

In the Provincial Court of Alberta

Citation: Attorney-General for Canada v Stark, 2020 ABPC 230

Date: 20201130

Docket: 200817971H1

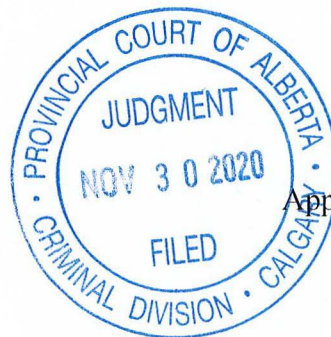
Registry: Calgary

Between:

Attorney-General for Canada

- and -

Ryan Stark



Applicant

Respondent

Reasons for Ruling on Application by Attorney-General for Canada to Strike for Lack of Jurisdiction of the Honourable Judge A.A. Fradsham

Introduction

[1] Mr. Stark received from the Registrar of Firearms a letter which Mr. Stark took to be a notice under section 72(1) of the *Firearms Act* (Canada) that the Registrar had revoked certain registration certificates held by Mr. Stark. Mr. Stark filed in the Provincial Court of Alberta a section 74(1) *Firearms Act* (Canada) application for review of that “revocation” (the review application).

[2] The Attorney-General for Canada filed an application (the jurisdiction application) for an order striking out Mr. Stark’s review application. The Attorney-General took the position that the letter from the Registrar of Firearms did not constitute a notice of revocation, and therefore the Provincial Court of Alberta did not have jurisdiction to hear the review application.

[3] These Reasons set out my ruling, and the reasons therefore, in the Attorney-General’s jurisdiction application.

[4] A reference in these Reasons to a section number is, unless otherwise stated, a reference to that section in the *Firearms Act*, S.C. 1995, c. 39, as amended.

Issues

[5] The overarching issue in this application is whether the Provincial Court of Alberta has jurisdiction to hear the application filed by Mr. Stark in which he purports to invoke section 74 of the *Firearms Act*.

[6] The primary issue is whether the letter sent to Mr. Stark by the Registrar of Firearms constituted a notice of revocation of certain registration certificates under section 71(1)(a) of the *Firearms Act*.

Facts

[7] On May 1, 2015, the Registrar of Firearms issued to Mr. Stark a Firearm Registration Certificate (FRC) bearing a Registration Certificate Number of ****5063.0001. The FRC listed the following information: Make: SIG Sauer; Class: Restricted; Firearm Identification Number: *****192; Type: Rifle; Action: Semi-Automatic; Serial Number: *****093; Barrel Length: 178 mm.

[8] On October 10, 2017, the Registrar of Firearms issued to Mr. Stark a Firearm Registration Certificate (FRC) bearing a Registration Certificate Number of ****0310.0001. The FRC listed the following information: Make: Heckler & Koch; Class: Restricted; Firearm Identification Number: *****977; Type: Rifle; Action: Semi-Automatic; Serial Number: *****201; Barrel Length: 368 mm.

[9] On March 12, 2019, the Registrar of Firearms issued to Mr. Stark a Firearm Registration Certificate (FRC) bearing a Registration Certificate Number of ****6505.0001. The FRC listed the following information: Make: Heckler & Koch; Class: Restricted; Firearm Identification Number: *****605; Type: Rifle; Action: Semi-Automatic; Serial Number: *****641; Barrel Length: 267 mm.

[10] Each of the Firearm Registration Certificates had printed above it a message which contained, amongst other things, the following statements:

The Firearms Registration Certificate is issued to the owner for a specific firearm. The registration certificate is valid until the firearm is transferred or disposed of or the certificate is revoked.... The firearm registration certificate is issued by the Registrar under the authority of the *Firearms Act*.

[11] On May 1, 2020, the Governor-in-Council made a regulation (SOR/2020-96), effective that day, under the terms of which certain firearms previously classed as “restricted firearms” were reclassified as “prohibited firearms”.

[12] Section 3(1) of SOR/2020-96 says:

Item 83 of Part 1 of the schedule to the Regulations is replaced by the following:

83 The firearms of the designs commonly known as the SG-550 rifle and SG-551 carbine, and any variants or modified versions of them, including the SAN Swiss Arms [followed by a list of 16 separate descriptors such as “Aestas”; “Autumnus”; “Black Special”; and “Black Special Carbine”]

[13] Section 3(2) of SOR/2020-96 says:

Part 1 of the schedule to the Regulations is amended by adding the following after item 86:

87 The firearms of the designs commonly known as the MI6, AR-10 and AR-15 rifles and the M4 carbine, and any variants or modified versions of them – other than one referred to in item 47, 49 or 50 of this Part – including the [followed by a list of 946 separate descriptors such as “2 Vets Arms 2VA-10”; “Accuracy Systems A-15 Custom Edition LR Tech Tactical”; “Adams Arms AA15”; and “Ambush Firearms A11”]

