

Canadian Coalition for Firearm Rights et al v. Attorney General

Murray Smith
on Thursday, October 29, 2020



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1 Court File No. T-735-20

2
3 FEDERAL COURT

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5 BETWEEN:

6
7 CHRISTINE GENEROUX

8 JOHN PEROCCHIO, and

9 VINCENT R. R. PEROCCHIO

10
11 Applicants

12 and

13
14 ATTORNEY GENERAL OF CANADA

15 Respondent

16
17 Court File Nos. T-577-20 and T-677-20 on page 2

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20 Transcript of Oral Questioning of

21 MURRAY SMITH

22 (On affidavit affirmed October 9, 2020)

23 Held via videoconferencing

24 October 29, 2020

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Court File No. T-577-20

FEDERAL COURT

BETWEEN:

CANADIAN COALITION FOR FIREARM RIGHTS, RODNEY GILTACA,
LAURENCE KNOWLES, RYAN STEACY, AND OTHERS

Applicants

and

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

Respondents

Court File No. T-677-20

FEDERAL COURT

BETWEEN:

MICHAEL JOHN DOHERTY, NILS ROBERT EK, RICHARD WILLIAM
ROBERT DELVE, CHRISTIAN RYDICH BRUHN, AND OTHERS

Applicants

and

THE ATTORNEY GENERAL OF CANADA and ROYAL CANADIAN MOUNTED
POLICE

Respondents

1 ALL PARTIES APPEARING VIA VIDEOCONFERENCING

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17 403-266-1744

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1 (Proceedings commenced at 8:00 a.m. MT)

2 THE COURT REPORTER: Counsel, as you all know, because we
3 are using a virtual connection, everyone is going to have
4 to be more conscious than ever of not speaking over each
5 other.

6 If I cannot hear the end of a question or the beginning of
7 an answer, you are going to have a very poor record. If I
8 have to consistently interrupt because I cannot hear or
9 understand something that is said, you will not have a good
10 examination flow.

11 If there is an objection, I must be able to hear it and
12 know who is objecting. If I do have to interrupt, please
13 be patient and understand my goal is to provide you with a
14 perfect record of these proceedings. Please move your
15 papers and/or legal pads away from your phone so there is
16 no ambient noise.

17 From time to time we've noticed the audio can be affected,
18 and if so, we may need to stop the proceedings and wait a
19 moment for the audio to improve, either by reconnecting or
20 asking that everyone use the conference call number if
21 you're using computer audio.

22 Would the witness please identify himself and spell your
23 first and last name?

24 THE WITNESS: Murray Smith. Spelled

25 M-U-R-R-A-Y, S-M-I-T-H.

1 THE COURT REPORTER: Thank you. Our witness today is
2 Murray Smith. If there are any questions about the
3 witness' identity, would counsel please advise on the
4 record now.

5 MURRAY SMITH, affirmed, questioned by Ms. Warner:

6 Q. Mr. Smith, thanks for being here today. As the court
7 reporter mentioned, my name is Laura Warner. I'll be
8 the first counsel asking you questions today. Can you
9 hear me all right?

10 A. You're speaking quite faintly, and my hearing is not as
11 good as it used to be, so I would appreciate a little
12 more volume, if I could.

13 Q. Sure. I'll do my best. And if it's still an issue,
14 let's see if we can get the volume cranked up on your
15 end.

16 Just to confirm, you've just affirmed, and you'll
17 tell the truth today?

18 A. Yes, indeed.

19 Q. And, sir, you swore an affidavit in Federal Court File
20 Number T-735-20? Do you have a copy of that in front
21 of you?

22 A. Yes. That's T-735-20?

23 Q. That's right.

24 A. Yes, I have it in front of me.

25 Q. And you understand that you're here today to answer

1 questions about that affidavit?

2 **A.** Yes.

3 **Q.** Sir, I'm going to start off with a few sort of formal
4 administrative things.

5 So to start with, you've agreed to be
6 cross-examined by way of videoconference today?

7 **A.** Yes.

8 **Q.** And you agree that you will not record or broadcast
9 this cross-examination in any way?

10 **A.** No.

11 **Q.** And you will not mute or turn off your microphone,
12 camera, or speakers or move out of view of the camera
13 during this cross-examination unless agreed upon or
14 otherwise directed to do so by me?

15 **A.** Yes.

16 **Q.** And you will not view during this cross-examination any
17 device, documents, apps, or information other than your
18 affidavit or as requested or presented to you during
19 this cross-examination?

20 **A.** Yes.

21 **Q.** Can you please confirm that you have closed and will
22 not re-open any other windows on your computer during
23 this cross-examination?

24 **A.** Yes, that's correct.

25 **Q.** And finally, you will not communicate in any way with

1 any party outside of the virtual meeting during this
2 cross-examination?

3 **A.** Yes.

4 **Q.** Okay. Another sort of administrative matter, we sent
5 some documents yesterday that are things that I may ask
6 you to refer to today. I understand there were
7 potentially some difficulties, so I wanted to confirm
8 that you have those documents available to you in some
9 way?

10 MR. MACKINNON: Just for counsel's information, it
11 was way too large for, barely, us to get it into our
12 system, so if Murray's at home with his own small
13 system -- so he couldn't get it. So he doesn't have
14 it.

15 We're on a secure laptop, which isn't his, and it
16 doesn't accept emails because it's in a secure room
17 area, so can you put whatever document you want to put
18 onto Zoom so he can see it? Because we can't print out
19 570 megabytes in 20 hours.

20 Can you put whatever document on the shared screen
21 or whatever you want to put to him?

22 MS. WARNER: Let's try to proceed that way, and
23 if we run into issues in terms of speed, then we'll
24 take a break and figure something out.

25 **Q.** So, sir, I just want to confirm that you'll let me

1 finish my questions before you start to answer; that's
2 something that the court reporter touched on. That
3 leads in my next point, which is that I want you to
4 ensure that you'll provide an audible response to each
5 question I ask. So a head nod or an "mm-hmm" won't
6 work for the purposes of the court reporter, so if you
7 could just confirm that you'll provide an audible
8 response to each question.

9 **A.** Yes, I will.

10 **Q.** Great. And will you please confirm that you'll let me
11 know if you don't understand a question that I've asked
12 you?

13 **A.** Yes, I will ask for clarification, if needed.

14 **Q.** Great. And just to help things, hopefully, goes as
15 smoothly as possible during this cross-examination, I
16 would like to just get on common ground about certain
17 terms that we might be using over the next little bit.

18 So the first thing is I might refer to something
19 called "the regulation." That's something that you
20 have defined in your affidavit at paragraph 14. It
21 refers to a regulation that was promulgated on May 1 of
22 2020. I want to confirm that if I use the term "the
23 regulation," you'll understand that that's what I'm
24 referring to.

25 **A.** Yes. So as I understand it, then, when you refer to

1 "the regulations," you're referring to only the
2 amendments which took place on May the 1st?

3 **Q.** That's right. And that's distinct from the 1998
4 regulation. If I refer to the 1998 regulation, which
5 you have defined at paragraph 12 of your affidavit, I
6 will identify that as "the 1998 regulation" or "the
7 former regulation." Do you understand that?

8 **A.** Yes. I understand it in the context of the 1998
9 regulations, yes.

10 **Q.** Okay. And you also in your affidavit defined the Royal
11 Canadian Mounted Police as the "RCMP," and I may do the
12 same; do you understand that?

13 **A.** Yes.

14 **Q.** And you've defined the Canadian Firearms Program as the
15 "CFP." I may do the same; do you understand that?

16 **A.** Yes.

17 **Q.** You've also defined the Specialized Firearms Support
18 Services as the "SFSS," and I may do the same; do you
19 understand that?

20 **A.** Yes.

21 **Q.** You've defined the Firearms Reference Table as the
22 "FRT," and I may do the same; do you understand that?

23 **A.** Yes.

24 **Q.** And if you'll flip to paragraph 25 of your affidavit.
25 Let me know when you have that in front of you.

1 **A.** Yes, I have paragraph 25.

2 **Q.** Okay. In that paragraph, you say: (as read)

3 "The FRT refers to 'named variant' to
4 describe a variant which is explicitly
5 listed in the Regulation and to 'unnamed
6 variant' to describe a variant that is
7 not expressly listed in the Regulation."

8 And I may use "named variant" and "unnamed variant" in
9 that same way. So you understand that?

10 **A.** Yes, I do.

11 **Q.** Sir, if I refer to the "Governor General in Council" or
12 the "GIC," who would you understand that I am referring
13 to?

14 **A.** Yes.

15 **Q.** Who would you understand that I'm referring to?

16 **A.** The GIC? That, to the best of my knowledge, is a
17 committee of the federal cabinet.

18 **Q.** Okay. That's fine. So we can act on that same
19 understanding; that if I refer to "Governor in Council"
20 or "GIC," I'm effectively referring to cabinet acting
21 in its legal authority.

22 And if I refer to the "AGC," you'll understand
23 that I'm referring to the Attorney General of Canada?

24 **A.** Yes, I do.

25 **Q.** Okay.

1 So, sir, just turning now to talk a little bit
2 about you and your background. To start with I would
3 like to confirm whether or not you had -- did you have
4 any firearms or ballistics training before you joined
5 the RCMP?

6 **A.** I had some experience with ballistics through
7 self-study. I began using firearms in the late 1960s,
8 early 1970s as an individual firearms owner.

9 One of the things that I did was build my own
10 chronograph from scratch. And chronographs were very
11 unusual electronic devices in those days used for
12 measuring bullet velocity. So I designed and built my
13 own, as I have a hobby background in electronics, as
14 well. So in the course of doing so, I learned through
15 self-study considerable information about ballistics.

16 Also while I was at university, again, in the
17 1970s, I undertook a science degree. Part of that was
18 training in mathematics and, in particular,
19 differential equations. So part of my self-study was
20 becoming acquainted with the differential equations
21 that govern exterior ballistics.

22 **Q.** Okay. And so my next question was going to relate to
23 your formal education, and you've confirmed that your
24 formal education is BSc in chemistry, right?

25 **A.** That's correct.

1 Q. And I think your evidence just now was that that
2 included some mathematics courses which you would say
3 had some relation to later work that you did in
4 ballistics, right?

5 A. Yes. My university education in the sciences includes
6 primarily chemistry, mathematics, and physics.

7 Q. Right. And from there, when you started your
8 professional career, that was with the RCMP in 1977,
9 right?

10 A. Yes, correct.

11 Q. And your first role was as a forensic firearms
12 specialist, right?

13 A. Yes.

14 Q. Would it be fair to say that you were effectively
15 trained to do that role on the job?

16 A. The sound dropped out for a moment. Could you repeat
17 the question, please.

18 Q. You bet. Is it fair to say that as a forensics
19 firearms specialist, you were effectively trained how
20 to do that role on the job?

21 A. Yes. My training as a forensic scientist was a
22 culmination of taking advantage of the knowledge that I
23 had already acquired prior to joining the RCMP plus
24 additional training which took place after I joined the
25 RCMP, which took place over the course of about

1 18 months.

2 **Q.** Okay. And I understand that you worked with the RCMP
3 in different capacities between 1977 and May of 2020.
4 On which specific day did you retire in May of 2020?

5 **A.** May 20th of 2020.

6 **Q.** And you now consult for the Canada Firearms Program; is
7 that right?

8 **A.** That's correct. Starting in June of 2020.

9 **Q.** When in June?

10 **A.** June the 8th.

11 **Q.** Sir, you've said in your affidavit that you were asked
12 by counsel for the AGC to provide an opinion in respect
13 of certain applications for injunctive relief. Did you
14 receive those instructions in writing?

15 **A.** No, I don't believe so. No.

16 **Q.** How did you receive them?

17 **A.** Verbally.

18 **Q.** So you don't have any instructions about the scope of
19 your affidavit in writing?

20 **A.** Not that I'm aware of.

21 **Q.** Did anyone help you in providing your opinion that is
22 included in your affidavit?

23 **A.** Yes. The Department of Justice legal counsel did a
24 considerable portion of the drafting of my affidavit.
25 That said, when I look through the affidavit, many --

1 much of the language came directly from me.

2 **Q.** Maybe just help me understand that a little bit better.
3 What did that process look like?

4 **A.** The way the process worked was counsel provided a
5 template for the affidavit with all of the formalities
6 that are attached to an affidavit filled in because I'm
7 not familiar with the Rules of Court the same way they
8 are. And very general statements about what they
9 anticipated my evidence would be, and then I fleshed it
10 out from there.

11 And the majority of the paragraphs in my affidavit
12 all contained content directly from me or material
13 which I have reviewed and agreed with.

14 **Q.** Sure. So it sounds to me like that initial template
15 affidavit, as you've called it, basically served a
16 function of effectively being a written request or
17 written instructions about what they were looking for
18 from you, right?

19 **A.** It helped define the scope of -- that I was being
20 requested to produce an affidavit for.

21 **Q.** Sure.

22 **MS. WARNER:** So, Counsel, I would like to
23 request a copy of that initial template affidavit.

24 **MR. MACKINNON:** You don't have a basis for asking
25 for drafts of an affidavit. That's -- at least in

1 Ontario you need a -- you can't just fish for drafts
2 unless you establish a basis in evidence that requires
3 it to be produced.

4 And we don't -- we're not here to provide
5 undertakings either. This is a cross-examination; not
6 an examination for discovery.

7 MS. WARNER: Sure. So I'm looking for it in
8 the sense that it serves as written instructions to the
9 witness. So on that basis, are you willing to provide
10 it?

11 MR. MACKINNON: No. For the reasons I just gave.

12 MS. WARNER: Okay.

13 UNDERTAKING NO. 1 - To provide a copy
14 of the initial template affidavit given
15 to Mr. Smith by counsel - REFUSED

16 Q. MS. WARNER: So, sir, I asked you whether
17 anyone helped you in preparing your opinion, and you
18 said DOJ counsel, legal counsel. Did anybody else help
19 you?

20 A. I relied on statistical information from my colleagues
21 at the Canadian Firearms Program. And I would pose
22 direct questions for information that I needed looked
23 up, and I was provided that information. This was all
24 done in that fashion because of the COVID-19
25 environment we're operating in, and I can't be at the

1 office every day where all of my technical resources
2 are located. So I would communicate from time to time
3 with staff members of my former unit to look up
4 technical information in references which were present
5 at the office.

6 So that brings me to my second point, is I also
7 relied on technical information in the form of
8 technical books, firearms manufacturers' advertising,
9 manufacturers' websites, and other general information
10 that was available to me as technical references.

11 **Q.** Okay. And, sir, I think you given evidence that you
12 reviewed the Conduct for Expert Witnesses as part of
13 finalizing your affidavit?

14 **A.** Yes, I did.

15 **Q.** Okay. So under that code of conduct it says that:
16 (as read)

17 "An expert affidavit shall include the
18 facts and assumptions on which the
19 opinions in the report are based and any
20 literature or other materials
21 specifically relied on."

22 And so it sounds to me like you just described some
23 statistical and technical information that you did, in
24 fact, rely on in completing your report, right?

25 **A.** Correct.

1 Q. And I don't see that included anywhere in your report,
2 and I would request that that be provided.

3 A. Where such information was used, it's referred to in
4 the text of the affidavit. The source is identified as
5 part of the affidavit.

6 MS. WARNER: So, Counsel, I would request a
7 list of the information and a description of the facts
8 and assumptions relied upon.

9 MR. MACKINNON: He has just answered the question,
10 and, again, we are not here to provide undertakings.
11 So that's a no to the question.

12 MS. WARNER: Mr. MacKinnon, I'm struggling to
13 hear you. If you could just speak up a little bit
14 louder.

15 MR. MACKINNON: Okay. He answered the question
16 for you, that it's in the text of the affidavit. And
17 secondly, we are not here to provide undertakings, to
18 provide documentation, which is not the purpose of this
19 cross-examination. So those are the two reasons.

20 UNDERTAKING NO. 2 - To provide a list
21 of the information and a description of
22 the facts and assumptions relied upon
23 by Mr. Smith - REFUSED

24 Q. MS. WARNER: Mr. Smith, how did you determine
25 the scope of documents that you would review and rely

1 on in preparing your report?

2 **A.** That depended on the subject that I was drafting
3 content for the affidavit for. If I -- if I knew the
4 answer from memory, I would simply draft from memory,
5 but if I had to look up a particular number or find an
6 illustrative example, then I would go to technical
7 resources to obtain it.

8 **Q.** And which affidavits filed by the applicants did you
9 review in preparing your own affidavit? Do you know
10 whether you reviewed all of them, or did you only
11 review some of them?

12 **A.** I'm just -- I'm thinking for a moment on what the
13 sequence of events was. I believe that most of my
14 affidavit was drafted before I ever saw any other
15 affidavits.

16 But I may have seen some, and I -- because the
17 timing overlapped, I can't remember precisely -- where
18 I did refer to affidavits, I did mention it in the text
19 of my affidavit, I believe. For example, if you look
20 at paragraph 78 of my affidavit, you'll see that I
21 referred to three other affidavits that I referred to.
22 And I also believe earlier in the document I referred
23 to Mr. O'Dell's --

24 **Q.** I have seen that. And so that's my question. So two
25 things: The first thing is can you please explain to

1 me the timing. When did you first start preparing your
2 affidavit?

3 **A.** I don't recall the specific date. It would --

4 **Q.** What's your best recollection? Was it after May 1st of
5 2020?

6 **A.** Oh, yes. I would have started my affidavit around the
7 beginning of September, but as for the precise date, I
8 didn't keep track of that.

9 **Q.** Okay. And it was sometime after that that you reviewed
10 some affidavits. And so then my second question is,
11 for the ones that are listed in your affidavit, is that
12 all of the ones that you reviewed, or did you review
13 some that you haven't described in your affidavit?

14 **A.** I have reviewed others, which I did not describe in my
15 affidavit, but the majority of those, I think, were
16 reviewed after my affidavit was completed.

17 **Q.** So would it be fair to say that they were provided to
18 you by counsel?

19 **A.** Yes, that would be correct. It seems to me I saw some
20 of them on the internet, as well. For example,
21 Mr. Timmins, I think, is published on the internet.

22 **Q.** Okay. But, generally, in terms of the affidavits that
23 you that reviewed, they were ones that you were asked
24 to review by counsel; is that right?

25 **A.** Yes.

1 Q. All right. So you've also stated in your affidavit,
2 you've listed the topics that you were asked to provide
3 evidence on; you've done that at paragraph 5 of your
4 affidavit.

5 Let me know when you have that in front of you.

6 A. Yes. Those are topics which I expressly commented on,
7 as listed in paragraph 5.

8 Q. And did you know to comment on those because they were
9 included in the template that was sent to you?

10 A. I believe it was, yes.

11 Q. So your evidence is that you were asked to provide
12 evidence on these topics, and so it was, in fact,
13 counsel who listed the topics for you? Or were there
14 any topics where you said to them, Well, shouldn't I
15 also speak about this?

16 A. It was primarily counsel which identified the topics
17 that I was asked to address in my affidavit.

18 Q. Okay. And you say "primarily." So which were the
19 topics that you said you thought you should provide
20 your opinion on?

21 A. I'm not sure what you mean by your question. I'm
22 sorry.

23 Q. You just said it was primarily counsel who asked you to
24 give evidence on a particular topic, and so when you
25 said "primarily," that suggested to me that there were

1 some topics that you identified. I wanted to know
2 which ones those were?

3 **A.** I just -- I just don't know right offhand. I have to
4 go through my affidavit and compare the topics listed A
5 through E in paragraph 5 and compare them to the text
6 that's in the affidavit and look at what is different.

7 For example, I brought in information about my
8 background, my CV, in the affidavit, and that's not one
9 of the items listed in paragraph A through E.

10 So without the opportunity to review my affidavit
11 in full, I can't give you an item-to-item list of
12 what's in the affidavit that pertains to any of those
13 five items and what is above and beyond that.

14 **Q.** Okay. Let's start with the first one. So you said
15 that you were asked to provide evidence about the FRT.
16 And I just wanted to confirm that your knowledge about
17 the FRT doesn't relate, for example, to your formal
18 education in chemistry; it relates to on-the-job
19 experience with the RCMP, right?

20 **A.** Correct. It relates to my experience as the manager of
21 the Firearms Reference Table unit.

22 **Q.** Right. And so to give evidence about the FRT, you
23 would effectively have to be somebody who was or had
24 been employed by the RCMP, right?

25 **A.** To know about the FRT? I'm not sure exactly what

1 you're asking me there.

2 **Q.** To give what you've described in your affidavit as
3 expert evidence about the Firearms Reference Table,
4 that's something that you would learn because you had
5 worked with the RCMP, right?

6 **A.** Well, that's how I learned it. There are users of the
7 FRT outside of the RCMP who could speak to what it does
8 and how it works. So it's not just me who is able to
9 talk about it.

10 **Q.** In terms of the fact that you've been asked to give an
11 expert opinion about the FRT, would you agree with me
12 that there's no public resource that I could refer to
13 to learn the kinds of things that you've explained in
14 some detail in your affidavit?

15 **A.** Most of the -- most, if not all, of the information
16 that I gave in my affidavit would have been available
17 to the public, for example, via the access to
18 information protocol process.

19 It would have been available -- or much of it
20 would have been available to anyone who made queries to
21 the Firearms Program. And, in fact, over the years, I
22 have drafted responses to many individuals, many
23 businesses and many in the press on questions about the
24 FRT, what it does, and how it functions.

25 So it's not -- it's not something that is kept

1 secret. It's quite openly available. We haven't
2 published a treatise on that subject, but we're not
3 hiding the information either.

4 **Q.** For sure. And I didn't mean to imply that you were.
5 And in your answer there, when you say "we," are you
6 referring to the SFSS in particular or the CFP?

7 **A.** Well, as manager of SFSS, I would have overseen all of
8 the correspondence that came to and left that
9 organization, but that doesn't mean I drafted it all
10 personally.

11 So there was a staff of about 30 people when I
12 retired, and on many occasions, the SFSS staff would
13 respond directly to a query. So the -- when I say
14 "we," I'm referring to myself and my staff who would
15 respond to questions or challenges against the FRT.

16 **Q.** Right. And people direct those inquiries to the SFSS
17 and to the CFP? That's who I contact to get answers
18 about the FRT, right?

19 **A.** Yes, that's correct. Although we do -- in the CFP we
20 do have a communications division that pools answers
21 previously given. So if a question is asked a second
22 time by someone, the communications and media services
23 may just answer it without it being referred to SFSS,
24 if it's something that's been answered before.

25 **Q.** Sure. Somebody within the CFP would do that, right?

1 **A.** Correct.

2 **Q.** And you've said that one of your current
3 responsibilities is to transfer your knowledge and
4 history to the incoming manager. Who is the incoming
5 manager?

6 **A.** There is a temporary manager right now acting since I
7 retired. Her name is Kimberley Glass.

8 **Q.** And part of what you're doing right now is what you've
9 described as transferring your knowledge and history,
10 including about the FRT, to Ms. Glass?

11 **A.** Yes, that's correct.

12 **Q.** Okay. And another thing that you've said that you were
13 asked to give evidence on is the definition of the term
14 variant and how the RCMP determines variants. And,
15 again, your qualifications that allow you to provide
16 that evidence are the fact that you personally have had
17 to think about the definition of the term variant and
18 apply that within your responsibilities with the CFP;
19 is that right?

20 **A.** Yes. That's where my expertise comes from, is from
21 having applied the term in the course of populating the
22 Firearms Reference Table with information about
23 firearms.

24 I would also point out that the term variant is
25 not used alone. The expression, I believe, is "variant

1 or modified version," which operate together. We
2 typically, and the firearms community typically, uses
3 the word variant to mean both.

4 So where I use the word "variant," unless I
5 specify otherwise, what I mean is variant or modified
6 version; not just the word "variant" alone.

7 **Q.** Okay. And thanks for clarifying that. You haven't
8 said that anywhere in your affidavit, right?

9 **A.** No.

10 **Q.** And just to be clear, I know we're all motivated to be
11 as efficient as we can over the next couple of days.

12 So right now I'm just focused on your paragraph 5
13 and what you have said in terms of what you were asked
14 to give evidence about, and I was just confirming that
15 when you say there, "The definition of a 'variant,' how
16 the RCMP determines variants," I was just confirming
17 with you that the qualifications that you bring to give
18 that evidence relate to the experience you had in the
19 RCMP, and I think your answer to that was effectively,
20 yes, right?

21 **A.** Yes. And to clarify, what I believe I said was that's
22 how I obtained my experience.

23 **Q.** Right. And I think we would be on common ground, just
24 in clarifying, that based on your CV, it's evident that
25 you're not a lawyer and so your qualifications don't

1 derive from any particular expertise in legal

2 interpretation; that's right?

3 **A.** No. My qualifications are primarily technical.

4 **Q.** Right. And just to confirm from your CV, also, you're

5 not an engineer, and so your qualifications in that

6 regard don't relate to any particular expertise in

7 engineering, right?

8 **A.** No. I don't have any formal education in engineering.

9 **Q.** Yeah. And you've said at paragraph 5 (b) that you were

10 also asked to give evidence about "the use of the term

11 variant by gun retailers and gun owners."

12 And, sir, it would be fair to say that gun

13 retailers and gun owners might have their own

14 understanding of the term variant that might be

15 different from yours, right?

16 **A.** Yes. The level of knowledge varies from one business

17 to another or from one individual to another.

18 **Q.** Right.

19 **A.** I would agree with that.

20 **Q.** Right. And you've also said that one of the topics

21 that you were asked to provide evidence on is how

22 muzzle energy thresholds and bore diameters are

23 measured by the RCMP. And, again, just confirming that

24 your expertise in that area wouldn't relate to your

25 formal education in chemistry or to any legal

1 background. Again, your qualifications there stem from
2 the work that you have done with the RCMP over the
3 years, right?

4 **A.** Yes. The -- most of that would come from my experience
5 with the RCMP, but the principles, for example, of
6 muzzle energy, that goes back to my education at
7 university in physics, for example, where energy is a
8 phenomenon that is -- that it was part of the physics
9 curriculum. So --

10 **Q.** Sure. I certainly appreciate that point. I can tell
11 you that physics was not my favourite subject, and so I
12 take your point that anybody who has studied physics
13 certainly may have some understanding and opinion about
14 things like muzzle energy, right?

15 **A.** Correct.

16 **Q.** Okay. And I think I understood from your CV that you
17 worked for the RCMP for your entire professional career
18 up until May, I think you said, 8th of 2020, right?

19 **A.** That's correct.

20 **Q.** Who did you receive your paycheque from during that
21 period from 1977 until 2020?

22 **A.** My paycheque came from the Government of Canada.

23 **Q.** Okay. And while you worked for the RCMP, who did you
24 understand was your boss?

25 **A.** Oh, I had numerous bosses over the course of my career.

1 The RCMP has a hierarchical organization much like any
2 other government organization, and depending on what
3 particular year you're talking about and what job I was
4 doing, I would report to various supervisors.

5 **Q.** Okay. Maybe just let me see if I've understood the
6 hierarchy correctly, and so I'll just see if I've got
7 these things right. The CFP is a, let's call it, a
8 Canadian government program within the RCMP; is that
9 right?

10 **A.** That's correct.

11 **Q.** And the commissioner of the RCMP serves as the
12 commissioner of firearms; is that right?

13 **A.** Yes. It's a separate and distinct appointment, but
14 it's usually vested in the same person.

15 **Q.** Okay. And is the commissioner of firearms responsible
16 to the Minister of Public Safety of Canada?

17 **A.** I believe that is the case, yes.

18 **Q.** Okay. And we established earlier that since your
19 retirement, now you are consulting for the Canadian
20 Firearms Program, right?

21 **A.** Yes, I am.

22 **Q.** And that's paid work?

23 **A.** Yes, it is.

24 **Q.** How much are you being paid, sir?

25 **A.** My current contract, I am being -- if I give you the

1 number on an annualized basis, that would be \$107,000
2 per annum.

3 Q. Okay. Who is paying you that?

4 A. The Government of Canada.

5 Q. And is that in accordance with a contract that you
6 entered into with the Government of Canada?

7 A. Well, at the present time, I'm what the RCMP refers to
8 as a temporary employee. So it's not a -- it's not a
9 contractor in the same sense as a -- say, as a plumber
10 would be a contractor, but it's not a full-time
11 permanent employee either. It's kind of in between.

12 Q. I see. And so I think that helps explain, for example,
13 why you -- as I understand it, you still use an RCMP
14 email address, right?

15 A. Yes, I do.

16 Q. And do you have a boss within the RCMP at the moment?

17 A. Yes, I do.

18 Q. Who is that?

19 A. That would be Superintendent Suzanne Black.

20 Q. Okay. When was the last time you updated your CV?

21 A. It would have been post-retirement, so in June of this
22 year, I believe. I believe that is on my affidavit.

23 Yes. If you look on page 1 of my affidavit,
24 you'll see that it's dated June of 2020, so that would
25 have been the last time that I updated it.

1 Q. Sure. I think you're referring to Exhibit A of your
2 affidavit, which is your CV, right?

3 A. Yes.

4 Q. Okay. And why did you update your CV at that time?

5 A. Because there had been a significant change in my
6 credentials at that time. I could no longer accurately
7 claim to be manager of Specialized Firearm Support
8 Services; that had terminated on May 20th.

9 And it also reflected the consultancy I entered
10 into following that.

11 Q. And did you change anything substantively in your CV at
12 that time, or was it mostly just to reflect your new
13 role?

14 A. The sole change there, I believe, was to reflect my
15 change in employment status.

16 Q. Okay. And you've had the same employer for your whole
17 professional career. So did you rely on this CV
18 predominantly to basically support you in providing
19 evidence when needed?

20 A. Well, my CV right now at -- the June 2020 CV reflects
21 the cumulative total of my experience throughout
22 42 years of service with the RCMP. At earlier stages
23 in my career, I would have less experience, and there
24 would be less content.

25 So the -- so in that sense, the CV varied

1 depending on what particular year you would be
2 referring to. So they -- so my CV in 1977 would be
3 vastly different than my CV today.

4 **Q.** Of course. I understand from your CV that you've
5 managed the SFSS since 2008; is that right?

6 **A.** That's correct.

7 **Q.** And you were the head of a team of what you've called
8 firearm technicians?

9 **A.** Yes.

10 **Q.** And in your affidavit I think you've said that as a
11 group you collected and assessed technical information
12 to classify firearms, and one of the reasons that you
13 did that was to determine if a particular firearm is
14 non-restricted, restricted, or prohibited for purposes
15 of the Criminal Code, right?

16 **A.** Yes. I engaged in those kinds of activities. The
17 information is in, you know, para 8 and the few
18 paragraphs following that in my affidavit. The -- it's
19 not quite in the same order as you posed your question,
20 but, yes, the -- one of my roles was to oversee the
21 production of the Firearms Reference Table, and that
22 required firearms to be properly identified as well as
23 the classification being assessed.

24 **Q.** Right. So yeah my question was pretty narrow. It's
25 basically one of the reasons why you and your team

1 reviewed technical information was to determine whether
2 a firearm was non-restricted, restricted, or prohibited
3 for purposes of the Criminal Code, right?

4 **A.** That was one of the purposes, yes.

5 **Q.** Yeah. And that was my question.

6 So my understanding is that when a technician
7 would form an opinion about whether a firearm was
8 non-restricted, restricted, or prohibited, that that
9 would be recorded in the FRT, right?

10 **A.** Yes. The technician's assessment would be reported,
11 and then a second equally qualified technician would
12 review, and if both of them agreed, then the
13 information would be published.

14 **Q.** Okay. You call those, I think, "classifications"
15 sometimes, right?

16 **A.** Yes. The office shorthand for that is a classification
17 determination.

18 **Q.** Okay. And I think I just understood you to say that
19 that's made by one person and then reviewed by another
20 person at basically the same level of seniority?

21 **A.** For the vast majority of the Firearm Reference Table
22 records, yes. If the technical issues are more
23 complex, there is an escalation process available where
24 the determination can be reviewed by more senior and
25 more experienced individuals within the SFSS.

1 Q. Okay. And your evidence in your affidavit is that the
2 opinions that are reflected in classification
3 determinations are not intended to be binding, right?

4 A. Yes, I believe that is stated.

5 Q. You can look at paragraph 12 of your affidavit for
6 that.

7 A. Paragraph 12, yes. Yes, that's correct. It is
8 intended to be non-binding.

9 Q. And when you say "intended," you mean by the SFSS and
10 the CFP?

11 A. And the RCMP, as well. The --

12 Q. Right. And --

13 A. The current reference table is a reference database.
14 No one is forced to use it. And individuals who do use
15 it can choose to use the information as they see fit.

16 Q. Right. And so I take that to mean, as you've said,
17 that those individuals who use it, effectively, would
18 be free to form their own opinion about a given
19 firearm, right?

20 A. Yes. And, in fact, that has happened on numerous
21 occasions.

22 Q. And you know, for example, that some of the people who
23 rely on the FRT are law enforcement organizations,
24 right?

25 A. Yes. The Firearms Reference Table is widely

1 distributed to law enforcement within Canada.

2 **Q.** Is distributed to them, and you know that it's a
3 resource that they make use of, right?

4 **A.** Yes. My understanding is that the police view the
5 Firearms Reference Table as a very useful resource, and
6 they use it frequently.

7 **Q.** Okay. And it's also used by, I think you described
8 them as, administrative decision-makers under the
9 Firearms Act, right?

10 **A.** It's more broad than that. It's administrative
11 decision-makers under the Firearms Act for
12 registration, for example, but also under the Export
13 and Import Permits Act for the -- for import and export
14 permits, and possibly other users that I'm not aware
15 of.

16 **Q.** Sure. And I think your point at paragraph 12, which
17 you've confirmed today, about it not intended to be
18 binding is that those organizations that rely on the
19 FRT could reach a different opinion in the SFSS about
20 the classification of a firearm, right?

21 **A.** Yes, they could.

22 **Q.** And a firearm business could reach a different opinion,
23 right?

24 **A.** Yes, it could.

25 **Q.** And I suppose an individual gun owner could, as well,

1 right?

2 **A.** Yes.

3 **Q.** And I think the point that you make in paragraph 12

4 about it not being intended to be binding is that

5 there's no legal authority I could point to to say,

6 This opinion is right, and this opinion is wrong,

7 correct?

8 **A.** Yes. The way I would say it is that the Firearms

9 Reference Table classification determinations do not

10 carry the weight of law. They're not enforceable

11 determinations.

12 **Q.** Okay. And so that's your evidence about it not being

13 intended, as you say, to be binding. My understanding

14 is that, as we've discussed, that it is widely used by

15 law enforcement organizations. And would you agree

16 that it is relied on in making decisions about

17 arresting and charging people?

18 **A.** Yes. My contact with law enforcement officers would

19 leave me to believe that the information in the

20 Firearms Reference Table is important to them in terms

21 of formulating charges, but it's not the sole

22 information. The FRT information combined with a

23 variety of other information is what leads to the

24 decision to lay a charge.

25 **Q.** Okay. And in your affidavit, sir, you've referred to a

1 case called Henderson. Are you aware of that -- well,
2 I'll give you the pinpoint in your affidavit.

3 **A.** I think that is mentioned in a footnote, I believe.

4 **Q.** Yeah. Let me know when you have that in front of you.

5 **A.** Do you happen to have the page number?

6 **Q.** So I think it's footnote 9.

7 **A.** Footnote 9, yes. Correct, yes. So I see Henderson
8 there. Yes.

9 **Q.** And so you were involved in that case, I understand,
10 that -- I think that you wrote a memo that was then
11 incorporated into evidence in that case. Do you recall
12 that?

13 **A.** Yes, I do.

14 **Q.** And in that memo, in the reported decision from that
15 case, it says that in that memo you wrote that:
16 (as read)

17 "The FRT database is distributed to
18 federal, provincial, and municipal
19 police to help correctly identify
20 firearms in the field and to determine
21 the correct legal classification of a
22 firearm for law enforcement purposes."

23 You would agree that that's accurate, right?

24 **A.** Yes.

25 **Q.** And I can take you to it, but in your CV, you also, I

1 think, confirm the same point. You say that: (as read)
2 "The FRT is used extensively by police
3 units specializing in firearms
4 enforcement."

5 So that's obviously something that you agree with and
6 that you know from your experience, right?

7 **A.** Yes.

8 **Q.** Okay. And so another topic that you touch on in your
9 affidavit is communication with the public about the
10 regulation. Did you play some role in determining how
11 the public would be communicated with about the
12 regulation?

13 **A.** Yes. I had a role to play, primarily technical,
14 ensuring that the communication was technically correct
15 where it spoke to technical matters.

16 The communique was prepared by the RCMP Canadian
17 Firearms Program Communication Service with input from
18 all the affected branches of the CFP.

19 **Q.** And the SFSS was one of those affected branches, right?

20 **A.** Yes.

21 **Q.** And so you were a part of providing input about the
22 communication to the public, right?

23 **A.** Yes. My -- I had input into the communication to the
24 public post May 1st.

25 **Q.** Sure. And in your affidavit, you've described that

1 between May 22 and June 5th, a one-page information
2 sheet was sent to 2.2 million individuals with a valid
3 firearms licence. You had some involvement in the
4 preparation of that one-page information sheet?

5 **A.** Yes. In fact at both ends I helped prepare the text of
6 the communique as well as having received one myself,
7 personally, as a firearms owner.

8 **Q.** Sure. And you've provided an example of one of those
9 at Exhibit C to your affidavit.

10 And then you've also said that on May 15th of
11 2020, an information sheet was sent to 4,500 firearms
12 businesses. And, again, did you have some involvement
13 in preparing or reviewing that communication?

14 **A.** Yes, I did. And that was, again, a technical role.
15 One of the major components of that was to ensure that
16 the -- was to establish the search criteria for the
17 registry to determine all of the firearms that were
18 affected so that all of the owners could be identified.

19 So the -- so, again, the role was technical, and
20 for that one we had substantially more involvement.

21 **Q.** For the May 15th communication sent to the firearms
22 businesses, right?

23 **A.** No. For the communication sent to all of the
24 registered owners. I'm sorry. Maybe we're not
25 referring to the same one.

1 Q. Well, why don't you flip to Exhibit C of your
2 affidavit.

3 A. Yes. I have that.

4 Q. So there's an announcement of a firearms prohibition.
5 I understand that to be what went out to 2.2 million
6 individuals, right?

7 A. Yes.

8 Q. And just looking at that particular document, would you
9 agree with me, sir, that that generic notice doesn't
10 inform gun owners whether a firearm that they own is an
11 unnamed variant of a firearm in the regulation?

12 A. The document does not differentiate between named or
13 unnamed variants.

14 Q. Right. So you would agree with me that this notice
15 doesn't inform a gun owner about whether or not a
16 firearm they own might be an unnamed variant?

17 A. It doesn't identify whether the -- a member of the
18 public owns a named variant or owns an unnamed variant.
19 It doesn't identify either one of them by make and
20 model.

21 Q. Okay. And so I think we're on common ground that this
22 doesn't, therefore, provide any information to a gun
23 owner about whether or not they own an unnamed variant?

24 A. The document itself doesn't tell them; however, it does
25 offer a mechanism for the owners to obtain more

1 information if they are concerned that they might have
2 one of those affected firearms.

3 **Q.** And by that you mean in the bottom right corner it
4 says, "For a list of newly prohibited firearms and
5 information, go to the CFP website," and then it has a
6 website there?

7 **A.** That's right. As well as, "What Are Your Options."

8 **Q.** What Are Your Options is: (as read)

9 "Wait for further instructions, have
10 your firearm deactivated, or legally
11 export your firearm."

12 That's what you're referring to?

13 **A.** Yes. In the course of doing those things, an owner
14 would be in contact with a firearms business,
15 presumably. And the firearms business may be in a
16 position to advise them on whether their firearm is a
17 variant or not.

18 **Q.** Let's just return. At the outset, we went to your
19 paragraph 25, and we talked there are named variants
20 and there are unnamed variants, and so I think we got
21 on the same ground about what we mean when we're using
22 those two terms.

23 **A.** Yes.

24 **Q.** And so an unnamed variant, of course, is something that
25 is not listed in the regulation, right?

1 **A.** Yes. An unnamed variant is one which is not listed in
2 the regulation but is nonetheless still within the
3 scope of the variant or modified version clause of the
4 regulations.

5 **Q.** And so, in your view, what would be the best way for a
6 gun owner to find out whether or not they have
7 something that you just described as an unnamed
8 variant?

9 **A.** Well, firearms owners would have a number of options.
10 One would be to figure it out for themselves, which is
11 not as difficult as some would say. The -- most of the
12 variants that are in circulation in Canada are obvious
13 to everyone as variants. In fact, the owners typically
14 purchase the firearm because it was a variant.

15 So, for example, the largest single group of
16 firearms named in the regulations is the AR platform.
17 There's about 90,000 of these firearms in circulation
18 in Canada. And the AR platform is well-known to
19 firearms owners, and people typically buy one of those
20 firearms because they know it is a variant of the
21 AR-15, and that is a desirable characteristic.

22 So for the vast majority of these firearms and
23 their variants, the lineage, history, and relationship
24 of these firearms to the original firearm is
25 well-known.

1 There is a percentage where the association with
2 the parent firearm is perhaps less clear, but for the
3 majority, it's pretty straightforward.

4 **Q.** Sure. And so you would understand that, of course, the
5 consequences of making what could be perceived as an
6 incorrect conclusion on this has potential criminal
7 consequences, right? Because if I am in possession or
8 using a restricted or prohibited firearm without
9 proper, let's say, permission to do so, you understand
10 that the consequences for that are potentially
11 criminal, right?

12 **A.** Yes. There's a potential for criminal consequences.
13 The --

14 **Q.** Right. And so you mentioned that, in your view, it's
15 sometimes easy to determine whether something is an
16 unnamed variant, and then sometimes it can be a little
17 more tricky. And so let's say I'm in a situation where
18 I have some doubt about the conclusion that I've drawn.
19 What would be the best resource for me to rely on at
20 that point?

21 **A.** Well, you've posed two questions there. First of all,
22 what I said was that the majority of the variants are
23 obvious and self-evident, and only a small percentage
24 which is not.

25 Secondly, for owners who are uncertain about the

1 status of their firearm are welcome to contact the
2 Canadian Firearms Program. They can contact via 1 --
3 pardon me. A toll free number, they can contact the
4 program via email. They can contact their local chief
5 firearms officer. They could consult outside of the
6 CFP, as well, with firearms businesses; in particular
7 the business that sold them the firearm or is about to
8 sell them the firearm. There's lots of options for
9 owners.

10 **Q.** Okay. So if I were to call the CFP number, the person
11 who -- if somebody answered that call, what would that
12 person refer to to answer my question about my given
13 firearm? How would they provide me with their opinion?

14 **A.** If the -- the first thing that the individual would do,
15 in all likelihood, is look up the firearm in the
16 Firearms Reference Table to see what the classification
17 is.

18 If that does not satisfy the question, then it
19 would be referred to SFSS for a more technical analysis
20 and answer.

21 **Q.** And when the SFSS reached its conclusion, how would
22 that conclusion be recorded?

23 **A.** It depends on the exact circumstances. Sometimes the
24 answer is already in the FRT, but people are unable to
25 find it, and simply point them to the correct FRT entry

1 or provide them a copy of the FRT entry.

2 If there is no Firearms Reference Table entry for
3 a particular firearm that's the subject of a query,
4 then SFSS would create an entry for that firearm.

5 **Q.** And so at the culmination of all of that, as an
6 individual, what I would have is the SFSS's opinion
7 about my firearm, right?

8 **A.** Yes.

9 **Q.** And that's the opinion that we agreed is not binding,
10 right?

11 **A.** Correct.

12 **Q.** And so if as an owner I wanted an answer that was
13 binding, I would need that from the GIC, right?

14 **A.** I don't know how you would get an answer that is
15 binding other than going to the courts, for example.
16 The courts are the ultimate determiner of what the
17 classification of a firearm is, and...

18 **Q.** That's fine. I appreciate that.

19 And so in your affidavit, back to the body of the
20 affidavit, at paragraph 16. Let me know when you have
21 that in front of you.

22 **A.** Yes, I have paragraph 15.

23 **Q.** Okay. At the end of paragraph 16, you say that:
24 (as read)

25 "Owners of firearms that were classified

1 as restricted prior to May 1st, 2020,
2 and were prohibited by the Regulation
3 were also provided with individualized
4 letters advising them of the change."

5 And I just wanted to confirm that you haven't exhibited
6 an example of that to your affidavit, right?

7 **A.** Are you referring to paragraph 15?

8 MR. MACKINNON: 16.

9 **Q.** MS. WARNER: 16.

10 **A.** 16. I'm sorry. My hearing is not the greatest.

11 **Q.** Not at all. So the last sentence of paragraph 16.

12 **A.** Yes. The -- based on the contents of the Firearms
13 Registry individualized letters were sent to owners of
14 firearms affected by the May 1st regulations --

15 **Q.** Okay. Did you --

16 **A.** -- which were previously restricted.

17 **Q.** Right. And I'm correct that you haven't exhibited an
18 example of one of those to your affidavit, right?

19 **A.** No.

20 **Q.** Do you have access to the affidavit of Ryan Steacy?

21 **A.** I don't have it with me here today, no.

22 MS. WARNER: Okay. I wonder if we could go off
23 the record for a moment?

24 MR. MACKINNON: Sure.

25 (DISCUSSION OFF THE RECORD)

1 **Q.** MS. WARNER: Mr. Smith, I understand that the
2 inclusion of the Firearms Reference Table has made it
3 impossible for you to access documents that we sent to
4 you, and so I'm going to try to share documents with
5 you one at a time, as needed.

6 And before we took the short break, we were
7 talking about letters that were sent to individuals who
8 had firearms that were restricted before the
9 regulation. Do you recall that discussion that we were
10 having?

11 **A.** Yes, I do.

12 **Q.** So what you should have in front of you now is the
13 affidavit of Ryan Steacy. It's an affidavit filed in
14 support of one of the injunction applications, and
15 Exhibit G to that affidavit is entitled, "Firearm
16 Registration Certificate Impacted By the Amended
17 Classification Regulations." Is that what you have in
18 front of you?

19 **A.** Where would I find the part about firearms registration
20 application?

21 **Q.** If you're looking at Exhibit G. That's basically the
22 title of the letter.

23 MR. MACKINNON: So you want to go to Exhibit G of
24 this.

25 **A.** Exhibit G.

1 MR. MACKINNON: What page number would it be; do
2 you know?

3 A. I'm still not clear where I'm supposed to look. Is it
4 somewhere inside this affidavit?

5 Q. MS. WARNER: Try going to the very last page.

6 A. I don't have a scroll bar, so it's going to take at a
7 while. Oh, there it is.

8 Okay. Yes. The very last page is titled,
9 "Firearm Registration Certificate Impacted By the
10 Amended Classification Regulations."

11 Q. Okay. And this is a letter sent by the RCMP, right?

12 A. It appears to be. I didn't view every individual
13 letter, but, yes, this appears to be one of those.

14 Q. And in paragraph 16 of your affidavit, you said that
15 letters were sent to individuals who owned previously
16 restricted firearms. Is that an example of the kind of
17 letter that you describe in paragraph 16 of your
18 affidavit?

