

FORM 359 - Rule 359

FEDERAL COURT

BETWEEN:

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

Applicants

and

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

Respondents

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants will make a motion to the Court on January 18, 2021, at 9:30 a.m., via a Zoom videoconference or, if the parties so request at least 30 days before the hearing date, in person at a venue to be agreed upon by the Court and parties.

THE MOTION IS FOR interim or interlocutory relief under Rule 373 of the Federal Courts Rules, SOR/98-106 (**Rules**), pursuant to the *Constitution Act*, 1867, 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 (**Constitution Act, 1867**), the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (**Constitution Act, 1982**), and the Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, (**Charter**), and the *Canadian Bill of Rights*, SC 1960, c 44 (**Bill of Rights**).

Specifically, the Applicants seek an Order:

- (a) Granting an interlocutory injunction staying and/or suspending the effect of the *Regulations Amending Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted: SOR/2020-96 (Regulation)* and consecutively the *Order Declaring an Amnesty Period (2020)*, SOR/2020-97 (the **Amnesty Order**) until the within Application for Judicial Review of the Regulation (**JR Application**) has been heard and finally determined;
- (b) Granting an interlocutory injunction directing that the Royal Canadian Mounted Police Specialized Support Services Unit (**RCMP SFSS**) must cease designating firearms as restricted or prohibited in the Firearms Reference Table (**FRT**), or otherwise, until the JR Application has been heard and finally determined;
- (c) Declaring that any designations of firearms made by the RCMP SFSS as restricted or prohibited, or as “variants” of other restricted or prohibited firearms, made since or purportedly pursuant to the Regulation, are suspended and are of no force or effect until the JR Application has been heard and finally determined;
- (d) Directing that the Applicants are not required to give an undertaking for damages pursuant to Rule 373(2); and

- (e) Granting such further and other relief as Counsel for the Applicants may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

I. INTRODUCTION

1. The Applicants repeat and adopt all allegations of fact in the Notice of Application filed on May 26, 2020.
2. On May 1, 2020, Prime Minister Justin Trudeau announced immediate amendments to Canada's gun laws which criminalize the use of certain types of firearms and related devices. The change was effected through the Regulation, made by the Governor in Council (**GIC**) through Order in Council P.C. 2020-298 (**OIC**).
3. Section 84(1) of the *Criminal Code* defines certain items which fall within three categories of firearms: non-restricted, prohibited, and restricted. The definitions of both restricted and prohibited firearms allow for certain firearms to be prescribed. Under the authority of section 117.15 of the *Criminal Code* the GIC may make regulations prescribing categories of firearms according to the definitions of restricted and prohibited firearms. This regulation-making authority is constrained by section 117.15(2) of the *Criminal Code* which creates legislative requirements, including that the GIC shall not prescribe anything to be a prohibited or restricted firearm if, in the opinion of the GIC, it is reasonable for use in Canada for

hunting or sporting purposes. This regulation-making authority is also constrained by administrative law principles, the division of legislative authority in the *Constitution Act*, 1867, and the *Constitution Act*, 1982.

4. In addition to criminalizing a specific enumerated list of firearms and devices (the **Prohibited Items**), the Regulation also purports to include “variants or modified versions” of those firearms, including “current or future, whether they are expressly listed or not”. The phrase “variant or modified versions” is undefined and nondescript, creating the risk of attracting exposure to criminal liability, arrest and detention for persons who have no ability to ascertain which firearms may fit within that designation.

5. The Regulation also criminalizes any firearm with a “bore diameter of 20 mm or greater” (**Bore Diameter Restriction**), or “[a]ny firearm capable of discharging a projectile with a muzzle energy greater than 10,000 joules” (**Energy Restriction**). These broad restrictions are in addition to enumerated lists of specific firearms. These criteria are vague and, in practice, difficult or impossible to ascertain, particularly for laypeople, without specialized equipment and training. The Energy Restriction is further vague and arbitrary because many firearms can be modified to discharge a projectile with a muzzle energy greater than 10,000 joules. These restrictions also create further risk of criminal liability on uncertain or even unascertainable grounds.