88 The firearm of the design commonly known as the Ruger Mini-14 rifle, and any variant or modified version of it, including the [followed by a list of 9 separate descriptors such as “Clark Custom Guns Ruger Mini-14”; “Ruger Mini-14 GB”; “Ruger Mini-14 Ranch Rifle”; and “Ruger Mini-14 Ranch Rifle Deluxe”]

89 The firearm of the design commonly known as the US Rifle, M14, and any variant or modified version of it, including the [followed by a list of 43 separate descriptors such as “American Historical Foundation Federal Ordnance M14 US Rifle Vietnam War Commemorative”; “Armscorp US Rifle M14”; “Armscorp US Rifle M14 National Match”; and “AR Sales MARK 4”]

90 The firearm of the design commonly known as the Vz58 rifle, and any variant or modified version of it, including the [followed by a list of 27 separate descriptors such as “Century Arms VZ2008 Sporter”; “CZ CZ958 2P”; “CZ CZ858 Tactical-2 P Spartan Limited Edition”; and “Czech Small Arms SA VZ58 Canadian Sporter 7.62”]

91 The firearm of the design commonly known as the Robinson Armament XCR rifle, and any variant or modified version of it, including the Robinson Armament [followed by a list of 4 separate descriptors being “XCR-L”; “XCR-L Micro Pistol”; “XCR-M”; and “XCR-M Micro Pistol”]

92 The firearms of the designs commonly known as the CZ Scorpion EVO 3 carbine and CZ Scorpion EVO 3 pistol, and any variants or modified versions of them, including the CZ [followed by a list of 3 separate descriptors being “CZ Scorpion EVO 3 S1 Carbine”; “CZ Scorpion EVO 3 S1 Pistol”; and “CZ Scorpion EVO 3 S2 Pistol Micro”]

93 The firearm of the design commonly known as the Beretta Cx4 Storm carbine, and any variant or modified version of it.

94 The firearms of the designs commonly known as the SIG Sauer SIG MCX carbine, SIG Sauer SIG MCX pistol; SIG Sauer SIG MPX carbine and SIG Sauer SIG MPX pistol, and any variants or modified versions of them, including the SIG Sauer [followed by a list of 2 separate descriptors being “SIG MCX Rattler” and “SIG MCX Rattler Pistol”]

95 Any firearm with a bore diameter of 20 mm or greater – other than one designed exclusively for the purpose of neutralizing explosive devices – including the [followed by a list of 280 separate descriptors such as “Aerotek NTW”; “Airtronic M203”; “Alpimex APK 20”; and “Colt Eagle”]

96 Any firearm capable of discharging a projectile with a muzzle energy greater than 10,000 joules – other than one referred to in item 12, 13, 14, 20, 22, or 30 of this Part or one designed exclusively for the purpose of neutralizing explosive devices – including the [followed by a list of 175 separate descriptors such as “AAO 2000”; “Accuracy International AW50”; “Alberta Tactical Rifle AT50”; and “Prairie Gun Works LRT3REP”].

[14] Concurrently on May 1, 2020, the Governor-in-Council, pursuant to section 117.14(1) of the *Criminal Code*, made a regulation (SOR/2020-97), effective that day, which created an amnesty period for those who found themselves in possession of a firearm which, as a result of SOR/2020-96, was reclassified as a “prohibited firearm”.

[15] SOR/2020-97 (“the Amnesty Order”) is in effect from May 1, 2020 to April 30, 2022.

[16] The Amnesty Order (as it applies to firearms) applies to a person who:

- (i) on the day on which this Order comes into force, owns or possesses a specified firearm and holds a licence that was issued under the *Firearms Act*,
- (ii) at any time during the amnesty period, is in possession of the specified firearm,
- (iii) during the amnesty period, continues to hold the licence while in possession of the specified firearm, and
- (iv) (iv) if the specified firearm was, on the day before the day on which this Order comes into force, a restricted firearm, held on the day before the day on which this Order comes into force, a registration certificate for the specified firearm that was issued under the *Firearms Act*.

[17] Section 2(2) of the Amnesty Order sets out the purpose of the amnesty period which (for persons who are not a business) is to “permit the person to”:

1. Deactivate the firearm
2. Deliver the firearm to a police officer for destruction or other disposal
3. Deliver the firearm to its owner if the person possessing it is not the owner
4. Export the firearm
5. Transport the firearm by vehicle for the purpose of doing any of the things listed in points 1-4 inclusive
6. Store the firearm before doing any of the things listed in points 1-5 inclusive
7. Transport the firearm by vehicle for the purpose of storing the firearm
8. Use the firearm to hunt for sustenance (if the firearm was classified as a non-restricted firearm on the day before the Amnesty Order came into effect) (not applicable to the matter presently before the Court)
9. Possess the firearm before doing any of the things listed in points 1-8 inclusive.

