1999 CanLII 687 (SCC) [*Corbiere*] where the Supreme Court of Canada found that the exclusion of off-reserve band members from band elections was a breach of section 15 even though band members chose to live off reserve. They also point to *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [*PHS*] where the Supreme Court of Canada upheld an exemption to permit safe injection sites to continue despite prohibitions in the

Controlled Drugs and Substance Act, SC 1996, c 19 and despite that people chose to use prohibited drugs.

(4) Section 26

[660] The Generoux Applicants submit that all the statutes they rely on regarding their section 15 argument demonstrate that firearm owners have rights related to the ownership and use of firearms, which remain unaffected by the non-exhaustive rights and freedoms set out in the *Charter*. They point to section 26 of the *Charter* in support of this submission.

B. *The AGC's Submissions*

[661] The AGC notes the relevant jurisprudence that has interpreted the *Charter* provisions and submits that sections 8, 11, 15 and 26 are not engaged.

[662] With respect to section 8, the AGC submits that although the Regulations may result in firearm owners surrendering their now prohibited firearms, this is a loss of property which has no effect on privacy rights, which is the focus of section 8.

[663] With respect to section 11, the AGC notes that these rights apply to persons who are charged with an offence. None of the Applicants state that they have been charged. In the event that anyone is charged with any offence, the protections of section 11 would apply.

[664] With respect to section 15, the AGC submits that gun culture is not an enumerated or analogous ground under subsection 15(1).

[665] In addition, there is no evidence that gun owners face systemic disadvantages. The Regulations prohibit a small percentage of firearms, leaving many other firearms for use in hunting and sport.

[666] The AGC explains that Section 26 is not a stand-alone basis for a *Charter* breach, rather a safeguard clause. It does not raise the status of other rights or freedoms, not set out in the *Charter*, to constitutional status.

[667] The AGC adds that courts have declined to apply section 26 in cases that assert rights related to firearms (*e.g.*, *Montague* at paras 16-19).

C. *The Regulations do not infringe Sections 8, 11, 15 or 26*

(1) Section 8 is not engaged.

[668] Section 8 states:

> Everyone has the right to be secure against unreasonable search or seizure.

[669] The Applicants' argument that firearm owners would be unaware that they possess a prohibited firearm, which would lead to an unreasonable search and seizure of their property misunderstands the protections of section 8. First, there are resources available that firearm

owners can consult to determine if their firearm is a variant. Second, section 8 calls for a two-step analysis to determine whether there has been an infringement; first, whether there has there been a search or seizure and second, whether the search or seizure is reasonable. A reasonable search or seizure is one that is authorized by law; the law is reasonable; and the manner in which the search is carried out is reasonable (*R v Shepherd*, 2009 SCC 35 at para 15). There is no suggestion that there have been any searches or seizures arising from the Regulations or their enforcement.

[670] In addition, as the AGC notes, section 8 is intended to protect privacy interests (*Hunter v Southam Inc*, [1984] 2 SCR 145, 1984 CanLII 33 (SCC) at 159), not financial losses arising from property losses.

(2) Section 11 is not engaged

[671] Paragraphs 11(a) and (d) state:

11 Any person charged with an offence has the right:	**11** Tout inculpé a le droit :
(a) to be informed without unreasonable delay of the specific offence;	a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;
. . .	[…]
(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;	**d)** d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

[672] The protections of section 11 are important and apply to persons charged with a criminal offence. There is no suggestion that any firearm owner has been charged with an offence arising from the enforcement of the Regulations. If and when that occurs, that person would be entitled to their section 11 rights.

[673] Contrary to Mr. Hipwell's submission, anyone who is charged with unlawful possession of a firearm prohibited by the Regulations would be entitled to know the specific charge(s) they face and would be presumed innocent until proven guilty.

(3) Section 15 is not engaged

[674] Section 15 states:

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	**15 (1)** La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or	**(2)** Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou

ethnic origin, colour, religion, sex, age or mental or physical disability.	ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

[675] Despite the Generoux Applicants' explanation of their theory that the origins and continuation of firearm use in Canada have elevated it to a gun culture, this is not an enumerated ground and is far from an analogous ground under subsection 15(1).

[676] The Generoux Applicants' submission that this Court should apply a similar approach as adopted by the Supreme Court of Canada in *Van Der Peet* for the determination of whether an aboriginal right had been established to the determination of whether gun culture rights are established is a novel but unworkable theory for many reasons. In particular, the gun culture is not a distinctive culture.

[677] In *Corbiere*, relied on by the Generoux Applicants , the Supreme Court of Canada explained the criteria for identifying an analogous ground, first noting that an analogous ground is similar to the grounds enumerated in section 15, and stating, at para 13:

> It seems to us that what these grounds have in common is the fact that they often serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity. This suggests that the thrust of identification of analogous grounds at the second stage of the *Law* analysis is to reveal grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law. To put it another way, s. 15 targets the denial of equal treatment on grounds that are actually immutable, like race, or constructively immutable, like religion. [Emphasis added]

[678] Ms. Generoux acknowledged that her participation in the gun culture is a personal choice and not part of "her DNA." She submits that her identity is bound up with the gun culture. However, this is not a personal and immutable characteristic.

[679] The Applicants' records reveal that the use of firearms for hunting and sport continues to thrive in Canada. Although the Applicants oppose the restrictions on the firearms that they have previously used and those they prefer to use for hunting and sport and they argue that the non-prohibited firearms will not meet their preferences or needs, they do not suggest that they are prevented or even deterred from hunting or sport shooting. There are many other firearms available for hunting and sport.

[680] The Generoux Applicants opinion that firearm owners are discriminated against and stigmatized is simply their opinion and that of Mr. Gold.

[681] The Generoux Applicants' analogies to "genocide" and the eradication of other cultures is extreme and likely offensive to those who have experienced the loss of their cultural identity.

(4) Section 26 is not engaged

[682] Section 26 states:

26 The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.	**26** Le fait que la présente charte garantit certains droits et libertés ne constitue pas une négation des autres droits ou libertés qui existent au Canada.

[683] There is very little jurisprudence on section 26, likely due to its clear wording, which conveys that, in interpreting the rights set out in the *Charter*, existing rights are not denied; *i.e.*, the *Charter* rights do not take away existing rights.

[684] The Applicants have not argued that any *Charter* provision has taken away a right previously granted to firearm owners. The Generoux Applicants' reference to various statutes regarding cultural property does not provide firearm owners with rights. There is no right to possess firearms in Canada (*Montague* at paras 16-19).

XIV. Do the Regulations infringe the *Canadian Bill of Rights*?

A. *The Applicants' Submissions*

[685] The CCFR Applicants argue that the Regulations and the identification of unnamed variants deprive Mr. Giltaca and Mr. Steacy of their property contrary to paragraph 1(a) of the *Bill of Rights*. They submit that this deprivation of property occurs without due process. They submit that, as a result of this deprivation, the Regulations should be declared inoperative.

B. *The AGC's Submissions*

[686] The AGC submits that the *Bill of Rights* provides only due process protections in the context of an adjudication of a person's rights and obligations before a Court or tribunal (*Authorson v Canada* 2003 SCC 39 at para 42 [*Authorson*]). The AGC adds that the jurisprudence establishes that the protections of paragraph 1(a) of the *Bill of Rights* are not engaged in processes before the Governor in Council. The AGC notes that the law (the *Criminal*

Code and the Regulations) prohibits the possession and use of certain firearms; this is not an individualized adjudication. Due process rights do not arise.

C. *The Regulations do not infringe the Canadian Bill of Rights*

[687] The *Canadian Bill of Rights* states at para 1(a):

1 It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,	**1** Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe :
(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;	a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;

[688] As the Supreme Court of Canada noted in *Authorson*, there has been little jurisprudence on the *Bill of Rights.* This continues to be the case.

[689] *In Authorson* at para 34, the Court noted that many of the protections in the *Bill of Rights* gained constitutional status upon the adoption of the *Charter*. Paragraph 1(a) of the *Bill of Rights* is not such a provision. It guards against the deprivation of the enjoyment of property except by due process of law.

[690] The Applicants' argument that they have been deprived of the enjoyment of their property ignores or overlooks that the *Bill of Rights* focusses on rights that arise in the context of the adjudication of their rights before a court. The Applicants are not faced with such an adjudication of their rights. As noted, no one claims that they have been charged with any offence arising from the Regulations.

[691] The Regulations at issue result in the prohibition of possession and use of certain firearms. However, the Regulations are not an adjudicative process for the applicants who are complaining of their loss of enjoyment of property. The Governor in Council's authority to promulgate the Regulations does not give rise to any due process rights to the Applicants.

[692] As found by the Supreme Court of Canada in *Authorson* at para 41:

> [41] Due process protections cannot interfere with the right of the legislative branch to determine its own procedure. For the *Bill of Rights* to confer such a power would effectively amend the Canadian constitution, which, in the preamble to the *Constitution Act, 1867*, enshrines a constitution similar in principle to that of the United Kingdom. In the United Kingdom, no such pre-legislative procedural rights have existed. From that, it follows that the *Bill of Rights* does not authorize such power.

[693] The Court addressed the scope of the procedural protections for property rights at paras 42 and 46, again noting that the rights apply only in the context of an adjudication before a court or tribunal and "in an individualized adjudicative setting."

> [42] What procedural protections for property rights are guaranteed by due process? In my opinion, the *Bill of Rights* guarantees notice and some opportunity to contest a governmental deprivation of property rights only in the context of an adjudication of that person's rights and obligations before a court or tribunal.

> [46] Section 1(*a*) of the *Bill of Rights* does guarantee a degree of procedural due process in the application of the law in an individualized, adjudicative setting. But no such application took place here, and no further procedure was due.

XV. Conclusion

[694] In conclusion, the Court finds that the Applications shall be dismissed.

[695] To reiterate, for the detailed reasons set out above, the Court finds as follows:

- The Order in Council and Regulations are not *ultra vires*. The Governor in Council did not exceed the statutory grant of authority delegated to it by Parliament pursuant to subsection 117.15(2) of the *Criminal Code*. The Governor in Council formed the opinion that the prescribed firearms are not reasonable for use in hunting and sport and the opinion and decision to prescribe the firearms as prohibited are reasonable.

- The Governor in Council did not sub-delegate its statutory grant of authority to prescribe firearms as prohibited. The prescribed firearms and their variants are prohibited based on the *Criminal Code* and the Regulations. The role of Specialized Firearms Support Service of the Royal Canadian Mounted Police in assessing and classifying firearms as non-restricted, restricted or prohibited reflects the opinion of the Specialized Firearms Support Service. The Firearms Reference Table sets out the results of the SFSS's assessment; it is an administrative resource or guide for firearm owners and others.

- The Governor in Council does not owe a duty of procedural fairness to firearm owners affected by the Regulations. The jurisprudence is clear that the duty of procedural fairness does not apply to the legislative process. Nor does the Specialized Firearms Support Service owe any duty of procedural fairness to firearm owners in the context of its assessment and classification of firearms; the Specialized Firearms Support Service is not an administrative decision maker.

- The Regulations do not infringe section 7 of the *Charter*; the Regulations are not vague, overbroad or arbitrary. Alternatively, if the Court had found that the Regulations infringed section 7 in a manner not in accordance with the principles of fundamental justice, the Court would find that any infringement is justified pursuant to section 1 of the *Charter* as a reasonable limit. The Regulations have a pressing and substantial objective and are a proportional response to that objective. The Regulations' restriction on the now prohibited firearms—that are inherently dangerous and have the capacity to inflict severe harm and, as a result, are not reasonable for use in hunting and sport—is rationally connected to the objective and minimally impairs the section 7 rights of firearm owners. The minimal infringement on firearm owners, who now have less choice in the firearms that they can possess and use and who could face criminal charges if they continue to use the now prohibited firearms, is outweighed by the beneficial impact of the Regulations in terms of reducing the harm from mass shootings and the inherent danger posed by the now prohibited firearms, and achieving the broader objective of enhancing public safety.

- The Regulations do not infringe sections 8, 11, 15 or 26 of the *Charter*.

- The Regulations do not infringe the *Canadian Bill of Rights*.

JUDGMENT in files T-569-20, T-577-20, T-581-20, T-677-20, T-735-20, T-905-20

THIS COURT'S JUDGMENT is that:

1) The Applications are dismissed.

2) The Attorney General of Canada did not seek costs and no costs are ordered.

"Catherine M. Kane"
Judge

ANNEX A

In files T-569-20, T-577-20, T-581-20, T-677-20, T-735-20, T-905-20, the Court received affidavits from the following people.

A. FOR THE APPLICANTS

- Alexander Robinson,
- Allan Harding,
- Andre Perreault,
- Andrew Tomlinson,
- Andrew Vincent,
- Anthony Bernardo,
- Bruce Gold,
- Caillin Langmann,
- Cary Baker,
- Cassandra Parker,
- Christian Rydich Bruhn,
- Christine Generoux,
- David Bot,
- David Huta,
- Franco Nardi,
- Gary Mauser,
- Grant Baverstock,
- Gregory Allard,
- Howard Herbert Michitish,
- Jason James Joseph Daenick
- Jennifer Eichenberg,
- Jeremy Penny,
- Jim Shockey,
- Johannes Cornelius Evers,
- John Hipwell,
- John Perocchio,
- Jordan Marsh,
- Keith Cunningham,
- Kevin Doubt,
- Linda Miller,
- Lindsay Jamieson,
- Lynda Kiejko,
- Mark Nichol,
- Mathew Overton,
- Matt DeMille,
- Matthew Hipwell,

- Michael Doherty,
- Morgan Guldbrand Andreassen,
- Natasha Baggs,
- Nils Robert Ek,
- Peter Minuk,
- Peter Turrell,
- Philip Alexander McBride,
- Phillip O'Dell,
- Richard Delve,
- Richard Guerra,
- Rick Timmins,
- Rodney Giltaca,
- Ryan Joyner,
- Ryan Steacy,
- Travis Bader,
- Vincent Perocchio,
- Wyatt Singer, and
- Zakary Francis Whittamore.