6. Additional uncertainty is created by the following statement in the OIC:

There is also a risk that affected firearms owners may elect to replace their firearms with models unaffected by the ban, causing a market displacement. This risk may be mitigated by adding additional makes and models to the list of prohibited firearms in the future.

(the **Change Statement**)

7. The designations of firearms as “variant or modified versions” are apparently made by the RCMP SFSS, through maintenance of the FRT (**SFSS Re-Designations**). The SFSS Re-Designations operate against a firearm owner and carry the same criminal liability as firearms prescribed specifically by the GIC, except the SFSS Re-Designations are made by an unelected body without any statutory authority, with no apparent oversight, and without notice to the public. In fact, the general public has no way of reasonably ascertaining whether any particular firearm is or is not prohibited, as the RCMP states on its website that “[a]ccess to the online FRT is only for users authorized by the RCMP. Authorized users include members of the policing community, specific Public Agents and approved firearm verifiers”. The public may only view a limited version of the FRT, which is not current to the online FRT that may be accessed by authorized users. Criminal liability for the possession or use of firearms prohibited by way of SFSS Re-Designations is therefore not only un-promulgated, but unascertainable criminal law.

8. The SFSS Re-Designations are made pursuant to an improper sub-delegation of legislative authority which is not authorized by the enabling statute, the *Criminal Code*, and is therefore impermissible.
9. Since May 1, 2020, the RCMP SFSS has re-designated an estimated additional 200 to 380 firearms and devices as prohibited, apparently on the basis that those items are variants of the firearms and devices set out in the Regulation, and this number continues to grow.
10. The Regulation and SFSS Re-Designations significantly impact tens of thousands of Canadians, including (1) lawful owners of the Prohibited Items and items that are the subject of the SFSS Re-Designations, (2) retailers, training facilities, and target and shooting ranges, (3) manufacturers, (4) sport shooters, and (5) hunters.

II. THE APPLICANTS

11. The Applicant Maccabee Defense Inc. (**Maccabee**) is an Alberta company, based in Okotoks, Alberta. Maccabee is owned by Wyatt Singer and Shaina Singer. Maccabee manufactures and sells the SLR-Multi Rifle, a unique firearm designed by the Singers.
12. The Applicant Wolverine Supplies Ltd. (**Wolverine**) is a prominent Canadian retailer and distributor of firearms. Wolverine is a Manitoba company, based in the Assiniboine Valley of Manitoba. Wolverine

employs 20 people, in a rural community with limited employment opportunities given the location.

13. The Applicant Laurence Knowles (**Mr. Knowles**) is an individual who resides in Old Massett, Haida Gwaii, British Columbia. Mr. Knowles is a Status Indian under the *Indian Act*, RSC 1985, c I-5, as amended, and a member of the Haida Nation.
14. The Applicant Ryan Steacy (**Mr. Steacy**) is a highly skilled and competitive sport shooter and retired military corporal. Mr. Steacy is specifically accomplished in Service Condition Rifle Competitions and is one of the top competitors in Canada.
15. In addition to the named Applicants, the Court may and should consider the effect of the Regulation and SFSS Re-Classifications on non-parties who are in the same or substantially similar positions to or circumstances as the Applicants.

III. INJUNCTION - LEGISLATIVE STAY

16. The Applicants seek, broadly speaking, two injunctions:
 - (a) A legislative stay of the Regulation and Amnesty Order; and
 - (b) A prohibition on the RCMP SFSS from continuing to make the SFSS Re-Designations, and a related declaration that any SFSS

Re-Designations made since or purportedly pursuant to the Regulation are of no force or effect.

17. This relief is warranted in this case because of the following:
- (a) The JR Application presents a serious issue to be tried;
 - (b) Without an injunction being granted, the Applicants and others like them will suffer irreparable harm; and
 - (c) The balance of convenience favours granting the injunction.