19 A. Yes. Yes, it is.

20 Q. And you described the letter in your affidavit, and so
21 I took from that that you had some knowledge of these
22 letters. Were you involved in either preparing or
23 reviewing these letters?

24 A. I was involved in the preparation of the text that was
25 common to all of the letters. I was also involved in

1 identifying all of the registry files --

2 Q. Right.

3 A. -- for firearms which would be subject to inclusion in
4 these letters.

5 Q. Great. And so some of that text says: (as read)

6 "These firearms listed below are now
7 classified as prohibited, and the
8 previous registration certificates are
9 automatically nullified and are
10 therefore no longer valid but should be
11 retained as a historical registration
12 record."

13 So you were involved in either drafting or somehow
14 contributing to or improving of that text that's
15 standard in the letter, right?

16 A. Well, I contributed to the text of the letter, but that
17 particular language did not come from me.

18 Q. Did you review it, and do you agree with it?

19 A. Yes, I agree with it.

20 Q. Okay. I'm going to share another document with you,
21 now, so let me know when you've had a chance to open
22 what I just shared with you.

23 A. So far nothing has appeared. Do I have to close this
24 one first?

25 MR. MACKINNON: Probably. I haven't seen anything

1 come in.

2 Have you sent another document?

3 MS. WARNER: Yeah. It should be tab 5.

4 MR. MACKINNON: Have you sent it to us? I don't
5 have it in my inbox. Okay, there it is now.

6 So, Murray, if you go to where it says "chat" at
7 the bottom and open up the chat function.

8 **A.** Yeah.

9 MR. MACKINNON: Do you see that? At the bottom of
10 the screen there, somewhere on the screen, it should
11 say "chat," and there should be a little notification.

12 **A.** There's not, actually.

13 MR. MACKINNON: Okay.

14 (DISCUSSION OFF THE RECORD)

15 MR. MACKINNON: So could you describe what that
16 document is, Counsel?

17 **Q.** MS. WARNER: Okay. So the document that you
18 have in front of you now is printed from a website.
19 It's <https://www@rcmp>, et cetera, .ca.

20 So this is from an RCMP website about What you
21 need to know about the Government of Canada's new
22 prohibition on certain firearms and devices.

23 Just generally, do you recognize this text from
24 that website on the RCMP web page?

25 **A.** Yes. In general, I recognize the text.

1 Q. Okay. And so at the very top of this page, you'll see
2 it says "Important Notice." I'll just give you a
3 moment to read that.

4 A. Okay. I'm just looking at that now.

5 Yes, I've read the opening paragraph.

6 Q. Okay. And so that paragraph says that: (as read)

7 "A letter was recently sent out to
8 individuals/businesses to inform them
9 that their previously registered
10 restricted firearms are now prohibited
11 and their registration certificates
12 became nullified."

13 And so you can agree with me that that's a reference to
14 the type of letter that we just reviewed that was sent
15 to Ryan Steacy, right?

16 A. Yes, I do.

17 Q. Okay. And now, there's another sentence that says:

18 (as read)

19 "This nullification is the result of the
20 legislative change in Criminal Code
21 regulations and not the result of any
22 decision by the registrar to revoke the
23 registration certificates under the
24 Firearms Act. Accordingly, the letter
25 is not a firearm registration

1 certificate revocation notice."

2 Do you see that?

3 A. Yes, I do.

4 Q. Okay. So you were involved in contributing to the
5 standard text in the Ryan Steacy letter. Did you have
6 any involvement in reviewing or contributing to this
7 language on this web page?

8 A. I did not have direct input into it -- into the legal
9 language. That's not my special -- area of
10 specialization.

11 I saw this information as a result of reviewing
12 the entire text, but that particular language did not
13 come from me.

14 Q. Did you review it before it was posted publicly on the
15 website?

16 A. Yes.

17 Q. Was that because, basically, the people who posted it
18 wanted to ensure that the SFSS agreed with what was
19 being posted?

20 A. No. The purpose of my review of the document was to
21 determine whether any technical information on firearms
22 that was in any of the communications documents was
23 complete and accurate.

24 Q. Sure. This doesn't refer to any technical information,
25 but you did review it before it was posted, right?

1 **A.** Right. I reviewed all of the communications packages.

2 **Q.** Yeah. And do you agree with the language that I just
3 reviewed about the nullification as a result of the
4 legislative change? Do you agree with that?

5 **A.** Yes. My understanding is that's how it works.

6 **Q.** Yeah. So, for example, you didn't raise any concerns
7 or suggest any edits or anything like that to that
8 language?

9 MR. MACKINNON: He just had said that this was --
10 that part was drafted by legal, and so that he doesn't
11 have input into that aspect of it.

12 MS. WARNER: Sure. I think he's answered the
13 question, in any event.

14 **Q.** It was just that, in reviewing it, you didn't suggest
15 any edits or raise any concerns?

16 **A.** No, I did not.

17 **Q.** Okay. And I am going to show you one more document.
18 Maybe before I do that, I think it might be helpful for
19 the Court to exhibit what I just showed to the witness
20 for identification.

21 MS. WARNER: So, Counsel, do you have any
22 concerns with that?

23 MR. MACKINNON: No. If you want to just ask
24 Murray if he recognizes that document in any way.
25 Do you know what that document is?

1 **A.** Which document are you referring to?

2 MR. MACKINNON: The notice, "What You Need to Know
3 About the Government of Canada's New Prohibition on
4 Certain Firearms and Devices."

5 **A.** Yes. That's the document we were just speaking about,
6 and, yes, I do recognize it from the drafts I reviewed.

7 MR. MACKINNON: Okay.

8 MS. WARNER: So we're agreed we'll make that an
9 exhibit for identification?

10 MR. MACKINNON: Sure.

11 EXHIBIT A FOR IDENTIFICATION - Tab 5
12 Document titled "What You Need to Know
13 About the Government of Canada's New
14 Prohibition on Certain Firearms and
15 Devices" with "Important Notice" at the
16 top

17 **Q.** MS. WARNER: And, sir, just before leaving this
18 document, I just wanted to confirm with you that if you
19 look under, "How this prohibition affects owners of
20 these firearms," it mentions that the regulation
21 prohibits firearms and their variants.

22 And then immediately below that, you see that it
23 points individuals to the Canada Gazette, right?

24 **A.** Yes. It indicates that a list of firearms is available
25 on the Canada Gazette.

1 Q. And so do you understand that that would point somebody
2 to, basically, the regulation itself?

3 A. Well, I'm not familiar with the URL for the Gazette,
4 but it looks like it is the URL for the amendments made
5 on May 1st.

6 Q. Right.

7 Okay. I'm going to show you another document.
8 Let me know when you have that open in front of you.

9 A. Yes. I'm just getting some instructions on how to work
10 the software. I'm not familiar with it.

11 (DISCUSSION OFF THE RECORD)

12 MR. MACKINNON: Again, Counsel, can you describe
13 the document for Mr. Smith.

14 Q. MS. WARNER: So this document shows the website
15 that we were just looking at at different points in
16 time.

17 And so on the first page of the document at the
18 top, you should see "May 1 of 2020," basically in
19 between two little triangles up at the top right-hand
20 corner of the document.

21 A. Yes. Okay. That's from the internet archive, I
22 presume.

23 Q. You bet. And so you recognize this as an earlier
24 version of the web page we were just looking at?

25 A. I didn't check the date of the other web page, so.

1 Q. So, for example, this does not have the notice at the
2 top of this document. Do you see that?

3 A. What am I looking for again? I'm sorry.

4 Q. So we just reviewed the notice that talked about
5 nullification.

6 A. Yes.

7 Q. And that was at the top of the page. And when you look
8 at this one, you can see that that notice is not there,
9 right?

10 A. That was page...

11 Q. So on the first page, we don't see any information
12 about the nullification of certificates, right?

13 A. I'm scrolling through the document. I don't see
14 anything.

15 Q. Okay.

16 MR. MACKINNON: Counsel, it doesn't indicate here
17 the date of the --

18 MS. WARNER: So if you look in the top
19 right-hand corner of the page --

20 MR. MACKINNON: Yeah.

21 MS. WARNER: -- it says "May 1 of 2020." For
22 example, if you scroll through a few pages, on page 5
23 of the document, that date changes to May 9. Do you
24 see that?

25 MR. MACKINNON: Sorry. Is this an amalgam of more

1 than one version?

2 MS. WARNER: Yes. I'm showing you the
3 different versions.

4 MR. MACKINNON: Okay. There's no evidence in the
5 record to describe this. So as you're describing it,
6 you're providing evidence, but I don't know that Murray
7 can confirm this in any way.

8 MS. WARNER: Sure. So as the witness
9 described, this is from the web archive, which, as I
10 understand it, is accessed through something called
11 "Way Back."

12 Q. And so if you look at the date on the top right-hand
13 corner, sir, do you see where the date changes to
14 May 9.

15 A. Looking on page 5, yes, there is a header at the top of
16 page 5 which looks like the Way Back machine time stamp
17 or date stamp for the document.

18 Q. Great.

19 A. In this case, May 9.

20 Q. Okay. And under that, you --

21 MR. MACKINNON: Sorry. There's no time, like
22 actual time on this date, when it was put up or in
23 effect. Like, this could have changed. So I don't
24 know if this is accurate for that day.

25 MS. WARNER: Well --

1 MR. MACKINNON: That's all I'm --

2 MS. WARNER: Sure. Maybe I could ask the
3 witness some questions, and you can let me know if you
4 think the evidence is evidence that he can speak to.

5 Q. So on May 9th, you'll see that at the top of the page,
6 now we see an important notice, and it says it's an
7 "Update on 10 and 12 gauge shotgun classification."

8 And so, sir, I've taken it from your evidence that
9 you were generally involved in communications to the
10 public from the SFSS and the CFP related to the
11 registrations. So let's just start with confirming
12 that. You were generally involved in the communication
13 with the public, right?

14 A. Yes.

15 Q. And you've said in your CV that it's part of your
16 current role to be involved in the roll out of the
17 regulation, right?

18 A. That's correct.

19 Q. And so do you recall being involved, in between May 1st
20 and May 9th, in communications about updating the
21 public website of the RCMP to include this important
22 notice about update on 10 and 12 gauge shotguns?

23 A. I recall the issue, and the text on page 5 looks like
24 the text that was released. It would definitely be
25 post May 1st, but I don't recall specifically when the

1 web page was updated to include that information,
2 whether it was the 9th or sometime before.

3 **Q.** And in terms of the general timing around May 9th, as
4 you say, it would have been sometime after May 1st;
5 this is shortly after May 1st. This generally
6 coincides with your recollection about when you were
7 having conversations about this 10 and 12 gauge shotgun
8 issue?

9 **A.** Yes. It was after -- it was shortly after May 1st.

10 **Q.** Okay. And you reviewed this text before it went live
11 on the website, right?

12 **A.** Yes.

13 **MR. MACKINNON:** Well, that's assuming it was live
14 at the website. We can't -- or unless he can confirm
15 that he knows for sure that this actual document was
16 live on the website.

17 **Q.** **MS. WARNER:** Do you know, sir, whether this
18 information was put up publicly on the website at some
19 point?

20 **A.** This kind of information was published on the CFP
21 website, but I haven't compared this document, you
22 know, letter by letter, word by word to see if it's
23 exactly the same as what was posted, but I would say
24 it's generally the same.

25 **Q.** And then if you continue to scroll about four or five

1 pages onwards, please let me know when you see the date
2 change to September 10th.

3 **A.** Okay. I'm scrolling now. This computer is slow. It's
4 taking its time to scroll down.

5 Okay. September 10th. Yes, I have -- I have a
6 document which is flagged as September 10th.

7 **Q.** Okay. And now you can see at the top of the web page
8 is that notice that we first reviewed that's related to
9 the nullification of certificates, right?

10 **A.** Yes. This particular document speaks to nullification.

11 **Q.** And if you keep scrolling for two or three more pages,
12 what you should see is that the update on 10 and 12
13 gauge shotguns now appears closer to the end of this
14 web page and this information. Let me know when you
15 see that.

16 **A.** Yes. There's a section entitled, "Update on 10 and 12
17 Gauge Shotgun Classifications."

18 **Q.** Okay. And so that was helpful for me in terms of just
19 understanding the timing of when certain things were
20 communicated to the public. And so you said it sounded
21 about right to you that the 10 and 12 gauge shotgun
22 issue was early May or so. And then would it accord
23 with your memory that it was some time in and around
24 September 10th or so that there were internal
25 discussions at the RCMP about the need to communicate

1 about the nullification of certificates?

2 **A.** I don't recall precisely when that took place. I
3 recall there being a conversation on it, but as for
4 exactly when, no, I can't say.

5 MR. MACKINNON: Counsel, just before you keep
6 going, I don't see how the nullification of
7 certificates is relevant to his affidavit or the
8 injunction here. Can you let me know how that's
9 relevant to this motion.

10 MS. WARNER: Sure. So it relates to his
11 evidence at paragraph 16 about the letters that were
12 sent out. And so this is tied into that in terms of
13 the information provided to the public to understand
14 the regulation. And, also, Mr. Smith has given his
15 evidence about his understanding about how an
16 individual can get a final answer about whether or not
17 they're exposed to criminal liability. And his answer
18 was that that person needs to get that from the Court.

19 And so I'm exploring his understanding of what
20 individuals are being told about that and how they can
21 get that advice that he's spoken to today.

22 **Q.** So, really, my final question for the witness about
23 this was when you sent the letters to the individuals,
24 like the one that we looked at from Ryan Steacy, were
25 you aware of anybody communicating, reaching out, to

1 the CFP about some confusion about how they could
2 respond to that letter?

3 **A.** Yes. There were all kinds of questions received by our
4 communications division and by the branch of SFSS which
5 responds to technical queries.

6 So people were calling in asking to confirm
7 whether or not their firearm was affected. As I
8 understand it, they were also calling in asking what to
9 do with their firearms or what would ultimately be done
10 with the firearms.

11 **Q.** Right. And that's helpful. And I think the point
12 is -- I'm just looking to confirm that you understood
13 that what was then put on the RCMP website was, as a
14 result of that, to explain the RCMP's understanding
15 that the nullification and the letter is not a firearm
16 registration certificate revocation notice, right?

17 **A.** You know, the communications documents are living
18 documents, and they're constantly improved to better
19 communicate issues which the CFP believes are of
20 interest to firearms owners.

21 So, yes, as time went on, when issues became
22 evident, it's much more efficient to address them in a
23 communication venue such as the RCMP website.

24 **Q.** Yeah. I think that's good for that.

25 **MS. WARNER:** Counsel, I think it could be

1 helpful for the Court to have that document exhibited
2 for identification purposes.

3 MR. MACKINNON: That's fine. But, you know, it's
4 not a complete -- it's unclear whether this is a
5 complete version of whatever was up there, is what I'm
6 saying. You can put it there as to what it indicates,
7 but I'm just not sure if it's complete with -- because
8 you've put in a couple of days in there, too, and I
9 don't know if they're complete, and I don't know if the
10 witness can tell looking at it right now that it's
11 complete because he can't recall whether -- this
12 particular version or not.

13 MS. WARNER: I mean, I appreciate all of that.
14 It sounds like you're okay exhibiting it for
15 identification?

16 MR. MACKINNON: Yeah.

17 MS. WARNER: Okay.

18 EXHIBIT B FOR IDENTIFICATION - Tab 35
19 Document titled "What You Need to Know
20 About the Government of Canada's New
21 Prohibition on Certain Firearms and
22 Devices" dated May 1, 2020 at the top

23 Q. MS. WARNER: So, Mr. Smith, just to follow, one
24 question. So we've confirmed that the RCMP sent
25 letters in respect of named variants that were

1 previously restricted. Were letters sent in respect of
2 unnamed variants that were previously restricted?

3 **A.** I don't know the answer to that from memory. I would
4 have to confirm that. The -- it would depend on how
5 the issuance of the letters were synchronized with the
6 Firearms Reference Table at the time they were sent.

7 So, no, I don't know the answer to that question.

8 MS. WARNER: So, Counsel, would you be willing
9 to have the witness learn the answer to that question
10 and let us know?

11 MR. MACKINNON: We're not here to provide
12 undertakings.

13 MS. WARNER: So, Counsel, as I understand it,
14 the test for that is that if the information is easily
15 accessible and would assist the Court in determining
16 the application that it's entirely proper for the
17 witness to provide that information to the Court.

18 So on that basis, would you be willing to have the
19 witness provide that information?

20 MR. MACKINNON: No. Because he's here to answer
21 your questions to the best of his knowledge and
22 personal knowledge, and if he can't answer it, then
23 that's the answer.

24 UNDERTAKING NO. 3 - To provide
25 information on whether there were

1 letters sent in respect of unnamed
2 variants that were previously
3 restricted - REFUSED

4 **Q.** MS. WARNER: Sir, when did you and your team
5 first start reviewing the FRT to update it in light of
6 what you understood was going to be in the regulation?

7 **A.** The FRT itself was not actually touched until May 1st
8 because the FRT was accessible right up until May 1st
9 for use by law enforcement and others. So the FRT had
10 to remain in the format prior to May 1st right up until
11 midnight of April 30th.

12 So the FRT was not changed in advance at all.

13 **Q.** That makes sense to me. And so the question is a
14 different one. I understand that you were ready to,
15 sort of, hit some button on some computer to update it,
16 as you say, at midnight on May 1st.

17 My question is when did you start reviewing the
18 FRT for that exercise, to update it in light of what
19 you understood would be in the regulation?

20 **A.** That started approximately mid April of 2020.

21 **Q.** And why did it start at that time?

22 **A.** The CFP was notified of the potential of the
23 regulations coming soon.

24 **Q.** Okay. And when you started to review the FRT at that
25 time, did you communicate to someone in the government

1 the variants that you identified that became named
2 variants?

3 **A.** That information, I believe, is protected by cabinet
4 confidence. I don't believe I can respond to that
5 question.

6 **Q.** Well, I guess I'll let your counsel take that position
7 or not. My question is, when you started your review
8 in April, as you identified variants, did you
9 communicate those to the government?

10 MR. MACKINNON: His answer is correct, that
11 identifying anyone to whom the answer to that question
12 is given would relate to the cabinet confidence,
13 relating to submissions to cabinet.

14 OBJECTION TAKEN to answering the question: My question is,
15 when you started your review in April, as you
16 identified variants, did you communicate those to the
17 government?

18 **Q.** MS. WARNER: Sir, were you and your team -- I
19 wonder if we can just establish this ground-level
20 point, that you and your team were the source of the,
21 let's call them, the newly named variants as of
22 May 1st.

23 **A.** What I can say is that I had input into the
24 regulations, but I cannot say anything beyond that.

25 **Q.** So to do your work, you would have had to know what the

1 regulation was going to say, of course, right?

2 MR. MACKINNON: Again, you're asking for
3 information that relates to submissions to cabinet, so
4 he cannot answer.

5 OBJECTION TAKEN to answering the question: So to do your
6 work, you would have had to know what the regulation
7 was going to say, of course, right?

8 Q. MS. WARNER: Sir, after the regulation was
9 promulgated or became law on May 1st of 2020, I
10 understand that you and your team continued your work
11 of reviewing the FRT, right? You've said that in your
12 affidavit?

13 A. Yes. The Firearms Reference Table at the time
14 contained, and still does, over 190,000 unique firearms
15 entries, and not all of those could be reviewed in the
16 time that was available. So work continued post
17 May 1st to update the FRT according to the changes
18 brought about by the new regulations.

19 Q. Right. As you said, you were ready to update some as
20 of May 1st, right?

21 A. That's correct.

22 Q. And then I think your evidence is that, at that time,
23 the list in the regulation was not exhaustive. Was
24 that your opinion that the list wasn't exhaustive as of
25 May 1st?

1 **A.** Yes. That was my opinion then, and it remains so now
2 because manufacturers continue to produce new variants
3 of these firearms and still continue to produce new
4 variants of these firearms.

5 So the -- so any list that is created at any point
6 in time is almost immediately out of date by virtue of
7 the activities of the manufacturers in the firearms
8 industry.

9 **Q.** Sure. Let distinguish between two different things.
10 In your affidavit, I think it's paragraph 24, you talk
11 about how, after May 1st, you were doing two things:
12 One is what you just described, which is as new
13 firearms basically come to your attention, you're going
14 to engage in what you call your classification
15 exercise. But then you mention that also after
16 May 1st, you weren't just classifying new firearms that
17 came to your attention; you were continuing to review
18 the FRT. And so those weren't new firearms; those were
19 ones with existing FRT entries, right?

20 **A.** Yes. Both activities took place following May 1st.

21 **Q.** Okay.

22 **A.** As indicated in paragraph 24.

23 **Q.** To the best of your knowledge -- so I guess my point is
24 this could be an estimate -- as between what I'm going
25 to call new firearms and existing FRT entries, in terms

1 of the work that was done after May 1st, which
2 percentage of those were new firearms versus existing
3 FRT entries?

4 **A.** I don't have the number handy for new firearms;
5 however, for existing FRT entries, which were changed
6 post May 1st, there were about just short of 200
7 changed, 200 records changed, and of the 200,
8 approximately 80 dealt with the nine families and the
9 issue of variant.

10 **Q.** What did the other ones deal with?

11 **A.** They dealt with the two categories: The large calibre
12 and high energy categories.

13 **Q.** Okay. So between May 1 -- and I think your evidence is
14 it was around the middle of June that the SFSS was
15 identifying more unnamed variants -- was there any
16 discussion about just delaying the promulgation of the
17 regulation to let the SFSS finish its work?

18 **MR. MACKINNON:** Sorry. The promulgation. You're
19 talking about the cabinet process, the GIC being
20 promulgated. That was done on May 1st.

21 **MS. WARNER:** Right. And --

22 **MR. MACKINNON:** You're asking him now in June.

23 **MS. WARNER:** So the witness's evidence is that
24 the FRT was updated on May 1st with some named
25 variants.

1 Q. And between May 1st and the middle of June, your
2 evidence is that the SFSS continued to review the FRT,
3 and you've just said that that was because you couldn't
4 complete that work before the regulation became law on
5 May 1st. And my question is did you make a request to
6 just delay the regulation becoming law so that you
7 could finish that review of the FRT?

8 MR. MACKINNON: Again, that kind of question that
9 you're asking concerning promulgation goes to cabinet
10 confidence because that concerns submissions to the
11 cabinet.

12 OBJECTION TAKEN to answering the question: And between May
13 1st and the middle of June, your evidence is that the
14 SFSS continued to review the FRT, and you've just said
15 that that was because you couldn't complete that work
16 before the regulation became law on May 1st. And my
17 question is did you make a request to just delay the
18 regulation becoming law so that you could finish that
19 review of the FRT?

20 Q. MS. WARNER: Is it part of the SFSS's standard
21 procedure that when you identify an unnamed variant,
22 you communicate that outside the SFSS to the government
23 in some way?

24 A. The complication in the Firearms Reference Table and
25 the wide availability of the Firearms Reference Table

1 is, in effect, how the determinations are distributed.

2 **Q.** Okay.

3 **A.** So unless the firearm in question was of interest for
4 some other reason, it would not be advertised beyond
5 publication in the Firearms Reference Table.

6 **Q.** Okay. And at some point during this process, a
7 decision was made that the FRT needed a public version,
8 right?

9 **A.** Well, a public version of the Firearms Reference Table
10 has been in our plans for many years, and it was first
11 made available, I believe, in early 2020 to the general
12 public.

13 **Q.** Right. Before that time, it was only available to
14 organizations with special access, let's call it?

15 **A.** Well, the public did not have direct access to the
16 Firearms Reference Table until 2020, but the public
17 would have indirect access. They could have
18 communicated with the firearms program, for instance,
19 to pose a question about a firearm being a variant or
20 not.

21 And I'm thinking I said something to that effect
22 in my affidavit, and I'm just trying to find it right
23 now.

24 **Q.** Sure. And so I think the point is that the decision
25 was made, or at least executed, in early 2020 to make a

1 version of the FRT available to the public, as you say,
2 right?

3 **A.** Yes. Work had been underway on that for some time
4 prior to 2020, but 2020 was when we were able to
5 actually put the plan into action and make the FRT
6 available to the public.

7 **Q.** And so let's just walk through the process for
8 accessing that. So a member of the public would need
9 to know that it's available to them, and then basically
10 there's a web page at the RCMP that has both the law
11 enforcement version of FRT and then the public version
12 under that, right? You're familiar with that website?

13 **A.** Yes. Yes.

14 **Q.** And so if a member of the public clicks on the public
15 version, then, as I understand it, they're taken to
16 this 100 plus, thousand-page PDF document, right?

17 **A.** Yes. The only way to distribute the Firearms Reference
18 Table at the time to the public is via the PDF
19 document.

20 **Q.** Okay. And within that PDF, I understand there's a link
21 that can provide someone with access to -- is it
22 firearms specifically affected by the regulation?

23 **A.** My recollection is there was a link to a list, yes.

24 **Q.** Okay. And do you know whose idea it was to include
25 that or why it was included?

1 **A.** It was included purely for informational purposes, just
2 to inform users of the FRT where changes could be
3 found.

4 **Q.** Okay. And in terms of the firearms that the SFSS has
5 identified as unnamed variants since May 1 of 2020,
6 that isn't reported anywhere other than the FRT, right?

7 **A.** I would have no idea whether anyone else is recording
8 those firearms. They're recorded in the Firearms
9 Reference Table. Whether someone else is keeping a
10 similar list, I have no idea.

11 **Q.** Right. I think my question, though, was about -- the
12 SFSS's opinion, of course, is only available in the
13 FRT, right?

14 **A.** To the best of my knowledge, we have not distributed
15 lists beyond what's in the Firearms Reference Table.

16 **Q.** Okay. I think the easiest way for us to look at it is
17 just for me to share it with you. So I've got another
18 document for you to open.

19 **A.** Yes, I have the document tab 10 on possess laptop.

20 **Q.** So this comes from the website of the RCMP that
21 provides access to the two different versions of the
22 FRT; do you recognize that?

23 **A.** As I said before, I haven't compared these kinds of
24 documents word for word, but, yes, it generally appears
25 to be the same as the web page on the CFP website.

1 Q. I'm assuming you've seen this website before and you've
2 been consulted on making the FRT available to the
3 public, right?

4 A. Yes.

5 Q. So under the part of this page that refers to access to
6 the FRT for the public, do you see a little I in the
7 word "note"?

8 A. Yes.

9 Q. And then in the third paragraph under that, it says,
10 "We recommend using Microsoft Internet Explorer web
11 browser." And then it says, "If you're experiencing
12 technical issues." Do you see that there?

13 A. Yes, I do.

14 Q. Are you aware of the fact that people have experienced
15 difficulties in accessing and downloading the public
16 version of the FRT?

17 A. No.

18 Q. So you haven't had any involvement in, for example, the
19 parts of this page that are trying to explain to
20 members of the public how to overcome any difficulties
21 they might face in accessing the FRT?

22 A. No. That's an information technology issue. I
23 wouldn't have had anything to do with that.

24 Q. Sure. And so in your affidavit, you've described the
25 PDF as searchable. Do you recall providing that

1 evidence?

2 **A.** Describe the FRT as?

3 **Q.** Searchable.

4 **A.** What?

5 **Q.** Searchable. It's in paragraph 13 (b) of your
6 affidavit.

7 **A.** Oh, in my affidavit. Sorry. I was looking for it in
8 the document.

9 **Q.** In paragraph 13 (b), you've described the FRT as
10 searchable. Do you see that?

11 **A.** Yes.

12 **Q.** So, sir, an experience that has been communicated to me
13 is that you can open this PDF and try to search it for
14 something that you may find out later is in the
15 document, but that because the document is so big and
16 it's still loading, when you search for a firearm, it
17 doesn't actually show up.

18 And so if I put it to you that that is something
19 that somebody has had happen to them, do you have any
20 information to the contrary?

21 **MR. MACKINNON:** Well, wait. You're putting
22 evidence -- trying to put evidence into the record for
23 which there's no affidavit. If you have an affidavit
24 to take him to with regard to what you just said,
25 that's fine. But to ask him, to say, Can you deny

1 this, assumes that what you're saying is true.

2 MS. WARNER: Sure.

3 MR. MACKINNON: Do you have an affidavit where it
4 says that?

5 MS. WARNER: He's provided evidence that it is
6 searchable.

7 MR. MACKINNON: Okay.

8 MS. WARNER: I'm putting it to him that there
9 are problems with its searchability and asking him
10 whether he has any information about that one way or
11 the other.

12 MR. MACKINNON: Okay. Well, there was an
13 assumption in your question that this, in fact, had
14 happened to somebody when, in fact, there's no evidence
15 on the record to that effect, but if you're asking him
16 do you know of any problems, that's fine.

17 MS. WARNER: Sure. He's an expert. He's been
18 put forward as an expert on the FRT, and he's told me
19 it's searchable. I think it's fair for me to put to
20 him that I understand that there are problems with the
21 searchability, but it sounds like, in any event, you'll
22 have the witness answer the question about whether or
23 not he has any evidence one way or the other about
24 problems with the searchability that you have
25 described.

1 MR. MACKINNON: Okay. But your understanding is
2 not evidence on the record. You can just ask him the
3 question, do you know of any -- but to put to him an
4 assumption in that question assumed that fact, and we
5 don't agree that that's a fact. And he's --

6 MS. WARNER: Sure. So let's take the question
7 at that high level.

8 Q. So in terms of your evidence that it's searchable, do
9 you have any information one way or the other about
10 problems that users encounter in the searchability.

11 A. No, I'm not aware of any such problems.

12 Q. Okay. And, sir, you would agree that there's no
13 notification system in place to let the public know
14 when the FRT is updated, right?

15 A. No. My understanding is the FRT is -- when it's
16 updated, the new version replaces the old version, but
17 there's no notification system to anyone about that.
18 It just changes on the website.

19 Q. Okay. And you'll see in that document in front of you
20 that I shared with you most recently that you were just
21 looking at, right under the part that we were reading
22 about the technical issues, then under that is
23 something called the "Legal Disclaimer for Public Use."

24 A. Which document are you referring to? The one that I
25 have open now?

1 Q. Yeah. The FRT website.

2 A. Yes. I have the legal disclaimer here.

3 Q. Were you involved at all in deciding whether or not
4 this disclaimer needed to go on the web page, and if
5 so, what its contents should be?

6 A. I was involved in the discussion as to whether there
7 should be a legal disclaimer or not, but I did not
8 draft the text for it.

9 Q. For the disclaimer?

10 A. For the disclaimer.

11 Q. Did you agree that there should be one?

12 A. Yes.

13 Q. And that relates to your earlier evidence about the
14 fact that the FRT isn't binding, right?

15 A. Correct.

16 Q. And this disclaimer says that, "The aforementioned Act
17 and regulations are the prevailing legal authority with
18 respect to firearms classification." And so you share
19 that understanding, right?

20 A. Yes. The regulations themselves are the law, and they
21 stand on their own.

22 Q. Yeah. And that comes back to your point from earlier
23 that ultimately it's up to the individual to draw their
24 conclusion about, for example, whether or not their
25 firearms is an unnamed variant, right?

1 **A.** What I believe I said was that one of the options for
2 an individual was to determine the classification of
3 their firearm by themselves, but that wasn't the sole
4 option that I had indicated.

5 **Q.** Right. Of course. That's one option, but I think it
6 ties into the point that ultimately it is up to the
7 individual because there isn't a binding, legally
8 binding resource that they can refer to, right?

9 **A.** Well, I believe what you're asking me is to affirm a
10 legal principle that individuals are expected to know
11 the law, and that's my understanding. I can't dispute
12 that or confirm it, but that's my understanding.

13 **Q.** Yeah. I think the answer to the question is yes, in
14 that the question was you're not aware of any legally
15 binding resource that the individual can refer to,
16 right?

17 **A.** Yes. The individual can refer to the law itself.
18 That's legally binding, in my view.

19 **Q.** Right. I was referring to determine whether or not
20 their firearm is an unnamed variant, and the regulation
21 won't tell them that, right?

22 **A.** Well, the regulation provides language, namely the
23 variant or modified version clause, which --

24 **Q.** Right. And if I wanted -- so it tells me that if I
25 have a variant, it's prohibited. And so if I want to

1 know if I have a variant, the regulation won't tell me
2 that if it's not listed, right?

3 MR. MACKINNON: He has answered a number of your
4 questions along that line, and you did ask him about
5 this same question before concerning binding, and there
6 is a long line of questioning, and then he said the
7 ultimate authority was the courts on that, if you can
8 recall that.

9 MS. WARNER: Sorry, I'm having a hard time
10 hearing you, Mr. MacKinnon. I think you're saying --

11 MR. MACKINNON: Oh, sorry.

12 MS. WARNER: I think you're saying asked and
13 answered and that his answer is that the legal
14 authority is the courts, right?

15 MR. MACKINNON: The ultimate binding legal
16 authority. But he mentioned that there's law cases and
17 so forth that people can go to, and he's already
18 described how people can find out whether they have an
19 unnamed variant or not.

20 But the ultimate legal authority is the court,
21 from what I can recall from what he said.

22 Q. MS. WARNER: And so, sir, when we were talking
23 about unnamed variants, we went to some language that
24 the RCMP has provided to people about changes in the
25 legal status, being a nullification.

1 Did you understand that that advice from the RCMP
2 relates to whether or not a person can bring a
3 challenge under the Firearms Act?

4 **A.** My understanding of that notice was simply to clearly
5 communicate to the public that the change in
6 classification of the affected firearms was due to the
7 implementation of regulations and not the result of a
8 decision by the registrar of firearms.

9 The program received a number of questions on that
10 issue, and the website was an efficient way of making
11 the answer available to all firearms owners.

12 **Q.** So do you understand that -- are you familiar with
13 section 74 of the Firearms Act?

14 **A.** In general, yes.

15 **Q.** So, in general, do you understand that certain
16 conditions need to be met for an individual to get
17 access to a reference under section 74 of the Firearms
18 Act?

19 **A.** Yes. My general understanding of section 74 is it
20 provides a framework to hold the Canadian Firearms
21 Program accountable for the decisions that the Canada
22 Firearms Program makes.

23 **Q.** And I think you said you share the general
24 understanding that there are certain stipulations in
25 section 74 that need to be met for that type of

1 reference to be available, right?

2 **A.** I'm not opposed to the concept of accountability.

3 **Q.** Right. The question is much more specific. Do you
4 have an understanding of the criteria that need to be
5 engaged for an individual to be able to access the
6 reference under the Firearms Act?

7 MR. MACKINNON: Again, Counsel this is getting a
8 little further afield than what we're dealing with
9 here. How does a section 74 reference part of this
10 injunction, or even his affidavit?

11 MS. WARNER: So I'm exploring the witness's
12 evidence that the way to get an answer about whether or
13 not your firearm is non-restricted is through the
14 courts, and so I'm wondering if the witness has an
15 understanding about how an individual can get access to
16 the courts on that question.

17 MR. MACKINNON: Well, as we are both aware, there
18 are a number of section 74 challenges going on now, and
19 what you're asking him is really a legal question that
20 he's not competent to answer.

21 MS. WARNER: That's fair. I think we had the
22 witness's evidence from earlier that he shares the
23 understanding that -- from the letters that were sent
24 out at Exhibit G to Mr. Steacy's affidavit.

25 **Q.** Mr. Smith, we also have your evidence that, as you

1 understand it, there will be no further updates to the
2 FRT in respect of unnamed variants, right?

3 **A.** I'm not aware of any firearms which are recorded in the
4 FRT and which were recorded in the FRT prior to May 1st
5 with a non-restricted or a restricted classification
6 determination attached to it, which is expected to
7 change after June 15th.

8 **Q.** And you're -- I was going to say you're no longer a
9 staff member, but I think it's that you're no longer a
10 full-time staff member. And so in terms of when you
11 say you're not aware, on what basis do you know whether
12 or not that's to be expected or not?

13 **A.** The bulk of the work of updating the Firearms Reference
14 Table was done while I was still manager, and so the --
15 so I'm generally aware from my term at that point as
16 manager that all of the firearms that we were aware of
17 that could change either had changed or were scheduled
18 to change before I left and went into retirement.

19 Now, if the new manager has discovered new
20 concerns with the content of the data in the FRT, I
21 would not necessarily be aware of that. But what I'm
22 telling you today is I'm not aware of any planned
23 changes.

24 **Q.** Sure. And I think what you just said about the new
25 manager confirms my understanding that there's

1 certainly nothing stopping the SFSS from updating any
2 particular FRT entry at any given time, right?

3 **A.** No. The FRT database is an administrative database
4 maintained by the RCMP, and it's within the sphere of
5 operations of the RCMP to modify the content of the
6 Firearms Reference Table, although, that said, the
7 value of the Firearms Reference Table is in its
8 comprehensiveness and accuracy, and I'm not aware of
9 anyone who would compromise either of those.

10 **Q.** How involved were you with the updates that occurred
11 after May 1st? Were you involved with sort of on an
12 individual basis or at a higher level?

13 **A.** I was involved at a higher level. I oversaw the
14 process. I may have dealt with certain individual
15 firearms, but the majority of those changes were made
16 by SFSS staff.

17 MR. MACKINNON: Counsel, it's almost 12:30. I'm
18 wondering whether it's convenient now to break or
19 whether you have a couple of other questions on this
20 line before lunch. We're a little bit past our lunch
21 break.

22 MS. WARNER: Sure. Why don't we take a break.
23 Let's go off the record just quickly and talk a little
24 bit about documents.

25 MR. MACKINNON: Sure. But before we do, can you

1 make that last document an exhibit because you put to
2 him a particular section that I don't think you read
3 out in total. The Firearms Table, tab 10.

4 MS. WARNER: Yes. The RCMP website for the
5 FRT. We'll make that the next Exhibit.

6 MR. MACKINNON: Yes.

7 MS. WARNER: Sure. Thanks, Counsel.

8 THE COURT REPORTER: Is that also for identification,
9 or is that going to be Exhibit 1?

10 MR. MACKINNON: I think it probably should be
11 Exhibit 1 because he acknowledged that, and she read to
12 him a particular passage that he acknowledged, so I
13 think, unless the witness has a different --

14 MS. WARNER: Yeah, I agree.

15 MR. MACKINNON: Okay.

16 EXHIBIT 1 - Tab 10 Firearms Reference
17 Table

18 (Proceedings ended at 10:27 a.m. MT)

19 _____

20 (Proceedings to recommence at 11:30 a.m. MT)

21 _____

22

23

24

25

1 (Proceedings recommenced at 11:32 a.m. MT)

2 MURRAY SMITH, previously affirmed, questioned by

3 Ms. Warner:

4 **Q.** You will confirm that you remain under your affirmation
5 and that you'll continue to tell the truth?

6 **A.** Yes.

7 **Q.** And just before we broke, we were talking a little bit
8 about the process that the SFSS went through after
9 May 1st in identifying, I think what you might call,
10 additional unnamed variants, and I think I heard you
11 say that you were not involved in each one of those
12 decisions but that you were involved in some of them.
13 Is that right?

14 **A.** Yes, I was involved in some.

15 **Q.** Okay. And so I would like to look at a couple of them,
16 and to start, I would ask you to refer to the affidavit
17 of Wyatt Singer.

18 **A.** Yes, I'm just opening that now.

19 **Q.** Okay.

20 **A.** Okay. Ready.

21 **Q.** This is in respect of a firearm that I understand is
22 called the Maccabee Defense SLR-Multi. Are you
23 familiar with that particular firearm?

24 **A.** Yes, I am.

25 **Q.** Was it one of the classification determinations that

1 you were individually involved in?

2 **A.** I believe it was, but, you know, there was on the order
3 of 80 of those, so I don't have them all memorized.

4 **Q.** Okay. Well, let's look at a couple of documents and
5 see what it refreshes in terms of your memory.

6 I would like you to start with Exhibit B of that
7 affidavit.

8 **A.** Scrolling down.

9 MR. MACKINNON: Page 27.

10 **Q.** MS. WARNER: That should be a November 3 of
11 2017 letter. Let me know when you have that in front
12 of you?

13 **A.** So Exhib bravo?

14 MR. MACKINNON: Yes.

15 **A.** So that's the inspection report?

16 **Q.** MS. WARNER: All right. And that is authored
17 by Bruce Macdonald. Who is Bruce? What's his role?

18 **A.** He was a firearms technologist who was a -- or firearms
19 technician, I guess -- who was employed in SFSS at the
20 time.

21 **Q.** Is he still employed there?

22 **A.** No. He's gone to a different but similar job.

23 **Q.** Okay. Do you recall whether you were involved in
24 inspecting the SLR-Multi in and around November of
25 2017?

1 **A.** I recall the firearm passing through the inspection
2 service. I recall the outcome on the rationale fort,
3 but beyond that, I was not directly involved.

4 **Q.** Okay. So in terms of the outcome and the rationale,
5 looking at this inspection report, it says that "The
6 SLR-Multi receiver can meet the definition of a
7 non-restricted firearm."

8 And then in paragraph 4, it mentions a barrel
9 length of over 470 millimetres, and then it concludes
10 that, as received, that firearm is classified as
11 non-restricted; do you see that?

12 **A.** Yes. It was non-restricted at the time.

13 **Q.** And you were generally aware of that at the time?

14 **A.** Yes, generally aware of it. Because it was an unusual
15 firearm.

16 **Q.** Okay. And so given that you were generally aware of
17 it, fair to say that you agreed with this letter that
18 was sent in November of 2017, right?

19 **A.** Indeed, I do.

20 **Q.** Okay. And so you would understand that those
21 conclusions by Mr. Macdonald were reflected in the FRT.
22 You can find that at Exhibit C of Mr. Singer's
23 affidavit.

24 **A.** So there is an FRT record there. It's sideways, a
25 little hard to see.

1 Q. Yeah. So the date at the top is November 3rd of 2017.
2 Can you see that? I appreciate it's sideways.

3 A. Yes, I can.

4 Q. And can you see in the middle of the page where it
5 says, "Legal classification, Non-Restricted" and "Legal
6 Authority CC 2 'firearm'"?

7 A. Yes, I can see that.

8 Q. I understand that part there, the legal authority, to
9 be the SFSS's reference to what you consider to be the
10 relevant -- what's the language you used? The relevant
11 Criminal Code section; is that right?

12 A. Yes. In this particular case, section 2 of the
13 Criminal Code.

14 Q. Okay. And so does that refer -- it's referring to the
15 definitions of firearm and restricted firearm and
16 prohibited firearm; is that right?

17 A. It refers to the definition of firearm.

18 Q. Okay. So Mr. Macdonald's letter that we just looked at
19 said that the firearm could be classified as
20 non-restricted, and then it referred to the barrel
21 length. Did that inform the basis on which you
22 concluded at that time that the firearm was not
23 restricted?

24 A. Yes. The actual specimen had a barrel length which
25 exceeded 470 millimetres, which meant that it fell

1 within the non-restricted classification --

2 **Q.** Okay.

3 **A.** -- at the time.

4 **Q.** Right. That's the section you were referring to at
5 that time.

6 And you can see in this FRT report under the
7 heading "Model," you can see in the third line it says:
8 (as read)

9 "The SLR-MULTI main features are the use
10 of a T-Slot assembly interface
11 reminiscent of the prototype AR-10A,
12 serial number XN03, a removable trigger
13 housing and compatibility with many
14 AR-15 components."

15 And so that would have been something that you would
16 have considered in November of 2017 in classifying this
17 firearm?

18 **A.** Yes, it was.

19 **Q.** And you'll see that on the next page there is a section
20 called "Canadian Law Comments," right?

21 **A.** I'm just looking for that now. Yes, I see it.

22 **Q.** And so is that section where you captured the SFSS's
23 understanding at that time of the relationship between
24 the Canadian law and the classification of the firearm?

25 **A.** Yes. It provides a short rationale of why SFSS

1 believed the firearm fit the category identified.

2 **Q.** Right. And in November of 2017, the AR platform was
3 restricted under the regulation, right?

4 **A.** A subset of the AR platform was restricted, yes.

5 **Q.** Okay. So explain that to me. So the platform is
6 dividable into subparts?

7 **A.** Well, in effect, it was divided by the regulations
8 which were enforced at the time. The regulations as
9 they read prior to May 1st of 2020 restricted the M16
10 and any variants or modified versions of it.

11 So the way that regulation was constructed meant
12 that only those firearms which flowed from the M16
13 could be considered to be within the scope of the
14 regulation.

15 **Q.** That was how the SFSS interpreted that, right?

16 **A.** Correct.

17 **Q.** Okay. And you're aware, sir, that the SFSS's
18 classification of the SLR-Multi is now listed in the
19 FRT as prohibited, right?

20 **A.** Yes, it is.

21 **Q.** And were you involved in that decision?

22 **A.** I was involved -- yes, I was involved in that decision
23 from the -- from, perhaps, a slightly more global
24 perspective. There were a number of firearms which
25 were similar to the SLR-Multi, and I dealt with them as

1 a group.

2 Q. You took the lead on those?

3 A. I'm sorry, I didn't hear that.

4 Q. You took the lead on those? You said you dealt with
5 them as a group. You took the lead on them?

6 A. I was involved in the final decision. I approved the
7 final decision, so in that sense, yes, I took the lead
8 on them.

9 Q. Okay. Who else was involved?

10 A. There were a number of staff members from Specialized
11 Firearms Support Services involved.

12 Q. And what was your process in terms of inspecting the
13 SLR-Multi between May 1 and when the FRT was updated?

14 A. Well, the firearm was not physically inspected during
15 that interim.

16 Q. So what did happen?

17 A. What happened was the regulations changed, and the
18 regulation amendments of May of 2020 did two things:
19 It changed the classification of those firearms from
20 either non-restricted or restricted to prohibited. It
21 also changed the scope of the -- of what's considered a
22 firearm to be regulated.

23 The former regulations included the M16 and the
24 history of it whereas the May 2020 regulation
25 explicitly includes the AR-10, AR-15, M16, and M4,

1 which gives it a much broader scope than existed prior
2 to May 1st of 2020.

3 **Q.** Right. And it's described as one platform, right?

4 **A.** Well, the firearms industry describes the family of AR
5 firearms as being the AR platform. It's shorthand to
6 mean firearms of the AR-10, AR-15, M16, and M4 design.
7 And what it means in practice is that the firearms all
8 have interchangeable parts, for the most part, and
9 owners who purchase one of those firearms tap into a
10 vast supply of parts, accessories, and enhancements,
11 which are made for that group of firearms.

12 **Q.** So, now, maybe just flip to Exhibit D of the Singer
13 affidavit.

14 **A.** Okay. Exhibit B?

15 **Q.** D as in delta.

16 **A.** Delta, okay. I'm sorry. It's my hearing.

17 Exhibit D is another FRT record.

18 **Q.** That's right. And this one's dated June 7th of 2020.

19 **A.** Yes.

20 **Q.** So you'll see there that the legal classification is
21 prohibited, and the legal authority is PFR, which I
22 understand stands for the regulation, right?