[18] The Registrar of Firearms sent to Mr. Stark, who resides in Calgary, Alberta, a letter dated July 20, 2020. The letter said:

On May 1, 2020, the Government of Canada amended the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted* (commonly referred to as the *Classification Regulations*).

An Amnesty Order, expiring April 30, 2022, was also issued by the Government of Canada. This order protects owners from criminal liability for unlawful possession of a newly prohibited firearm if those owners were in lawful possession of one or more of the newly prohibited firearms or prohibited devices on the day the amendments to the *Classification Regulations* came into force. With respect to newly prohibited firearms which were previously restricted, the Amnesty Order protects owners who held a valid registration certificate for that restricted firearm on April 30, 2020.

Certain restricted firearms which were registered to you have been affected by the recent regulatory amendments. These firearms, listed below, are now classified as prohibited and the previous registration certificates are automatically nullified and are therefore no longer valid but should be retained as a historical registration record.

[19] The letter then listed the three Registration Certificate Numbers, and the corresponding makes, types of firearms, serial numbers, and Firearms Identification Numbers, all as noted above.

[20] In listing the Registration Certificate Numbers, the letter described them as “Registration Certificate Number (no longer valid)”.

[21] Mr. Stark filed with the Clerk of the Provincial Court of Alberta a “Reference to a Provincial Court Judge” (Form F-12 of the *Firearms Act*; “the Reference”) dated August 13, 2020. The “Reference” sets out that Mr. Stark is applying for a “review of the following decision: Revocation of a Registration Certificate (s. 71 *Firearms Act*)”.

[22] As a preliminary matter, the Attorney-General for Canada brought the application which is presently before me for an order striking out the “Reference to a Provincial Court Judge”. The basis for the Attorney-General’s “application to strike” is, generally described, that the Registrar of Firearms did not revoke Mr. Stark’s registration certificates, and, consequently, the prerequisites for invoking section 74 of the *Firearms Act* do not exist with the consequence that no Judge of the Provincial Court of Alberta has jurisdiction to hear Mr. Stark’s “Reference”.

Law and Analysis

[23] Section 71(1) of the *Firearms Act* states that “The Registrar (a) may revoke a registration certificate for a ...restricted firearm for any good and sufficient reason”. Section 72(1) states that subject to subsection (1.1), which does not apply in the case at bar, “if...the Registrar decides to...revoke a registration certificate...the...Registrar shall give notice of the decision in the prescribed form to the...holder of the...registration certificate.” Section 71(2) states that “a notice given under subsection (1) must include reasons for the decision disclosing the nature of the information relied on for the decision and must be accompanied by a copy of sections 74 to 81.”

[24] Section 71(5) states:

A notice given under subsection (1) in respect of a registration certificate for a prohibited firearm or a restricted firearm must specify a reasonable period during which the applicant for or holder of the registration certificate may deliver to a peace officer or a firearms officer or a chief firearms officer or otherwise lawfully dispose of the firearm to which the registration certificate relates and during which sections 91, 92 and 94 of the *Criminal Code* do not apply to the applicant or holder.

[25] Section 74(1) of the *Firearms Act* states that “where...the Registrar...revokes a...registration certificate...the...holder of the...registration certificate...may refer the matter to a provincial court judge in the territorial division in which the...holder resides.” Section 74(2) goes on to say that a “holder may only refer a matter to a provincial court judge under subsection (1) within thirty days after receiving notice of the decision of the...Registrar...under section...72....”

The Position of the Attorney-General

[26] The Attorney-General (the applicant on this application to strike out the “Reference to a Provincial Court Judge”) submitted that:

1. The Registrar’s letter to Mr. Stark did not constitute a revocation by the Registrar of Mr. Stark’s registration certificates; the Registrar was only providing to Mr. Stark information about the effects of SOR2020-96 and SOR2020-97 which are both creations of the Governor-in-Council. Consequently, the authority granted by sections 74 and 75 to a Judge of a Provincial Court to hear the Reference does not come into play. The Reference should be struck out.
2. Even if the Court were to conclude that the Registrar had revoked Mr. Stark’s registration certificates, and therefore the Court has jurisdiction to hear the Reference, there can be no outcome but a confirmation of the revocation, and the Reference should be struck out pursuant to Rule 3.68 of the *Alberta Rules of Court*.