A. Serious Issue to be Tried

18. On a preliminary investigation of the merits, the JR Application presents a serious issue to be tried. The JR Application presents a number of legitimate, *bona fide* challenges to the *vires* and constitutionality of the Regulation and the SFSS Re-Designations, and is neither frivolous nor vexatious.
19. The GIC's regulation-making authority under section 117.15 of the *Criminal Code* is delegated to it from Parliament. All delegations of legislative authority are constrained by the actual grant of authority (i.e., the enabling statute), the *Constitution Act*, 1867, the *Charter*, the *Constitution Act*, 1982, the *Bill of Rights*, and principles of administrative law and natural justice.

(a) The Regulation and SFSS Re-Designations are *ultra vires* and administratively invalid

20. Section 117.15 delegates regulation-making authority to the GIC, but there are limiting parameters on the exercise of this power. Any regulations passed pursuant to this section must be:

(a) Reasonable, in light of the governing statutory scheme in the *Criminal Code* and the inability of the federal Parliament and its delegates to pass laws respecting property and civil rights, which includes hunting and sporting;

(b) Reasonable, in light of the necessity for the GIC to form an opinion that any items prohibited by regulations under this section are not reasonable for use in Canada for hunting or sporting;

(c) Fair and proportionate; and

(d) Passed by the GIC itself and not further sub-delegated, whether to the RCMP SFSS or anyone else.

21. The Regulation does not comply with those requirements and is thus administratively invalid and *ultra vires* the specific delegation of authority given to the GIC in section 117.15 of the *Criminal Code*. Specifically, the Regulation is:

- (a) Unreasonable, in that the GIC could not reasonably form the opinion that the Prohibited Items are not reasonable for hunting or sporting in Canada. The Prohibited Items are routinely used for those purposes and specifically designed for those purposes, as acknowledged by the Regulation, the accompanying Regulatory Impact Analysis Statement (**Analysis Statement**), and the Amnesty Order;
- (b) Unreasonable, in that the rationale for the Regulation, including the Analysis Statement, is unsupported and contradicted by evidence;
- (c) Unreasonable, in that it is a colourable infringement upon provincial authority to regulate property and civil rights;
- (d) Unfair and unreasonable, in that it draws unnecessary and irrational distinctions between makes and models of firearms;
- (e) Unfair and unreasonable, in that it draws unnecessary and irrational distinctions between subsistent and non-subsistent hunters;
- (f) Unfair, to the extent that it purports to authorize the SFSS Re-Designations of “variants or modified versions” which are made without notice or transparency;

- (g) Unfair and unreasonable, in that it criminalizes the use of firearms that meet the Energy Restriction or the Bore Diameter Restriction criteria, which are both vague and impossible for the layperson to ascertain;
- (h) An exercise in impermissible sub-delegation, as many of the now-prohibited firearms have been re-designated as such by the RCMP SFSS, through the SFSS Re-Designations. Only the GIC has the authority to prescribe prohibited firearms. Further, even if this sub-delegation was permitted, the SFSS Re-Designations are themselves unreasonable and unfair for the reasons stated above, and also *ultra vires* the enabling statute.

22. The Regulation and the SFSS Re-Designations are thus *ultra vires* the enabling statute and the specific grant of authority given to the GIC.

(b) The Regulation and SFSS Re-Designations are an unjustifiable infringement of section 7 of the *Charter*

23. The Regulation and the SFSS Re-Designations engage criminal penalties for those who use, own, possess, transport or sell the Prohibited Items and items subject to the SFSS Re-Designations. The criminal consequences include arrest, imprisonment and firearm prohibition orders. Consequently, the Regulation and the SFSS Re-Designations must be consistent with section 7 of the *Charter*, which provides that:

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

24. The Regulation and the SFSS Re-Designations are vague, disproportionate, arbitrary, and overly broad. Therefore the Regulation and SFSS Re-Designations are not in accordance with the principles of fundamental justice and infringe on the section 7 *Charter* rights of the Applicants and all other Canadians who possess firearms listed in the Regulation, or which have been subsequently re-designated by the RCMP SFSS as prohibited, or which may be so designated in the future.
25. This infringement cannot be justified under section 1 of the *Charter*, for the following reasons:
 - (a) The Regulation and the SFSS Re-Designations were not made in response to any exceptional or extraordinary situations;
 - (b) The extent of the infringement of section 7 of the *Charter* is not proportional to the benefits (or lack thereof) of the Regulation and the RCMP SFSS Re-Designations;
 - (c) The Regulation is not a rational means to pursue the legislative objective; and

(d) There are alternative measures which can achieve the stated purpose of the Regulation without infringing section 7 of the *Charter*.