23 **A.** Yes, it does.

24 **Q.** Paragraph 87. And so this is what you're saying, which
25 is that the SFSS decided after May 1st that this

1 firearm should be prohibited on the basis of
2 paragraph 87 of the regulation, right?

3 **A.** Well, no. SFSS did not decide that the firearm should
4 be prohibited. What SFSS determined was that the
5 characteristics of that firearm matched the
6 requirements of paragraph 87 of the regulations, and
7 therefore, was assessed to be prohibited for inclusion
8 in the FRT.

9 But the firearm itself became prohibited as a
10 result of the action in the regulations; not anything
11 the FRT did.

12 **Q.** Yeah. We're on common ground that this is an unnamed
13 variant. It's not listed in the regulation, right?

14 **A.** That's correct.

15 **Q.** And so when you say it became prohibited, that's your
16 opinion and the SFSS's opinion, right?

17 **A.** Yes, it is.

18 **Q.** And on the next page of the FRT, you'll see that
19 there's no Canadian Law comments section, right?

20 **A.** Yes. The -- there simply wasn't time to update the
21 Canadian Law comments. The priority was to update the
22 classifications.

23 **Q.** So all you did was delete the Canada Law comments?

24 **A.** Yes.

25 **Q.** Are you in the process of updating the Canadian Law

1 comments to explain the SFSS's rationale?

2 **A.** That had not -- that was planned but had not started by
3 the time I retired. I believe it's on the agenda of
4 the new manager, but I can't say that with certainty.

5 **Q.** Okay. So I would ask you to now open the affidavit of
6 Phil O'Dell.

7 Let me know when you have that in front of you.

8 **A.** Okay. Phil O'Dell. Okay. It's open now.

9 **Q.** Are you generally aware of the firearms that Mr. O'Dell
10 has described as the Defender and the Lion and the MK10
11 and the MK12?

12 **A.** I'm just trying to find them in the affidavit right
13 now.

14 **Q.** Sure. I didn't know if you might know off the top of
15 your head. If you want to refer to the affidavit, it
16 starts around paragraph 47 Mr. O'Dell's affidavit.

17 **A.** Did you say 47, four-seven?

18 **Q.** That's right.

19 **A.** Okay. So...

20 **Q.** Do you recall whether you were involved in reviewing
21 the FRT entries for the MK10 and the MK12?

22 **A.** I was -- I was involved but not deeply involved in May
23 of 2020. I recall being more involved prior to that.

24 **Q.** What do you mean by that? What was your involvement
25 prior to May of 2020?

1 **A.** Well, I believe some of those firearms were submitted
2 for inspection prior to May of 2020.

3 **Q.** Okay. And so you generally recall that you were
4 involved in their initial inspection and
5 classification; is that right?

6 **A.** Yes.

7 **Q.** So do you generally recall that they were initially
8 classified as non-restricted?

9 **A.** Yes.

10 **Q.** Okay. So if you look at Exhibit L, as in Lima, of
11 Mr. O'Dell's affidavit. Let me know when you have that
12 in front of you.

13 **A.** Okay.

14 Okay. Exhibit L, which is an FRT record for the
15 Derya MK-12.

16 **Q.** Right. And it's dated June 16th of 2020; do you see
17 that?

18 **A.** Yes, I do.

19 **Q.** So you see that the classification has been updated,
20 according to the SFSS, to prohibited. And, again, the
21 reference is paragraph 87 of the regulation; do you see
22 that?

23 **A.** Yes.

24 **Q.** And then if you scroll down under the "Model" section
25 of that FRT entry.

1 **A.** Yes.

2 **Q.** You see where it says in the same bullet: (as read)

3 "The design of the semi-automatic box
4 magazine feed shotgun resembles but is
5 not a variant of the AR-15."

6 Do you see that?

7 **A.** Yes, I see that.

8 **Q.** So it's the SFSS's understanding that a firearm cannot
9 be a variant of the AR-15, but nonetheless, be
10 classified as prohibited under paragraph 87 of the
11 regulation, right?

12 **A.** Yes. In this case, the shotgun is a variant of the
13 AR-10, which is listed as one of the parent firearms in
14 para 87.

15 **Q.** One of the parent firearms in this family? Is there
16 more than one parent in this family?

17 **A.** When I use that language, what I am referring to is
18 that in the language of paragraph 87 of the regulations
19 made in May of 2020, that four distinct firearms
20 designations are used, and AR-10 is one of them.

21 **Q.** So is there more than one parent in the family?

22 **A.** The AR platform firearms are grouped. Because they
23 have so many elements in common, it would be difficult,
24 if not impossible, to deal with them as individuals
25 simply because of the ability to exchange parts, the

1 overlaps in design, and so on.

2 It's logical to treat them as a single group, just
3 as the firearm industry does.

4 **Q.** So if you treat them as a single group, then, how can
5 it be that it's not a variant of the AR-15 but it's
6 still prohibited under paragraph 87?

7 **A.** Well, I interpret the regulations as meaning that if a
8 firearm is a variant of any one of those firearms, four
9 firearms, or any combination of them, then it falls
10 within the ambit of the regulation.

11 **Q.** Okay. That's helpful. And you earlier, just a moment
12 ago, talked about the understanding in the industry.
13 And I would ask you, sir, out of fairness, to concede
14 that the understanding that you just described is not
15 shared by the industry such that you could speak on
16 behalf of the entire industry. Will you concede that?

17 **A.** I would beg to differ with that assessment because the
18 industry widely uses the expression "air platform" and
19 uses it to cover models related to all four of those
20 firearms. It's all over the internet. It's all over
21 books and advertising material. Very widely used.

22 **Q.** Sure. And so your position is that your expert opinion
23 should be relied on by the Court as being on behalf of
24 the industry, as a whole, right?

25 **A.** I'm not a spokesman for the industry, if that's what

1 you're asking.

2 **Q.** Right. That is. Because different people in the
3 industry could have different understandings, right?

4 **A.** Yes. Different people in the industry may have
5 different opinions on the matter; I concede that.

6 **Q.** Sure.

7 **A.** But what I was informing you of is that if you look at
8 the volume of websites, printed material, firearm user
9 reports, firearm user reviews, and so on, you will see
10 the AR platform terminology being used exceedingly
11 broadly and to deal with all four of those firearms
12 named in paragraph 87.

13 **Q.** And so, by that, are you referring, for example, to
14 what you've exhibited to your affidavit at Exhibits 28
15 and 29, Jane's Infantry and one other source? Is that
16 what you're referring to?

17 **A.** Well, the -- that particular example dealing with
18 Jane's -- and that's in my affidavit at --

19 **Q.** Are those the kinds of things that you're referring to?

20 **A.** Yes. That's one example of where a very respected
21 firearms publisher is using the term variant to
22 describe families of firearms.

23 In this -- in the example given, I use the AR
24 family as well as the AK-47 family, and it illustrates
25 that the word variant is used very broadly.

1 Q. Right. And you mentioned earlier that you were not
2 involved in all updates to the FRT after May 1 but you
3 were involved in some of them. Which ones were you
4 more individually involved in and why?

5 A. One of the -- one of the issues that I was involved in
6 more deeply had to do with the AR-10 branch of the AR
7 platform family because of the significant change in
8 scope of the regulations when compared before and after
9 May 1st of 2020. So --

10 Q. Right. You formed the opinion and the conclusion that
11 the change in language related to the AR platform
12 resulted in a significant change in scope, right?

13 A. That's correct.

14 Q. When did you form that opinion? Was it before or after
15 May 1st?

16 A. I can't pick a precise moment when I arrived at that
17 point of view.

18 Q. So I understand from your CV that it's been part of
19 your job since at least 1989 to provide advice to the
20 government, right?

21 A. Yes.

22 Q. And you've listed in your CV quite a number of
23 instances where you provided advice in respect of
24 specific pieces of regulation or legislation, right?

25 A. Yes. On numerous occasions.

1 Q. Did you provide any advice to the government in advance
2 of May 1st about the wording of the AR platform section
3 of the regulation?

4 MR. MACKINNON: He can't answer that. It's
5 protected by cabinet confidence for the same reason
6 given earlier. It relates to submissions to cabinet.

7 OBJECTION TAKEN to answering the question: Did you provide
8 any advice to the government in advance of May 1st
9 about the wording of the AR platform section of the
10 regulation?

11 Q. MS. WARNER: Were you aware before May 1st that
12 the language of paragraph 87 would be different?

13 MR. MACKINNON: Again, for the same reason.

14 OBJECTION TAKEN to answering the question: Were you aware
15 before May 1st that the language of paragraph 87 would
16 be different?

17 Q. MS. WARNER: So, sir, as part of the advice
18 that you've given to the government, and just your job
19 in general, did you become aware of a regulation called
20 the "Firearms Records Regulations Classification"? It
21 came about in 2014.

22 A. Yes, I'm aware of those regulations.

23 Q. What's your understanding of what those regulations are
24 about?

25 A. Those regulations bind the registrar of firearms to

1 certain bookkeeping duties. That's about it.

2 **Q.** And so it's your interpretation of the regulation that
3 that is all that it does, right?

4 **A.** Yes.

5 **Q.** Were you involved in consulting or advice, as you
6 described in your CV, in relation to that particular
7 regulation at all?

8 MR. MACKINNON: Okay. Hold on. If this involves
9 anything related to submissions to cabinet, then it's
10 protected. If it's not, then you can answer.

11 **A.** I can give the same answer as I do for the court
12 regulations which is that I had input, but I can't say
13 anything further beyond that, as I understand cabinet
14 confidence.

15 **Q.** Okay. And, again, as part of your advice to government
16 or your job, generally, did you come to understand that
17 the Standing Joint Committee for the Scrutiny of
18 Regulations took an interest in this 2014 FRRC
19 regulation?

20 **A.** My understanding is that the Committee on the Scrutiny
21 Regulations took an interest in the expression
22 "variant" and the expression "commonly available in
23 Canada." That's my interaction with them.

24 **Q.** So I'm going to talk to you about that in a minute.
25 This is a separate issue. We're talking about this

1 classification regulation were you said that it imposed
2 certain obligations on the registrar, and I think you
3 said something about "and nothing more" or "that's all
4 it does."

5 And the Standing Joint Committee for the Scrutiny
6 of Regulations examined whether or not, in fact, that
7 is what the regulation does or whether it purports to
8 do something more than that. Are you aware of that
9 issue?

10 **A.** No. I was not involved in dealing with the Committee
11 on the Scrutiny of Regulations on that issue.

12 **Q.** On that issue. Okay.

13 And so when you and your team were working on
14 updating the FRT in relation to the regulation, did you
15 understand that you were prohibited from updating any
16 FRT entries that had been classified within -- beyond
17 the previous year?

18 **A.** I'm not aware of any such limitation.

19 **Q.** And, again, on this regulation that I'm calling the
20 FRRC, that's the 2014 classification regulation, so you
21 understand that, that I'm referring to --

22 **A.** Yes.

23 **Q.** -- that regulation?

24 **A.** Yes.

25 **Q.** And in respect of that particular regulation, did you

1 have any understanding that when the government
2 explained in its regulatory impact analysis statement
3 why it was promulgating that regulation, that it made
4 reference to the firearms known as CZ-858 and Swiss
5 Arms Classic Green, were you aware of that?

6 **A.** I recall seeing the regulatory impact analysis
7 statements for those regulations at the time, but it's
8 been many, many years since I've looked at them, so my
9 recollection today is a bit rusty.

10 **Q.** So to the best of your recollection, what was the
11 relationship between the FRRC and the two rifles that I
12 just mentioned?

13 **A.** There was no connection that I'm aware of.

14 **Q.** So you don't know why the government included that in
15 the regulatory impact analysis statement?

16 **A.** I'm not sure that was the question you asked
17 previously. I believe you asked me if there was any
18 connection between the regulations and those two
19 firearms, and, no, I'm not aware of any.

20 As for the reason why the government chose to
21 introduce those regulations, I can't say. I'm -- I was
22 not present at the time the government took that
23 decision.

24 **Q.** Okay. And in your CV when you're listing the things
25 that you have advised the government on, you list Bill

1 C-42, which arose in 2015. Do you recall that bill?

2 **A.** Yes, I do.

3 **Q.** And do you recall that part of that bill allowed the
4 GIC to prescribe a firearm as non-restricted?

5 **A.** Yes. One of the amendments brought about to the
6 Criminal Code by Bill C-42 was to add two subsections
7 to, I believe, Section 117.15 of the Criminal Code,
8 which permitted the GIC to downgrade classifications
9 from prohibited to either restricted or non-restricted.

10 **Q.** Okay. And were you aware -- well, first, were you
11 aware that it was Mr. Blaney who was the Minister of
12 Public Safety at that relevant time?

13 **A.** Yes. I believe Minister Blaney was the Minister of
14 Public Safety in 2015 when C-42 passed through
15 parliament.

16 **Q.** And were you aware that in explaining Bill C-42, one of
17 the things that Minister Blaney said was that it had
18 been a mistake for the CFP to classify the CZ-858 and
19 the Swiss Arms Classic Green rifles as prohibited
20 firearms?

21 **A.** I believe he said that, yes.

22 **Q.** Were you aware of that?

23 **A.** Yes. I recall seeing the news coverage when he said
24 that statement.

25 **Q.** Okay. And you also are aware that those firearms are

1 now prohibited in the regulation, right?

2 **A.** Yes, they are.

3 **Q.** And do you agree that they should be prohibited?

4 **A.** I'm --

5 **MR. MACKINNON:** When you mean "should be," are you
6 meaning a decision taken in the regulation, or are you
7 saying the classification --

8 **MS. WARNER:** I'm asking for Mr. Smith's
9 personal opinion about whether or not those firearms
10 should be prohibited.

11 **MR. MACKINNON:** Well, he's not here for that.
12 That's a decision, as you said, that was taken by the
13 government and cabinet in the regulation. So it's not
14 for him to say his personal opinion.

15 **Q.** **MS. WARNER:** I take your point. I think it
16 could be helpful for the Court to understand the views
17 of this witness who has been put forward as an expert,
18 who is meant to be impartial, and so his own views are
19 relevant.

20 **MR. MACKINNON:** He's not put forward for the
21 purpose of giving evidence on the intention of
22 goverment when it passes a regulation, and so his
23 personal view of that is irrelevant.

24 **OBJECTION TAKEN to answering the question:** And do you
25 agree that they should be prohibited?

1 Q. MS. WARNER: Sir, you've given some evidence in
2 your affidavit and today that, in your view, the term
3 variant is, I think you say, it's well-known to gun
4 owners in Canada, right?

5 A. Yes. I believe that to be the case. The -- I speak to
6 that in paragraph 25 of my affidavit. The use of --
7 the concept of variant has been around for more than,
8 well, more than 20 years, so it has familiarity with
9 both firearms businesses and firearms owners.

10 Q. And you would agree, though, that that term, its
11 definition, its application, has been the subject of
12 significant controversy and confusion in the industry
13 and among firearm users, right?

14 A. Yes, indeed. A fair degree of controversy. I believe
15 that there are certain sectors within the firearms
16 business community and also within the firearm owner
17 community who disagree with the firearms control laws
18 as they exist in Canada today. And one of the
19 provisions, I believe, that those people dislike is the
20 use of the variant clause, and they're certainly
21 entitled to their point of view.

22 Q. Sure. And another entity that has issue with it you
23 mentioned earlier is the Standing Joint Committee for
24 the Scrutiny of Regulations. You're aware of that,
25 right?

1 **A.** Yes. The committee was looking into the word "variant"
2 and wondering whether a definition of variant would be
3 helpful or not.

4 **Q.** Yeah. And how do you know that?

5 **A.** I was directly involved with the Department of Justice
6 in drafting responses to that committee. I also
7 appeared before the committee on at least one occasion,
8 although I didn't actually testify. I was on call but
9 didn't actually speak.

10 **Q.** Okay. So I don't know if I had included it earlier.
11 I've just dropped in a document now related to the
12 Standing Joint Committee, so let me know when you have
13 that tab 31 open in front of you, please.

14 **A.** I'm sorry. Which document are you looking for?

15 **Q.** Tab 31 that I've just included in the chat box.

16 **A.** Oh, it's just been sent. Okay.

17 MR. MACKINNON: Yeah. It's just been sent. It's
18 called "Evidence - REGS." Tab 31.

19 **A.** Okay. So, yes, I have that document open.

20 **Q.** MS. WARNER: Okay. So this one is dated
21 June 15th of 2017. Do you see that?

22 **A.** Yes.

23 **Q.** So these are the proceedings that you were just
24 referring to that you were involved with along with the
25 Department of Justice, right?

1 **A.** I don't know if I was present during this particular
2 session, but, yes, I was involved with it from time to
3 time over the course of seven or eight years.

4 **Q.** Right. Exactly. And so that's my point. If you flip
5 to the second page of this document, there are
6 statements from Evelyne Borkowski-Parent, General
7 Counsel to the Committee. Do you see that?

8 **A.** Yes. I'm looking at the top of the page that is
9 labelled 229. Is that what you're referring to? Oh,
10 228?

11 **Q.** That's right. 228. And so in the third full
12 paragraph, it starts with the words: (as read)

13 "It bears noting that the power to
14 prescribe is a narrow enabling power
15 which means that regulations should
16 provide for the law with precision and
17 certainty."

18 Do you see that there?

19 **A.** Yes, I do.

20 **Q.** And then it says, "Upon examination it was found that
21 the description of a great many of the firearms," and
22 then it goes on to raise what you described earlier,
23 which is commonly available in Canada and variant,
24 right? That was the issue you were referring to
25 earlier?

1 **A.** Yes. That's all mentioned in that paragraph.

2 **Q.** Right. So then in the next paragraph it says that that
3 issue was asked by the committee in the year 2005, and
4 the file has not progressed much since. Do you see
5 that?

6 **A.** Yes, I do.

7 **Q.** And so that's consistent with what you said earlier,
8 that this was an issue that was longstanding over a
9 number of years, right?

10 **A.** Yes. The committee -- the committee took an interest
11 in it over a long period of time. Yes.

12 **Q.** Right. And it's fair to summarize that the interest
13 that they took was -- they concluded that the words
14 "variant" and "commonly available in Canada" lacked the
15 precision and certainty that they thought should be
16 included, right?

17 **A.** Well, I don't see that in writing here. Could you tell
18 me exactly where you're looking.

19 **Q.** Well, I will, but let's just start with your
20 understanding. Is that your understanding of the
21 committee's position?

22 **A.** My understanding of the committee is that their role is
23 to review regulations and to provide advice to the
24 government on where regulations can be improved. And
25 one of the areas that they were looking at in the

1 Criminal Code regulations was the use of those two
2 expressions: "Variant or modified version" and
3 "commonly available in Canada."

4 It was the position of the committee, so far as I
5 know, that those terms should be considered for
6 inclusion of a definition of them in the Criminal Code.
7 And my further understanding is that the Department of
8 Justice disagreed with that point of view and wrote
9 back to that effect indicating that it was the belief
10 of the Department of Justice that the -- an individual
11 firearms owner would be no better off with a definition
12 than without.

13 **Q.** Do you have a particular communication from the
14 Department of Justice in mind when you say that?

15 **A.** I can't recall a specific communication, no, on that.
16 The -- I believe the Department of Justice wrote back
17 to the committee and said they were not planning any
18 amendments at the time.

19 **Q.** And you said that you were involved in the Department
20 of Justice communications to the committee, right?

21 **A.** Yes. I was -- my role was to provide technical advice,
22 and I reviewed drafts of the communications and the --
23 and that was basically it.

24 **Q.** Yeah. And I think the view that you've expressed when
25 you and I have been chatting today is that you think

1 that the term variant is understandable, right?

2 **A.** Yes. It's defined in the dictionary. It's a word in
3 the English language, and its usual and ordinary
4 meaning is sufficiently accurate for the determination
5 of whether a firearm is a variant or not.

6 **Q.** Maybe just before I move on, again, I think it might be
7 helpful for the Court to exhibit tab 31 that I just
8 showed to you.

9 MS. WARNER: Counsel, any objection to that?

10 MR. MACKINNON: Tab 31?

11 MS. WARNER: I'm sorry, I couldn't hear you.

12 MR. MACKINNON: You just want to make an exhibit,
13 or what did you want to do?

14 MS. WARNER: Yeah, exactly.

15 MR. MACKINNON: That's fine. Although you could
16 also -- with the statutes, regulations, and provisions
17 of gazetted, you know, committees, you can put in
18 separately, if you like. I mean, technically, I don't
19 think we need to, but if you want to, that's fine.

20 MS. WARNER: Sure. Fair enough. Just for
21 one-stop shopping, we'll make that the next exhibit for
22 identification.

23 MR. MACKINNON: Okay.

24 EXHIBIT C FOR IDENTIFICATION - Tab 31
25 document titled "Evidence - REGS"

1 Q. MS. WARNER: Okay. And then I was just going
2 to touch on what you said previously, which is that you
3 understood that this controversy about the provision
4 and certainty around the term variant did lead to a
5 Private Member's Bill that was Bill C-230. You know
6 that?

7 A. I'm aware of the bill; however, I would not agree with
8 your statement that it stems from uncertainty. The
9 genesis of that, I believe, was more from a sector of
10 the firearms owning public that simply didn't like the
11 direction that the government had taken in gun control
12 and was doing something about it via their member of
13 parliament.

14 Q. And that bill suggested a definition of the term
15 variant as to mean a firearm that has an unmodified
16 frame or receiver of another firearm. You understand
17 that, right?

18 A. That's what the definition says.

19 Q. That's what it was proposed in the bill. You
20 understood that, right?

21 A. Yes.

22 Q. And you, in your affidavit, have provided your personal
23 understanding of what the term variant means at
24 paragraph 23, right?

25 A. Yeah. In essence, yes.

1 Q. What do you mean by "in essence"?

2 A. Well, I -- SFSS -- neither SFSS nor I, at this point,
3 have a formal definition of variant which is used to
4 determine the classification of firearms.

5 So what's in paragraph 23 describes in general
6 terms what a variant is, but I would not want it to be
7 construed as being the definition that SFSS follows.

8 Q. What is the definition that SFSS follows?

9 A. The dictionary definition, as I said earlier.

10 Q. And what's that?

11 A. Well, the Oxford Dictionary definition defines a
12 variant as being a former version of something that
13 differs from another item or a standard.

14 Q. And is it just a more specific way of saying that? To
15 define variant as a firearm that has an unmodified
16 frame or receiver of another firearm, or are those two
17 totally separate things?

18 A. They are different concepts. Because if a firearm had
19 the same frame or receiver as another firearm, it would
20 be the same firearm. It wouldn't be a variant. The
21 concept of that definition is self-contradictory.

22 Q. And so you and the SFSS don't agree with the definition
23 of the term variant that was put forward in Bill C-230,
24 right?

25 A. Well, it's not a question of us agreeing with or

1 disagreeing with it. It was a Private Member's Bill.
2 Had parliament passed it, we would have found a way to
3 implement it.

4 **Q.** It's not what you implement right now; we can agree on
5 that, right?

6 **A.** No. Because that's not what the law says.

7 **Q.** And in your CV, which is Exhibit A to your affidavit,
8 under the section entitled "Scientific Papers and
9 Presentations --" let me know when you have that in
10 front of you.

11 **A.** Yes, I have that.

12 **Q.** Number 29 there says that you presented on firearm
13 variants to the CFAC in May of 2018, right?

14 **A.** Yes, I did.

15 **Q.** And so what did you present to them on at that time?

16 **A.** I presented a PowerPoint presentation, which dealt with
17 the general concept of variant with a number of
18 examples.

19 **Q.** And did it provide any advice or recommendations?

20 **A.** No, I don't believe it did. It was more of an
21 information or education presentation as opposed to
22 advocating any particular course of action.

23 **Q.** Okay. And, sir, another one of the topics that you
24 were asked to provide evidence about is I think what
25 you've described as non-prohibited firearms that are

1 available for hunting and sporting use. That was one
2 of the things you were asked to give evidence on,
3 right?

4 **A.** Well, in my affidavit I speak to the issues of hunting
5 starting at page 70 and sport shooting on para 77, so
6 if that's what you mean, then, yes.

7 **Q.** Well, let's start with paragraph 5 of your affidavit.

8 **A.** Okay.

9 **Q.** And paragraph 5 (d), you've said that one of the things
10 that you were asked to speak about was non-prohibited
11 firearms that are available for hunting and sporting
12 use, right?

13 **A.** Yes. That's paragraph (d) there, yes.

14 **Q.** And that was one of the things you were asked to speak
15 about?

16 **A.** Yes. And that's reflected in the paragraph 70 onwards
17 that I mentioned before.

18 **Q.** Right. And in those paragraphs you've provided your
19 opinion that the newly prohibited firearms under the
20 regulation aren't required or necessary for hunting,
21 right?

22 **A.** Correct. My view in the affidavit is -- especially as
23 indicated in para 74 is that the -- is that the use of
24 the prohibited firearms for hunting before they became
25 prohibited was a choice; not a necessity.

1 Q. Right. And part of how you've explained that logic is
2 that the difference from a hunting point of view
3 between newly restricted firearms and firearms that
4 remain non-restricted is only a matter of seconds, and
5 when you consider the recoil, that decreases the
6 difference even further. That's your view, right?

7 MR. MACKINNON: Which paragraph are you referring
8 to?

9 A. Paragraph 74, I believe.

10 MR. MACKINNON: Okay.

11 A. And, yes, this is simply one example of where, in my
12 view, the tactical style of firearms which were
13 prohibited as a result of the regulations of May 2020
14 don't really offer anything more for hunting than
15 conventional sporting firearms do.

16 Q. MS. WARNER: And those are your personal views?
17 You would agree with me that there's nothing in your CV
18 that exhibits particular qualifications related to
19 expertise in hunting, right?

20 A. I'm not claiming any particular expertise in hunting or
21 management of game animals; however, I do have
22 expertise in terms of firearms, their operating
23 mechanisms, and the kinds of uses which firearms are
24 put to, which touches on the use of them for hunting.
25 So I feel confident speaking to this issue.

1 Q. Did you review the Regulatory Impact Analysis Statement
2 that went out with the May 2020 regulation?

3 A. If you're asking me if I saw it, yes, I did.

4 Q. Did you see it before it was published?

5 A. Yes. I had input into it.

6 Q. Okay. There's a section in that statement that talks
7 about -- well, I'll just read it to you: (as read)

8 "There is a risk that affected firearms
9 owners may elect to replace their
10 firearms with models unaffected by the
11 ban, causing a market displacement.

12 This risk may be mitigated by adding
13 additional makes and models to the list
14 of prohibited firearms in the future."

15 Are you aware of that part of the impact statement?

16 A. Yes. I recall seeing that in the final published
17 version.

18 Q. And so are you aware of any criteria that a hunter
19 could rely on to know which non-restricted firearms
20 they could buy as a replacement and not have to worry
21 about being prohibited in the future?

22 A. Yes. I think if a hunter were to review the RIAS in
23 total, they would see that the approach taken by the
24 Governor in Council is to regulate derivatives of
25 military and paramilitary firearms.

1 So a reasonably logical conclusion that would flow
2 from that would be that if an individual were to
3 purchase conventional sporting firearms or conventional
4 hunting firearms for hunting, they're less likely to be
5 touched by future regulations the governing council
6 might choose to make. But I can't say with any
7 certainty what future governor or councils will do.

8 They're -- they hold the authority to prohibit
9 firearms, and I'm not in a position to influence them
10 on that.

11 **Q.** And then you've also touched on a separate topic of
12 what I'll call sport shooting starting at paragraph, I
13 think maybe, 77 of your affidavit. And, again, on this
14 topic, you're not putting yourself forward as an expert
15 in, for example, the type of training that law
16 enforcement or military members would need to be
17 proficient in marksmanship, right?

18 **A.** No. I'm not claiming to be an expert in police
19 training or military training, although I do have
20 personal knowledge of both. I have participated in
21 police training and military training, and I have
22 delivered training to police officers and to the
23 military over the years.

24 So while I would not say that I am an expert in
25 all aspects of police or military training, I certainly

1 do have considerable experience with it.

2 **Q.** Your experience in the military that I see in your CV
3 was up until 1977, right?

4 **A.** That's correct.

5 **Q.** Okay. And I took it from your affidavit that you
6 understand that the organization known as the DCRA was
7 created through an act of parliament with a specific
8 purpose. You understand that, right?

9 **A.** Yes. It was created at the turn of the previous
10 century by --

11 **Q.** Yes.

12 **A.** -- parliament.

13 **Q.** Yeah. And in your affidavit at paragraph 82, you've
14 provided your understanding that the regulation will
15 impact what we call the service rifle competition,
16 right?

17 **A.** I believe that's para 83, but, yes.

18 **Q.** Okay. Thank you for that.

19 And that is your view? You do understand that the
20 regulation will impact that particular competition,
21 right?

22 **A.** Well, it will impact civilian participation in that
23 activity. Military and police, when acting within the
24 scope of their duties, are permitted to possess
25 prohibited firearms, so they would be unaffected.

1 Q. Right. And so that's the second part of the opinion
2 that you have provided, is that -- you've said that
3 members of the military won't be affected, and then you
4 say because they have prescribed training programs,
5 right?

6 A. Well, not only that, but also the military is an
7 organization which is permitted to possess prohibited
8 firearms by law, so they're not subject to any of the
9 prohibitions that would occur from time to time in
10 changes to the Criminal Code itself or changes to the
11 regulations pursuant to the Criminal Code.

12 So the military can have just about any kind of
13 firearm or weapon that they want, and the police,
14 likewise, understood the law as it exists now.

15 Q. Right. I understand that. The reason why the service
16 rifle competition will be impacted is because that's a
17 civilian competition, right?

18 A. Yes. It's the civilian element of that sort of
19 competition which is impacted because the kinds of
20 firearms that are commonly used at present for that
21 competition are now prohibited.

22 Q. Right. And just, generally, you would understand the
23 common sense principle that there's a relationship
24 between proficiency in marksmanship and the training
25 received by members of the military and law

1 enforcement, right?

2 **A.** Yes. There is a link between training and performance,
3 if that's what you're asking me.

4 **Q.** Right. And so you understand that members of the
5 military and law enforcement participate in civilian
6 shooting competitions, right?

7 **A.** They have in the past. There's nothing that I'm aware
8 of that prevents a member of the military or a member
9 of a police department to participate in a civilian
10 competition as an off-duty civilian.

11 So, you know, it's possible that either the
12 military or certain police departments may have a
13 policy on what their staff can do after hours, but I'm
14 not aware of any impediment for professional users of
15 firearms such as the military and police to also have a
16 secondary use as a civilian participant on their spare
17 time.

18 **Q.** Right. And, in fact, they would do that, potentially,
19 because they're interested and to increase their
20 proficiency, right?

21 **A.** Well, they might choose to do it for that reason. They
22 might choose to do it simply because it's fun. I don't
23 know what the motivation of all those shooters are.

24 **Q.** Right. And are you aware that the civilian part of the
25 service rifle competition proceeds in advance of the

1 military part of the small arms competition?

2 **A.** My understanding is that's been the practice for -- in
3 the recent decade or so. I can't say with certainty
4 that that occurred throughout the entire history of the
5 DCRA because that goes back over 100 years.

6 **Q.** And so you have some awareness of these things, and
7 you've purported to give some evidence about the DCRA.
8 So do you have the understanding that that order of
9 things is to allow members of the military to hone
10 their skills in advance of their own competition?

11 **A.** Well, they might well choose to do that, but I don't
12 believe it's an essential component to participate as a
13 member of the military in the military competition.

14 Individuals might choose to get additional
15 practice or experience by shooting as a civilian in the
16 DCRA competition in advance of that. I can see where
17 an individual would choose to do that.

18 **Q.** Right. And you're using words like "might," and so I
19 take it from that that you don't know one way or the
20 other. You're providing your educated guess on that?

21 **A.** No. I'm not meaning it in that sense. What I'm
22 meaning is that the -- both police departments and the
23 military are, in general, very capable institutions who
24 have established training programs for their personnel.
25 And it's my view that if the military decided that DCRA

1 shooting was an essential ingredient of military
2 training, then they would have everyone do it; not just
3 those who choose to do so.

4 **Q.** And, sir, you're not an expert in military marksmanship
5 training, right?

6 **A.** No.

7 **Q.** Are you aware of the fact that the military and law
8 enforcement organizations retain civilian organizations
9 to assist them develop their training programs or
10 execute those training programs?

11 **MR. MACKINNON:** Just a second. Again, you're
12 putting a fact to him, an assumption in a question
13 that's not proven. Do you have a statement to that
14 effect somewhere in an affidavit or a statement
15 somewhere?

16 **Q.** **MS. WARNER:** Are you aware of whether the
17 military or law enforcement organizations retain
18 private civilian training organizations to either
19 develop their training programs or execute those
20 training programs?

21 **A.** I'm not aware of any specific instances, but both
22 police departments and the military contract out for a
23 wide range of services, and I would not be surprised if
24 training were a part of it.

25 **MS. WARNER:** Okay. So can we just go off for a

1 moment.

2 (DISCUSSION OFF THE RECORD)

3 MR. BOUCHELEV QUESTIONS THE WITNESS:

4 **Q.** Mr. Smith, my name is Arkadi Bouchelev. I am counsel
5 for the applicants in the T-677-20 matter, and I will
6 be taking over this cross-examination at this point.
7 And I just want to remind you that you are still under
8 oath. Do you understand that?

9 **A.** Yes, I do.

10 **Q.** Okay. Thank you. So I would like to begin just by
11 asking you a few clarifications regarding your
12 background.

13 So you mentioned in your report that you were a
14 consultant, and I think you clarified it today by
15 saying that you are a temporary employee. What does
16 that job entail as a temporary employee? What are your
17 obligations and duties?

18 **A.** My obligations include continuing to provide advice to
19 RCMP management and public safety, to provide a
20 transfer of history and knowledge to the incoming
21 manager of the Firearms Reference Table, to provide
22 training to the SFSS staff, and, in general, provide my
23 expertise wherever the Firearms Program wishes to bring
24 it to bear.

25 **Q.** And does that include continuing to assist the RCMP

1 with classification decisions?

2 **A.** No. The classification decisions are no longer mine to
3 make, or classification determinations. Pardon me.
4 They're not decisions. They're determinations.

5 The -- my role could be to provide advice that
6 would lead to a classification determination, but the
7 responsibility for making those determinations now lies
8 with the new manager for the Firearms Reference Table.

9 **Q.** But you could be asked to assist that new manager,
10 correct?

11 **A.** I could be asked just about any question relating to my
12 expertise.

13 **Q.** And would you agree with me that the nature of your job
14 has not changed much since May? You have a different
15 title. You are not a manager. You're a temporary
16 employee, but, essentially, you are doing the same kind
17 of work?

18 **A.** From looking at a technical perspective, it's very
19 similar work; however, I do not have the managerial
20 responsibilities of managing a team of 30 plus
21 individuals with what all of that entails. I also
22 don't have the same corporate responsibilities as a
23 manager within the RCMP. My role, now, is simply and
24 purely technical in nature.

25 **Q.** Okay. I understand that, thank you.

1 Now, you also mentioned that as a temporary
2 employee you receive a salary. Are you being paid
3 separately by anyone? And by "anyone," I really mean
4 the government, for the work you are doing in
5 connection with this report and this cross-examination,
6 or are you doing that as part of your job as a
7 temporary employee?

8 **A.** I'm doing it as part of my job as a temporary employee.
9 I'm performing all the functions I described earlier.
10 The mix of duties varies from one week to the next, but
11 they're all intermingled.

12 **Q.** Okay. So just to be clear, you are not being paid
13 separately to do this report, correct?

14 **A.** No.

15 **Q.** Okay. What was your involvement in the creation of the
16 regulation? And I want to start as an open-ended
17 question to give you an opportunity to express in your
18 own words. When I say "regulation," I'm talking about
19 the most recent regulation that was passed on May 1st,
20 2020.

21 **A.** Well, as I said earlier, I had input, but to go into
22 any depth beyond that touches on cabinet privilege, I
23 believe.

24 **Q.** Well, I understand that there is a claim with respect
25 to cabinet privilege, and I'm not asking you to, for

1 example, you know, tell me what your communications
2 were with members of the cabinet. I'm just asking you
3 for your general involvement. What were your
4 responsibilities or activities in connection with this
5 regulation?

6 MR. MACKINNON: He can't go into that information
7 because it relates to submissions to cabinet.

8 MR. BOUCHELEV: I'm sorry, I'm not sure I
9 understand. I'm asking for his general role. What
10 was, in general, his involvement?

11 MR. MACKINNON: Well, he did say he had some
12 input, but that's as far as he can go.

13 MR. BOUCHELEV: Yeah. But that's not very
14 specific.

15 MR. MACKINNON: That's the nature of,
16 unfortunately, this kind of public interest in unity.
17 So that's as far as he can go, and we've confirmed
18 that with our colleagues who are responsible for those
19 privileges.

20 MR. BOUCHELEV: Okay. Well, I understand it's an
21 objection.

22 OBJECTION TAKEN to answering the question: What were your
23 responsibilities or activities in connection with this
24 regulation?

25 Q. MR. BOUCHELEV: Let me ask you a different

1 question, then. Was it a substantial involvement, or
2 was it minor?

3 MR. MACKINNON: Again, the nature of the
4 involvement is protected.

5 OBJECTION TAKEN to answering the question: Was it a
6 substantial involvement, or was it minor?

7 Q. MR. BOUCHELEV: Okay. Was that involvement over
8 an extended period of time or just over a short period
9 of time?

10 MR. MACKINNON: The timing of the involvement,
11 that is protected, as well, as part of this. His
12 involvement -- the extent, the timing, the content,
13 that's protected.

14 OBJECTION TAKEN to answering the question: Was that
15 involvement over an extended period of time or just
16 over a short period of time?

17 Q. MR. BOUCHELEV: Now, at the time when you first
18 became involved in the regulation process, did you
19 already have a list of guns that you felt should be
20 banned by this new regulation?

21 MR. MACKINNON: Again, the question relates to --
22 you're asking about a list of guns to be banned.
23 Again, that relates to submissions to cabinet.

24 MR. BOUCHELEV: I don't know. How do you know
25 that? Maybe it wasn't submitted to cabinet.

1 MR. MACKINNON: I know because we've discussed the
2 contours of the questions he can answer with relation
3 to these kinds of questions.

4 OBJECTION TAKEN to answering the question: Now, at the time
5 when you first became involved in the regulation
6 process, did you already have a list of guns that you
7 felt should be banned by this new regulation?

8 Q. MR. BOUCHELEV: Okay. Did you submit any kind of
9 list to the cabinet?

10 MR. MACKINNON: Again, that's protected.

11 OBJECTION TAKEN to answering the question: Did you submit
12 any kind of list to the cabinet?

13 Q. MR. BOUCHELEV: Outside of your involvement in
14 this regulation, did you ever have a list of firearms
15 that you felt should be banned by the government?

16 A. No.

17 Q. So the regulation, it bans -- you call them nine
18 families, so I'll use the same terminology -- the nine
19 families of firearms. So can you tell me how that
20 decision came about? Why were those specific nine
21 families targeted by the regulation?

22 MR. MACKINNON: Again, it's protected by cabinet
23 confidence privilege.

24 OBJECTION TAKEN to answering the question: So the
25 regulation, it bans -- you call them nine families, so

1 I'll use the same terminology -- the nine families of
2 firearms. So can you tell me how that decision came
3 about? Why were those specific nine families targeted
4 by the regulation?

5 **Q.** MR. BOUCHELEV: Now, were you asked to participate
6 in the regulation process, or was it your own
7 suggestion made to the government?

8 **A.** My requirement to provide input to the regulations was
9 part of my duties at the time.

10 **Q.** Okay. Now, I'm going to go into a slightly different
11 area. I just want to focus on your CV. And you may
12 have touched on some of these subjects, but I just
13 wanted to ask you for clarification.

14 So you said that you are not here as an expert on
15 hunting, correct?

16 **A.** I'm not here as a expert on what, sorry?

17 **Q.** On hunting.

18 **A.** On hunting?

19 **Q.** Hunting.

20 **A.** On hunting. No. I do not claim to be an expert in
21 hunting. And when you say "hunting," I take that to
22 mean someone who is an expert in identification of game
23 animals, game management, harvesting of game animals,
24 the means by which hunters pursue the game, wildlife
25 management rules and regulations. And, no, I'm not an

1 expert in any of that; however, where I do claim
2 expertise is in the area of firearms. In particular,
3 their operating characteristics and the kinds of uses
4 that firearms are put too, which -- one of which is
5 hunting.

6 **Q.** Okay. So are you an expert on how particular types of
7 guns are used in the hunting environment?

8 **A.** Yes. I believe I can speak to that issue on the kinds
9 of firearms which are commonly used for hunting.

10 **Q.** And I'm just wondering, looking at your resume, it's
11 not apparent to me what that expertise is based on?

12 **A.** It comes from my 40 plus years of contact with the
13 study of firearms. It's virtually impossible to study
14 firearms technology and its development without, at the
15 same time, looking at the history of how firearms were
16 used and what they were used for.

17 So the two issues travel together, and a study of
18 firearms, to a certain extent, involves a study of the
19 history of the firearms and the applications of the
20 firearms.

21 **Q.** But you are not a hunting instructor, are you?

22 **A.** No, I'm not.

23 **Q.** And you're not a hunter yourself, correct?

24 **A.** Yes. I have hunted a variety of game. I'm not
25 particularly active right today, but, yes, I have done

1 a lot of hunting in my past.

2 **Q.** Okay. Are you an expert in the use of firearms?

3 **A.** The use of firearms for what purpose?

4 **Q.** For any purpose.

5 **A.** Well, as I said earlier, my expertise, I think, extends
6 to knowledge about firearms characteristics, their
7 development, and the kinds of uses they are put to.

8 The reason I ask the question is because being an
9 expert in firearms use is usually interpreted as
10 meaning a use of force specialist in connection with
11 policing and the use of force in policing, and, no, I'm
12 not an expert in that aspect of it.

13 But I am familiar with firearms and the kinds of
14 purposes that various makes and models of firearms are
15 designed for and are typically used for.

16 **Q.** Are you an expert in the use of firearms for
17 competition?

18 **A.** I would view someone who is an expert in competitions
19 to be someone who can operate competitions, design
20 competitions, score competitions, and deal with all of
21 the aspects of hosting a competition, and the training
22 of individuals to compete. And, no, I am not that.

23 However, as I said earlier, my exposure to
24 firearms gives me expertise in the uses to which
25 firearms are put, which competition shooting is but one

1 example.

2 **Q.** Are you a competitive shooter yourself?

3 **A.** Yes, I have.

4 **Q.** When was the last time you participated in a shooting
5 competition?

6 **A.** The last time I participated in a formal shooting
7 competition was when I was with the military reserves,
8 and I believe I make reference to that in my affidavit.
9 And that would be paragraph 79. And it would have been
10 in the 1970s.

11 **Q.** Okay. And other than the shooting that you've done in
12 the 1970s as an army reservist, you do not have any
13 competitive shooting experience, correct?

14 **A.** In formal competitions where there is an official
15 prize, no. But I've been in lots of informal shooting
16 competitions over the years, mainly to do with RCMP and
17 other police departments.

18 **Q.** Are you an expert on legal interpretation?

19 **A.** I'm neither a lawyer nor a judge, so in that sense, no;
20 however, the kind of interpretation I do, which I think
21 you're -- which you're referring to, is primarily
22 technical.

23 So if you look at the determination of the
24 classification of a firearm --

25 **Q.** Sorry. I don't mean to interrupt, but I just wanted to

1 clarify that I'm not talking about technical
2 interpretations. I'm strictly speaking about legal
3 interpretations.

4 So you agree with me that you are not an expert on
5 legal interpretations?

6 **A.** I'm not --

7 MR. MACKINNON: He's not being put forward to
8 answer legal questions. We agree on that.

9 MR. BOUCHELEV: But you agree that he is not an
10 expert on legal interpretation, correct?

11 MR. MACKINNON: He's not -- I think we had a
12 discussion with the other counsel that he's not here to
13 answer legal questions, nor is he a lawyer, so.

14 MR. BOUCHELEV: Well, but that doesn't really
15 answer my question. Do you agree that he is not an
16 expert on legal interpretation?

17 MR. MACKINNON: What specifically are you -- like,
18 this is a very general question, so, no, in a general
19 sense he's not, but have you got a particular question
20 you want to ask him?

21 MR. BOUCHELEV: Well, I'll take him to the
22 particular question.

23 **Q.** But, in general, you agree that you are, like you said,
24 you are not a judge, you are not an lawyer, you are not
25 an expert interpreting laws and regulations, correct?

1 **A.** What I said was I am not an expert in legal
2 determinations in the sense -- in the very general
3 sense that I am neither a lawyer nor a judge or anyone
4 else who would make any manner of legal decision;
5 however, what I do is make technical determinations
6 which have -- which are related to interpretation of
7 the Criminal Code and other Acts, and, in particular,
8 firearms classifications which are published in the
9 Firearms Reference Table.

10 So if you're asking about expertise in that field,
11 then, yes. If you're asking me about whether I'm an
12 expert in the law dealing with, you know, bank robbers
13 and all kinds of other things like that, then, no.

14 So it depends on what you mean.

15 **Q.** Well, I'm a little confused, I have to admit, because
16 you previously testified that the decisions -- that the
17 classification decisions or determinations that are
18 contained in the FRT are not legal in any sense. They
19 are just technical opinions, have no force of law,
20 correct?

21 **A.** They're not binding on anyone. That's correct.

22 **Q.** But they have -- I think the expression that you used
23 is that they have no force of law. They are not legal
24 determinations?

25 **A.** That's correct.

1 Q. Okay. So anything that, you know, the opinions or
2 reports or any information of the FRT, that's not legal
3 information; that's purely technical information,
4 right?

5 A. No, I would disagree with that. The determination of a
6 firearms classification for publication in the Firearms
7 Reference Table requires an analysis of the technical
8 aspects of the firearm and an analysis of the
9 definitions in the Criminal Code to arrive at a proper
10 classification determination.

11 So holding an opinion on the classification of a
12 firearm is legal expertise, in that sense.

13 Q. Okay. And that's the kind of legal analysis that you
14 perform?

15 A. Essentially, yes. Yeah. I'm a specialist in firearms,
16 and the kinds of analyses that I spend virtually all of
17 my time on have to do with the classification of
18 firearms and firearms accessories and components.

19 Q. So when you make a determination, an FRT determination,
20 does it have to be approved by a lawyer before it is
21 posted in the FRT?

22 A. No.

23 Q. Okay. And you mentioned that you have no legal
24 training yourself, correct?

25 A. I have no formal legal training as a lawyer, no.

1 Q. Mr. Smith, are you an expert on mass shootings?

2 A. If by that you mean am I a sociologist who has broad
3 knowledge of the phenomena of mass shootings and why
4 shooters become mass shooters and how victims become
5 victims and all of that -- all those elements, then no.

6 I am familiar with mass shootings only to the
7 extent of keeping track of the kinds of firearms that
8 are typically or commonly used in mass shootings.