B. FOR THE RESPONDENT

- Blake Brown,
- Cheryl Mancell,
- Chris Baldwin,
- Louis Klarevas,
- Murray Smith,
- Najma Ahmed,
- Randall Koops, and
- Simon Chapman.

ANNEX B

Selected evidence from files T-569-20, T-577-20, T-581-20, T-677-20, T-735-20, T-905-20 is summarized below.

I. SELECTED EVIDENCE FROM THE APPLICANTS

A. *Rodney Giltaca*

Mr. Rodney Giltaca is the Director of Civil Advantage Management Inc, described as a well- known firearms training business. He is also the producer of several TV shows and is the Executive Director of the Canadian Coalition of Firearm Rights [CCFR].

Mr. Giltaca explains that the objectives of the CCFR include providing a voice for firearm owners and accurate information to firearm owners, governments and the public.

Mr. Giltaca notes that he is a sport shooter and has possession and acquisition licenses for many non- restricted and restricted firearms.

Mr. Giltaca opines that the Regulation has severely impacted the culture and resources of the firearms community. He states that "nearly all" of the newly prohibited firearms are reasonable for hunting and sport and have been so used for decades.

Mr. Giltaca describes the AR-15 and why, in his view, it should not be prohibited. He also describes the BCL Coyote and states that it should not be classified as a variant.

Mr. Giltaca opines that the Regulations threaten his liberty and security of the person including his right to self defend against those who use firearms illegally. He also notes the need of others for self-defence against animals, for example, bears.

Mr. Giltaca disputes the statements in the RIAS, alleging they are inaccurate and prejudicial. He notes that the majority of guns used in homicides and other urban shootings are handguns, not the firearms referred to in the Regulations.

Mr. Giltaca expresses the view that the FRT is impossible to use or rely on, including due to its sheer volume and unreliable search capacity. He adds that there is uncertainty and a risk of criminal liability due to the uncertainty of what is a "variant" and the unreliability of the FRT as a tool to verify what is a variant.

Mr. Giltaca notes that the CCFR made several ATIP requests for documents that may have been related to the decision to enact the Regulation. He provides a list of the responses received and attaches excerpts.

B. *Caillin Langmann*

Dr. Caillin Langmann is a medical doctor, more specifically, an emergency physician at St. Joseph's Hospital and Hamilton Health Science Center. Dr. Langmann is also appointed as an Assistant Clinical Professor of Medicine, Department of Medicine, Division of Emergency Medicine at McMaster University.

Dr. Langmann explains that he became interested in firearm legislation and the pursuit of reduced harm by firearms while doing his residency in emergency medicine. He notes that he has studied the causes of firearm violence and possible ways to mitigate and reduce firearm violence in Canada and elsewhere.

Dr. Langmann attaches several publications to his affidavit, including: "Canadian Firearms Legislation and Effects on Homicide, 1974-2008 (published in 2011 and described as a statistical study on the rates of homicide in response to legislative changes in 1977, 1991 and 1995); and,

"Effect of firearms legislation on suicide and homicide rates in Canada from 1981 to 2016" (published in 2020 as a follow up to the 2011 publication).

Based on his research, Dr. Langmann concludes that Canadian legislation to regulate and control firearm possession and acquisition does not have a corresponding effect on homicide and suicide rates. He explains that homicides and suicides are instead carried out by other means or, if by firearms, the firearms were obtained illegally.

Dr. Langmann notes that he has been a witness on several occasions at Parliamentary Committee proceedings, including at the Standing Committee on Public Safety and National Security in February 2019 with respect to Bill C- 71, *An Act to amend certain Acts and Regulations in relation to firearms*. Dr. Langmann's brief to the Committee, which addresses mass homicide and provides a statistical analysis, is attached to his affidavit.

Dr. Langmann states that his research on mass homicides found no relation between firearm legislation and mass homicide events in Canada from 1974-2010. He adds that firearm regulations do not appear to be a bar to a person obtaining a firearm and committing a crime.

Dr. Langmann provides his opinion regarding research conducted in Australia (by Professor Simon Chapman), which is relied on by the Attorney General of Canada. Dr. Langmann opines that this research is not reliable for several reasons, including that the data is not statistically significant and the authors used their own characteristics to define mass shootings as five or more deaths, rather than three or more deaths.

With respect to the Regulations at issue, Dr. Langmann opines that there is no reliable evidence to support the stated objective that prohibiting certain firearms will reduce the frequency or severity of mass shootings. Dr. Langmann points to his own research, noted above, in support of his opinion.

He also points to the experience of Australia with respect to buy back programs and the United States with respect to bans on assault style weapons as not having any large effects on homicide rates and victimization.

Dr. Langmann states that legal firearm owners are less likely to engage in firearm violence than "average citizens", and that there is no evidence that targeting firearm owners will bring about reductions.

Dr. Langmann notes that based on his own research, there are several factors associated with homicide and suicide rates, none of which are related to whether the firearm is legally accessible.

C. *Gary Mauser*

Gary Mauser is Professor Emeritus at the Institute for Canadian Urban Research Studies and Beedie School of Business, Simon Fraser University. Professor Mauser states that he is a criminologist, trained in social science research methodology.

Professor Mauser attaches several academic publications, other articles and submissions to Parliamentary Committees (House of Commons and Senate) on the issue of firearms legislation and regulation, including to the Standing Committee on Public Safety and National Security with respect to Bill C- 71 in 2018- 2019.

Professor Mauser states that public safety and violent firearm crime in Canada will not be affected by the Regulations. He supports his opinion with his statistical analysis/ tables. Among other things, Professor Mauser notes that gun crime is less than one-half of all police reported crime, guns are involved in only 3% of violent crime, and guns are used to harm a person in less than 1% of incidents.

He states that there is no statistical evidence that the firearms subject to the Regulations or long guns of any kind are disproportionately used in criminal offences. He adds that long guns are the most popular firearms across Canada, primarily used for hunting as well as target sports. He adds that this use has not posed disproportionate problems for public safety.

Professor Mauser states that licenced owners of legally owned guns do not pose a risk to public safety. He points to data from Statistics Canada (2016) that firearms license holders are less likely to commit murder than are other Canadians.

Professor Mauser attributes gun crime to gang crime, pointing to statistics that indicate that 47% of gun crime is gang related and 87% of gang crime is gun related.

Professor Mauser also explains that most guns used in homicides are illegally possessed.

He adds that stolen guns are not a major source of gun crime, rather smuggling is more likely. He adds that legally owned firearms are not likely to be stolen and used in violent crimes.

Professor Mauser opines that there is a significant risk of non- compliance with the Regulations that is likely to contribute to the grey and black markets for firearms in Canada. He predicts that some owners of newly prohibited firearms will not turn them in or will not know that their firearms are prohibited. He notes that the failure to register firearms following the 1995 amendments contributed to the grey and black market.

Professor Mauser notes that his interest in research in firearms regulation stems from his academic background and the gift of a firearm decades ago that he reluctantly later accepted. He also notes that he has owned an AR-15 for decades, which he used for hunting and sporting, and it is now prohibited.

D. *Ryan Steacy*

Mr. Ryan Steacy is a retired Corporal of the Canadian Armed Forces [CAF]. Mr. Steacy was also a professional Armourer for entertainment productions. He is now the Technical Director at International Barrels Inc. ("IBI"), a firearms business that manufactures precision barrels for firearms, including the newly prohibited AR-15.

Mr. Steacy hunts and competes in sport shooting competitions. Prior to May 1, 2021, he owned three restricted firearms for sport shooting, all of which are now prohibited.

Mr. Steacy states that firearms competitions have better prepared the CAF for dangerous missions and enhanced their safety.

Based on his hunting experience, he states that the alternative firearms available (those not prohibited) are inferior. He states that the now-prohibited firearms provide for a more accurate and successful hunt as well as greater security against possible grizzly bear interaction.

E. *Wyatt Singer*

Mr. Wyatt Singer and his wife, Shaina Singer, founded Maccabee Defense Inc. in 2015. Maccabee is an Alberta-based designer, manufacturer and retailer of a single firearm, the SLR-Multi Rifle (SLR-Multi). Mr. Singer explains the firearms regulatory approval process with the RCMP's Specialized Firearms Support Service [SFSS]; the uniqueness of the SLR-Multi; its popularity; and the subsequent shuttering of Maccabee once the SLR-Multi was listed as a prohibited firearm.

F. *Matthew Hipwell*

Mr. Matthew Hipwell is the current owner and President of Wolverine Supplies Limited, a retailer and distributor of firearms. Mr. Hipwell notes his experience with firearms for sport and hunting beginning in his youth, his time as an Army Cadet and in the Military Reserves and his career in the

RCMP(2001- 2017) including his role as a Firearms Instructor and his increasing responsibilities in that role. He retired from the RCMP in 2017 to join Wolverine on a full time basis.

Mr. Hipwell describes the requirements of Wolverine's business licence, licencing of their employees and security measures. He also describes the growth of Wolverine from a smaller home based operation to its expansion in size and reputation, including due to its sales to law enforcement and security companies as well as competitive hunters and sport shooters.

Mr. Hipwell states that at least six of Wolverine's product lines were listed in the Regulations as prohibited.

He notes that the Robinson Armaments XCR- which was non- restricted until May 1, 2020- had been imported by Wolverine since 2007. He notes that Wolverine did not receive any specific notice about the reclassification of this rifle, except in late July 2020 with respect to their import licence.

Mr. Hipwell notes that as a business owner, Wolverine has access to the on line version of the FRT, but a gun owner only has access to a static PDF version that is not always up to date, is voluminous, and difficult to download.

Mr. Hipwell notes that many non- restricted firearms were listed as variants after the Regulations were made on May 1, 2020. He refers to Armalytics .ca which identified over 300 firearms listed as prohibited on the FRT (not listed in the Regulations) as of the date of his affidavit (September 29, 2021).

Mr. Hipwell states that he is unaware of an accepted interpretation of the term "variants or modified version". He states that there is "no accepted application of the word 'variant' in the firearms industry. He states that it is "shocking and bewildering" how the SFSS has re-designated firearms as

variants, alleging that these decisions are arbitrary as there is no transparency about how the decisions are made and no notice or right to appeal.

Mr. Hipwell notes several examples and states that he cannot reconcile the listing of these firearms with the Regulations and with his firearms knowledge. He opines that these are not variants and remain reasonable for hunting and sport.

As an example, Mr. Hipwell notes that the Alpharms Model 15SA was assessed by the SFSS in 2016 and the Inspection Report concluded it was a newly designed semi- automatic firearm "which is not readily and easily converted to full automatic fire" and classified as non- restricted. However, this firearm is now prohibited as a variant of an AR-15.

Mr. Hipwell notes that Wolverine is now left with stock it cannot sell and which has no value. He adds that the threat of criminal and regulatory liability and the consequences are causing severe hardship to Wolverine and its employees.

G. *Alexander Robinson*

Mr. Alexander Robinson is the owner of Robinson Armament Co. Salt Lake City, Utah, USA.

Mr. Robinson notes his several business interests, focussing on Robinson Armaments, which originated in 1994 with the intention of manufacturing semi-automatic rifles for civilian use. Robinson Armament is the manufacturer and wholesaler of the XCR rifle, also developed only for civilian use. He notes that it has been widely used in Canada for hunting and sport, including in three gun competitions.

He notes that the annual sales of the XCR in Canada have varied since 2006.

Mr. Robinson notes that prior to May 1, 2020, both the light and medium weight models were non-restricted in Canada. As of May 1, 2020, the XCR and its variants were listed as prohibited. Mr. Robinson states that there are no variants of the XCR. He adds that it is not feasible to convert the XCR to fully automatic

H. *Phillip O'Dell*

Mr. Phillip O'Dell is the President of O'Dell Engineering. He describes his various business interests and notes that his business has expanded to generate $7 Million annually.

Mr. O'Dell focusses on his experience in firearms importation, sales and as a gunsmith. He notes that O'Dell engineering established the "Canuck" brand of firearms in 2016 and has been importing shotguns and handguns under the Canuck name to meet the Canadian market.

Mr. O'Dell notes that the firearms engineering business does complete design, upgrades and modifications to existing designs, among other services and products.

Mr. O'Dell notes that his business is recognized as a primary source for warranty and repairs of several different firearms, including those used by police.

Mr. O'Dell also describes the gunsmithing services including: firearm function analysis and repair; parts replacement and remanufacture; shotgun modification to fit interchangeable chokes; rebarrelling, chambering, threading, crowning, fitting; trigger modification and repair; deactivation and deregistration. He adds that all services are completed by gunsmiths and supervised by a licensed Professional Engineer.