(c) **The Regulation, Amnesty Order, and SFSS Re-Designations are an unjustifiable infringement of section 35 of the *Constitution Act, 1982***

26. Section 35 of the *Constitution Act, 1982* recognizes, affirms and provides constitutional protection for the rights of Aboriginals. These rights can only be infringed by legislation to the extent that the infringement is “justifiable”. Aboriginals have a well-recognized right to hunt in their traditional lands or lands subject to treaties. The Regulation, Amnesty Order, and SFSS Re-Designations are of no force and effect to the extent that they infringe upon these rights, unless that infringement is proven by the Crown to be justifiable.

27. Mr. Knowles, and thousands of other Aboriginal Canadians like him, regularly exercise their Aboriginal rights to hunt and trap, and use Prohibited Items to do so. Many of the Prohibited Items, including the ones that Mr. Knowles possesses and uses, have specialized hunting and trapping purposes that permit Mr. Knowles to hunt and trap in the manner that he chooses, in order to provide food for himself, his family and his community, to engage in population management of certain species, and to

engage in ancient rituals that bind his community together and tie them to their ancestors and their history.

28. Mr. Knowles' ability to replace any of the Prohibited Items is impaired by the ongoing SFSS Re-Designations and the Change Statement.

29. The Regulation, Amnesty Order, and SFSS Re-Designations infringe on Aboriginal rights as they:

(a) Unreasonably limit Mr. Knowles' ability to hunt and trap for sustenance and for ceremonial and social purposes;

(b) Impose undue hardship on Mr. Knowles and his community, as they will diminish their capability to hunt for sustenance and to carry out the social and cultural traditions surrounding hunting and trapping; and

(c) Deny Mr. Knowles the ability to exercise his right to hunt and trap by the means he prefers.

30. The Crown therefore bears the burden to establish that this infringement is justified, in particular:

(a) That the Regulation and Amnesty Order have valid legislative objectives;

- (b) That the Regulation and Amnesty Order involve as little infringement to the Applicants' rights as possible to achieve their legislative objective; and
- (c) That the Crown has consulted with Mr. Knowles and the Haida Nation.

31. The Crown cannot discharge this burden.
32. The Regulation does not involve minimal infringement of section 35 rights to achieve its legislative objective, for the same reasons that it is not rationally connected to its purpose, as described further herein. Public safety by way of regulation of firearms can be achieved by means that do not infringe Aboriginals' section 35 rights at all.
33. The Crown has failed in discharging its duty to consult with Aboriginals, including Mr. Knowles and the Haida Nation, on the Regulation and its effect on Aboriginals and the exercise of their section 35-protected hunting rights, in that:
 - (a) The Crown is generally aware of the assertion and exercise of Aboriginals' rights to hunt in their traditional territories, or on treaty lands.
 - (b) In particular, the Crown is aware of the rights of the Haida Nation, of which Mr. Knowles is a part, to the lands and resources in and around Haida Gwaii, British Columbia. As previously

acknowledged by the Supreme Court of Canada, the Haida Nation's claim to these rights is strong and is not a "mere assertion".