9 Q. Have you conducted any scientific studies to determine
10 which guns are used in mass shootings?

11 A. No, I have not published anything in that area.

12 Q. Okay. You haven't conducted any studies, right?

13 A. Well, as I said earlier, I keep track of the kinds of
14 firearms that are involved in mass shootings;
15 particularly those in Canada. So if you wish to
16 consider that to be research, then yes.

17 Q. And so when you say that you keep track, you
18 basically -- and I don't want to put words in your
19 mouth -- but it sounds like you are reading newspaper
20 stories or, you know, watching TV, like, the kind of
21 information that any Canadian can obtain, right?

22 A. Well, some of my information comes from public domain
23 sources, but the firearms program is, indeed, directly
24 involved in the aftermath of mass shootings, and the
25 program, including me, has direct contact with police

1 who are investigating those kinds of shootings to
2 provide them information on firearms and licensing
3 status and registration, and so on, as if affects any
4 particular mass shooting incident.

5 So the -- my involvement is not just reading about
6 articles in the newspaper. It's also about having
7 direct contact with the policing officials who are
8 engaged in investigating or mitigating mass shootings.

9 **Q.** Okay. But, again, I think, just so that we are clear,
10 there is no systematic analysis or study that you
11 engage in to scientifically determine which types of
12 guns are more likely to be used in shootings, correct?
13 It's all based on anecdotal that you collect as a
14 result of every shooting?

15 **A.** I have not done any such study. There are such studies
16 available, but I have not conducted them.

17 **Q.** Okay. Now, at paragraph 6 of your affidavit you say
18 that you served as an expert in hundreds of
19 proceedings, so I just want to explore that.

20 When you say that you served as an expert, what
21 does that mean? Do you mean that you were qualified as
22 an expert witness in hundreds of court cases?

23 **A.** Yes, I mean that I was -- yes, exactly. I was
24 qualified by the Court to give expert evidence.

25 **Q.** Okay. Would you be able to provide me with a list of

1 the cases that you were -- in which you were qualified
2 as an expert witness? Because I was only able to find
3 a handful. I certainly wasn't able to do find
4 hundreds. So do you have a -- do you keep a list of
5 the cases in which you were qualified as an expert?

6 **A.** No. I never kept a list on all of those. The -- I can
7 remember a few anecdotally, but it was my regular duty
8 in the past as a forensic scientist to go to court on
9 then analytical findings that I made in the laboratory,
10 so --

11 **Q.** Okay.

12 **A.** -- it was routine. It was every -- every week I was
13 going to court for many years.

14 **Q.** And did you primarily act in that capacity earlier in
15 your career or in recent years, as well?

16 **A.** I went to court most often as an expert witness earlier
17 in my career because that was my main job. I went less
18 frequently in the latter years of my career because I
19 was tasked with other duties such as management and
20 policy making, and so on. So there simply wasn't the
21 same amount of time available that I could dedicate to
22 going to court.

23 **Q.** Okay. No, that's fair enough.

24 And I take it that in the earlier part of your
25 career, your testimony as an expert witness was related

1 to -- I'm not sure if I'm using the right
2 terminology -- but I guess to ballistics and to
3 forensic situations like shootings and crime and things
4 like that?

5 **A.** Yes. My testimony was related to that. It was also
6 related to firearms classifications.

7 **Q.** Okay. And have you always acted as an expert
8 witness -- in criminal cases, have you always acted as
9 an expert for the Crown, or have you acted as an expert
10 for the defence, as well?

11 **A.** I've been called by the defence on a number of
12 occasions.

13 **Q.** Okay. And have you ever acted as an expert for any
14 non-governmental entity in a civil case?

15 **A.** I have never -- when you say "non-governmental," you
16 mean where the government was not a party to the civil
17 offence or the civil suit?

18 **Q.** No. That the party that asked you to act as an expert
19 witness was not the Canadian government or a branch of
20 the Canadian government or a police force or any -- you
21 know, the Crown or the government, essentially.

22 **A.** Yes, it has happened, but not very often.

23 **Q.** Okay. So would it be fair to say that, primarily, you
24 have given expert evidence in criminal cases where you
25 primarily testified for the Crown and in civil cases

1 where you testified for the government?

2 **A.** The kinds of cases that I testified in were typically
3 ones where I was subpoenaed by the Crown, but when I'm
4 testifying, I'm testifying for the Court; not for the
5 Crown.

6 So to answer the second part of your question, no,
7 I never testified just for the Crown as an advocate,
8 ever. I was always an expert for the Court.

9 **Q.** Yeah. And I'm not saying that you testified as an
10 advocate, but, I mean, you were called by the Crown,
11 right?

12 **A.** It was a mixture. Sometimes the Crown called me
13 because the Crown wanted me there. Sometimes the Crown
14 called me because the defence asked the Crown to have
15 me there.

16 So I'm never entirely sure who is behind the
17 request for me to appear in court. So it is a blend of
18 the Crown and the defence, and --

19 **Q.** Okay. But to go back, I don't think we got a clear
20 answer to this question. So in civil cases, you've
21 given evidence as an expert in civil cases as well,
22 correct?

23 **A.** Yes, I have.

24 **Q.** And did you ever act, and when I say "act," I mean were
25 you ever called as an expert witness by anyone other

1 than the government or a government-related entity?

2 **A.** Yes, I have. And let me explain how that happens.

3 Typically I become involved in the matter because it's
4 a criminal case, and then when a criminal case is
5 concluded, there are sometimes civil cases that relate
6 to the same facts as the criminal case. And I could be
7 called by either party on a civil case which follows
8 the criminal case, if you understand what I'm getting
9 at.

10 **Q.** Yeah, I understand. So the civil cases where you acted
11 as an expert were all related to criminal cases where
12 you also acted as an expert?

13 **A.** Yes.

14 **Q.** Okay. Have you ever, to your knowledge, given evidence
15 that contradicted the position of the Crown or the
16 RCMP?

17 **A.** Yes. It's not uncommon. The police may arrive at a
18 preliminary theory of how a crime took place, and the
19 evidence that I give would contradict that. So that's
20 not uncommon at all. The police typically depend on
21 the forensic evidence to understand what took place in
22 the context of a criminal event.

23 Now, do I actually testify to the contrary of the
24 Crown or the police in court? Not very often. Because
25 usually the Crown, being a responsible agent of the

1 Crown, will adjust their approach so that there's no
2 necessity to testify against the Crown position. So
3 it's fixed before it gets to trial.

4 Q. Now, have you ever acted as an expert witness in a
5 case that involved the RCMP?

6 A. Yes, I have.

7 Q. Was it a civil case or a criminal case?

8 A. Both.

9 Q. Okay. Have you ever given evidence that contradicted
10 the position of the RCMP in those cases?

11 A. I don't recall any specific instances of that, no.

12 Q. Okay. When you became an RCMP officer, you had to take
13 an oath of secrecy, correct?

14 A. Well, let me correct that statement. I'm not an RCMP
15 officer in the sense of a police officer. I was a
16 civilian employee of the RCMP --

17 Q. Okay.

18 A. -- which all the forensic staff were.

19 So I am not and never have been a policeman.

20 Q. Okay. That's fair enough. But as a civilian employee,
21 did you have to take an oath?

22 A. Yes, I did. I took an oath way back in 1977 when I
23 joined the RCMP.

24 Q. Okay.

25 A. It's was a long time ago, but...

1 Q. Okay. And it is -- an oath of secrecy under the RCMP
2 Act is one of the oaths that you would have had to
3 take, correct?

4 A. My recollection is that I had a general oath of office
5 for loyalty to the Crown, and I had a general oath of
6 office under the -- what was then known as the Official
7 Secrets Act, which I think is now the Security
8 Information Act.

9 Q. Okay. Well, I'll read to you what the oath of secrecy
10 under the RCMP Act is today, and you can tell me if
11 it's similar to the one that you had to take back then.
12 It would say that --

13 MR. MACKINNON: Can I ask you to put the document
14 so he can read it.

15 MR. BOUCHELEV: Sure. I mean, do you have access
16 to the internet, Mr. Smith, on your computer?

17 MR. MACKINNON: I don't think so. I don't think
18 his -- could you send it just by chat?

19 MR. BOUCHELEV: I can send the link to it. Would
20 you be able to open it on your computer and show it to
21 him?

22 MR. MACKINNON: Actually, you could do a screen
23 share.

24 MR. BOUCHELEV: Let's see if we can do this
25 quickly.

1 Q. Now, Mr. Smith, what I'm referring to is -- do you see
2 where it says "Oath of Secrecy" on the page that I'm
3 sharing with you?

4 A. Yes. I see both the "Oath of Office" and the "Oath of
5 Secrecy."

6 Q. Okay. So just read the Oath of Secrecy and tell me if
7 that's the type of oath that you had to take back when
8 you became a civilian employee?

9 A. Well, the oath of office I took was taken over 40 years
10 ago, and I'm afraid I can't compare it word for word
11 from memory; that's just not possible.

12 It's generally the same concept, but I don't
13 believe I can really say more than that because it
14 happened so long ago.

15 Q. That's fair enough. But if you read the Oath of
16 Secrecy, it states that: (as read)

17 "I," so and so, "solemnly swear that I
18 will not disclose or make known to any
19 person not legally entitled thereto any
20 knowledge or information obtained by me
21 in the course of my employment with the
22 Royal Canadian Mounted Police."

23 Now, is it your understanding that you are bound by this
24 oath?

25 A. As a contractor?

1 Q. In your current position.

2 A. A temporary employee?

3 Q. As a temporary employee, yeah.

4 A. I didn't take any oath to become a temporary employee,
5 so I might be bound; I might not be bound. I don't
6 know.

7 Q. Before you became a temporary employee, were you bound
8 by this oath?

9 A. Well, I was bound by the code that I swore an oath to
10 in 1977. Now, whether it's the same as this one or
11 not, I can't say with certainty.

12 Q. So if the code is updated, you know, in the course of
13 your employment, you are not bound by the new version?
14 You continue to be bound by the oath you took, you
15 know, a number of years ago?

16 A. Well, that's a legal analysis, and I think we agreed
17 previously I was not an expert in the law.

18 Q. I'm just asking for your understanding. I'm not asking
19 you for an analysis.

20 A. Well, I -- the oath is very simple and straightforward,
21 and I would say that RCMP employees, as a matter of
22 course, would follow that oath.

23 Q. Okay. And would you agree with me that you, both in
24 your capacity as a civilian employee, a full-time
25 employee before May 2020, as well as a temporary

1 employee today, you would not disclose or make known to
2 any person or entity any information obtained in the
3 course of your employment with the RCMP provided that
4 that person or entity is not legally entitled to it?

5 MS. OXAAL: Counsel, you've missed out part of
6 the wording there, the part about not -- "make known to
7 any person not legally entitled thereto." I suggest
8 that the full wording should be put to the witness.

9 MR. BOUCHELEV: Well, actually I did say that
10 part. I just switched it around. But I'll just read
11 it exactly as it appears in the Act.

12 Q. So, Mr. Smith, do you agree that both in your capacity
13 as a manager before May 2020 and in your current
14 capacity as a civilian -- as a temporary employee, you
15 would not disclose or make known to any person not
16 legally entitled thereto any knowledge or information
17 obtained by you in the course of your employment with
18 the RCMP?

19 MR. MACKINNON: Can I just say something first.
20 Again, he has commented, he hasn't sworn this as a
21 temporary employee, he told you. He doesn't know if
22 it's the same as what he did before, but if you're
23 asking if he's bound in some written way as if he has
24 sworn it, I don't see the relevance of this to what
25 we're dealing with in his affidavit or to the

1 injunction. So can you help me there?

2 **Q.** MR. BOUCHELEV: Well, sure, I can help you there.
3 And you are right. My question is, regardless of
4 whether or not this is the oath that he swore,
5 Mr. Smith, do you feel bound by this requirement?

6 MR. MACKINNON: But how is that relevant to what
7 we're dealing with today with the injunction and his
8 affidavit? That's what I'm having difficulty --

9 MR. BOUCHELEV: Well, sure. I mean, Mr. Smith is
10 being presented as an independent expert, and I want --
11 I'm entitled to test, you know, the extent of his
12 independence.

13 MR. MACKINNON: But how does this oath of secrecy
14 figure into -- that's what I'm having a hard time
15 seeing as it relates. I don't understand.

16 MR. BOUCHELEV: Well, I mean, it's a simple
17 question.

18 **Q.** Do you feel that you are -- that you should not
19 disclose any information that you obtained in the
20 course of your employment with the RCMP to any person
21 who is not legally entitled to it?

22 MR. MACKINNON: Okay. There's been no allegation
23 that he's made some unauthorized disclosure. And if
24 you're asking him to ask if he's breached some form of
25 oath --

1 MR. BOUCHELEV: No. That's not what I'm asking at
2 all. I'm not asking him if he has breached his oath or
3 if he has committed any impropriety.

4 I'm asking him if he feels that this oath and this
5 requirement applies to him.

6 MR. MACKINNON: Well, you can ask your
7 understanding, as best you can. I don't really
8 understand the relevance of it.

9 **A.** I would say, as a matter of course, I would not provide
10 protected information to an unauthorized recipient.

11 **Q.** MR. BOUCHELEV: And an unauthorized recipient
12 would be someone who is not legally entitled to that
13 information, right?

14 MR. MACKINNON: Again, the way your questions are
15 framed are framed as if he's breached some obligation,
16 so -- in secrecy. So --

17 MR. BOUCHELEV: Well, no. No, hold on a second.
18 I'm not making that allegation. Those are your words;
19 not mine. I never said that he breached anything.

20 MR. MACKINNON: Well, again, I don't see the
21 relevance of this line of questioning. That's why. If
22 you're not going that way, I don't see how this is at
23 all relevant.

24 MR. BOUCHELEV: Okay. Well, I'll make it as
25 simple as I can.

1 Q. Mr. Smith, do you feel that you are bound by the RCMP
2 "oath of secrecy"? Yes or no?

3 A. I believe that I am bound to the extent that I would
4 not release protected information to anyone who's not
5 entitled to it.

6 Q. Okay. Now, I'm going to ask you some questions about
7 the SFSS, which is at paragraph 9 of your affidavit.

8 Now, can you give me -- I don't need an exact
9 number, but approximately how many technicians work
10 there?

11 A. That changed over the years. In the month that I
12 retired, May of 2020, there were approximately
13 34 technicians who worked there.

14 Q. Okay. And how does that compare historically? Is it
15 less or more than the number of technicians in previous
16 years?

17 A. There were fewer in the past. The organization has
18 grown over time.

19 Q. Okay. And do you know an individual by the name of
20 William Etter, E-T-T-E-R?

21 A. Yes. He was the -- he's the chief technologist who
22 reported directly to me when I was manager of SFSS.

23 Q. Okay. And does he still work for SFSS?

24 A. As far as I know, he does, yes.

25 Q. Okay. Still in that capacity, right?

1 **A.** Still in the same capacity.

2 **Q.** And are you aware of the fact that Mr. Etter has
3 authored a number of reports contained in the FRT?

4 **A.** Yes. He -- one of his duties -- again, this is going
5 back to the days when I was manager of the SFSS. One
6 of Mr. Etter's duties was to oversee the firearms
7 inspection service. And so he would have been involved
8 in the issuance of inspection reports for firearms that
9 were inspected by SFSS.

10 **Q.** Okay. And do you think that Mr. Etter is a competent
11 technician? Is he competent in his job?

12 **A.** Yes.

13 **Q.** Okay. And if Mr. Etter had to write an FRT or an FRT
14 inspection report, before it gets published, did it
15 have to be reviewed by you, or did he have authority to
16 publish it himself?

17 **A.** It depends on the nature of the report. There was --
18 again, going back to my days with SFSS, there was an
19 escalation process. Some determinations could be
20 released by the most junior of technologists. Some
21 determinations could be released by the next
22 supervisory level up, and others by the next level up,
23 which would be Mr. Etter. And some I issued
24 personally. It depended on the nature of the issue and
25 the level of expertise required to formulate an opinion

1 on the subject that was dealt with in any of the
2 reports.

3 **Q.** Okay. So help me understand, then. Was there a
4 particular mechanism, or was there a, sort of, like, a
5 protocol that had to be followed? How would someone
6 know if a particular issue is the type of issue that
7 had to be escalated?

8 **A.** Mr. Etter directly oversaw the inspection service, and
9 so he would make the determination as to what reports
10 could be released under his signature or under one of
11 his junior's signature and which ones he would refer to
12 me.

13 **Q.** Okay. What about people below Mr. Etter on the
14 hierarchy? How did those people decide whether or not
15 classification decisions have to be escalated?

16 **A.** Well, they didn't have to decide because Mr. Etter was
17 the person who oversaw their operations. He was aware
18 of everything that passed through their hands, so he
19 was able to make that decision himself.

20 **Q.** Okay. So let's say a new firearm is introduced to the
21 Canadian market and it is submitted for inspection to
22 the SFSS, and then am I correct in understanding that
23 Mr. Etter would then decide if he can delegate it to
24 one of his juniors, if he has to do it himself, or if
25 he has to escalate it to you?

1 **A.** For those requests that come directly to him, yes.

2 **Q.** Okay. So some requests do not come directly to him?

3 **A.** No. Some requests would come directly to the junior
4 technologists. Again, it depends on the issue.

5 So let me illustrate by example. So if the new
6 FRT record was just a new barrel length, so a new
7 calibre for a firearm that was well-known to us and for
8 which there already was a record in the Firearms
9 Reference Table, that would typically be handled by a
10 junior firearms technologist.

11 But if it involves a more complicated issue, then
12 it gets escalated up to a more senior and more
13 experienced technologist or technicians within the
14 SFSS.

15 **Q.** Okay. And if it is a brand new firearm that has never
16 been available on the Canadian market before, is that
17 something that would have to be, then, escalated to you
18 or not necessarily?

19 **A.** Not necessarily. It depends on how complicated the
20 firearm is and how complicated the analysis of the
21 Criminal Code definitions that pertain to it are.

22 So, again, illustrating by way of example, a
23 firearm which is an ordinary sporting bolt action rifle
24 would probably be evaluated by a more junior
25 technologist than, for instance, a new tactical firearm

1 that is a direct derivative of a fully automatic
2 firearm.

3 **Q.** Okay. And so would it be fair to say that the people
4 on the junior level, they have some amount of
5 discretion? They make the decision whether or not a
6 particular rifle is a typical hunting rifle or if it's
7 something that has to be escalated, right?

8 **A.** Well, they will escalate a determination if they -- if
9 it falls within a more complex determination. So it
10 doesn't matter so much the kind of firearm. I used
11 some examples to illustrate, but it doesn't matter so
12 much on the kind of firearm but rather on how
13 complicated is the analysis, based on the parameters in
14 part 3 of the Criminal Code that touch on firearms
15 classification.

16 **Q.** But again, and maybe I'm misunderstanding what you're
17 saying, but it requires a certain level of discretion
18 on the part of the junior employee to decide whether or
19 not it is a more complicated situation that needs
20 escalating, right?

21 **A.** And we do rely on the junior employees to escalate
22 things that they believe are beyond their normal sphere
23 of operations, but we also have supervisors who oversee
24 the work of the junior staff, and they're there to
25 ensure that that happens.

1 So it doesn't just fall to the junior staff to
2 make that determination. The supervisors that are
3 overseeing their work are well aware of their workload
4 and could be relied upon to escalate a determination if
5 they believe it to be beyond the capabilities of the
6 junior technologist.

7 **Q.** Okay. But would it be fair to say that this is a
8 relatively loose structure? That, you know, there
9 is -- it's not like there is a template or a specific
10 protocol. You do rely, to an extent, on discretion by
11 junior employees, by supervisors to make a
12 determination as to whether or not something needs to
13 be escalated, right?

14 **A.** Well, there's no formal written protocol for that
15 because one is not needed. Because the unit that does
16 that is co-located. They all work out of the same
17 building, and it's possible to have oversight of the
18 activities of the junior employees by the senior
19 employees. It's not -- it has been a problem to this
20 point.

21 And then I would further say that even if a junior
22 technologist were to make an incorrect decision and it
23 was not observed by his or her supervisor, the normal
24 processes for the Firearms Reference Table is for the
25 person making the initial determination to put that

1 information into the Firearms Reference Table, but it
2 is always and must be viewed by a second independent
3 technologist before the record can be published. So --

4 **Q.** Okay.

5 **A.** -- even if there were a slip up on the part of one
6 junior firearms technologist, there would be another
7 firearms technologist who has to review the work and
8 would likely pick it up.

9 **Q.** And does the work -- before a determination gets
10 published, is the SFSS required to obtain consultation
11 or approval from any other organization or branch of
12 government?

13 **A.** No. Because the firearms that are submitted for
14 inspection by SFSS are submitted voluntarily by the
15 agency that is in possession of them. So there's no
16 need to get permission anywhere else.

17 **Q.** Okay. And the SFSS does not have any staff lawyers,
18 correct?

19 **A.** The SFSS has access to RCMP legal counsel. There is
20 legal counsel that is part of the firearms program,
21 which is shared with all branches of the firearms
22 program.

23 So there isn't any -- there aren't any legal staff
24 that are assigned to SFSS work and only SFSS work, but
25 that said, SFSS does have access to lawyers where and

1 when needed.

2 **Q.** Okay. But approval or review by these lawyers is not
3 necessary for an FRT determination to be published,
4 correct?

5 **A.** No, it's not. Because the most complex portion of an
6 FRT determination is the technical component. In most
7 cases the legal elements are very straightforward and
8 don't require the services of legal counsel.

9 **Q.** Now, I would like to ask you some questions about the
10 FRT and its history. You've given some information at
11 paragraph 12 of your affidavit.

12 Can you tell me how long has the FRT been around?

13 **A.** It was started in 1996.

14 **Q.** Okay. And who started it?

15 **A.** I'm a co-developer of it. And it was -- it was
16 developed by two independent branches of the RCMP from
17 1996 until 2000.

18 Starting in 2000, all of the FRT fell under my
19 oversight, and I directly managed the Firearms
20 Reference Table and its activities from year 2000 to
21 year 2020.

22 **Q.** Okay. And where did the -- back in 1996, back when it
23 was being developed, where did the original information
24 and data come from?

25 **A.** Well, in 1996, when the FRT was commenced, it was

1 empty. It had nothing in it, and we began to build the
2 database. The information came from a variety of
3 sources. The vast majority of it through open source
4 publications by firearms manufacturers and
5 distributors.

6 **Q.** Okay. And can you personally make changes, amendments,
7 delete entries in the FRT?

8 **A.** Additions are routinely made to FRT entries because
9 manufacturers add new barrels, new calibres, and other
10 features to existing firearms, and the FRT record is
11 grown accordingly. So it's quite common for
12 information to be added.

13 Information is rarely deleted because, even if a
14 firearm is no longer manufactured, it's still in
15 circulation, and it still requires an FRT record.
16 Typical occurrences that result in information to be
17 deleted would be, for example, if we discover that
18 there are two records for the same firearm due to a --

19 **Q.** I'm sorry. I don't mean to cut you off, but I think my
20 question was more about you personally. Do you have
21 access? Are you able to make changes, additions,
22 deletions yourself?

23 **A.** Technically I had access, but I never directly accessed
24 the Firearms Reference Table. I didn't build records.
25 I didn't manage -- change the information in the FRT.

1 Q. Who did that?

2 A. I had a login, but I used it only for read-only
3 purposes.

4 Q. Okay. And who made the changes, the additions, the
5 deletions and so on?

6 A. The technologists who worked for me made all the
7 changes.

8 Q. Okay. Is there any kind of a protocol where you --
9 well, I guess the question is can anyone with access
10 to -- with a login to the FRT basically go in and make
11 a change to an FRT entry?

12 A. No. The read/write access control to the FRT is
13 managed by the database administrator in the FRT -- in
14 SFSS, and only those individuals who are qualified to
15 make entries will be given a right status or right
16 permissions to make changes to the FRT.

17 There are thousands of people, though, who have
18 access on a read-only basis.

19 Q. Okay. And I'm talking about the individuals within the
20 RCMP itself, within the SFSS. Does everyone who works
21 at the SFSS have read and write access?

22 A. No, not everyone.

23 Q. Okay. And who has the ability to make changes?

24 A. The firearms technologists who have had training in the
25 classification of firearms and the protocols for

1 populating the Firearms Reference Table would be
2 permitted to make entries. We refer to them in house,
3 in-house shorthand for them is system editors.

4 When a -- if a technologist is a system editor,
5 then they're allowed to edit or create information in
6 the Firearms Reference Table; nobody else is.

7 **Q.** Okay. And how many, approximately, of such people do
8 you currently have at the SFSS?

9 **A.** At the present time there would be around 30.

10 **Q.** Okay. So almost everyone who works there?

11 **A.** Yes.

12 **Q.** Okay. Now, can you look at -- I'm referring to your
13 paragraph. I'm looking at Exhibit -- sorry, at your
14 affidavit. Exhibit C to your affidavit.

15 **A.** Yes, that's the notices.

16 **Q.** Yeah. That's the notices.

17 And, now, do you agree with me that this notice
18 does not contain any definition of the term variant?

19 **A.** No, it does not.

20 **Q.** Okay. It does say, however, that the government
21 intends to implement the buyback program, correct?

22 **A.** Well, let me view the document and see. Yes. It does
23 say in paragraph 2 in the top right of page 1 that the
24 government is looking at implementing a buyback
25 program.

1 Q. Okay. Just give me one second.

2 And, I'm sorry, where are you referring to? That
3 it says that the government --

4 A. So I'm looking at Exhibit C in my affidavit.

5 Q. Okay.

6 A. And when you open it to see the two pages of notice, if
7 you look at the left-hand page, top right corner,
8 there's a box entitled, "What this means for you."

9 Q. Right.

10 A. And paragraph 21 of that talks about the government's
11 intentions with respect to a buyback program.

12 Q. Right. So it doesn't say that the government is
13 looking into it. It says the government intends to
14 implement a buyback, correct?

15 A. That's what the document says, yes.

16 Q. And you assisted with the preparation of this document,
17 correct?

18 A. Yes, I did.

19 Q. So how do you know that the government intends to
20 implement a buyback program?

21 A. Because the Minister made announcements publicly to
22 that effect.

23 Q. Okay. So you're saying that the Minister has made a
24 commitment to implement the buyback?

25 A. I can't commit the Minister. What I'm saying is that

1 I've seen on the news the Minister speaking to the
2 issue of buyback and saying he intends to do a buyback
3 or is looking into it or something of that nature.

4 We would -- we would probably have received
5 information from Public Safety to the same effect, as
6 well. I don't recall specifically.

7 **Q.** And you're talking about Mr. Blair, correct?

8 **A.** I'm talking about the intention to operate a buyback
9 program.

10 **Q.** No. But when you say "Minister," you mean Minister of
11 Public Safety, Mr. Blair?

12 **A.** I mean -- yes. I mean the Minister of Public Safety.
13 Yes.

14 **Q.** Okay.

15 **A.** Who is currently Mr. Blair.

16 **Q.** Okay. Do you recall if that's something that he
17 specifically told you?

18 **A.** He didn't specifically tell me in a private audience,
19 but the Minister is -- has been quoted on the news
20 regularly. I've seen video on the news of him saying
21 that, so I'm -- I don't -- I can't say that he will
22 faithfully follow through with that. I don't know.

23 The government could change its intention at any
24 time; that's not my area of responsibility, and I can't
25 speak for what the government intends to do or not

1 intends to do.

2 **Q.** Well, but, in effect, that's what you're doing in this
3 document. You're speaking for the government. You're
4 saying that it intends to implement the buyback.

5 So would you agree with me that someone reading
6 this would conclude that there will, in fact, be a
7 buyback?

8 **A.** The firearms program was informed that the government
9 intended to implement a buyback program at the time
10 that document was prepared.

11 **Q.** Okay. And by informed, you mean you saw it on TV,
12 correct?

13 **A.** I'm sorry. Please say that again.

14 **Q.** When you say that you were informed, it means you saw
15 the Minister give an interview on TV and mention
16 something about the buyback?

17 **A.** We saw the Minister, or we were informed by Public
18 Safety. It's long enough ago that I don't recall
19 exactly how we came in possession of that information.

20 **Q.** Can you look at paragraph 23 of your affidavit.

21 **A.** Now, paragraph 23 defines a variant as a: (as read)
22 "Firearm whose design was derived from
23 an original firearm (head of family)."

24 Now, where did you get this definition?

25 **MR. MACKINNON:** Mr. Bouchelev, he's already

1 answered questions, several questions on this already,
2 so the whole idea of having three different parties
3 continue the examination is to not repeat the same
4 question. So that question has been asked and answered
5 several times.

6 MR. BOUCHELEV: No. I don't think that particular
7 question has been asked and answered. There may have
8 been some questions relating to the same area, but not
9 this particular question.

10 So my question.

11 MR. MACKINNON: Well, ask it specifically again.

12 Q. MR. BOUCHELEV: Sure. Where did this definition
13 come from?

14 MS. OXAAL: He was asked previously about this
15 as a definition and gave an answer explaining this
16 paragraph and that it was not provided as a definition.
17 It has been asked already and answered.

18 MR. BOUCHELEV: I'm sorry, I didn't hear the last
19 part of what you said.

20 MS. OXAAL: He was asked before by Ms. Warner
21 about paragraph 23 as a definition. He gave an answer
22 in which he indicated that paragraph 23 was not
23 providing a definition.

24 MR. BOUCHELEV: Okay.

25 MS. OXAAL: The question you're asking has

1 been asked and answered already.

2 MR. BOUCHELEV: Well, my recollection is that --
3 okay.

4 **Q.** So if this is not a definition, then I believe your
5 evidence was that the definition that the RCMP uses is
6 the one that's in the Oxford Dictionary, correct?

7 **A.** That's correct.

8 **Q.** Which version of the Oxford Dictionary? Canadian
9 Oxford Dictionary? English Oxford Dictionary?

10 **A.** I don't recall specifically the exact version. It was
11 an online version of the dictionary, which I believe
12 comes straight from Oxford, and it defines a variant as
13 being --

14 MR. MACKINNON: You already gave what you
15 remembered it saying, so --

16 **A.** Okay.

17 MR. MACKINNON: Mr. Bouchelev, it's now 4:00, and
18 we said we would break for the day at 4. Do you have
19 one or two other questions?

20 MR. BOUCHELEV: Well, Mr. MacKinnon, I want to
21 remind you that we've lost a lot of time today due to
22 some technical issues on your end and not being able to
23 open documents and so forth. We've lost at least half
24 an hour, if not more. And it's only 4:00 now, and it's
25 my intention to continue this cross-examination until

1 5.

2 Now, if you decide to leave, I mean, we'll have to
3 deal with that, but that may require an additional day
4 of attendance on the part of Mr. Murray, which I'm not
5 sure if that's something that he wants to do.

6 My preference would be to just continue until 5:00
7 and try to get as much done today as possible.

8 MR. MACKINNON: Well, I'll respond to that.

9 First off, the technical issues weren't at our
10 end. They were because of 570 megabytes of documents
11 that were sent to us at about 3:00 yesterday, which
12 were almost impossible to open for a while. Even the
13 counsel who sent them acknowledged that they,
14 themselves, were having difficulty. Today they had to
15 figure out a way of putting those documents to the
16 witness, and that was the cause. So I take issue with
17 that comment.

18 Secondly, we've made it clear for at least a
19 couple of weeks now and even a few days ago that we
20 would break at 4, and the reason being that it's a
21 tiring process. He's had to drive more than an hour
22 here. He's 68 years old. I'm tired after six hours of
23 spending here, and it's more so straining doing it by
24 video. He's given his full attention to all of the
25 questions asked. He's -- I can see he's visibly tired,

1 and I would like him alert to answer any proper
2 questions.

3 So you're going to continue this tomorrow. We
4 don't agree on any other days. We've had this time
5 lined up for a while. So you can -- I would have
6 objected to a lot of irrelevant questions that you
7 asked, but if that's how you want to spend your time,
8 that's fine. I would suggest focusing in on what is
9 truly important for that case, but that's up to you as
10 to choose what to ask, but we're going to leave --

11 MR. BOUCHELEV: Well --

12 MR. MACKINNON: -- so --

13 MR. BOUCHELEV: -- Counsel, just a second. Just a
14 second. So you are leaving over our objections. I
15 also note that Mr. Murray did not indicate that he's
16 tired; in fact, you've made that decision for him, it
17 seems, even before today. And what you are trying to
18 do is you are trying to limit the amount of time that
19 three counsel have for cross-examinations on a very
20 lengthy affidavit.

21 And at no point was it agreed by the parties that
22 the examination would end at 4. At no point did the
23 Court make any ruling saying that the examination dates
24 should be truncated. The standard practice is to go 10
25 to 5, and you want to leave early. You are leaving

1 over our objections, and we may have no other choice
2 but to request additional days of cross-examination.
3 If you refuse, then we may have to, you know, go to
4 court to deal with that.

5 But I will not allow my clients' interests to be
6 prejudiced by you artificially limiting this
7 cross-examination by you spending half an hour figuring
8 out how to download a single file, which I can download
9 on my computer in about 30 seconds.

10 And, Counsel, I think it's quite inappropriate
11 what you are doing, but we'll have to deal with that.

12 Now, I would like to continue --

13 MR. MACKINNON: No. I'm going to respond to what
14 you just put on the record.

15 MR. BOUCHELEV: No, you don't need to respond --

16 MR. MACKINNON: Allow me to speak, sir.

17 Because what you've said, again, about tech
18 issues, you, yourself, couldn't figure how to put a
19 document to this witness, so we had to figure --

20 MR. BOUCHELEV: Except I figured it out in about
21 15 seconds. I didn't need half an hour to figure out
22 how to do that.

23 MR. MACKINNON: All right. But that was from the
24 other counsel.

25 So what I am saying is this witness has been here

1 for more than six hours. You had plenty of notice that
2 this was the time period that was set. We both -- all
3 counsel have to come to some arrangements, and if
4 they're too far apart -- my interest is to preserve
5 the, at least, the witness's capability of focusing
6 properly on questions without being too tired. I can
7 ask him now.

8 How do you feel?

9 **A.** I'm feeling some eye strain now because I'm working
10 with a very small laptop and a very small image on
11 that.

12 MR. MACKINNON: And he's been here since about 9
13 this morning having driven more than an hour to get
14 here. He's got to drive more than an hour back. We
15 have another day to go through. We're not --

16 MR. BOUCHELEV: This examination started at 10:00,
17 Mr. MacKinnon; not at 9.

18 MR. MACKINNON: I said he's here at 9. I'm just
19 telling you what his day is like.

20 So it's not standard practice to go to 5 p.m. I
21 can tell you that --

22 MR. BOUCHELEV: I disagree with that.

23 MR. MACKINNON: -- and even going to 4 or 4:30 in
24 a normal setting with other counsel around; that's
25 trying. It's even doubly more so sitting in a room,

1 looking at screens all day, and maintaining focus.

2 So we're happy to --

3 MR. BOUCHELEV: We'll need another day. We are
4 going to need another day, I'm afraid.

5 MR. MACKINNON: Well, we've had this notice for
6 weeks now, and we will --

7 MR. BOUCHELEV: What do you mean by notice?
8 What's notice? We never agreed to limit the
9 examination to end at 4:00. You keep calling it
10 notice, but it's a unilateral decision on your part.
11 No one has ever agreed to it.

12 MR. MACKINNON: So far I thought most of the
13 counsel around the table have agreed on many things,
14 including how to.

15 MR. BOUCHELEV: We --

16 MR. MACKINNON: Wait, can I just finish -- having
17 to conduct ourselves, allowing you time for your --
18 whatever you're doing tomorrow, your hour break, so
19 we'll accommodate that, too.

20 Everybody has to make some accommodations here.
21 You know, yesterday we had to make accommodations for
22 another counsel, understandably --

23 MR. BOUCHELEV: Yeah. But, Counsel, not at the
24 expense of my client's right to conduct a fulsome
25 cross-examination on a very lengthy affidavit. The

1 examination time that I have to share with other
2 counsel. And we -- normally, if we didn't -- we
3 actually did a big favour to you by agreeing to do one
4 examination instead of three separate examinations,
5 which we could have done.

6 And I think what you're doing is you are abusing
7 the accommodation that applicants' counsel has extended
8 to you, and you are not being accommodating at all. In
9 fact, you are making this unnecessarily difficult.

10 And we could have been asking and answering
11 questions right now instead of arguing, and we could
12 have gone until 4:30, 5:00 without issue. We had a
13 long lunch hour break. We had two other breaks.

14 But, hey, you know, if that's your strategy,
15 that's fine. We'll just have to --

16 MR. MACKINNON: We don't --

17 MR. BOUCHELEV: I'm just telling you, we'll have
18 to go to court, and we'll have to --

19 MR. MACKINNON: We didn't have a long lunch hour.

20 We had a normal lunch hour that everybody agreed to.

21 And --

22 MR. BOUCHELEV: One hour.

23 MR. MACKINNON: Yeah. That's fine.

24 All I can say is that, you know, we've had to make
25 accommodations for you and your clients. And even

1 extending a cross-examination for next Thursday.

2 So we all have to make some accommodations. My
3 concern is with this witness. He's visibly tired and
4 he's got a long ways still to go home. He's going to
5 be back tomorrow to answer more questions.

6 So if you want to look closely at the questions
7 you need to ask -- this is a preliminary motion, an
8 injunction. This is not the hearing on the merits.
9 And I would ask you to keep that in mind. There will
10 likely be another opportunity to ask this witness in
11 the main proceeding.

12 MR. BOUCHELEV: Right. And I think to -- I don't
13 know if you've explored this possibility with
14 Mr. Smith, but we're entirely happy to have him give
15 this evidence from his home. He doesn't have to drive
16 to your office. As long as he has an internet
17 connection at home, he can connect to Zoom. He can
18 save himself two hours of time. That is something
19 that's perfectly fine with us.

20 MR. MACKINNON: There's issues of connectivity as
21 I've mentioned in one of my emails. He's not set up in
22 the same way.

23 So it's more efficient, clearly, to have him here
24 to do it. So we're trying to be as efficient as we
25 can.

1 So we will see you tomorrow at 10 a.m.

2 MR. BOUCHELEV: Okay. And we will be just --
3 again, in case my position is not clear, this
4 examination is being terminated over my objections.

5 MS. GENEROUX: Mine as well.

6 MS. WARNER: This is Ms. Warner. I just wanted
7 to confirm that when you say 10 tomorrow, that's
8 10 EST, so it will be 8 MST.

9 And the other thing is I just wanted to record my
10 request that you make arrangements to provide the
11 witness with a larger screen for his viewing, please.

12 MR. MACKINNON: We'll do what we can before
13 tomorrow. Our office is empty right now. We'll do
14 what we can.

15 MS. WARNER: Great. Thank you, Counsel.

16 (DISCUSSION OFF THE RECORD)

17 MR. BOUCHELEV: Mr. Smith, you are not allowed to
18 discuss your cross-examination with your counsel
19 because your cross-examination has not been completed
20 yet. I don't know if Mr. MacKinnon has advised you of
21 that.

22 MR. MACKINNON: He knows. I told him.

23 MR. BOUCHELEV: Okay. Good.

24

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(Proceedings ended at 2:10 p.m. MT)

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 to 174 are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

I further certify that this questioning was conducted in accordance with the Alberta Protocol for Remote Questioning, Revised 05/05/2020.

Dated at the City of Calgary, Province of Alberta, this 3rd day of November, 2020.



Melinda M. Heinrichs, CSR(A)
Official Court Reporter

1 - I N D E X -

2 MURRAY SMITH

3 October 29, 2020

4 The following is a listing of exhibits, undertakings and
5 objections as interpreted by the Court Reporter.

6 The transcript is the official record, and the index is
7 provided as a courtesy only. It is recommended that the
8 reader refer to the appropriate transcript pages to ensure
9 completeness and accuracy.

10
11 ***EXHIBITS***

12 EXHIBIT A FOR IDENTIFICATION - Tab 5 Document 54

13 titled "What You Need to Know About the Government
14 of Canada's New Prohibition on Certain Firearms
15 and Devices" with "Important Notice" at the top

16
17 EXHIBIT B FOR IDENTIFICATION - Tab 35 Document 63

18 titled "What You Need to Know About the Government
19 of Canada's New Prohibition on Certain Firearms
20 and Devices" dated May 1, 2020 at the top

21
22 EXHIBIT 1 - Tab 10 Firearms Reference Table 85

1	EXHIBIT C FOR IDENTIFICATION - Tab 31 document	112
2	titled "Evidence - REGS"	
3		
4	***UNDERTAKINGS REQUESTED***	
5	UNDERTAKING NO. 1 - To provide a copy of the	16
6	initial template affidavit given to Mr. Smith by	
7	counsel - REFUSED	
8		
9	UNDERTAKING NO. 2 - To provide a list of the	18
10	information and a description of the facts and	
11	assumptions relied upon by Mr. Smith - REFUSED	
12		
13	UNDERTAKING NO. 3 - To provide information on	64
14	whether there were letters sent in respect of	
15	unnamed variants that were previously restricted -	
16	REFUSED	
17		
18	***OBJECTIONS***	
19	OBJECTION TAKEN to answering the question: My	66
20	question is, when you started your review in	
21	April, as you identified variants, did you	
22	communicate those to the government?	
23		
24		
25		

1 OBJECTION TAKEN to answering the question: So to 67
2 do your work, you would have had to know what the
3 regulation was going to say, of course, right?

4

5 OBJECTION TAKEN to answering the question: And 70
6 between May 1st and the middle of June, your
7 evidence is that the SFSS continued to review the
8 FRT, and you've just said that that was because
9 you couldn't complete that work before the
10 regulation became law on May 1st. And my question
11 is did you make a request to just delay the
12 regulation becoming law so that you could finish
13 that review of the FRT?

14

15 OBJECTION TAKEN to answering the question: Did 101
16 you provide any advice to the government in
17 advance of May 1st about the wording of the AR
18 platform section of the regulation?

19

20 OBJECTION TAKEN to answering the question: Were 101
21 you aware before May 1st that the language of
22 paragraph 87 would be different?

23

24

25

1	OBJECTION TAKEN to answering the question: And do	106
2	you agree that they should be prohibited?	
3		
4	OBJECTION TAKEN to answering the question: What	128
5	were your responsibilities or activities in	
6	connection with this regulation?	
7		
8	OBJECTION TAKEN to answering the question: Was it	129
9	a substantial involvement, or was it minor?	
10		
11	OBJECTION TAKEN to answering the question: Was	129
12	that involvement over an extended period of time	
13	or just over a short period of time?	
14		
15	OBJECTION TAKEN to answering the question:Now, at	130
16	the time when you first became involved in the	
17	regulation process, did you already have a list of	
18	guns that you felt should be banned by this new	
19	regulation?	
20		
21	OBJECTION TAKEN to answering the question: Did	130
22	you submit any kind of list to the cabinet?	
23		
24		
25		

1 OBJECTION TAKEN to answering the question: So the 130
2 regulation, it bans -- you call them nine
3 families, so I'll use the same terminology -- the
4 nine families of firearms. So can you tell me how
5 that decision came about? Why were those specific
6 nine families targeted by the regulation?

7

8 MR. BOUCHELEV QUESTIONS THE WITNESS 125

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Canadian Coalition for Firearm Rights et al v. Attorney General

Murray Smith - Continued
on Friday, October 30, 2020



700 4 Avenue SW, Suite 220
Calgary, AB T2P 3J4

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Court File No. T-735-20

FEDERAL COURT

BETWEEN:

CHRISTINE GENEROUX

JOHN PEROCCHIO, and

VINCENT R. R. PEROCCHIO

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

Court File Nos. T-577-20 and T-677-20 on page 182

Transcript of Oral Questioning of

MURRAY SMITH (Continued)

On affidavit affirmed October 9, 2020)

Held via videoconferencing

October 30, 2020

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Court File No. T-577-20

FEDERAL COURT

BETWEEN:

CANADIAN COALITION FOR FIREARM RIGHTS, RODNEY GILTACA,
LAURENCE KNOWLES, RYAN STEACY, AND OTHERS

Applicants

and

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

Respondents

Court File No. T-677-20

FEDERAL COURT

BETWEEN:

MICHAEL JOHN DOHERTY, NILS ROBERT EK, RICHARD WILLIAM
ROBERT DELVE, CHRISTIAN RYDICH BRUHN, AND OTHERS

Applicants

and

THE ATTORNEY GENERAL OF CANADA and ROYAL CANADIAN MOUNTED
POLICE

Respondents

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1 (Proceedings commenced at 8:02 a.m. MT)

2 MURRAY SMITH, reaffirmed, questioned by Mr. Bouchelev:

3 **Q.** Now, Mr. Smith, I am going to continue with the
4 questioning that we started yesterday. And I think we
5 left off at -- I was asking you some questions about
6 the definition of the term variant.

7 And you've previously testified that the
8 definition of the term variant contained at
9 paragraph 23 of your affidavit is not actually the
10 definition that is used by the CFP and the SFSS in that
11 the definition that is used is actually the Oxford
12 Dictionary definition, correct?

13 **A.** Yes. The working definition that has been used by SFSS
14 up until now is the ordinary dictionary definition of
15 the word variant. And, correct, the mention of the
16 word variant in paragraph 23 of my affidavit is
17 illustrative of the meaning, but it's not a definition.
18 It's not offered as a definition.

19 **Q.** Okay. And just to clarify, when you say the dictionary
20 definition, as you know there are different
21 dictionaries, and they all have different definitions.

22 So you are specifically referring to the Oxford
23 Dictionary, correct?

24 **A.** Yes. I'm referring to the Oxford Dictionary definition
25 from the online dictionary which refers to a variant as

1 being something that differs form from the original or
2 from a standard.

3 **Q.** Okay. So I think just so that we're clear, I'm going
4 to share a screen with you, and I'll show you the
5 Oxford Dictionary definition, and I just want you to
6 confirm that that is the one that you're talking about.
7 So give me one second and I will share the screen with
8 you.

9 Do you see the Oxford Dictionary on your screen
10 now?

11 **A.** No. That's Oxford Learner's Dictionary. I'm using the
12 Oxford Dictionary. The definition that I mentioned is
13 different.

14 **Q.** Sorry, this is the what dictionary?

15 **A.** If you look at the top of the web page, you'll see that
16 it's the Oxford Learner's Dictionary.

17 **Q.** Okay. So let's see if we can find the Oxford
18 Dictionary here. And you said that this is an online
19 version of the dictionary?

20 **A.** Yes, it is.

21 **Q.** And do you have access to the internet on your
22 computer?

23 **MR. MACKINNON:** No, he doesn't.

24 **A.** No, it does not.

25 **Q.** **MR. BOUCHELEV:** Does your counsel have access to

1 the internet on his computer?

2 MR. MACKINNON: I do.

3 MR. BOUCHELEV: Okay. Would you mind sharing the
4 screen with me and showing me that online Oxford
5 Dictionary definition that Mr. Smith is referring to.

