

Canadian Coalition for Firearm Rights et al v. Attorney General

Murray Smith - Continued
on Thursday, November 5, 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

November 5, 2020

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

2
3 For the Applicants in Court File T-577-20

4 Sarah Miller

5 Jensen Shawa Solomon Duguid Hawkes LLP

6 800, 304 - 8th Avenue SW

7 Calgary, AB T2P 1C2

8 403-571-1520

9
10 For the Applicants in Court File T-677-20

11 Arkadi Bouchelev (examining counsel)

12 Arkadi Bouchelev Barrister & Solicitor

13 1700, 65 Queen St W

14 Toronto, ON M5H 2M5

15 416-594-1400

16
17 For the Applicant Christine Generoux in Court File T-735-20

18 Self-represented

19 613-806-0887

20
21 For the Applicant John Perocchio in Court File T-735-20

22 Self-represented

23 613-294-5322

1 For the Attorney General of Canada

2 Robert MacKinnon (objecting counsel)

3 Zoe Oxaal (objecting counsel)

4 Other Attendees

5 Jordan Milne

6 Sean Gaudet

7 Sarah Jiwan

8 Jennifer Bond

9 Department of Justice Canada Civil Litigation Section

10 500 - 50 O'Connor St

11 Ottawa, ON K1P 6L2

12 613-670-6288

13
14 Official Court Reporter

15 Melinda M. Heinrichs, CSR(A)

16 Amicus Reporting Group, a Veritext Company

17 403-266-1744

18

1 (Proceedings commenced at 8:08 am 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: Our witness today is Murray Smith.

2 If there are any questions about the witness' identity,
3 would counsel please advise on the record now.

4 Hearing no objection, counsel, are you ready for
5 me to affirm the witness.

6 MR. BOUCHELEV: Yes, please go ahead.

7 MURRAY SMITH, affirmed, questioned by Mr. Bouchelev:

8 Q. Mr. Smith, good morning.

9 A. Good morning.

10 Q. Last time I was asking you some questions about the
11 certain specific firearms that were listed in the
12 report of Travis Bader, and there is just one other
13 firearm that I wanted to ask you about, and that is the
14 Typhoon Defence F12 Typhoon shotgun. Are you familiar
15 with that specific firearm?

16 A. In general, yes.

17 Q. Okay. Is it also one of the Turkish shotguns that you
18 were looking at?

19 A. Yes, it is a Turkish shotgun.

20 Q. Okay.

21 A. And it was --

22 Q. Sorry, go ahead.

23 A. And it is listed in the Firearms Reference Table
24 currently as prohibited.

25 Q. And it was previously listed as non-restricted,

1 correct?

2 **A.** That, I do not recall. I believe so, but I can't say
3 with 100 percent accuracy.

4 **Q.** Okay. Now, do you agree with me that this particular
5 firearm does not have the same receiver as the AR-10,
6 AR-15, M4, or M16 rifles?

7 **A.** The receiver is mechanically different.

8 **Q.** And the same goes for other main components like the
9 barrel and the bolt and so on?

10 **A.** Yes. Logically they would be different because they're
11 a different calibre 12 gauge.

12 **Q.** Okay. And do you know what makes -- why this firearm
13 is currently listed as prohibited?

14 **A.** It's listed in the Firearms Reference Table as a
15 prohibited firearm because it's a variant of the
16 firearms named in paragraph 87.

17 **Q.** Okay. And what makes it a variant of firearms named in
18 paragraph 87?

19 **A.** There's a variety of reasons. One is the overall
20 ergonomics and appearance of the firearm are similar to
21 and within the scope of what would be considered an AR
22 platform firearm.

23 Secondly the shotgun is portrayed as being a
24 member of the AR-15, AR-10 family. AR platform, in
25 general. There is advertising to that effect. There's

1 references in industry literature to that effect.

2 So the firearm is presented to the would-be
3 purchaser as a member of the AR platform. There's also
4 some parts compatibility. The -- to varying extents.
5 In the case of the Typhoon F12, it seems to me that it
6 will accept AR-15 peripherals, such as stocks.

7 **Q.** Okay. Other than stocks, what other AR components does
8 it accept?

9 **A.** I don't recall specifically. I don't know if it uses
10 any of the AR-15 trigger mechanisms. Some of those
11 shotguns do; some don't. I don't know the state of
12 affairs for this particular one.

13 **Q.** Now, you've told me that this firearm is being
14 advertised and marketed and promoted by the
15 manufacturer as an AR variant?

16 **A.** What I said was it's being promoted as an AR platform
17 firearm. Not -- by a variety of places. By the
18 dealers, the distributors.

19 In the case of a manufacturer, I don't
20 specifically recall whether the manufacturer mentions
21 it or not. The manufacturer's website is mostly in
22 Turkish, and there's not a great deal of English
23 content there available --

24 **Q.** Okay.

25 **A.** -- one way or the other.

1 Q. Did you at any time try to contact the manufacturer and
2 clarify with them whether or not this shotgun is an AR
3 variant?

4 A. I did not. However, staff at SFSS have been in contact
5 with the manufacturer from time to time. And --

6 Q. Sorry, I don't mean to cut you off, but I'm not
7 interested in time to time. I'm asking about this
8 specific firearm and this specific manufacturer.

9 A. Well, no. I don't have that information with me today.

10 Q. So you don't have any information that RCMP staff
11 contacted the manufacturer of Typhoon F12 to confirm
12 whether or not it's a variant of the AR, correct?

13 A. No. What I said is I do not have any information with
14 me today. I'm not saying it doesn't exist. I just
15 don't have any with me today.

16 Q. Are you saying that it does exist and you just don't
17 have it with you?

18 A. No. What I'm saying is I don't recall whether it
19 exists or not. I would have to check because there
20 are -- there were dozens of these shotguns entered into
21 the Firearms Reference Table. I do not know which ones
22 involved a check back with the factory or the importer
23 and which ones did not.

24 All I have here with me today is my affidavit.

25 Q. I understand.

1 MR. BOUCHELEV: So as an undertaking, will you go
2 back and check and provide me with any, if they exist,
3 communications with the manufacturer of this shotgun.

4 MR. MACKINNON: No. For previous reasons given.
5 We are not providing an undertaking.

6 MR. BOUCHELEV: Okay. We'll mark it as a refusal.

7 UNDERTAKING NO. 5 - To check for and
8 provide any communications between RCMP
9 staff and the manufacturer of the
10 Typhoon Defence F12 - REFUSED

11 Q. MR. BOUCHELEV: Can you tell me which distributors
12 or retailers that sell the F12 shotgun mark it as a
13 variant of the AR or promote it as a variant of the AR?

14 A. I don't recall from memory, and I don't have that
15 information with me. As I said earlier, the only
16 document I have with me today is my affidavit.

17 Q. And if I suggest to you that no distributor or retailer
18 in Canada promotes this particular firearm as an AR
19 variant, would you agree or disagree with me?

20 A. I would say I don't know the answer to that question.
21 I do know that there are some distributors, but I don't
22 recall which ones or which nation they were in because
23 the advertising we rely on is based both in Canada and
24 the US, for the most part.

25 Q. Okay. So would it be fair to say that you do not know

1 whether any distributors or retailers promote this
2 particular shotgun? This particular shotgun; not any
3 other Turkish shotgun, but this particular shotgun as
4 an AR variant; is that correct?

5 **A.** No. What I'm saying is I do not have any of that
6 information here with me today. I do not recall it
7 from memory, but it might well exist in records at the
8 SFSS office.

9 So I simply don't know the answer to that question
10 from memory.

11 **Q.** Okay. So when you say it might well exist, then the
12 opposite is also true; it might well not exist?

13 **A.** Yeah. Those are the two logical options, yes.

14 **Q.** Okay. So in other words, you do not know if any --
15 sitting here today, you do not know if any retailer or
16 distributor promotes this particular shotgun as an AR
17 variant, correct?

18 MR. MACKINNON: Counsel, he has answered that
19 question more than once now, so that's been asked and
20 answered.

21 MR. BOUCHELEV: What's the answer?

22 MR. MACKINNON: It's on the record.

23 MR. BOUCHELEV: Well, I don't have the answer on
24 the record. I don't think that particular question was
25 answered. So if it has been answered, then I would

1 like to know what the answer is.

2 MR. MACKINNON: He's answered it.

3 MR. BOUCHELEV: Is that a refusal, then?

4 MR. MACKINNON: No. He's answered the question.

5 MR. BOUCHELEV: Okay. Well, I don't understand
6 the answer, so I'm going to ask for clarification.

7 Q. So sitting here today, is it correct that you do not
8 know, one way or the other, whether any distributor or
9 retailer promotes this particular shotgun as an AR
10 variant?

11 MR. MACKINNON: He has answered that question in
12 several different ways that you have asked it.

13 MR. BOUCHELEV: Okay. We'll mark it as a refusal.

14 OBJECTION TAKEN to answering the question: So sitting here
15 today, is it correct that you do not know, one way or
16 the other, whether any distributor or retailer promotes
17 this particular shotgun as an AR variant?

18 MR. BOUCHELEV: And, Counsel, just to save me some
19 time, any time that Mr. Smith says, Well, I don't have
20 any information with me today; I only have my
21 affidavit, and to get more information I would have to
22 go back and check, if I actually ask Mr. Smith to go
23 back and check, you are going to refuse my request for
24 an undertaking, correct?

25 MR. MACKINNON: We've gone through this before.

1 He's here to give his personal knowledge as he sits
2 here today. A cross-examination, it's not to go back
3 and check information and come back and provide
4 undertakings, so that's true.

5 MR. BOUCHELEV: Okay. So any undertaking requests
6 will be refused. Okay. That's fine.

7 Q. And so just as a hypothetical question, let's say there
8 is some distributor out there, maybe in the US, maybe
9 in Turkey, maybe in some other country that describes
10 this particular shotgun as some kind of a version of
11 AR. Would you consider that type of information
12 authoritative?

13 A. I believe I answered the question last week to that, in
14 general. And that is the decision, or rather, the
15 determination of the classification of a firearm as
16 recorded in the Firearms Reference Table is based on
17 all of the information available.

18 So any kind of advertising, wherever it appears,
19 would be one of the factors that would be considered,
20 but there is not any single factor, that I'm aware of,
21 that would be absolutely definitive other than the
22 firearm having been specifically named by the Governor
23 in Council. That would be the only thing I would
24 accept as being individually and distinctively
25 definitive.

1 **Q.** Okay. So any kind of information. So if someone, you
2 know, let's say in -- I don't know. Let's pick a
3 random country -- in Bulgaria decided to manufacture a
4 gun that is based on the AK-47 mechanically, but they
5 describe that as a variant of Remington 700 hunting
6 shotgun. Would that kind of information factor into
7 your determination as to whether it is a non-restricted
8 or prohibited firearm?

9 **A.** Well, given your hypothetical, the answer would be,
10 yes, the information would be evaluated, but it
11 probably wouldn't be viewed as being very useful, given
12 the contrary information you included in your
13 hypothetical.

14 **Q.** So in other words, the mechanical design is more
15 important than how the manufacturer describes it,
16 correct?

17 **A.** It varies from one firearm to the next. So to answer
18 your question specifically about the mechanical nature
19 of the firearm, that is something that is definitely
20 looked for, and where there is commonality between the
21 mechanics or the receiver of a firearm and a potential
22 variant, those are all viewed as very important facts
23 to consider; however, it's not a necessity. The
24 definition -- the dictionary definition that we rely
25 on, in part, does not require the receiver or the

1 mechanism to be the same. In fact, the notion of
2 variant suggests there's going to be some differences.

3 The way the industry uses the term also suggests
4 that the compatibility or direct imitation of the
5 mechanism is not critical. I gave examples in my
6 affidavit with respect to --

7 **Q.** But, Mr. Smith, sorry, but you're not really answering
8 my question, though. So the question was is the
9 mechanical design of the firearm more important than
10 the manufacturer's description? And you started
11 answering that question by saying it varies from one
12 firearm to the next. So does that mean that in the
13 case of some firearms mechanical design is more
14 important while in the case of other firearms the
15 manufacturer's description is more important than
16 mechanical design?

17 **A.** Yes. It varies depending on the firearm. All
18 information is evaluated and --

19 **Q.** And, sorry, I don't mean to cut you off, but when you
20 say it varies, how to you determine -- like, if you
21 have a particular firearm in front of you, how do you
22 determine whether the mechanical design or the
23 manufacturer's description is more important?

24 **A.** What is important is establishing a link between the
25 firearm that is proposed to be a variant and the parent

1 firearm. That can be determined through various means;
2 one of them being commonality in the design of the
3 receiver or the firing mechanism. That can also be
4 statements from the designer, the manufacturer, the
5 retailer, the importer --

6 Q. No, no. I understand all that. Mr. Smith, you've
7 mentioned that several times --

8 MR. MACKINNON: Okay. Wait. Let me him finish.

9 MR. BOUCHELEV: No. But --

10 MR. MACKINNON: Let him finish --

11 MR. BOUCHELEV: Yeah. But we are --

12 MR. MACKINNON: -- answering the question.

13 MR. BOUCHELEV: But there is no need --

14 MR. MACKINNON: Let him finish --

15 MR. BOUCHELEV: -- Mr. MacKinnon --

16 MR. MACKINNON: Can he just finish answering your
17 question so it's on the record.

18 MR. BOUCHELEV: No, I don't think so. Because
19 there is no need to repeat the same evidence. You
20 know, it's on the record. It's been the same
21 information as has been stated in several different
22 ways already.

23 All I'm asking for is I'm trying to understand,
24 when you have one firearm where the mechanical design
25 seems to be -- and the manufacturer's description of

1 the gun are not necessarily consistent, how do you
2 determine which one is more important? And Mr. Smith
3 told me that it depends -- it varies from one gun to
4 the next. So I'm trying to understand how that logic
5 is applied?

6 **Q.** So you have one particular firearm. How do you
7 determine what's more important? The description or
8 the actual design?

9 **A.** Well, I can perhaps answer that with an example. You
10 presented a copy of the Henderson decision to me last
11 week. That involved a firearm called the Armi Jager
12 AP-80, which was proposed as a variant of the AK-47
13 assault rifle.

14 I note in the decision that the Court found that
15 there was no mechanical similarity and no mechanical
16 parts compatibility between the two firearms, yet the
17 Court still found the AP-80 to be a variant.

18 So one of the things that I will do is take
19 guidance from the Courts in the form of case law as
20 being information that factors into whether a firearm
21 is a variant or not. And the Courts, to the extent
22 that there is case law, have clearly stated that the
23 mechanical compatibility or the reuse of the same parts
24 is not a defining factor in determining whether
25 something is a variant or not.

1 Q. And you're referring to the Henderson decision, right,
2 as the case law?

3 A. Well, that's one -- I said I was going to give you an
4 example. That is one example. I can give you another
5 example, if you like.

6 Q. Are you aware of -- sorry. But are you aware of any
7 other case other than Henderson that describes a
8 particular -- deals with the issue of whether a
9 particular firearm is a variant or not?

10 A. I'm not aware of any offhand.

11 Q. So there is really just one case in Canada that deals
12 with one particular firearm; this is the case law that
13 you are referring to, correct?

14 A. As I said before, I rely on all the information
15 available, and one of those pieces of information is
16 the attitude of the Courts towards the -- what
17 constitutes a variant.

18 That's not the only reason for taking that point
19 of view. If you look at how the Governor in Council
20 populated the regulations on May 1st, and in 1995 for
21 that matter, many of the firearms listed in those
22 regulations as named variants had mechanical actions
23 and receivers substantially different from the original
24 firearm.

25 So another factor I take into account is that the

1 Governor in Council, by way of example -- of the named
2 variants they include in the regulatory text, and I
3 take guidance from the Governor in Council on how
4 broadly to employ the word variant.

5 I also rely on the --

6 **Q.** Okay. Sorry, can I just clarify this? What kind of
7 guidance have you received from the Governor in Council
8 on how to define variant?

9 **A.** Sure, I can answer that. The -- it's -- it can be
10 inferred by simply looking at the regulation. So if
11 you --

12 **Q.** Which regulation?

13 **A.** The regulations that amended the Criminal Code
14 regulations in May of 2020, and also the regulations
15 that were made by the Governor in Council in 1995.
16 Both have examples of this.

17 **Q.** And you told --

18 **A.** So --

19 **Q.** -- me previously -- sorry --

20 MR. MACKINNON: Wait.

21 MR. BOUCHELEV: I'm --

22 MR. MACKINNON: No. Let --

23 MR. BOUCHELEV: -- just asking --

24 MR. MACKINNON: Can you let him --

25 MR. BOUCHELEV: Well, I --

1 MR. MACKINNON: No, no. Let him finish the answer
2 to that question first.

3 MR. BOUCHELEV: Well, but we need the record to be
4 clear what we're talking about because we need --

5 MR. MACKINNON: Okay.

6 MR. BOUCHELEV: -- to know, first of all, which
7 regulation we're talking about.

8 Q. So you've just identified that it's the May 1st
9 regulation that you've previously told us you had some
10 involvement in, correct?

11 MR. MACKINNON: No. Can you let him finish his
12 answer to your question. He identified the two
13 regulations, and he was going to continue.

14 Can you finish your thought, Mr. Smith.

15 A. So what I was about to say was that the Governor in
16 Council included a number of named variants in the
17 regulatory text.

18 And since we're dealing with the -- initially with
19 the Typhoon F12, which is a type -- which is a
20 paragraph 97 (verbatim) variant, I'll produce examples
21 from there.

22 If you look in those regulations, you will see
23 firearms like the AP -- Armi Jager AP-74 mentioned,
24 which is a .22 long rifle calibre blowback mechanism,
25 which is different from any of the original AR

1 firearms.

2 You'll also see in those regulations, a shotgun, a
3 Turkish shotgun, Uzkon XTR-12, which is an AR design
4 scaled up to 12 gauge, which is very similar to the
5 other Turkish shotguns that we have spoke over the last
6 few days.

7 So the examples given in the regulations of what
8 the Governor in Council views as being variants is
9 instructive to me on how broadly the scope of variant
10 should be used.

11 Q. Okay. So you just told me that you take guidance from
12 the regulatory texts such as the most recent regulation
13 that came out on May 1st of 2020. And you have
14 previously also testified that you had some involvement
15 in the creation of that regulation; although you will
16 not say exactly what that involvement is because your
17 counsel asserts Parliamentary privilege.

18 So it appears to me that you are --

19 MR. MACKINNON: Cabinet confidence.

20 Q. MR. BOUCHELEV: -- informed by the regulation that
21 you have, yourself, participated in creating. In other
22 words, you've created a list of guns for the regulation
23 that should be banned, and you are informed by that
24 very list as to what is or is not a prohibited firearm,
25 correct?