- (c) The Crown is aware of the impact of the Regulation on the hunting rights of Aboriginals specifically. For example, this can be seen in the Analysis Statement, and the special application of the Amnesty Order to Aboriginal hunters.
- (d) The JR Application advances strong *prima facie* claims about the rights of Mr. Knowles, and thousands of Aboriginals like him, to hunt in their preferred manner for sustenance, and for social and ceremonial purposes. As a result of the strength of the claim to these rights, the Crown bears a heavy duty to consult with those Aboriginals affected by the Regulation.
- (e) The Crown failed in discharging its duties to consult in respect of the Regulation's infringement on section 35 of the *Constitution Act*, 1982. It did not consult with Mr. Knowles or the Haida Nation generally. It is likely that the Crown failed to consult with most (or all) other Aboriginal peoples and First Nations across Canada regarding the effect of the Regulation on their constitutionally protected rights.

34. Had consultation occurred, it would have given rise to the Crown's obligation to accommodate section 35 rights in achieving the stated

legislative objective. Because no consultation occurred, or in the alternative because it was inadequate, accommodation was not, by definition, achieved.

35. As a result of the infringement, and the Crown's failure to consult and accommodate, the Regulation constitutes an unjustifiable infringement of Mr. Knowles' rights to hunt by his preferred means. The Amnesty Order is not sufficient accommodation, especially in light of the Change Statement and SFSS Re-Designations.

B. Irreparable Harm

36. The Regulation and the SFSS Re-Designations will cause irreparable harm to the Applicants, and thousands of other Canadians in the same or substantially the same circumstances as the Applicants, in that they will:
- (a) Cause Maccabee, Wolverine, and hundreds of other Canadians who participate in the firearms industry, financial harm, both quantifiable and unquantifiable, which cannot be redressed by damages;
 - (b) Cause Mr. Knowles, and thousands of other Aboriginal Canadians like him, harm in infringing his Aboriginal rights, including the loss of sustenance and resulting physical harm, and the loss of ability to pursue their traditional way of life;

- (c) Cause Mr. Steacy, and most all other Canadian sport shooters like him, harm by effectively removing their ability to participate and compete in a number of sport shooting events;
- (d) Cause individual Canadians non-compensable harm in unjustifiably endangering their liberty; and
- (e) Result in diminished (or eliminated) skill transference from and training by civilian marksmen to law enforcement and the military, thereby reducing public safety.

(a) Maccabee

37. The Applicant Maccabee is a family-owned, independent firearms manufacturer, licensed under the *Firearms Act*, SC 1995, c 39 (***Firearms Act***), that produces one product: the SLR-Multi. The SLR-Multi is a uniquely designed rifle and is not based on or derived from any other firearm (i.e., it is not a “variant”). The SLR-Multi is specifically designed with safety in mind and with the intent for it to be a non-restricted firearm based on the laws as they were prior to May 1, 2020.
38. Upon the Regulation being passed, the SLR-Multi was not listed as restricted or prohibited. Several weeks after the Regulation was passed, the RCMP SFSS designated the SLR-Multi as a “variant” of another prohibited firearm, and it then became prohibited. This was done without notice to Maccabee or any of the owners of the SLR-Multi, and despite the

fact that the SLR-Multi is in fact *not* a “variant” of any firearm, let alone any firearm listed in the Regulation. Maccabee has not been provided with any information or justification about this designation. It is unclear what firearm the RCMP SFSS alleges the SLR-Multi to be a variant of, as there is no transparency with the SFSS Re-Designations or the FRT.

39. As a result of the designation of the SLR-Multi, the entire business of Maccabee has been destroyed. Maccabee cannot manufacture the SLR-Multi for sale in Canada, and it has no export business (nor any license to do so). This action by the RCMP SFSS has caused and will continue to cause irreparable financial harm to Maccabee and has resulted in the loss of its owners’ entire financial livelihood and the promising future prospects of the SLR-Multi. The Regulation, and the subsequent designation of the SLR-Multi has also caused Maccabee an irreparable loss of business reputation, market share, and goodwill.

(b) Wolverine

40. The Applicant Wolverine is a licensed firearms business under the *Firearms Act* located in Manitoba. It carries on business in retail and wholesale firearms sales. The largest portion of Wolverine’s sales relates to the AR-15 line of firearms manufactured by Daniel Defense, which are manufactured for hunting and sporting purposes, but are now prohibited by the Regulation.