6 MR. MACKINNON: Well, you put the documents to
7 him. We're not here to take undertakings, so --

8 MR. BOUCHELEV: I'm not asking for an undertaking.
9 I'm asking you to do it right now. Because this
10 witness is telling me that there is some online Oxford
11 Dictionary definition that's different from the one
12 that I've just shown him. And I think it's incumbent
13 on you to show me where that is so that there is no
14 confusion and that the Court can understand what
15 Mr. Smith is talking about.

16 MR. MACKINNON: Well, why doesn't he direct you as
17 to where you can go there.

18 **A.** Or perhaps you can try the definition -- or rather the
19 link directly underneath the one that you had selected.
20 So the lexico.com one.

21 **Q.** MR. BOUCHELEV: But that's -- okay. But I don't
22 think that's an Oxford Dictionary, is it? It says that
23 it's powered by Oxford.

24 **A.** Now, the -- type in "variant" there and see what you
25 get.

1 Q. Is says, "A form or version of something that differs
2 in some respect from other forms of the same thing or
3 from a standard."

4 A. Yes, that's the definition.

5 Q. Okay. Now, you will agree with me that that is not a
6 very precise definition?

7 A. It's typical of a dictionary definition in that it's --
8 I believe it to be general in covering fields of study
9 beyond just firearms.

10 Q. Okay.

11 A. So it's very general.

12 Q. Okay. But, you know, when you say -- when the
13 dictionary states that "differs in some respect," what
14 is some respect? How do you quantify some respect?

15 A. I would just take the ordinary meaning of those words.
16 So what it means is that for a firearm to be a variant
17 of another firearm, that it's not an exact copy. That
18 it differs in some fashion or respect from the
19 original.

20 Q. Okay.

21 A. So the underlying concept of variant is that the -- is
22 that the variant -- in this case a variant firearm --
23 is not exactly the same as the original.

24 Q. Okay. Now, you'll agree with me that a 16th century
25 musket differs in some respect from an AK-47?

1 **A.** It's different in many respects.

2 **Q.** Okay. And so then, therefore, a 16th century musket is
3 a variant of an AK-47, correct?

4 **A.** No. The 16th century musket preceded AK-47.

5 **Q.** Okay.

6 **A.** So an object that existed before the firearm in
7 question certainly cannot be a variant of it because it
8 had a life independent of it prior to existence of the
9 point of comparison.

10 So the --

11 **Q.** Sorry. Let me -- I understand what you're saying, but
12 let me just stop you here and ask you where does the
13 Oxford definition that you took me to, where does it
14 say that?

15 **A.** It does not say it in that definition.

16 **Q.** Okay. But that's the definition that the CFP uses,
17 correct?

18 **A.** To the extent that the CFP uses a definition, that's
19 the definition that's used. That's not the sole factor
20 that's relied upon by the CFP, but that definition is
21 used in the formulation of opinions.

22 **Q.** Okay. And, now, so when you say that the CFP uses this
23 Oxford Dictionary definition, do you have -- is that
24 Oxford Dictionary definition contained in the FRT?

25 **A.** That definition is not repeated in the FRT, to my

1 knowledge. I don't believe the FRT defines variant in
2 any way, and further to your question, there is an
3 assumption, I think, in your question that the CFP uses
4 this Oxford Dictionary definition of variant
5 exclusively, and that's not correct.

6 The definition in the dictionary is one of the
7 elements that's relied on, but it's not exclusively so.

8 **Q.** Okay. And is the Oxford Dictionary definition that we
9 are looking at, is it contained anywhere on the RCMP or
10 CFP website?

11 **A.** To my knowledge, no.

12 **Q.** Okay. To your knowledge, has the RCMP ever notified
13 any gun owner in Canada that it uses the Oxford
14 Dictionary definition of variant?

15 **A.** I can't speak for the entire RCMP. There could
16 possibly be someone in the RCMP, an organization of
17 20,000 plus people, who has given advice to someone in
18 the public over the definition of variant. I would
19 have no way of knowing.

20 **Q.** Well, let's narrow it down to SFSS, then. Let's narrow
21 it down. That's fair. So I'm just talking about the
22 SFSS.

23 **A.** To the best of my knowledge, the word variant has never
24 been defined in any communications from SFSS in the way
25 it appears in a dictionary.

1 Q. Okay.

2 A. The word variant, however, has been discussed, and the
3 manner in which it's interpreted has been discussed in
4 various affidavits and other correspondence that deal
5 with the firearms inspected by SFSS.

6 Q. Okay. Does the SFSS have any internal documents or
7 memos or protocols that say, We use the Oxford
8 Dictionary definition of variant?

9 A. I don't believe so, but I can't say exactly -- there is
10 a -- there is a system editor's guide, which speaks to
11 the control over the format of the FRT, but I don't
12 believe it contains the word "variant."

13 Q. Okay. Now, are you aware of any scientific publication
14 or any firearms industry publication that defines the
15 word firearms variant the same way that the Oxford
16 English Dictionary defines variant in general?

17 A. I'm not aware of any definition that any industry body
18 has put forward. I have searched the literature and
19 searched the internet quite extensively looking for
20 definitions of variant, and I could not find any
21 industry body which defines variant in the same way --
22 in the same format as variant will be defined in the
23 dictionary, nor in the way that the Oxford Dictionary
24 defines it.

25 The only way to infer the meaning of the word

1 variant from industry publications is from the examples
2 of where the industry has used it.

3 **Q.** Okay. Now, I'm going to ask you to look at
4 paragraph 25 of your affidavit. And at paragraph 25 --
5 I'll give you a moment to go to it.

6 **A.** I've got paragraph 25 here in front of me.

7 **Q.** Okay. Now, you say at paragraph 25, "The term variant
8 has been used in the regulation since 1992." Which
9 regulations are you referring to?

10 **A.** I'm referring to the Criminal Code regulations. The
11 regulations which were amended by the May 1st Order in
12 Council are the regulations I'm referring to.

13 The current short name for them that we use is the
14 Criminal Code regulations. There is a longer official
15 name, which I don't have in front of me, which is the
16 regulations regarding the prohibition and restriction
17 of firearms and devices, et cetera. I just don't have
18 that full name --

19 **Q.** Are you --

20 **A.** -- with me.

21 **Q.** Are you referring to the 1998 regulation that was
22 amended by the current regulation?

23 **A.** What I'm referring to is what you're referring to in
24 your question, which is the regulation stemming from
25 1992 to the present date.

1 In -- starting in 1998, and using Ms. Warner's
2 language, the 1998 regulations are the ones which use
3 the new name. Prior to 1998, under the old Act, the
4 regulations had the same content but operated under a
5 different name. They were known as Prohibited Weapon
6 Orders in those days.

7 **Q.** Okay. But --

8 **A.** So the name has changed over the years, so there's no
9 single name that applies.

10 **Q.** Okay. But you agree with me that those regulations did
11 not define the term variant?

12 **A.** They did not explicitly define the word variant.

13 **Q.** Okay. And I just wanted to clarify something, your
14 testimony from the other day. You were asked some
15 questions by Ms. Warner about the Private Member's Bill
16 that was introduced, I believe, back in 2016 to define
17 the term variant. And I believe your evidence was you
18 disagreed with the definition proposed in that Private
19 Member's Bill, correct?

20 **A.** I didn't agree or disagree with it. The -- I believe
21 the questions concerned how the definition would
22 operate if it had been -- if it had become law.

23 **Q.** Okay. Were you asked for any input by the government
24 at the time with respect to this Private Member's Bill?

25 **A.** To the best of my knowledge, my recollection, no.

1 Q. Okay.

2 A. The -- it's possible -- well, let me refine that. I
3 can say that I did not contribute to the Private
4 Member's drafting of that Private Member's Bill;
5 however, I may have provided advice to the government
6 on the government response to it.

7 Q. And what was the advice that you provided?

8 A. That's not something I can comment on. That's
9 protected by cabinet privilege.

10 Q. And when you say that you may have provided, is it
11 because you don't remember, or is it because you did
12 provide advice but you cannot go into the substance of
13 that advice?

14 A. Well, it's long enough ago that I cannot be absolutely
15 certain that I provided advice.

16 Q. Okay. But to the best of your recollection, you did?

17 MR. MACKINNON: He's answered that question twice
18 now. He doesn't know.

19 Q. MR. BOUCHELEV: Now, at paragraph 25, you also say
20 that the term variant is a concept well-known to gun
21 owners in Canada. So I just want to understand, how do
22 you know that? Have you conducted a survey of Canadian
23 gun owners to determine if they knew what the term
24 variant means?

25 A. No, I have not conducted any survey.

1 Q. So this is purely speculation on your part, correct?

2 A. No. I would disagree with that. This comes from
3 having had direct personal contact with members of the
4 firearms industry, the manufacturers, the firearms
5 retailers. Having direct contact with individual
6 firearms owners. Also by reading postings to firearms
7 chat rooms, numerous chat rooms, by reading the
8 postings made by the three major firearms owners groups
9 in Canada -- the CCFR, the CSSA, and the NFA -- all
10 lead me to believe that those organizations are very
11 familiar with the term.

12 I would also add that -- you may recall that
13 several years ago there was an e-petition presented to
14 Parliament to de-regulate the AR-15, and that had
15 something like 80,000 or more firearms owners signing
16 it. And that spoke to de-regulating the AR-15 from the
17 regulation.

18 So I think the people who own the kinds of
19 firearms which were dealt with in the May 1st
20 regulations are generally familiar with the concept of
21 variant.

22 Q. Okay. So how many gun owners are there in Canada? Do
23 you know, approximately?

24 A. Well, there are 2.2 million firearms licensees in
25 Canada --

1 Q. Okay.

2 A. -- so that would approximate the number of owners.

3 Q. And how many of them have you personally spoken to on
4 the subject of variants?

5 A. Over the course of 40 years, I have -- or maybe not
6 40 years because the variant term came in 1992 -- but
7 over the course of the last 20-some years, hundreds, if
8 not, thousands. But I didn't keep a count, and I
9 certainly didn't speak to all 2.2 million.

10 Q. Okay. Now, I'm going to ask you some questions about
11 paragraph 28 of your affidavit where you refer to some
12 gun literature.

13 A. Yes. So paragraph 28 in my affidavit speaks to a book
14 called, "AR Platform Firearms & Calibers."

15 Q. Right. So let's look at that. This is Exhibit E to
16 your affidavit. Let's look at that publication.

17 Do you have it in front of you?

18 A. I'm at tab E in my affidavit.

19 Q. Yeah. So, first of all, what is this publication?
20 Where did you get it?

21 A. It's came from the library of SFSS. It was purchased
22 commercially from a book supplier in Canada. I don't
23 order the books. There's a clerk at the SFSS that
24 orders the books, so I don't know exactly what book
25 store it was purchased from.

1 Q. Okay. And is this a Canadian publication?

2 A. No. I believe it's an American publication.

3 Q. Okay. Do you know how many Canadian gun owners are
4 familiar with this publication or have read this
5 publication?

6 A. I have no idea.

7 Q. Okay.

8 A. It's available for sale in Canada. It's available for
9 sale on the internet or -- so I have no idea how many
10 people actually bought one.

11 Q. Okay. And you have no idea whether this is a book that
12 is widely read by Canadian gun owners? You don't have
13 any of that information, right?

14 A. Well, it's published by Shooter's Bible, which is a
15 business that produces a great many firearms books
16 meant for consumption by the general public.

17 It's a brand that is well-known to firearms
18 owners, that are commonly available in book stores and
19 gun shops, and so on. So it is a popular brand, but I
20 cannot say from personal knowledge how widely
21 distributed this book was or how many people purchased
22 it.

23 Q. Mr. Smith, are you suggesting that if I went to a book
24 shop in, let's say, Toronto or Montreal or Vancouver I
25 would find a book like this in a book shop?

1 **A.** You might. This particular edition is the first
2 edition, which I believe is now out of print and
3 replaced with a second edition. But you can find gun
4 books in ordinary book stores.

5 **Q.** I've never seen one, but, anyways, that's beside the
6 point. Okay. So I take your evidence is that you have
7 no idea how many Canadian gun owners are familiar with
8 this book, have read this book.

9 Now, does this book use the same definition of
10 variant that you do or the SFSS does?

11 **A.** I don't believe the book defines variant, so I don't
12 know what definition they use.

13 **Q.** Okay. Now, what I'm trying to understand is what is
14 the relevance of a book published in the United States
15 in the context of the legal definition of variant in
16 Canada?

17 **A.** The book -- the references from the book were there to
18 illustrate the use of variant by the firearms industry.
19 The firearms industry is international. Canadians
20 purchase firearms made all over the world and are very
21 much aware of the various manufacturers in the
22 countries that produce firearms and export them to
23 Canada; US being a significant source of firearms for
24 Canadians.

25 **Q.** But I guess what I'm asking you is that, you know,

1 whatever their opinion about variants is, it has
2 absolutely no legal effect or binding legal effect in
3 Canada, right?

4 **A.** Well, you've changed the nature of the question, now.
5 The conversation began with a discussion on how
6 well-known the term variant was, and as I indicated,
7 the excerpt from that book was put in my affidavit to
8 illustrate that the term variant is used widely in
9 publications; it's used widely by the industry.

10 Now the question you're putting to me is whether
11 or not that definition should be employed as the legal
12 definition of variant in Canada, and I would suggest
13 probably not.

14 **Q.** Okay. Now, you mentioned the Ontario Court of Appeal
15 decision of Henderson in your affidavit. Are you aware
16 that the Court of Appeal in Henderson stated that the
17 meaning of variant in the relevant Order in Council is
18 a very specialized area of the legal system and has
19 limited general application?

20 **A.** I don't have the Henderson decision in front of me, so
21 I cannot verify that quote.

22 **Q.** Okay. I'll share the screen with you, and I'll take
23 you to the relevant section of that decision. Just
24 give me one second.

25 **MR. MACKINNON:** Let him have time to read the full

1 decision, please.

2 Q. MR. BOUCHELEV: Mr. Smith, do you need to read the
3 entire decision? Are you familiar with the case,
4 generally?

5 MR. MACKINNON: I would like the witness to have
6 time, if he wants, to read the full decision because
7 you're putting to him a proposition that -- actually,
8 can you zoom in on it?

9 MR. BOUCHELEV: Well, hold on a second. So let's
10 look at paragraph 37, and if the witness tells me that
11 he needs to read the entire decision, we'll deal with
12 it then. But for now can you just read paragraph 37.

13 MR. MACKINNON: It's kind of small. Can you blow
14 it up a bit?

15 MR. BOUCHELEV: I don't know if I can blow it up.

16 Q. Are you able to see it, Mr. Smith?

17 A. The print is very, very fine.

18 Q. Okay. Is that better?

19 MR. MACKINNON: That's a little better.

20 A. It's a little bit better.

21 Q. MR. BOUCHELEV: I can make it larger, if you want.

22 How's this?

23 A. Yes, I can read that.

24 Q. Okay. So please read paragraph 37.

25 A. So 37?

1 Q. Yeah.

2 A. Okay. You'll have to move it to the top of the window
3 because the video windows at the side block the
4 paragraph.

5 Q. Is that better?

6 A. That's good. Thank you.

7 So I've read paragraph 37 of this document.

8 Q. Okay. So I'll take you to the third sentence there:
9 (as read)

10 "In addition, the nature of the
11 questions of law that arise for the
12 registrar is compatible with a standard
13 of defence. As in this case, where the
14 question is the meaning of variant in
15 the relevant Order in Council, these
16 questions are within a very specialized
17 area of the legal system and have
18 limited general application."

19 Do you understand what that means?

20 A. In general, yes. However that is a legal determination
21 made by a judge in a court of law, and that -- I have
22 no reason to take issue with that particular course
23 determination.

24 Q. Okay. So you will agree with me, then, that the term
25 variant as defined in the legal context is not the same

1 thing as the term variant in its general application?

2 **A.** No, I would not draw that conclusion. I believe what
3 the Court is saying there is that the word variant is
4 not used everywhere in the Criminal Code, that it has a
5 specialized use with respect to the determination and
6 classification of firearms and is limited in that
7 sense.

8 **Q.** Okay. Which, I think, is the same thing as what I am
9 saying. I think we're --

10 **A.** No, it's not the same thing.

11 **Q.** Okay.

12 **MR. MACKINNON:** You had said this is a definition,
13 and he's saying no, it's not.

14 **Q.** **MR. BOUCHELEV:** Okay. Your answer is fine,
15 Mr. Smith. I'll move on to the next question.

16 Okay. Now, let's look at the next paragraph in
17 your affidavit. I should say the next exhibit,
18 Exhibit F.

19 **A.** Yes. Exhibit F is an excerpt from Jane's Infantry
20 Weapons.

21 **Q.** Okay. And what is that? Is that a Canadian
22 publication?

23 **A.** No. That's a publication from the UK.

24 **Q.** Okay. And where did you obtain this publication?

25 **A.** This was in the library of Specialized Firearm Support

1 Services, and, again, it was purchased from somewhere
2 by my library clerk.

3 **Q.** Okay. And do you know how many Canadian gun owners are
4 familiar with this publication or have read this
5 publication?

6 **A.** I have no idea.

7 **Q.** Okay. Does this publication use the same definition of
8 variant that the SFSS does?

9 **A.** I don't know what definition of variant that this
10 publication uses.

11 **Q.** Okay. So, again, the same question as before, you
12 agree with me that, you know, any definition of variant
13 that would be contained in this publication would have
14 no legal effect in Canada?

15 **A.** If what you mean is does the -- does Jane's have the
16 ability to dictate legal terminology for use by the
17 Canadian courts, I would answer, no. On the other
18 hand, if the Jane's Infantry Weapons excerpt is used as
19 an example of how the industry employs the word
20 variant, then, yes, it may be of some value to a Court
21 in Canada.

22 **Q.** And, Mr. Smith, does the SFSS have any kind of a
23 procedure manual that it uses to determine if a
24 particular firearm is a variant?

25 **A.** There is a general process. It's not written down, but

1 there is a general process understood by members of
2 SFSS.

3 **Q.** But it's not written down. There is no checklist or
4 written protocol, correct?

5 **A.** Correct.

6 **Q.** Okay. So it's not like -- well, anyways, I think
7 you've answered the question.

8 But you would agree with me that determining
9 whether or not something is a variant is, to an extent,
10 an art as well as a science?

11 **A.** It's a process which requires knowledge of firearms and
12 the application of that knowledge to determine the
13 lineage of a firearm and whether or not it is related
14 to another firearm. Call it a science, if you like, or
15 an art, if you like. The -- it's an art in the sense
16 that it's not numerical. It's not like you can put
17 numbers into an equation and arrive at an answer.

18 On the other hand, it's not done on a whim, as
19 would be implied by the use of the term "art."

20 **Q.** Okay. And would you agree with me that two reasonable,
21 knowledgeable people can look at the same gun and reach
22 different conclusions as to whether or not it is a
23 variant of another gun?

24 **A.** I'd like to think that two experts who have access to
25 the same body of knowledge and the same information on

1 which to make a decision would arrive at the same or
2 nearly the same conclusion.

3 **Q.** But it doesn't always happen like that, does it?

4 **A.** No.

5 **Q.** And I'm sure you've had situations at the SFSS where
6 you had technicians that disagreed with each other
7 whether or not a certain gun was a variant, correct?

8 **A.** In the course of determining whether a firearm is a
9 variant of another, there is often some discussion on
10 the merits of, yes, it's a variant or, no, it's not.

11 Where there are differing opinions, the -- it
12 usually calls for more research to find information
13 that will tilt the balance one way or the other. But I
14 would say that in my experience with SFSS, the -- we
15 rarely have divided opinions on whether something is a
16 variant or not.

17 **Q.** Okay. But there are certainly divided opinions. For
18 example, your opinion is often not shared by other
19 experts in the firearms industry such as experts, you
20 know, from the industry itself or from the
21 manufacturers or retailers of firearms, correct?

22 **A.** Yes. From time to time individuals who represent
23 firearms businesses or who are acting on their own will
24 not like a determination made by SFSS concerning
25 whether a firearm is a variant or not.

1 However, I'm never entirely sure whether it is the
2 assessment that they don't like or whether it's the
3 outcome that they don't like.

4 **Q.** Okay. And you would agree with me that in determining
5 whether or not a firearm is a variant, there is a
6 degree of subjective analysis?

7 **A.** It's non-mathematical, so it's not -- it's not
8 objective in that sense; however, many decisions in
9 science are non-numerical in nature; that doesn't make
10 them subjective. So --

11 **Q.** But it is subjective in a sense that someone has to
12 formulate an opinion. It's not immediately apparent.
13 Like you say, it's not mathematical. It's not like 2
14 plus 2 equals 4, which everyone knows. One has to
15 formulate an opinion, correct? And in formulating that
16 opinion, there is an element of subjectivity?

17 **A.** No, I would disagree with that. Certainly within SFSS,
18 the way opinions are formulated is based on the
19 information available and the application of logic to
20 that information.

21 **Q.** Okay. And you are saying that logic is entirely
22 objective; there is no subjective element to it?

23 **A.** Well, it depends on how you precisely define
24 subjective. If you mean anything as non-numerical as
25 being subjective, then, yes.

1 But that said, and as I said earlier, the opinions
2 rendered by SFSS concerning the classification of a
3 firearm in a particular -- that which has to do with
4 variants is based on the best information available at
5 the time with logic applied to that information to
6 arrive at one of the three possible classifications
7 made available by the Criminal Code.

8 **Q.** Now, I would like you to look at paragraph 30 of your
9 affidavit.

10 **A.** I'm turning to that now.

11 **Q.** So at paragraph 30, you discuss that if a firearm is
12 not specifically marketed or identified as a variant by
13 the manufacturer, then the RCMP will evaluate the
14 firearm to determine, for the purposes of its entry
15 into the FRT, whether or not it is a variant.

16 So are you suggesting that if a firearm is
17 marketed as a variant that the RCMP will not do any
18 further investigation or analysis?

19 **A.** It depends on the nature of the variant. So, for
20 example, if a manufacturer begins to produce an AR-15
21 firearm and the manufacturer claims that it's a variant
22 of the AR-15 and it has all of the obvious
23 characteristics of an AR-15, the conclusion that it is
24 a variant of the AR-15 would probably be accepted at
25 that point because there's no real evidence to the

1 contrary.

2 **Q.** I guess what I'm trying to understand is why does it
3 matter how a manufacturer markets the firearm? Isn't
4 it ultimately the design, the objective of criteria
5 that would matter as opposed to marketing, which is not
6 an objective criteria?

7 **A.** Well, marketing indicates the manufacturer's intention.
8 So since a variant is related to the original firearm
9 by its design, if the manufacturer or its agent, an
10 importer or distributor, states that the purpose of
11 this firearm is to have the same characteristics as the
12 original firearm, then that's information that's useful
13 in assessing its status as a variant.

14 **Q.** Well, but the purpose of marketing, I would suggest, is
15 to maximize sales. So what a manufacturer may put in
16 its marketing and promotional materials may not
17 necessarily be accurate.

18 **A.** That's true, and that is part of the assessment by
19 SFSS, is to determine how reliable any of the
20 information that's used to formulate a determination
21 is. So in some cases, yes. Information provided by
22 the manufacturer may not be credible. I have instances
23 of that.

24 However, in general, the manufacturers describe
25 their firearms, in particular, as variants in order to

1 capitalize either on the fame or notoriety of the
2 original firearm and thereby increase sales while at
3 the same time indicating that the firearm is related to
4 the original.

5 **Q.** Okay. So if a manufacturer specifically describes a
6 firearm as not being a variant, you would agree with me
7 that the intent of the manufacturer is to build a gun
8 that is not a variant?

9 **A.** As I said before, the manufacturer's statement as to
10 the purpose of the firearm is one piece of information
11 which is used. So if the manufacturer claims that a
12 firearm is a variant, then that will used -- that will
13 be verified, or at least assessed, as to how reliable
14 that information is. And, likewise, if the
15 manufacturer states the contrary, that a certain
16 firearm is not a variant, again, the credibility of
17 that information will be assessed and then used in the
18 formulation of the opinion.

19 So what the manufacturer says, yes or no,
20 concerning variant, will be evaluated and used in the
21 same way.

22 **Q.** Okay. And how would it be evaluated?

23 **A.** Well, the -- it will be evaluated in the context of all
24 the other information available. For example, the
25 characteristics of the firearm, the -- it may be based

1 on an inspection if we have the opportunity to
2 physically examine the firearm.

3 The -- we may compare a variety of sources of
4 information about the purpose of the firearm. So there
5 may be the manufacturer's advertising or statement of
6 purpose of the firearm. But the importer to Canada may
7 say something different. The retailer may say
8 something different, yet. In the firearm's press,
9 there may be other information that's provided.

10 So all of this information is collected and
11 intercompared and assessed to determine which
12 components of the information available are credible,
13 and then those are used to formulate an opinion.

14 **Q.** Okay. And so I guess what you're telling me is that it
15 would be a very thorough process, correct?

16 **A.** Yes, indeed. The --

17 **Q.** Okay. And --

18 **A.** Let me finish, though.

19 **Q.** Sure.

20 **A.** The amount of effort will vary depending on how obvious
21 the information is.

22 **Q.** Okay. But if the SFSS reaches a conclusion that a
23 particular firearm is not a variant, that would be a
24 determination resulting from a thorough investigation,
25 right?

1 **A.** Yes, it would.

2 **Q.** Okay. And it's a determination that retailers and gun
3 owners in the gun industry can rely on, correct?

4 **A.** I didn't quite hear you correctly there. Can you
5 repeat the question.

6 **Q.** Sure. So it is a determination that gun owners, the
7 gun industry, can rely on?

8 **A.** Yes. I believe the FRT is a reliable database that
9 provides accurate descriptions of firearms and an
10 accurate assessment of its classification according to
11 the parameters of the Criminal Code.

12 **Q.** Okay. Now, can you look at paragraph 31 of your
13 affidavit, please.

14 **A.** Yes, I have that with me.

15 **Q.** So can you explain to me -- so you talk about design at
16 paragraph 31. When you're talking about design, I
17 understand that your definition of design to include
18 two components. One is the physical appearance, and,
19 second, the location of user controls. Is that what
20 you mean by design?

21 **A.** No. I'm not defining design in that way, and that's
22 not the thrust of paragraph 31.

23 The issues of overall appearance and position of
24 the user controls are two examples of design, but they
25 do not comprise the definition of design.

1 Q. Okay. And what is the importance of physical
2 appearance? Why does it matter?

3 A. The physical appearance is related to the ergonomics of
4 the firearm. So when a manufacturer produces a variant
5 of another firearm, they will often copy the external
6 appearance of the firearm in order to have the same
7 ergonomics as the original firearm.

8 Q. Okay. But, again, I'm just trying to understand how --
9 why does it matter? Why does that -- how does that
10 factor into the definition of a variant?

11 A. Well, a variant is a firearm that is derived from
12 another firearm, broadly speaking. And so if a firearm
13 has exactly the same appearance as another firearm,
14 that would suggest, in the absence of any other
15 evidence, that it is derived from that firearm because
16 the chances of two firearms being independently
17 invented that have exactly the same appearance is not
18 impossible but quite remote.

19 Q. Okay. So you're saying that for a gun to be a variant,
20 it has to have -- the appearance has to be exactly the
21 same?

22 A. No, I'm not saying that at all.

23 Q. Well, with respect -- so I guess what I'm trying to
24 understand is we have two firearms, and they look
25 exactly the same externally; then one is the variant of

1 the other; that's what you're saying?

2 **A.** No. What I'm saying is that an identical external
3 appearance between the original firearm and a variant
4 or potential variant firearm is evidence of a linkage
5 between the two firearms. It's not definitive proof in
6 itself, but it certainly suggests that the firearms are
7 related, and that's one of the --

8 **Q.** Okay.

9 **A.** -- components that's used to assess variant status.

10 **Q.** Okay. So it's not enough for the two firearms to look
11 identical; it's just one of the pieces of the puzzle,
12 right?

13 **A.** That's correct. A decision concerning whether a
14 firearm -- pardon me. A determination concerning
15 whether a firearm is a variant of another is based on
16 all of the available evidence, including --

17 **Q.** Okay.

18 **A.** -- the external appearance.

19 **Q.** What if two guns do not look exactly the same but they
20 look kind of similar? Is that evidence of one gun
21 being a variant of the other?

22 **A.** That depends on how dissimilar they are.

23 **Q.** Okay.

24 **A.** So, for example, if the original firearm was made with
25 wood and blued steel, for sake of argument, and the

1 potential variant is made from stainless steel and a
2 polymer stock, they can be virtually the same firearm
3 even though they look quite different.

4 So it's -- the nature of the differences needs to
5 be assessed as well as the nature of the similarities
6 to determine how useful they are in assessing the
7 status of the variant. It's not just a question of
8 taking two photographs of -- one of each of the two
9 firearms and saying that they're either the same or
10 different. That's not the process at all.

11 **Q.** Okay. So how similar does a gun have to be to another
12 gun for it to be considered a variant, in terms of
13 external appearance?

14 **A.** There is no particular degree of similarity that's
15 required because the similarity of appearance is only
16 one element of the assessment. And variants of
17 firearms can be similar in appearance or can be
18 different in appearance.

19 So the facts will vary from one particular set of
20 circumstances to another, and, as I said, all of the
21 available information will be assembled and used to
22 evaluate whether a firearm is a variant of another.

23 **Q.** Okay. So I take it it's not like there is a checklist
24 of, you know, 57 different items that you have to check
25 off and then if, you know, you get 30 out of 57, then

1 it is a variant in terms of appearance. It's not a
2 mathematical exercise. It's not like you have a
3 checklist, right?

4 **A.** Yeah. It's -- there is no fixed number of
5 characteristics that either have to be similar or
6 different to make an assessment.

7 **Q.** Okay. So to an extent, it's a subjective exercise?

8 **A.** As I said earlier, it is an exercise which comprises of
9 a fact gathering stage where all of the available
10 information is assembled, and then a determination is
11 the result of a logical assessment of all of the facts
12 available to arrive at an opinion.

13 **Q.** Okay. But when it comes to things like physical
14 appearance, I would suggest to you that is inherently
15 subjective. Two individuals could look at two guns,
16 and one could say, Yes, it looks similar, and someone
17 else could say, No, it doesn't look similar?

18 **A.** Well, similarity of firearms can be broken down into
19 component parts. So if two firearms are similar,
20 they're going to be similar in some physical element of
21 the two firearms. You could point to something and
22 say, It's either there or it's not. Likewise, if two
23 firearms are different, you can point to
24 characteristics which are in one firearm but not on the
25 other.

1 So it's not subjective, in that sense. You can
2 point to the exact features which are the same or
3 different.

4 **Q.** Well, two people could look at a firearm, at a rifle
5 stock, for example, and one could say, Yeah, that looks
6 like an AR-15 stock, and someone could say, No, it
7 doesn't look like an AR-15 stock.

8 **A.** I think you could probably do an assessment much more
9 precisely than that because the analysis of an AR-15
10 stock, as you offered as an example, has many physical
11 characteristics which could be measured such as whether
12 or not the stock fits on the standard AR-15 buffer tube
13 or not, or whether it operates in the same fashion as a
14 typical AR-15 stock, whether it's marketed as an AR-15
15 stock. And all those factors could be assessed to
16 arrive at an intelligent opinion as to whether it's an
17 AR-15 stock or not.

18 It's not simply a question of looking at
19 photographs of two stocks and wondering whether they're
20 the same or different. That's -- the analysis
21 undertaken by SFSS is not done in a manner as flippant
22 as that.

23 **Q.** Okay. Well, let's use a different example. Let's look
24 at a Remington 700 rifle. Are you familiar with that
25 firearm?

1 **A.** Yes, I am.

2 **Q.** So if you look at a stock from a Remington 700 rifle,
3 will it be immediately apparent that it is a stock from
4 that particular firearm?

5 **A.** If you're talking about the original factory stocks
6 made by Remington, it could probably be quickly
7 determined that a stock is meant for a Remington model
8 700 rifle.

9 **Q.** Purely on visual observation without taking any
10 measurements?

11 **A.** No. You would have to do -- you would have to look at
12 the measurements. And I would include the measurements
13 as being part of the appearance. It's not a question
14 of looking at the image with the naked eye and not
15 taking advantage of any technology to more accurately
16 assess the shape or the dimensions.

17 So appearance is a term which is used very broadly
18 to mean not just how it looks in the sense of a
19 portrait, but also what the dimensions of the item in
20 question may be.

21 **Q.** Okay. Would you agree with me that the cosmetic
22 appearance of a firearm has no impact on how it
23 functions?

24 **A.** It depends on how you define cosmetic. If -- let me
25 use an example: If you were talking about the Swiss

1 Arms Classic Green series of firearms, there is a --
2 there's the Classic Green, which is a metallic green
3 colour.

4 There is another firearm called the Blue Star,
5 which is absolutely identical to the Classic Green
6 except for its colour and model designation.

7 If what you mean by cosmetic differences is the
8 kind of differences between a Classic Green and a Blue
9 Star Swiss Arms rifle, then, yes, cosmetics have no
10 impact on the function.

11 **Q.** Okay. So do you agree with me that the cosmetic
12 appearance of a firearm has no impact on how lethal it
13 is?

14 **A.** I would agree. Probably not. I can't think of any
15 instance where the cosmetics would affect lethality.

16 **Q.** Okay. And one of the examples that you used in your
17 affidavit is a single shot AKT-47 rifle, which is a
18 single shot .22 calibre rifle that has the same
19 appearance as the AK-47 assault rifle, correct?

20 **A.** You're referring to the example in Jane's, which I
21 believe is tab F of my --

22 **Q.** It's mentioned at paragraph 29 of your affidavit.

23 **A.** Yes. It's paragraph 29 of my affidavit, but it refers
24 to the excerpt from Jane's at tab F. And, yes, I
25 believe the firearms you're referring to are the

1 original AK-47 assault rifle --

2 **Q.** Okay.

3 **A.** -- which is a weapon of war developed by the former
4 Soviet Union, and -- which is a selective fire firearm,
5 meaning it is capable of firing both semi-automatic and
6 semi -- both fully-automatic and semi-automatic modes,
7 and is a centrefire calibre, gas-operated firearm.

8 And that the other firearm that you are referring
9 to is the Romanian training rifle, and I'm just looking
10 for that now. It's the Romanian AKT-47 rifle, which is
11 a .22 long rifle.

12 **Q.** Blowback operated, correct?

13 **A.** Yes, I believe it's a blowback operated version of
14 the -- it has a blowback mechanism, yes.

15 **Q.** Okay.

16 **A.** So the firearms are different in operating mechanism.

17 **Q.** Okay. But would you agree with me that the AKT-47, the
18 blowback .22 single shot rifle is less lethal than the
19 AK-47 assault rifle?

20 **A.** That depends on the circumstances under which it's
21 deployed. So if the two firearms were both, for sake
22 of argument, shot into a person's head at both close
23 range, they're both lethal.

24 If you were talking about the ability to hit a
25 human sized target at a distance of 300 metres and

1 inflict an injury, then I would say there's probably a
2 difference. The original AK-47 would be more lethal
3 under those sets of circumstances.

4 So lethality is tied to the manner of use. It's
5 not an intrinsic characteristic of the firearm.

6 **Q.** Okay. So would you agree with me that the AKT-47
7 training rifle, the single shot .22 rifle, would be no
8 more lethal than any commercially available .22 calibre
9 rifle you can buy in Canada?

10 **A.** If you are referring to lethality as being limited to
11 the ability of a .22 long rifle -- a projectile from a
12 .22 long rifle calibre cartridge to cause injury to a
13 person or death to a person, then, yes.

14 The effects of the .22 long rifle calibre
15 cartridge fired from the AKT-47 training rifle would be
16 no different, in general, than a projectile from a .22
17 long rifle calibre cartridge fired from a sporting
18 firearm. There may be minor differences because the
19 different firearms could have different barrel lengths,
20 which affects velocity, but from a purely external
21 ballistics consideration at the muzzle of the two
22 firearms, they would be very similar in effect.

23 **Q.** Okay. Now, I'm going to ask you to look at
24 paragraph 32 of your affidavit. So at paragraph 32 you
25 say that: (as read)

1 "In addition to design similarities,
2 other characteristics can factor into
3 the assessment, such as the
4 manufacturer's description, patents, the
5 interchangeability of parts and the
6 purpose of the firearms. Also, in
7 certain cases, case law has determined
8 that a firearm is a variant."

9 So what I want to do -- and, sorry, just give me one
10 second. I just want to break it down and get your views
11 on some of these components.

12 So the manufacturer's description, why is that
13 important for determining whether it's a variant? Is
14 that basically the same argument as for marketing? This
15 is how the manufacturer presents his own product?

16 **A.** Yes. I believe we went through all that previously.
17 The manufacturer's statement as to the design and
18 purpose of the firearm is useful information and forms
19 part of the body of information used to assess where a
20 firearm could be a variant or not.

21 **Q.** Okay. What about patents? Why do patents matter?

22 **A.** Well, a patent speaks to the design of a firearm, and
23 so a patent can provide information on what firearms
24 the patent is related to because the patent
25 applications often cite other patents as being what the

1 particular firearm was based on. The patents will also
2 illustrate design similarity.

3 So, in general, they are a very useful statement
4 as to how the firearm was designed, what it was
5 designed for, and what any forerunners to that firearm
6 might be.

7 **Q.** Okay. Now, you also mentioned the interchangeability
8 of parts. So why is that an important consideration?

9 **A.** It's an indicator of a relationship between two
10 firearms. So I would argue that if two firearms have
11 interchangeable parts, that unless there's a reasonable
12 explanation to the contrary, that those two firearms
13 are related in some fashion.

14 **Q.** And how many parts would have to interchange for you to
15 reach that conclusion, that the guns are related?

16 **A.** There's no fixed number of parts because the -- an
17 assessment would be made on the basis of, not only how
18 many parts, but also how important the component is.

19 So, for instance, if the interchangeable component
20 was the bolt, for instance, that's an integral part of
21 the firearms design, and it would be a very important
22 similarity.

23 If, on the other hand, the two firearms use a
24 similar front sight or some other feature which is more
25 distant from the core design of the firearm, then the

1 interchangeability of parts would be less important.

2 So it depends on the -- exactly on the context.

3 As I said, all of these factors are part of the
4 body of knowledge that's available at a time an
5 assessment is made, and it is the collective weight of
6 the information that is available at the time that
7 determines whether a firearm is considered to be a
8 variant or not.

9 **Q.** Okay. So I think what I take from your evidence is
10 that there are certain core design characteristics that
11 are more important than other not core design
12 characteristics, right?

13 **A.** When it comes to the interchangeability of parts, yes,
14 that was my evidence.

15 **Q.** Okay. So you gave an example of a bolt. What would be
16 some of the other core design characteristics or
17 components? Would a receiver be one such component?

18 **A.** Yes. Receiver would be a component or a portion of the
19 receiver, if it is a split-receiver design. The bolt,
20 the bolt carrier --

21 **Q.** How about barrel?

22 **A.** Barrel, yes. All of those would be important factors.
23 But, that said, there are some components which are
24 less important and may be the same on two firearms
25 which are not closely related.

1 Q. Okay. And what would be some examples?

2 A. That could be --

3 Q. Magazines?

4 A. Magazines could be one. Sighting equipment could be
5 another.

6 Q. How about stocks?

7 A. It's possible, but not terribly likely. Stock
8 components, yes. So if you're talking, say, a butt
9 plate or something of that nature. Perhaps the
10 fore-end stock components may be more interchangeable.
11 The stock, as a whole, is generally built for a
12 particular kind of firearm, though.

13 Q. So you're not aware of, for example, any non AR-15
14 firearms that use AR-15 stocks?

15 A. No, I didn't say anything like that at all. And, in
16 fact, I'm very much aware that there are.

17 Q. Okay.

18 A. There are firearms which are not AR platform firearms
19 which employ AR-15 components. There are --

20 Q. And you would agree with me that just by virtue of
21 having an AR-15 stock, the gun -- that does not make
22 the gun an AR-15 variant?

23 A. No. The important criterion in establishing whether a
24 firearm is a variant or not is the lineage of the
25 firearm, whether it is derived from the original

1 firearm or not. And the fact that some manufacturer
2 who independently designs and manufactures a firearm
3 might take advantage of the vast supply chain of AR
4 platform components as an economy measure or efficiency
5 measure does not make -- or does not necessarily make
6 that firearm a variant.

7 **Q.** Okay.

8 **A.** We're an hour into this. Would it be possible to have
9 five minutes for a quick stretch?

10 MR. BOUCHELEV: Yeah. If you need a five-minute
11 break, we can do that.

12 **A.** Thank you very much.

13 MR. BOUCHELEV: Not a problem.

14 (ADJOURNMENT)

15 **Q.** MR. BOUCHELEV: Let's go back to paragraph 32 of
16 your affidavit.

17 **A.** Yes.

18 **Q.** Now, one of the things that you have described here as
19 a characteristic that can factor into the assessment of
20 a firearm as to being a variant is the purpose of the
21 firearm. So what exactly do you mean by purpose?

22 **A.** The purpose of the firearm is the purpose either stated
23 by the manufacturer or which can be reasonably inferred
24 from the design of the firearm.

25 And by purpose it's -- I'm looking at whether the

1 firearm is intended or its purpose is to be some
2 variation on an existing family of firearms.

3 So it's -- so, for example -- it's best
4 illustrated by an example. So if a firearm was an
5 AR-15 and it was the same as a standard AR-15 except
6 that it had a heavy barrel on it, its purpose might be
7 for long range accurate shooting. So the purpose, at
8 that point, would then be assessed as an AR variant
9 meant for shooting targets at longer ranges.

10 So the purpose of the firearm describes what the
11 manufacturer intended to achieve with that particular
12 design of firearm, and that is just another element of
13 what will formulate a package of information on which
14 an assessment of variant status can be made reasonably.

15 **Q.** Okay. Would you agree with me that some guns can have
16 more than one purpose?

17 **A.** Yes. It depends precisely on how you define purpose.
18 I think you're probably meaning purpose to mean the
19 uses to which a firearm might be put as opposed to the
20 purpose, per se.

21 But, yes, I acknowledge that a firearm may be used
22 for more than one kind of activity.

23 **Q.** Well, in fact, it may be designed by the manufacturer
24 for more than one kind of activity?

25 **A.** Yes. That's possible, too.

1 Q. Okay. So, as an example, you could have a rifle that
2 is used both for hunting and target shooting?

3 A. Yes. There are all manner of uses or purposes like
4 that. The AR-15 family or AR-15 platform is an
5 excellent example of that. The manufacturers will
6 often state the purpose of the firearm and give a wide
7 variety of purposes. So --

8 Q. Okay.

9 A. -- hunting could be one; target shooting, another; home
10 defence, being a third; security force use, being
11 others.

12 So there's all manner of purposes for a firearm,
13 depending on exactly which manufacturer made it and
14 what design they were imitating.

15 Q. Now, let's use an example. Are you familiar with the
16 Ruger Mini-30 rifle?

17 A. Yes.

18 Q. Okay. This is one of the firearms that was banned by
19 the most recent regulation, correct?

20 A. Yes, that's correct.

21 Q. What, in your understanding, is the purpose of that
22 firearm?

23 A. The Mini-30 is the adaptation of the general Mini-14
24 design to fire a different calibre, 7.62 Russian.

25 The overall design of the family, the Mini-30 and

1 Mini-14, et cetera, is a civilian version of a rifle
2 design -- originally designed by Ruger with both
3 civilian and military applications in mind.

4 The three typical firearms of that family which
5 define it are going to be the Ruger Mini-14, the Ruger
6 Mini-30, and the AC-556, which is the selective firearm
7 version of that family of firearms.

8 So Ruger had a number of purposes with the
9 original design, you know, harkening back to the
10 conversation we had a minute ago. So civilian use as a
11 utility rifle was one of the uses that Ruger had
12 expressed, and also they had expressed one of the
13 design uses as being either military or security
14 forces.

15 **Q.** Okay. And you would agree with me that the Ruger
16 Mini-14 and Ruger Mini-30 were guns that were quite
17 popular with hunters and rangers?

18 **A.** I would agree that they were popular. I can't give an
19 exact number because the firearm is available both in
20 restricted and non-restricted versions. It is possible
21 to determine how many of the restricted firearms are
22 registered in Canada, but there are no records of the
23 non-restricted firearms, so I cannot attach a number to
24 the availability of that firearm in Canada that is
25 precise. But, yes, it was a relatively popular rifle.

1 Q. Okay. And you would also agree with me that neither
2 Ruger Mini-14 or Ruger Mini-30 was a popular military
3 firearm, correct?

4 A. Well, the -- as I said earlier, the Mini-14 and Mini-30
5 were designed as civilian versions of a military rifle,
6 so they're not military rifles themselves, but they
7 follow the design of military and paramilitary
8 firearms.

9 So my understanding is that the Ruger Mini-14 and
10 the Mini-30 that were sold to the public were primarily
11 meant either for use as a utility rifle by ranchers or
12 hunter or as a semi-automatic carbine used by security
13 forces.

14 Q. Okay. And would you agree with me that many of the
15 nine -- I'll use your terminology -- nine families --
16 you understand what I mean by that, right? The nine
17 types of firearms that were banned by the most recent
18 regulation?

19 A. Yes.

20 Q. So you would agree with me that many of those nine
21 family type of firearms were previously used by hunters
22 and target shooters in Canada?

23 A. Depending on how you would define those terms, yes.
24 Let me give a more fulsome answer. The -- some owners
25 of the nine families of firearms have reported use of

1 their firearm for hunting purposes. There are no
2 statistics on that that I'm aware of to establish how
3 widely they are used for hunting, but it's more than
4 zero, and I base that on anecdotal information.

5 As for their use in sporting competitions, it
6 depends on how you define a sporting competition as to
7 whether it's sporting or meant for some other purpose.

8 **Q.** Okay. Well, let's use an example. Are you familiar
9 with the 3-Gun Competition?

10 **A.** I'm generally familiar with the competition.

11 **Q.** Would you agree that it is a very popular type of
12 competition?

13 **A.** It's popular amongst the owners of firearms like the
14 nine families of firearms. I don't believe it's
15 popular among the general firearms owning public.

16 **Q.** And what makes you say that?

17 **A.** Well, the 3-Gun matches are organized in such a way
18 that a tactical firearm is the only practical firearm
19 to be a serious competitor within those matches.

20 So logically, then, it's only the owners of
21 tactical firearms that would be interested in that kind
22 of competition, for the most part.

23 **Q.** Right. Or you can put it another way. If someone was
24 interested in that type of competition, he would have
25 to buy one of the nine family types of firearms,

1 correct?

2 **A.** That would be the typical direction that a would-be
3 participant would take --

4 **Q.** Okay.

5 **A.** -- and has taken in the past.

6 **Q.** And you would agree with me that there is nothing
7 unreasonable in using firearms like the nine family
8 type of firearms for sporting competitions?

9 **A.** The word "reasonable" is a value judgment. Prior to
10 the new regulations, it was legal to use those firearms
11 for those kinds of competitions, and people, in fact,
12 did so.

13 The term reasonable, again, being value-loaded,
14 would also require a consideration as to whether the
15 target competition in question was legitimate or not,
16 whether it was actually sporting or really meant for
17 some other purpose.