1 **A.** My understanding of how it works is that the Governor
2 in Council has the exclusive authority to determine
3 what's in the regulations and what is not. And, to the
4 best of my knowledge, that's what happened with respect
5 to the May 2020 regulations as well as the earlier 1995
6 and 1992 regulations. I was --

7 **Q.** But you assisted --

8 **A.** -- not present.

9 **Q.** Sorry --

10 MR. MACKINNON: Can you --

11 **Q.** MR. BOUCHELEV: -- you assisted --

12 MR. MACKINNON: -- let him --

13 **Q.** MR. BOUCHELEV: -- the Governor --

14 MR. MACKINNON: -- finish. Can you --

15 MR. BOUCHELEV: No. Because we are --

16 MR. MACKINNON: -- let him finish, please. Can
17 you please let him finish his thought when you ask a
18 question.

19 MR. BOUCHELEV: No. Because it's now not
20 responsive to my question. My question was --

21 MR. MACKINNON: Well, if you let him finish it
22 would be responsive. He was --

23 MR. BOUCHELEV: No. No. Because otherwise we'll
24 be here all day. You know, like, I ask a simple
25 question, and I get a ten-minute answer. We'll be here

1 all day today, and then we'll be here tomorrow and all
2 week next week if we continue.

3 Q. So it's very important, Mr. Smith, that you answer
4 specifically the questions that I ask instead of just
5 broadly giving evidence that you think would be
6 supportive of the Government's case. So please focus
7 on the questions that I'm asking you.

8 And the question is you agree with me that you had
9 involvement in the creation of the list of guns that
10 were banned on May 1st, 2020, correct?

11 MR. MACKINNON: No. I'm going to respond to that
12 comment, first. If you keep cutting him off, he's not
13 going to be able to answer properly. He's answering
14 your questions to the best of his capability, contrary
15 to what you've just stated.

16 So let him finish his answer to your questions.
17 If you want to make them more focused, you'll probably
18 get a shorter answer. And if you don't --

19 MR. BOUCHELEV: No. I've --

20 MR. MACKINNON: -- repeat the question --

21 MR. BOUCHELEV: I can't --

22 MR. MACKINNON: If you don't repeat the question,
23 you won't keep getting the same answers. So I'd --

24 MR. BOUCHELEV: Well, Mr. MacKinnon --

25 MR. MACKINNON: -- like him to finish --

1 MR. BOUCHELEV: -- I can't --

2 MR. MACKINNON: -- his answer --

3 MR. BOUCHELEV: I can't --

4 MR. MACKINNON: -- to the last --

5 MR. BOUCHELEV: I can't make --

6 MR. MACKINNON: Would you let me finish, please.

7 I let you finish.

8 If you let him finish the last question, he was
9 about to continue.

10 Q. MR. BOUCHELEV: The question that I asked was
11 very, very simple and couldn't be -- it's a yes or no
12 question. Do you agree with me that you had
13 involvement in the creation of the list of guns that
14 were banned on May 1st, 2020; yes or no?

15 MR. MACKINNON: Okay. Hold on.

16 Did you have a thought to finish for the last
17 question where you were interrupted?

18 A. No. I think I'm finished now, given --

19 MR. MACKINNON: Okay.

20 A. -- where the conversation's going.

21 MR. MACKINNON: All right. Okay. Continue.

22 A. So the answer to your current question is, yes, I had
23 involvement in the preparation of the regulations, but
24 I cannot provide you any more detail than that.

25 Q. MR. BOUCHELEV: Because of Parliamentary

1 privilege?

2 MR. MACKINNON: Because of cabinet confidence.

3 MR. BOUCHELEV: Okay.

4 OBJECTION TAKEN to answering the question: Do you agree
5 with me that you had involvement in the creation of the
6 list of guns that were banned on May 1st, 2020; yes or
7 no?

8 Q. MR. BOUCHELEV: Now, Mr. Smith, I would like to
9 change gears and talk about something else. I'm going
10 to go into a different subject; that is the bore
11 diameter of a firearm and how it is measured.

12 Now, do you agree with me that measuring bore
13 diameter precisely is an exercise that requires skill
14 and specialized tools that the average firearm owner
15 would not have?

16 A. Well, there's an assumption in your question there that
17 the kind of measuring you're talking about is directly
18 measuring the interior of the bore of a firearm at a
19 specific point, and if --

20 Q. That's the only kind of measurement. Just to be clear,
21 that is the type of measurement that I'm talking about
22 right now. I'm not asking you about nominal bore
23 diameter. I'm asking about actually measuring the
24 n-bore diameter.

25 A. The -- it requires a specialized form of micrometer to

1 get an accurate measurement at any particular point
2 along the shotgun bore.

3 **Q.** Okay. And my question is you agree with me that the
4 average gun owner would not have that kind of a tool?

5 **A.** That would depend on the gun owner. The gun owner --
6 there are many different kinds of gun owners. There
7 are some firearms owners who have no tools at all, and
8 there are some firearms owners who own machine shops.

9 So it depends on who you're talking about.

10 **Q.** Well, I'm talking about on average, you know. I'm not
11 talking about someone who owns a machine shop. I'm
12 talking about the average -- there is 2.2 million gun
13 owners in Canada, as you have told us last time. Let's
14 think of the average gun owner.

15 Would you agree with me that the average gun owner
16 would not have the tools or expertise to precisely
17 measure bore diameter?

18 **A.** I believe your question is circular. You're asking me
19 to assume that the firearms owner has no tools in order
20 to provide an answer that they wouldn't have the tools
21 available to do so. So given the premise in your
22 question, then, yes.

23 **Q.** Sorry, I'm not sure how my question is circular. The
24 question is does the average gun owner in Canada -- do
25 you think, does the average gun owner have the tools

1 and expertise necessary to precisely measure bore
2 diameter. And your answer is no, correct?

3 MR. MACKINNON: He answered it. You put a fact to
4 him to assume that the average gun owner does not have
5 tools --

6 MR. BOUCHELEV: No.

7 MR. MACKINNON: -- to measure the --

8 MR. BOUCHELEV: No. No. That's not what I asked.
9 That's not my question. The question was --

10 MR. MACKINNON: Well, that's what he presumed.
11 And if you want -- how would he know who the average
12 gun owner is? You would have define them. And how is
13 that, you know, relevant right now? Seriously.

14 MR. BOUCHELEV: Well, it --

15 MR. MACKINNON: If you want to --

16 MR. BOUCHELEV: -- is highly relevant.

17 MR. MACKINNON: Okay. If you want to put to him
18 the characteristic of some particular gun owner who he
19 doesn't know as a hypothetical, again, we're far astray
20 from the relevance to this injunction here.

21 MR. BOUCHELEV: Well, Mr. MacKinnon, you and I
22 have a very different view of what's relevant to this
23 injunction, but I don't want to engage an argument with
24 you on this point right now; we'll do it on January the
25 18th.

1 **Q.** The question that I'm posing, and I'm not asking you to
2 assume. I'm asking you, you know, first of all, you've
3 told me that there are 2.2 million gun owners in
4 Canada. Do you think that the average gun owner -- not
5 a highly sophisticated gun owner that owns a machine
6 shop, you know, who manufactures his own firearms --
7 I'm talking about the average person, the average
8 hunter and sport shooter. Do you think that the
9 average hunter and sport shooter has the knowledge and
10 expertise and the tools necessary to measure bore
11 diameter?

12 **A.** I'm going to have to give you the same answer again
13 because you are -- you're not really defining what an
14 average gun owner is other than to say that it is a
15 person who is not skilled, does not own a machine shop,
16 et cetera. So the answer to the question lies in the
17 premise of the question.

18 So if you assume that the average firearms owner,
19 and average means a person who is unskilled and bereft
20 of tools, then, of course, the logical answer is that
21 they would be unskilled and bereft of tools.

22 So it's a circular question that has no logical
23 answer. I'm sorry I can't help you more than that.

24 **Q.** Okay. Do you think that of the 2.2 million gun owners
25 in Canada, do you think that the majority of them own

1 machine shops?

2 **A.** I have no information firm one way or the other, but I
3 doubt it.

4 **Q.** Okay. Have you interacted with many gun owners in
5 Canada, or are you somewhat insular at the -- in your
6 job that you don't interact with, you know --

7 **A.** I've --

8 **Q.** -- sport shooters and hunters and so on?

9 **A.** I've interacted with thousands of firearms owners over
10 the years.

11 **Q.** Okay. Of the thousands that you have interacted with,
12 do you think that the vast majority would have the
13 knowledge and expertise to measure bore diameter
14 accurately?

15 **A.** I don't really think I can answer that question because
16 it depends on what you define the average firearms
17 owner as being. If --

18 **Q.** I'm talking about the people that you have personally
19 interacted with.

20 **A.** Oh. Well, a great many of them were hand loaders, and
21 hand loaders typically own calipers that can measure
22 both inside and outside diameter of tubes, have depth
23 gauges, et cetera.

24 So, yeah, the kind of people I interacted with
25 personally would be able to make a measurement of the

bore diameter, at least part way into the bore at either end.

Q. Okay. So the only types of firearms owners that you have interacted with are -- the vast majority are hand loaders, correct?

A. I've interacted with all kinds of firearms owners, but what you -- you asked me if I thought any of those owners would have the stools or the skill, and the answer is, yes, some of them do; particularly those people who are hand loaders.

Q. But many of them do not?

A. I don't know what proportion of firearms owners are hand loaders in Canada.

Q. Okay. So in other words, you have no idea whether the -- is that what you are telling me? You have no idea whether, you know, a typical Canadian gun owner can measure bore diameter himself or herself?

MR. MACKINNON: He's answered that question several ways now --

MR. BOUCHELEV: Okay.

MR. MACKINNON: -- so that's been answered.

Q. **MR. BOUCHELEV:** Now, let's look at paragraph 39 of your affidavit.

Now, at paragraph 39 you define the bore of a firearm as the interior surface of the barrel exclusive

1 of the chamber and other features.

2 So where did you get this definition?

3 **A.** That is the common thread amongst many definitions from
4 many sources. It's also based on my knowledge and
5 experience over the 40 years I've been in the business.

6 **Q.** So, basically, it's a definition that you came up with
7 yourself, correct?

8 **A.** It's not a definition. It's not presented as if it
9 were a dictionary definition. It's presented as my
10 understanding of what the bore is.

11 And the chamber is not bore; a forcing cone is not
12 bore; a choke is not bore. It is the portion of the
13 barrel that's exclusive of all of those various
14 components, and I think my answer there is very
15 consistent with the norms of the industry.

16 **Q.** Okay. And is this definition contained in paragraph 39
17 of your affidavit, is it also contained in the Firearms
18 Act, the Criminal Code, or any regulations thereto?

19 **A.** First of all, it's not a definition. And second of
20 all, to the best of my knowledge, it does not appear
21 anywhere in any legislative text in Canada.

22 **Q.** Okay. Does it appear in any technical literature?

23 **A.** The exact words that I've written for paragraph 39, I
24 doubt it. The -- it would be similar in concept but
25 not the exact same words.

1 Q. Okay. And is this definition contained in paragraph
2 39, is it contained in any RCMP or SFSS document?

3 A. No, not in this format.

4 Q. Okay. Is it contained anywhere in the FRT?

5 A. There's a definition of bore diameter in the FRT, but
6 it differs somewhat, and I believe I've addressed that
7 in my affidavit.

8 Q. And we'll get to that in a second --

9 A. I'm going to find --

10 Q. -- I promise --

11 A. -- that.

12 Q. Yeah. We'll get to that --

13 MR. MACKINNON: Wait. No, no. You've asked him
14 about the FRT. He's looking in his affidavit now.
15 Just let him --

16 MR. BOUCHELEV: No, no --

17 A. That's --

18 MR. BOUCHELEV: -- he's telling me --

19 MR. MACKINNON: Sorry. What are you --

20 A. That's addressed at paragraph 44.

21 Q. MR. BOUCHELEV: Yeah. And I promise you we'll get
22 to paragraph 44 because I have some questions about it.
23 Okay. So you've answered my question.

24 Now, so the term "bore," you will agree with me
25 that, you know, it has a certain -- a plain word

1 meaning. Where did the term bore originate; do you
2 know?

3 **A.** You mean the etymology of the word? No. I would have
4 to look it up in the dictionary to find out.

5 **Q.** Okay. Do you know what a barrel blank is?

6 **A.** Yes.

7 **Q.** And what is that?

8 **A.** A barrel blank is a partially finished barrel, which
9 often has a rough bore diameter drilled through the
10 centre end to end.

11 **Q.** Okay. So you take the barrel blank, you take a solid
12 piece of metal, and you bore it from one end to the
13 other, correct?

14 **A.** Well, my recollection is that most -- well, barrel
15 blanks can be obtained as raw, undrilled, solid
16 cylinders of metal, but more typically they come bored
17 with the bore diameter finished to some degree.

18 **Q.** Okay.

19 **A.** From the interior bore.

20 **Q.** But the way a barrel is made, you start out with, you
21 know, a cylindrical piece of metal, and then you bore
22 it from one end to the other, right?

23 **A.** No. There are a variety of ways of making a barrel.
24 That is one of them.

25 **Q.** Okay. How let's look at paragraph 36 of your

1 affidavit.

2 Now, paragraph 36 you state that you do not
3 believe that the regulation requires the bore diameter
4 to be 20 millimetres or less at every possible point
5 along the bore.

6 Now, you have testified previously that you are
7 not presenting yourself as an expert on the statutory
8 interpretation, so how can you give evidence on what --
9 on how the regulation is to be interpreted?

10 **A.** I'm just reading the paragraph.

11 **Q.** Sure.

12 **A.** I do not believe I mentioned the regulations at all in
13 paragraph 36. What I'm referring to -- oh, I do. I'm
14 sorry. I do mention the regulation.

15 So what I'm speaking about there, for the purposes
16 of making entries in the Firearms Reference Table, I do
17 not believe that there is a requirement that the bore
18 diameter be less than 20 millimetres everywhere in the
19 bore.

20 **Q.** Okay. And that understanding is based on your
21 understanding of the regulation?

22 **A.** Yes. That's based on my understanding of the
23 regulations and how regulations have been applied by
24 the Courts over the years and the fact that for decades
25 the -- both the FRT and, to the best of my knowledge,

1 the Courts have relied on standards and norms as
2 opposed to specific measurements for these kinds of
3 cases.

4 We -- there's nothing unusual about that. We use
5 standard information for barrel length, for calibre,
6 where it's relevant, such as rimfire or the
7 twivehour (phonetic) 32 calibres that relate to handgun
8 classification determinations. All of these are based
9 on standards as opposed to individual precise
10 measurements.

11 So this interpretation in paragraph 36 fits the
12 historical practice that has been adopted by the
13 Firearms Reference Table, by police, and by the Courts
14 for many decades.

15 **Q.** And is that what you call the normative process?

16 **A.** Your question came through unclear, sorry.

17 **Q.** Is that what you would refer to as the normative
18 process?

19 **MR. MACKINNON:** Where did he refer to normative?

20 **MR. BOUCHELEV:** Well, he's talking about standards
21 and norms, which are relied on by the police and the
22 Courts.

23 **A.** For certain kinds of classification determinations,
24 yes. And I believe I gave you examples; barrel lengths
25 being one of them, for instance.

1 Q. Okay. Can you just clarify what is the normative
2 process, in your understanding?

3 A. Well, as it applies to the bore diameter that I'm
4 speaking to in paragraph 36, it means that the
5 determination of whether a particular shotgun bore
6 exceeds 20 millimetres or not would be based on the
7 nominal bore diameter as opposed to attempting to
8 measure a specific diameter at any particular point
9 along the barrel.

10 And this is a process which is widely used in
11 industry. I cited a number of examples in my affidavit
12 starting at paragraph 46 where the -- where they speak
13 to the nominal bore diameter of shotguns.

14 This is what is used to determine what a shotgun
15 gauge is, what the related bore diameter is for the
16 purposes of safe use, marketing the firearms, and I
17 also use it with respect to making FRT classification
18 determinations.

19 Q. Okay. And you will agree with me that nowhere in the
20 regulation does it actually say that the bore diameter
21 has to be 20 millimetres at only certain points of the
22 bore as opposed to along the entire length of the bore?

23 A. No, it does not.

24 Q. Okay. Now, let's look at paragraph 35. You say here
25 that: (as read)

1 "As explained in more detail below, to
2 determine whether their firearm has a
3 bore diameter equal to or greater than
4 20 mm, all a firearm owner need to do is
5 look at the calibre data stamp on the
6 firearm."

7 Now, which part of the firearm would that data stamp
8 appear on?

9 **A.** The data stamp can appear in a variety of places on the
10 firearm. That's normally placed at the discretion of
11 the manufacturer or, in some cases, defined by the laws
12 of the country in which the firearm is either
13 manufactured or imported.

14 For calibre and gauge information, it is typically
15 stamped on the barrel itself.

16 **Q.** Okay. But some firearms have no data stamp at all,
17 correct?

18 **A.** Correct. Some firearms are not marked.

19 **Q.** Okay. And then if the data stamp is on the barrel and
20 someone replaces the barrel, the replacement barrel
21 would not necessarily have the data stamp, correct?

22 **A.** Commercially manufactured replacement barrels typically
23 have a data stamp, but they don't have to.

24 **Q.** Okay. And you will also agree with me that the data
25 stamp can wear out or can be damaged to a point where

1 it's no longer recognizable?

2 **A.** It's possible. I've rarely seen firearms that are so
3 worn that the markings are invisible.

4 **Q.** But it can be damage, for example, by corrosion or, you
5 know, other factors?

6 **A.** I suppose it could. It's possible.

7 **Q.** And what's to stop someone from intentionally
8 mislabelling, let's say, a shotgun barrel? If that's
9 all it takes, if, you know, you're going to go by what
10 the data stamp is on the barrel and you have an 8 gauge
11 barrel, why not stamp it as a 16 gauge?

12 **A.** Well, I suppose that kind of misrepresentation or a
13 fraud could occur.

14 **Q.** Well, but it's not illegal. It wouldn't be a
15 misrepresentation or a fraud. It would just be a
16 mislabelling, correct?

17 **A.** I think that's a legal question. And I think it would
18 depend on the context.

19 MR. MACKINNON: Your question said intentional
20 misrepresentation.

21 **Q.** MR. BOUCHELEV: So you will agree with me,
22 Mr. Smith, that we cannot rely on the information on
23 the barrel of the firearm for making a legal
24 determination as to whether the particular firearm in
25 question is prohibited or not?