Mr. O'Dell provides detailed descriptions of the different types of firearms set out in the Regulations and their core parts. He provides definitions of key terms, including rifle, carbine, shotgun and

pistol. He also describes and defines the basic groups of parts, for example, action, stock and barrel, and their components.

With respect to the Regulations prohibiting firearms based on their bore diameter, Mr. O'Dell states that the exact concept of bore diameter is not known to most civilians and not easily measured. He explains that bore diameter can vary even within the same type of firearm.

He notes that measuring the bore diameter requires the use of precision instruments that require skill to calibrate. He opines that it is nearly impossible for a firearms owner to know whether their 12 or 10 gauge shotgun has a bore diameter over 20mm.

Mr. O'Dell adds that shotguns are not marked with their largest bore diameter.

Mr. O'Dell states that it is not clear which firearms fall within the prohibition based on bore diameter. He notes that this will depend on where and how the bore diameter is measured to determine if some break action, pump action or semi automatic shotguns -routinely used for hunting and sport- have a bore diameter greater than 20 mm.

With respect to the prohibition on firearms based on muzzle energy, Mr. O'Dell notes that to calculate the muzzle energy it is necessary to know both the mass of the projectile and the velocity at which it leaves the muzzle. He explains that both variables are difficult to calculate, and several factors affect the calculations.

Mr. O'Dell concludes that the lack of marking and the lack of listing the specific firearms in the Regulations fail to inform a firearm owner that their firearm is now prohibited. He adds that owners of unnamed variants have no idea that their firearm's classification has changed, noting that there is no notification process.

As an example of inconsistent classification of firearms, Mr. O'Dell compares the Mossberg 702 Plinkster (currently non-restricted) with the Mossberg 715T Tactical 22, previously non- restricted and now prohibited. Mr. O'Dell provides technical details of each and concludes that both have identical receivers and should be classified in the same manner.

Mr. O'Dell describes the classification of firearms (non- restricted, restricted, prohibited) and the role of the Firearms Reference Table [FRT].

Mr. O'Dell notes the lack of definition of "variant", noting that the term is used colloquially in the industry, but without a consistent or single definition.

Mr. O'Dell opines that the "family concept" for the nine groups of firearms and variants does not "hold up" in practical use. He submits that legal standards should be clear.

Mr. O'Dell notes that he received notice from the RCMP in July 2020 regarding the cancellation of registration certificates for previously registered firearms, which were now prohibited. However, for firearms that were previously non- restricted and therefore not registered, there was no notice to owners. Mr. O'Dell submits that these owners are at risk of criminal charges, prosecution and conviction, although they are unaware that their firearms are now prohibited.

Mr. O'Dell notes that he is involved in competitive target shooting and historical firearms collection and restoration. He notes that his firearms that are now prohibited were not previously restricted and as such, he was not required to have a license for them. He contends that his possession exposes him to criminal charges, the possible search of his dwelling and seizure of his property.

I. *John Hipwell*

Mr. John Hipwell is a firearms owner, hunter, competitive sport shooter, collector, importer, distributor and seller of firearms. He is the founder of Wolverine Supplies.

Mr. Hipwell recounts his hunting experiences including an African Safari, where he used the Manton 8 Bore Double Rifle, now prohibited. He notes its economic and sentimental value. He opines that the Manton 8 Bore is not a weapon of mass destruction or threat to public safety, but rather a hunting rifle.

Mr. Hipwell notes that several of his other firearms, which were previously not restricted, and for which he did not have a license or registration, are now prohibited. He opines that due to the Regulation, he would now be exposed to criminal liability and the many consequences.

Mr. Hipwell also comments on variants that, in his view, do not meet the criteria of a variant.

J. *Natasha Baggs*

Ms. Natasha Baggs describes herself as a business owner. She attaches email correspondence with former Member of Parliament, Marwan Tabarra (MP for Kitchener South 2015-2020).

In the April 30, 2020 email responding to Ms. Baggs concern about the 2020 Regulations, Mr. Tabarra states:

> I know there will be people unhappy with this decision [the Regulations], but Canadians have formed a consensus that weapons intended for military use should not be accessible to Canadians except for military purposes.
>
> We can't get the necessary unanimous consent for introduction of a Bill on this subject and this has waited too long for action.
>
> A bill respecting handguns may have to wait, but we can act now by regulation on some of those weapons.

K. *Travis Bader*

Mr. Travis Bader is the owner of Silvercore Advanced Training, a federally licensed facility, described as "dedicated to firearms and the use of force training". Silvercore is licensed to provide retail sales, gunsmithing, transportation, import, storage, development, modification and testing of firearms.

Mr. Bader is a gunsmith and RCMP accredited firearms verifier. He has 20 years experience in providing repairs, maintenance and training to law enforcement, private security and to others.

Mr. Bader provides his opinion on a definition of variant, the measurement of bore diameter and muzzle energy, and whether the now prohibited firearms are reasonable for hunting and sporting use in Canada. Mr. Bader attaches a detailed report, which includes 21 appendices. His opinions and explanations are set out in his report.

Mr. Bader's report includes the following conclusions.

With respect to the definition of "variant", Mr. Bader states that there is no legal definition and no generally accepted definition. He notes that the term is not widely understood by gun owners. He explains that in the firearms industry, "variant" is understood to be a firearm that has an unmodified frame or receiver of another firearm. He explains that a frame/receiver is the central component to which other parts are attached, is engraved with the serial number and is a firearm on its own (without attachments).

Mr. Bader states that the term "modified version" has no definition and is not commonly used in the firearms industry.

Mr. Bader notes that several of the firearms referred to in the Regulations as prohibited were already prohibited because they are fully automatic.

Mr. Bader states that the Regulations conflate military firearms with civilian semi- automatic firearms.

Mr. Bader identifies 11 firearms that are now prohibited as variants that in his view do not meet his proposed definition of variant (as a firearm with an unmodified frame or receiver of another firearm) and he explains the basis for his opinion. He notes that this is not an exhaustive list. For example, Mr. Bader notes that the Adler B210 Bolt Action Shotgun [Adler] was previously non- restricted. Upon updating the FRT on May 15, 2020 (after the Regulation), the FRT listed this shotgun as a variant of the M16/AR-10/AR-15/M-4 family of rifles. Mr. Bader states that the Adler does not share the same receiver design with this family of rifles. The Alberta Tactical Rifle Supply Modern Hunter was also previously non- restricted based on a FRT Report that found that it did not trace its lineage to any prohibited or restricted firearm. As of June 15, 2020, the FRT listed this rifle as a variant of the M16/AR-10/AR-15/M-4 family of rifles. Similarly, the Maccabee Defence SLR Multi, a semi automatic firearm was previously non-restricted and as of June 2020 was listed as a variant of the M16/AR-10/AR-15/M-4 family of rifles.

With respect to the prohibition of firearms based on bore diameter, Mr. Bader notes the complexity of measuring, explaining that this is not a simple task. He states that the average firearm owner would not have access to the precision tools required for this measurement.

Mr. Bader states that most- if not all- 10 and 12 gauge shotguns are now prohibited because the chamber diameter exceeds 20mm.

Mr. Bader describes how muzzle energy is measured and calculated. He explains that this measurement requires skills that most firearm owners would not have. He adds that muzzle energy is not a constant variable and that it depends on several factors, including temperature, humidity and elevation.

With respect to the reasonable use of particular firearms for hunting and sport, Mr. Bader identifies five types of considerations to inform what is reasonable. These are safety, ethical, performance, reliability/durability and personal considerations.

Mr. Bader describes the nine families of prohibited firearms and the two general categories (based on bore diameter and muzzle energy). He elaborates on the relevant considerations for each category and notes particular examples.

Mr. Bader concludes that none of the firearms listed in the Regulations are unreasonable for hunting or sporting use in Canada.

L. *Andre Perreault*

Mr. Andre Perreault describes his experience with hunting and target shooting since his youth. He is the founder and owner of an online portal, GunPost.ca [Gunpost]. Gunpost is an online classified ad platform for licensed gun owners to legally and safely purchase and sell firearms.

Mr. Perrault states that the Regulations have hampered Gunpost's efforts to weed out illegal transactions due to the uncertainty created. He notes that since May 1, 2020, Gunpost has been inundated with inquires from members asking whether the guns they wish to sell or purchase are variants or modified versions of prohibited firearms.

Mr. Perreault states that the Regulations and subsequent FRT changes have created widespread confusion and uncertainty. He notes that there is no clarity regarding what is a variant, how to treat a removable choke, how to measure muzzle energy and no comprehensive list of newly prohibited firearms. He also notes that members have contacted Gunpost about their concerns about exposing themselves to criminal liability if they seek to buy or sell, without knowing the status of their firearm.

With respect to bore diameter, Mr. Perreault states that measurement requires specialized tools and that a gun owner would not have the skill to use such tools. He adds that bore diameter can vary, including due to the use of chokes. He notes that there is no guidance whether the bore is measured with or without the choke.

Mr. Perreault refers to a legal opinion provided to the Canadian Sport Shooting Association that concluded that "almost every modern 12 –gauge and 10 gauge shotgun in Canada with removable chokes" is now prohibited by the Regulation. He notes that this is inconsistent with a tweet issued by the Minister of Public Safety, Bill Blair on May 5, 2020, which stated the opposite. Mr. Blair later stated that bore diameter is measured 'after the chamber but before the choke in shotguns"

Mr. Perreault also refers to the definition used by the CBSA ("bore" is the inside of the barrel of the firearm from the throat to the muzzle, through which the projectile travels". He notes that the FRT uses a similar definition.

With respect to the prohibition based on 10, 000 joules, Mr. Perreault states that measurement of the muzzle energy requires tools and skills not possessed by the average gun owner. He adds that muzzle energy can vary depending on the type of ammunition.

Mr. Perreault describes the FRT and notes that the RCMP has continued to change the status of firearms that were not mentioned in the 2020 Regulations. He notes several news articles reporting on the reaction of gun owners and their lack of specific notice of the changes.

M. *Keith Cunningham*

Mr. Keith Cunningham is a retired captain in the Canadian Armed Forces [CAF] and has had a long career as a competitive shooter both within the CAF and as a civilian.

Mr. Cunningham explains that he has been shooting competitively since 1973 at the club, provincial, national and international levels. He has won 167 provincial and national events. In 1994, Mr. Cunningham was inducted into the CAF Sports Hall of Fame.

Mr. Cunningham is also a long time member of the Dominion of Canada Rifle Association [DCRA].

Since 1997, he and his wife, Linda Miller, have operated the MilCun Training Center. Mr. Cunningham is the Chief Operating Officer and Instructor.

Keith Cunningham explains the use of the AR and similar semi automatic firearms for sporting purposes in Canada. He notes that AR means “Armalite Rifle”. He further explains that there are two categories of AR firearms- those capable of automatic fire (used by the military) and those that are semi- automatic (used by target shooters, hunters and law enforcement).

Mr. Cunningham notes that AR’s are popular with women and persons with disabilities. They are also popular because they are accurate, reliable and affordable and have adjustable stocks to accommodate different body types.

Mr. Cunningham states that the use of the term "assault rifle" is confusing because this conflates two types of firearms that look similar but function differently. He states that the definition of "assault rifle" is based on its functionality. He explains that "assault rifles" are used by the military.

Mr. Cunningham contends that a statement made by Minister of Public Safety, Bill Blair, regarding the rationale for the Regulations is factually inaccurate. Minister Blair commented that the Regulations are intended to end the use of weapons designed for soldiers to kill other soldiers. Mr. Cunningham states that AR firearms and other semi- automatic firearms now prohibited were specifically designed for target shooting, hunting and other non-military purposes. He states that these firearms were not designed for soldiers to kill other soldiers.

Mr. Cunningham adds that to use the AR firearms for sport, the owner must pass the required safety course in order to obtain the required license. He notes that gun clubs, where shooting competitions take place, have very strict safety rules. More generally, the Canadian shooting community takes safety extremely seriously.

N. *Linda Miller*

Ms. Linda Miller explains that she began participating in sport shooting in 1984. She developed her skills initially using a .22 caliber bolt action rifle. She describes how she expanded her skills and experience with various other types of firearms for sport shooting.

Ms. Miller notes that she won the National Championship in Sporting Rifle at the Canadian National Championships in 1988. She later replaced her equipment to practice Olympic Style Shooting.

Ms. Miller notes that she was a member of the Canadian National Team in 1988 and won several championships over the years.

Ms. Miller also describes her participation and success at the National Service Conditions Championships, which includes competitors from the armed forces as well as civilians. In 2001 Ms. Miller won the King Trophy in the deliberate fire category; the first female to do so.

Ms. Miller and her husband, Keith Cunningham (also an affiant in T-677-20) are active in training and coaching. They opened the MilCun training centre in the late 1990s. MilCun trains police, military marksmen, competitive shooters and hunters.

Ms. Miller explains why the AR type firearms are a good and preferred choice for female competitors. Ms. Miller opines that the prohibition of the AR-15 and similar firearms will disproportionately affect female athletes and make sport shooting less accessible to them.

O. *Matt DeMille*

Mr. Matt DeMille is the manager of Fish and Wildlife Services of the Ontario Federation of Anglers and Hunters (OFAH). The OFAH is a conservation organization representing over 100, 000 members.

Mr. DeMille attaches the submission of the OFAH to the Minister of Public Safety regarding the Regulations.