The Position of Mr. Stark

[27] Mr. Stark submitted that the letter from the Registrar did constitute a revocation by the Registrar of Mr. Stark’s registration certificates and therefore sections 74 and 75 apply. Mr. Stark submitted that the letter was evidence of a decision made by the Registrar to revoke the three certificates referred to in the letter. Mr. Stark submitted that the word “nullified”, as used in the letter, is not a term found in the *Firearms Act*, nor is it found in either of SOR2020-96 or SOR2020-97. Mr. Stark submitted that the Governor-in-Council did not state that it was “nullifying” registration certificates such as the ones held by Mr. Stark, and that if the registration certificates were “nullified” (and “nullify” is a term which must be taken to be equivalent to “revoke”), then it was the Registrar who exercised his or her statutory power to revoke. Consequently, the Court has jurisdiction to hear the Reference.

[28] Mr. Stark submitted that it is premature to conclude that no remedy is available to him.

Court’s Analysis

[29] It is a criminal offence for a person to possess either a restricted or prohibited firearm while that person knows that he or she is not the holder of both a licence under which the person

may possess the firearm, and a registration certificate for the firearm: section 92(1) of the *Criminal Code*.

[30] The Attorney-General submitted that SOR2020-96 had two results: (1) the three firearms referred to in the July 20, 2020 letter to Mr. Stark from the Registrar were, as of May 1, 2020, reclassified as prohibited firearms; and (2) the three registration certificates previously issued to Mr. Stark in relation to those firearms were made invalid.

[31] The Attorney-General further submitted that as a result of sections 12.1 and 13 of the *Firearms Act*, “an individual cannot possess a registration certificate for a prohibited firearm unless that individual is authorized to possess prohibited firearms” (Attorney-General’s Brief).

[32] Sections 12.1 and 13 read as follows:

12.1 A registration certificate may only be issued for a prohibited firearm or a restricted firearm.

13 A person is not eligible to hold a registration certificate for a firearm unless the person holds a licence authorizing the person to possess that kind of firearm.

[33] It is evident that all section 12.1 says is that a registration certificate may only be issued in relation to a restricted or prohibited firearm.

[34] Section 13 simply says that a person is not “eligible” to “hold” a registration certificate for a particular firearm unless the person “holds” a licence to possess that particular “kind of firearm”. Section 13 of the *Firearms Act* speaks only to the “eligibility” of a person to lawfully hold a registration certificate. The section does not affect the registration certificate itself; it only affects the ability to lawfully hold the registration certificate.

[35] The Attorney-General submitted that, as a result of Mr. Stark’s firearms being reclassified from “restricted” to “prohibited”, and since Mr. Stark was not eligible to hold a registration certificate for prohibited firearms (he did not have a licence to possess prohibited firearms), the registration certificates held by Mr. Stark “became invalid”.

[36] The Attorney-General offered the decision of *Scherbey v. Canada (A.G.)* 2009 BCSC 1445 as support for his proposition.

[37] In *Scherbey v. Canada (A.G.)*, *supra*, Mr. Scherbey entered into a section 810 (*Criminal Code*) peace bond, one of the terms of which was a prohibition against possessing firearms. The Registrar wrote to Mr. Scherbey and told him that as a result of the prohibition his registration certificate had been revoked. Mr. Scherbey applied under section 74 for a reference to a Judge of the Provincial Court. Both the Provincial Court Judge and the British Columbia Supreme Court Justice took the view that the Registrar had not effected the revocation of the registration certificate. The revocation certificate was revoked by the operation of section 116(1) of the *Criminal Code*. That section states that:

“every...registration certificate relating to any thing the possession of which is prohibited by a prohibition order and issued to a person against whom the prohibition order is made is, on the commencement of the prohibition order, revoked...to the extent of the prohibitions in the order.”

[38] In the case of Mr. Scherbey, it was clear that the revocation of his registration certificate had been effected by section 116(1) of the *Criminal Code*. The section specifically said that the registration certificate was “revoked”.

[39] With respect, the *Scherbey* case does not assist the Attorney-General in the case at bar. No provision of the *Criminal Code*, or of the *Firearms Act*, or the two Orders in Council, make any mention of registration certificates being revoked as a result of the Orders in Council and the reclassification of Mr. Stark’s firearms.

[40] Rather, a different case from the British Columbia Supreme Court is support for the proposition that Mr. Stark’s registration certificates continued to exist in law after the firearms to which they related had been reclassified as “prohibited”.

[41] In *Barrett v. Canada (Registrar of Firearms)* 2010 BCSC 345, Ms. Barrett obtained a Firearms Acquisition Certificate (FAC) in February, 1995. Later in 1995, Ms. Barrett acquired registration certificates for two handguns. Those handguns were, at the time, classified as restricted firearms. At the time, no licence was required to lawfully possess the handguns; the FAC was needed to acquire the handguns.