1 **A.** I believe you can rely on the markings on the firearm
2 in the vast majority of cases. There is the
3 possibility of exceptions where that information may
4 not be marked or may not be visible or may not be
5 reliable. But in the vast majority of cases for
6 commercially manufactured firearms, the firearms are
7 well-marked, and it's very obvious what they are.

8 **Q.** Okay. And you will agree with me that some of the
9 older shotguns are less likely to have the data stamps?

10 **A.** That depends on how old you mean when you say older.

11 **Q.** Well, the older it is, the less likely it is to have a
12 stamp?

13 **A.** Well, if you go back to the days before cartridge
14 firearms and are talking about muzzle loading shotguns,
15 then the markings would be much simpler and less
16 informative, yes.

17 **Q.** Okay. What about cartridge firearms? Have there been
18 shotguns manufactured in the past that did not have
19 data stamps?

20 **A.** Oh, I'm sure there were. But for cartridge guns, the
21 cartridge type was typically marked on the firearm in
22 order to inform the owner of the correct cartridge to
23 use in that firearm. And that's been a practice in the
24 firearms industry, not only as a convenience to the
25 owner, but also for safety purposes.

1 And, in fact, the industry has produced standards
2 organizations, like, SAAMI, which produce written
3 guidelines for manufacturers to voluntarily comply
4 with -- manufacturers of firearms and manufacturers of
5 ammunition so that owners of firearms can reliably
6 determine the gauge or calibre of their firearm and the
7 gauge or calibre of the ammunition to buy to put in it.

8 So this is very common. That's the way the system
9 works today.

10 **Q.** It's not a legal requirement in Canada to have data
11 stamps on guns, correct?

12 **A.** At the present time, no.

13 **Q.** Okay. Now, let's look at paragraph 43 of your
14 affidavit. And, sorry, what do you mean, "At the
15 present time, no"? Was it ever a requirement in the
16 past?

17 **A.** For firearms to be marked?

18 **Q.** Yeah.

19 **A.** No. I don't think there's ever been a marking
20 requirement for firearms in Canada other than firearms
21 which were used in government service. Those
22 typically --

23 **Q.** Okay.

24 **A.** -- had some kind of official marking, but sporting
25 firearms, no.

1 **Q.** Okay. Paragraph 43 of your affidavit.

2 So you talk here about the use of the nominal bore
3 diameter which is what the CFP uses, but you'll agree
4 with me that the regulation doesn't say -- makes no
5 mention of nominal bore diameter, correct?

6 **A.** No. The regulation does not mention that.

7 **Q.** Okay. And you will also agree with me that prosecutors
8 and judges have -- are under no obligation to use
9 nominal bore diameter when deciding whether or not
10 someone should be charged with a criminal offense or in
11 findings of whether someone has committed a criminal
12 offense?

13 **A.** I think that's a legal question.

14 **Q.** But you previously testified that the FRT itself is not
15 legally binding, so you were comfortable giving me that
16 answer. Are you uncomfortable saying whether or not
17 judges and prosecutors are legally bound by CFP's
18 definition of diameter as nominal bore diameter?

19 **A.** Well, again, that's a circular question. You have
20 pointed out that what I previously said was that the
21 FRT is not intended to be binding, and then you say
22 because it's not intended to be binding, then
23 prosecutors aren't obligated to use it. That's
24 self-evidently true.

25 **Q.** All right. So then, just so that we're clear, you

1 agree with me that judges and prosecutors do not have
2 to go by CFP's use of nominal bore diameter?

3 **A.** As the creator of the Firearms Reference Table, we have
4 no authority and no intention to obligate prosecutors
5 or judges or police officers to use the FRT. We
6 provide it as a tool, but we do not force it on anyone.

7 So I can speak to it from the FRT in terms of what
8 our intentions are; however, what goes on in the mind
9 of a Court or a prosecutor or a police officer is
10 something that is unknowable to me.

11 **Q.** Okay. Let's look at footnote 10 to paragraph 43. You
12 talk about AFTE, which is the Association of Firearm
13 and Tool Mark Examiners. Now, is AFTE a regulatory
14 agency in Canada?

15 **A.** No. It's a worldwide organization, which is the
16 association and -- for forensic ballistics exports.

17 **Q.** Okay. It's a nonprofit organization based in the
18 United States, correct?

19 **A.** Yes. It's based in the United States, but has
20 worldwide membership.

21 **Q.** Okay. But it has no connection whatsoever with the
22 Canadian government or Canadian regulator?

23 **A.** No, it does not.

24 **Q.** Okay. Now, so the AFTE definition of bore is -- and
25 I'm reading from footnote 10: (as read)

1 "The interior dimensions of the barrel
2 forward of the chamber but before the
3 choke."

4 Do you agree with that definition?

5 **A.** I believe that quote is correct, yes.

6 **Q.** Okay. Is the forcing cone forward of the chamber?

7 **A.** The forcing cone could be considered part of the
8 chamber; it could be considered part of the bore.

9 It -- I would consider it to be part of the chamber.

10 It's where the chamber dimensions are reduced to bore
11 diameter.

12 **Q.** Do you know if the AFTE considers it to be a part of
13 the chamber?

14 **A.** Well, their definition is silent on that.

15 **Q.** Okay. And you would agree with me that many would
16 consider the forcing cone to be part of the bore as
17 opposed to part of the chamber?

18 **A.** No. I have no basis to agree or disagree with you on
19 that. What I will say is I view that as part of the
20 chamber because it is -- it's the portion of the
21 firearm where the cartridge sits and which collectively
22 with the chamber introduces the charge to the bore of
23 the firearm.

24 **Q.** Okay. But some others, for example, Mr. Bader in his
25 affidavit, he describes the forcing cone as being part

1 of the bore.

2 And so do you agree with me that there is a
3 difference of opinion in that respect? Some in the
4 industry consider the forcing cone to be part of the
5 bore?

6 **A.** I have never seen a definition which says the forcing
7 cone is part of the bore, ever. I've never --

8 **Q.** Have you ever --

9 **A.** -- heard anyone other than Mr. Bader in his affidavit
10 refer to it as such, either.

11 **Q.** Have you seen a definition that stated that the forcing
12 cone is part of the chamber?

13 **A.** No, I haven't seen that either. However, what I will
14 say is that when you take a barrel blank, as you had
15 described earlier, which may be a 12 gauge barrel blank
16 and then chamber it as the finishing operation, then
17 the forcing cone is cut as part of the chambering
18 operation.

19 So in my view, from a purely mechanical and
20 gunsmithing point of view, the forcing cone is much
21 more closely aligned with being part of the chamber
22 than it is part of the bore.

23 **Q.** Do you agree with me that the forcing cone diameter of
24 a 10 gauge shotgun exceeds 20 millimetres?

25 **A.** Typically it does, yes.

1 Q. And the same is true of the forcing cone diameter of a
2 12 gauge shotgun?

3 A. Yes, I believe that exceeds 20 millimetres as well.

4 Q. Okay. Now, I would like to look at paragraph 48 of
5 your affidavit.

6 A. Yes.

7 Q. Okay. So paragraph 48 you say: (as read)

8 Because the RCMP uses the nominal bore
9 diameter in its assessment of firearms,
10 in order to know the bore diameter of
11 their firearm, an owner does not need to
12 measure it. All a firearms owner needs
13 to do is look at the calibre data stamp
14 on the firearm to know the gauge of the
15 firearm."

16 But I think you have previously told me that you do not
17 know and cannot know whether judges and prosecutors use
18 nominal bore diameter, correct?

19 A. No. My understanding is the Courts are independent,
20 and they will make up their own mind as to what they
21 will use.

22 Q. So what really matters is not what the RCMP uses but
23 what judges and prosecutors use, correct?

24 A. If you're talking about a criminal prosecution, yes.

25 Q. Okay. Now, so -- and by the way, when you say that the

1 RCMP uses nominal bore diameter, do you have -- is it
2 recorded somewhere? Is it recorded in the FRT, for
3 example, that the RCMP uses bore diameter? A nominal
4 bore diameter?

5 **A.** No. This is a new regulation, and so the
6 interpretation of using the standard nominal bore
7 diameter is as new as the regulation. It didn't matter
8 previously, so there was no requirement to have a
9 definition which was precisely accurate in this
10 respect.

11 **Q.** Okay. So you will agree with me, then, that there's
12 nothing in writing at the RCMP or the SFSS that defines
13 bore diameter as nominal bore diameter?

14 **A.** I believe we posted on the CFP website information to
15 the effect concerning the AFTE definition and how the
16 issue of shotgun bore diameter would be determined for
17 the purposes of the regulation by the CFP.

18 So it --

19 **Q.** Okay.

20 **A.** It is in writing. It is on the website, and it is
21 available to all Canadians.

22 **Q.** Okay. Fair enough. But other than that one example,
23 you can't think of any other places where the
24 definition would be in writing, correct?

25 **A.** At the present time, no. Although there are plans to

1 incorporate that in the Firearms Reference Table as we
2 update the definition of bore diameter.

3 **Q.** Now, let's look at paragraph 44 of your affidavit.
4 This is the paragraph that you referenced previously.
5 So paragraph 44 states: (as read)

6 "I will note that the FRT includes
7 definitions of bore and choke that may
8 give a reader an indication that the
9 choke is part of the bore. However, the
10 glossary is for general illustrative
11 information and is not meant to be
12 determinative."

13 So you agree with me, then, that the FRT -- just looking
14 at the FRT might give the reader a false impression as
15 to what the definition of a bore is?

16 **A.** It gives an impression which is not clear. That
17 particular --

18 **Q.** And that is misleading.

19 **A.** That particular definition dates back to circa 2005 and
20 is in need of updating, and it will be updated to take
21 into account the requirements of the new regulations.

22 **Q.** Okay. And I may have asked you this before, and I
23 apologize if I did, but I believe the AFTE definition
24 is not contained in the FRT, correct?

25 **A.** No, it's not.

1 **Q.** So if I am a law enforcement officer and I'm checking
2 the FRT, I would not be able to see the AFTE
3 definition?

4 **A.** Not by looking at the FRT, no.

5 **Q.** Okay. So, now, sir, I would like to change gears
6 again, and we'll talk about another subject, which is
7 muzzle energy.

8 Now, this is something that you address at
9 paragraph 59 of your affidavit. So at --

10 **A.** Yes.

11 **Q.** Sorry?

12 **A.** Yes, I've turned to that page. I have that paragraph.

13 **Q.** Okay. Excellent. So at paragraph 59, I'm
14 paraphrasing, but you essentially say that muzzle
15 energy is the same thing as the destructive potential,
16 right?

17 **A.** Well, the muzzle energy is the primary contributor to
18 the destructive potential of a firearm.

19 **Q.** Okay. And you give some examples of military weapons
20 that exceed 10,000 joules. But you will agree with me
21 that there are some hunting rifles, as well, that
22 exceed 10,000 joules of muzzle energy?

23 **A.** Yes. There are some rifles primarily designed for
24 hunting large African game, like elephants and rhinos
25 and so on, that have employed cartridges which generate

1 an energy in excess of 10,000 joules.

2 **Q.** But these same guns are not necessarily just used in
3 Africa; they can be used in Canada for hunting large
4 game, correct?

5 **A.** To the best of my knowledge, there's no legal
6 impediment to using them in Canada. However, the
7 energy of the firearm far exceeds the kind of game
8 animals that are present in Canada. There are no
9 elephants to hunt in Canada, to the best of my
10 knowledge.

11 **Q.** Now, if you can look at paragraph 64 of your affidavit,
12 you talk about -- well, I'll just read paragraph 64:
13 (as read)

14 "As noted above, the Regulation
15 prohibits any firearm 'capable' of
16 discharging a projectile with a muzzle
17 energy greater than 10,000 joules. The
18 CFP's understanding of this term, based
19 on the case law, is that a firearm is
20 considered 'capable' of exceeding the
21 muzzle energy restriction if it can be
22 converted to the prohibited use in a
23 relatively short period of time with
24 relative ease."

25 Now, which case law are you referring to? Are you

1 referring to the Hasselwander decision of the Supreme
2 Court?

3 **A.** That would be the -- that would be the primary case,
4 yes.

5 **Q.** And that's the only case, right?

6 **A.** Well, Hasselwander is used in other cases, and it's
7 clarified and amplified. Another Supreme Court case,
8 for example, I believe, where it's used is Dunn, but at
9 any rate, the Hasselwander case is -- was the seminal
10 case; although that -- the logic of that has been used
11 in other Courts as well.

12 **Q.** Right. But you'll agree with me that the Hasselwander
13 case dealt with firearms that could be converted into
14 fully-automatic weapons as opposed to firearms that had
15 anything to do with muzzle energy, correct?

16 **A.** My understanding of the Hasselwander case is that the
17 issue before the Court dealt with the conversion of a
18 semi-automatic firearm to a fully-automatic firearm.
19 However, the essence of the Hasselwander decision deals
20 with the meaning of the word "capable."

21 **Q.** Okay. So would you agree with me that any firearm, any
22 semi-automatic firearm that can be converted to shoot
23 full auto is a prohibited firearm?

24 **A.** Based on Hasselwander, no, because it's -- because
25 there are more requirements than that. It's not just

1 the ability to be converted, but it's the ability to be
2 converted in a relatively short period of time with
3 relative ease.

4 **Q.** And what is your understanding of relatively short
5 period of time? Are we talking about a matter of
6 seconds? Minutes? Hours? Days?

7 **A.** The -- it depends on the circumstances. Again, the
8 Supreme Court itself, and I don't recall the decision,
9 indicates that the conversion must take place within
10 the four corners of the offence so that if the
11 firearm's been used for a bank robbery, for example,
12 the conversion would have to be something that could be
13 effected within the time span of that particular
14 robbery; whereas for a possession offence, there would
15 be a much longer time span available. That's my
16 understanding of how it works.

17 **Q.** Okay. And what about relative ease? What is your
18 understanding of relative ease?

19 **A.** Well, I can infer relative ease to some extent from the
20 facts that were before the Court for Hasselwander. So
21 the so relative ease involved replacement of parts and
22 some mechanical work, so that would be a good example
23 of relative ease.

24 **Q.** Okay. So if someone was able to take a semi-automatic
25 rifle, take it to a gunsmith and then have the

1 gunsmith, using parts that are commercially available,
2 convert the gun into full auto, would that make the
3 original firearm a prohibited firearm? Would it make
4 it capable of being a fully-automatic firearm?

5 **A.** Sorry, we're just distracted for a second. I'll ignore
6 that, though.

7 The -- when a gunsmith converts the firearm from
8 semi-automatic to fully-automatic, whether the
9 unmodified semi-automatic firearm would be considered a
10 prohibited firearm by virtue of Hasselwander would
11 depend on whether it falls within the range of
12 relatively short period of time with relative ease.

13 And, again, based on Hasselwander, I would say
14 that if the conversion required relatively minor
15 mechanical work and, perhaps, replacement of a few
16 parts and could be effected within a few hours, then it
17 would definitely be within that time span, and would --

18 **Q.** Okay. I understand your answer. Thank you.

19 And the same logic would apply to when you convert
20 a firearm that is capable of less than 10,000 joules to
21 a firearm that is capable of more than 10,000 joules,
22 correct?

23 **A.** In general, yes.

24 **Q.** Okay. So if I had a firearm that presently was capable
25 of less than 10,000 joules and I took it to a gunsmith

1 who, within a matter of a couple of hours, converted it
2 using off the shelf parts into something that is
3 capable of more than 10,000 joules, then the firearm in
4 question is capable of over 10,000 joules and is
5 prohibited, right?

6 **A.** Well, that would depend on how much gunsmithing work
7 the gunsmith had to invest in the conversion.

8 **Q.** Just replacing the barrel and magazine and bolt.

9 **A.** Right. But that can be easy or hard depending on the
10 firearm. So --

11 **Q.** Okay.

12 **A.** -- if the -- if you're talking about a conventional
13 bolt-action rifle, which would be typical of the kind
14 of large calibres used in hunting, the removal of the
15 barrel, the re-chambering of a barrel or replacement of
16 the barrel with a new barrel and properly aligning and
17 headspacing the barrel with concurrent modifications to
18 the bolt face, if the bolt was not suitable, and
19 changes to the magazine would be a fairly extensive
20 operation. And I think, in general, that would fall
21 outside a relatively short period of time with relative
22 ease.

23 **Q.** In general, but not necessarily, correct?

24 **A.** Well, there are, and have been for a number of years,
25 firearms that are modular in nature where the end user

1 can replace components and reconfigure the firearm in a
2 very short period of time.

3 So there are -- there's a whole range of options;
4 one from changes that can be effected by the end user
5 in a matter of an hour or less versus those which
6 require specialized equipment and extensive gunsmithing
7 services.

8 **Q.** Okay. So let's just, you know, break this process
9 down. So you mentioned, you know, modifying the bolt.
10 When you re-chamber a -- I don't think re-chambering is
11 the right term -- when you change the calibre on a
12 bolt-action rifle, you don't necessarily need to make
13 modifications to the bolt. You can just simply buy a
14 different bolt for the different calibre, correct? And
15 that would -- replacing a bolt on a bolt-action rifle
16 is a matter of seconds?

17 **A.** Well, that depends, again, on the kind of firearm
18 you're referring to. So the example that I responded
19 to in paragraph 66 of my affidavit, the one surfaced by
20 Mr. O'Dell involving the Remington model 700 rifle,
21 that firearm has a recess bolt face, which means that
22 the bolt face dimensions are very sensitive to the
23 exact nature of the cartridge that is being used.

24 The second I would point out is that the Remington
25 model 700 was never commercially manufactured, to my

1 knowledge, in any calibre which would exceed 10,000,
2 joules. So you're gunsmithing the calibre -- you're
3 gunsmithing the firearm beyond its normal limits.

4 So, yes, I would say that would require extensive
5 work.

6 **Q.** Okay. But Remington 700 is just one example. There
7 are certainly other bolt-action rifles that would be a
8 lot easier to convert to a different calibre, correct?

9 **A.** Firearms design is a continuum, and there are going to
10 be firearms out there which are very difficult to
11 convert and some which are probably very easy to
12 convert.

13 **Q.** And are you familiar with the Savage 110 bolt-action
14 rifle?

15 **A.** In general terms, yes.

16 **Q.** Would you agree with me that that's a rifle that would
17 be quite easy to convert to a different calibre?

18 **A.** Well, it's certainly easier, but my understanding of
19 it, as well, is it requires a fine tuning of the
20 chamber, so you may have to apply a chamber reamer to
21 it. It also requires the use of headspace gauges to
22 properly align the bolt with the barrel.

23 So it's not a trivial exercise. It's not one that
24 I'm aware of that's commonly done by the -- by someone
25 in the their basement, but I suppose it could be done.