Mr. DeMille also attaches the 2019 report of the Conference Board of Canada commissioned by OFAH and the Canadian Shooting Arms and Ammunition Association, entitled, “Economic Footprint of Angling, Hunting, Trapping and Sport Shooting in Canada”.

Mr. DeMille summarizes some of the conclusions of the Report, including that angling, hunting, trapping and sport shooting contributed $5 billion to the Canadian economy in 2018. The Report

describes the "economic footprint". For example, the gross domestic product of sport shooting is $1,803,000,000, which represents 17.28% of Canada's gross domestic product.

Mr. DeMille also attaches a Report of the OFAH, which he describes as an examination of previously restricted firearms, now prohibited by the Regulations, noting firearms that are reasonable and proportionate for hunting in Canada. The Report states that nearly all of the newly prohibited firearms are used for hunting and sport in Canada.

The Report also notes concerns about the uncertainty among gun owners whether their firearm is prohibited, the inability to know muzzle energy and bore size and the lack of any definition or criteria to inform what constitutes a variant.

P. *Christine Generoux*

Ms. Generoux states that she has a deep familial history with the Canadian outdoors and "gun culture." She notes that her great grandfather was a hunter, trapper, and guide at Algonquin Park from the late 1800s to the early 1900s and that she personally grew up taking backcountry camping trips with her family. Ms. Generoux states that firearms and nature have fostered her sense of inner peace, self-esteem, independence, personal responsibility and pride. She notes that her use of firearms is more than a personal choice or a recreational hobby—it is spiritual to her and is a big part of her identity. She adds that, in her experience, firearm use is often generational.

She notes that the safety courses and licencing process for firearm owners are extensive and that safety and responsibility are a big part of gun culture.

Ms. Generoux states that Canadian firearm licensees form a culture that is under regulatory attack amounting to "cultural genocide." She notes that past gun control laws have made it harder to practice cultural rituals, but that the Regulations completely ban integral parts of her cultural rituals,

gatherings, activities and objects. She states that membership in gun-culture is declining and that prospective members fear the stigma experienced by existing members.

Ms. Generoux states that the Regulations ban semi-automatic hunting rifles, whereas fully automatic firing military firearms have been grandfathered and can be possessed by civilians, such as her co-applicant John Perocchio, a firearm collector.

Among other uses, Ms. Generoux hunts small game and states that she can no longer use her Ruger Mini-14 firearm as it is now prohibited. She laments that she could not afford to buy a non-restricted firearm before the hunting season after the Regulations came into force. She notes her concern that replacement firearms will also become prohibited.

Q. *Vincent Perocchio*

Mr. Vincent Perocchio is the son of Mr. John Perocchio (both are applicants in T- 735-20). He states that he has lost his inheritance because his father's shop had to close. He is licensed to possess and acquire non-restricted and restricted firearms. Mr. Perocchio built an AR-15 pattern semi-automatic firearm for target practice, which is now prohibited.

R. *Bruce Gold*

Mr. Bruce Gold describes himself as a researcher and firearms historian, recognized in the industry as an expert on firearms issues in Canada and abroad on the topics of firearm uses, risks, benefits, firearm culture and legislation.

Mr. Gold holds a Masters in Intellectual History and a Masters in Public Administration. He states that he served for nine years in the Canadian Army and rose to the rank of Captain and unit training officer. He states his expertise is in infantry training and in the use of small arms. He adds that he was also employed for ten years by the British Columbia Government as a Policy Analyst.

Mr. Gold describes “Canadian gun culture” and his views on its origins and benefits.

Mr. Gold states that more Canadians participate in gun culture than hockey or golf. He states that the peaceable possession and use of modern semi- automatic firearms is a major component of gun culture.

Mr. Gold opines that the civilian possession of modern arms laid the foundation for Confederacy and that without such possession Canada would not exist. In his view, the existence of armed citizens has deterred and prevented violence. He also opines that the military depends on the skills of civilians who are part of the gun culture for recruitment and support. Mr. Gold states that the preparedness of Canadians for the armed forces is critical. He acknowledges that training is not required to become a member of the armed forces, but opines that it is a “massive benefit”.

Mr. Gold submits that Canada relies on a “citizen’s militia” as part of its national defence and security. He reiterates that civilian access to modern firearms and civilian shooting ranges will permit expertise to be achieved, which will benefit Canada. He claims that the Regulations will jeopardize Canada’s national security by removing key equipment and training opportunities for law enforcement, the military and civilians.

Mr. Gold traces the historical path of the gun culture he describes.

Mr. Gold opines that the Regulations will destroy the gun culture and the place it holds in Canadian history and heritage. He expresses the view that the Regulations, which prohibit the use of many firearms, will jeopardize the lives of Canadians.

Mr. Gold describes the gun culture with reference to the membership of many Canadians in hunting and sport shooting clubs and in National and International organizations. He notes that these

organizations provide social, emotional and financial support to members, along with safety training and a source of information for policy makers.

Mr. Gold states that peaceable civilian firearms ownership and use (i.e., the culture he describes) relies on the continued use of certain firearms that are now prohibited. He states that these firearms are both reasonable for use and preferable for use in hunting and sport. He states "[T]he Government's contention that they have no sporting use and have no purpose other than murder is a bizarre example of the 'big lie' and Orwellian double speak". He adds that some of the now prohibited firearms have been in common use for hunting and sport for over 50 years.

Mr. Gold opines that the 1500 firearms now prohibited remain reasonable for hunting and sporting use in Canada. He singles out the AR-15 for its popularity for hunting and sport.

Mr. Gold adds that restrictions on bore diameter will destroy unique firearms and end big game hunting in Canada's North.

Mr. Gold states that the prohibited firearms are not military assault weapons, noting that these have been prohibited since 1978.

With respect to the Firearms Reference Table, Mr. Gold opines that this is an impermissible sub-delegation and amounts to "an illegal star chamber".

Mr. Gold claims that Canadian gun culture- which is tied to its members' personal identity- will be destroyed if the ban on modern semi-automatic firearms is maintained.

Mr. Gold concludes that the Regulations that make extensive and continuing changes to firearms classification is a "refutation of our military heritage". He contends that this violates common law traditions and presents a risk to public safety.

S. *Jennifer Eichenberg*

Ms. Jennifer Eichenberg is a firearms owner and avid sports shooter both nationally and internationally. She notes that due to the Regulations, she not been able to compete in two types of shooting competitions because her now prohibited rifle (a Stag Arms Stag-15 rifle, which is an AR-15 platform rifle) is the only firearm suitable for use in these sports.

T. *Franco Nardi*

Mr. Franco Nardi owns the Montreal Firearms Recreational Centre Inc or Centre récréatif d'armes à feu de Montréal inc. (CRAFM). CRAFM is federally licensed to obtain, import, sell, distribute and service prohibited, restricted and non-restricted firearms, ammunition and accessories. CRAFM is in possession of approximately $250,000 worth of now prohibited firearms that cannot be returned, sold or transferred. CRAFM also owns and operates the Montreal Shooting Club, a federally licenced shooting range under the *Firearms Act*. Before the Regulations, the Montreal Shooting Club permitted the use of the nine prohibited families for sport shooting. Mr. Nardi notes that these prohibited firearms continue to be used outside of Canada in competitions held by the International Practical Shooting Confederacy.

II. SELECTED EVIDENCE FROM THE RESPONDENT

A. *Murray Smith*

Mr. Murray Smith is a forensic scientist with over 40 years experience in the provision of technical and policy advice to the Government regarding firearms. Most recently, from 2008 – 2020, Mr. Smith was Manager of the Specialized Firearms Support Service [SFSS] within the Canadian Firearms Program [CFP] of the RCMP. In this capacity, he was responsible for maintaining the Firearms Reference Table [FRT] and inspecting firearms from police and other law enforcement agencies and firearms businesses to establish a standard description and to assess firearm

classifications. Mr. Smith notes that his experience within the CFP and its predecessor includes that relating to the origin, design, operation, uses and characteristics of firearms and their parts and accessories.

Mr. Smith's evidence addresses, among other issues: the origins and role of the FRT; the firearms addressed by the Regulations; the meaning of variants and how they are identified; and, the measurement of bore diameter and muzzle energy.

Mr. Smith also responds to some of the statements made by the Applicants' affiants, including Mr. Bader, Mr. Galtica, Mr. O'Dell and Mr. Delve.

Mr. Smith was extensively cross-examined by several of the Applicants.

On cross-examination, Mr. Smith elaborated on his expertise and experience. Mr. Smith explained that his knowledge of the FRT is based on his experience as the manager of the FRT unit of the RCMP. He states that most -if not all - of the information in his affidavit would have been accessible to the public by contacting the CFP or SFSS or via access to information requests.

(1) Canadian Firearms Program [CFP] and SFSS

Mr. Smith explains that the CFP was created in 2006 upon the transfer of responsibilities of the Canadian Firearms Centre (established in 1996) to the RCMP.

Mr. Smith explains that the **SFSS** is part of the CFP that employs firearm technicians to collect and assess technical information to classify firearms for the purpose of registration, import and export control, and to assist law enforcement agencies with firearm identification and investigations.

(2) The FRT

Mr. Smith describes the FRT as a database maintained by SFSS. The FRT currently lists 200,000 firearm entries plus entries for prohibited devices and ammunition. Mr. Smith explains that named variants are those listed in the Regulations and unnamed variants are not listed in the Regulations, but would be included on the FRT if assessed to be a variant.

Mr. Smith describes the purpose of FRT as "to assist law enforcement officers, customs officers, and officials responsible for the regulation of firearms with the identification and classification of firearms. It is not intended to legally bind law enforcement, judges or administrative decision makers under the *Criminal Code, Firearms Act* or other relevant statutes. It is intended to be a non-binding administrative tool."

Mr. Smith explains that the FRT lists and describes firearms and their assessment reflecting the view of the SFSS on whether the firearm is non-restricted, restricted or prohibited. FRT assessments are based on the definitions in the *Criminal Code* , the types of firearms set out in the 1998 Regulations, the 2020 Regulations and the *Firearms Act.*

On cross examination, Mr. Smith reiterated that because the FRT is non-binding, administrative decision-makers under the *Firearms Act*, *Import and Export Permits Act*, and other government users could reach a different opinion on the classification of a firearm, as could firearm businesses and individual firearm owners. He notes that it is an important resource for law enforcement officers to formulate charges, but it is not the only tool.

On cross examination, Mr. Smith responded that he was a co-developer of the FRT. He explained that the first FRT entries were entered by firearm technicians based on a variety of open source information, the majority being publications by firearm manufactures and distributors.

Mr. Smith notes that the FRT is available to firearms businesses in software format that is updated every 24 hours. The FRT is also available to businesses and the public in PDF form that is searchable and updated every two weeks.

Mr. Smith notes that businesses and the public can contact the CFP by phone or email.

Mr. Smith provides statistics that show that for the first 6 months of 2021, 1568 phone inquiries were made (averaging 224 per month) and 4111 email inquiries (averaging 587 per month) were received.

(3) FRT—Quality Assurance

Mr. Smith explains that there is a quality assurance system to ensure the accuracy of the information included in the FRT. All new entries and material changes to existing entries are separately reviewed and confirmed by different SFSS firearms experts before the FRT is updated.

On cross examination, Mr. Smith elaborated, noting that SFSS technicians make classification determinations on firearms (i.e. whether they were non-restricted, restricted, or prohibited) beginning with one technician making an assessment, a second equally qualified technician reviewing, and if both technicians agree, then the information would be published in the FRT. He added that if the technical issues are more complex, there is an escalation process where the determination can be reviewed by more senior and more experienced SFSS officers. He further stated that for more complex or new firearms under review, a more senior technician would be tasked with the classification. Mr. Smith provided an example: a well-known platform with a new barrel length would go to a junior technician, whereas a firearm that is a derivative of many platforms not already in the FRT would more likely be assigned to a senior technician.

When asked about disagreement within the SFSS, Mr. Smith stated that debate is encouraged, but that multiple opinions only arose in "very few cases."

Mr. Smith also notes that the SFSS assessment of firearms may be reconsidered where the owner or business makes a request and provides a rationale and supporting material.

On cross-examination, Mr. Smith noted that from time to time, people have contacted the SFSS and FRT entries had been downgraded in their classification and that in other instances, law enforcement had called and entries have been upgraded.

On cross examination, Mr. Smith stated that once an assessment is made, it is recorded in the FRT and not altered unless there is a new model of the firearm available. He noted that the practice in the early 2000s placed more weight on information from firearm manufacturers. However, misrepresentations regarding Swiss-Arms and SG firearms led to their subsequent reclassification.

On cross-examination, Mr. Smith explained that after 2009 all new FRT entries require physical inspection. He later noted that new policies were implemented in 2015 and 2019. He acknowledged that in a few instances, physical inspection did not occur because the publication materials were sufficient.

(4) Reliance on the FRT

On cross-examination, Mr. Smith stated that he was not aware that government officials and other agencies have been encouraged to recognize the credibility of the FRT, but noted that various agencies had instructed their staff to consult the FRT. He explained that the SFSS provides training to Crown Attorneys to familiarize them with the FRT and how to use it. He noted that the SFSS promotes the FRT and hopes that users will regard it as a credible tool, but added that "the use of the FRT database is nonetheless voluntary by any agency or individual who chooses to use it".