41. Wolverine currently possesses over \$477,000 in stock (not including complementary accessories) that cannot be sold and has no value because it is now prohibited by the Regulation and the SFSS Re-Designations. This inventory cannot be sold in Canada because of the Regulation, and much of it cannot be exported due to importation restrictions in the destination jurisdiction. The Regulation does not provide any mechanism for Wolverine to dispose of this inventory, whether through export, grandfathering, or buyback. Further, this inventory continues to grow with the changes in the FRT effected by the SFSS Re-Designations.

42. The Regulation has caused Wolverine, its owners, and its employees, significant losses which cannot be compensated in damages, including:
 - (a) The loss of sales of Prohibited Items and complementary accessories and products, which immediately causes a significant reduction in sales by approximately 21% to 33% of Wolverine's business, threatens the continuing viability of Wolverine, and will cause a loss in business reputation, market share, goodwill, and loss of employment;

 - (b) Harm to Wolverine's relationships with its suppliers and manufacturers as a result of attempting large-scale returns of inventory. This will in turn harm Wolverine through reduced credit with its suppliers and manufacturers and increased likelihood that they will insist on full pre-payment upon shipment of inventory

(which has already begun to occur with some suppliers and manufacturers);

- (c) Most of Wolverine's employees are located in Virden, Manitoba, an area which has limited employment opportunities. Most of these employees have specialized skills related to firearms which are non-transferable to other industries;
- (d) Uncertainty, distress, and anxiety regarding the threat to the continued viability of Wolverine, the lack of clarity regarding compliance with the Regulation and the Change Statement and the possibility of uncertain criminal liability including as a result of the SFSS Re-Designations; and
- (e) Harm to the reputation of Wolverine, and the Canadian firearms industry as a whole, as a result of the uncertainty surrounding the Change Statement and the SFSS Re-Designations.

43. Wolverine is not unique in this respect, and many other Canadian firearms retailers, which are predominantly small and/or family-owned businesses, will undoubtedly suffer the same fate.

44. Wolverine also faces severe business challenges with respect to the SFSS Re-Designations and the Change Statement, which create a great deal of uncertainty in the legal firearms market. This uncertainty means that

Wolverine cannot plan or implement changes to its business model with any confidence.

45. The Regulation affects independent businesses such as Wolverine and Maccabee, but also has greater economic effects through reduced economic activity in the entire firearms industry and knock-on effects to Canada's economy.

(c) Mr. Knowles

46. Sustenance hunting represents a significant portion of the diet of Mr. Knowles and many others in his isolated community, in addition to thousands of other Aboriginal and non-Aboriginal Canadians. A hunting failure can mean going hungry, or resorting to distasteful, non-traditional, packaged and store-bought food. This concern can be exacerbated when other traditional food supplies, such as salmon, are scarce, which is the case for Mr. Knowles and the Haida Nation -- and thousands of other Aboriginals in British Columbia -- in 2020.
47. Hunting is a precise endeavor. Having firearms well-suited to the particular requirements of the specific terrain and prey is essential to the success of the hunt. Not all firearms are useful for all hunting purposes, and many non-restricted firearms are not well-suited to certain hunting purposes or hunting at all. Using a firearm which is not suited to its particular hunting purpose means the hunt will in all likelihood be unsuccessful. Underpowered rifles can also cause needless and protracted

suffering for a wounded animal. Unsuitable firearms can also place the safety of the hunter at risk.

48. Hunting also serves other cultural purposes to Aboriginals besides sustenance. Hunting is a social and ceremonial activity that connects Aboriginals to their communities, the land, and to their ancient, traditional ways of life. Hunted animals are used to make traditional clothing and artwork. These practices are endangered by the Regulation, which renders the hunting activities of Mr. Knowles and other Aboriginals like him ineffective or impossible.
49. This harm cannot be compensated in damages. It is harm to a way of life, and to tradition, which is by its nature non-compensable. The Regulation and the SFSS Re-Designations will therefore cause Mr. Knowles, and thousands of other Aboriginals like him, and their communities, irreparable harm.