1 **Q.** But a competent gunsmith could do it quite easily,
2 correct?

3 **A.** Right. But a competent gunsmith has access to all the
4 tools of a gun shop and has the skill and knowledge.

5 **Q.** Do you know approximately how many licensed gunsmiths
6 there are in Canada? Are we talking about thousands?

7 **A.** I think thousands is probably too high, but I don't
8 know offhand. There are -- you know, there are roughly
9 4,000 licensed businesses -- firearms businesses in
10 Canada, half of which just sell ammunition. So just
11 from that alone, it's going to be, you know, probably
12 fewer than -- well, it would be definitely fewer than
13 2,000, but I don't know how many gun -- how many
14 firearms businesses have a gunsmith on staff. I just
15 don't know.

16 **Q.** Okay. But, in general, from your knowledge of the
17 firearms community, if someone lives in a major
18 population centre, it's not difficult to have access to
19 a gunsmith, correct?

20 **A.** Correct.

21 **Q.** Okay. So based on your knowledge of the Savage 110,
22 you'll agree with me that the barrel itself can be
23 replaced, you know, by anyone who has access to a vice
24 and a wrench?

25 **A.** It's more complicated than that. As I said earlier,

1 although the -- although there are replacement barrels
2 readily available for that make and model of firearm,
3 the installation of the new barrel involves more than
4 just putting the rifle in a vice and applying a wrench
5 to the barrel to take it out.

6 The installation of the new barrel requires the
7 use of tooling, in particular headspace gauges, to make
8 sure that the firearm is going to operate safely when
9 the conversion is completed.

10 **Q.** But let's say, you know, you forego that and you don't
11 use headspace gauges. The firearm would still be
12 capable of firing a shot, correct?

13 **A.** It might. It might not. Improperly set headspacing
14 can prevent the firearm from discharging.

15 **Q.** But not necessarily?

16 **A.** Not necessarily, but -- so there's no guarantee it
17 would work --

18 **Q.** Okay.

19 **A.** -- if you don't use the proper tools.

20 **Q.** And, again if you are replacing on the Savage 110, if
21 you are replacing the bolt and the barrel -- and the
22 magazine, bolts and magazines for that particular
23 firearm can be purchased online or at, you know, any
24 licensed -- not any licensed business but at licensed
25 businesses that do sell them. These are commonly

1 available parts, correct?

2 **A.** I agree to the extent that the Savage model 110
3 bolt-action rifle is designed to make the replacement
4 of the barrels, bolts, and magazines easier than it is,
5 say, for a Remington model 700. However, being easier
6 doesn't mean that it's necessarily easy.

7 **Q.** Okay. And are you aware that there are -- and I think
8 you've mentioned this when you were talking about
9 modular guns -- there are certain guns that have switch
10 barrel systems where you can essentially change the
11 barrel without any tools, correct?

12 **A.** Yeah. They're less common, but they do exist.

13 **Q.** Are you familiar with the Blaser R8 rifle?

14 **A.** Well, I am now, courtesy of Mr. Bader.

15 **Q.** Okay. So you've seen the Shooting Times article that
16 is attached to his affidavit, correct?

17 **A.** Yes. It's an unusual firearm. It's the only one that
18 I'm aware of, that and its predecessor, that have
19 interchangeable barrel assemblies where the resulting
20 change can either go above or below 10,000 joules.

21 MR. BOUCHELEV: And I want to mark that article as
22 an exhibit to this examination, so I think the easiest
23 thing would be for me to send it to you through Zoom to
24 make sure we're all looking at the same document, and
25 I'll mark it as an exhibit.

1 **A.** While you're doing that, I wonder if it's a convenient
2 time to break for lunch?

3 MR. MACKINNON: Not for lunch, but if you want
4 to --

5 **A.** Or a stretch break, rather.

6 MR. BOUCHELEV: Yeah. Certainly, if you're tired,
7 if you need a stretch break, we'll take it.

8 (ADJOURNMENT)

9 **Q.** MR. BOUCHELEV: Mr. Smith, can you please open the
10 file that was just shared with you. This is the
11 Shooting Times article that we talked about before the
12 break.

13 **A.** Okay.

14 MR. MACKINNON: First off, do you recognize that
15 article?

16 **A.** No. I saw the article for the first time in an
17 affidavit prepared by Mr. Bader.

18 **Q.** MR. BOUCHELEV: Okay.

19 MR. MACKINNON: So this is an attachment to an
20 affidavit that we have taken the position on is
21 inadmissible. So if you're putting a document to him
22 that's separate from that affidavit, if you want to
23 call it that, that's fine, but if he doesn't recognize
24 this document as legitimate or anything else, you can't
25 confirm its authenticity.

1 MR. BOUCHELEV: Well, he recognized it as a
2 document that he has reviewed. This is an article from
3 the -- this is a magazine review article, and you can
4 see in the last page that it's from the Shooting Times.

5 Q. Are you familiar with the Shooting Times magazine?

6 MR. MACKINNON: Okay. But hold on. You're
7 providing the evidence now that it's from the Shooting
8 Times and it's found in some place. I'm just
9 confirming on the record there's no evidence as to
10 where this came from.

11 MR. BOUCHELEV: Well, I'm not giving any evidence.
12 I'm looking at the last page, and it says, "Shooting
13 Times."

14 MR. MACKINNON: Well, it might, too, but that's
15 not evidence that it's actually from -- it's not
16 authenticated.

17 Q. MR. BOUCHELEV: Okay. Well, Mr. Murray, do you
18 disagree that this is a review from the Shooting Times?

19 MR. MACKINNON: He has no knowledge. He's just
20 said that he doesn't recognize the article. He's
21 looked at it, but that's it.

22 Q. MR. BOUCHELEV: Okay. And can you look at the
23 second page of the document.

24 A. Okay.

25 Q. Okay. And if you look at the highlighted paragraph:

1 (as read)

2 "The system is designed in such a way
3 that bolt heads can be interchanged, and
4 the unique way that barrels attach also
5 enhances the rifle's versatility. You
6 can make the same rifle shoot everything
7 from .22 Long Rifle rimfire rounds to
8 .500 Jeffery dangerous-game rounds
9 simply by swapping bolt heads, magazine
10 inserts, and barrels."

11 Do you agree with this statement that this is the way in
12 which the Blaser R8 rifle is designed to work?

13 **A.** Yes, that's my understanding.

14 **Q.** Okay. And you agree that, in some loadings, a .500
15 Jeffery calibre can exceed 10,000 joules?

16 **A.** Yes. The calibre can exceed 10,000 joules energy.

17 **Q.** Okay. But it would depend on the loading? Some
18 loadings would be less than 10,000; some would be more
19 than 10,000, right?

20 **A.** From my recollection, yes. Some loads were over; some
21 were under.

22 **Q.** Okay. So would this be an example of a rifle that a
23 gun owner can easily convert himself into a rifle
24 that's capable of less than 10,000 joules to a rifle
25 that's capable of more than 10,000 joules?

1 **A.** It's potentially the case. I haven't looked into the
2 rifle in detail in order to arrive at an opinion one
3 way or the other. I would look more at the level of
4 work involved in exchanging the barrel, bolt, and
5 magazine. But the way the article is written, it seems
6 to be something that's intended to be accomplished by
7 the end user.

8 MR. BOUCHELEV: Okay. So I want to make this
9 document an exhibit to this examination. So I believe
10 this is the first exhibit to this examination.

11 MR. MACKINNON: Well, hold on. I don't agree
12 because this article has not been authenticated in any
13 way. I didn't mind if you want to put a general
14 statement, as you did, to Mr. Smith, but I do object to
15 it being an exhibit because we have no knowledge of
16 this article or its authenticity. There's no evidence.

17 MR. BOUCHELEV: Well, I understand your position.
18 I'll mark it as an exhibit over your objection. We can
19 deal with this at the hearing, if need be.

20 So let's mark it as the first exhibit.

21 MR. MACKINNON: No. I would ask that it not be
22 marked as an exhibit because it's not --

23 MR. BOUCHELEV: Well, Counsel, it's my
24 cross-examination, so, with respect, I think that it's
25 up to me to ask that it be marked, and it you're

1 objecting, then we can deal with that at the hearing,
2 but I'm asking --

3 MR. MACKINNON: Okay. Where's the --

4 MR. BOUCHELEV: -- that it be marked --

5 MR. MACKINNON: Where's the evidence to
6 authenticate it?

7 MR. BOUCHELEV: Look, Counsel, I don't want to
8 engage in legal argument at this time, okay. So your
9 objection is noted. I want to mark this as an exhibit
10 to this examination, and if you have an objection, you
11 can raise it at the hearing.

12 Now --

13 MR. MACKINNON: Well, the standard has been, right
14 now, even where it's been authenticated to some degree,
15 they've marked it for identification with letters A, B,
16 C. Is that correct, Court Reporter?

17 THE COURT REPORTER: That is correct. Typically what
18 our practice is, if counsel is objecting to it being
19 marked, even for identification, it will not be marked.
20 It will be listed as on objection. Both counsel need
21 to agree for me to mark it as an exhibit,
22 Mr. Bouchelev.

23 MR. BOUCHELEV: Okay. So in that case, we'll mark
24 it as an exhibit for identification purposes, so it
25 will be Exhibit A.

1 MR. MACKINNON: I don't agree for even
2 identification purposes.

3 MR. BOUCHELEV: Well, what does that mean? Why
4 would you not agree to mark something for
5 identification purposes?

6 MR. MACKINNON: Because there's no authenticity to
7 this document evidence that's been provided, and we
8 have objected to the admissibility of the affidavit to
9 which you sought to attach it.

10 MR. BOUCHELEV: Okay.

11 Q. And, Mr. Smith, after reading the -- you know,
12 obviously, and notwithstanding the fact that your
13 counsel is objecting to the affidavit of Mr. Bader,
14 you've read the affidavit, you've read the article that
15 was attached to the affidavit. Did you go online to
16 verify that this was, indeed, an article from the
17 Shooting Times?

18 MR. MACKINNON: He's not answering any questions
19 concerning an inadmissible affidavit.

20 MR. BOUCHELEV: Well, I'm asking him about this
21 particular document. You said that he didn't identify
22 it, so I'm trying to see if he can identify it.

23 Q. Did you go online and check if this was an article from
24 the Shooting Times magazine?

25 A. No, I did not. What I did was go to the manufacturer

1 of the Blaser and confirm the characteristics of the
2 firearm directly from the manufacturer.

3 Q. And these characteristics are consistent with what we
4 have seen in this article, correct?

5 MR. MACKINNON: With the question you put to him.

6 MR. BOUCHELEV: Pardon me?

7 MR. MACKINNON: You put a question, a statement,
8 to him that he agreed with. So it's consistent with
9 what you put to him. It's not consistent, necessarily,
10 with what's in the article because we object to the
11 article.

12 Q. MR. BOUCHELEV: Well, I read a statement from the
13 article, so it is consistent with the statement
14 contained on paragraph 2 of the document that you are
15 looking at, correct.

16 A. The information that's in the highlighted text on
17 page 2 of the document, which you sent me, is
18 approximately the same as the kind of information
19 that's available from the manufacturer's website. The
20 information on the manufacturer's website is
21 considerably more detailed.

22 Q. Okay.

23 MR. BOUCHELEV: So, Madam Reporter, I'm not sure
24 what your practice is, but I want the record to show
25 that this document was put to Mr. Smith, this document

1 should be attached to the transcript and noted that
2 there was an objection to the marking of this document.

3 THE COURT REPORTER: So just confirming you are wanting
4 the document attached to the transcript knowing that it
5 will not physically be marked as an exhibit; the record
6 will show that it's being objected to?

7 MR. BOUCHELEV: That's correct. But I want the
8 document to be attached to the transcript so the Court
9 is aware of which document we are talking about.

10 MR. MACKINNON: There's an objection to that.

11 MR. BOUCHELEV: Well, Counsel, you can object to,
12 you know, something being marked as an exhibit. I
13 don't think that you can object to the document being
14 attached to the transcript.

15 MR. MACKINNON: I can and I did.

16 MR. BOUCHELEV: Okay. Well, my position, Madam
17 Reporter, is that notwithstanding the objection, the
18 document should be attached.

19 THE COURT REPORTER: I can check on our lunch break. I
20 will have to contact the office staff and see what the
21 protocol would be in this situation.

22 MR. BOUCHELEV: And, Counsel, while we're on the
23 record, can you explain to me why you are objecting to
24 the October 22nd affidavit of Travis Bader?

25 MR. MACKINNON: We put it in an email to you,

1 Counsel, to make it clear that there is no provision
2 for a reply affidavit. It came after all the
3 affidavits were filed, all the timelines, without any
4 kind of notice, and you're seeking to admit it now in
5 some form after cross-examination has gone on for two
6 days already, two, two-and-a-half days now with
7 Mr. Smith. It's inappropriate --

8 MR. BOUCHELEV: Well, no. The affidavit was
9 provided to you well in advance of today's
10 cross-examination or any -- in advance of any
11 cross-examinations in this proceeding. And it was
12 certainly open, and it's still open to you to
13 cross-examine Mr. Bader on that affidavit.

14 So I'm just trying to understand your position to
15 why you are objecting to that particular affidavit
16 going in?

17 MR. MACKINNON: Because it cannot be properly
18 filed with the Court. There's been no provision for
19 any kind of reply affidavit, nor has Mr. Smith had an
20 opportunity to reply to it in any way before his
21 cross-examination started.

22 So it's inadmissible directly, and it should not
23 be admissible through an indirect means by attaching
24 parts of it as an exhibit.

25 MR. BOUCHELEV: And how can Mr. Smith reply? The

1 affidavit in question is a reply to his responding
2 affidavit, so I'm not entirely sure what you mean by
3 that.

4 MR. MACKINNON: Well, we can discuss this before
5 the Judge if necessary. We don't need to get into our
6 legal arguments now, but I've just mentioned, you'd
7 been put on notification as soon as you served it that
8 it was inadmissible.

9 MR. BOUCHELEV: Okay. So, Madam Reporter, if you
10 can, during the lunch break, find out if you can attach
11 the document in question, please.

12 OBJECTION TAKEN to entering the Shooting Times article
13 found attached to Travis Bader's affidavit as an
14 exhibit or attaching it to the transcript of
15 Mr. Smith's cross-examination

16 Q. MR. BOUCHELEV: Now, a few minutes ago, Mr. Smith,
17 you mentioned, and there was one example, the .500
18 Jeffery is a calibre that, depending on the load, can
19 be either below 10,000 joules or above 10,000 joules.
20 And you'll agree with me that there are other calibres
21 like that; that depending on, you know, the type of
22 loading that you use, the muzzle energy would vary,
23 correct?

24 A. Yes. That's normal for any rifle calibre.

25 Q. Okay. And you also mentioned to me that of the

1 thousands of gun owners that you've interacted with in
2 the past, many were hand loaders, correct?

3 **A.** Many of them were, yes.

4 **Q.** And you'll agree with me that oftentimes hand loaders
5 load their ammunition to different specifications
6 compared to what a factory manufacturer -- what a
7 commercial manufacturer would?

8 **A.** Hand loader -- in my experience, hand loaders generally
9 load ammunition in accordance with loading tables
10 supplied by the manufacturers of hand loading
11 components. In some cases manufacturers of bullets and
12 other cases manufacturers of propellant powder.

13 My understanding is that those load tables are
14 designed to be safe and will operate within industry
15 norms.

16 **Q.** But there is nothing that would stop a hand loader from
17 using hot ammunition, for example, loading it in excess
18 of what may be recommended?

19 **A.** It's possible. There are some factors which will
20 influence that. For example, most of the loads on the
21 hand loading tables are designed to either fill or
22 completely fill the cartridge case.

23 So, in most cases, it simply wouldn't be
24 physically possible to put more propellant in than the
25 maximum permitted by the loading table.

1 But, yes, hand loaders are free to adjust the
2 charges a bit more than people who buy ammunition
3 preloaded.

4 **Q.** And you say that, in some cases, it may be the capacity
5 of the cartridge would prevent you from, you know,
6 loading or increasing the power of the load. But you
7 will agree with me that there are different types of
8 propellants, so if the physical size of the cartridge
9 is the limitation, you can just use a different more
10 powerful type of gun powder?

11 **A.** No. It doesn't work that way because propellant
12 powders have different burning rates. And if a hand
13 loader were to replace a -- the load from a loading
14 table using a particular powder with another powder
15 that was faster burning with the goal of generating a
16 higher muzzle velocity or a higher muzzle energy, they
17 might well wind up just increasing the pressure and
18 perhaps damaging the firearm.

19 So the preparation of the loading tables is, as I
20 understand it, very complicated. It's very sensitive
21 to small changes, and that the producers of loading
22 manuals are very careful to point out to hand loaders
23 not to deviate from the authorized loads in the tables.

24 **Q.** What you are describing, it sounds like best practices,
25 but there is nothing stopping an individual user from

1 deviating and trying to increase the pressure to make
2 you know, a more powerful round, correct?

3 **A.** Certainly a hand loader could try. Whether it would
4 result in a more powerful round or not is questionable.

5 **Q.** But it could?

6 **A.** It might.

7 **Q.** Okay. And so, then, you would have a situation where a
8 firearm is capable of generating more joules of muzzle
9 energy than, you know, what a manufacturer would have
10 with a commercial load, correct?

11 **A.** Well, as we previously discussed, the commercial
12 manufacturers produce a variety of loads for a given
13 calibre. And so there's already going to be some
14 variation built into the potential muzzle energy of a
15 firearm based on what kind of ammunition is available
16 commercially. The ammunition loaded by hand loaders
17 is, in general, going to fall into the same range.

18 **Q.** In general, but not necessarily?

19 **A.** It depends on exactly what the hand loader does.

20 **Q.** Okay. And just so that, you know, the Court is clear
21 as to what hand loading is, can you just describe that
22 briefly? What is hand loading?

23 **A.** Certainly. Hand loading is a -- it refers to the
24 process of loading a cartridge ammunition, whether it
25 be for rifles, pistols, or shotguns, from the basic

1 component.

2 So in the case of a rifle ammunition, which I
3 believe is the focus of our discussion now, the hand
4 loader would assemble a primer into a cartridge case,
5 would load a prescribed amount of propellant powder
6 into the cartridge case, and then seat a bullet in the
7 mouth of the cartridge case, all in accordance with the
8 hand loading manual's instructions.

9 And this would result in a cartridge of a
10 particular calibre, which could be fired safely in the
11 firearms that's chambered for that particular calibre.