Mr. Smith noted that in his experience the police and Crown Attorneys widely use the FRT to assist their decision making and to present evidence in Court. He clarified that the FRT is only used as an information source.

When asked about other resources available to Crown attorneys, Mr. Smith stated:

> It seems to me Crown attorneys rely on the services of expert witnesses, from forensic laboratories and elsewhere. They may rely on their own personal information. They may rely on information supplied by the police.
>
> So Crown attorneys, in my experience, collect information from just about anywhere they can get it and from sources which they view as being reliable.

(5) Updates to the FRT after the Regulations

Mr. Smith states that the CFP estimates that 100,000 to 110, 000 firearm owners (5% of the 2.2 million firearm licensees) and 150,000 firearms were affected by the 2020 Regulations (relying on a report by PBO in June 2021).

Mr. Smith notes that prior to the May 2020 Regulations, there were 700 unnamed variants in the FRT.

On cross examination, Mr. Smith explained that after the May 1, 2020 Regulations, he and his team updated the FRT to reflect the Regulations, in addition to their usual task of classifying further firearms not already in the FRT. He explained that about 200 of the existing FRT entries had to be changed following the Regulations and that, of the 200 entries, approximately 80 dealt with the nine families and the remaining dealt with muzzle energy and bore diameter.

He explained that after the Regulations, SFSS researchers assessed all the information available and determined whether the classification changed as a result of the Regulations. Mr. Smith noted that

the "particular outcome would have been reviewed by a quality control researcher with similar qualifications, and the record would have been published as a prohibited firearm only if both of them concurred."

Mr. Smith notes that the review of all FRT entries was not completed by the date of the 2020 Regulations and further updates continued until June 15, 2020 (with a few made subsequently).

Between May 1 and June 15, 2020, the SFSS identified 996 additional variants not listed in the Regulations. After May 1, 2020, the SFSS also identified 384 newly designed and manufactured variants – not listed in the Regulations- but prohibited because they are a variant of one of the nine families of prohibited firearms.

Mr. Smith states that after May 2020, approximately 87% of the variants of the nine families were named in the Regulation, and 13% were unnamed, but listed on the FRT.

On cross- examination, Mr. Smith clarified that his statement that 90 percent (actually 87%) of the variants associated with the nine families were named in the May 1, 2020 Regulations is supported by a study conducted by his staff at the SFSS. He stated that the majority of the prohibited types of firearms were previously marked as restricted prior to May 1, 2020. He explained that he could determine the number of restricted firearms owned and affected due to the registration system, but that he did not have the number of the non-restricted firearms because these were not registered.

Mr. Smith also describes how firearm owners and the public in general were notified of the Regulations. All firearm licensees received a one pager whether impacted by the Regulations or not. Owners of restricted firearms, now prohibited, were sent individual letters. Firearm businesses were also provided with information about the Regulations.

(6) Variants

Mr. Smith acknowledges that the term "variant" is not defined in legislation but notes that this not a new concept as the term has been in the predecessor regulations since 1992.

He explains that the RCMP relies on the ordinary meaning of "variant"; the term generally refers to a firearm whose design was derived from an original firearm (head of family). He notes that manufacturers use the term variant in their marketing, Mr. Smith points to several examples. In addition, gun literature uses the term variant, for example, "Shooters Bible Guide to AR- 15s".

On cross-examination, Mr. Smith pointed to three common firearms publications that use the term "variant" but do not define it. He added that there is no standard industry definition. Mr. Smith explained that changes or updates to firearm models can be ascertained by firearm users. He noted that some significant variations can have different nomenclature, such as the newer version of the M16 introducing a significant change in design, which became a M16A1. He added that this practice is not consistent across firearms, for example, the AR-15 has many variations without changes in its nomenclature. He noted that there is no standard naming practices for firearms and he is not aware of any laws in Canada on firearm marketing.

Mr. Smith states that the definition of variant proposed by Mr. Bader, which focuses on the frame of the firearm, is not feasible. Mr. Smith notes that Mr. Bader's definition would mean that variants of seven of the nine families would only include fully automatic firearms, since the semi-automatic variants explicitly listed in the Regulation do not have the same frame or receiver as the original fully automatic version. He adds that fully automatic firearms are already prohibited in Canada. Mr. Smith points to *Janes Weapons: Infantry's* assessment of variants of the AR-15, and the CCFR's policy on magazine restrictions as acknowledging AR-15 variants, in support of disputing Mr. Bader's definition.

Mr. Smith also states that contrary to Mr. Bader's assertion that the Mossberg 715T.22 is not a variant of the AR-15, the "Shooters Bible" contradicts his assessment.

On cross-examination, Mr. Smith responded that a variant is a firearm whose design was derived from a parent of the nine families; however, he clarified that he is not proposing this as a definition. He reiterated that the working definition of variant used by the CFP and SFSS is the dictionary meaning. He noted that each family may have multiple parents (for e.g. the parents in section 87 of the Regulations are the M16, AR-10, AR-15, and the M4 carbine). He stated that there is not much point in differentiating the parents of the same family because of interchangeable parts and overlap in design, among other factors (i.e. between the AR-10 and M4 carbine). He noted that the firearms' industry widely refers to the AR-platform to cover all four parents in section 87 of the Regulations (the M16, AR-10, AR-15, and the M4 carbine).

On cross- examination, Mr. Smith stated that the Oxford Dictionary definition of variant used by the CFP and SFSS is "A form or version of something that differs in some respect from other firms of the same thing or from a standard." He stated that a 16th century musket cannot be a variant of the AK-47 because variants cannot exist before the original head of family or parent. When asked how this element of chronology is part of the definition, Mr. Smith noted that the dictionary definition is not the sole factor relied on by the CFP in classification of variants. He acknowledged that the FRT and SFSS do not publicly state that they use the Oxford Dictionary definition of variant. He also acknowledged that he could not point to any scientific or firearms industry publication that define variant the same way as the Oxford Dictionary.

On cross- examination, Mr. Smith noted that he has no doubt that firearm owners know what "variant" means, based on his personal contact with members of the firearm industry and individual

owners, through reading posts by the major firearm owners groups, and based on the e-petition from a few years ago calling for Parliament to deregulate the AR-15 platform.

On cross- examination, Mr. Smith also stated that the terms "variant" and "modified version" do not mean the same thing, but despite their distinct meanings, the term "variant" is often used as shorthand for both. He added that some firearms could likely qualify as both a variant and a modified version. Mr. Smith reiterated that both terms have been in the regulations since 1992

(7) How the SFSS Assesses Variants

With respect to how the SFSS assesses variants, Mr. Smith notes that if the firearm is marketed as a variant, the SFSS will list it as a variant on the FRT. If not so marketed, the SFSS will consider several things, including the design, in particular the appearance and position of user controls, the manufacturer's description, patents, interchangeability of parts and the purpose of the firearm. No characteristic is definitive.

Mr. Smith notes that on a You Tube video, Rodney Galtica, describes an AR-15 as a Lego gun, due to the interchangeability of its parts.

On cross-examination, Mr. Smith explained that the SFSS does not have a checklist or written protocol. Mr. Smith stated that classifying variants is "a process which requires knowledge of firearms and the application of that knowledge to determine the lineage of a firearm and whether or not it is related to another firearm." He stated that this assessment is not mathematical, but it is not subjective since it is driven by information and logic. He stated that he would "like to think that two experts who have access to the same body of knowledge and the same information on which to make a decision would arrive at the same or nearly the same conclusion." He admitted that this does not always occur and that differing opinions usually mean that more research is needed to find

information to tip the balance one way or the other. He noted that in his experience with SFSS, it is rare for there to be divided opinions.

On cross-examination Mr. Smith noted that when classifying variants, a common physical design or appearance with a prohibited head of family is one factor that may indicate that a firearm is a variant. This involves more that looking at pictures and may include measurements where these are common for the interchangeability of parts. He noted that cosmetic appearance does not affect the lethality of the firearm. Mr. Smith also noted that common patents and interchangeable parts with a head of family can indicate- but not determine- whether a firearm is a variant. With respect to interchangeable parts, Mr. Smith noted that the focus is on core parts -such as a bolt, a receiver, the bolt carrier and the barrel- and that some parts are far less important, such as the sighting equipment and magazines. He emphasized that "the important criterion in establishing whether a firearm is a variant or not is the lineage of the firearm, whether it is derived from the original firearm or not. And the fact that some manufacturer who independently design and manufactures a firearm might take advantage of the vast supply chain of AR platform components as an economy measure or efficiency measure does not make—or does not necessarily make—that firearm a variant."

Mr. Smith emphasized that many factors are considered at the time the assessment is made, and that "it is the collective weight of the information that determines whether a firearm is considered to be a variant."

On cross- examination, Mr. Smith explained that the SFSS looks at the advertising materials for firearms- as only one factor- when formulating classification opinions. He noted that advertising material is, at times, not credible, but that manufacturers generally describe their firearms as variants "to capitalize either on the fame or notoriety of the original firearm and thereby increase sales while at the same time indicating that the firearm is related to the original." He added that the reliability of

this information is evaluated in the context of all other information available, including a physical inspection where possible.

(8) How Firearm Owners Can Identify a Variant

On cross-examination, when asked for the best way for a firearm owner to identify whether they have an unnamed variant, Mr. Smith explained that most variants are obvious, but that firearm owners would have a number of options to determine this, noting:

> One would be to figure it out for themselves, which is not as difficult as some would say. Most of the variants that are in circulation in Canada are obvious to everyone as variants. In fact, the owners typically purchase the firearm because it was a variant.
>
> So, for example, the largest single group of firearms named in the regulations is the AR platform. There's about 90,000 of these firearms in circulation in Canada. And the AR platform is well-known to firearms owners, and people typically buy one of those firearms because they know it is a variant of the AR-15, and that is a desirable characteristic.
>
> So for the vast majority of these firearms and their variants, the lineage, history, and relationship of these firearms to the original firearm is well-known.
>
> There is a percentage where the association with the parent firearm is perhaps less clear, but for the majority, it's pretty straightforward. [Minor edits made to transcript to remove extra filler words.]

For the "small percentage" of firearms that are not "obvious and self-evident," Mr. Smith stated that those owners are welcome to contact the CFP via phone or email. He noted that they could contact their local firearms officer, or consult outside of the CFP, as well, with firearms businesses; in particular the business that sold them the firearm or is about to sell them the firearm.

(9) Prohibited firearms and variants

On cross-examination, Mr. Smith was asked about why certain firearms were now prohibited.

With respect to the SLR Coyote, an unnamed variant of a prohibited firearm, Mr. Smith noted that it was "reminiscent" of the AR-10 and AR-15 families, but that he could only recall, from memory, that it had a bolt stock and a "T slot connection" that was "similar to and probably derived from the AR-10" and that the trigger was similar to the AR-15. He could not provide further details without reference to his notes.

With respect to the non-restricted classification originally given to the SLR-Multi, which was purported to be an original design, Mr. Smith stated that it was previously classified as non-restricted classification because it could not be positively established as a variant of the M16. He stated that he did not recall marketing material suggesting that the SLR-Multi was based on the AR-10 and AR-15 design, but he did recall that the manufacturer was "striving to produce a rifle that was not an AR-15 restricted firearm but which incorporated as much of the AR-15 elements as was possible." He stated that the SFSS's view was that the SLR- Multi turned out to be a combination of AR-15 and AR-10 components and design.

Mr. Smith was asked about a Turkish firearm (Akdal MKA 1919) listed in the FRT as prohibited, but in working notes of a SFSS technician it was described as having "cosmetic" similarities to the M16 and AR-15 firearms. Mr. Smith explained that:

> The appearance of the firearm is an indication of the intention of the manufacturer to produce a firearm that was a member of the target family. It also, generally, duplicates the ergonomics of the parent firearm, and the manufacturers go to great lengths to point that out in their advertising. So it's not just a cosmetic issue. The linkage is much deeper than that.

With respect to the Alberta Tactical Modern Hunter, Mr. Smith stated that prior to the May 1, 2020 Regulations Alberta Tactical Rifle Supply was very open with the SFSS while designing a firearm known as the Modern Hunter. Alberta Tactical Rifle Supply designers were trying to produce an AR-15 pattern firearm that was similar enough the AR-15 to be used for the same purposes, but to

not fall within the M16 prohibition that existed at the time. The firearm was classified as a non-restricted firearm prior to the May 1, 2020 Regulations.

(10) Bore Diameter

Mr. Smith states that firearms with bores of 20 mm and over are mostly associated with weapons of war.

He explains that bore can be determined; for a shotgun, the larger the gauge, the smaller the bore. A gauge less than 10 will generally be above 20mm in bore. For rifles, the bore diameter is based on the caliber. The firearm owner needs to confirm whether the caliber is above 20mm. The firearm owner needs to know the caliber to know the type of cartridge to use. (In other words, firearm owners will know the gauge or will inquire.)

Mr. Smith notes that a firearm will usually be stamped with the caliber. In the exceptional case where it is not stamped, a firearm owner would need assistance to determine or measure the bore, and this can be obtained from the vendor, a gunsmith or the CFP.

Mr. Smith notes that the CFP measures the bore in accordance with the Association of Firearm and Tool Mark Examiners (AFTE) definition for bore diameter ("the interior dimensions of the barrel forward of the chamber but before the choke").