18 **MR. MACKINNON:** Counsel, just to be clear on the
19 record, when you're using the word "reasonable," there
20 is a legal reference to reasonable in the OIC, as you
21 know. So he's not here to define what that reasonable
22 element is. When he's speaking, he's speaking from his
23 own personal perspective of what he thinks might be
24 reasonable in a general sense of the use of the word.

25 But if you're trying to connect it to the legal

1 term, that's something totally different.

2 **Q.** MR. BOUCHELEV: Okay. And I would suggest to you
3 that using a firearm that is a member of the nine
4 families for hunting was also reasonable in a
5 general -- in a non-legal sense of that term?

6 **A.** What I can say is that individuals have reported using
7 firearms from those nine families for the purpose of
8 hunting, but I don't have any exact numbers on how
9 many. I don't -- I couldn't say that it's widespread.

10 And, furthermore, I would point out that the use
11 of such firearms for hunting is a controversial topic
12 within the hunting community, as indicated by their
13 anecdotal reports and chat rooms and so on.

14 It's -- there's still some debate within that
15 sector as to whether the military pattern firearms are
16 suitable or not.

17 **Q.** Well, let's use a specific example. Let's use an AR-10
18 rifle, which would be chambered in the .308 Winchester
19 calibre, correct?

20 So let's say I wanted to go deer hunting, and I
21 was using an AR-10 rifle chambered in .308 Winchester.
22 Would that be a reasonable firearm to use for hunting
23 deer?

24 **A.** The calibre .308 Winchester is a suitable calibre for
25 hunting deer. Whether the rifle itself is reasonable

1 depends on the factors that -- other factors that are
2 also considered by hunters such as weight, overall
3 physical size, which relate to portability under
4 hunting conditions. And my understanding is hunters
5 prize firearms which are generally lighter in weight
6 and higher in accuracy, and AR-10 based firearms have a
7 reputation for neither.

8 **Q.** You're saying that AR-10 rifles have a reputation for
9 being inaccurate?

10 **A.** No, I'm not saying that. What I'm saying is that there
11 are sporting firearms which are built for accuracy,
12 which are, under most circumstances, going to be more
13 accurate than an AR-10. An AR-10 derived firearm is a
14 firearm which is based on a battle rifle designed for
15 military purposes. And the military requires such
16 firearms to be accurate, but only to a certain point.
17 They're not interested in extreme long-range shooting
18 with those firearms, in general, with some exceptions.

19 So the -- so my experience shooting battle rifles,
20 like AR-10s, M16s and firearms of that nature, is that
21 while they're accurate enough to satisfy the military
22 selection criteria, they're not in the same category as
23 sporting firearms, which are built for long-range
24 shooting.

25 Likewise, the portability of the firearm --

1 Q. Can I -- before we go into portability, I just want to
2 ask you on this point, and then we'll come back to
3 portability.

4 So we're not talking about, you know, an AR-10 --

5 MR. MACKINNON: Can he --

6 Q. MR. BOUCHELEV: We're not talking about an AR-10
7 rifle --

8 MR. MACKINNON: Can he just finish his answer so
9 it's -- he was completing his thought. So can he just
10 finish his answer to your question first so --

11 MR. BOUCHELEV: No, no. We'll go back to
12 portability; otherwise it's just the answer is too
13 long, and it's --

14 MR. MACKINNON: Well, wait. No. He has to be
15 allowed to finish his answer to your question.

16 MR. BOUCHELEV: And I will allow him to answer his
17 question. We'll just get to portability after we deal
18 with accuracy. Mr. MacKinnon, as you can see, I'm not
19 cutting off his answers. I've given him an opportunity
20 to give fulsome answers, so we'll get to portability in
21 a second.

22 MR. MACKINNON: He didn't finish answering your
23 question. You cut him off; that's all I'm saying.

24 So could you just let him -- I doubt he's going to
25 take ten minutes to finish it. Just let him finish the

1 thought; that's all.

2 MR. BOUCHELEV: Fine. I don't want to waste time
3 arguing.

4 Q. Okay. Go ahead, Mr. Smith.

5 A. Well, what I was going to say is that a AR-10 rifle is
6 quite long and quite heavy in comparison to sporting
7 rifles. So it is -- it differs from the norm that
8 hunters would value in terms of characteristics of a
9 hunting rifle. That's not to say that it can't be
10 used, but it doesn't fit with the ordinary choices of
11 sport hunters.

12 Q. Okay. So, now, let me just be clear that we are not
13 talking about an AR-10 battle rifle from the 1950s.
14 We're talking about a modern AR-10 type rifle that is
15 manufactured and used today.

16 So you would agree with me that many AR-10 rifles
17 that are manufactured today are, in fact, extremely
18 accurate and specifically designed for accuracy?

19 A. The modern versions of the AR-10 rifle generally share
20 the same characteristics as the original; otherwise
21 they wouldn't be variants of the AR-10. So they have
22 the same, in general, overall length and weight.

23 I would acknowledge that if a manufacturer took it
24 as a set purpose to create a variation of the AR-10
25 which was more accurate than the typical AR-10, they

1 could probably achieve that.

2 **Q.** And you would agree with me that some AR-10 rifles are
3 actually used by police SWAT teams precisely because of
4 their accuracy?

5 **A.** I'm not aware of that. I wouldn't -- I wouldn't
6 disagree with it, but I can't cite an example of where
7 SWAT teams use an AR-10. It's quite a large calibre
8 for a SWAT team, but possibly they use it.

9 **Q.** Okay. And, now, with respect to portability, again,
10 you would agree with me that portability of a -- there
11 are many rifles that fall under the AR-10 umbrella.
12 Some of them can be quite portable because they would
13 have a shorter barrel than the original 1950s AR-10,
14 correct?

15 **A.** Most of the AR-10s that I have seen have weight and
16 length characteristics quite similar to the original.

17 **Q.** What is the barrel length of an AR-10?

18 **A.** I don't recall offhand. It would be something on the
19 order of 20 to 24 inches, but I don't recall precisely
20 from memory.

21 **Q.** What is the barrel length of a typical hunting
22 bolt-action rifle?

23 **A.** They're in the same general range, 20 to 24 inches.

24 **Q.** Okay. And you would agree with me that many AR-10
25 rifles have a collapsible stock, correct?

1 **A.** They can have a collapsible stock, yes.

2 **Q.** Okay.

3 **A.** Whether they can be fired with the stock collapsed is a
4 different matter.

5 **Q.** Okay. And you will also agree with me that typical
6 bolt-action rifles do not have collapsible stocks?

7 **A.** No. Typical sporting bolt-action rifles have fixed
8 stocks. Only the tactical versions have folding stocks
9 or collapsing stocks, in general.

10 **Q.** So you would agree me that many AR-10 rifles are, in
11 fact, just as compact or more compact than a typical
12 bolt-action rifle?

13 **A.** An AR-10 can be rendered more compact. But if an
14 AR-10, for example, had a folding stock, that does make
15 it shorter; it doesn't make it any lighter. And, on
16 top of that, the firearm cannot be aimed and fired
17 accurately until the stock is unfolded, and then you're
18 back to the original length.

19 **Q.** And you'll agree with me that the weight of a firearm
20 is also a characteristic that can vary within the AR-10
21 family; some are significantly heavier than others,
22 right?

23 **A.** AR-10s can vary in weight, primarily due to the kind of
24 barrel that's installed; however, one of the design
25 advantages of the AR-10 rifle in the 1950s was to use

1 modern lightweight materials. And the materials used
2 in 2020 are not substantially lighter than they were in
3 the 50s. The polymer weighs pretty much the same as it
4 used to, and so does aluminum.

5 **Q.** And you can have a lighter contour barrel, for example,
6 which is what a hunter would typically use to make it
7 lighter than, let's say, a military or tactical version
8 of the same firearm, correct?

9 **A.** Yes. And the purpose of that would be to take an AR-10
10 rifle and try to make it more similar to a conventional
11 sporting rifle.

12 **Q.** Okay. And if you did all of that, then I would suggest
13 to you that there would be nothing unreasonable, again,
14 in a non-legal sense of that term in using a rifle like
15 that for hunting.

16 **A.** What I would agree is, if set as a goal, a manufacturer
17 could produce an AR-10 variant which is closer to the
18 design of a sporting firearm than the original AR-10
19 was.

20 **Q.** Okay. Now, do you or have you ever personally owned
21 any of the nine family types of firearms?

22 **A.** No. I don't own any at present, no.

23 **Q.** Have you owned any in the past?

24 **A.** No.

25 **Q.** Now, I'm going to take you back to the Henderson

1 decision, the Ontario Court of Appeal decision that we
2 looked at. You've included that decision in your
3 affidavit, so I assume that you have read it and you
4 are familiar with that case, right?

5 **A.** I am generally familiar with that case. It took place
6 almost a decade ago, so I can't say that I remember
7 every detail with clarity, but, yes, I'm generally
8 familiar with it.

9 **Q.** But you've read it before you included it in or made
10 references to it in your affidavit this year, correct?

11 **A.** Yes.

12 **Q.** Okay. You don't happen to have a copy of that case on
13 your computer, do you?

14 **MR. MACKINNON:** I can get it up for him in
15 probably less than a minute.

16 **MR. BOUCHELEV:** Okay. So that's probably easier
17 than sharing a screen, so if you can do that, please.

18 **MR. MACKINNON:** All right. Is that part of any
19 production? Because I've got the documents I can pull
20 up, is what I'm saying.

21 **MR. BOUCHELEV:** No. I don't think the case,
22 itself, is in the productions. There is a reference to
23 it in his affidavit, but I don't think a copy is
24 attached.

25 **MR. MACKINNON:** Okay. We'll just print it out

1 then quickly.

2 MS. OXAAL: If you could give me the citation.

3 MR. MACKINNON: It's 2011 Ontario --

4 MR. BOUCHELEV: You know what, I'll just share it
5 on my screen. That's probably --

6 MR. MACKINNON: Or the easiest way, actually, as
7 we did yesterday, you can send it by the chat function.
8 Actually, that would be the easiest way.

9 **Q.** MR. BOUCHELEV: Just a second. So you should have
10 it on your screen now. So this is the Henderson v.
11 Canada. This is the Court of Appeal decision, and I'm
12 going to take you to paragraph 27.

13 Okay. You see paragraph 27?

14 **A.** Yes, I can see the text.

15 **Q.** Okay. So if you can just take a moment and read
16 paragraph 27.

17 **A.** Yes, I have read the paragraph.

18 **Q.** Okay. Now, what I would suggest to you what this
19 paragraph states is that the AP80 is an unnamed variant
20 of the AK-47 because it is an exact same gun as the
21 AK-22, which is a named variant of the AK-47, correct?

22 **A.** No, I don't believe the Court decided that. I believe
23 what the Court said is that it was established as a
24 fact during the hearing that the AP80 is the same
25 firearm as the AK-22 because the Court says, "given

1 that it is the same weapon."

2 So I don't interpret that as a conclusion of the
3 Court. I look at that as being an observation made by
4 the Court as part of the evidence that he examined in
5 rendering a decision.

6 **Q.** Okay. But you would agree with me that the reason why
7 the Court in this particular instance concluded that
8 the AP80 was an AK-47 variant was because it was the
9 exact same gun as the AK-22?

10 **A.** I think it would be reasonable to conclude that the
11 Court relied on that information as part of the reasons
12 for formulating its decision.

13 **Q.** Well, in fact, and I've read the case just yesterday,
14 but I don't see any other criteria that the Court
15 applied. Maybe I'm wrong, and you could point it out
16 to me.

17 **A.** Well, no. I'm just looking at the language in
18 paragraph 27, and the -- and it seems to me in the
19 opening sentence of that paragraph that the Superior
20 Court views the firearm, the AP80, as being a variant
21 of the AK-47 because it says the decision by the Lower
22 Court that it wasn't is not correct.

23 So it seems to me that the core decision made by
24 the Court -- or the Superior Court is that the AP80 is
25 a variant of the AK-47, and it further goes on and

1 gives the fact that the AP80 is the same firearm as the
2 AK-22. It's one of the elements that the Court relied
3 upon to arrive at that determination.

4 **Q.** And where does it say that it is one of the elements
5 that the Court relied upon? Where do you see that?

6 **A.** The Court doesn't say it's the only element. It simply
7 cites it as an example.

8 **Q.** But it also doesn't say that there were other elements
9 considered, correct?

10 **A.** Not in that paragraph.

11 **Q.** So you will agree with me that the Court in Henderson
12 did not use your definition of variant?

13 **A.** I believe the Court was silent on that matter. I don't
14 know whether the Court used it or not.

15 **Q.** Okay. Are you familiar with any Canadian case from any
16 Court that defines the term variant?

17 **A.** No, I'm not.

18 **Q.** Okay. Now, I'm going to take you to paragraph 15 of
19 your affidavit.

20 **A.** That's one-five, 15?

21 **Q.** 15, yeah.

22 **A.** Yes, I'm there.

23 **Q.** Now, you say at paragraph 15 that you are -- that the
24 June 15, 2020, version of the FRT is the current
25 version and that you're unaware of any pending

1 declassification decisions. But that's not to say that
2 there couldn't be any classification decisions in the
3 future, correct?

4 **A.** Yes. I believe that's exactly what it says, is that
5 the -- is that as of the date of my affidavit, that
6 there were no more pending or planned changes to the
7 FRT concerning the class -- concerning classification
8 of firearms which existed in the FRT prior to May 1st
9 and which might be affected by the May 1st regulations.

10 The same paragraph, paragraph 15, also goes on to
11 say that manufacturers are constantly producing new
12 designs of firearms; some of which might be variants of
13 one of the nine families.

14 **Q.** Okay. But sometimes the SFSS declassifies old firearms
15 that were previously -- had a different classification,
16 right?

17 **A.** No. The FRT does not have the authority to decide what
18 a classification of a firearm is. The FRT follows the
19 Criminal Code definitions to determine whether a
20 firearm fits any particular category according to the
21 Criminal Code criteria.

22 So if the -- if in this case, which is what
23 para 15 is all about, the Governor in Council changes
24 the regulations, then the Firearms Reference Table will
25 be changed accordingly.

1 Q. So you are unaware of any instance where the SFSS
2 amended FRT entries of existing firearms in the absence
3 of a change in the legislation, the regulation?

4 A. I believe that's the first time you've opened that
5 topic, and my answer to that is, yes, there have been
6 occasions when classifications have been amended;
7 typically when new information arises that indicates
8 that the previous determined classification is no
9 longer correct.

10 Q. One example of that would be the Swiss Arms firearms,
11 correct?

12 A. I believe you're referring to the Swiss Arms Classic
13 Green series of firearms?

14 Q. Yeah. Yes, that's what I'm referring to.

15 So is that an example of a FRT description being
16 changed after additional information became available?

17 A. Yes. The classification of those firearms was
18 originally made in the 2001 to 2003 era because there's
19 a whole series of firearms; there's not just one.

20 So as they were identified by the importer and the
21 manufacturer, they were subject to a classification
22 determination, and the firearms were either
23 non-restricted or restricted, depending on whether the
24 barrel length was over or under 470 millimetres,
25 respectively.

1 It wasn't -- the firearm was also evaluated as to
2 whether it was a variant of the SG 550 firearm, which
3 it appeared, based on the paper submissions from the
4 importer, to be very similar to. And it was assessed
5 as not being a variant because the manufacturer of the
6 firearm, Swiss Arms, in Europe and the Canadian
7 importer provided four letters signed by senior
8 officials of the company on official letterhead to the
9 effect that the Classic Green series of firearms were
10 variants of the SG 540 firearm and not the SG 550
11 firearm.

12 And we, meaning SFSS, did not do inspections in
13 those days, in the early 2000s, and we placed a high
14 value on information provided by manufacturers on the
15 company letterhead and signed by senior executives of
16 the company. So we took their word for the proposition
17 that the Classic Green rifle was based on the SG 540
18 and not on the SG 550.

19 It was not until ten years later that new
20 information became available and we discovered that the
21 information provided directly from the factory was
22 simply not accurate and the Classic Green series of
23 firearms were, in fact, variants of the SG 550 -- this
24 was based on a physical inspection of the rifles -- and
25 the correct classification for those firearms, then,

1 was prohibited, and the change to the classification
2 was made in 2014.

3 **Q.** Okay. So there was a period of about 12 or 13 years
4 between the firearm being originally -- I don't want to
5 use the word "classified," but, I guess, originally
6 determined to be a non-restricted or restricted firearm
7 in that determination being changed to prohibited,
8 right?

9 **A.** Yes. Generally the -- in the Firearms Reference Table,
10 we do not continually review the classification of
11 firearms. Once an assessment is made, it's recorded in
12 the FRT and not altered unless there's a new model of
13 the firearm available.

14 So it took ten years to discover the nature of the
15 misrepresentation of the firearm.

16 **Q.** Okay. So someone could rely on the information in the
17 FRT that is current as of today and purchase a firearm
18 believing it to be non-restricted, and then several
19 years down the road the SFSS could discover new
20 information and change its opinion, and then the
21 firearm becomes prohibited, right? That could
22 conceivably happen?

23 **A.** Well, it did happen with the Swiss Arms firearms.
24 The -- I'm putting it very politely here -- the
25 information from the factory and from the Canadian

1 importer was not as accurate as it should have been,
2 which led to an incorrect classification determination
3 which was not uncovered until a decade later.

4 And, yes, owners would have purchased firearms
5 based on the original classification in the Firearms
6 Reference Table.

7 **Q.** And just going back for a second to what you said
8 before, and this may be a technical point, but you said
9 that originally it was determined that based on
10 information provided by the manufacturer that the Swiss
11 Arms Classic Green was a variant of the SG 540 as
12 opposed to SG 550. Isn't SG 540 and SG 550 essentially
13 the same firearm?

14 **A.** No. The SG 540 is the predecessor to the SG 550. So
15 the history there is the SG 540 was a firearm developed
16 in the 1970s by Swiss Arms. It was then known as SIG;
17 it had a different company name at that point.

18 The firearm was not a commercial success, and the
19 design was sold eventually to another manufacturer.
20 Swiss Arms continued the development of the firearm and
21 in the mid 1980's developed the SG 550 rifle, which was
22 subsequently adopted by the Swiss Armed Forces as the
23 STGW 90 or Sturmgewehr 90 and then led to a whole
24 series of civilian adaptations that were semi-automatic
25 in calibre, including the Swiss Arms Classic Green

1 series in 2001.

2 **Q.** Okay. But in terms of design, the SG -- what is the
3 difference in the design of the SG 540 and the SG 550?

4 **A.** Well, I don't have a complete list here with me. The
5 SG 550 is a solid receiver design, for instance,
6 whereas the SG 540 is a stamped, steel, and folded
7 receiver design.

8 **Q.** So I'm just trying to understand. So a rifle was on
9 the market for well over a decade, and the SFSS didn't
10 realize that the rifle being sold has a stamped
11 receiver as opposed to a machined solid steel receiver?

12 **A.** No. Because the SFSS had never actually seen one of
13 the firearms. As I said earlier, the practice of SFSS
14 in the early 2000s was to place significant weight on
15 the accuracy of information supplied by manufacturers
16 and the accuracy of information supplied by Canadian
17 importers.

18 We discovered, to our rue, that neither of those
19 places supply particularly reliable or accurate
20 information. As a result, we changed our policies in,
21 roughly, 2010 to be more independent when assessing
22 firearms of those types. And we generally insist on a
23 physical inspection now to avoid exactly the same
24 problem which occurred in 2001 through 2003.

25 **Q.** Okay. Now, let me ask you a question. We're still at

1 paragraph 15 of your affidavit. There is a reference
2 in the second line of that paragraph to "the opinion of
3 CFP's firearm experts." So what does that mean? Who
4 are the CFP firearm experts you're referring to?

5 **A.** That's referring to the staff at Specialized Firearm
6 Support Services.

7 **Q.** The technicians?

8 **A.** All of the technical staff within SFSS.

9 **Q.** Okay.

10 **A.** So whether they are bench worker technicians or whether
11 they are the supervisory staff.

12 **Q.** Okay. Now, can you go to paragraph 20 of your
13 affidavit.

14 **A.** Yes.

15 **Q.** So at paragraph 20 you describe the nine families of
16 firearms and their variants that are now prohibited.
17 In (a) you list the M16, AR-10, AR-15, and the M4.

18 So the M16 is a fully-automatic machine gun,
19 correct? Or I should say select fire.

20 **A.** The vast majority are, yes.

21 **Q.** Well, is there any M16 rifles that are not select fire?

22 **A.** It seems to me there have been rifles under the M16
23 name which are not selective fire.

24 **Q.** But the term M16 specifically refers to the rifle that
25 was adopted by the US military as a select-fire

1 firearm, correct?

2 **A.** The original M16 was the military designation given by
3 the US military to the design of rifle they adopted,
4 circa 1962.

5 **Q.** Okay. Which was a select-fire weapon?

6 **A.** Yes. I believe the rifle was select fire at that time.

7 **Q.** Okay. And the M4 is also a select fire, correct? It's
8 just simply a carbine version of the M16?

9 **A.** Well, there, the split between select-fire and
10 semi-automatic versions is much broader. The -- there
11 are all kinds of civilian semi-automatic versions of
12 the M4 marketed worldwide. So the semi-automatic
13 version of the M4 is much more common.

14 So the M4 -- the original M4 was selective fire,
15 but there are both M4 selective fire assault rifles and
16 M4 semi-automatic carbines available on the market.

17 **Q.** SKS what you call the M4 semi-automatic rifles, they
18 are simply variants of the AR-15; they are not variants
19 of the M4. Because that's what an AR-15 is. It's a
20 semi-automatic version of the same gun that is -- the
21 M4 and M16 are select fire. AR-15 is semi-automatic,
22 right?

23 **A.** Well, there's a very close relationship between the M16
24 and the M4. The M4 is simply a -- well, not simply --
25 is largely a more compact version of the M16, but

1 otherwise the same kind of firearm. It employees the
2 same kind of receiver.

3 And the semi-automatic variations on those two
4 firearms are also quite similar, as a result. So a
5 semi-automatic firearm on the market could be
6 characterized depending on its physical attributes,
7 whether it's a variant of the M16 or a variant of the
8 M4. It would vary according to the firearm.

9 **Q.** Okay. Now, you will note that -- are you familiar with
10 the SKS rifle?

11 **A.** Yes. That's the Soviet era battle rifle.

12 **Q.** Okay. Semi-automatic?

13 **A.** The rifle as generally issued to the Soviet Armed
14 Forces was semi-automatic, but there were
15 fully-automatic versions available.

16 **Q.** What about the versions of the rifle available in
17 Canada? Are they semi-automatic?

18 **A.** If by that you mean were the firearms sold to civilians
19 in Canada, the semi-automatic version, then I would
20 say, generally, yes, although we have detected, from
21 time to time, a selective fire version that slipped
22 into the supply chain.

23 **Q.** So I note that it's not one of the firearms that was
24 banned by the regulation earlier this year. Do you
25 know why that is?

1 **A.** That decision was made by the Governor in Council, so I
2 do not have the information that they used in order to
3 formulate their decision. So, no, I don't know the
4 answer to that question.

5 **Q.** Do you personally believe that it should be banned?

6 MR. MACKINNON: His personal opinion as to whether
7 something should be banned or not is irrelevant. It's
8 the decision of the Governor in Council that matters
9 here. His personal opinion on whether something should
10 or should not be banned is totally irrelevant.

11 OBJECTION TAKEN to answering the question: Do you
12 personally believe that it should be banned?

13 **Q.** MR. BOUCHELEV: Do you believe that the SKS is
14 reasonable for use for hunting or sporting purposes in
15 Canada?

16 MR. MACKINNON: Again, that question is actually
17 the term that's used in the OIC, and I've already said
18 he's not here to interpret legal matters, and that's
19 got to be a legal issue. What's reasonable for --

20 MR. BOUCHELEV: Well -- yeah. I don't mean it in
21 a legal sense. I mean it in a practical sense.

22 **Q.** Is that a gun that has reasonable use for sporting and
23 hunting purposes?

24 **A.** The -- I have seen reports concerning the SKS where
25 some individuals have chosen to use that firearm for

1 hunting.

2 So I would not be surprised if it was used for
3 hunting, but I can't really say how widespread the use
4 is because the SKS in its ordinary semi-automatic form
5 is a non-restricted rifle, so there are no official
6 statistics on how many are available in Canada, who
7 owns them, and what they use them for.

8 **Q.** But you will agree that it is a very popular rifle, in
9 large part, due to the fact that it's quite
10 inexpensive?

11 **A.** Based on the information I have available, I would say
12 there are thousands of SKS firearms in circulation in
13 Canada.

14 **Q.** Okay. And so what I would like to do now is I'm going
15 to ask you to look at the affidavit of Travis Bader
16 that says the affidavit -- in his expert report.
17 You've actually referenced this report in your
18 affidavit. And this is the report that is dated --
19 this is the report in the affidavit dated September
20 18th, 2020. Do you have a copy of it on your computer?

21 **MR. MACKINNON:** I have to go try and pull it up
22 for him. Do you know how to just send it through the
23 chat function?

24 **MR. BOUCHELEV:** Yeah. If that's easier, I can
25 probably do that.

1 (DISCUSSION OFF THE RECORD)

2 Q. MR. BOUCHELEV: You should have it now.

3 A. I'm just downloading it now. The computer is
4 downloading it right now. It's got about 20 percent of
5 it done now. At the rate the bar is moving it will be
6 about a minute, I think.

7 Q. Okay. Well, I guess we'll just have to wait.

8 A. We're at the halfway point now.

9 MR. MACKINNON: Well, while he's pulling that up,
10 sometime between now and 12:30 we should break for a
11 half hour, so whenever is okay with you.

12 MR. BOUCHELEV: Okay. Let's do it at 12:30.

13 A. The download is still moving, but it's at a much slower
14 pace than it was previously. We're at four -- about
15 two-thirds now.

16 Okay, I have it now. I'm opening it now.

17 Q. Okay. So what I would like you to do is go to page 33
18 of the PDF file.

19 A. Okay. Sometimes the page numbering in the Adobe
20 Acrobat is not the same as the page numbering --

21 Q. Yeah. Just don't worry about the page numbering at the
22 top of the page. I'm going to go by the numbering in
23 the PDF itself, so just go to page 33 of the Acrobat
24 file.

25 A. So that page has got the title "1.4 Definitions." Is

1 that the page you want?

2 **Q.** Actually, it should be the next page. It should be
3 somewhere in the middle of the page. It should have
4 "Section 2. Are there any examples of firearms
5 reclassified." Do you see that?

6 **A.** Yes. I'm trying to get there now. This computer is
7 not responding. The computer is frozen, for some
8 reason. I can't get it to scroll down.

9 **Q.** Maybe your counsel can pull it up on his computer.

10 (DISCUSSION OFF THE RECORD)

11 **A.** So the place I'm at now is numbered at 2, and it says
12 "Examples of firearms reclassified after May 1st."

13 **Q.** MR. BOUCHELEV: Yes. Right. So the first
14 example, example A, is the Adler B-210 bolt-action
15 shotgun. Are you familiar with that firearm?

16 **A.** In general, yes.

17 **Q.** Do you agree that it was classified as a non-restricted
18 firearm before May 15th, 2020?

19 **A.** Yes, it was.

20 **Q.** Okay. And then it subsequently became reclassified as
21 a prohibited firearm and as a member of the M16, AR-10,
22 AR-15, and M4 family, correct?

23 **A.** Yes. It became a prohibited firearm on May 1st as a
24 result of the new regulations, and it was posted in the
25 FRT as soon as possible thereafter.

1 Q. Okay. And do you know why it wasn't included in the
2 regulation, itself?

3 A. The formulation of the list of named firearms in the
4 regulations is a matter of cabinet confidence, so I
5 cannot answer that question.

6 Q. Okay. Now, this bolt-action shotgun, does it have a
7 receiver that is interchangeable with AR-15, AR-10, M4,
8 or M16?

9 A. While I said I was generally familiar with the firearm,
10 I don't have all those fine details in my memory right
11 now. I would have to refresh my memory on the
12 mechanics of that particular firearm.

13 Q. Well, but I would suggest to you that if it did, in
14 fact, have the same receiver as the AR-15, it would
15 have been classified as -- it could have possibly been
16 classified as non-restricted before May 1st, correct?

17 So by virtue of the fact that it was classified as
18 non-restricted, that, in and of itself, would suggest
19 that it did not have a receiver from the AR-15 or other
20 firearms in that family.

21 A. Now I understand the nature of your question. Yes.
22 The shotgun was non-restricted, or at least assessed as
23 non-restricted in the Firearms Reference Table, prior
24 to May 1st of 2020 because it was not a variant of any
25 firearm named in the regulations, and, in particular,

1 not an AR-15. And the characteristics of the firearm
2 as compared to the criteria in part 3 of the Criminal
3 Code indicated that the firearm best fit the category
4 of non-restricted firearm. So --

5 **Q.** Well, more specifically, my question was about the
6 receiver. So it does not have -- it's clear that it
7 does not have a receiver that's interchangeable with
8 the AR-15, AR-10 or M4 or M16, right?

9 **A.** No. It was --

10 **Q.** Because if it did, it would have been a restricted
11 firearm?

12 **A.** It is not -- it does not have a receiver which is
13 interchangeable with the AR-15.

14 **Q.** Does it have a receiver that is interchangeable with an
15 AR-10?

16 **A.** No. The receiver is not directly interchangeable.

17 **Q.** Okay. Does it have a bolt that is interchangeable with
18 the M16, AR-10, AR-15 or M4?

19 **A.** Not likely since the -- this is a shotgun, and the
20 AR-10 is a rifle, and the calibre differences would
21 require a different bolt.

22 **Q.** How about the barrel?

23 **A.** Again, it's a different calibre, so it would not be the
24 same as the original AR-10.

25 **Q.** Okay. So can you explain to me, then, why it was

1 classified -- why it is now classified as a variant of
2 the M16, AR-10, AR-15, or M4?

3 **A.** Prior to May 1st, the firearm was assessed according to
4 the law that existed prior to that, and the firearm was
5 looked at as to whether or not it was a variant of the
6 AR-15 or not, and it was assessed as not being a
7 variant of the AR-15, which was the sole requirement of
8 the regulations as they existed prior to May 1st.

9 The firearm had AR-10 and AR-15 characteristics
10 but not enough to qualify it as a variant of the AR-15,
11 and it was ambiguous as to whether the firearm was a
12 variant of either the AR-10 or the AR-15.

13 However, when the regulations changed on May 1st
14 of 2020, not only did the classification change from
15 restricted to prohibited for the AR-15 family, but also
16 the scope of the regulations changed. So the scope
17 specifically included the AR-10 where it was not
18 included before.

19 And so the firearms like this particular shotgun
20 had to be reassessed in light of the change of scope.
21 And it was determined within the SFSS that there were
22 sufficient similarities to establish a design linkage
23 between the Adler shotgun and the AR family, as
24 expressed in para 87 of the regulations, for it to
25 qualify as a variant --

1 Q. So --

2 A. -- as such --

3 Q. So can I ask you, so which -- so is it a variant of the
4 AR-15, AR-10, M4, or M16? Which of the four do you
5 consider it to be a variant?

6 A. It's primarily a variant of the AR-10 and AR-15. It
7 has characteristics of both. I don't have the exact
8 list of details here that -- you're going very deeply
9 into the internal mechanics of this shotgun, and it's
10 been some time since I've looked at it, so I don't
11 recall the exact details, but --

12 Q. Okay. Well, I can help you with that because if you
13 look at appendix 1 to Mr. Bader's report, it actually
14 contains the FRT report. So why don't you look at
15 appendix 1.

16 A. Well, the FRT report would contain only a summary of
17 the assessment; not the entire assessment.

18 Q. Well, let's look at what we have.

19 So this is going to be -- let's go to page 45 of
20 the PDF file.

21 A. Okay. Which appendix was it again? Sorry.

22 Q. Appendix 1.

23 MR. MACKINNON: It should be around page 42,
24 somewhere around there.

25 A. Okay.

1 Q. MR. BOUCHELEV: It starts on page 42, but the
2 relevant page is page 45.

3 A. Okay. 43, 44.

4 MR. MACKINNON: Is that okay, or is that too
5 small?

6 A. Well, I can read it, but it's not the right firearm.

7 Q. MR. BOUCHELEV: I'm sorry?

8 A. I'm looking at a document that says "45" in the top
9 right corner.

10 Q. No, no. Don't look at what's in the top right corner.
11 Look at the PDF pages themselves.

12 A. Okay. 45. Well, that doesn't correspond either, then.

13 MS. OXAAL: I think it's page 12, 13 at the
14 top right.

15 MR. MACKINNON: Yeah. That's right. At the top
16 right. Go back to 14 or so and then scroll.

17 Q. MR. BOUCHELEV: Can you tell me which page number
18 you have in the top right corner.

19 A. I'm at page 25 of the top right corner right now.

20 Q. Okay. So you're too far down. If you can go up, go to
21 page 13 in the top right.

22 A. Okay. I'm at that page now.

23 Q. Okay. Just tell me, what are you looking at?

24 A. I'm looking at an a FRT report dated the 14th of
25 September, 2020, for the Adler B-210 shotgun.

1 Q. Give me one second. Yes. September the 14th.

2 Okay. So can you scroll a few pages down until
3 you get to a page that has "16" in the top right
4 corner.

5 A. Okay.

6 Q. And under "Model," you should have a description of
7 this particular model, right?

8 A. Yes. It says Adler is marked in script letters on the
9 right side of the receiver frame.

10 Q. Okay. And then it says, "This is an AR style shotgun,"
11 right?

12 A. Yes.

13 Q. Okay. So let's look at the next bullet point. It
14 says: (as read)

15 "Adler uses a split, two-piece
16 receiver/frame in a manner similar to an
17 AR-15/M16 but which attaches in a
18 different manner."

19 Right?

20 A. Yes.

21 Q. So what this means is that it utilizes a two-piece
22 receiver design, but it doesn't attach in the same way
23 that the two receiver parts are attached on an AR-15?

24 A. That's what it says.

25 Q. Okay. But you would agree with me that just because a

1 gun utilizes a two-piece receiver does not, in and of
2 itself, make it an AR-15 variant?

3 **A.** No, it would not.

4 **Q.** Okay. So, then, let's look at the next sentence:
5 (as read)

6 "The Adler is not attached by a front
7 hinge pin, rather the Adler firearm has
8 a one-piece butt and trigger mechanism
9 housing and the two components of the
10 receiver actually slide apart
11 horizontally."

12 So that's different from how an AR-15 operates, correct?

13 **A.** For the standard AR-15, yes.

14 **Q.** Okay: (as read)

15 "The one-piece butt and trigger
16 mechanism housing are fastened to the
17 'upper receiver' by a through-bolt,
18 which when removed, permits the two
19 components of the receiver/frame to be
20 disassembled.

21 Features include: upper receiver with a
22 detachable carry handle having an
23 adjustable A2 style rear sight, right
24 hand cocking handle and ejector port;
25 support tube that is mounted below the

1 barrel; synthetic ventilated handguard;
2 muzzle break; synthetic lower receiver
3 with an integral/fixed or adjustable
4 buttstock and pistol grip; sling
5 swivels; black finish."

6 Now, you'll agree with me that there is nothing here to
7 say that it has the same bolt or barrel as the AR-15,
8 right? For reasons that you have explained, that would
9 not be possible?

10 **A.** No, I wouldn't expect that. Because what we're looking
11 at are the model notes for that firearm which is simply
12 a description of the firearm's general characteristics.

13 **Q.** Okay. So with the benefit of this report, can you
14 explain to me why the Adler B-210 is deemed to be a
15 variant of the AR-15 or AR-10 or M4 or M16?

16 **A.** Not based on this report because this particular report
17 does not contain the information on which the
18 determination was made. The FRT record is simply a
19 description of the firearm.

20 **Q.** But if it did -- for example, if it did have the same
21 bolt or barrel or an interchangeable receiver with a
22 gun that it is a variant of, you would expect that
23 information to be in the description, right?

24 **A.** It might be, depending on its significance. The --
25 what I'm saying here is the entire model notes section

1 is merely a description. It's not -- it is not the
2 information on which a determination of classification
3 is -- or was made for this particular firearm.

4 Q. Okay. And sitting here --

5 A. I also said earlier that interchangeability of parts is
6 only one factor of many that influence whether a
7 firearm is a variant or not.

8 Q. Okay. And sitting here today, you cannot tell me why
9 this gun was deemed to be a variant of the AR-15?

10 A. No. I didn't come knowing we would be discussing this
11 particular firearm. There are over 190,000 firearms in
12 the Firearms Reference Table database. I do not have
13 them all memorized, so --

14 Q. Well, with respect, sir, this firearm is specifically
15 addressed in Mr. Bader's affidavit. It's 1 of the 10
16 or 11 mentioned there, and you clearly read his
17 affidavit because you reference it in your own
18 affidavit.

19 MR. MACKINNON: Okay. The witness has answered
20 the question to the best of his knowledge, okay. He
21 doesn't have the report upon which this is based, so
22 he's answered your question.

23 Q. MR. BOUCHELEV: And I would suggest to you,
24 Mr. Smith, that the reason why the Adler was deemed to
25 be an AR variant is simply because of its overall

1 appearance.

2 **A.** I don't recall specifically the details of the
3 characteristics on which an assessment was made
4 regarding variant, but what I do recall is this: Is
5 that the firearms were -- the firearm was expressly not
6 a variant based on an assessment of its characteristics
7 prior to May 1st, but with the change in scope with the
8 regulation post May 1st, it was assessed as being a
9 variant.

10 Now, just precisely what those characteristics
11 were, I don't recall, and they're definitely not
12 present in the model note description, nor would I
13 expect it to be.

14 **Q.** Okay. And you will agree with me that the design of
15 the Adler B-210 did not change after May 1st? It's
16 still the same firearm that it was before, correct?

17 **A.** With respect to the model described in this FRT record,
18 yes, so far as I know there are no model changes.

19 The -- bearing in mind that Turkish manufacturer
20 shotguns like this tend to be somewhat erratic in the
21 way they are made from one batch to the next. So
22 the -- some variation is expected from one to the next,
23 but it usually does not affect the classification.

24 **Q.** And so you said that the scope of the regulation
25 changed -- I'm trying to use your exact language --

1 after May 1st. What do you mean by that? When the
2 scope changed, what -- can you be more specific.

3 **A.** Well, in the former regulations, the ones enforced
4 prior to May 1st, 2020, variants of the M16 were
5 restricted. And so any firearm which was considered a
6 variant would have to have its lineage traced back to
7 the M16 and only the M16 because that was the only
8 firearm named in the regulations at that time.

9 However, in the 2020 formulation of the
10 regulations, you'll note that there are four firearms
11 placed there: the AR-15, the AR-10, the M16, and the
12 M4.

13 So a firearm would be within the scope of that
14 paragraph if it were a variant of any one of the
15 individual four firearms or a blend of the
16 characteristics of those four firearms.

17 **Q.** But the M16 and the AR-15 are mechanically identical
18 except for the fact that the M16 is a select-fire
19 firearm, correct?

20 **A.** Most of them are, but there's a high degree of
21 variability in the AR-15 family. The AR platform
22 includes a huge number of firearms, and so it's not
23 always true that the mechanism is the same or the
24 receiver is the same. But I will acknowledge that,
25 generally speaking, the typical AR-15 is a

1 semi-automatic version of an M16.

2 **Q.** So if something is not a variant of the M16, it follows
3 that it is also not a variant of the AR-15, correct?

4 **A.** I think that's a circular argument. If the AR-15 is a
5 variant of the M16, then the question as to whether
6 it's a variant of itself is not -- I don't get the
7 point of the question.

8 **Q.** Okay. Well, if Adler is not a variant of the M16, it
9 is also not a variant of the AR-15?

10 **A.** Generally, that would be true. Yes.

11 **Q.** Okay. And if it's not a variant of the M16, it is also
12 not a variant of the AR-10?

13 **A.** That's not correct. The AR-10 preceded the M16; it's
14 an independent design. And a firearm can be a variant
15 of the AR-10 and not a variant of the M16.

16 **Q.** But other than the calibre and the select-fire
17 capability, the AR-10 and the M16 are the same gun
18 mechanically; are they not?

19 **A.** No, they're not. They're quite different.

20 **Q.** What is the difference?

21 **A.** Just about everything. The receiver is different. The
22 way the receiver connects can be different. There are
23 several variations of the AR-10. The magazine is
24 different. The barrel is different. Just about
25 everything that's significant about the firearm is

1 different.

2 Now, let me explain a bit further here, because I
3 understand where you might be slightly confused. When
4 I'm talking about the AR-10, I'm talking about the
5 original AR-10 as designed by the ArmaLite Corporation
6 in 1955.

7 There were other AR-10s produced by the ArmaLite
8 Corporation when it resurfaced in the 1990s under a
9 completely different ownership, which produced what
10 they called AR-10 rifles but were simply AR-15 rifles
11 where the calibre was increased from .223 Remington to
12 .308 Winchester. And those indeed are AR -- they're
13 AR-10 in name, but they're actually variants of the
14 AR-15. But that applies only to that particular
15 company's production, which started in the 1990s.

16 The original AR-10 has an existence completely
17 independent of the M16 rifle.

18 MR. BOUCHELEV: Okay. Now, it's 12:30 now, so if
19 you want to take a -- I guess we should take the half
20 an hour break now, and then we'll be back at 1:00.

21 MR. MACKINNON: Okay.

22 (Proceedings ended at 10:30 a.m. MT)

23

24 (Proceedings to recommence at 11:00 a.m. MT)

25

1 (Proceedings recommenced at 11:01 a.m. MT)

2 MURRAY SMITH, previously affirmed, questioned by

3 Mr. Bouchelev:

4 **Q.** MR. BOUCHELEV: Going back to my questions about
5 the Adler B-210. Do you agree with me, Mr. Smith, that
6 it does not have the same magazine as the AR-10, AR-15,
7 M4, or M16?

8 **A.** As I said earlier, I'm a bit fuzzy on the details
9 because it's been some time since I looked at those
10 particular shotgun designs; however, logically, they
11 would be different because of the difference in calibre
12 between the Adler and the original AR-10.

13 **Q.** The Adler is a 12-gauge shotgun, right?

14 **A.** Correct.

15 **Q.** And you could not use a 12-gauge shotgun magazine in a
16 AR-10 or AR-15?

17 **A.** The magazine itself could potentially fit, but it
18 wouldn't function because the interior dimensions of a
19 magazine for 12 gauge is going to be different than one
20 for a .308 Winchester.

21 **Q.** Okay. Now, what I would like you to do is I would like
22 you to -- we're still at the same document we were
23 looking at before, the affidavit and report of
24 Mr. Bader. If you can look at -- if you're in the same
25 PDF file that we were looking at before --

1 **A.** Yes.

2 **Q.** -- can you please go to page 33 of that report, of that
3 document. And it should say "page 4" in the top right
4 corner.

5 **A.** Yes, I have that one.

6 **Q.** Okay. Now, do you see towards the bottom of the page
7 there is some discussion about the Alpharms 15SA?

8 **A.** Yes. I see it's paragraph -- or subparagraph B,
9 Alpharms?

10 **Q.** Right. And are you familiar with that firearm?

11 **A.** Again, in general. I haven't looked at the details of
12 that shotgun for some time, but I'm generally familiar
13 with it.

14 **Q.** Okay. And you agree that this is a semi-automatic
15 shotgun that was classified as non-restricted prior to
16 May 1st, 2020?

17 **A.** Yes. It's essentially the same story as the Adler.

18 **Q.** Okay. And then the classification changed at some
19 point after May 1st to -- and it is now listed as a
20 variant of the M16, AR-10, AR-15, and M4, correct?

21 **A.** That's correct.

22 **Q.** Okay. And I'm now going to take you to a appendix 1,
23 which provides some information about the -- well,
24 which is the FRT report in connection with that
25 firearm.

1 So appendix 2 is starting at page 47 of the PDF
2 document.

3 MR. MACKINNON: Page 17, top right.

4 A. Page 17.

5 Q. MR. BOUCHELEV: It would have "page 18" in the top
6 right.

7 A. Okay, I have that page.

8 Q. Okay. And then it states that, you know -- do you see
9 the section the description under "Model"?

10 A. That's, I think, on the next page, but I'm...

11 Q. It may be, yes. Yes, it's on -- yeah. It's on the
12 page that should have number 20 on the top right.

13 A. Yes, I've got that now.

14 Q. Okay. Now, do you agree with me that the description
15 provides the, you know -- I should say this section
16 provides a description of the various characteristics
17 of this firearm?

18 A. Under "Model" it provides a general description of the
19 firearm, yes.

20 Q. Okay. And you'll note that it says it's an AR style
21 shotgun, right?

22 A. Yes, it says that.

23 Q. So it doesn't specifically say if it's a variant of the
24 AR-10 or AR-15 or M4 or M16. It just says that it's an
25 AR style shotgun?

1 **A.** In that particular section of the FRT report, no, it
2 does not.

3 **Q.** Does it say that -- is there any information anywhere
4 else in this FRT report that gives us, you know, a
5 clearer picture of which firearm it's a variant of?

6 **A.** No. The details -- somehow I lost that. Sorry.

7 **Q.** Yeah. So you are looking at page 20 in the top right
8 corner? Page 49 of the PDF file.

9 **A.** Yeah. I was trying to scroll down to see what it said
10 further down in the report, but I don't...

11 **Q.** That's okay. You can do that if you would like. I'm
12 just -- I don't see that information anywhere else, but
13 maybe I'm missing it. I don't know.

14 MR. MACKINNON: Can you zoom it? Can you read it?

15 **A.** It's very, very fine print, but I can read it. I think
16 I can answer the question based on what I see here.

17 Now, the rationale for why this shotgun was
18 determined to be a variant is not contained within the
19 FRT report that is part of Mr. Bader's affidavit.

20 **Q.** MR. BOUCHELEV: Do you know what that rationale
21 was?

22 **A.** It was essentially the same as the Adler. The shotgun
23 has a blend of AR-15 and AR-10 characteristics. It
24 didn't have enough AR-15 character to be considered a
25 variant prior to the May 1st regulations but was

1 clearly a member of the AR platform family. And post
2 May 1st, because of the broadening of the scope of the
3 regulations, it fit within paragraph 87 and became
4 prohibited as a result.

5 **Q.** Okay. And how do you know this? Is it based on
6 memory, or are you just guessing?

7 **A.** No. I remember dealing with the -- with these
8 shotguns, in general. First of all to determine that
9 they were not variants under the old regulations
10 because we had a number of Turkish made shotguns; some
11 of which were listed in the Firearms Reference Table as
12 being variants, and some of them were not.

13 We had a -- we had a project to review all of the
14 Turkish shotgun classifications prior to May 1st of
15 2020, a year or so before, perhaps maybe longer, in
16 order to be very firm about our reasons for
17 deregulating.

18 And, in fact, there were a number of these
19 shotguns that because we viewed them as being more
20 AR-10 than AR-15, they were actually removed from being
21 considered a variant and went from restricted to
22 non-restricted.