[42] On December 5, 1995, the *Firearms Act*, which replaced the *Criminal Code* as the legislation which controlled the registration and regulation of firearms, was given Royal Assent. Most of its provisions came into effect on December 1, 1998. Under the new legislation, it became necessary to have both a registration certificate and a licence to possess firearms such as the ones possessed by Ms. Barrett. The licence requirement was new, and previously issued FACs were deemed to be a licence to possess firearms.

[43] However, Ms. Barrett allowed her FAC to expire on February 10, 2000. Further, under the provisions of the *Firearms Act*, all registration certificates previously issued under the *Criminal Code* were deemed to expire on December 31, 2002. Ms. Barrett applied to renew her registration certificates in October, 2002.

[44] In 2008 she learned that her application for registration certificates had been refused. She applied to refer the decision of the Registrar of Firearms to a Judge of the Provincial Court of British Columbia. Ultimately, she was unsuccessful in obtaining a registration certificate for her now prohibited firearms. However, what is relevant to the matter at bar is that Justice McEwan was of the view that Ms. Barrett’s registration certificates continued to exist up to their expiry date of December 31, 2002, which was long after Ms. Barrett was no longer eligible to hold those certificates because her FAC (deemed licence) had expired, and long after her firearms had been reclassified as “prohibited”. Justice McEwan said:

[43] It is not, strictly speaking, correct to speak of Ms. Barrett’s “right” to keep a prohibited firearm. She is only permitted to possess such a weapon if she is authorized by the legislation to do so. On the face of it she was not, because the legislation requires the owner to be licensed, and the firearm to be registered. Because Ms. Barrett’s deemed licence (the FAC) had expired on February 10, 2000 she was not eligible to hold a registration certificate. By the time Ms. Barrett’s registration certificate expired on December 31, 2002 she had been ineligible for over two years. ...

[45] It is also interesting to note that Parliament must have taken the view that the registration certificates which had been issued for “restricted” firearms still existed after the reclassification of the firearms as “prohibited”; if Parliament was not of the opinion that the registrations certificates existed after reclassification, then it would not have been necessary to set an expiration date for those registration certificates.

[46] From all that, we can take that the registration certificates held by Mr. Stark did not cease to exist on May 1, 2020 (upon the making of the SOR2020-96) when his firearms were reclassified as “prohibited”, even though Mr. Stark was, as of that date, no longer permitted to possess a registration certificate for those prohibited firearms because he did not possess a licence to possess prohibited firearms.

[47] The Attorney-General submitted that the registration certificates issued in relation to Mr. Stark’s firearms became invalid when the firearms, previously classified as “restricted”, were reclassified as “prohibited”. The Attorney-General pointed to the registration certificates, and noted that each certificate at the time of its issuance referred to the class of firearm as being “restricted”. The submission was that the registration certificate no longer applied to the firearm once it was reclassified as “prohibited”; the act of reclassification made the registration certificate “invalid”.

[48] The difficulty with that submission, which is to the effect that the registration certificate ceased to exist in law because of the reclassification of the firearm, is that the *Firearms Act* itself contemplates the continuation of a valid registration certificate issued for a firearm (which at the time was classified as “restricted”) after that firearm is reclassified as “prohibited”. For example, in the “grandfathering” provisions of the *Firearms Act*, one is only able to enjoy the benefits of the grandfathering provisions in relation to the now prohibited firearm if one keeps current the registration certificate which was issued for the firearm when it was restricted [see, for example, section 12(6) and in particular section 12(6)(b)]. One could not keep the registration certificate current if the act of reclassification from “restricted” to “prohibited” had, in and of itself, caused the registration certificate to be invalid and cease to exist in law.

[49] The Registrar of Firearms used the word “nullified”. However, the legislation which created the registration certificates only contemplates the following states of being for registration certificates:

1. Issuance [section 60]
2. Revocation [section 71(1); 71(2)]
3. Expiry [section 66]

[50] The *Criminal Code* only speaks of “surrendering” [section 114(b)] or “revoking” registration certificates [section 116(2)].

[51] Neither piece of legislation, when referring to registration certificates, speaks in terms of “invalidity” or “nullifying”.

[52] The Attorney-General submitted that it was the Governor-in-Council, through SOR2020-96, and not the Registrar of Firearms, who “invalidated” the registration certificates in relation to the now prohibited firearms of Mr. Stark. I agree that it was the Governor-in-Council who reclassified Mr. Stark’s firearms with attendant consequences (somewhat ameliorated by SOR2020-97) in relation to the ability to possess those firearms. However, the Governor-in-

Council did not cause those registration certificates to cease to exist in law. They could only cease to exist in law, absent new legislation eliminating them, by way of revocation, expiry, or surrender. For example, if the Governor-in-Council had by a new Order in Council made on May 2, 2020, simply rescinded SOR2020-96 in its entirety, there is nothing that was stated in SOR2020-96 which would suggest that previously issued registration certificates (for the firearms affected) no longer existed in law, and would have to be reissued.