12 Q. And you will agree with me that hand loading is a very
13 common practice among Canadian gun owners?

14 A. It's quite common. I don't have a percentage in mind,
15 but it's quite common.

16 Q. Okay. Now, when you were looking at Mr. Bader's
17 evidence in respect to the Blaser R8 rifle, he also
18 mentioned certain other rifles that are of a similar
19 switch-barrel modular design like the Blaser R93,
20 Merkel KR1, Chapuis Armes Challenger, HMS STRASSER.
21 Are you familiar with those firearms?

22 A. I believe you're referring to Mr. Bader's October 22nd
23 affidavit; is that correct?

24 Q. That's correct, yeah.

25 MR. MACKINNON: As I said before, Counsel, he's

1 not going to be answering any questions concerning an
2 inadmissible affidavit.

3 MR. BOUCHELEV: I'm not putting the affidavit to
4 him. I'm just putting the names of certain rifles to
5 him.

6 Q. Like, for example, Blaser R93, are you familiar with
7 that rifle?

8 A. Yes. That rifle is the forerunner to the Blaser R8 and
9 has similar characteristics.

10 Q. Okay. What about Merkel KR1?

11 A. That's a firearm which has interchangeable calibres --

12 Q. Okay.

13 A. -- as well. But to the best of my knowledge, none of
14 them would exceed 10,000 joules, though.

15 Q. What about the Chapuis Armes Challenger? Are you
16 familiar with that rifle?

17 A. In a very general way, and I believe that's another
18 modular rifle --

19 Q. Okay.

20 A. -- and when I looked it up, none of the calibres
21 exceeded 10,000 joules.

22 Q. Okay. And where did you look that up? Where did you
23 obtain that information?

24 A. I went to the manufacturer's websites.

25 Q. Okay. What about the HMS STRASSER? Are you familiar

1 with that rifle?

2 **A.** Yes. I believe that's another one of the rifles that
3 was mentioned. And it's the same issue there; I
4 checked the list that was there, and of those firearms,
5 it was only the R93 and R8 that had interchangeable
6 barrels and calibres where you could go over or under
7 10,000 joules. The other rifles had interchangeable
8 barrels and calibres, but all of the factory available
9 barrels and calibres were under 10,000 joules.

10 **Q.** So there's nothing to stop, for example, an
11 after-market manufacturer from manufacturing a barrel
12 that would be capable of exceeding 10,000 joules,
13 right?

14 **A.** That would depend on the details of the design of the
15 rifle, whether the receiver dimensions are large enough
16 to accept a high-energy calibre. And I haven't looked
17 into the matter deep enough to answer that question
18 accurately.

19 **Q.** Okay. But, in general, you will agree that it's quite
20 common in the firearms industry for after-market
21 manufacturers to manufacture barrels, for example?

22 **A.** After-market barrels are quite commonly available for
23 the ordinary hunting calibres.

24 **Q.** Okay. Now, can you go to paragraph 69 of your
25 affidavit.

1 So at paragraph 69, you talk about proof loads,
2 and you say that the use of proof loads can mean that a
3 firearm is capable of producing muzzle -- no, sorry.

4 That's the reference to Mr. O'Dell. You say: (as read)

5 "Proof loads are loads deliberately
6 designed to produce operating pressures
7 at a defined amount (commonly
8 30 percent) over the maximum safe level
9 and are used by firearms manufacturers
10 to stress test new firearms."

11 And then you say that -- the last sentence of that
12 paragraph: (as read)

13 "They are not sold to the public, and
14 are designed to raise the pressure
15 level, which does not necessarily result
16 in a higher velocity or energy."

17 So you're saying it does not necessarily result, but it
18 could result in higher velocity or energy, correct?

19 **A.** I haven't looked at every proof load that's ever been
20 made anywhere, so I can't answer that question
21 categorically; however, in general terms, proof loads
22 are designed to raise pressure. This produces a higher
23 peak on the pressure time curve. But, in general, the
24 proof loads do not change the area under the pressure
25 time curve, which is what relates to the muzzle energy

1 or the muzzle velocity that's produced.

2 So, broadly speaking, I would not expect a proof
3 load which is designed to raise pressure, and only
4 raise pressure -- that's its principal design
5 consideration -- to result in much change to muzzle
6 energy or muzzle velocity. That's not to say that it
7 couldn't happen, but that's not the purpose of a proof
8 load.

9 **Q.** Okay. Now, at paragraph 70 you talk about hunting.

10 You say that: (as read)

11 "Hunters select their firearms largely
12 on calibre of ammunition, which must be
13 sized according to what would cause a
14 humane kill of the animal that is the
15 object of the hunt, and accuracy, which
16 is reflected by the size of the game
17 animal and how closely it can be
18 stalked."

19 Now, I'm just wondering, what makes you an expert on the
20 types of rifles that hunters choose for hunting?

21 **A.** Well, as I said initially, I think, on the first day
22 that I testified, when I was asked what the scope of my
23 expertise was, I included, as part of it, knowledge of
24 the purposes to which firearms are put, and
25 paragraph 70 falls into that --

1 Q. Okay.

2 A. -- purpose.

3 Q. But you can't -- I mean, every hunter is different.

4 You can't possibly know what each hunter, what
5 criteria, you know, an individual hunter looks at when
6 deciding which particular rifle to use himself or
7 herself, right?

8 A. No. I have no idea what goes in the mind of every
9 single hunter. However, based on the literature and
10 reports and surveys and so on from wildlife agencies,
11 hunters will generally select a calibre which the
12 hunter believes will be adequate for a humane kill of
13 the game animal under the circumstances as the hunter
14 intends to hunt. And it's only logical that a hunter
15 would do that.

16 Q. Okay. And you'll agree with me that the reliability of
17 the rifle is an important factor?

18 A. Reliability is important, but it's not an overriding
19 factor. The -- I would put safety, for example, at a
20 higher level than ordinary reliability because the
21 worse that can happen if the firearm fails to function
22 is that the opportunity to bag a game animal is lost;
23 that's it.

24 Q. Well, that's the whole purpose of hunting. If you have
25 an unreliable rifle, you know, why would you possibly

1 want to use it in a hunting situation?

2 **A.** That would be a logical assertion. So, yes, I would
3 say that hunters would desire a firearm which is
4 reliable and a firearm which is safe.

5 **Q.** Okay.

6 **A.** But as I said earlier, the primary consideration for
7 selecting a rifle is its calibre, because even if the
8 firearm were perfectly reliable, if it's chambered for
9 a calibre that's not suitable for the game animal, it's
10 not going to be of much use for the hunter.

11 **Q.** Well, would you agree with me that ergonomics is also
12 an important factor?

13 **A.** It can be for some hunters, but host factory firearms
14 come in a particular configuration and are not
15 adjustable, so it's -- the industry pays less attention
16 to ergonomics, in general.

17 **Q.** But there are some hunting rifles that are, in fact,
18 adjustable, right?

19 **A.** Yes. A hunter can have a factory firearm modified. A
20 hunter can have a firearm custom built. A hunter can
21 have a firearm that has adjustable components, to some
22 degree.

23 So all of these are possible, but if you were to
24 peruse the catalogs of sporting arms manufacturers, you
25 would see, in general, for conventional hunting rifles

1 and conventional hunting shotguns that they are pretty
2 much made in one configuration and it's up to the
3 hunter to adapt to the ergonomics of the firearm,
4 rather than the reverse.

5 **Q.** Isn't it one of the appeals of AR-10 and AR-15 type
6 rifles is that they are very configureable and that,
7 you know, you can modify them to adapt them to your
8 physical characteristics?

9 **A.** That is a factor that appeals to certain owners of
10 AR-10 and AR-15 purchasers. I would suggest to you
11 that the principal factor is that they want to own a
12 tactical firearm.

13 **Q.** And how can you possibly know that?

14 **A.** Because that's how they're marketed. That's how
15 they're discussed in terms of firearms chat rooms and
16 other informal sources of information.

17 So the existence of that category of firearm is
18 that they are derived from military firearms. They are
19 tactical in nature, and there's a certain number or a
20 certain percentage of firearms owners who seek to own
21 tactical guns.

22 **Q.** What's that percentage? Do you know?

23 **A.** I don't have the numbers with me, but it's relatively
24 small. So, for example --

25 **Q.** No, no. Sorry. Maybe I'm not making my question

1 clear. So what I'm asking for is of all the people who
2 buy AR-10 and AR-15 guns, do you know what percentage
3 are buying them because they want to have a tactical
4 type rifle?

5 **A.** There's no way to know that because I don't survey
6 every owner, every purchaser as to the reason why they
7 bought a particular firearm.

8 **Q.** And I think, as you've told me before, the only reason
9 why you think that that is the reason why people want
10 them is because of, you know, the way some of these
11 guns are marketed and the anecdotal information that
12 you were able to see in some online chat rooms, right?

13 **A.** No. It's more firm than that. I don't have it with
14 me, but for -- it's available online -- for example,
15 the National Sport Shooting Foundation, which is a
16 large US organization which represents US firearms
17 manufacturers, did surveys on the use of the AR-15,
18 which is a tactical firearm of the type we're
19 discussing, and the survey was asking owners of those
20 firearms why they bought the firearm, and an activity
21 like hunting was among the outcomes, but it was a very
22 small percentage, something like 10 or 12 percent;
23 whereas the main purpose in buying an AR-15, at least
24 among American owners, was for home defence and other
25 tactical reasons.

1 So to the extent that there is evidence available,
2 hard evidence available, the -- it's my view that the
3 main reason owners have an interest in those firearms
4 is to own tactical firearms, based on their military
5 heritage, to be used in tactical shooting events.

6 **Q.** Are you aware of the fact that many AR-10 and AR-15
7 rifles are specifically marketed as hunting rifles?

8 **A.** They can be used as hunting rifles; some better than
9 others.

10 **Q.** No, no. The question is are you aware that a number of
11 such rifles are marketed by their manufacturer as
12 hunting rifles?

13 MR. MACKINNON: Wait. Do you have something where
14 you can verify that fact? You're putting an assumption
15 in your question.

16 MR. BOUCHELEV: Well, I'm asking this witness, who
17 is an expert, who is being presented as a firearms
18 expert, and who has given extensive evidence on how
19 guns are being marketed, I'm asking him if he is aware
20 of AR-10 and AR-15 rifles being marketed as hunting
21 rifles.

22 **A.** And the answer is that a manufacturer will typically
23 advertise the AR-10 or AR-15 firearm as being suitable
24 for a number of purposes. Such things as home defence
25 and hunting and target shooting.

1 Q. Okay. But are you aware of any AR-10 or AR-15 rifles
2 that are specifically marketed as hunting rifles?

3 A. I can't quote you a particular make and model. There
4 probably are, but I would -- I can't give a definitive
5 answer as to a particular make and model from memory.

6 Q. How about the Alberta Tactical Rifle Supply Modern
7 Hunter? Are you familiar with that firearm?

8 A. Yes, I am.

9 Q. And this is a firearm that is specifically marketed by
10 its manufacturer as a hunting rifle, correct?

11 A. Well, the model name "Hunter" and the comparable
12 firearm Varminter would suggest that hunting is a
13 primary intended use of the firearm.

14 Q. But other than the name, are you familiar that the
15 manufacturer describes it as a hunting firearm and
16 markets it as a hunting firearm?

17 MR. MACKINNON: Well, again, you've put a fact to
18 him that is nowhere in the evidence. You say --

19 MR. BOUCHELEV: It is. Yeah, it is.

20 Mr. MacKinnon, are you familiar with the affidavit of
21 Rick Timmins?

22 MR. MACKINNON: Well, if you want to put a fact in
23 another affidavit, that's fine.

24 MR. BOUCHELEV: Well, I don't have to refer him to
25 the affidavit just yet. I might if I need to, but

1 I'm -- you know, you're making a statement that is
2 false. You are saying that, you know, this is not
3 referred to in any of the evidence. It is. But I'm
4 entitled to ask him in general before I refer him to a
5 specific affidavit.

6 Q. So I'm asking him, are you familiar with the fact that
7 the Alberta Tactical Rifle Supply Modern Hunter is
8 specifically being marketed as a hunting firearm?

9 MR. MACKINNON: Well, actually, I was challenging
10 the assumption in that question in which it's not been
11 put to him that the evidence of so and so says this.
12 That's how you put it to him. But if you want --

13 MR. BOUCHELEV: Well, I don't have to --

14 MR. MACKINNON: -- to -- well, I'm going to stop
15 you. If you're going to put a fact that you're not
16 telling us where it's found, if that's what you're
17 doing --

18 MR. BOUCHELEV: No. But I don't have to speak
19 into a specific evidence. I can ask him a general
20 question, and he can agree or disagree.

21 Q. So the question that I'm putting is very simple. Do
22 you agree that the Alberta Tactical Rifle Modern Hunter
23 is being marketed specifically by the manufacturer as a
24 hunting firearm?

25 MR. MACKINNON: And that assumes a fact. And I'm

1 asking you to where that fact is actually proven. If
2 you want to ask him does the manufacturer do this,
3 that's fine. But you're putting to him --

4 MR. BOUCHELEV: Sure. I'll ask him. I don't want
5 to argue with you Mr. MacKinnon. I'll ask him.

6 Q. Does the manufacturer of Alberta Tactical Rifle Modern
7 Hunter market it as a hunting firearm?

8 A. Yes. My recollection of ATRS, Alberta Tactical Rifle
9 Supply, markets their series of firearms -- the Hunter,
10 the Varminter, and the Sporter -- in two ways: One as
11 a hunting firearm, and the other as a non-restricted
12 member of the AR platform, as it stood prior to
13 May 1st.

14 Q. So you're telling me that Alberta Tactical Rifle
15 markets their firearm as a member of the AR platform?

16 A. Yes, they do.

17 Q. Can you show me where? Can you direct me specifically
18 to where it is being marketed as such?

19 A. Well, if you were to go to the ATRS website --

20 Q. Okay.

21 A. -- you will see that those three firearms are marketed
22 under the heading AR-10, AR-15.

23 Q. Okay. So let's go -- can you go to the ARTS website on
24 your computer, please, because I want you to show me
25 where it is --

1 MR. MACKINNON: No.

2 Q. MR. BOUCHELEV: -- on their website?

3 MR. MACKINNON: He's not going to scour the
4 internet --

5 MR. BOUCHELEV: No, no. But he's --

6 MR. MACKINNON: You can --

7 MR. BOUCHELEV: No, no. I'm not asking him to
8 scour the internet. He referred me specifically to
9 their website. I'm on their website. I would like to
10 see where that rifle is being marketed as a member of
11 the AR family. I think that's a fair question.

12 MR. MACKINNON: He's given you evidence. If you
13 have a document to put to him, you go ahead. But he's
14 not going to go interactively to a website to give
15 evidence about wherever you want to go on the internet.
16 That's not --

17 MR. BOUCHELEV: No, no. I'm not asking to go
18 wherever I want. He referred me to the Alberta
19 Tactical Rifle website, and I want him to -- I can
20 share the screen, certainly, and he can point me to
21 where I need to go to find that marketing information.

22 MR. MACKINNON: No. If you want to put a document
23 to him, you do that. But we're not -- this is not
24 proper to go searching the internet for evidence.

25 MR. BOUCHELEV: No. We're not -- I'm only going

1 to where Mr. Smith has already taken me.

2 Q. So what I can do is I'm going to ask you to go to the
3 Alberta Tactical Rifle website on your computer. Can
4 you please do that.

5 MR. MACKINNON: No. He's not going to do that for
6 the reasons I have given.

7 Q. MR. BOUCHELEV: Okay. Well, I'm going to share my
8 screen with you, sir. One second.

9 Now, while I do that, Mr. Smith, will you agree
10 with me that Alberta Tactical Rifle Supply manufactures
11 a number of different guns; not just the Modern Hunter?

12 A. They manufacture three similar firearms. The Modern
13 Hunter, Modern Varminster, and Modern Sporter. I
14 believe they also make an AR-15, a direct copy of the
15 AR-15, as well.

16 Q. Okay. Now, sir, can you see the screen that I'm
17 sharing with you?

18 MR. MACKINNON: Well, first off, is this a
19 document that you're trying to put into evidence,
20 Mr. --

21 MR. BOUCHELEV: No, it's not a document. It's the
22 website of Alberta Tactical Rifle.

23 Madam Reporter, can you confirm that you can see
24 the image that I'm sharing.

25 THE COURT REPORTER: Yes, I can see it.

1 MR. BOUCHELEV: All right.

2 MR. MACKINNON: Well, I'm not having this witness
3 answer questions from your putting evidence in through
4 the internet this way.

5 Q. MR. BOUCHELEV: Well, Mr. Smith, do you degree
6 with me that this is the Alberta Tactical Rifle Supply
7 website?

8 MR. MACKINNON: As I say, he's not answering those
9 questions because you're trying to put in evidence from
10 yourself now.

11 OBJECTION TAKEN to answering the question: Well, Mr. Smith,
12 do you degree with me that this is the Alberta Tactical
13 Rifle Supply website?

14 MR. BOUCHELEV: No, I'm not trying to put in
15 evidence from myself.

16 Q. Have you ever been to the Alberta Tactical Rifle
17 website?

18 MR. MACKINNON: We are not going to do this
19 through the internet.

20 MR. BOUCHELEV: I'm just asking a simple question.
21 He said that the information is on the website, so I'm
22 entitled to question him whether he has ever been to
23 the Alberta Tactical Rifle Supply website.

24 Q. Have you been to that website?

25 A. On many occasions.

1 Q. Okay. Are you looking at that website right now?

2 MR. MACKINNON: He's not going to answer
3 questions. As I said, you can continue in this vein,
4 but the answer is he's not answering questions of your
5 searches through the internet.

6 MR. BOUCHELEV: Okay. Well, as an undertaking,
7 will you tell me where I can go on this website to see
8 the rifle being marketed as a member of the AR family.

9 MR. MACKINNON: No. He's given you his answer
10 already, generally, in answer to your questions. He's
11 not giving undertakings.

12 MR. BOUCHELEV: Okay. So we'll mark it as a
13 refusal, that the witness has refused to advise where
14 on the Alberta Tactical website one can find the Modern
15 Hunter being marketed as a member of the AR family.

16 UNDERTAKING NO. 6 - To advise where on
17 the Alberta Tactical Rifle Supply
18 website the Modern Hunter is marketed
19 as a member of the AR family - REFUSED

20 Q. MR. BOUCHELEV: Now, Mr. Smith, are you familiar
21 with other AR -- I'm going to say are you familiar with
22 other firearms that are now prohibited under the
23 regulation that are prohibited as members of the AR-10,
24 AR-15 family that are marketed by their manufacturers
25 as hunting firearms?

1 **A.** I'm not sure I understand your question fully.

2 **Q.** Okay. Do you know what a Remington R-15 is?

3 **A.** Yes.