23 So the legwork on these shotguns had been done
24 several years previous to the change in regulations
25 determining that they were not sufficiently AR-15 in

1 design to be considered an AR-15 variant. And the main
2 reason for that is they were -- it could not be
3 distinguished accurately whether they were variants of
4 the AR-15 or variants of the AR-10.

5 Post May 1st, with the expanded scope of the
6 regulations, it didn't matter that the firearms were a
7 blend of the AR-15 or the AR-10 because both of those
8 firearms were in the regulations, and as a result, the
9 classification changed.

10 **Q.** Okay. Now, I want to focus on this particular firearm;
11 not the Turkish shotguns in general. So we're talking
12 about Alpharms 15SA. What characteristics of AR-10 or
13 AR-15 does it possess?

14 **A.** I do not have the inspection reports or -- that deal
15 with these firearms with me, and I simply cannot recall
16 all of the details that led to the determination.

17 **Q.** Were there additional inspection reports produced after
18 May 1st, 2020?

19 **A.** Well, there would have been an analysis before these
20 firearms were considered to be variants of the firearms
21 in paragraph 87. Whether that took the form of an
22 actual inspection or was simply an analysis of material
23 that we had on hand, I don't know. I don't recall.

24 **Q.** And when you say analysis, was it a written analysis?

25 **A.** Was it a what analysis?

1 Q. Was it a written analysis? Was it, like, a report or a
2 memo of some kind?

3 A. It's possible. I don't -- I don't specifically recall
4 any memos post May 1st on these shotguns. There may
5 have been a memorandum or a note to file produced prior
6 to May 1st, you know, a year or so before May 1st, when
7 we looked at these shotguns and determined that they
8 were not variants of the AR-15. So the --

9 Q. I'm only interested in after May 1st, after it was
10 determined that they are variants of the AR -- other AR
11 firearms. Were there any memos or reports produced
12 after May 1st?

13 A. There were none that I authored; however, I don't know
14 whether there were any that my staff had produced and
15 are on file. I simply just don't know the answer to
16 that question.

17 MR. BOUCHELEV: Will you agree to check and
18 provide me with these reports, if you have them.

19 MR. MACKINNON: No. This is a cross-examination;
20 not an undertaking under an examination for discovery.

21 MR. BOUCHELEV: Well, I think it's not an
22 examination for discovery doesn't mean that I can't ask
23 for an undertaking.

24 MR. MACKINNON: Well, you can ask, and I'm just
25 giving you our answer.

1 MR. BOUCHELEV: Okay. So I take it that your
2 refusal is because you do not want the Court to see the
3 reasons why these particular firearms were deemed
4 prohibited firearms after May 1st? Is that correct?

5 MR. MACKINNON: No. As I have mentioned in the
6 previous cross-examination in answer to the similar
7 questions, it's not a proper question, undertaking to
8 require production; besides which, this is not a
9 production for discovery motion. This is an
10 injunction. And we're actually --

11 MR. BOUCHELEV: Counsel, you don't have to repeat
12 the same point twice. I --

13 MR. MACKINNON: Can I finish?

14 (CROSS-TALKING)

15 MR. MACKINNON: Can I finish? This is an
16 injunction of preliminary motion. The questions that
17 you're going into now are really not relevant to this
18 injunction, but we've let you go. And he'll not be
19 producing documents in response to a request for an
20 undertaking. I'll put it that way.

21 UNDERTAKING NO. 4 - To provide any
22 additional inspection reports that were
23 produced after May 1st, 2020 - REFUSED

24 Q. MR. BOUCHELEV: And, Mr. Smith, does the Alpharms
25 15SA have the same receiver as any of the AR firearms?

1 **A.** Not that I recall. I believe, no.

2 **Q.** Okay. What about the barrel? Does it have the same
3 barrel as any of the AR firearms?

4 **A.** It may have the same barrel as other Turkish shotguns.
5 There's a significant exchange --

6 **Q.** Sorry. I just want to be clear that I'm talking about
7 AR-10, AR-15, M4, and M16. I'm not talking about the
8 other Turkish guns.

9 **A.** You're talking about -- let me clarify, then. You're
10 talking about the original 1955 AR-10 and the 1957
11 AR-15?

12 **Q.** No. I'm talking about the AR-10, AR-15, M4, and M16
13 firearms that are named variants in the regulation.

14 **A.** I don't know which other Turkish shotguns are named in
15 the regulations from memory. What I'm stating to you
16 is there is a possibility that there are a number of
17 Turkish shotguns, including the two that are of
18 interest to you, that are variants of firearms named in
19 paragraph 87, whether they're named or otherwise,
20 and -- which may share some components between them,
21 including the barrel.

22 **Q.** Well, I would suggest to you that there are no Turkish
23 shotguns named in the regulation.

24 **A.** That might be true. I haven't gone through the detail
25 analysis to determine that.

1 Q. Okay. But you would agree with me that it does not
2 have the same barrel as any AR-10, AR-15, M4, or M16
3 rifle?

4 A. No. I just explained earlier that of the firearms that
5 are either named or variants of the firearms mentioned
6 in paragraph 87, that there are a number of Turkish
7 shotguns included within the scope --

8 Q. Sorry. I don't mean to cut you off, but you are not
9 answering my question. My question is very simple and
10 very narrow. Do you agree with me that the Alpharms
11 15SA does not share a barrel with any AR-10, AR-15, M4,
12 or M16 rifle?

13 A. I will agree with you to the extent that the shotgun
14 does not share a barrel with the original 1955 AR-10,
15 the original 1957 AR-15, the original 1962 M16, or the
16 original 1994 M4.

17 Q. And, in fact, it's broader than that. It doesn't share
18 a barrel with any AR-10, AR-15 M4, or M16 rifle because
19 a shotgun barrel, by definition, is not a rifle barrel?

20 A. Yes. The answer to that question is self-evident. If
21 you are asking me if a shotgun barrel is the same as a
22 rifle, then I can give you a very general answer: No.

23 Q. Okay. And you will agree with me that the magazine
24 used by Alpharms 15SA is not shared with any other
25 AR-10, AR-15, M4, or M16 rifle?

1 **A.** Same as before. The magazine for the shotgun will not
2 be the same as the original 1955, 1957, 1962, or 1994
3 firearms.

4 **Q.** Okay. What about rifles that are made at a later date?

5 **A.** Well, the AR platform family of firearms, which are the
6 ones made at a later date, comprises a huge number of
7 firearms. There are --

8 **Q.** I'm only --

9 **A.** -- hundreds --

10 **Q.** -- interested in rifles, though.

11 **A.** Well, as I said earlier, if you are asking me to say
12 that a shotgun barrel can't be used in a rifle, I would
13 agree with you that shotgun barrels and rifle barrels
14 are different things.

15 **Q.** I'm talking about magazines; not about barrels.

16 **A.** I'm sorry. Sorry, I got off target there.

17 Yes. When it comes to magazines, if you are
18 talking a 12-gauge magazine, as is the case for your
19 shotgun, it's unlikely it would be used for any rifle
20 calibre firearm.

21 **Q.** Okay. Not just unlikely, but as you said before, it
22 simply wouldn't function?

23 **A.** Well, there are rifle calibers in 12 gauge. I'm not
24 aware of any of them being used in the AR platform
25 family, but that's not to say that someone didn't think

1 of a way to do it.

2 **Q.** And you would degree with me that the Alpharms 15SA
3 does not share its bolt with any AR-10, AR-15, M4, or
4 M16?

5 **A.** It depends on whether you're talking about those four
6 specific firearms in their original design or whether
7 you're talking about the entire family.

8 **Q.** Well, I'm talking about rifles, specifically.

9 **A.** It's unlikely that a shotgun bolt would be the same
10 bolt as used in a rifle.

11 **Q.** In fact, you're not aware of any AR-10, AR-15, M4, or
12 M16 rifle that would use a shotgun bolt?

13 **A.** No, I'm not aware of any offhand. No.

14 **Q.** And you're not aware of any rifle that would use a
15 shotgun bolt, correct?

16 **A.** Broadly speaking, shotgun bolts are larger than what is
17 required for most rifle calibers. So, in general, no,
18 a shotgun bolt would not be used in a rifle.

19 **Q.** Okay. So can you look at the pictures that are
20 contained in the FRT report. So the first picture is
21 on page 52.

22 **A.** So I've got page 21 here for the -- with a left-side
23 view of the firearm. Is that what you're referring to?

24 **Q.** Yeah. So page 21 in the top-right corner, correct?

25 **A.** Page two-one.

1 Q. Two-one. Okay. So let's go down to page 24.

2 A. Okay. So that page 24 shows the Alpharms shotgun, a
3 right-side view close up on the receiver area.

4 Q. Okay. And you'll see -- do you see the bolt and the
5 charging handle?

6 A. Yes.

7 Q. And the charging handle is on the right-hand side,
8 right?

9 A. Yes.

10 Q. And that's quite different from how an AR-10, AR-15,
11 M4, M16 bolt operates, correct? In the charging
12 handle, I should say.

13 A. Most AR-15s have a charging handle at the rear;
14 however, there are side charging AR-15s.

15 Q. But that's not the original AR-15 design?

16 A. The -- it depends on what you mean by what is the
17 original AR-15. If you're referring to the 1957
18 version, then this would be different from that.

19 Q. Okay. So which AR-15 has a side charging handle?

20 A. I know they exist. I don't recall a model offhand.

21 Q. And what about the AR-10? Does it have a side charging
22 handle?

23 A. I believe some of the earlier versions had a side
24 charging handle, but I just -- I don't specifically
25 recall which version, so I can't answer your question

1 conclusively today.

2 **Q.** So would it be correct to say that sitting here today
3 you cannot tell me why this particular firearm has been
4 deemed to be -- I should be more specific -- which
5 particular features of this firearm make it an AR-10 or
6 AR-15 variant?

7 **A.** I don't have those details with me. All I have with me
8 today is my affidavit, which doesn't touch the area
9 that you are posing questions on. And I do not recall
10 from memory precisely all of information on which the
11 classification determination is based.

12 What I can tell you is that it would have been
13 based on all of the available information for that
14 particular shotgun and not just whether certain parts
15 were interchangeable or not.

16 **Q.** But you cannot tell me what that information was?

17 **A.** I'm telling you -- yes. I'm telling you that I can't
18 tell you today because I don't recall the details from
19 memory.

20 **Q.** Okay. Now, I would like to take you to appendix 9 of
21 this report. I'll give you the page reference number
22 in a second.

23 So that's page 114 of the PDF file.

24 **A.** 85?

25 **MR. MACKINNON:** Page 85, top right.

1 **A.** Okay.

2 **Q.** MR. BOUCHELEV: Yes. 85 on the top right-hand
3 corner.

4 **A.** Right. So that is another FRT record. This one for
5 Derya Arms MK12.

6 **Q.** Okay.

7 **A.** And its print date is 14th of September this year.

8 **Q.** Okay. So you will agree with me that this is a
9 semi-automatic shotgun which was classified as
10 non-restricted prior to May 1st, 2020?

11 **A.** That's my recollection.

12 **Q.** Okay. And at some point after May 1st, this particular
13 firearm became classified as a prohibited firearm,
14 right?

15 **A.** No. That would be inaccurate. If the firearm changed
16 classification, and I believe it did, it would have
17 changed classification on May 1st by the action of the
18 regulations.

19 **Q.** Okay. Well, let me just rephrase my question, then.
20 At some point after May 1st, the FRT entry was updated
21 to change its description from non-restricted to
22 prohibited?

23 **A.** I believe this was one of the firearms that was posted
24 after May 1st, I but I would have to check to be
25 certain.

1 Q. Okay. So this is -- I mean, I guess it's -- I have to
2 ask you the same question I asked you before. Well,
3 first of all, can you explain why this firearm
4 became -- why the description of the legal status of
5 the firearm changed after May 1st?

6 A. Yes. There's -- it's the same answer as before.
7 There's a common thread between the Turkish shotguns
8 which were affected by the regulations.

9 Broadly speaking, they were a blend of AR-10,
10 AR-15 characteristics; not enough AR-15 character to be
11 considered a variant of the AR-15 prior to May 1st,
12 2020, and as a result, their classification was
13 typically non-restricted because they had a long enough
14 barrel length.

15 However, after May 1st, because of their AR-10 and
16 AR-15 characteristics, and I don't recall specifically
17 all of them, these firearms fit within paragraph 87 as
18 prohibited firearms. And the Alpha firearms like -- or
19 pardon me. The Derya -- the Derya shotgun like the
20 others, I didn't bring the details with me. I didn't
21 anticipate receiving such detailed questions on these
22 particular firearms today.

23 Q. And can you tell me why the Derya MK12 -- what
24 characteristics the Derya MK12 possesses that make it a
25 variant of the AR family of firearms.

1 **A.** As I said earlier, there's a blend of AR-10 and AR-15
2 characteristics shotgun, but I do not have a specific
3 list of details with me today. I cannot answer your
4 question in exact detail --

5 **Q.** Okay.

6 **A.** -- from memory.

7 **Q.** Now, can you look at page 117 of the PDF file, which
8 should say page 88 in the top right corner.

9 **A.** Okay. I have that page.

10 **Q.** Okay. Do you see the description under "Model"?

11 **A.** Yes, I do.

12 **Q.** Okay. Can you review that and tell me if it helps you
13 answer the question that I have just asked you
14 previously about the characteristics making this
15 firearm an AR variant?

16 **A.** I'm reading the section now. It's rather difficult to
17 read because it's such tiny font.

18 **Q.** Well, there's nothing that I can do on my end, but you
19 may be able to zoom in too make it larger.

20 **A.** No. I'm zooming now, but it means the paragraph is
21 only half on the page at the time. I have to scroll
22 between the two sides, so it will take a minute.

23 **Q.** Okay.

24 **A.** So the description of the Derya shotgun in the model
25 section does as it usually does: Gives a general

1 description of the firearm. It speaks to its -- to
2 some of its characteristics, but it's not a detailed
3 analysis on the characteristics that would be
4 considered for variant status.

5 **Q.** Okay. And who prepared this description? Was it you?

6 **A.** No. That would be one of the SFSS staff members who
7 did that.

8 **Q.** Doing it under your supervision?

9 **A.** At the time, yes.

10 **Q.** Okay. And, now, I see that there are a lot of
11 references to similarity with the AR-15, but I don't
12 see any references to any similarity with the AR-10.
13 You would agree with me the AR-10 is not mentioned
14 here?

15 **A.** In that description, yes.

16 **Q.** Okay. And you will agree with me that this particular
17 firearm does not have the same receiver as any AR-10,
18 AR-15, M4, or M16 firearm?

19 **A.** As I said earlier, it does not have the same receiver
20 as any of the original firearms of those types.

21 **Q.** Okay. Does it have the same receiver as any
22 non-original firearm of that type?

23 **A.** Well, as I said before, the Turkish shotgun industry
24 reuses parts and components between brands of shotguns
25 considerably. And so there may be other shotguns

1 similar to the Derya which fall within the ambit of
2 paragraph 87 and which have parts that are
3 interchangeable to the Derya MK12.

4 **Q.** Well, I don't think you're quite answering my question,
5 though. So let me put it this way: Are you aware of
6 any shotgun, Turkish or otherwise, that has the same
7 receiver as the original AR-10, AR-15, M4, or M16?

8 **A.** No. The receivers would be -- would logically be
9 different because they're shotgun receivers.

10 **Q.** Okay. So then I think what that means is that this
11 particular firearm does not have the same receiver as
12 any M4, M16, AR-10, or AR-15?

13 **A.** I'm, again, presuming you're referring to the original
14 firearms of those model designations?

15 **Q.** Well, we have already established that no shotgun has
16 the same receiver as the original, so I'm not quite
17 sure why we need to make the distinction.

18 **A.** The reason I need to make the distinction is because
19 the AR platform family of firearms consists of
20 thousands and thousands of models, some of which are
21 very similar to the original designs, and some of which
22 are quite different.

23 So -- and on top of that, there are a number of
24 Turkish made shotguns, which are also variants of
25 the -- of that family of firearms, and I cannot say

1 with certainty today, with the information I have at
2 hand, whether any of those Turkish shotguns have common
3 components.

4 **Q.** Well --

5 **A.** My --

6 **Q.** But hold on a second. But you said something
7 interesting. You said that, you know, there's the
8 original AR-15s and then -- they are very different
9 from the original. The ones that are very different,
10 they are not AR-15s at all, are they?

11 **A.** They can be. What I meant when I referred to that was
12 that -- when I was talking about the AR-15 -- or rather
13 the AR platform family, which as I said, consists of
14 thousands of models of firearms, made by hundreds of
15 manufacturers, supplied by thousands of third-party
16 parts suppliers. The range of designs are huge, yet
17 they're all part of the AR platform family, most of
18 which would be variants of one of those four original
19 firearms.

20 **Q.** Okay.

21 **A.** In addition to that, there are Turkish shotguns other
22 than the three that you have mentioned, which would
23 fall into the variant category for paragraph 87, and
24 because of the way the Turkish shotgun industry works,
25 with a high degree of interchangeability between parts

1 and components within that industry, it's entirely
2 possible that some other variant of a firearm named in
3 paragraph 87 would have some exchangeability or
4 capability with components of the three shotguns you
5 referred --

6 **Q.** Right. But --

7 **A.** -- but I simply don't have that detailed information
8 available here today.

9 **Q.** But the reason why the Turkish shotguns were deemed
10 variants of the AR family by you has nothing to do with
11 their receivers. That's not why they're considered to
12 be variants, correct?

13 **A.** First of all, SFSS does not deem anything. That's a
14 legislative power. SFSS does not do that.

15 Secondly, as I have said earlier, the
16 determination as to whether any firearm is a variant or
17 not is based on all of the information available; not
18 just whether it has a common receiver or any other
19 exchangeable or interoperable parts.

20 **Q.** And I do understand that, but I just want to make it
21 clear that the reason why the Turkish shotguns are
22 variants, in your view, has nothing to do with their
23 receivers, correct?

24 **A.** No, I would disagree with that. The receiver of a
25 variant firearm can be different but still a variant.

1 So -- and, for example -- I gave you an example earlier
2 of the 1990s era AR-10s made by the resurrected
3 ArmaLite Corporation. The -- they were designed,
4 manufactured, and offered for sale as AR-15 variants
5 even though the firearm had been altered to be
6 chambered for .308 Winchester rather than .223
7 Remington, and that involves a change to the receiver.
8 The magazine well has to be longer. The receiver ring
9 has to be bigger. There's a number of differences
10 there. So these firearms are still variants of the
11 AR-15 even though the receiver is not the same as the
12 AR-15.

13 So as a principle, a variant does not have to have
14 the exact same receiver as the original, and in most
15 cases -- well, I mean, in many cases they do not.

16 **Q.** And is there a degree of difference that is necessary
17 for something to be different than after it's no longer
18 a variant? I'm talking about --

19 **A.** I --

20 **Q.** -- receivers specifically.

21 **A.** As I said earlier, the determination of whether a
22 firearm is a variant or not does not depend on the
23 single matter of whether a firearm has a receiver which
24 is the same or different. That's not the basis on
25 which --

1 Q. No, no. I don't think -- that's not my question. You
2 were talking about whether one receiver is a variant of
3 another receiver. So we're just talking about
4 receivers, specifically, okay.

5 So is there a degree of difference, a specific
6 degree of difference that is required for one receiver
7 to no longer be a variant of another receiver?

8 A. No. There's no specific amount of change. I'm not
9 sure how you would measure amount of change, even if it
10 were. As I said earlier, the similarities of the
11 receiver is but one factor that's considered in
12 determining whether a firearm is a variant of another
13 firearm.

14 The decision as made by -- or I mean the
15 determination as made by SFSS is based on the totality
16 of information available; not individual single
17 factors.

18 Q. And I think we (indiscernible) from the receivers. I'm
19 not sure if I've asked you about the barrel and the
20 bolt, but you would degree with me that the barrel and
21 bolt of this shotgun does not -- of the Derya MK12 is
22 not shared with any AR-10, AR-15, M4, or M16 in the
23 regulations?

24 A. Correct. The barrel of the Derya shotgun is not the
25 same as any barrel used in any of the original AR-10,

1 AR-15, M16 or M4 firearms.

2 **Q.** And the same goes for the bolt and the magazine, right?

3 **A.** Yes, that's correct.

4 **Q.** Okay. So just so we're clear, because I think, you
5 know, this is an important point, you referred to the
6 original design of the AR-10, AR-15, M4, and M16.

7 The firearms -- I'm not sure what the right
8 terminology is. The group that is specifically named
9 in the regulation as M4, AR-15, M16, AR-10, is that a
10 reference to their original designs? Is that what the
11 regulation refers to in your understanding?

12 **A.** Yes, it does.

13 **Q.** So just to be clear, if you can give me one second. Do
14 you have a copy of the regulation handy?

15 **A.** It's not in front of me right now, but I imagine we
16 could get one fairly quickly.

17 **Q.** Okay. Well, it's probably easier if I share a screen
18 with you, so just give me one second.

19 Now, I'm showing you section 87 of the regulation,
20 and there's a reference there to the firearms of the
21 designs commonly known as the M16, AR-10 and AR-15
22 rifles and the M4 carbine. So that reference in
23 section 87 is to their original designs, right?

24 **A.** Yeah. The screen share has not come through. I can
25 see you but not the document.

1 Q. Oh, that's very odd.

2 A. I think -- do I have to do anything? I don't think so.

3 Q. Well, let me try sharing it with you again. You should
4 be able to see it. Do you see it now?

5 A. What I see is a...

6 MR. MACKINNON: Here, can I help you?

7 A. Yeah. I don't see what you're --

8 MR. BOUCHELEV: I mean, another option, Counsel,
9 it for you to just pull up a copy of the regulation on
10 your computer and go to section 87.

11 MR. MACKINNON: Right. But there seems to be
12 something wrong with --

13 MS. BOND: Mr. Bouchelev, this is Jennifer
14 Bond. Right now we're seeing your desktop. I think
15 when you share your screen, you have to share the --
16 there will be an option to maybe share the internet tab
17 instead. I think that might be the issue.

18 MR. BOUCHELEV: That's what I've been trying to
19 do. I mean --

20 MS. BOND: I'm just trying to troubleshoot.
21 I'm not sure exactly what the issue is.

22 MR. BOUCHELEV: Hold on a second. I'll try to
23 move it to a different screen. Maybe that will fix it.

24 MR. MACKINNON: Oh, that's better. So that was
25 your screen, not his. So that was why.

1 MR. BOUCHELEV: Well, I don't know if you can make
2 that assumption.

3 MR. MACKINNON: Well, no, no. Because you were
4 showing it to all of us. I looked at his screen and
5 the other -- yeah. You were showing something from
6 your own screen.

7 MS. OXAAL: What we were seeing was your
8 desktop, as Ms. Bond indicated; not the document.

9 Q. MR. BOUCHELEV: Okay. Do you see section 87 now?

10 A. Yes, it's come through now.

11 Q. Okay. Excellent. So the firearms of the design
12 commonly known as M16, AR-10, AR-15 rifles, and the M4
13 carbine; do you see that?

14 A. Yes.

15 Q. Okay. So in your understanding, section 87, when it
16 lists these four firearms, it refers to the original
17 designs from the 1950s and 60s?

18 A. That's my understanding.

19 Q. Okay. All right. So all of the firearms listed in
20 subparagraphs starting with (a) and going all the way
21 down hundreds of entries here, they are all, in your
22 understanding, variants of the original design of the
23 AR-10, AR-15, M4, or M16?

24 A. Well, the content of those regulations was determined
25 by the Governor in Council.

1 Q. Okay. But I'm asking for your understanding.

2 A. They all look like variants to me.

3 Q. No, no. But -- so section 87 has a number of
4 subparagraphs, right? Starting with (a)?

5 A. Yes, it does.

6 Q. Okay. And all of these subparagraphs refer to
7 individual firearms, right?

8 A. They refer to individual makes and models, which may
9 actually represent more than one firearm.

10 Q. Okay.

11 A. If you factor in calibers and barrel lengths.

12 Q. But all of these individual makes and models are
13 variants of the original M4, M16, AR-10, and AR-15,
14 right?

15 A. Well, those firearms were put there by the Governor in
16 Council, so they are named as variants, and I accept
17 them as that.

18 Q. Okay. But is it your understanding that they are
19 variants of the original design?

20 A. They certainly appear to be, but the rationale for
21 determining what went into the named variant list lies
22 with the Governor in Council, and I don't know what
23 that is.

24 Q. Okay. But you don't have any information to suggest
25 that they -- okay. Anyways, I think you've answered my

1 question.

2 I take it it is your understanding that they are
3 all variants of these four?

4 **A.** It certainly appears to be to me.

5 MR. BOUCHELEV: Okay. Well, Counsel, I have to
6 take a break now. As you know I have a case conference
7 in another matter starting at 2:00. So what I propose
8 we do, and I'm not sure how long my case conference
9 will be. It could be up to an hour, but I suggest we
10 take until 2:30 and then we check back, and if I'm not
11 back by 2:30, then we'll reconvene at quarter to 3,
12 okay?

13 MR. MACKINNON: All right. How far along are you
14 now?

15 MR. BOUCHELEV: I'm not sure. I'll have to check
16 my notes, so we can talk about that when I come back.

17 MR. MACKINNON: Okay.

18 (Proceedings ended at 11:49 a.m. MT)

19 _____
20 (Proceedings to recommence at 12:30 p.m. MT)

21 _____

22
23
24
25

1 (Proceedings recommenced at 12:42 p.m. MT)

2 MURRAY SMITH, previously affirmed, questioned by

3 Mr. Bouchelev:

4 **Q.** Mr. Smith, what I will do is -- let's go back to the
5 report of Mr. Bader that we were looking at before.

6 Okay. I'm going to ask you at page 125 of the PDF
7 file, which is page 96 in the top right corner.

8 **A.** Okay.

9 **Q.** Just let me know when you're there.

10 **A.** Okay, I'm there now. It's referring to a Derya Arms
11 VR90 shotgun, FRT record?

12 **Q.** Yeah, that's correct.

13 Now, are you familiar with this firearm?

14 **A.** Not particularly. I don't recall this particular
15 model.

16 **Q.** Okay. Is it one of the Turkish shotguns that you were
17 looking at?

18 **A.** It is a Turkish shotgun. I don't specifically recall
19 this one, but...

20 **Q.** Okay. Now, do you agree that this is a shotgun that
21 was classified as non-restricted prior to May 1st,
22 2020, and is currently denoted in the FRT as a
23 prohibited firearm?

24 **A.** Well, it's currently denoted as a prohibited firearm in
25 the -- currently because the FRT record says so. I

1 don't specifically recall this firearm and what it was
2 prior to May 1st if, indeed, it was ever actually
3 recorded in the FRT. I just don't recall.

4 MR. BOUCHELEV: Okay. And is there any way that
5 you could check?

6 MR. MACKINNON: He's answering from what he has in
7 front of him and his memory, so he's not going back and
8 coming back.

9 Q. MR. BOUCHELEV: Okay. But do you have the
10 capability to do that? Do you have the capability to
11 check what its classification was or what the FRT note
12 was prior to May 1st?

13 A. I would have to check with the SFSS office, and at this
14 late day on Friday, I don't know if anyone's going to
15 be in the office because of the depopulation of the
16 office due to the COVID-19 practices.

17 Q. Well, Mr. Bader states in his affidavit that this
18 firearm was a non-restricted firearm prior to May 1st.
19 Do you have any reason to disagree with him?

20 A. Well, I could assume that for the purposes of your
21 questions, if you like.

22 Q. Okay. But you don't have any information to suggest
23 that it was prohibited or restricted, right?

24 A. No. As I said before, I just don't recall this
25 particular model. This does not come to mind.

1 Q. Okay. And can you tell me why it is currently
2 described as a prohibited firearm in the FRT?

3 A. Well, according to the record that's here, it's
4 prohibited because it's a variant of a firearm
5 that's -- that is regulated by paragraph 87.

6 Q. And do we know which particular firearms it's a variant
7 of?

8 A. The record does not indicate that, and I just don't
9 remember.

10 Q. Okay. Now, do you agree with me that this firearm does
11 not have the same receiver as the firearms in
12 section 87 of the regulation?

13 A. As I said, I do not recall the shotgun. I don't have
14 the specifics memorized, so I don't know with certainty
15 whether it has the same receiver as any other firearm
16 or not.

17 Q. But being a shotgun, it couldn't have the same receiver
18 as the original M4, M16, AR-10, and AR-15, correct?

19 A. Correct. Unlikely.

20 Q. Okay. And it wouldn't have the same bolt, correct?

21 A. It would be unlikely.

22 Q. I would say impossible.

23 A. Well, again, I just don't recall the specifics of this
24 particular firearm, so I don't know what --

25 Q. Well, but you can look at the FRT report. I think it

1 gives you the specifics. It says that it's a 12-gauge
2 shotgun, semi-automatic. I mean, what other specifics
3 do you need?

4 **A.** Right. So based on that, I'm quite willing to agree
5 that it's unlikely that the receiver or the bolt or the
6 barrel are of this shotgun, the Derya Arms VR90, is
7 going to be exactly the same as any one of the four
8 original firearms named in paragraph 87.

9 **Q.** So that was the receiver, the bolt, the barrel, the
10 magazine. You agree that none of that is going to be
11 the same as the original firearms in paragraph 87?

12 **A.** Based on what I see in the FRT record here, I would say
13 it's highly unlikely.

14 **Q.** But you say "highly unlikely," but why do you say
15 unlikely as opposed to just simply admitting that it's
16 impossible for that to be the same?

17 **A.** Because I don't recall the details of the firearm. I
18 just don't remember what it is. But based on the data
19 that's there, it's -- it is, in all likelihood, a
20 different design than any of the original four firearms
21 in terms of the bolt and barrel and magazine and
22 receiver.

23 **Q.** If you look at page 127 of the PDF, which would say
24 "page 98" in the top right corner, do you see that
25 there is some descriptions under "Model"?

1 It's says, "VR90 may or may not be marked on the
2 firearm." Do you see that?

3 **A.** Yes, I see all that.

4 **Q.** Okay. So do these descriptions help you understand why
5 this firearm is now described as a variant in the FRT?

6 **A.** It helps a bit in the sense that the model description
7 describes the shotgun as an AR style shotgun, which
8 suggests it might be a variant. But in terms of the
9 precise details as for why that assessment was made in
10 that fashion, I just -- I don't recall. I didn't
11 review all of these firearms to come prepared to
12 discuss them in this level of detail today.

13 **Q.** Okay. And you will agree that, you know, although it
14 describes it as an AR style shotgun, just because it's
15 AR style doesn't necessarily means that it's a variant,
16 right?

17 **A.** The determination as to whether this shotgun was a
18 variant or not is not based on what's written in the
19 FRT record, as you have shown me today.

20 The information is collected. All of the
21 information is reviewed, and an assessment is made as
22 to whether a firearm can be a variant or not, and then
23 the FRT record is produced, including this description
24 of the model.

25 So you're putting the cart before the horse. The

1 determination is not based on the FRT record; the
2 reverse is true. The FRT record is based on the
3 analysis and determination.

4 **Q.** Okay. So if I were a gun owner who wanted to look at
5 all of this information that was reviewed to make the
6 determination that this is an AR variant, where would I
7 go to get that information?

8 **A.** You could look up the shotgun in the public version of
9 the FRT, and it would tell the owner that it was
10 prohibited as a result of being a variant.

11 **Q.** No, no. But that's not my question. As an owner, I
12 want to see what criteria the RCMP considered in
13 deciding that this is an AR variant. Where would I go
14 to get that information?

15 **A.** That information is not published.

16 **Q.** Okay.

17 **A.** It is available, I believe, via the Access to
18 Information protocol.

19 **Q.** Okay. So other than the -- so you believe it is
20 available, but you are not sure if it's available via
21 the Freedom of Information request, right?

22 **A.** That's -- we have released similar information in the
23 past in response to a tip request, so in all likelihood
24 it is.

25 The reason I have to be somewhat cautious is

1 because sometimes the information is proprietary to a
2 particular dealer or manufacturer, and under the rules
3 of ATIP, we have to protect third-party information.

4 But apart from that, the inspection reports and
5 the FRT records are all available, the ATIP process, if
6 someone wanted to look at them and challenge them.

7 **Q.** And the inspection reports are not available in the
8 public version of the FRT, correct?

9 **A.** We do not publish them, no.

10 **Q.** Okay. And --

11 **A.** But --

12 **Q.** And if you do a Freedom of Information request, then
13 the information that comes back to you may be partially
14 redacted, correct?

15 **A.** If it contains information that is not releasable via
16 the ATIP process, it will be redacted, yes.

17 **Q.** Okay. Now, going back to the question that I was
18 asking you before, there is, you know, a specific
19 comment here saying that this is an AR style shotgun.
20 So what I'm trying to understand is when, you know, the
21 FRT refers to something as AR style, is that the same
22 way as saying -- another way of saying AR variant? Or
23 it means something else?

24 **A.** It means exactly what it says, is that the overall
25 style of the shotgun follows AR pattern firearms.

1 Q. And it is, therefore, an AR variant?

2 A. It might be an AR variant; it might not? It depends
3 on --

4 Q. Okay.

5 A. -- all of the information. As I said many times
6 before, a decision concerning the status of a firearm
7 as a variant for the purposes of the Firearms Reference
8 Table is based on all of the available information; not
9 one single statement, such as the one you referred to.

10 Q. Okay. So I'm just trying to understand because it's a
11 little confusing to me. But if something is described
12 as AR style, is does not necessarily mean that it is an
13 AR variant, correct?

14 A. That's correct.

15 Q. Okay. Now, can you look at page 135 of the PDF file.
16 It will say "page 106" in the top right-hand corner.

17 MR. MACKINNON: Counsel, how many more of these
18 guns do you intend to put to him? Because this is
19 really -- for the purposes of this motion in his
20 affidavit, it's not relevant. And he's answered in
21 excruciating detail questions on several guns.

22 I just want to know, is this the last gun, or are
23 you intending to do more? Because I don't see the
24 relevance --

25 MR. BOUCHELEV: Well, Counsel, we'll go through as

1 many as necessary. I disagree with you that it's not
2 relevant, and I suspect that other counsel for the
3 applicants will also disagree with you. I think you're
4 alone in that opinion, which you are entitled to have,
5 but it's my cross-examination, and I'll ask the
6 questions that I feel --

7 MR. MACKINNON: But I can direct the witness. I'm
8 asking you how is this kind of detail, which he's
9 answered many, many times now for you, directly
10 relevant to this injunction and to his affidavit?

11 MR. BOUCHELEV: It is absolutely relevant. I'll
12 remind you that these materials are contained in the
13 affidavit of one of the witnesses that we have
14 provided, and I am entitled to -- these are guns that
15 are now classified as prohibited firearms, whereby they
16 weren't before, and it is directly relevant to the
17 injunction, so I would like to --

18 MR. MACKINNON: We could be here for days and days
19 if you're going to do that, because I'm sure there's
20 many --

21 MR. BOUCHELEV: Well, I don't -- you'll be happy
22 to know that I only have a few more. It's not like I
23 have 100 or 1,000 of these to go through. If you had
24 reviewed the affidavit of Mr. Bader, you will probably
25 know how far along I am. And I only have a couple

1 more.

2 MR. MACKINNON: All right. I'll just judge the
3 time. I'm just anxious to get, basically in a timely
4 way, finished with relevant materials. And he's
5 answered a lot. I mean, I haven't interrupted hardly
6 at all.

7 So go ahead, but we'll see how long it takes,
8 okay.

9 MR. BOUCHELEV: Okay.

10 Q. Now, Mr. Smith, do you have page 106, top right corner.
11 Do you have that in front of you?

12 A. Yes. It's another FRT report dated September 14th,
13 2020, and it deals with a Mossberg 702 Plinkster.

14 Q. Okay. And are you familiar with that firearm, the
15 Mossberg 702 Plinkster?

16 A. In general, yes. I know what the firearm is.

17 Q. Okay. So I'm going to -- I think it will probably be
18 easier. I'm going to find a picture of this firearm,
19 and I'll just share -- it's from the website of the
20 manufacturer, and then I'll just share it with you.
21 Give me one second.

22 Now, while I'm doing that, do you agree that this
23 is a firearm that was previously described as a
24 non-restricted firearm in the FRT before May 1st, 2020?

25 A. Yes. I believe the 702 Plinkster has been in

1 circulation for many years. It was non-restricted
2 before, and it remains non-restricted.

3 **Q.** Okay. And why does it remain non-restricted?

4 **A.** Because the characteristics of the firearm, when
5 compared to the criteria in part 3 of the Criminal
6 Code, produce a result that is non-restricted in
7 classification.

8 **Q.** And it's not a variant of any prohibited firearm listed
9 in the Firearms Act or regulation, correct?

10 **A.** No. It's not a variant of any firearm in the current
11 version of the regulations.

12 **Q.** Okay. Now, I'm going to take you to the next page.
13 This is page 148 in the PDF file, and it should say
14 "page 119" at the top right-hand corner.

15 **A.** Okay. I have page 119.

16 **Q.** Okay. Now, do you see that this is an FRT report for
17 the Mossberg 715T Tactical 22?

18 **A.** Yes.

19 **Q.** Okay. Are you familiar with this firearm?

20 **A.** In general terms, yes.

21 **Q.** Okay. How is it different from the 702 Plinkster that
22 we have just looked at?

23 **A.** It differs in a number of ways. First of all, they are
24 different firearms. The model 702 is marked as a model
25 702, whereas the model 715 is marked as a model 715.

1 The model 715 has different accessories than the
2 model 702, and it is advertised by Mossberg as being
3 their contribution to the AR platform.

4 **Q.** What does that mean to you? Their contribution to the
5 AR platform?

6 **A.** Well, they -- Mossberg is -- in its advertising
7 describes the firearm as having all manner of AR
8 characteristics. I don't have the details in front of
9 me, so I can't itemize them to you one by one. But the
10 firearm is presented by Mossberg as being a type of AR
11 platform firearm. It's meant to emulate the
12 characteristics of an AR-15 but in .22 long rifle
13 calibre.

14 **Q.** Okay. Does it have the same receiver as the AR-15?

15 **A.** No.

16 **Q.** Does it have the same bolt?

17 **A.** No.

18 **Q.** Does it have the same barrel?

19 **A.** No.

20 **Q.** Does it have any other functional components that are
21 identical to the AR-15?

22 **A.** There may be some capability with accessories. I
23 believe the advertising indicates that it accepts
24 standard AR-15 components as in, you know, stock and
25 sights and so on, but I would have to confirm exactly

1 which ones would fit that rifle.

2 But none of the mechanical portions of the rifle
3 are the same, which is logical since it's .22 long
4 rifle calibre.

5 **Q.** So Mr. Bader states in his affidavit that the Mossberg
6 702 and 715T function in the same manner, have
7 identical receivers. Do you agree with that?

8 **A.** The mechanical operation of the two rifles is the same;
9 however, they are definitely marked differently.

10 **Q.** Well, that's not my questions as to how they're marked.
11 I'm saying that they have the same receiver.

12 **A.** Yes. You asked me if they had the same receiver, and
13 they don't. One is marked with a Mossberg 702, and the
14 other is marked with a Mossberg 715.

15 **Q.** Okay. But other than the marking, are the receivers
16 identical?

17 **A.** So far as I know, yes.

18 **Q.** Okay. And Mr. Bader states in his report that the 715
19 is a variant of the 702. Do you agree with that?

20 **A.** No.

21 **Q.** So you're saying that the 715 was not derived from the
22 702?

23 **A.** Well, it depends on how you're using the word variant
24 now. If you're using the word variant in the sense of
25 whether a firearm is a variant of a firearm named in

1 the regulations, then the Mossberg 715T is a variant of
2 the firearms listed in paragraph 87.

3 **Q.** Are we using the Oxford Dictionary definition?

4 **A.** If you're using the variant definition more loosely,
5 then the Mossberg 715T could, in fact, be described as
6 a variant of the model 702, yes.

7 **Q.** So under the Oxford Dictionary definition that we've
8 looked at before, is the 715T a variant of the 702?

9 **A.** Yes.

10 **Q.** Okay. And are you aware of the Mossberg 715T being
11 used by any military or police organization?

12 **A.** I'm not aware of that, no.

13 **Q.** And you would agree with me that it would be unsuitable
14 in that role?

15 **A.** No, I would not. Many military forces use .22 long
16 rifle calibre firearms as training firearms. So this
17 firearm would be suitable in that role if some military
18 agency were to adopt it. I don't see any issues there.

19 **Q.** So help me understand, I think what you're saying is
20 that the main reason why this gun is deemed to be an
21 AR-15 variant is because of how it is marketed by the
22 manufacturer and because externally it kind of looks
23 like an AR-15?

24 **A.** Well, I don't have all of the factors right here in
25 front of me, but, yes, I would agree that, from what I

1 recall from the advertising, it is marketed as an
2 AR-15, that it has a number of AR-15 characteristics,
3 that it will accept AR-15 accessories.

4 So, yes, the totality of information available on
5 that particular firearm would lead me to believe that
6 that firearm is properly characterized as a variant of
7 a firearm mentioned in paragraph 87 for the purposes of
8 firearms classification.

9 **Q.** So it sounds to me like you're placing a great deal of
10 importance on how the manufacturer is marketing?

11 **A.** As I indicated to you previously, all information is
12 examined, and each element of the information is vetted
13 for credibility. And in some cases what the
14 manufacturer says will be of considerable importance;
15 in other cases what the manufacturer says will be of no
16 importance. It depends on how credible the
17 manufacturer's information is.

18 **Q.** And you find that Mossberg's claim that this is -- this
19 gun is a version of the AR-15 to be a credible claim?

20 **A.** Yes. I believe they're attempting to produce an AR-15
21 pattern firearm in .22 long rifle. It's clear to me
22 that the 715T would have no reason to exist if the
23 AR-15 had never been invented.

24 **Q.** And why does that matter whether or not it would have
25 reason to exist? I'm not sure I follow.

1 **A.** The reason for that is variants are imitations or
2 copies or derivatives of the original firearm, and, as
3 such, they owe their existence in some way to the
4 creation of the original firearm. And if the original
5 firearm had never been created, there wouldn't be any
6 variants of it.

7 So in the case of the Mossberg model 715T, the way
8 that firearm is designed and marketed, it seems to me
9 that it would never have come into existence were it
10 not for the previous existence of the AR-15 for it to
11 copy.

12 **Q.** But that seems quite a departure from the Oxford
13 English Dictionary definition. There is nothing in the
14 Oxford English Dictionary that I can see that deals
15 with this kind of analysis.

16 **A.** It's still -- the Oxford Dictionary definition still
17 says a firearm which is derived from the original. And
18 the explanation I just gave you concerning the unlikely
19 probability of a 715T existing were not for the prior
20 existence of the AR-15 falls into that. It has to do
21 with the linear relationship between the original
22 firearm and the variants which appear either later in
23 time or in a different geographic area.

24 **Q.** Well, actually the Oxford Dictionary definition that
25 you took me to does not say anything about being

1 derived from an original.

2 **A.** You're entitled to your point of view, sir. If that's
3 how you see it, that's fine with me.

4 **Q.** It's not how I see it. It's just that we looked at the
5 Oxford Dictionary definition. It says nothing about
6 something deriving from an original. It states, A form
7 or version of something that differs in some respect
8 from other forms of the same thing.

9 MR. MACKINNON: Well, that's not the exact
10 wording, but --

11 MR. BOUCHELEV: Or from a standard. That's
12 exactly what that definition says.

13 **Q.** But in any event, so --

14 **A.** You might recall, sir, that when we talked about that
15 definition, that I never committed to that being the
16 sole factor for defining what a variant is.

17 You asked me what definition we use. That's the
18 definition we use; however, as I've said many, many
19 times, the determination as to whether a firearm is a
20 variant or not depends on all of the information
21 available. So it's not just whether it happens to meet
22 a particular definition, but it's also how the firearm
23 is portrayed by its manufacturer, how the word variant
24 is used in the industry, and how that fits with the
25 manufacturer's description.

1 It deals with questions like, Would this firearm
2 ever have existed if the original had not? There's a
3 whole host of factors to consider of which a plain
4 dictionary definition is only one single factor, and
5 you were trying to convince me that the dictionary
6 definition is the only thing that matters, and I'm
7 replying by saying that is not correct or accurate.

8 **Q.** Well, I'm not sure that I ever said that, what you are
9 ascribing to me, but you say that there is a whole host
10 of factors, including the dictionary definition. And
11 who came up with this host of factors?

12 **A.** These were developed within SFSS under my direction.

13 **Q.** Okay. So these are basically factors that you
14 articulated?

15 **A.** Yes. Because the purpose or one of the purposes of
16 SFSS is to produce the Firearms Reference Table. The
17 Firearms Reference Table describes firearms and
18 determines a legal classification for each firearm.
19 The Criminal Code offers only three categories:
20 non-restricted, restricted, and prohibited.

21 And over the years, SFSS has developed a practical
22 system for determining what category each firearm best
23 fits. And it's based on a variety of criteria, as I
24 previously mentioned.

25 **Q.** Okay. And so I think to simplify, at the end of the

1 day, whether or not a gun is a variant or not is
2 ultimately at your discretion?

3 **A.** No, it is not. Anyone, anyone in Canada, any business,
4 any individual, any institution can do exactly the same
5 as the RCMP. They can build their own version of the
6 FRT if they choose to do so.

7 When the RCMP built the FRT, the goal was to have
8 a comprehensive database with accurate descriptions and
9 accurate firearms classifications. We strive to do
10 that. We think we've got it right, but if someone else
11 wants to compete with us in this venue and build their
12 own version of the FRT, they are welcome to do so.

13 **Q.** Well --

14 **A.** The only arbitrator of this is the Courts.

15 **Q.** Well, but surely you are being facetious when you say
16 that anyone can do the same thing that the FRT has
17 done. I mean, sure, I could create my own database,
18 but I'm not the RCMP. The prosecutor and law
19 enforcement agencies are not going to use my database
20 to decide if people are going to be charged with crimes
21 to decide if someone owns a variant of a prohibited
22 firearm.

23 So can you say that anyone can do the same thing?

24 **A.** Well, the FRT is not imposed on police. It's not
25 imposed on prosecutors. It's not imposed on

1 businesses. It's all used voluntarily. And, in fact,
2 there are many instances where businesses have
3 independently created their own assessment of
4 classification.

5 And, likewise, police or prosecutors have also
6 come to their own conclusions on what a firearm should
7 be or whether a charge is relevant.

8 So the FRT does not dictate to anyone any more
9 than a competing database would as to who must use it
10 or who must not.

11 **Q.** Now, do you agree with me that most firearms that are
12 sold in Canada are not manufactured in Canada?

13 **A.** Yes, I would agree with that.

14 **Q.** So if they're not manufactured in Canada, they would
15 have to be imported?

16 **A.** Yes.

17 **Q.** And the agency that decides whether or not a gun can be
18 imported is the CBSA?