[53] The Attorney-General, relying on the reasoning set out in *Canada (Registrar of Firearms) v. Whitmore* 2008 ONCJ 166, also submitted that section 74 is not available to Mr. Stark because the Registrar of Firearms did not make any decision in relation to Mr. Stark's firearms. The Attorney-General submitted that "revocation requires the exercise of judgment or discretion in light of particular facts" (quoting from paragraph 35 of *Whitmore*), and that the Registrar of Firearms was not engaged in that function when he or she sent out the letter of July 20, 2020.

[54] I respectfully disagree. When the Registrar of Firearms sent the letter dated July 20, 2020, to Mr. Stark, the Registrar had decided that SOR2020-96 applied to the three specific firearms and registration certificates listed in the letter. The Registrar considered the particular information available to him or her, and concluded that the firearms noted on registration certificates ****5063.0001; ****0310.0001; and ****6505.0001 were firearms that were included in the hundreds of firearms listed in SOR2020-096. Their inclusion in the firearms listed is not evident simply by reading the list. The Registrar made an individualized decision in specific reference to Mr. Stark's firearms.

[55] In order to determine whether the July 20, 2020 letter from the Registrar of Firearms constituted an act revoking Mr. Stark's three firearm certificates, it is necessary to first review the applicable statutory provisions.

[56] Section 71(1)(a) states that the Registrar "may revoke a registration certificate for a prohibited or a restricted firearm for any good and sufficient reason...."

[57] Section 72(1) states that, subject to an exception which is not applicable in the case at bar, "if...the Registrar decides...to revoke a registration certificate..., the...Registrar shall give notice of the decision in the prescribed form to the...holder of the...registration certificate...."

[58] Section 72(2) states that "a notice given under subsection (1) must include reasons for the decision disclosing the nature of the information relied on for the decision and must be accompanied by a copy of sections 74 to 81."

[59] Section 72(5) states:

A notice given under subsection (1) in respect of a registration certificate for a prohibited firearm or a restricted firearm must specify a reasonable period during which the applicant for or holder of the registration certificate may deliver to a peace officer or a firearms officer or a chief firearms officer or otherwise lawfully dispose of the firearm to which the registration certificate relates and during which sections 91, 92 and 94 of the *Criminal Code* do not apply to the applicant or holder.

[60] The letter dated July 20, 2020, from the Registrar to Mr. Stark is not in the prescribed form. It was not accompanied by a copy of sections 74 to 81 of the *Firearms Act*.

[61] The question is: Is it reasonable to conclude that the letter dated July 20, 2020, communicated to Mr. Stark that the Registrar had “decide[d] to revoke” the registration certificates specifically described in the letter?

[62] The July 20, 2020 letter communicated the following pieces of information to Mr. Stark:

1. The letter was from the Registrar of Firearms.
2. The Government of Canada, on May 1, 2020, had amended the regulations which it said were commonly known as the “Classification Regulations”.
3. The Government of Canada had also issued an Amnesty Order, expiring on April 30, 2022, which “protects owners from criminal liability for unlawful possession of a newly prohibited firearm if those owners were in lawful possession of one or more of the newly prohibited firearms or prohibited devices on the day the amendments to the Classification Regulations came into force. With respect to newly prohibited firearms which were previously restricted, the Amnesty Order protects owners who held a valid registration certificate for that restricted firearm on April 30, 2020.”
4. “Certain restricted firearms which were registered to you have been affected by the recent regulatory amendments.” The letter then listed those specific firearms and identified them by make, type, serial number, firearms identification number, and “registration certificate number (no longer valid)”.
5. Those listed firearms “are now classified as prohibited and the previous registration certificates are automatically nullified and are therefore no longer valid but should be retained as a historical registration record.”
6. The Government has announced that it “intends to implement a buy-back program for the newly prohibited firearms.” More information about program “will be available at a later date.”
7. “Owners of newly prohibited firearms are
 - To keep them securely stored in accordance with their previous classification
 - They cannot be sold or imported
 - They may only be transported under limited circumstances
 - They cannot be legally used for hunting, unless allowed through the Amnesty Order
 - They cannot be used for sport shooting, either at a range or elsewhere”
8. Mr. Stark’s options are:
 - “Wait for further instructions to participate in the buy-back programme
 - Have your firearm deactivated by an approved firearms business and advise the Registrar of Firearms once completed
 - Legally export your firearm in which case you can engage businesses with the proper firearms licence privilege. Once exported you are requested to advise the Registrar of Firearms.”