4 **Q.** Okay. Is it an AR-15 type rifle?

5 **A.** Yes, it is.

6 **Q.** Is it marketed by Remington as a hunting firearm?

7 **A.** I don't specifically recall what Remington says on
8 their website.

9 **Q.** Okay. Are you aware of any AR -- other than the
10 Alberta Tactical Rifle, are you aware of any AR-10 or
11 AR-15 rifle that is specifically marketed as a hunting
12 rifle?

13 **A.** I can't think of any examples where the manufacturer is
14 marketing hunting as the sole purpose of the firearm.
15 However --

16 **Q.** What about one of the purposes?

17 **A.** However, it's very common for manufacturers to market
18 AR-15 rifles as hunting rifles where hunting with that
19 kind of firearm is permitted. And AR-15 firearm being
20 modular in nature can be configured in different
21 calibres for different purposes; one of which might be
22 hunting.

23 **Q.** And we were previously talking about ergonomics, and,
24 you know, we -- you agree with me that the AR-15 is the
25 type of rifle that is easier to adapt ergonomically to

1 the shooter than a more traditional hunting rifle?

2 **A.** Yes. That's one of the characteristics that it
3 inherited from its military predecessor. The -- it was
4 very common in military use to have -- or in present
5 day to have firearms that are readily adjustable to fit
6 soldiers of varying sizes and weights and strengths,
7 and the AR-15, being a derivative of the original
8 military model, came with that capability built in.
9 So --

10 **Q.** And you would agree that the same type of capability
11 would be attractive to people using it in hunting as
12 opposed to military context?

13 **A.** It is a -- it's a feature of the firearm that is
14 considered useful by many owners.

15 **Q.** Okay.

16 **MR. MACKINNON:** Counsel, we're at 12:17 now. We
17 usually break for lunch at noon. Are you at a spot
18 where it's convenient now or in a few minutes?

19 **MR. BOUCHELEV:** Maybe let's take a break at 12:30.

20 **MR. MACKINNON:** Okay.

21 **MR. BOUCHELEV:** So in about 15 minutes.

22 **MR. MACKINNON:** Okay.

23 **Q.** **MR. BOUCHELEV:** Now, can you look at, sir,
24 paragraph 71 of your affidavit.

25 **A.** Yes.

1 Q. So at paragraph 71, you essentially use .223 Remington
2 and 5.56x45 NATO interchangeably, but you agree with me
3 that they are technically different calibre?

4 A. They have the same dimensions. The military ammunition
5 is sometimes loaded to a higher pressure, but the
6 dimensions of the cartridges are the same.

7 Where there are differences, which is often noted
8 by owners, is in the chamber dimensions of the
9 firearms, but the ammunition is interchangeable
10 dimensionally.

11 Q. Okay. And you will agree with me that the
12 .223 Remington is the civilian cartridge and the
13 5.56x45 NATO is a military cartridge?

14 A. Yeah. As I indicated, they're essentially the same
15 cartridge operating under two names.

16 The .223 Remington name is most commonly used in
17 civilian circles; whereas the 5.56x45 NATO in military
18 circles.

19 Q. But while dimensionally the same, when it comes to
20 actual firearms that are chambered in those calibres,
21 the ammunition is not necessarily interchangeable,
22 right?

23 A. It's one of those things that varies according to the
24 firearm. A firearm which is designed expressly for
25 .223 Remington may have some difficulties functioning

1 with 5.56 NATO ammunition. However, broadly speaking,
2 they're interchangeable, and a phenomenon that is
3 widely observed is for the firearm to be chambered for
4 .223 Wylde -- that's W-Y-L-D-E for the benefit of the
5 court reporter -- which is a chambering that means you
6 can use either one, and that's becoming increasingly
7 common.

8 Q. Okay. And I would suggest to you that the .223
9 Remington actually came out before the 5.56 NATO; would
10 you agree with that?

11 A. No. The calibres were co-developed with the
12 development of the AR-15. They --

13 Q. Okay.

14 A. -- travelled together.

15 Q. But the .223 was specifically developed as a civilian
16 version of 5.56?

17 A. I wouldn't say that's the case. As I said --

18 Q. But it would -- sorry. But it was developed for
19 civilian use?

20 A. Yes. The development of the cartridge for civilian use
21 and military use ran in parallel.

22 Q. Okay. And does the same apply to .308 Winchester and
23 7.62 NATO?

24 A. No. It's very clear there. The military calibre came
25 first; the civilian calibre came later.

1 Q. You're saying that .308 was developed after 7.62?

2 A. Well, the cartridges are the same. It's simply renamed
3 for civilian marketing.

4 Q. Okay. And you agree with me that a .308 Winchester is
5 one of the most popular hunting calibres in North
6 America?

7 A. I don't have the statistics to prove that it's the most
8 popular, but I would agree that it is a very, very
9 popular calibre.

10 Q. You will agree with me, also, that the .223 Remington
11 is a popular hunting calibre?

12 A. I would say less so because the .223 calibre is
13 suitable for a much smaller range of game.

14 Q. So if we're talking about varmint hunting, it's
15 probably the most popular calibre for that type of
16 hunting, correct?

17 A. The .223 Remington calibre would be more popular for
18 small game hunting like varmint hunting, yes.

19 Q. But you agree with me that it is extremely popular for
20 that type of hunting?

21 A. Yes. The .223 Remington calibre is a very popular
22 chambering for tactical firearms like the AR-15 and
23 similar firearms.

24 Q. No, no. But .223 Remington is an extremely popular
25 calibre for varmint hunting? That's my question.

1 **A.** Well, as I mentioned earlier, the statistics from the
2 National Sport Shooting Foundation indicated, at least
3 for American users, that hunting was a relatively less
4 common reason for owning a firearm like an AR-15.

5 So I would infer from that that the -- that while
6 .223 is a very popular chambering, it's probably more
7 often used for one of the other purposes than it is
8 hunting. But I will acknowledge that .223 Remington
9 calibre is very popular, and it is a calibre that could
10 be used for hunting small game.

11 **Q.** Is the AR-15 the only firearm that is chambered in
12 .223?

13 **A.** No, there are many others.

14 **Q.** Okay. And so the question is, in general, you would
15 agree that the .223 Remington calibre is extremely
16 popular for varmint hunting?

17 **A.** It's an extremely popular calibre. I don't have the
18 information to say that it's the most popular calibre
19 for hunting small game. I simply don't know that. I
20 don't have the statistical information for that.

21 **Q.** But in general --

22 **A.** However --

23 **Q.** -- it is extremely popular for that purpose, right?

24 MR. MACKINNON: Okay. He's answered that question
25 in several ways now. He's given his answers.

1 MR. BOUCHELEV: Well, no. I think he was
2 specifically talking about the AR-15.

3 Q. So I'm interested in general, the .223 calibre. Like,
4 I don't think this is a controversial question. It is
5 one of the most popular calibres used for varmint
6 hunting, correct?

7 A. Let me reiterate, then. It's a very popular calibre.
8 One of its uses is hunting, but I do not have a
9 breakdown as to the ratio of cartridges expended for
10 hunting versus target shooting versus home defence
11 versus whatever else the firearm might be used for.

12 Q. Okay. And you'll agree with me that the .223 is based
13 on an earlier cartridge known at .222 Remington?

14 A. I believe one of the inspirations for that calibre was
15 the .222 Remington, yes.

16 Q. Which is a civilian cartridge, correct?

17 A. That one is, yes.

18 Q. Okay. And you'll agree with me that the
19 .308 Winchester is based on the .300 Savage calibre?

20 A. The historical record shows that the 7.62 NATO calibre
21 was inspired by the .300 Savage, but it is a distinctly
22 different calibre.

23 Q. And .300 Savage is a civilian cartridge as well,
24 correct?

25 A. I believe it saw some -- may have seen some military

1 use. I can't be entirely sure on that, but it's
2 primarily a sporting or hunting calibre.

3 **Q.** Okay. And you'll agree with me that just because a
4 certain calibre may be used by the military doesn't
5 mean it's any less suitable for civilian application,
6 such as hunting, correct?

7 **A.** No. As I mentioned in my affidavit, that the primary
8 selection criteria for hunting ammunition -- that's
9 para 70 I'm referring to -- is based on its suitability
10 for the kind of hunting that the hunter contemplates.

11 So if a firearm -- pardon me. If a cartridge that
12 was originally military is suitable for hunting, then
13 it's likely to be adopted by hunters for that purpose.

14 **Q.** Okay. And you'll agree with me, in general, that many,
15 if not most, of rifles that exist today, including, for
16 example, bolt-action rifles, are based on designs that
17 were originally developed for military use, correct?

18 **A.** It varies. A substantial number of firearms are
19 derived from or, at least, co-developed with military
20 designs, but the two are very much intertwined.

21 **Q.** Right. So to use an example, I don't think you will
22 disagree that bolt-action rifles are some of the most
23 popular types of hunting rifles, right?

24 **A.** Yes, they're very common.

25 **Q.** And would you agree with me that bolt-action rifles

1 were originally developed for military use such as, you
2 know, in World War I?

3 **A.** The bolt-action rifle was developed far earlier than
4 World War I, but, yes, bolt-action rifles were very
5 commonly used by the armed forces of all of the nations
6 involved in the War.

7 **Q.** Okay. And the same would apply to lever-action rifles?
8 They were -- well, first of all lever-actions are
9 popular among hunters, correct?

10 **A.** Yes. Lever-action rifles have seen hunting use,
11 military use, law enforcement use. A variety of
12 purposes for that action type.

13 **Q.** Okay. And would you say that lever-action rifles were
14 originally developed for military use by Winchester?

15 **A.** To some degree. It depends on how you define a
16 lever-action mechanism and whether you include the
17 single-shot lever-operated versions or not.

18 But I -- but the gist of your question is, I
19 think, do most lever-action rifles trace their origin
20 back to the US Civil War period, and, yes, that would
21 be correct.

22 **Q.** Okay. And they were extensively used by military
23 forces at the time, right?

24 **A.** No. The muzzle orders were still the predominant
25 firearm in that war.

1 Q. Okay. But they were used in the -- that was the
2 beginning of the lever-action as a military weapon, was
3 the Civil War era, correct?

4 A. That was a significant introduction of that particular
5 action type.

6 Q. Okay. So you would agree with me that just because a
7 firearm was originally developed for military use makes
8 it somehow less suitable for hunting purposes?

9 A. No. And as I indicated in -- perhaps not in that -- in
10 a direct way, but hunters will select firearms for
11 hunting based on their suitability for hunting, which
12 will depend on the characteristics of the firearm.

13 So it's the characteristics that make the
14 determination whether they originate from civilian
15 development; that doesn't matter.

16 Q. Okay. Now, and the same logic, I take it, would apply
17 to AR-type weapons, even if they were originally
18 designed for military applications, there is nothing
19 about their design that would make them unsuitable for
20 hunting use, correct?

21 MR. MACKINNON: Again, you're asking about
22 specific words that have a legal interpretation from
23 the OIC.

24 MR. BOUCHELEV: No. No. I'm just asking, in
25 general.

1 MR. MACKINNON: Well, to make it clear, he's not
2 interpreting the words in the OIC here, so they have a
3 legal terminology unsuitable for use.

4 MR. BOUCHELEV: I mean in a practical sense; not
5 in a legal sense.

6 Q. You would agree with me that in a practical sense,
7 there is nothing about the design of the AR-10 and the
8 AR-15 rifles that would make them unsuitable for
9 hunting use?

10 MR. MACKINNON: Well, again, because it's
11 ambiguous when he gives an answer, his answer really is
12 of no relevance to the interpretation of that section.

13 MR. BOUCHELEV: Again, I'm asking it as a
14 practical question; not as a legal question.

15 MR. MACKINNON: Yeah. But I think the problem is
16 that it could be mistaken for an interpretation, and
17 I'm going to ask him not no answer that particular
18 question because it does have a legal component to it
19 that he's not here to address, so that's not relevant.

20 MR. BOUCHELEV: Okay. Well, I don't intend to
21 argue with you, so we'll just mark it as a refusal.

22 OBJECTION TAKEN to answering the question: You would agree
23 with me that in a practical sense, there is nothing
24 about the design of the AR-10 and the AR-15 rifles that
25 would make them unsuitable for hunting use?

1 MR. BOUCHELEV: It's 12:30 now, so we'll just take
2 the lunch break.

3 (DISCUSSION OFF THE RECORD)

4 MR. MACKINNON: Just to be clear, I've been trying
5 to find out when Ms. Deschamps could come in this
6 afternoon, to get an idea. I know Mr. Bouchelev said
7 he might be half an hour to an hour, and then
8 Ms. Generoux is to cross-examine Mr. Murray Smith.

9 We've all agreed that the cross-examinations of
10 both Mr. Smith and Ms. Deschamps would be finished
11 today. So --

12 MS. GENEROUX: No, I haven't agreed to that,
13 Mr. MacKinnon.

14 MR. BOUCHELEV: Yeah. I don't think we have
15 agreed to that.

16 MR. MACKINNON: That is in writing. Both of these
17 people are to be finished today. So we have not --

18 MR. BOUCHELEV: That's not the agreement,
19 Mr. MacKinnon.

20 MS. GENEROUX: Yeah. That's in your writing; not
21 mine.

22 MR. BOUCHELEV: And not in mine.

23 MR. MACKINNON: That's in writing. And that's --

24 MR. BOUCHELEV: That's not in writing. Sir, that
25 is --

1 MR. MACKINNON: Well, we can argue about it, but
2 all I'm saying is you have had us put Ms. Deschamps on
3 notice to be cross-examined today and to complete her
4 cross-examination today.

5 MR. BOUCHELEV: There was no such agreement.

6 MR. MACKINNON: So you're not providing me any
7 kind of time for Ms. Deschamps to come in to complete
8 her cross-examination. And I think if you don't
9 complete her cross-examination today, you're going to
10 have to ask for the Judge to have another day, given
11 what we've been through.

12 So we've set aside this time. It shouldn't take
13 very much, in my estimation, but I would like a time
14 for Ms. Deschamps to come in for her cross-examination
15 today.

16 MS. MILLER: Mr. MacKinnon, this is Sarah
17 Miller, just for the record. I am not really sure I
18 understand the issue here. You've suggested yourself
19 3:30 for Ms. Deschamps. My understanding is she works
20 in your building, in your office. I understand that
21 there's some COVID situation that we're dealing with;
22 we're all trying to manage and address accordingly, but
23 I'm not sure that it really matters what time we start
24 Ms. Deschamps today. She has to come in today. You've
25 indicated that she's, you know -- hopefully the cross

1 will commence. I'm not going to hold Ms. Generoux or
2 Mr. Bouchelev to anything about the completion of
3 Mr. Smith, but I just don't understand why we are
4 wasting time right now trying to figure this out.

5 Ms. Deschamps can come in at 3:30. If we can
6 start her then or shortly after or shortly before or
7 however, than I think that's a reasonable step to take
8 and not waste any more time eating into everybody's
9 lunch.

10 MR. MACKINNON: No. I've been trying to --

11 MR. BOUCHELEV: I agree.

12 MR. MACKINNON: -- what most counsel can agree to,
13 usually, pretty simply.

14 So I will ask her to come in at 3:30. She doesn't
15 come in every day. We have minimal staff at the
16 office, so it's very rare. So I'll ask her to be here
17 for 3:30, and we can take it from there.

18 So we'll come back by 1:30.

19 MR. BOUCHELEV: So 1:30?

20 MR. MACKINNON: Yeah.

21 MR. BOUCHELEV: Okay.

22 (Proceedings ended at 10:37 MT)

23 _____
24 (Proceedings to recommence at 11:30 MT)
25 _____

1 (Proceedings recommenced at 11:31 MT)

2 MURRAY SMITH, previously affirmed, questioned by

3 Mr. Bouchelev:

4 **Q.** Now, Mr. Smith, I would like to take you to
5 paragraph 74 of your affidavit.

6 **A.** Yes.

7 **Q.** Okay. So at paragraph 74 there's some discussion about
8 the use of guns in the hunting context, and you say
9 that: (as read)

10 "The difference between these and the
11 successive shot capabilities of a
12 non-prohibited firearm that is suitable
13 for hunting is a matter of seconds."

14 So just to be clear, you are not suggesting that
15 firearms of what you call the nine families, the AR-type
16 firearms, you're not suggesting that they are unsuitable
17 for hunting, right?

18 **A.** No. I'm talking purely about the mechanical
19 characteristics of firearms in that paragraph and that
20 the firearms of the nine families are primarily
21 semi-automatic firearms.

22 **Q.** Okay. But just to be clear, you are not suggesting
23 that those firearms are not suitable for hunting?

24 **A.** Well, that's -- that, I think, is touching on the legal
25 meaning of suitability. What I believe I can say is

1 that it's been reported that firearms of the nine
2 families have been used by individuals for the purpose
3 of hunting, and I have no particular reason to view
4 that as being incorrect information.

5 **Q.** Right. And the reason why I use the word "suitable" is
6 because you use it yourself in paragraph 74. Just so
7 you understand, that's where I get that language.

8 **A.** Okay. Let me look at the context here.

9 Yeah. I believe that I'm using suitable in that
10 context, as a -- meaning a non-prohibited firearm that
11 is permitted for hunting, allowed for hunting. So that
12 would exclude things like handguns, for instance.

13 **Q.** Okay.

14 **A.** So what I'm referring to there is an ordinary
15 conventional hunting firearm.

16 **Q.** Right. Although, of course, you know, this is not
17 legal in Canada, but in the United States handguns are
18 sometimes used for hunting, correct?

19 **A.** Yes, that's my understanding. It varies from one state
20 to the next.

21 **Q.** So when you say that, you know, that the difference is
22 a matter of seconds, you'll agree with me that in the
23 hunting context, a matter of seconds may actually be a
24 significant amount of time between, you know, let's say
25 the first shot and the second shot.

1 And let me just clarify, so, you know, in a matter
2 of seconds, a number of things could happen. The
3 animal could jet away, get out of your line of sight.
4 If you are dealing with a dangerous, you know, predator
5 that's in close proximity, that dangerous predator
6 could attack you.

7 So a matter of seconds could actually be of
8 significance.

9 **A.** It's possible to imagine a circumstance where it would
10 make a difference. It depends, to some degree, on the
11 calibre of the firearm.

12 So if the firearm were in a -- a hunting calibre
13 like a .308 Winchester, for example, the recoil is
14 quite significant, and the recovery time from recoil to
15 re-aim is not going to be hugely different for a
16 semi-automatic firearm of the -- of a type of one of
17 the nine families versus a bolt-action or lever-action
18 rifle that is a more traditional sporting design.