Mr. Smith notes that this definition is on a notice posted on the CFP website. Mr. Smith acknowledges that the glossary on the FRT may give the reader an indication that the choke is part of the bore- but the glossary is not determinative. The CFP website explains how bore is measured.

On cross- examination, Mr. Smith stated that he understands the bore of a firearm to mean the interior surface of the barrel exclusive of the chamber, the forcing cone, the choke, and other features. (In other words, the CFP does not consider the choke to be part of the bore.)

Mr. Smith states that the common way to measure –and that used by the CFP- is to use nominal bore diameter. Mr. Smith notes that he is not aware of any complications arising from use of nominal measurement of bore diameter

Mr. Smith states that for shotguns, a firearm owner need only look at the data stamp (caliber) to know the gauge. The gauge is linked to bore (as explained in the Canadian Firearm Safety Course). He also notes that bore diameter is noted on gun manufacturers' websites and through other resources, including the CFP.

On cross-examination, Mr. Smith noted that in the vast majority of cases, the calibre data stamp on firearms will provide the calibre. He reiterated that the caliber can be converted to a nominal bore diameter measurement. He also noted that using the correct cartridge is a matter of safety and that standardizing organizations exist to assist with this. He acknowledged that there is no requirement in Canada for firearms to be stamped with certain information.

Mr. Smith explains that any gauge less than 10 will have a nominal bore diameter larger than 20 mm.

Mr. Smith explains that firearms of all types used for hunting will have a bore diameter less than 20 mm. Calibers of 20 mm or greater are almost exclusively for military use. Mr. Smith notes that most rifle owners do not own a rifle with a bore diameter of 20 mm or even close to 20 mm.

Mr. Smith states that the vast majority of modern cartridge firing hunting and sporting firearms with rifled bores are chambered for calibers of 50 or smaller (which is far less than the 20 mm limit).

Mr. Smith disputes Mr. O'Dell's and Mr. Bader's opinions that bore diameter is complicated or confusing to measure. Mr. Smith states that it is clear how to measure the bore. Mr. Bader and O'Dell's assumptions that the 20 mm limit applies at every point along the bore is incorrect based on the historical definition of bore diameter.

Mr. Smith also stated that Courts are independent and may use a measurement other than nominal bore measurement, since this is not defined in the legislation and will require interpretation.

(11) Muzzle energy

Mr. Smith states that it is easy for firearm owners to look up the muzzle energy of ammunition –for example, on manufacturers' websites or other firearms' websites.

Mr. Smith states that, contrary to Mr. O'Dell's assertion that modifications are easily done to change the firearm to make it capable of firing a projectile with more than 10, 000 joules, such modifications could not be accomplished in a short period of time with relative ease, which is the standard established in jurisprudence.

Mr. Smith adds that he is not aware of any caliber close to the 10,000 joule limit that could become capable of producing a muzzle energy of over 10,000 joules due to the variables noted by Mr. O'Dell (for example, temperature). He states that any variations would be very small.

On cross- examination, Mr. Smith explained that some military weapons exceed 10,000 joules of muzzle energy, as do a few hunting rifles for large African game, like elephants and rhinoceroses. He noted that such energy is not required for hunting in Canada.

On cross- examination, Mr. Smith stated that muzzle energy can vary based on the type of loading. He explained that firearm owners that he is aware of who hand load rely on loading tables supplied by manufacturers of bullets or propellant powder. He added that while a hand loader could overload a firearm, in most cases this is not physically possible due to space limitations. He also noted that substituting gunpowder for a stronger kind than intended by the manufacturer risks damaging the firearm itself.

Mr. Smith clarified that hand loading means loading a cartridge ammunition from the basic component. He acknowledged that hand loading is quite common. Mr. Smith noted that anyone who hand loads their firearms would have the tools for measuring their bore diameter.

On cross-examination, Mr. Smith stated that his qualifications to explain muzzle energy and bore diameter are based on his work with the CFP, but that some foundational principles come from his study of physics.

(12) Firearms reasonable for hunting and sport

Mr. Smith notes that while some of the Applicants may prefer to hunt with firearms now prohibited (in the nine families) these firearms are not required for any "technical aspect" of hunting.

Mr. Smith notes that firearm owners were never permitted to use restricted firearms for hunting. He adds that many of the firearms now prohibited were previously restricted and therefore, were not used for hunting before the Regulations. As a result, the impact is on those hunters who used non-restricted firearms that are now prohibited.

Mr. Smith responds to Mr. Delve's preference for using his BCL 102 semi automatic and notes that this is a variant of AR-15 and that there are alternatives to address Mr. Delve's personal needs.

Mr. Smith also responds to Mr. Giltaca's concern about the impact on Yukon conservation officers. Mr. Smith explains that Yukon conservation officers can continue to use certain now prohibited firearms. Hunters were already prohibited from using the firearms noted by Mr. Giltaca before May 2020.

(13) The impact of the Regulations on Sport Shooting and the DCRA competitions

Mr. Smith acknowledges that the Service Rifle Competition is of long standing. He explains that the term "service rifle" connotes the battle rifle that was in the current service of the military at the time of the competition. The competitions are designed to simulate combat conditions. In these competitions, civilians use civilian versions of military or law enforcement service firearms.

Mr. Smith explains that the only sport shooting competitions of the DCRA that are affected by the Regulations are the service rifle type competitions and only the civilians using civilian versions of military firearms would be affected. Mr. Smith states that there are alternatives that can be used.

Mr. Smith also notes that law enforcement and CAF have their own training programs and access to ranges and internal competitions.

In response to Mr. Giltaca's evidence about the AR-15, Mr. Smith states that while some of the features of the AR-15 may be useful for sport, this usefulness has little to do with how dangerous the AR-15 is. He notes that the AR-15 inherits its characteristics from the M16, a military firearm. Mr. Smith also notes that there are few sporting competitions that are designed for the AR -15.

Mr. Smith states that there are 100,000 AR-15s in Canada, but there are 2.2 Million firearm owners. This shows that most firearm owners use firearms other than the AR- 15.

On cross- examination, Mr. Smith noted that the parents of the nine families were used for hunting and for tactical sport shooting, but did not have any statistics regarding use. When asked if it was reasonable to use these firearms for tactical sports, Mr. Smith said that this is "value-loaded" since it requires a judgement as to "whether the target competition in question was legitimate or not, or whether it was actually sporting or really meant for some other purpose."

B. *Randall Koops*

Mr. Randall Koops is Director General of International and Border Policy at the Department of Public Safety and Emergency Preparedness [Public Safety].

He explains the role and mandate of Public Safety and the entities within that Portfolio. He also explains that Public Safety plays a key role in the development of firearms policy.

Mr. Koops provides an overview of the *Firearms Act* and relevant *Criminal Code* provisions.

He notes that the Governor in Council has made various Orders in Council since 1992 that prescribe prohibited and restricted firearms and other devices, and variants or modified versions.

Mr. Koops notes that Royal Assent in 1995 but most provisions came into force in December 1998, He describes the major changes brought about by Bill C-68, including the creation of the *Firearms Act* and the *Criminal Code* amendments.

Mr. Koops notes that Regulations were made in 1998 pursuant to Section 117.15 that incorporated pre 1998 Orders in Council and prohibitions on semi- automatic firearms and any variants or modified versions of them.

Mr. Koops explains that the context for the Regulations is largely set out in the RIAS.

Mr. Koops notes the mass shootings that occurred in the UK, Australia, New Zealand, and the United States and the types of firearms used.

He also notes the mass shootings that have occurred in Canada from 1989- 2020 and the types of firearms used. Mr. Koops notes the public reaction to these events and the calls for prohibitions on handguns, assault rifles, and semi-automatic firearms.

He notes that as early as 1994, the Canadian Association of Chiefs of Police [CACP] advocated for bans on military assault type rifles except for law enforcement and military.

Mr. Koops notes the concerns of the police due to the risks they face from persons armed with assault type firearms. As an example, he notes the fatal shootings in Mayerthorpe Alberta in 2005 and Moncton in 2014.

Mr. Koops refers to a presentation made by Statistics Canada to the Standing Senate Committee on National Security and Defence in 2019. Statistics Canada reported that firearms related violent crime in 2017 was 42% higher than in the previous four years, whereas the overall police reported crime was only 3% higher.

In 2017, there were over 7,700 victims of police reported violent crime involving firearms.

Between 2013 and 2017 the number of shooting homicide victims more than doubled and gang related firearm homicides almost doubled.

Mr. Koops notes the Government's commitments in election platforms, the 2015 and 2019 SFT, 2016 and 2018 Budget and other announcements and legislative initiatives in response to commitments to enhance public safety by further restrictions for firearms.

Mr. Koops notes that the 2019 Mandate Letter to the Minister of Public Safety and Emergency Preparedness directed the Minister to work with the Minister of Justice to implement the firearm policy commitments, including to amend the law to ban all military assault style rifles with a 2 year amnesty and a buy back program; and to continue to protect the rights of hunters and farmers, noting that there would not be a return to the long gun registry.

Mr. Koops describes the Regulations, their goal (as set out in the RIAS) and the intention to develop a buy back program.

Mr. Koops explains that Public Safety conducted a national public engagement process from October 2018 to February 2019. This included a questionnaire, written submissions, roundtables and discussions with Provinces, territories and Indigenous communities. The Report, "Engagement Summary Report- Reducing Violent Crime: A Dialogue on Handguns and Assault- Style Firearms", was released in April 2019.

Mr. Koops notes that participants were highly polarized. He summarizes some of the views of supporters of further bans or restrictions.

In addition to the consultations, stakeholders made submissions and or appeared before the Standing Committee on Public Safety and National Security in the study of Bill C-71. Mr. Koops again notes that views varied regarding further restrictions, but concerns about the safety risks of assault style firearms emerged.

Mr. Koops notes the submissions of CACP, Coalition for Gun Control, National Association of Women and the Law, YWCA Toronto, Canadian Paediatric Society, and PolySeSouvient, all calling for bans or restrictions on assault type firearms.

Mr. Koops explains that following the 2018-19 consultation process, the Minister of Border Security and Organized Crime Reduction directed officials to develop policy measures to ban assault style firearms. Officials at Public Safety worked together with officials at the Department of Justice, RCMP (CFP), CBSA and Global Affairs.

Mr. Koops reiterates the policy objectives of the Regulations as noted in the RIAS, including to limit access to firearms capable of inflicting significant harm.

Mr. Koops explains that the authority to prescribe firearms as prohibited or restricted is not new as this authority was first delegated to the Governor in Council in 1969.

Mr. Koops states that the Governor in Council was of the opinion that the firearms prescribed are not reasonable for use for hunting or sport. He reiterates the concerns set out in the RIAS regarding the inherent public safety risk which makes the firearms unsuitable for civilian use. He explains that the Governor in Council concluded that the prohibited firearms were not suitable for civilian use because “their potential destructive power enable casualties or property damage at long range”.

Mr., Koops states that the GIC considered that the significant risk posed to public safety outweighed any justification for their use in hunting and sport, and also considered that other firearms remained available for these purposes.

Mr. Koops notes that the Regulations prohibit the firearms that were used in the mass shootings that occurred at l’Ecole Polytechnique and Dawson College and in Moncton, Quebec City and Nova Scotia.

Mr. Koops also notes several examples of firearms used in mass shootings in the US, New Zealand and Australia, that are now prohibited.

With respect to the exemption from prepublication in the Canada Gazette, Mr. Koops states that there is no requirement in the *Criminal Code* for amendments to Regulations to be tabled in Parliament for scrutiny, unlike amendments to regulations pursuant to the *Firearms Act*.

Mr. Koops notes that the Government was not required to provide advance notice of the Regulations to the World Trade Organization, as an exemption exists for urgent matters of safety health, national security and for other reasons.

Mr. Koops explains that no advance notice was provided to avoid creating "a run on the market". He notes that in the past when announcements were made about pending changes or restrictions, there were increases in transfers of firearm ownership, some due to anticipated "grandfathering" exceptions. He explains that stimulating demand was not in the interests of the objective of the Regulations.

Mr. Koops notes that the 1998 Regulations were the last major revision until the May 2020 Order in Council. He notes that over this period, the market grew and new firearms entering the market were classified according to the *Criminal Code* (section 84), if not already prescribed in the Regulations.

Mr. Koops acknowledges that some groups have lobbied for a definition of "variant" and a Private Member's Bill sought to add such a definition. He explains that the Government is not supportive of a definition as it would not provide clarity over the plain meaning and could have unintended consequences.

With respect to the use of the terms "assault style firearm" or "assault weapon", Mr. Koops explains that the terms are commonly used but do not have a specific definition. He explains that the Government used the term to avoid other terms that have been defined in other countries. He also

notes that the Regulations set out specific models and characteristics and do not use the broader terms.

C. *Blake Brown*

Professor Brown is a professor of Canadian legal history and has published extensively. A major subject of his academic research examines the use of firearms and firearm regulation in Canada.

Professor Brown discloses that he has received funding from the Social Science and Humanities Research Council of Canada, the Fulbright program, and Saint Mary's University, but has not received any funding from organizations that support or oppose gun control efforts.

Professor Brown's affidavit and opinion respond to specific questions.

(1) When did assault-style firearms enter the Canadian market, and were these firearms originally created with a military use in mind? How have these firearms been marketed over time? How has the popularity of these firearms changed over time?