(d) Ryan Steacy

50. Mr. Steacy is a highly accomplished competitive sport shooter and retired military Corporal of the Canadian Armed Forces. He is one of the highest ranked sport shooters in Canada, being one of only seven Canadians listed in the Hall of Fame of the Dominion of Canada Rifle Association (**DCRA**); an association which has a long history in Canada, being established in 1868 and incorporated by an Act of Parliament in 1900.

51. Mr. Steacy has competed in DCRA competitions as both a serving member of the military and as a civilian. These competitions provide important and invaluable training for serving members of the military and allow civilians to share developed techniques with those serving our country who may not have years of marksmanship experience. The sharing of knowledge and transfer of skills is instrumental for the military, which endorses this professional development through an integrated partnership with the DCRA.
52. Mr. Steacy requires certain Prohibited Items to be competitive at the sporting events held by the DCRA and at international sporting events. He is a skilled and competitive marksman and one of the highest achieving sport shooters in Service Conditions Rifle Competitions (commonly known as **Service Rifle**). Service Rifle is one form of sport shooting, which requires a high degree of accuracy and reliability. The Prohibited Items include the AR-15, AR-10, Sig 10, Stag 10, Maccabee Defense SLR, BCL 102 and the ATRS Modern Sporter. These are the firearms that would perform best in the Service Rifle competition, and now because of the Regulation no Canadian competitor can use these firearms for training or competition.
53. Without these select Prohibited Items, especially the AR-15, Mr. Steacy will suffer irreparable harm to his sporting career and his identity. Most competitions in the sport will be essentially non-existent in Canada, and Canadians will be precluded from competing internationally as they will

be unable to possess the Prohibited Items and unable to train for competitions. Skills will atrophy, and the integrated relationship between the DCRA, civilian sport shooters, and military will disintegrate and lose value.

54. The loss of skill, loss of opportunity to compete, and negative impact on hunting activities caused by the Regulation are irreparable harms, which cannot be compensated in damages.
55. Mr. Steacy is also a hunter. He had planned to use Prohibited Items for hunting during the hunting season of 2020, and any currently non-prohibited firearm will be less effective with a greater risk of an inhumane kill for the animal and an increased risk to Mr. Steacy's safety in defense against grizzly bears who may be attracted to his kill.

C. Balance of Convenience

56. The balance of convenience favours granting an injunction, preserving the pre-May 1, 2020 status quo until the *vires* and constitutionality of the Regulation, Amnesty Order, and SFSS Re-Designations are finally determined in the JR Application.
57. The infringement of rights and the resulting irreparable harm caused by the Regulation and the SFSS Re-Designations are significant. In this case, they outweigh any alleged public benefit produced by the prohibition of

the otherwise legal possession and use of firearms as had been the status quo for years prior to the promulgation of the Regulation.

58. Preservation of the status quo pending determination of the Regulation's validity provides the following significant public benefits:

- (a) There is a significant public interest in upholding constitutional principles. In particular, it is a fundamental tenet of the rule of law that criminal law be promulgated to permit citizens to understand if their behavior is lawful or unlawful, which is frustrated by the Regulation, including the Change Statement, and SFSS Re-Designations, all of which are void for vagueness;
- (b) Trade in the Prohibited Items provides almost 50,000 full-time equivalent jobs and contributes to the annual gross domestic product of Canada, including:
 - (i) \$1.38 billion dollars in provincial government revenue;
 - (ii) \$1.8 billion dollars from the sport shooting industry;
 - (iii) \$870 million in labour income related to the sport shooting industry;
 - (iv) \$4.1 billion dollars from the hunting industry; and
 - (v) \$1.9 billion dollars in labour income related to the hunting industry.