[63] Through the letter, the Registrar of Firearms told Mr. Stark that the registration certificates specifically identified and listed in the letter “are automatically nullified and are no longer valid”.

[64] Nothing in either the *Firearms Act* or SOR202-96 says that the registration certificates are “nullified”, “automatically” or otherwise. Likewise, nothing in either the *Firearms Act* or SOR202-96 says that the registration certificates are “no longer valid”. Indeed, as previously explained, the registration certificates continued to exist in law after the firearms reclassifications effected on May 1, 2020 by SOR2020-96. SOR202-96 did not nullify or make invalid the registration certificates.

[65] Consequently, if the Registrar of Firearms was of the opinion expressed in his or her July 20, 2020 letter that the listed registration certificates were “nullified” and were “no longer valid”, which was the message sent by the Registrar to Mr. Stark, then that nullification and invalidity must have come about as a result of an act of the Registrar of Firearms.

[66] Nothing in the *Firearms Act* says that the Registrar can “nullify” a registration certificate or declare it to be “no longer valid”. However, the *Firearms Act* does empower the Registrar of Firearms to revoke a registration certificate for any good and sufficient reason [section 71(1)(a)].

[67] The term “revoke” is not defined in the *Firearms Act* or the *Criminal Code*. *The Canadian Oxford Dictionary* (Don Mills, Ontario: Oxford University Press, 2001), at page 1235, defines “revoke” as follows: “rescind, withdraw, or cancel (a licence, decision, promise, etc.).”

[68] The same dictionary, at page 998, defines “nullify” as follows: “1. Make legally null and void; annul; invalidate. 2. Make of no value or use; cancel out, neutralize.”

[69] The only power available to the Registrar the exercise of which would render the registration certificates “nullified” and “no longer valid” is the power of revocation. Indeed, the terms “revoke” and “nullify” and “invalidate” share the same denotation and the same connotation.

[70] Consequently, one must conclude that the act of the Registrar which “nullified” and made “no longer valid” the registration certificates listed in the July 20, 2020 letter was the revocation of those registration certificates by the Registrar. I find that the Registrar of Firearms did revoke the registration certificates listed in the July 20, 2020 letter directed to Mr. Stark.

[71] The July 20, 2020 letter from the Registrar told Mr. Stark the reason for the revocation (the reclassification of the firearms specified in the letter brought about by the amendment to the Classification Regulations). The letter also informed Mr. Stark what he could do with the reclassified firearms, and that he would have until April 30, 2022 under an Amnesty Order to dispose of the firearms. In my respectful view, the July 20, 2020 letter from the Registrar of Firearms to Mr. Stark gave notice to Mr. Stark “of the decision of the...Registrar” [section 74(2)] to “revoke” [section 74(1)(a)] the registration certificates listed in the letter.

[72] As previously noted, I am mindful that the July 20, 2020 letter was not “in the prescribed form” for a section 72(1) notice, and that it was not accompanied by a copy of sections 74 to 81. However, in all other respects it complied with the notice provisions of the *Firearms Act*, and the deficiencies noted do not change the character (a notice of revocation) of the document. The deficiencies may have other consequences, but that is not for me to decide in this application by the Attorney-General.

[73] I find that I have jurisdiction to hear the section 74(1) referral of the decision of the Registrar of Firearms to revoke the registration certificates listed in the July 20, 2020 letter sent to Mr. Stark.

[74] I am mindful that the Honourable Judge Gorman of the Provincial Court of Newfoundland and Labrador has reached a different conclusion on the question of jurisdiction (see: *In The Matter of an Application for a Reference Hearing, Made Pursuant to Section 74(1) of the Firearms Act, R.S.C. 1985* 2020 CanLII 79410). I am also aware that the Provincial Court of New Brunswick, in similar factual circumstances, has simply refused to allow the filing of requests for reviews under section 74(1). I must respectfully disagree with those decisions for the reasons which I have set out herein.

[75] The Attorney-General submitted that even if the Registrar of Firearms had revoked Mr. Stark's registration certificates, Mr. Stark's section 74(1) review application should be struck out because no meaningful remedy is available to Mr. Stark, and that, in those circumstances, the hearing of the application is a waste of judicial resources. The Attorney-General submitted that by virtue of section 8(2) of the *Provincial Court Act* R.S.A. 2000, c. P-31, as amended, the Court may apply Rule 3.68 of the *Alberta Rules of Court* (Alta. Reg. 124/2010, as amended).

[76] Rules 3.68(1)(a) and (b) state: "If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following: (a) that all or any part of a claim or defence be struck out; (b) that a commencement document or pleading be amended or set aside...."