Professor Brown states that Regulations respond to changes in firearm technology, shifts in the marketing and sales of such firearms, and their use in domestic and international mass shootings. He describes the Regulations as "a continuation of the federal government's long-term efforts to curb the ownership and use of semi-automatic, assault-style firearms." He notes that the Regulations tend to capture firearms that can receive a detachable magazine, generally use centre-fire ammunition, and can fire with a semi-automatic function.

Professor Brown traces the development of firearms from the 1880s (single-shot, smooth-bore firearms loaded through the muzzle that were slow to load, inaccurate beyond approximately 100 metres, and often misfired) through to the semi-automatic firearms for hunting that became available in the 1960s and 1970s . Professor Brown notes that advertisements for some semi- automatic firearms based on military designs, such as the AR-15, which began to enter the Canadian civilian

market, often referred to the firearms as “assault rifles.” He notes that following the 1989 École Polytechnique massacre and the 1994 US ban on assault weapons, the firearms community stopped calling such firearms assault rifles, and instead described such rifles as ‘modern sporting rifles,’ ‘black rifles,’ or ‘tactical rifles.’

For the purposes of his affidavit, Professor Brown uses the term “assault-style rifle” to refer to semi-automatic, centre-fire rifles that can receive a detachable magazine that originated from a military design. He notes that at various times, these firearms have also been referred to as ‘para-military’ rifles, ‘military-style’ rifles, ‘modern sporting rifles,’ ‘black rifles,’ ‘assault weapons,’ and ‘assault rifles.’

Professor Brown addresses the criticism that firearms were described as “assault-style” because of their appearance. Professor Brown explains that the appearance is due to the “design following function” and that specific features were designed to provide a specific combat function.

Professor Brown explains that after the US assault weapons ban expired in 2004, gun manufacturers regarded assault-style rifles as a growth market. He notes that while many hunters continued to use manual-action firearms, gun manufacturers and retailers aggressively marketed semi-automatic rifles derived from military weapons designs.

Professor Brown states that the number of privately owned assault-style firearms in Canada is unknown (with estimates ranging from 7-13 million). By comparison, the federal government estimated that there were 124,755 of the nine families of newly prohibited semi-automatic firearms. Professor Brown states that this is a small fraction of the total number of firearms owned by civilians in Canada.

(2) Where and how have assault-style firearms been used in mass shootings in Canada, and in other places?

Professor Brown states that:

> Assault-style firearms have been employed in criminal activity in Canada. Press reports indicate that groups involved in the illegal drug trade are sometimes found to possess assault-style firearms. Shooters have also used semi-automatic rifles in several mass shootings, hostage takings, bank robberies, and police killings in Canada. The use of semi-automatic firearms in mass shootings is not unusual. Sociologist Jack Levin notes that "semiautomatic firearms, whether rifles or handguns, have been responsible for causing massive death and destruction."

Professor Brown lists incidents in Canada involving semi-automatic firearms from 1962-2020. These examples included a few attacks by licenced gun owners and legally purchased guns. Professor Brown also notes the mass shootings involving semi-automatic rifles in the US and elsewhere.

(3) How have police and the Canadian public responded to mass shootings and the growing popularity of assault-style firearms? What evidence is there of public support for gun control, and specifically gun control with respect to assault style firearms?

Professor Brown notes that during the 1970s, some Canadians expressed concern about the appearance of semi-automatic rifles based on military designs in the Canadian consumer market, such as the AR-15. He states that the increasing crime rates led to the federal government passing Bill C-51 in 1977, which required new purchasers to acquire a Firearms Acquisition Certificate.

Professor Brown notes that there was public outcry in the decade following the École Polytechnique massacre, calling for a ban on civilian possession of military or paramilitary weapons. Concerns about the high volume of rounds capable of being shot over a short amount of time was a common element of these concerns.

Professor Brown states that since the 1970s, the Canadian Association of Chiefs of Police [CACP] has taken the position that the availability of semi-automatic rifles to civilians should be limited. In

the early 1970s, CACP stated that semi-automatic rifles are not suited for hunting and noted that these had been used in an increasing number of bank robberies. In the late 1970s, the CACP stated that semi-automatic firearms are instruments of war and have "no sporting use either in the cultural or recreational sense" and urged that all semi-automatic firearms be classified as restricted, rather than the piecemeal, gun-by-gun approach to classification. By the mid-1980s, the CACP urged the federal government to take action on the international surplus of automatic and semi-automatic firearms that had entered the Canadian market. Prior to the École Polytechnique massacre, the CACP expressed concern with the high importation of military weapons in Canada and the ease of converting or re-converting such firearms to automatic fire mode. In 1994, CACP called for a ban of military assault rifles except for law-enforcement and military purposes, noting that these firearms are "manufactured for the sole purpose of killing people in large numbers."

Professor Brown also notes that professionally conducted public opinion polls have historically shown high levels of support for strengthening gun control laws in Canada. He notes the results of several public opinion polls from 1975 to 1994. He states that since the 1970s, the only period in Canadian history when popular support for strengthening gun controls waned was following the 1995 passage of Bill C-68, which required all owners of firearms to acquire a license and expanded the registration system to include all firearms. Professor Brown notes that the high costs of the long-gun registry led many Canadians to view the registry as a fiscal issue, rather than as a public safety issue.

Professor Brown also notes the results of more recent polling that shows strong popular support in Canada for strengthening gun control.

Professor Brown notes that two 2020 polls showed substantial support for limiting access to, or banning, assault-style rifles;

- 2020: Angus Reid reported that 78 percent of Canadians supported a complete ban on civilian possession of assault weapons (45 per cent of current gun owners and 70 per cent of former gun owners supported such a ban).
- 2020: Ipsos determined that 82 per cent of Canadians supported the federal government's ban on assault-style weapons.

Professor Brown notes that in 2018 and 2019, several organizations and municipalities called for a ban on assault-style firearms, including the Federal Ombudsman for Victims of Crime, Montreal's city council, and the Ontario Association of Chiefs of Police.

(4) How have Canadian politicians responded to mass shootings and the growing popularity of assault-style firearms? What legislative interventions have been made to regulate such firearms? What explains the change in wording of s.117.15 to "reasonable for use" in hunting and sporting?

Professor Brown notes that gun control in Canada dates back to pre-Confederation and that federal measures date back to the 1870s. He adds that legislation on handguns has been passed by both Liberal and Conservative governments.

Professor Brown states that the federal government's current approach to regulating long-guns can be traced back to the late 1960s and that amendments since that time have "gradually made it easier for the Governor in Council to restrict or prohibit firearms deemed dangerous". He notes that the Governor in Council has used its authority to limit the availability to the public of many models of firearms, including "assault-style" firearms.

Professor Brown describes the following key legislative reforms, among others.

In 1969, the *Criminal Code* was amended to set out three classifications of weapons; non- restricted, restricted and prohibited weapons. In addition to the definitions of restricted and prohibited weapons, the legislation granted the authority to the Governor in Council to declare a weapon to be a restricted weapon. Similarly, the Governor in Council could declare a weapon to be a prohibited

weapon ("not being a restricted weapon or a shotgun or rifle of any kind not commonly used in Canada for hunting or sporting purposes".

Professor Brown notes that this wording was relied on by successive governments to restrict many firearms (and he attaches several Orders in Council as examples).

In 1977 the *Criminal Code* was amended to change and expand the definition of restricted and prohibited weapons. This resulted in the restriction of short barrelled semi-automatic firearms. The Minister of the day noted that there was no proper hunting use for these firearms.

The 1977 amendments changed the definition of restricted weapon to "a weapon of any kind, not being a prohibited weapon or a shotgun or rifle of a kind that, in the opinion of the Governor in Council, is *reasonable for use in Canada for hunting or sporting purposes*, that is declared by order of the Governor in Council to be a restricted weapon"

The prohibited weapon definition was also expanded to include automatic weapon (with a grandfathering clause) and to modify the authority of the Governor in Council to declare firearms to be prohibited weapons- a firearm "of any kind, not being an antique firearm or a firearm of a kind *not commonly used* in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a prohibited weapon".

In 1991, Bill C- 17 slightly modified the definition of prohibited weapon and also prohibited large capacity magazines for semi automatic firearms, automatic firearms that had been converted to avoid the previous prohibitions and rifles manufactured as semi- automatic that used designs based on modified fully automatic designs. The Minister of Justice, Kim Campbell, explained the Government's intention to limit access to "modern semi-automatic military assault weapons".

In the context of Bill C- 17, Minister Campbell noted that the use of regulations would continue to permit flexibility to protect the public while respecting, to the extent possible, the interests of legitimate firearms owners and users.

Professor Brown notes several Orders in Council that prohibit or prescribe many firearms.

The Orders in Council made under the authority of the *Criminal Code* provisions dating back to 1969 and 1977, list many makes and models of firearms as prohibited and "any variant or modified version thereof". Similarly, Orders in Council listed firearms as restricted and "any variant or modified version thereof".

The 1994 Order in Council prescribed additional firearms as prohibited. The Minister of Justice, Alan Rock, noted that these firearms were "military type weapons" and were not intended for hunting or sport. Many semi-automatic rifles were prescribed as prohibited, rather than as restricted, firearms.

In December 1995, Bill C- 68 received Royal Assent. Bill C- 68 created the *Firearms Act* and moved the regulatory aspects of gun control (licensing, registration, possession, transfer, storage and transportation) from the *Criminal Code* into the *Firearms Act.* Bill C-68 also amended the *Criminal Code.* The majority of the *Criminal Code* provisions (including new offences and stricter penalties) were proclaimed into force in 1998. Among other amendments, the definitions of prohibited and restricted firearms and the power of the Governor in Council to prescribe firearms as prohibited were revised. Bill C- 68 enacted the provision now found in section 117.15 which provides that the Governor in Council may not prescribe any thing to be a prohibited firearm "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".

Minister Rock explained that the change in wording from "not commonly used" was made to address a "tactic" where a person would bring a firearm into Canada and create an event for its use in order for it to be regarded as "commonly used" and to fall outside the description and prevent prohibition.

The 1998 Order in Council made pursuant to section 117.15 prescribed certain firearms as prohibited or restricted. The Order in Council encompassed several former prohibited weapons orders that set out types of firearms, including long lists of specific firearms and "any variant or modified version thereof".

In 2012, Bill C- 19 (*Ending the Long Gun Registry Act*) came into force, removing the requirement to register non- restricted firearms.

In 2019, Bill C- 71, repealed amendments made in 2015 that permitted the Governor in Council to classify firearms to a less restrictive class.

In 2016, Private Members Bill C-230 was introduced. Bill C- 30 sought to define the term "variant" as a firearm "with an unmodified frame or receiver of another firearm". The Bill was not supported by the Government and did not pass. The Government noted that the term "variant" had been used for a long time and the proposed definition was too narrow and would result in the classification of many assault style rifles as non- restricted.

In 2018-2019, the current Government engaged in national consultations regarding the civilian ownership and use of handguns and "assault weapons".

On May 1, 2020, the Governor in Council made the Order in Council prescribing over 1500 firearms as prohibited. Professor Brown notes that these firearms are similar in capability to the firearms

prohibited in the 1990s. (He also notes that all of the types listed have been used by police or the military, although the military generally use versions that can be fired as automatic firearms)

Professor Brown notes that the 2015 and 2019 election platforms of the Liberal Party promised to strengthen restrictions on firearms.

Professor Brown also notes the efforts of other countries that have identified assault style rifles as dangerous if misused and have taken steps to regulate or prohibit their use.

(5) "How does the existing regulation of large capacity magazines affect the inherent danger of assault-style firearms?

Professor Brown explains that restrictions on large magazine capacity did not meet the intended objectives due to three major weaknesses:

i. Gun owners have taken advantage of legal loopholes that allow for the use of oversize magazines in some assault-style rifles.
ii. Some magazines can be altered to hold more than the permitted five rounds.
iii. Large capacity magazines are illegally acquired in Canada.

Professor Brown adds that, among others, the CCFR and the National Firearms Association have previously acknowledged the weakness of these laws because of their ability to be bypassed. He lists a few incidents involving shooters using magazines that exceed the legal limit.

(6) Were assault-style firearms commonly used in hunting and sporting activities prior to their prohibition?

Professor Brown states that it is difficult to know whether a model has been commonly used for a hunting or sporting purposes. He explains that, historically, assault-style rifles have not been common for hunting. He notes that the Olympics do not require the use of now prohibited assault-style rifles nor do most other shooting competitions.

Professor Brown also notes that shooting competitions that require the use of assault-style rifles are of relatively recent lineage, noting that these events became popular in the mid to late 1990s. He explains that these competitions are designed to replicate battlefield conditions and require participants to quickly aim and fire at targets placed at relatively short distances while moving through a course.

D. *Chris Baldwin*

Mr. Baldwin is a wildlife manager for the Government of Newfoundland and Labrador, with nearly 30 years of experience relating to firearm and hunter safety education training. He gives his opinion that there remain a wide variety of alternative non-prohibited firearms to the banned firearms in the OIC available to hunters and recreational shooters in Canada; that none of the prohibited firearm types were used in education courses; and that the prohibited firearms are not necessary for hunting.

E. *Najma Ahmed*

Dr. Najma Ahmed is a trauma surgeon at a large Toronto hospital, with 20 years of experience. She is Chief of the Department of Surgery at the hospital and is also a Professor of Surgery at the University of Toronto. Her hospital typically treats 1-2 patients with gunshot wounds per week. She has personally treated many of these patients.