- (c) The Regulation and SFSS Re-Designations have caused and will continue to cause the loss of jobs, livelihood, and the viability of many businesses, which, as small retailers and manufacturers, cannot withstand the financial damage caused by the Regulation and SFSS Re-Designations;
- (d) The destruction or buy-back of the Prohibited Items will produce significant waste, including billions of dollars for taxpayers;
- (e) Staying the Regulation and its effects will improve the Canadian economy, and restore property rights for thousands of Canadians who would otherwise suffer irreparable harm from the Regulation and SFSS Re-Designations;
- (f) The Prohibited Items may be used by millions of Canadians that hunt, trap and sport shoot, and staying the Regulation will allow these Canadians to continue engaging in hunting, sporting and recreation in a law-abiding way as they had been doing prior to May 1, 2020;
- (g) The Prohibited Items are used by Aboriginal Canadians to practice their traditional way of life by their preferred means, and there is a significant public benefit to preserving these traditions;
- (h) The Prohibited Items are used for sustenance hunting by Aboriginal and non-Aboriginal Canadians;

- (i) The Prohibited Items allow for more effective hunting, which decreases the suffering of prey animals, preserves a limited resource, and reduces danger to those engaged in hunting;
- (j) The protection of Aboriginal rights implicates the duty and honour of the Crown, and the preservation of fair dealings between the Crown and Aboriginal Canadians is in the public interest;
- (k) Criminalizing the possession of the Prohibited Items will result in an increase in illegal arms sales, importation and possession, thereby contributing to the maintenance of these illicit activities;
- (l) Staying the Regulation and prohibiting the SFSS Re-Designations will ensure that law-abiding firearms owners will not be exposed to criminal liability for laws which are vague and unfair;
- (m) Staying the Regulation and prohibiting the SFSS Re-Designations will preserve a legal firearms market which will contribute to public safety;
- (n) The liberty of otherwise law-abiding Canadians is at stake on an impermissibly vague basis as a result of:
 - (i) the Regulation and any ostensibly related (but non-promulgated) SFSS Re-Designations; and

(ii) the Energy Restriction and Bore Diameter Restriction which are difficult or impossible for laypeople to ascertain;

the contravention of any of which carries criminal liability, up to and including imprisonment; and

(o) Staying the Regulation and prohibiting the SFSS Re-Designations will allow for:

(i) civilians to continue to share sporting and marksmanship skills with members of the Armed Forces and law enforcement using the Prohibited Items; and

(ii) members of the Armed Forces and law enforcement to continue to practice in the use and handling of Prohibited Items while off-duty;

which skill transfer and practice both materially increase public safety for Canadians and Canada as a whole.

59. Conversely, the Regulation will have a limited or non-existent public benefit. Firearms lawfully possessed by licensed firearms owners are generally not used in criminal activity and the Regulation and SFSS Re-Designations will have no measurable effect on crime or public safety.

60. The balance of convenience therefore weighs heavily in favour of granting the injunctions sought in this Motion.

IV. CONCLUSION

61. The Applicants satisfy the test for the injunctive relief sought in this Motion, and respectfully request that the relief be granted.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Laurence Knowles, sworn August 24, 2020, to be filed;
- (b) The Affidavit of Wyatt Singer, sworn August 21, 2020, to be filed;
- (c) The Affidavit of Matthew Hipwell, sworn August 26, 2020, to be filed;
- (d) The Affidavit of Ryan Steacy, sworn September 3, 2020, to be filed;
- (e) The Affidavit of Rick Timmins, sworn September 10, 2020, to be filed;
- (f) The Affidavit of Matthew Overton, sworn August 24, 2020, to be filed;
- (g) The Affidavit of Ron LeBlanc, sworn August 27, 2020, to be filed;
- (h) The Affidavit of Jeff Pellarin, sworn August 6, 2020, to be filed;

- (i) The Affidavit of Phil O'Dell, sworn September 11, 2020, to be filed;
- (j) The Affidavit of Gary Mauser, sworn July 22, 2020, to be filed;
- (k) The Affidavit of Caillin Langmann, sworn August 25, 2020, to be filed;
- (l) The Affidavit of Eugene Beaulieu, sworn September 9, 2020, to be filed; and
- (m) Such further and other documentary evidence as Counsel for the Applicants may advise and this Honourable Court may permit.

Dated: September 11, 2020



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