[77] Rules 3.68(2)(b), (c), and (d) state:

"(2) The conditions for the order are one or more of the following: ... (b) a commencement document or pleading discloses no reasonable claim or defence to a claim; (c) a commencement document or pleading is frivolous, irrelevant or improper; (d) a commencement document or pleading constitutes an abuse of process...."

[78] I agree that section 8(2) of the *Provincial Court Act* allows me to apply Rule 3.68 of the *Alberta Rules of Court* because neither the *Provincial Court Act* nor the regulations under that Act "provide for a specific practice or procedure of the Court that is necessary to ensure an expeditious and inexpensive resolution" of a section 74(1) *Firearms Act* review application.

[79] Having said that, I am of the view that Mr. Stark's section 74(1) review application does not give rise to any of the conditions set out in Rule 3.68(2).

[80] Published in the same Canada Gazette as SOR2020-96 (Canada Gazette Part II, Volume 154, Extra), was a *Regulatory Impact Analysis Statement*. The *Regulatory Impact Analysis Statement* begins with this sentence: "This statement is not part of the Regulations or the Order." However, regardless of the fact that the *Regulatory Impact Analysis Statement* does not form part of the Regulations or Order, it is clear that it is published as being information provided by the Government of Canada, and it would be offensive to the honour of the Government to say that it has no meaning and those reading it should place no reliance upon its contents.

[81] Contained in the *Regulatory Impact Analysis Statement* is the following:

"The Government of Canada intends to implement a buy-back program, which would allow affected owners to declare their intent to deliver their firearms to a

police officer. The buy-back would compensate affected owners for the value of their firearms after they are delivered to a police officer. *An option to participate in a grandfathering regime would also be made available for affected owners.*" (emphasis added)

[82] Any fair reading of that paragraph would lead a person to conclude that the Government might, but not necessarily will, institute a buy-back program for firearms, and the Government might, but not necessarily will, make available to firearms owners a "grandfathering regime".

[83] Section 12 of the *Firearms Act* provides for the "grandfathering" of individuals who as of certain specified dates possessed certain firearms set out in the various subsections of the section. A constant requirement set out in the various subsections is that for a person to receive the benefit of the grandfathering provisions, "the particular individual was continuously the holder of a registration certificate" for the firearm.

[84] Sections 12(8) and (9) state:

(8) An individual is, in the prescribed circumstances, eligible to hold a licence authorizing the individual to possess firearms prescribed by a provision of regulations made by the Governor in Council under section 117.15 of the *Criminal Code* to be prohibited firearms if the individual

- on the day on which the provision comes into force possesses one or more of those firearms; and
- beginning on
 - (i) the day on which that provision comes into force, or
 - (ii) in the case of an individual who on that day did not hold but had applied for a registration certificate for one or more of those firearms, the day on which the registration certificate was issued

was continuously the holder of a registration certificate for one or more of those firearms.

(9) An individual is eligible to hold a licence authorizing the individual to possess prohibited firearms of a prescribed class if the individual

- possesses one or more firearms of that class on a day that is prescribed with respect to that class;
- holds a registration certificate for one or more firearms of that class in the circumstances prescribed with respect to that class; and
- was continuously the holder of a registration certificate for one or more firearms of that class beginning on the day that is prescribed — or that is determined under the regulations — with respect to that class.

[85] While none of this commits the Government of Canada to implement a grandfathering regime, or if it does choose to implement a grandfathering regime, to include in that regime provisions similar to the provisions which formed part of previous grandfathering regimes, it is reasonable for those reading the *Regulatory Impact Analysis Statement*, and who might benefit

from such a firearms grandfathering regime, to conclude that it is very likely, though not certain, that the continuous holding of a registration certificate will form part of the regime's requirements.

[86] For that reason alone (i.e., the likelihood that continuous holding of a registration certificate will be necessary to enjoy the benefits of a grandfathering regime), Mr. Stark's section 74(1) review application is not frivolous or an abuse of process. That application seeks a remedy (cancellation of the revocation of the registration certificate) which might turn out to be essential for Mr. Stark to enjoy the benefits of the possible grandfathering regime mentioned in the *Regulatory Impact Analysis Statement*. That possibility is enough to support a finding, which I make, that the conditions set out in Rule 3.68(2) are not met.

[87] I decline to strike Mr. Stark's section 74(1) review application under the provisions of Rule 3.68 of the *Alberta Rules of Court*.

Ruling

[88] The application of the Attorney-General to strike the section 74(1) review application filed by Mr. Stark is dismissed.

Dated at the City of Calgary, Alberta this 30th day of November, 2020.



A.A. Fradsham
A Judge of the Provincial Court of Alberta

Appearances:

G. Dunn
for the Respondent, Ryan Stark

D. Shiroky
for the Applicant, Attorney-General for Canada