With respect to the medical realities of gun violence, Dr. Ahmed notes the uniquely high mortality rate for firearm-related injuries and the extraordinary resources required to treat these injuries. She notes that survivors suffer long-lasting effects and their physical abilities are often greatly impaired.

Dr. Ahmed co- founded the not-for-profit organization, Canadian Doctors for Protection from Guns (CDPG), which advocates for safer gun control legislation. She explains that her opinion is based on her professional experience as a trauma surgeon and as an advocate for CDGP.

Dr. Ahmed explains that her experience treating gun violence victims and caring for their families led her to co-found CDGP in 2019 to advocate for safer gun control legislation in Canada. She notes that physicians have a long history of advocating for health and safety and that this is a part of their role, as affirmed by the Royal College of Physicians and Surgeons of Canada. She states that CDGP's evidence-based view is that "firearm-related injuries and deaths are a largely preventable public health issue, the solution to which begins with decreasing the proliferation of guns in Canadian homes and communities." Dr. Ahmed notes that the CDGP has communicated its position to the Government of Canada via letters and an appearance before a Parliamentary committee.

Dr. Ahmed adds that the Canadian Medical Association (CMA) recognizes gun violence as a public health issue, and that the medical profession has a responsibility to advocate for the prevention of injuries and deaths related to firearms. She elaborates that the CMA supports legislative measures to reduce the prevalence of firearms through restrictions on civilian ownership such as the prohibition of all automatic and semi-automatic firearms. Dr. Ahmed adds that the CMA is of the view that an "evergreening mechanism" is needed to ensure that new models of semi-automatic weapons are captured by the law.

F. *Louis Klarevas*

Professor Louis Klarevas is a research professor at an American university. His training is in political science, and his current research focuses on American public safety and gun violence.

Professor Klarevas has written one book and three articles on firearms. He has served as an expert witness in several American cases challenging various elements of firearm regulation.

Professor Klarevas states that firearm manufacturers advertised military-style firearms as "assault-style firearms" in the 1980s. He explains that US laws differentiate assault weapons from other semi-automatic firearms. He describes the features that characterise a semi-automatic firearm as an assault-style firearm.

Professor Klarevas states that there is no common definition for "mass shooting." He focuses on two types of mass shootings in his report:

- High-fatality mass shootings – shootings resulting in 6 or more fatalities, not including the perpetrator(s), regardless of location or motive.
- Mass public shootings – shootings resulting in 4 or more fatalities, not including the perpetrator(s), where the act of violence occurred largely in a public setting and was not undertaken in pursuit of an underlying criminal objective.

Professor Klarevas notes that public data sets on these types of mass shootings in the US is available from January 1, 1980 to December 31, 2019. He notes that such events are on the rise and are the deadliest individual acts of criminal violence in the US since the terrorist attack of September 11, 2001. He notes that in the 40 years of data, there were 103 high-fatality mass shootings resulting in 1,010 deaths and 152 mass public shootings resulting in 1,103 deaths. He adds that of these mass shootings, 35% of these events occurred between 2010 to 2019, resulting in 45% of the deaths. He characterises this period as the worst decade on record in terms of frequency and lethality of mass shootings in the US.

Professor Klarevas states that the use of assault-style firearms in mass shootings in the US is disproportionate to their ownership. He states that in 2019 the US National Sport Shooting Foundation estimated that 4% of all firearms in society are "modern sporting rifles," which he

explains means assault-style firearms. Professor Klarevas contrasts this with 2019 data that 75% of all high-fatality mass shootings and 57% of all mass public shootings in the US were committed with assault rifles.

Professor Klarevas also notes that mass shootings with assault weapons are more deadly, and have been used in 7 of the 10 deadliest mass shootings in the US. He describes assault-style firearms as "dangerous force multipliers" that are associated with an increase in the average death toll from mass shootings in the US by over 70% from 1980 to 2019 and by over 140% from 2010 to 2019.

Professor Klarevas states that bans on assault-style firearms primarily work by deterring perpetrators from committing mass shootings because their weapon of choice is not available or preventing perpetrators from committing mass shootings with a more lethal weapons. He adds that assault-style firearm bans secondarily deter illegal transfers of firearms.

Professor Klarevas notes examples of assault-style firearm bans by some US states and a US federal ban in force from 1994 to 2004. He notes that the purpose of these laws is to reduce mass shooting violence.

Professor Klarevas notes that Canada's regulations prohibiting assault-style firearms are most similar to New Jersey's state law that bans explicitly listed firearms and variants. New Jersey defines variant as "Any firearm manufactured under any designation which is substantially identical to any of the firearms listed [in the statute explicitly identifying assault weapons]" (N.J. Stat. Ann. §§ 2C:39-1w (2). The specific statute that expressly identifies assault weapons is N.J. Stat. Ann. §§ 2C:39-1w (1).)

Professor Klarevas notes that most—but not all—scholarly studies on the US Federal ban and the state bans have found significant reductions in mass shooting violence and fatalities. He states that he used well-established epidemiological methods to assess the public dataset.

With respect to the number of mass shootings (on a *per capita* basis) he finds that US states that prohibited assault weapons experienced:

- A 46% decline in high-fatality mass shootings (54% fewer shootings than other states);
- A 16% decline in mass public shootings (57% fewer shootings than other states).

With respect to the fatality rate for mass shootings (on a *per capita* basis), he finds that US states that prohibited assault weapons experienced:

- A 57% decline in high-fatality mass shootings (67% fewer deaths than other states);
- A 39% decline in mass public shootings (57% fewer deaths than other states).

Professor Klarevas states that of the 152 mass public shootings in the US from 1980 to 2019, 82 were perpetrated with firearms legally acquired or taken from residences to which the shooters had legal access (29 were illegally acquired, and 41 were not known). Professor Klarevas concludes that the tendency of mass murderers to use legal firearms suggest that the prohibition of assault-style firearms can reduce mass shootings.

Professor Klarevas also responded to the criticisms of Professor Mauser and Doctor Langmann regarding the relationship between firearm laws and violence in the US.

Professor Klarevas disagreed with Dr. Langmann's definition of mass shooting as three or more deaths. Professor Klarevas noted that he is only aware of one study that uses that definition and that US scholarship uses a threshold of either four or six victims.

G. *Simon Chapman*

Simon Chapman is an Australian social science professor. Professor Chapman has published extensively on his and other research regarding firearms. He notes that he has expertise in qualitative research and that when advanced statistical analysis is required, he has always worked with statisticians and biostatisticians, as is common practice. He adds that he has taken a multidisciplinary team approach in three research reports regarding firearms and has consulted statisticians in preparing his affidavit.

Professor Chapman provides evidence about Australia's measures to address violence from firearms and related social changes and health outcomes. He notes that in the two decades after Australia's firearm law reform there were no firearm-related homicides resulting in the death of five or more persons (excluding the perpetrators). This compares to the 18 years before the law reform, where 13 such homicides occurred. Professor Chapman explains that there was no standard definition for "mass firearm homicide" or "mass murder" when he released his first study (on the first decade), and that he maintained the five or more approach in his follow-up study (on the first two decades) despite that the more commonly used characterisation of "mass firearm homicide" had become four or more victims. He adds that if he adopted the four or more definition, his finding of no firearm-related homicides would change to one firearm-related homicide in the first two decades following the law reform.

An incidental finding to his research is that the rate of deaths from firearm-related homicide and suicide declined more rapidly after the law reform. Professor Chapman notes that this was a

statistically significant change for firearm-related suicides, but just barely not statistically significant for firearm-related homicides. He adds that there is no statistical evidence to suggest that there was substitution in methods of death for either homicides or suicides.

Professor Chapman explains that it can be difficult to compare the impact of interventions in different countries and to pinpoint the specific measures in Australia that contributed to the outcome. He states, "the substantial reduction in the population's exposure to semiautomatic long guns capable of accepting large-capacity magazines (LCMs) for ammunition is likely to have been key." Professor Chapman notes that although mass shootings in Australia were rare before the law reform, it is statistically highly improbable that the reduction after the law reform is merely due to chance.

Professor Chapman states that the methodological approach he has used has been endorsed and that the Journal of the American Medical Association (JAMA) that has published his research is highly regarded.

Professor Chapman advances his own statistical criticisms of the articles that challenge his findings. Professor Chapman notes that Dr. Langmann cites two of these articles, but that these are immaterial to the question of whether Australia's law reform reduced the rate of mass firearm homicides in Australia.

Professor Chapman comments on Dr. Langmann's criticism of Professor Chapman's studies published in JAMA. Professor Chapman notes that Dr. Langmann states that a ban on handguns or assault-style rifles will not reduce deaths from mass homicides enough to significantly reduce overall firearm deaths. Professor Chapman agrees that this may be the case in Canada, noting that in Australia deaths from mass shootings only accounted for 0.71% of intentional firearm deaths before

the law reform. Professor Chapman adds that semi-automatic firearms are irrelevant to reducing deaths from suicide because only one shot is required.

With respect to Dr. Langmann's criticism that Professor Chapman's conclusions about the reduction of homicide or suicides using firearms are not statistically significant, Professor Chapman responds that the Australian law reform was intended to reduce the risk of mass shootings, not overall homicides or suicides, and reiterates that it is highly improbable that the reduction to date is mere chance.

With respect to Dr. Langmann's criticism that Professor Chapman used the wrong definition of mass shooting, Professor Chapman responds that the US Federal Bureau of Investigation (FBI) has never used three or more deaths as a definition. Professor Chapman notes that Dr. Langmann counts six mass shooting events by erroneously including the perpetrator in the count, which is contrary to the FBI's and Professor Chapman's methodologies. Professor Chapman also notes that his studies have not counted two incidents that Dr. Langmann considers to be a mass homicide—one incident where a death was not from a firearm, but from a stab wound, and another incident where a death was accidentally caused by a police officer. Dr. Langmann also counted two incidents that occurred after Professor Chapman's study was published.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-569-20
STYLE OF CAUSE:	CASSANDRA PARKER AND K.K.S. TACTICAL SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
AND DOCKET:	T-577-20
STYLE OF CAUSE:	CANADIAN COALITION FOR FIREARM RIGHTS, RODNEY GILTACA, RYAN STEACY, MACCABEE DEFENSE INC., AND, WOLVERINE SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
AND DOCKET:	T-581-20
STYLE OF CAUSE:	JOHN PETER HIPWELL v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
AND DOCKET:	T-677-20
STYLE OF CAUSE:	MICHAEL JOHN DOHERTY, NILS ROBERT EK,, RICHARD WILLIAM ROBERT DELVE, CHRISTIAN RYDICH BRUHN,, PHILIP ALEXANDER MCBRIDE,, LINDSAY DAVID JAMIESON,, DAVID CAMERON MAYHEW, MARK ROY NICHOL AND PETER CRAIG MINUK v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
AND DOCKET:	T-735-20
STYLE OF CAUSE:	CHRISTINE GENEROUX, JOHN PEROCCHIO AND VINCENT PEROCCHIO v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
AND DOCKET:	T-905-20
STYLE OF CAUSE:	JENNIFER EICHENBERG, DAVID BOT, LEONARD WALKER, BURLINGTON RIFLE AND REVOLVER CLUB, MONTREAL FIREARMS RECREATION CENTRE, INC.,O'DELL ENGINEERING LTD. v ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ALBERTA
PLACE OF HEARING:	OTTAWA, ONTARIO

DATE OF HEARING:	APRIL 11, 12, 13, 14, 17, 18, 19, 20, 2023
JUDGMENT AND REASONS:	KANE J.
DATED:	OCTOBER 30, 2023

APPEARANCES:

Solomon Friedman	FOR THE APPLICANT T-569-20
Laura Warner Matthew Scott Ryan Phillips Sarah Miler	FOR THE APPLICANT T-577-20
Michael Loberg	FOR THE APPLICANT T-577-20
Edward Burlew	FOR THE APPLICANT T-581-20
Arkadi Bouchelev	FOR THE APPLICANT T-677-20
Christine Generoux John Perocchio Vincent Perocchio	ON THEIR OWN BEHALF T-735-20
Thomas Slade Eugene Meehan K.C. Mr. Cory Giordano	FOR THE APPLICANT T-905-20
Robert MacKinnon Bruce Hughson Sean Gaudet Zoe Oxaal Kerry Boyd Jennifer Bond Jordan Milne James Gorham Sarah Jiwan Jennifer Lee Vanessa Wynn-Williams Andrew Law Samantha Pillon	FOR THE RESPONDENT
Aleisha Bartier Nicole Pfeifer	FOR THE INTERVENER

SOLICITORS OF RECORD:

FRIEDMAN MANSOUR LLP Ottawa, Ontario	FOR THE APPLICANT T-569-20
JENSEN SHAWA SOLOMON DUGUID HAWKES LLP Calgary, Alberta	FOR THE APPLICANT T-577-20
LOBERG ECTOR LLP	FOR THE APPLICANT T-577-20
Edward Burlew Barrister and Solicitor Thornhill, Ontario	FOR THE APPLICANT T-581-20
BOUCHELEV LAW Toronto, Ontario	FOR THE APPLICANT T-677-20
None	FOR THE APPLICANT T-735-20
SUPREME ADVOCACY Ottawa, Ontario	FOR THE APPLICANT T-905-20
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT
Attorney General of Alberta Calgary, Alberta	FOR THE INTERVENER