19 **A.** There are actually two departments involved. The
20 Department of Global Affairs issues the import permits,
21 and the Canada Border Services Agency oversees the
22 actual importation.

23 **Q.** Okay. And the CBSA, the Canada Border Services Agency,
24 does it use the FRT to decide whether or not a gun can
25 be imported into Canada?

1 **A.** I can report to you that CBSA, or the Canada Border
2 Services Agency, voluntarily uses the FRT; however, how
3 they make their day-to-day decisions is up to them. I
4 don't give them direction on how they make decisions.
5 They have their own system for doing so.

6 **Q.** And you would agree with me that if, let's say, a
7 firearms owner does not agree with your definition of a
8 variant that is contained in the FRT, he cannot simply
9 appeal your decision. He -- because the FRT is not --
10 there's no appeal process for the FRT for an FRT
11 determination, correct?

12 **A.** Well, that's a legal decision, and I'll answer that to
13 a point. My understanding is that anyone who is
14 importing a product and --

15 **Q.** Just to be clear, I'm not talking about importing. I'm
16 sorry if I confused you. I'm not talking about import.
17 I'm talking about a gun owner inside Canada who wants
18 to buy, for example, a Mossberg 715T, and he disagrees
19 with your determination that it is an AR variant. Does
20 he have any recourse in terms of appealing the FRT
21 report?

22 MR. MACKINNON: Just a second. That makes an
23 assumption. And, again, you're getting into legal
24 questions here, as to how he can legally challenge
25 something. And that's not what Mr. Murray is here for.

1 Q. MR. BOUCHELEV: Well, it's not a legal question.
2 I mean, the question is is there something that a gun
3 owner can do -- can he apply to SFSS, for example, and
4 demand that you reconsider your decision?

5 MR. MACKINNON: Well, he's answered that question
6 in a number of ways already with regard to the
7 information a gun owner should get before they buy a
8 gun, how to check to see if the gun is a variant --

9 MR. BOUCHELEV: Well, no. But that's not my
10 question.

11 Q. My question is is there something a gun owner can do to
12 ask or demand that the SFSS change its determination?

13 MR. MACKINNON: But you're asking a legal
14 question. You're just asking --

15 (CROSS-TALKING)

16 MR. BOUCHELEV: It's a functional question. I'm
17 asking if there is a mechanism for an individual to
18 apply to the SFSS to ask or demand a change in a
19 determination.

20 MR. MACKINNON: Okay. So not a legal action of
21 some sort. He's asking, then, if someone writes to you
22 in some way and shows you some information, can they
23 convince you to change it?

24 A. Yes. SFSS will accept information from any source,
25 which will be analyzed for credibility and relevance.

1 And if someone, an individual or a business,
2 communicates with SFSS and has a clear, credible,
3 reasonable argument for why a classification
4 determination in the FRT is wrong and points out what
5 the classification should be and provides a rationale
6 and the necessary evidence to support that rationale,
7 then SFSS will change the record. That has happened in
8 the past.

9 **Q.** MR. BOUCHELEV: When was the last time --

10 **A.** We have changed FRT reports on the basis of people
11 having written to us in the past.

12 **Q.** Were the classifications upgraded or downgraded?
13 Meaning did you move to a more restrictive
14 classification or to a less restrictive classification?

15 **A.** Virtually all the instances where someone from the
16 public or from a private business has written to us has
17 resulted in a downgrading of classification.

18 I believe from time to time we will get requests
19 from police, which is more likely to result in an
20 upgrading of classification, so it's a mixture of both.

21 **Q.** When was the last time there was a downgrading of a
22 classification based on information you received from
23 the public?

24 **A.** Again, it's difficult to give you an exact answer there
25 because there's all kind of downgrading of

1 classifications that take place on a very, very regular
2 basis. So I'll give you two answers, then. One is
3 the -- is the one I think you're seeking, is where a
4 firearm which was named as a variant -- I'll back up
5 here. A firearm that was determined to be a variant
6 and prohibited as a result and where a business wrote
7 in and requested it be reviewed and supplied additional
8 information, and the ultimate result is that particular
9 firearm became non-restricted. That was done within
10 the last couple of years. I don't have the exact date.

11 The other half -- the other answer to your
12 question is --

13 **Q.** Which firearm was that?

14 **A.** It was, I believe, the WK108-C and the forerunner to
15 that, the AR-180B.

16 **Q.** Okay. And --

17 **A.** And --

18 **Q.** Can you think of a simple --

19 MR. MACKINNON: Sorry, just let him finish.

20 **A.** And it seems to me that it was the AR-180B that was the
21 subject of the query, but it had implications for the
22 WK108-C10C.

23 **Q.** MR. BOUCHELEV: Can you think of a single instance
24 when something like this happened when a member of the
25 public, meaning not a business, wrote to you and asked

1 for a downgrade?

2 **A.** Well, that was coming to my second part of my answer,
3 which is individuals and businesses modify their
4 firearms on a regular basis to produce a firearm which
5 has a lesser -- a less restrictive classification. And
6 those sometime result in the creation of a new FRT
7 record because it might be a unique barrel length or
8 calibre. And --

9 **Q.** Right. I'm sorry. I don't want to waste your time
10 because I understand what you are saying. If you
11 change the barrel for a -- you know, it goes from
12 restricted to non-restricted and vice versa. I'm not
13 interested in barrel changes.

14 I'm interested in when a firearm went from
15 non-restricted to restricted -- sorry. From prohibited
16 to non-restricted as a result of a member of the public
17 writing to you and asking for a downgrade.

18 **A.** Well, an example concerning a member of the public
19 stems back approximately one year where an individual
20 was charged for possession of a sawed-off shotgun.

21 Now, the individual did not write to SFSS. His
22 lawyer wrote to us on his behalf, and it was determined
23 by an analysis of the record that the individual had
24 had a point to make, that there were actually two
25 firearms. One that was standard length as a shotgun

1 and the other that had a very short barrel that looked
2 like it might have been sawed off but, in fact, was
3 determined to be -- to have been manufactured by the
4 Turkish manufacturer in that fashion.

5 So a second entry in the FRT was created, and as a
6 result, the Crown dropped charges against the
7 individual. So that occurred within the past year.

8 **Q.** Right. But that's a little different. Now you are
9 talking about a new entry being created. I'm talking
10 about an existing entry, a firearm classified as
11 prohibited or a firearm described as prohibited. A
12 member of the public writes to you, asks for a
13 downgrading, a downgrading is granted. Has that ever
14 happened?

15 **A.** It -- I can't cite any specific examples from recent
16 years. I just don't recall. But the -- there are
17 individuals who write in and request a firearm be
18 downgraded to antique, for instance.

19 **Q.** Okay. Well, again, I'm not interested in antiques.
20 I'm talking going from prohibited to non-restricted.
21 Can you think of a single example of that happening?

22 **A.** I can't think of any examples, no. But --

23 **Q.** Okay. Now, so let me just continue with my questions.
24 Give me one second. I'm going to come back to the
25 report of Mr. Bader, and if you can look at

1 appendix 15.

2 MR. MACKINNON: What page is that on the top
3 right?

4 Q. MR. BOUCHELEV: It's on page 166 of the PDF,
5 page 137, top right.

6 A. Okay. So I have a page that begins with a paragraph
7 63 -- or 53, rather.

8 Q. No, no. You should be looking at an FRT report, which
9 is on page 166 of the PDF file, page 137 in the top
10 right corner.

11 A. I'm looking at page 177, top right corner, and what I
12 have --

13 Q. No, no. 137. One-three-seven.

14 A. Okay. This appears to be a Firearms Reference Table
15 record for a Ranger XT3 Tactical firearm.

16 Q. Correct.

17 A. And its print date is also September 14th.

18 Q. Right. And this firearm is -- do you agree that this
19 firearm was classified -- was described as
20 non-restricted in the FRT prior to May 1st, 2020?

21 A. No. I don't recall this particular model. There were
22 a great many models that changed on the order of 200
23 post May 1st, and I simply don't remember them all from
24 memory.

25 Q. Okay. Well, Mr. Bader, in his affidavit, states that

1 it was classified as non-restricted before May 1st,
2 2020. Do you have any reason to disagree with him?

3 **A.** Not with the information I have here in front of me.

4 **Q.** Okay. And can you tell me why this firearm is
5 currently described as prohibited?

6 **A.** No. I don't recall the specifics on this one.

7 **Q.** Okay. Now, if you look at page 139, top right, under
8 the section called "Model --"

9 **A.** Yes, I'm there.

10 **Q.** Okay. And you'll see the last bullet point says that,
11 "This is an AR style shotgun."

12 **A.** Yes, I see that.

13 **Q.** Okay. And we've already established that AR style is
14 not necessarily the same thing as AR variant.

15 And there are -- if you look at features it says,
16 "Fibre optic front sight. M4/AR-15 type carrying
17 handle with adjustable rear sight." And that seems to
18 be the only feature that is described as being related
19 to M4 or the AR-15.

20 So is that the reason why this gun is prohibited?
21 Because it has an AR-15 style carrying handle?

22 **A.** As I mentioned to you before, the determination as to
23 whether a firearm is a variant or not, as done by SFSS,
24 does not depend on the model description that's
25 contained in the FRT record.

1 The analysis of the firearm as it concerns whether
2 it's a variant or not is based on all of the
3 information available. That is assessed. A
4 determination is made, and then the FRT record is
5 created.

6 So the model information you're seeing here is a
7 very brief description of the firearm after the
8 determination was made.

9 **Q.** Okay. Does this firearm have the same receiver as the
10 AR-15; do you know?

11 **A.** I don't recall the specifics on this firearm, but,
12 again, being a shotgun and as we discussed at length
13 before, probably not.

14 **Q.** Okay. So you would agree with me that this firearm
15 does not have the same receiver, bolt, magazine, or
16 barrel as the AR-10, AR-15, M4 or M16?

17 **A.** No. I wouldn't go that far on this firearm. Because
18 it's 410 gauge, and there are 410 gauge AR firearms, so
19 it is entirely possible for it to have the same
20 receiver. I just don't know what the answer is.

21 **Q.** So the original AR-10, AR-15, M4, or M16 were chambered
22 in 410?

23 **A.** That's not what I said. There are firearms in the AR
24 platform family --

25 **Q.** Okay.

1 **A.** -- which are chambered for 410 gauge and have the same
2 receiver design as a standard AR-15 or M4.

3 **Q.** Okay.

4 **A.** The reason for that is the 410 gauge is a small enough
5 gauge that it will fit within the confines of a
6 conventional AR-15.

7 **Q.** Do you know if that is the case of this particular
8 firearm?

9 **A.** No, I don't recall the specifics on this firearm.

10 **Q.** And I'm going to show you a picture of this firearm.
11 I'll just share it on your screen, and I'll ask you
12 some questions. Just give me a second.

13 Do you see the picture?

14 **A.** Yes, I do. I see a picture of a firearm that looks
15 generally AR with a carrying handle on top.

16 **Q.** Okay. Do you agree that this is the XT3 Tactical?

17 MR. MACKINNON: Well, Counsel, where is this
18 picture coming from?

19 MR. BOUCHELEV: This is from the internet.

20 MR. MACKINNON: Well, so you're giving evidence
21 now?

22 MR. BOUCHELEV: I'm asking him if he can identify
23 it as an XT3 -- this is a guy that you are presenting
24 as an expert in firearms. I'm asking him if he agrees
25 that this is the XT3 Tactical --

1 MR. MACKINNON: Well, he's already agreed with you
2 with regard to his knowledge currently about this
3 particular gun, and he stated that he doesn't remember
4 the details.

5 So you're asking him to identify this particular
6 gun that he doesn't remember the details about right
7 now? So --

8 Q. MR. BOUCHELEV: So the picture comes from the
9 website called "trimports" which describes --

10 MR. MACKINNON: I --

11 Q. MR. BOUCHELEV: -- it as XT3 Tactical 410
12 semi-auto.

13 MR. MACKINNON: Well --

14 Q. MR. BOUCHELEV: Do you agree that this is --

15 MR. MACKINNON: Just a second. You're giving
16 evidence now. So --

17 MR. BOUCHELEV: No, I'm not giving evidence.

18 MR. MACKINNON: You are. You're saying where this
19 is from. So --

20 MR. BOUCHELEV: Okay. Well, I showed him a
21 picture, and I've asked him if he agrees that this is
22 the XT3 Tactical.

23 Q. Mr. Smith, do you agree that this is the XT3 Tactical?

24 A. I can't tell you from memory. I can't see any of the
25 markings on the firearm, so I don't know.

1 Q. Okay. So you've never seen a picture of an XT3
2 Tactical? You've never examined it in your life,
3 right?

4 A. What I said is I don't remember whether I have
5 physically seen one or not.

6 Q. Okay.

7 A. Okay. The FRT database has over 190,000 firearms in
8 it. I do not have them all memorized. The SFSS
9 creates records by the dozen on a daily basis.
10 Hundreds of firearms pass through the inspection
11 service every year. I do not remember them all.

12 Q. Okay. And -- okay. Well, that's fair enough, but you
13 also told me today that you were dealing with Turkish
14 shotguns just recently, and this is a Turkish shotgun,
15 is it not?

16 MR. MACKINNON: Okay. Counsel, he has told you he
17 doesn't recognize this gun, this picture is what you
18 said it was. So it has no evidentiary value right now.

19 Q. MR. BOUCHELEV: Okay, fine. So you don't
20 recognize this gun, but you say that it looks like an
21 AR-15. What makes it look like an AR-15?

22 MR. MACKINNON: Well, first, what does that matter
23 if we haven't identified what this gun is?

24 MR. BOUCHELEV: Well, he said that it looks like
25 an AR, and I'm entitled to ask him why he states that.

1 MR. MACKINNON: You can put any kind of gun to him
2 and ask if it's an AR-15. That's not relevant to this.

3 MR. BOUCHELEV: Well, he said that --

4 MR. MACKINNON: He has not identified this gun as
5 what you wanted him to, so it doesn't matter what kind
6 of gun --

7 MR. BOUCHELEV: No, no. But hold on a second. He
8 identified it as an AR style gun. He said that it
9 looks like an AR, and I'm entitled to ask him why.

10 MR. MACKINNON: Yeah. But it has no relevance
11 because --

12 MR. BOUCHELEV: Yes, it does have relevance.

13 MR. MACKINNON: Okay. So how is it relevant?
14 This gun that we don't know what it is, you're asking
15 him to identify what's AR --

16 MR. BOUCHELEV: Well --

17 (CROSS-TALKING)

18 MR. MACKINNON: You know, it could be from a -- I
19 don't know. It could be anything, so what does that
20 matter?

21 MR. BOUCHELEV: It's relevant to his expertise.
22 This is an individual who you are presenting as a gun
23 expert. He testified that this looks to him like an
24 AR, and I'm entitled to explore why he feels that way.

25 MR. MACKINNON: Okay. We have already spent a

1 great deal of time, in my mind, going through a lot of
2 detailed questions on guns that I don't think are
3 relevant. We --

4 MR. BOUCHELEV: Excuse me.

5 MR. MACKINNON: I'll tell you why --

6 MR. BOUCHELEV: No. Hold on a second. Hold on a
7 second.

8 (CROSS-TALKING)

9 MR. MACKINNON: I'm telling you why --

10 MR. BOUCHELEV: This individual --

11 MR. MACKINNON: -- I'm objecting.

12 MR. BOUCHELEV: Okay. Mr. MacKinnon, Mr. Smith is
13 being presented as an expert on guns. It shouldn't --

14 MR. MACKINNON: Yes.

15 MR. BOUCHELEV: -- surprise you at all that he is
16 being asked detailed questions about guns because that
17 is his alleged area of expertise.

18 I'm not going to ask him questions about the
19 weather. I'm not going to ask him questions about
20 anything other than guns. That's what we're here to
21 do.

22 So excuse me if I'm asking him detailed questions,
23 but that's why we're here --

24 MR. MACKINNON: If you would let me finish. I was
25 saying that there's a lot of, to my mind, non-relevant

1 questions to his affidavit and to the purpose for which
2 it was supplied, for this preliminary motion.

3 MR. BOUCHELEV: Well, that's your opinion.

4 MR. MACKINNON: Will you let me finish, please.

5 (CROSS-TALKING)

6 MR. MACKINNON: Mr. Bouchelev, if you won't let me
7 finish, I can't answer.

8 MR. BOUCHELEV: Well, Counsel, you're wasting --

9 MR. MACKINNON: Would you let me finish my --

10 MR. BOUCHELEV: -- quality time unnecessarily.

11 MR. MACKINNON: Mr. Bouchelev, I let you finish
12 yours; let me finish my answer, please.

13 MR. BOUCHELEV: You are eating into my examination
14 time.

15 MR. MACKINNON: Well, how about you let me finish,
16 and you'll have less time -- you'll have more time.

17 MR. BOUCHELEV: I will have less time, of course.

18 MR. MACKINNON: Well, that's from your questions.

19 So the questions you have asked are very detailed.
20 They're not relevant, in my mind, to this injunction
21 that's currently before the Court, nor to his
22 affidavit.

23 This gun that you now want to go into detailed
24 question about, which we have no idea what it is, and
25 he said he doesn't know, are, to my mind, irrelevant.

1 So I am objecting to questions on this gun based
2 on his evidence right now.

3 OBJECTION TAKEN to answering questions about the Ranger XT3
4 Tactical

5 MR. MACKINNON: So if you want to put to him some
6 statements from your expert, that's fine.

7 MR. BOUCHELEV: Well, I was putting to him the
8 statements from my expert. The expert stated that this
9 is not an AR-15 variant. The problem is Mr. Smith
10 apparently has not read my expert's report and he
11 doesn't even know what an XT3 Tactical looks like.

12 MR. MACKINNON: You can put to him questions for
13 which he has knowledge, and he's answered those
14 questions already. So --

15 Q. MR. BOUCHELEV: Okay. Mr. Smith, did you review
16 the affidavit of Travis Bader?

17 A. Yes, I did.

18 Q. And did you read the portion of the affidavit that
19 deals with the XT3 Tactical?

20 A. Yes.

21 Q. Okay. And at that time, did you familiarize yourself
22 with what an XT3 Tactical was?

23 A. No, I did not.

24 Q. Okay. So I take it that because you didn't do that you
25 don't object to any of the statements that Mr. Bader

1 made about this firearm in his affidavit, correct?

2 **A.** Mr. Bader is entitled to his point of view. He
3 employees a number of statements with which I
4 definitely do not agree; particularly his definition of
5 what a variant is. That's completely and totally
6 incorrect, in my view.

7 The affidavit for Mr. Bader simply listed a number
8 of -- he selected several firearms from the 190,000 or
9 so firearms available on the FRT, gave his opinion on
10 the classification of those firearms based on a faulty
11 definition of receiver. And -- pardon me. Or a
12 variant.

13 And that's what I focused on, and I'm quite
14 prepared to argue the basis on which Mr. Bader thinks
15 the -- that particular firearm is not a variant, per
16 his definition, but Mr. Bader did not go into all the
17 details himself as to whether the receiver was the same
18 or the receiver was different or the barrel was the
19 same or the barrel was different, so I did not prepare
20 a rebuttal to any of his information of that nature.

21 Secondly --

22 **Q.** How --

23 **A.** Secondly, the -- Mr. Bader has had an enormous amount
24 of time to prepare his affidavit, and I've had almost
25 none to review it, which means I'm limited in the

1 amount of detail I can reply to on such short notice.

2 Q. Well, you had several weeks to review his affidavit.

3 MR. MACKINNON: Not several weeks.

4 Q. MR. BOUCHELEV: Well, how much time did you have?

5 When did you get a copy of his affidavit, Mr. Smith?

6 MR. MACKINNON: How is this relevant, Counsel?

7 MR. BOUCHELEV: Well, he says that he had to

8 respond to it on short notice, which is not true. It

9 was served on him in accordance with the Court ordered

10 timetable. Maybe your own counsel didn't give it to

11 you on time, but that's not my client's fault.

12 A. Well, that's not what I'm referring to. Because it

13 seems to me that I received notice that Mr. Bader's

14 affidavit was going to be discussed at the time of my

15 testimony, a matter of a couple days ago.

16 Q. Yeah. But you had, you know, your own affidavit

17 references Mr. Bader's affidavit, so obviously you had

18 a chance to review the affidavit of Mr. Bader a long

19 time ago.

20 MR. MACKINNON: Mr. Smith does not have any

21 particular duty to do the kind of analysis you are

22 wanting him to. That was not even in Mr. Bader's

23 affidavit. So --

24 Q. MR. BOUCHELEV: What I'm trying to ask is -- I'm

25 just trying to understand how can you possibly dispute

1 Mr. Bader's evidence in respect of this particular gun,
2 being the XT3 Tactical, when you don't even know what
3 that gun is? If you've never seen --

4 MR. MACKINNON: How about you put -- can you put
5 to him --

6 MR. BOUCHELEV: No, no. Counsel --

7 MR. MACKINNON: -- the document --

8 MR. BOUCHELEV: I don't --

9 MR. MACKINNON: No, no. If you're --

10 MR. BOUCHELEV: I don't need suggestions from
11 you --

12 (CROSS-TALKING)

13 MR. BOUCHELEV: No, no. Don't suggest --

14 MR. MACKINNON: You're putting an unfair question
15 to him. You're putting an unfair question right now to
16 my witness. You're saying "how" in a general term.

17 Put to him the document that you're referring to,
18 Mr. Bader's expert testimony or what's in his appendix.
19 You can put to him and ask him that question, but --

20 MR. BOUCHELEV: No --

21 MR. MACKINNON: -- in a general way, he's answered
22 it already. But to make some general comment --

23 MR. BOUCHELEV: I'll take that as a refusal.

24 Okay.

25 OBJECTION TAKEN to answering the question: I'm just trying

1 to understand how can you possibly dispute Mr. Bader's
2 evidence in respect of this particular gun, being the
3 XT3 Tactical, when you don't even know what that gun
4 is?

5 Q. MR. BOUCHELEV: So we looked at the XT3 Tactical.
6 Are you familiar with the regular XT3, which is the
7 firearm that is referred at PDF page 160, page 131 in
8 the top right corner.

9 MR. MACKINNON: Sorry. 160?

10 MR. BOUCHELEV: Yes. PDF page 160, page 131 in
11 the top right-hand corner.

12 MR. MACKINNON: Okay. Now, when I last asked you
13 about this, you said, Oh, I only have a couple more to
14 go. You've gone through two more. Are you intending
15 to go through four more after this?

16 MR. BOUCHELEV: I'll go through as many as I feel
17 are necessary.

18 MR. MACKINNON: Okay. All right. Well, then I'm
19 going to object now, so that you know, to more of these
20 detailed questions for any more of these guns that I do
21 not see any relevance to.

22 MR. BOUCHELEV: Yeah. Except they're in my
23 client's -- they're in my expert's report, and I'm
24 entitled to put information in my expert's report to
25 this witness, and I don't need your opinion as to

1 whether they are relevant or not.

2 MR. MACKINNON: You're not putting, actually, any
3 part of Mr. Bader's expert opinion to our witness here
4 to respond to. You're just putting some comments of
5 your own on questions of some exhibits.

6 MR. BOUCHELEV: Yeah. And I'm entitled to broadly
7 cross-examine an expert witness. So, Counsel, I think
8 your objection --

9 MR. MACKINNON: Okay.

10 MR. BOUCHELEV: -- is entirely improper.

11 MR. MACKINNON: Well, we've already gone more than
12 five and a half hours since yesterday with you, which
13 is another two and a half hours more than the first
14 counsel went.

15 MR. BOUCHELEV: Well --

16 MR. MACKINNON: And you're not finished going
17 through, even, these detailed questions on guns for
18 which it's not directly relevant to issues in the
19 injunction.

20 MR. BOUCHELEV: Well, Mr. MacKinnon, first of all
21 we are now wasting a lot of time with your commentary
22 on the record, which I think is not necessary. Second,
23 this is an important case. This is not a small claims
24 court matter. This is an injunction that will affect
25 thousands, if not tens of hundreds of thousands of

1 people, and I am going to do a thorough
2 cross-examination, and if we run out of time, then
3 we'll continue it on another day. If you object, we'll
4 go to court and ask for additional examination time.

5 MR. MACKINNON: All right. We've --

6 MR. BOUCHELEV: Stop wasting time and let me go
7 back to my question --

8 MR. MACKINNON: No. I'm going to say, we've been
9 assigned a certain amount of time. Other counsel have
10 been very good with keeping their time within the time
11 limits set. You're --

12 MR. BOUCHELEV: There was no time limit set.

13 MR. MACKINNON: Yes, there was. There was --

14 MR. BOUCHELEV: No. I didn't --

15 (CROSS-TALKING)

16 MR. BOUCHELEV: -- time limits.

17 MR. MACKINNON: We had to be done by October 30,
18 which was set by the Court.

19 MR. BOUCHELEV: Well, we'll have to extend that
20 because you, with your technology issues, and now with
21 your interruptions and wasting time and not allowing me
22 to ask my questions, you are making it impossible for
23 us to do this.

24 MR. MACKINNON: No. I'm trying to focus your
25 questions on your expert report, which you want to put

1 to my expert. He's answered for five and a half
2 answers now to your questions --

3 MR. BOUCHELEV: Yeah. Just because you don't like
4 my questions doesn't mean they're not relevant. Will
5 you allow me to continue my cross-examination?

6 MR. MACKINNON: I'm going to say that they're not
7 relevant to the issues in the injunction until you can
8 frame them directly to his affidavit or to your
9 expert's statement in his expert report, which --

10 MR. BOUCHELEV: Okay. Now --

11 MR. MACKINNON: -- have already been asked, then.

12 Q. MR. BOUCHELEV: Okay. Mr. Smith, can you look at
13 page 160. Do you see where it says Ranger XT3?

14 MR. MACKINNON: Okay. Again, I'm going to direct
15 my witness not to answer further questions on these
16 particular guns until you can actually satisfy us that
17 they're directly relevant to the issues in the
18 injunction.

19 Q. MR. BOUCHELEV: Okay. Well, Mr. Bader states that
20 the Ranger XT3 Tactical is a variant of the Ranger XT3.
21 Do you agree Mr. Smith?

22 A. Yes. It could be viewed as a variant of the XT3.
23 It's -- based on the FRT record, it's also a variant of
24 the -- no, this one is not. The Ranger XT3 is not a
25 variant of anything, whereas the Ranger XT3 Tactical is

1 a variant of the firearms mentioned in paragraph 87,
2 according to the FRT record that you showed me.

3 **Q.** Okay. But the Ranger XT3 Tactical is also a variant of
4 the XT3. And by "variant," I mean in an Oxford
5 Dictionary definition sense.

6 **A.** Correct. But I believe you're treating the word
7 variant as if it were exclusive; that a firearm can be
8 a variant of only one single firearm, and that's simply
9 not the case.

10 So what matters from the standpoint of determining
11 the classification of a firearm is whether a firearm is
12 a variant of any of the firearms named in the
13 regulations.

14 It may also draw some lineage from some other
15 firearm, and that's fine, but it's not relevant to the
16 issue of classification, so -- and I'm responding using
17 the definition, more or less, as we discussed from the
18 Oxford Dictionary.

19 **Q.** Okay. And, now, so the -- are you familiar with this
20 particular firearm, the XT3? Do you know what that is?

21 **A.** As I've said before, there's over 190,000 firearms on
22 the FRT.

23 **Q.** I'm only asking --

24 **A.** I did not memorize them all, and in particular, I do
25 not recall this particular shotgun. If --

1 Q. Now, do you agree that the Ranger XT3 does not have the
2 same receiver as any AR firearm?

3 MR. MACKINNON: Again, you're going into the same
4 detailed questions. He's answered your questions with
5 regard to your expert. If your expert has said
6 something in particular about this gun that
7 differentiates itself, you can put that to him --

8 MR. BOUCHELEV: Counsel --

9 (CROSS-TALKING)

10 MR. BOUCHELEV: -- proper objection. I am
11 entitled to explore questions on the issue of variant.
12 I'm trying to understand why a particular firearm is a
13 variant, why it was described as such in the FRT, and I
14 am asking this witness if the Ranger XT3 and the XT3
15 Tactical have the same receiver as the AR-15.

16 MR. MACKINNON: Well, if you're going to go into
17 the same detail, he said he's disagreed, and he's given
18 what he says his answer is concerning the variant.

19 MR. BOUCHELEV: Well, I don't think --

20 MR. MACKINNON: And I --

21 MR. BOUCHELEV: No, he didn't disagree.

22 Q. Mr. Smith, are you saying that the XT3 has the same
23 receiver as the AR?

24 A. Since I don't recall specifically the details of that
25 particular shotgun, I really can't answer your

1 question. I don't know if it has the same receiver as
2 an AR-15 or not.

3 **Q.** This is a --

4 **A.** Based on the --

5 **Q.** -- non-restricted firearm.

6 **A.** What's that?

7 **Q.** This is a non-restricted firearm.

8 **A.** Yes, it is. So I was continuing my question, saying
9 given the information that's -- or my answer, rather,
10 to your question. Given the information that's in this
11 FRT record, okay. So the FRT record 179122, it
12 describes the firearm as being a shotgun in 410 gauge
13 calibre and as a non-restricted firearm.

14 So based on that information that's present in the
15 FRT record, the shotgun -- the Ranger XT3 will not have
16 the same design of receiver as the AR-15.

17 **Q.** Okay. And is it possible for a firearm to have a same
18 receiver as an AR-10 or an AR-15 and still be a
19 non-restricted firearm?

20 **A.** In my view, no. That's a legal question, but in my
21 view, no.

22 **Q.** And why is that, in your view?

23 **A.** The reason for that is the receiver is named in the
24 definition of firearm in section 2 as being equivalent
25 to the firearm itself. And so if a receiver is an

1 AR-15 receiver, then it also follows that, per the
2 definition of firearm in section 2, that it is a
3 firearm and a firearm which is affected by the -- by
4 paragraph 87 of the regulation.

5 So all of that flows from the -- from the
6 assumptions you have given me as a hypothetical
7 question.

8 **Q.** But would it also work the other way if a receiver is
9 not an AR-15 receiver, then the firearm is not an
10 AR-15?

11 **A.** No. Because there are all kinds of variants of AR-15
12 and AR-10 and M4 and M16 firearms where the receiver
13 differs in some respect but they are still variants.

14 And I might add that that is indicated in the
15 examples I've given you that we discussed before.
16 The -- and that has to do with tab F of my example from
17 Jane's, which illustrates that a widely respected
18 journal in the firearms industry regards a firearm with
19 a completely different receiver, bolt, barrel, and
20 operating mechanism as still being a variant of the
21 original firearm.

22 **Q.** Okay. So let's --

23 **A.** Likewise, my example in the previous tab E dealing with
24 the AR platform family, the example uses the word
25 "variant" in all kinds of places to describe firearms,

1 which can have different receiver designs to
2 accommodate different calibers and other factors that
3 are relevant to AR-15s.

4 **Q.** Okay. Well, let's look at a specific example, okay.
5 So we've looked at some Turkish shotguns that are now
6 classified as prohibited, and you agreed with me that
7 they do not have the same receiver as the -- as any AR
8 gun because -- any AR rifle. Certainly not the
9 original AR rifles that are mentioned in paragraph 87
10 of the regulation by definition because a shotgun
11 receiver would be different.

12 Now --

13 **A.** What I believe I said was that the 12-gauge shotguns --

14 **Q.** Okay. Let's focus on the 12 gauge.

15 **A.** -- were unlikely to have the same receiver as any of
16 the original AR platform firearms. And I also said
17 that the shotguns chambered for 410 calibre, since it's
18 such a small calibre as compared to 12-gauge --

19 **Q.** Okay. So I think --

20 **A.** -- could, in fact, have the same receiver.

21 **Q.** Right. We'll focus on the 12-gauge. And I think
22 you've conceded that it's not just unlikely, but it is
23 impossible for a 12-gauge shotgun receiver to be the
24 same receiver as one of the original AR-10, AR-15, M4,
25 and M16 rifles, right?

1 MR. MACKINNON: That question's been asked and
2 answered.

3 Q. MR. BOUCHELEV: Okay. So, Mr. Smith, let's take a
4 Turkish 12-gauge shotgun that doesn't have the same
5 receiver as any AR but, nonetheless, it's been deemed a
6 variant.

7 MR. MACKINNON: Sorry, just --

8 MR. BOUCHELEV: Hold on. What?

9 MR. MACKINNON: What gun is this referring to in
10 the expert -- I'm looking at the guns that your expert
11 referred to. Where is this gun referred to that you're
12 talking about now?

13 MR. BOUCHELEV: Okay. So let say it's the Adler
14 B210; that's the first gun that we looked at.

15 MR. MACKINNON: Is that number A?

16 MR. BOUCHELEV: It's the Adler B-210, Counsel.
17 Find -- like, I don't want to waste my time going back
18 and finding things for you. This is the first --

19 MR. MACKINNON: Hold on. There's a certain number
20 of guns that are mentioned. I just want to make
21 sure --

22 MR. BOUCHELEV: Yeah. It's in appendix --

23 MR. MACKINNON: Not in the appendix. In the
24 expert report there's from A to K --

25 MR. BOUCHELEV: Appendix 1, page 41 of the PDF is

1 the Adler B210.

2 MR. MACKINNON: The Adler. Where is that referred
3 to in the expert report? That's what I'm --

4 MR. BOUCHELEV: Do you have the expert's report,
5 Counsel?

6 MR. MACKINNON: I'm looking at the expert's
7 report. In his list, is it -- oh, that's A. Okay,
8 that's fine. I just was looking to find it. Okay.
9 Thank you.

10 MR. BOUCHELEV: Okay. Good.

11 **Q.** Now, the Adler B210, we have previously established
12 that it doesn't have the same receiver as the AR guns,
13 but it is, nonetheless, deemed by the FRT to be a
14 variant of the AR.

15 So logically it follows that it was -- it's
16 considered to be a variant for other reasons that have
17 nothing to do with its receiver, correct?

18 **A.** First of all, to correct your language earlier, SFSS
19 does not deem any firearm to be prohibited. That's not
20 within the scope of our power or duties.

21 **Q.** Okay. I'll use a different word. Instead of using the
22 word "deem," I'll use the word "consider."

23 Okay. So the reason why the SFSS considers this
24 to be an AR variant has nothing to do with its
25 receiver, correct?

1 **A.** No, I would disagree with that. The assessment of the
2 status of a firearm as a variant is based on all of the
3 information available --

4 **Q.** I'm talking about this specific gun.

5 **A.** -- including the design of the receiver. Every -- the
6 question you asked me was whether the receiver was the
7 same or different, and I think we agreed upon that
8 it's -- that the receiver of the shotgun is likely to
9 be different from the receiver of the original AR
10 family of firearms.

11 That said, just because a receiver is not the same
12 does not establish that it cannot be a variant. That
13 was the focus of your second question, and I'm
14 disagreeing with that proposition.

15 **Q.** Okay. So the receiver -- I understand what you're
16 saying. So the receiver is not the same. So it is a
17 variant for other reasons; not because of its receiver?

18 **A.** No. That's not what I'm saying. What I'm saying is a
19 firearm is -- if a firearm is assessed and determined
20 to be a variant, it's based on all of the information
21 available. The nature of the receiver is but one
22 element in that body of evidence under consideration.
23 And even if a receiver is not exactly the same as the
24 original firearm, it can still be a variant. It can be
25 a scaled up version, a scaled a down version. It can

1 have some modification to it and still be a variant.

2 So --

3 **Q.** Is the Adler B-210 receiver a variant of an AR
4 receiver?

5 **A.** Sorry, could you repeat the question.

6 **Q.** Yeah. Is the Adler B-210 receiver a variant of an AR
7 receiver?

8 **A.** It's coming through to me scrambled. I'm not
9 understanding what you're saying.

10 **Q.** Can you hear me okay now?

11 **A.** Yes.

12 **Q.** Do you want to turn up the volume so you can hear me
13 okay?

14 **A.** No. I can hear you. It's more a question of some
15 distortion on the sound, and I couldn't hear you.

16 **Q.** Okay. So is the Adler B-210 receiver a variant of the
17 AR receiver?

18 **A.** I don't have the details in front of me to answer that
19 question.

20 **Q.** Is it possible to have a gun that has a receiver that
21 is completely different from another gun and still be a
22 variant of that gun?

23 **A.** It depends on what you mean by completely different.

24 **Q.** Completely unrelated.

25 MR. MACKINNON: Okay. Go ahead.

1 **A.** Well, if by completely different you mean completely
2 unrelated.

3 **Q.** MR. BOUCHELEV: Yeah. Let's say you have -- one
4 is a bolt-action rifle; the other is a semi-automatic
5 rifle; they have completely different receivers. Can
6 one be a variant of the other?

7 **A.** Yes, it's entirely possible. There are AR platform
8 firearms, for example, that are bolt-action or
9 pump-action, and they're still variants, even though
10 the action type is different. So it is, in principle,
11 possible. Not very common.

12 **Q.** Okay. And there are variants for these ones unrelated
13 to the receiver, correct?

14 **A.** No. As I said before, the receiver is considered along
15 with all of the other evidence that's available. And
16 even though a receiver is not identical, it may still
17 be related to the original firearm. And that cannot be
18 determined except through the assessment process I
19 described earlier.

20 **Q.** But how can a bolt-action rifle receiver be related to
21 the AR-15 receiver?

22 MR. MACKINNON: Sorry, are you still talking about
23 this gun, the gun that you referred to, the Adler gun?

24 MR. BOUCHELEV: No. We're talking about a
25 different example now.

1 MR. MACKINNON: Okay. Just so I understand, which
2 gun are you talking about?

3 MR. BOUCHELEV: We're talking in general. It's a
4 hypothetical question, which I am allowed to ask on a
5 cross-examination --

6 MR. MACKINNON: You are. But there's been so much
7 detailed answer, I just can't remember if this
8 particular one had been asked.

9 **A.** What I believe I mentioned here earlier is that there
10 are a number of examples of firearms within the AR
11 platform that have an action type other than
12 semi-automatic, and they are still variants.

13 The receiver is similar but not exactly the same
14 as an AR-15 --

15 **Q.** MR. BOUCHELEV: Okay. But hold on a second. Just
16 a second. I mean, I think we're getting away from the
17 point. The point is you told me that it's possible to
18 have a gun that has a completely different receiver
19 from another gun and still be a variant of that gun.
20 That's what you've just told me.

21 And so it logically follows -- there is no other
22 possible logical conclusion that one can make that if
23 the receiver is completely different and yet the gun is
24 still a variant, then it is a variant for reasons
25 unrelated to the receiver. Do you agree with that?

1 **A.** I agree with you in part. I agree with you that other
2 information other than the receiver is considered. As
3 I mentioned before, all information available is
4 evaluated; however, I would disagree with you in your
5 statement that a receiver can both be completely
6 different and still related to the original firearm.

7 It may be different but be a scaled up or scaled
8 down version. So it doesn't have the same dimensions
9 as the original, but it's still clearly derived from
10 it. So there still can be a link --

11 **Q.** Well, let's say it's not derived. Let's say the
12 receiver, itself, was not derived from the original
13 gun. Can it still be considered a variant?

14 MR. MACKINNON: Okay. Can we relate this to a
15 concrete gun that you're -- that is in your expert
16 report, because this --

17 MR. BOUCHELEV: Yeah. This is a hypothetical
18 question.

19 **Q.** So the question is, is it possible -- we're trying to
20 understand -- I think the reason why everyone is having
21 so much difficulty is that it's very difficult to
22 understand what is actually meant by the term variant,
23 and this is what we're trying to establish and what
24 we've been trying to establish for the past five hours.

25 So what I'm trying to understand is this: Is it

1 possible for a gun to have a receiver that is not
2 derived from any other receiver and still be a variant
3 of another gun?

4 So to put it in more concrete terms, okay, let's
5 say you have a gun that has a receiver that is not
6 derived from the AR design. Is it possible for this
7 gun to still be a variant of an AR-15?

8 **A.** Yes. And I'll give you an example of that. I don't
9 have one -- well, actually if you refer to the
10 Henderson case you spoke to me earlier, we have an
11 example of the AP80, which is a variant of the AK-47
12 but has -- does not have a receiver in common.

13 Also there are firearms which are explicitly
14 listed in the regulations which are .22 long rifle
15 variants of the AR-15, which do not share the same
16 receiver.

17 So, yes, in principle it's possible and examples
18 could be cited.

19 **Q.** Okay. So let's use the example of the .22 long rifle
20 guns that do not share a receiver but are still
21 variants. So they are variants despite the fact that
22 the receiver is not derived from the AR design,
23 correct?

24 **A.** Yes. Because the -- whether a firearm is a variant or
25 not depends on where the design was derived from.

1 So the receiver is not the same as the original,
2 but the entire firearm is derived from the original for
3 some purpose.

4 **Q.** Okay. So let's say I buy one of the -- or I have one
5 of these guns and I keep the receiver but get rid of
6 all the other components and replace them with
7 something completely different. Is it still a
8 prohibited firearm?

9 **A.** Well, that depends on the details. Which gun? Which
10 accessories are you changing? And how do the two
11 before -- how does the before and after compare?

12 So without details it's impossible to answer that
13 question.

14 **Q.** Okay. But it is possible if you now end up with a gun
15 that does not have the same components other than the
16 receiver, correct?

17 **A.** I'm not sure what you're getting at with that question.

18 **MR. MACKINNON:** These hypothetical questions have
19 been asked over and over along with very detailed
20 questions and detailed answers. We're now at 4:00,
21 when we're supposed to break. So perhaps we could go
22 off the record to determine what happens next.

23 **MR. BOUCHELEV:** No, let's do it on the record so
24 if there is a dispute later, so that there is no
25 ambiguity.

1 MR. MACKINNON: All right. So how long do you
2 expect to be?

3 MR. BOUCHELEV: I'm not going to finish today.
4 I'm going to need an additional -- we're going to need
5 some extra time, plus Ms. Generoux, of course, will
6 need to ask some questions as well.

7 MR. MACKINNON: Okay. I'm just asking for you
8 because the last estimate you gave us, which was this
9 week, said two days, the 29th and 30th, for all the
10 counsel.

11 MR. BOUCHELEV: No. Counsel, I didn't give you
12 any estimate. You are mistaken.

13 MR. MACKINNON: Actually, you did. There's an
14 email from you.

15 MR. BOUCHELEV: Yeah. I didn't say that it would
16 be two days. Plus I wanted to end at 5 today and
17 yesterday, and you didn't agree to that, okay. Now --

18 MR. MACKINNON: I'm just asking for your estimate
19 of time right now.

20 MR. BOUCHELEV: Counsel, it's very hard for me to
21 say because I have to factor in the possibility of your
22 objections. I have to factor in, you know -- Mr. Smith
23 sometimes is giving very lengthy answers to simple
24 questions, and I'm doing my best not to interrupt him
25 because I don't want, you know, to cut off his

1 cross-examination, but a lot of these questions could
2 be done -- could be answered in a much more simple
3 fashion. But it is what it is.

4 So I'm not going to give you an estimate now. I
5 think that if I had an extra day, I would be able to
6 complete my evidence, but it's not a guarantee.

7 MR. MACKINNON: Okay. So you're now saying you --
8 I disagree with your statement you've just made, and
9 the record will show for itself. I've actually not
10 interjected for many hours apart from the odd little
11 question.

12 But we're now at the end of our time of the
13 estimated stated days. He's been here -- well, he's
14 been here all day since 10:00 to 4:00. Yesterday the
15 same time. The other counsel finished her
16 cross-examination within three hours. We thought the
17 estimate would all be done with all three counsel, and
18 you've gone way over, at least if you're going to
19 divide it equally.

20 So I'm asking again for an estimate of time. You
21 should know by now how much time you need to finish
22 this.

23 MR. BOUCHELEV: I can't give you an exact figure,
24 but I think an extra day would be sufficient.

25 MR. MACKINNON: A full day?

1 MR. BOUCHELEV: Yes.

2 MR. MACKINNON: Okay. Well, this is not on the
3 merits, so where does all this go on the issues in the
4 injunction? Because you're getting into some nitty
5 gritty --

6 MR. BOUCHELEV: Yeah. I --

7 MR. MACKINNON: -- that is not relevant to the
8 injunction.

9 MR. BOUCHELEV: Counsel, I disagree with you, and
10 I am not obligated to preview the arguments that I
11 intend to make at the injunction application. But I
12 think that other counsel will disagree with you that my
13 questions are not relevant. I think you are the only
14 one who has that opinion.

15 MR. MACKINNON: Okay. So right now you think you
16 need another five hours of total cross-examination of
17 Mr. Smith to finish?

18 MR. BOUCHELEV: Well, it may be less than that,
19 but I'm reluctant to give you that number because I
20 don't want you to say, Aha, you told me an hour and a
21 half and now you want more.

22 So yeah --

23 MR. MACKINNON: Most counsel can fit their
24 cross-examinations into the time estimates that are
25 given.

1 So, anyways, then we'll end it here, then.

2 MR. BOUCHELEV: Okay. Well then we'll have to
3 continue on another day.

4 MR. MACKINNON: Well, maybe. We'll see.

5 MR. BOUCHELEV: So just on a finishing note, then.
6 So this cross-examination is being adjourned.

7 And, Mr. Smith, in case your counsel did not
8 mention this to you, you are not allowed to discuss the
9 case with him until we complete the -- all the
10 cross-examinations are completed.

11 MR. MACKINNON: Well, you don't need to advise him
12 in any way. He knows. He's been given the right
13 advice.

14 _____

15 (Proceedings ended at 2:07 p.m. MT

16 _____

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1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages
4 181 to 357 are a complete and accurate transcript of the
5 proceedings taken down by me in shorthand and transcribed
6 from my shorthand notes to the best of my skill and
7 ability.

8

9 I further certify that this questioning was conducted in
10 accordance with the Alberta Protocol for Remote
11 Questioning, Revised 05/05/2020.

12

13 Dated at the City of Calgary, Province of Alberta, this
14 3rd day of November, 2020.

15

16

17



18

19

Melinda M. Heinrichs, CSR(A)

20

Official Court Reporter

21

22

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1 - I N D E X -

2 MURRAY SMITH

3 October 30, 2020

4 The following is a listing of exhibits, undertakings and
5 objections as interpreted by the Court Reporter.

6 The transcript is the official record, and the index is
7 provided as a courtesy only. It is recommended that the
8 reader refer to the appropriate transcript pages to ensure
9 completeness and accuracy.

10
11 ***EXHIBITS***

12 none entered

13
14 ***UNDERTAKINGS REQUESTED***

15 UNDERTAKING NO. 4 - To provide any additional 276
16 inspection reports that were produced after May
17 1st, 2020 - REFUSED

18
19 ***OBJECTIONS***

20 OBJECTION TAKEN to answering the question: Do you 252
21 personally believe that it should be banned?

22
23 OBJECTION TAKEN to answering questions about the 332
24 Ranger XT3 Tactical

1 OBJECTION TAKEN to answering the question: I'm 335
2 just trying to understand how can you possibly
3 dispute Mr. Bader's evidence in respect of this
4 particular gun, being the XT3 Tactical, when you
5 don't even know what that gun is?

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