19 So for the higher recall firearms, the difference
20 is very small. If you go to a smaller calibre like
21 .223 Remington that we discussed earlier, there's less
22 recoil, there's less recovery time, and so it's very
23 likely that an individual could recover from recoil and
24 be back on target more quickly with the semi-automatic
25 firearm than they would with a manually-operated

1 firearm.

2 **Q.** Well, but getting back on target, I mean, recoil is one
3 thing, but if you have a manually-operated firearm,
4 there are additional steps. It's not just recovering
5 from recoil. You have to cycle the action manually,
6 which you wouldn't need with a sem-automatic firearm,
7 correct?

8 **A.** That takes a very short period of time, which is
9 relatively short in comparison to the time it takes to
10 recover from recoil from a larger calibre firearm.

11 **Q.** So you are saying that recovering from recoil takes
12 longer than cycling the action on a manually-operated
13 rifle?

14 **A.** Certainly. I'll use the example of a .308 Winchester.
15 The recoil will cause the firearm to rotate and go off
16 target. The shooter will be -- shoulder will be pushed
17 back. So the shooter has to reacquire a shooting
18 stance, reacquire the target, re-aim the firearm; all
19 of this takes time. And in that space of time, it
20 would be quite feasible to operate a modern manual
21 mechanism such as a bolt-action or a lever-action. So
22 it doesn't cost you any extra time.

23 **Q.** So if you had a firearm where you could minimize recoil
24 and, thus, minimize recovery time, that would be an
25 advantage in hunting, right?

1 **A.** It depends on the type of hunting. You had mentioned,
2 for example, for the light recoil calibre, .223
3 Remington varmint hunting. Varmint hunting is
4 something that's usually done at a considerable
5 distance, and so the time between shots is generally
6 less relevant. You're not -- and varmint hunting is
7 not that common to have quick followup shots.

8 **Q.** And what about hunting where you are -- that is not at
9 long distances but at shorter distances? Is it
10 important to have followup shots?

11 **A.** There are advantages to semi-automatic firearms under
12 those circumstances. An example would be a running
13 deer, for sake of argument, where the operator -- or
14 the hunter using a semi-automatic firearm would
15 probably be able to recover from recoil more quickly
16 and re-aim more quickly than with a manual mechanism,
17 but the difference is not huge.

18 **Q.** And what about situations where you need a firearm for
19 protection against dangerous predators, for example?
20 Is it important to have the quick followup shot
21 capability?

22 **A.** Given the question, yeah, it would be preferable to
23 have a quick followup -- quick shot capability, but
24 I'm -- I've certainly never experienced that during my
25 days hunting. I can't imagine a circumstance where a

1 hunter is going to be defending against wild animals
2 under circumstances that you describe, where a fraction
3 of a second makes a difference.

4 **Q.** What about if someone is attacked by a bear, let's say,
5 you know, a grizzly bear. In a situation like this,
6 would it be important to have quick followup up shot
7 capability?

8 **A.** I would suggest to you that if the grizzly bear already
9 has his paws on you, a rifle is not going to be much
10 good.

11 **Q.** What if he doesn't have his paws on you yet?

12 **A.** Then the first shot is going to be the same whether the
13 firearm is semi-automatic or bolt-action.

14 **Q.** What if the first shot is insufficient to stop the
15 predator? Would that second shot be important?

16 **A.** A second shot would be useful, but, again --

17 **Q.** What about the third shot?

18 **MR. MACKINNON:** Let him finish.

19 **A.** The difference between second and third shots under
20 those circumstances, using a semi-automatic versus a
21 bolt-action or a lever-action, is not hugely different.
22 You know, the -- I just don't see how the timeline can
23 be constructed in such a way as the reloading time for
24 a manual-operated mechanism which is done concurrently
25 with recovery from recoil and any reasonable calibre

1 for grizzly bear is going to make a difference.

2 **Q.** Do you accept that in a stressful situation such as
3 where someone has to defend against a dangerous animal,
4 the stress may actually make the hunter or the shooter
5 inadvertently -- would interfere with their ability to
6 reload the firearm and would result in a misfire or
7 inability to fire?

8 **A.** Well, if the hunter freezes and is unable to fire their
9 firearm, it doesn't really matter whether they have a
10 semi-automatic or a manual mechanism.

11 **Q.** Well, I'll give you an example. A pump-action shotgun,
12 right, is a manually-operated gun, correct?

13 **A.** Yes.

14 **Q.** It is possible to short cycle a pump-action shotgun so
15 that the shell is not loaded into the chamber, correct?

16 **A.** Yes.

17 **Q.** And in a stressful situation, one is more likely to
18 short cycle the weapon, correct?

19 **A.** Now you're getting into the area of human psychology
20 and training and weapon proficiency, and that's highly
21 variable from one individual to the next. And it's
22 also hard to isolate that one factor because the --
23 you -- you were talking -- in the you're talking,
24 you're talking about the use of a pump-action shotgun
25 where the operator fails to operate the mechanism

1 manually in a correct way to reload the firearm. But
2 you also have an equally possibility, with
3 semi-automatic firearms being more complicated, of
4 having a mis-feed or a failure eject, which is equally
5 severe in a semi-automatic firearm.

6 So the nature of the issue, I don't see changing
7 much from one action type to the other. The way it
8 presents itself can change, but the overall effect of a
9 firearm jamming or failing to load is the same,
10 regardless of the type.

11 **Q.** Now, would you agree with me that as a general
12 principle in hunting, and we'll take varmint hunting
13 out of the equation for a moment, but the type of
14 hunting where you're not shooting at, you know, very
15 long distances, as a general rule, you want to minimize
16 the recovery time caused by recoil, correct?

17 **A.** If I understand your question correctly, you're talking
18 about circumstances where you expect to fire more than
19 one shot?

20 **Q.** Yes.

21 **A.** If that's the case, then recovery time from recoil
22 would be an important factor.

23 **Q.** Okay. And if a firearm was designed in a way or could
24 be modified to minimize the recovery time caused by
25 recoil, that would be an advantage, correct?

1 **A.** Yes, that would be useful. In fact, it's done all the
2 time with recoil pads, muzzle brakes, and equipment
3 like that.

4 **Q.** Right. And if you had a gun, for example, that had an
5 adjustable gas mechanism that you could adjust to
6 minimize the amount of recoil, that would be an
7 advantage, as well, right?

8 **A.** The purpose of adjusting gas on a semi-automatic
9 firearm is for correct functioning of the
10 semi-automatic firearm. While the semi-automatic
11 mechanism will buffer the recoil slightly, in my view,
12 it does not make much of a difference.

13 **Q.** But it really depends on the type of semi-automatic
14 weapon, right?

15 **A.** Well, I'm not aware of any where adjusting the gas
16 mechanism is going to significantly alter the amount of
17 recoil.

18 **Q.** Okay. Well, let's look at paragraph 75 of your
19 affidavit where you talk about a specific firearm
20 called BCL 102.

21 **A.** Yes.

22 **Q.** Okay. So a BCL 102, you say at paragraph 76, is a
23 semi-automatic rifle that is a variant of the AR-10,
24 AR-15 family of assault rifles. Do you have any
25 personal experience with the BCL 102?

1 **A.** I have handled the firearm. I haven't shot it, but
2 I've handled it. We had one in for inspection.

3 **Q.** Okay. So because you haven't shot it, you have no
4 personal experience with its recoil characteristics,
5 correct?

6 **A.** From personal shooting, no.

7 **Q.** Okay. Now, you say in your affidavit at paragraph 76,
8 you say: (as read)

9 "When chambered with a 308 Winchester
10 cartridge, the BCL-102 has a significant
11 recoil. There are alternative,
12 non-restricted firearms in the
13 marketplace that are chambered for a 308
14 Winchester cartridge that produce the
15 same, or less recoil as the BCL-102 when
16 chambering the same cartridge."

17 Which firearms chambered in .308 produce less recoil
18 than BCL 102?

19 **A.** A firearm equipped with a muzzle brake, for instance.
20 It could be any firearm. The --

21 **Q.** Can a BCL 102 be equipped with a muzzle brake?

22 **A.** I imagine, yes.

23 **Q.** Okay. So what you are talking about, now, is that if
24 you start getting, you know, accessories to other
25 rifles, then they would have less recoil than BCL 102.

1 But that's not exactly an apples-to-apples comparison,
2 is it?

3 **A.** Well, I would suggest, for example, that a heavier
4 rifle would have less recoil because the weight of the
5 firearm has a significant impact on the amount of
6 recoil. So --

7 **Q.** But you --

8 **A.** -- a heavy --

9 **Q.** Okay. So --

10 **A.** -- bolt-action with a bull barrel would have
11 significantly less recoil, and that's intrinsic to the
12 firearm not requiring accessories.

13 So there's a variety of strategies that can be
14 employed.

15 **Q.** Well, but I think you've testified earlier that hunters
16 prefer lighter firearms as opposed to heavier firearms?

17 **A.** In general, yes. But the question you put before me
18 here, now, is how do you mitigate recoil. And one of
19 the ways --

20 **Q.** No I'm asking you -- sorry. Go ahead.

21 **A.** One of the ways to mitigate recoil is through the
22 weight of the firearm. Another is to use accessories,
23 which either reduce the recoil, like muzzle brakes, or
24 which reduce the perception of recoil, such as recoil
25 pads.

1 So there's a whole plethora of strategies that a
2 hunter could use to have a firearm that has similar or
3 less recoil than the BCL 102.

4 **Q.** All of those same accessories can also be added to the
5 BCL 102, right?

6 **A.** That's true. And that fundamentally speaks to the
7 premise of the whole notion. I'm -- one of the reasons
8 I'm having some difficulty in responding to you is that
9 if an individual is selecting a firearm in order to
10 minimize recoil, then starting out with a .308
11 Winchester calibre firearm is very much counter to your
12 original purpose.

13 So it's -- the whole premise of reducing the
14 recoil of the BCL 102 is made difficult by the
15 intrinsic nature of the firearm itself. And if an
16 individual were truly sensitive to the recoil and
17 wanted to use a lighter weight or -- pardon me, a
18 lighter recoil firearm, I don't see it as logical to
19 actually starting with the BCL 102.

20 **Q.** Well, let's go back to what you said before the break.
21 You said that hunters, when they choose a rifle, they,
22 you know, look at calibre, and they need a particular
23 calibre that would be sufficient to take down an
24 animal, right?

25 **A.** Yes.

1 Q. So if you wanted to -- if you were looking for a
2 hunting firearm and you were hunting, you know, a
3 reasonable sized game like, I don't know, a deer or a
4 moose, you would have to go with something like .308
5 Winchester or a similarly powerful calibre, correct?

6 A. Well, if you chose to use a -- one of the nine families
7 of firearms, you're probably more limited in terms of
8 choices of calibre, and .308 would probably be
9 something like the calibre you would choose.

10 But for conventional sporting firearms, there's
11 all kinds of calibres available. .270 would be an
12 example, which is -- has a reputation as a good deer
13 cartridge and lighter recoil.

14 Q. So you're saying that .270 Winchester has less recoil
15 than .308 Winchester?

16 A. In my experience, yes.

17 Q. Okay. It would depend on the type of rifle that is
18 being shot out of, doesn't it?

19 A. Yes. I'm saying that all of other things being equal.

20 Q. What if you wanted to hunt moose? Would you use a .270
21 Winchester for that?

22 A. I probably would not choose it, but I know of hunters
23 who have used .270 successfully.

24 Q. And you wouldn't choose it because you don't think
25 that's it's a good calibre for that type of hunting?

1 **A.** Yeah. I think it's marginal for something the size of
2 a moose.

3 **Q.** What about if you were hunting bear, for example?

4 **A.** It depends on the kind of bear; whether you're talking
5 black bear, polar bear, grizzly bear.

6 **Q.** Okay.

7 **A.** For hunting bear, the standard practice, as I
8 understand it, and the one that I used when I hunted
9 bear, because I have hunted bear, is not to hunt alone.
10 You always have more than one person present with a
11 firearm, and that second person becomes the backup in
12 the event that you miss or your firearm fails to
13 function or some other problem turns up.

14 So --

15 **Q.** Sure. But what does that have to do with the calibre?
16 I'm asking you about the suitable calibre.

17 **A.** Well, a suitable calibre for bear depends on the
18 species of bear. That's where I think I left --

19 **Q.** Okay. So what about --

20 **A.** So black bear could be taken with a smaller calibre.
21 Grizzly bear would probably require a larger calibre.

22 **Q.** Would .308 be a suitable calibre for black bear?

23 **A.** Yes.

24 **Q.** What about grizzly bear?

25 **A.** What about which one?

1 Q. Grizzly bear? Grizzly.

2 A. I suspect it's borderline for that size of bear; it
3 probably could be used.

4 Q. Okay. But you certainly wouldn't use anything less
5 powerful than .308, correct?

6 A. I probably wouldn't, no.

7 Q. Okay. And what about black bear? Would you use
8 something less powerful than .308 for black bear?

9 A. Yes. Black bear, you could get away with -- you could
10 use a calibre that's less powerful than .308 for black
11 bear.

12 Q. Like what, for example?

13 A. Well, like the .270 I mentioned earlier. Any of the
14 7 millimetres.

15 Q. And, now, so going back to, I guess, where we started,
16 you said that, you know, as a general premise, you
17 know, if you want to minimize recoil, you would choose
18 a less powerful cartridge than .308, but that would
19 imply that the type of hunting that you intent to
20 engage in was suitable -- was the type of hunting where
21 using a less powerful round was suitable, right?

22 But for some types of hunting, going, you know --
23 using something less powerful than .308 would not be
24 acceptable, as we have established, correct?

25 A. Yes. I would -- in general, I would agree with that;

1 that the choice made by a hunter in the selection of
2 calibre is to use a calibre that is suitable for a
3 humane kill and, in general, a one-shot humane kill.
4 That's the typical goal of a hunter.

5 **Q.** Well, it may be a typical goal, but it's not -- in the
6 real world that's not always possible, right?

7 **A.** It may not be. I suppose it depends on your skill
8 level as a hunter.

9 **Q.** Right. And other factors.

10 **A.** Well, the general principles of hunting are to be
11 capable of delivering a bullet of a suitable cartridge
12 to a vital portion of the animal to cause an immediate
13 humane kill.

14 If you choose a firearm that's incapable of doing
15 that, then you have the potential for problems.

16 **Q.** Right. Now, with the BCL 102, is it possible to
17 install a heavier buffer?

18 **A.** I don't recall what the barrel options are for that. I
19 don't know if there are any factory barrels that are
20 heavier for that firearm.

21 **Q.** No, no. Not barrel. Buffer.

22 **A.** Oh, buffer.

23 **Q.** Yeah. Is it possible to install a heavier buffer?

24 **A.** And by buffer you're referring to what in there? In
25 the gun?

1 **Q.** Well, it's an AR-10 type rifle, correct? What is a
2 buffer in an AR-10 rifle?

3 **A.** Well, in the AR family, there is a buffer tube, there's
4 a buffer tube assembly, there's a recoil spring. I'm
5 presuming that's what you're referring to?

6 **Q.** Well, I am referring to -- I'm not referring to the
7 buffer tube. I am referring to, for example, a buffer
8 spring, which you have mentioned. It is possible to
9 install a heavier buffer spring, correct?

10 **A.** Depending on the exact design of the firearm, in
11 general, yes, it's possible. The strength of the
12 buffer spring is very closely related to the reliable
13 functioning of the mechanism.

14 **Q.** Okay. And by installing a heavier buffer spring, you
15 would reduce the amount of recoil, correct?

16 **A.** You might. My understanding of using a heavier buffer
17 spring is more related to using ammunition that
18 produces more rearward force on the bolt and carrier
19 group and requires a stronger spring to offset the
20 rearward movement of those components.

21 So the choice of buffer spring is more related to
22 the proper functioning of the mechanism than it is to
23 recoil reduction, but it's --

24 **Q.** But all else being equal, if you use the same
25 ammunition and you have a lighter buffer spring or a

1 heavier buffer spring, there will be less recoil with a
2 heavier buffer spring?

3 **A.** It's difficult to put that factor in isolation because
4 the choice of buffer spring is related to the choice of
5 ammunition, and, generally, a heavier buffer spring
6 would be used with more powerful ammunition, which
7 generates more recoil and verse versa. So --

8 **Q.** But I'm saying --

9 **A.** -- there's more than one factor at play.

10 **Q.** Right. All else being equal, we use the same
11 ammunition. We use the same firearm. The only
12 difference is the buffer spring. Installing a heavier
13 buffer spring would reduce recoil, correct?

14 **A.** It might.

15 **Q.** Well, I mean it's simple physics. What do you mean
16 might? Would it not always reduce recoil, all else
17 being equal?

18 **A.** I don't think that's necessarily a given. The -- as I
19 said, the purpose of the buffer spring is to operate
20 the mechanism correctly. The recoil buffer spring
21 itself -- or the buffer spring itself is not
22 necessarily going to reduce recoil. It might spread
23 recoil out over a longer period of time and give a
24 perception of less recoil, but I don't see it having a
25 huge effect, frankly. The primary source of recoil is

1 based on the load that's being discharged.

2 Q. Okay. Now, what about getting a variable gas block?
3 Is that possible with the BCL 102?

4 A. I don't recall whether you can replace components of
5 the gas block or not for that firearm.

6 Q. What about on a general AR-10 design? Is that
7 possible?

8 A. Yeah. There are firearms with adjustable gas blocks,
9 and you can vary the amount of gas entering the --
10 either the cylinder or directly impinging on the bolt
11 carrier.

12 Q. Okay. And the variable gas block can be adjusted to
13 decrease perceptible recoil, correct?

14 A. Well, again, the purpose of an adjustable gas block is
15 to ensure proper functioning of the firearm mechanism.
16 It's not there primarily to reduce recoil.

17 It's possible it would have an effect, but it
18 would be a very minor affect.

19 Q. And when you say it would be very minor, how would you
20 measure it? What makes you say that it would be minor?

21 A. Well, it's because the primary determinant of recoil is
22 the calibre and the load of ammunition that's being
23 discharged. And adjusting the gas block merely affects
24 the amount of gas that is being used to operate the
25 firing mechanism. There's not a direct relationship

1 between that and the reduction of recoil, so I would
2 expect the impact to be relatively small.

3 **Q.** And things like variable gas blocks and buffer springs,
4 these are not things that you can add to, you know, a
5 more traditional hunting firearm, correct?

6 **A.** Well, most traditional sporting hunting firearms are
7 manually operated and, therefore, have no need of a gas
8 block, at all.

9 **Q.** Or a recoil spring or buffer spring?

10 **A.** Correct.

11 **Q.** Okay. So these are things that may reduce recoil on an
12 AR-type firearm, but they would not -- they simply
13 don't exist on a manually-operated rifle, correct?

14 **A.** On most of them, no. On a sporting semi-automatic
15 rifle, they could, but on a manually-operated sporting
16 firearm, no.

17 **Q.** Okay. Now, I want you to go back to paragraph 75 for a
18 moment.

19 So you say that the -- actually, no.

20 Paragraph 76. You say that the BCL 102 semi-automatic
21 rifle is a variant of the AR-10, AR-15 family of
22 assault rifles. What's an assault rifle?

23 **A.** An assault rifle is --

24 MR. MACKINNON: He's had a number of questions on
25 assault rifles. Do you remember answering them?

1 **A.** I don't if I answered --

2 MR. BOUCHELEV: Pardon me. Mr. MacKinnon, I can't
3 hear what you are saying.

4 MR. MACKINNON: It's okay. Let him answer. I
5 thought that question had been asked and answered
6 before in other cross-examination, but go ahead.

7 **A.** So an assault rifle is broadly accepted as meaning a
8 World War II era or later carbine size selective fire
9 rifle chambered for an intermediate sized cartridge.

10 **Q.** Okay. So the two things that you've mentioned are --
11 well, you mentioned more than two, but you've mentioned
12 the size; it has to be carbine size but smaller,
13 correct?

14 **A.** It doesn't have to be, but that's -- that describes a
15 typical assault rifle.

16 **Q.** And it would have to be either fully-automatic or
17 select fire, correct?

18 **A.** Again, that's typical of an assault rifle.

19 **Q.** But I would suggest to you that there is -- that all
20 assault rifles are either fully or -- automatic or
21 select fire; that's what makes it an assault rifle by
22 definition.

23 **A.** In military circles, the term assault rifle virtually
24 always means selective fire capability. The calibre
25 might change, the size of the firearm might change, but

1 but it almost always implies semi-automatic fire.

2 In paramilitary organizations such as national
3 police forces or some force in -- that some countries
4 employ that's just short of being military, will issue
5 semi-automatic versions, and they still refer to them
6 as assault rifles.

7 But I would agree that, primarily, assault rifles
8 means selective fire.

9 **Q.** Now, in Canada, police forces, do they use
10 fully-automatic or semi-automatic versions of these
11 rifles, to your knowledge?

12 **A.** They've used both, but the most common is
13 semi-automatic.

14 **Q.** And you would agree with me that in police circles, a
15 semi-automatic rifle is not referred to as an assault
16 rifle?

17 **A.** Police will have a variety of names for them. They'll
18 call them patrol rifles, patrol carbines, just plain
19 rifle, in some cases. So the terminology varies
20 depending on the police department in question.

21 **Q.** But not assault rifle, correct?

22 **A.** Typically, no.

23 **Q.** Okay. And so you would agree with me that the nine
24 families of -- again, I'm using your terminology -- the
25 nine families that are mentioned in the regulation at

1 section 87, they are not assault rifles?

2 **A.** The -- are you referring to the parent firearms in the
3 nine families?

4 **Q.** I am referring to the specific firearms that are listed
5 in section 87.

6 **A.** In section 86 of the Criminal Code regulations?

7 **Q.** No. Section 87 of the May 1, 2020, regulation.

8 **A.** Okay.

9 MR. MACKINNON: The named variants.

10 **A.** So para 87 deals with the AR platform.

11 **Q.** MR. BOUCHELEV: Right.

12 **A.** And the M16 and M4 are certainly assault rifles. They
13 fit the definition precisely.

14 The original AR-15 and AR-10 also could fit the
15 definition of assault rifles, as well.

16 **Q.** Okay. But what I'm referring to -- and if you can open
17 the regulation, because I think that will be easier.
18 Do you have it in front of you?

19 MR. MACKINNON: Do you want to show him the page.
20 He'll have to find it on the laptop.

21 **A.** Well, we can -- I don't know where it is on this
22 laptop, but we can look.

23 MR. MACKINNON: Okay.

24 **A.** I'm not seeing it here anywhere.

25 MR. MACKINNON: I think it's tab 15. Okay. Let

1 me find it.

2 (DISCUSSION OFF THE RECORD)

3 A. Okay, yes. There we are.

4 Q. MR. BOUCHELEV: Okay. So look at paragraph 87.

5 A. Yes.

6 Q. Okay. So the paragraph 87 describes the M16, AR-10,
7 AR-15, M4, and then it lists variants or modified
8 versions, right?

9 A. Correct.

10 Q. So my question is all of these, you know, so called
11 variants are modified versions. None of them are
12 assault firearms, right? Because none of them are
13 fully-automatic or select fire?

14 MR. MACKINNON: Just to be clear, you were asking
15 about assault style rifle, and now you're asking --

16 MR. BOUCHELEV: No.

17 MR. MACKINNON: -- about assault style firearms.

18 MR. BOUCHELEV: I was not asking him about assault
19 style rifles. I was asking him about assault rifles.

20 MR. MACKINNON: Okay. Assault rifle. Okay.

21 A. Okay. So the firearms in the chapeau of para 87 are
22 assault rifles, by the conventional military
23 definition; whereas the variants and modified versions
24 of them, primarily being semi-automatic firearms, do
25 not fit the definition of assault rifle because they do

1 not have automatic fire capability.

2 Q. Okay. And, in fact, all of these rifles that are, you
3 know, starting with subsection (a) and, you know, there
4 are hundreds of variants listed here, but these are all
5 semi-automatic rifles, correct?

6 A. For the most part. They're not exclusively
7 semi-automatic, but most of them are.

8 Q. Okay. And the reason for that is because assault
9 rifles were banned in 1977 along with all other
10 fully-automatic guns, correct?

11 A. Okay. You're referring to the legislative changes in
12 1977, which took effect in 1978. That resulted in the
13 prohibition of any firearm that was capable of full
14 automatic fire.

15 Q. Right. That would cover assault rifles by definition?

16 A. Yes. Any assault rifle which met the standard
17 definition, meaning it was capable of firing in a
18 fully-automatic manner, would have been become
19 prohibited in 1977 -- or19 -- actually the 1st of
20 January, 1978.

21 Q. Okay. I would like to take you to paragraph 84 of your
22 affidavit.

23 A. Okay.

24 Q. So at paragraph 84 you have a chart of several --
25 actually four different firearms. And I'm trying to

1 understand what is the purpose of listing these four
2 firearms and, you know, the incidents that they relate
3 to? Why is it in your affidavit?

4 **A.** The answer to that is found in paragraph 84, itself.
5 It was simply offered as examples of the kinds of
6 firearms that have actually been used in mass shootings
7 in Canada.

8 **Q.** And would you consider this to be the information -- in
9 paragraph 84 of your affidavit, would you consider it
10 to be scientific evidence or anecdotal evidence?

11 **A.** It's simply factual evidence. It's simply a matter of
12 the public record as to what firearm was used in which
13 attack.

14 **Q.** Well, anecdotal evidence is also fact evidence. So
15 you'll agree with me that this is anecdotal evidence?

16 **A.** No. I stay with my original assertion that it's
17 factual information.

18 **Q.** Okay. But it's just -- okay. So Ruger Mini-14 was
19 used in an incident in 1989 in Montreal, correct?

20 **A.** Yes.

21 **Q.** How many mass shootings has the Ruger Mini-14 been used
22 in since 1989?

23 **A.** Worldwide or in Canada?

24 **Q.** Well, let's start with Canada.

25 **A.** I'm not aware of any since that time.

1 Q. How about worldwide.

2 A. Worldwide there was a significant shooting in Finland
3 which used the fully-automatic version of the Mini-14,
4 the AC-556.

5 Q. And when --

6 A. Apart from --

7 Q. -- was that?

8 A. -- that, I don't recall any.

9 Q. Okay. And when was that, the shooting in Finland?

10 A. I'm pretty sure it was Finland. And something, like,
11 40 people were killed.

12 Q. No, no. But when? The question is when?

13 A. Oh, when. When. It was after 1989, but as for the
14 exact date, I don't remember. Maybe ten years ago,
15 15 years ago.

16 Q. Okay. And you have studied mass shootings, not just in
17 Canada, but in other countries, correct?

18 A. I keep track of the firearms that are used in mass
19 shootings.

20 Q. Okay.

21 A. In Canada, for sure, and, to a limited extent,
22 elsewhere.

23 Q. Okay. So the fact that, you know, you can only think
24 of one example, not just in Canada, but worldwide,
25 where the semi-automatic civilian Ruger Mini-14 was

1 used in a mass shooting, wouldn't it suggest that this
2 firearm is extremely unlikely to be used in a mass
3 shooting?

4 **A.** I don't think that the previous use of the firearm has
5 any impact on the future use of the firearm, so I don't
6 think that question has a logical answer.

7 **Q.** Okay. And do you know how many mass shootings have
8 there been in Canada since 1989?

9 **A.** It depends on how you define mass shooting.

10 **Q.** How do you define a mass shooting?

11 **A.** I've used the US definition, which is four people or
12 more dead.

13 **Q.** Okay. So how many such mass shootings have there been
14 in Canada since 1989?

15 **A.** I don't have the exact number at my fingertips, but
16 fewer than about ten.

17 **Q.** Okay. So less than ten. How about worldwide,
18 approximately?

19 **A.** Oh, if you include the United States, I think there's
20 one almost every day.

21 **Q.** So are we talking about, like, thousands?

22 **A.** Well, it depends on what time period you want it to
23 encompass.

24 **Q.** Since 1989.

25 **A.** Well, I don't have the exact number, but it would

1 certainly be a very large number.

2 **Q.** So in the thousands?

3 **A.** I would imagine so, yes.

4 **Q.** Okay. And you are only aware of one incident where the
5 Ruger Mini-14 was used, right? The semi-automatic
6 version?

7 **A.** Yes. I'm only aware of the one instance where a
8 Mini-14 was used in a mass shooting in Canada.

9 **Q.** Okay. Well, but I also -- in fairness, I also asked
10 you about worldwide, and the only example that you gave
11 me was in Finland where someone used a fully-automatic
12 version, right?

13 **A.** Correct. But both of those are examples. I don't have
14 comprehensive data.

15 **Q.** Okay. And so the next firearm that you have listed
16 there is the Beretta Cx4 Storm, which was used in
17 Dawson College in 2006.

18 Other than the shooting at Dawson College in 2006,
19 are you aware of this rifle being used in a mass
20 shooting in Canada?

21 **A.** No, I'm not aware of any others.

22 **Q.** How about outside of Canada?

23 **A.** Likewise, I'm not aware of that particular firearm
24 having been used in any other mass shootings.

25 **Q.** Okay. So you would agree with me that, statistically

1 speaking, it seems that this is -- it would be quite
2 rare for this particular gun to be used in mass
3 shootings?

4 **A.** No, I didn't say that. What I said was I wasn't aware
5 of any other instances. That's different from giving a
6 percentage of mass shootings where this firearm might
7 have been used.

8 So the answer to the latter is I don't know. I
9 don't have the data for that.

10 **Q.** Okay. Now, what about the M14? You mentioned that it
11 was used in a shooting in Moncton in 2014. So other
12 than that one incident in Moncton, are you aware of the M14
13 being used in a mass shooting in Canada?

14 **A.** No, I'm not.

15 **Q.** How about outside of Canada?

16 **A.** I'm not -- I don't recall any instances of it, but I
17 don't have comprehensive data for that.

18 **Q.** Okay. Now, I'm just going to ask you -- we're getting
19 close. I just have a couple of other questions for
20 you.

21 So first of all, you are, of course, aware of the
22 fact and you've testified previously that the public
23 version of the FRT is contained in one PDF file,
24 correct?

25 **MR. MACKINNON:** That was asked and answered.

1 MR. BOUCHELEV: Okay. Well, I'm simply reminding
2 the witness as to what his evidence was.

3 Q. So have you ever tried to download that PDF yourself?

4 A. Yes, I have.

5 Q. Okay. And can you help me -- so I am in front of a
6 computer. Where would I go to get this PDF file?

7 A. You go to the RCMP website.

8 Q. Okay. So I go to the RCMP website. Can you go to the
9 RCMP website on your computer so that --

10 MR. MACKINNON: No.

11 Q. MR. BOUCHELEV: -- we're on the same --

12 MR. MACKINNON: No.

13 Q. MR. BOUCHELEV: -- page.

14 MR. MACKINNON: No. He's not using the internet,
15 as we've gone over this before, and you're not giving
16 evidence. So if you want to ask his personal
17 experience from downloading it, he's ready to answer
18 your question.

19 MR. BOUCHELEV: No, no. I just want him to
20 explain to me what, you know, an average person who is
21 interested in accessing the FRT, what steps the person
22 would have to go through. So I don't understand the
23 basis for your objection.

24 MR. MACKINNON: Well, you're wanting him to go to
25 the internet now and do some procedure along with you;

1 that's not what's going to happen. But --

2 MR. BOUCHELEV: Why?

3 MR. MACKINNON: I've already explained.

4 If you're asking in his personal experience, as
5 you did, he can finish answering it; otherwise --

6 Q. MR. BOUCHELEV: Well, why don't you -- so that I'm
7 not accused of giving evidence, Mr. Smith, why don't
8 you access it on your computer and share a screen with
9 me so that I can follow along?

10 MR. MACKINNON: Because we are not doing that for
11 the reasons I have already given.

12 MR. BOUCHELEV: Which are what?

13 MR. MACKINNON: I'm not going to repeat them.

14 MR. BOUCHELEV: I don't understand.

15 OBJECTION TAKEN to answering the question: So that I'm not
16 accused of giving evidence, Mr. Smith, why don't you
17 access it on your computer and share a screen with me
18 so that I can follow along?

19 Q. Okay. And when you tried to download the PDF file, did
20 the file crash?

21 A. I had no difficulty loading it. I've loaded it both
22 from the office and from home, and I --

23 Q. Okay.

24 A. -- I haven't had any difficulty.

25 Q. Okay. And are you aware of the fact that other people

1 have had difficulty?

2 MR. MACKINNON: Again, there's an assumption in
3 that statement that is not proven.

4 MR. BOUCHELEV: Really, Mr. MacKinnon, have you
5 read the affidavits that my clients have filed?

6 MR. MACKINNON: Well, then, put it to him.

7 MR. BOUCHELEV: Well, before I put it to him, I'm
8 entitled to ask it as a general question.

9 MR. MACKINNON: To be fair to the witness, you
10 have to identify that there's evidence in front of whom
11 to that effect. You can't --

12 MR. BOUCHELEV: Yeah. But he may --

13 MR. MACKINNON: -- just assume the fact.

14 MR. BOUCHELEV: No, no. Mr. MacKinnon, he may be
15 aware of other instances that are not in my clients'
16 evidence, so I'm entitled to ask it as a general
17 question.

18 **Q.** Are you aware of situations where individuals have
19 experienced difficulty accessing that file?

20 **A.** I have seen some reports on the internet. I don't know
21 what level of credibility to attach to them. And also
22 the -- those instances which were reported did not give
23 sufficient information to determine the source of the
24 problem, whether there was a problem with the delivery
25 of the FRT or whether there was a problem at the

1 receiving end. I simply don't know.

2 **Q.** Have you taken any steps to investigate and verify if
3 there is, indeed, a problem with the PDF?

4 **A.** Yes. The whole process was tested by the RCMP IT
5 experts. They created the programming which permitted
6 the downloading, and they absolutely thoroughly tested
7 it before it was released, and any difficulties on
8 access are reported to the IT specialist, who will look
9 into them.

10 **Q.** Okay. Have you made any such reports after seeing
11 reports online that people are having difficulty? Have
12 you notified the IT department?

13 **A.** I believe, yes. Not me directly, but one of my staff
14 did so.

15 **Q.** Okay. And did you try to follow up with the
16 individuals that reported having these problems?

17 **A.** No. Largely because I expect to get a report back if
18 there's a problem; not if everything's going okay. And
19 I received no indication of a problem.

20 **Q.** Now, during your cross-examination last week, you were
21 asked a question as to whether the topics contained in
22 your affidavit were topics that were suggested by
23 counsel or topics that you came up with yourself, and
24 your answer was that most of them were suggested by
25 counsel.

1 So what I would like you to do is to identify the
2 topics in your affidavit that were not suggested by
3 counsel and that you decided to include on your own
4 initiative.

5 MR. MACKINNON: What's the relevance of that
6 question? Because there were a number of questions
7 asked along this frame by the first counsel who --

8 MR. BOUCHELEV: Well, it's relevance to the
9 witness's independence.

10 MR. MACKINNON: The evidence was he was asked to
11 provide some evidence on the following topics, and in a
12 framework of affidavit topics, and he answered those
13 questions on the topics.

14 MR. BOUCHELEV: Right. But the evidence was that
15 most of the topics were suggested by counsel, but not
16 all, and that's what I'm trying to explore.

17 Q. What are the topics that you decided to include that
18 were not requested by counsel?

19 A. Well, I would have to go through the affidavit and look
20 and see. The --

21 Q. Would you be able to do it right now?

22 A. The content that deals with my CV and experience is all
23 original with me. The -- I wrote a substantial portion
24 of the text for the paragraphs dealing with the
25 Firearms Reference Table.

1 MR. MACKINNON: He's asking for what topics that
2 were suggested. See, if you look in the table of
3 contents --

4 A. Oh, okay. Okay. So the kinds of things that were
5 offered by me was the description of the firearms
6 program, the description of SFSS and the Firearms
7 Reference Table. The remaining sections were, at least
8 initially, proposed by counsel, but I provided most of
9 the technical content.

10 MR. BOUCHELEV: Okay. Madam Reporter, I would
11 like to take a short break. Would you be able to open
12 a breakout room for applicants' counsel.

13 (ADJOURNMENT)

14 Q. MR. BOUCHELEV: Now, Mr. Smith, I have just one
15 other area that I want to explore with you. And for
16 that I'm going to ask you to open regulation
17 SOR/2014-198. You were asked some questions about this
18 regulation by Ms. Warner last week. Can you please
19 have it open, and then I'll my question.

20 MR. MACKINNON: Which regulation, so we're clear
21 what we're opening?

22 MR. BOUCHELEV: So this is SOR/2014-198.

23 MR. MACKINNON: Do you know what exhibit it is?

24 A. That would be the firearms records regulations.

25 MR. MACKINNON: Okay.

1 Q. MR. BOUCHELEV: That's right, yeah.

2 A. Okay. So it's a question of where --

3 MR. MACKINNON: Do you want me to find it, or are
4 you okay?

5 A. No. I would appreciate some help with that.

6 MR. MACKINNON: Okay.

7 (DISCUSSION OFF THE RECORD)

8 A. Okay. I have the firearms records regulations up.

9 Q. MR. BOUCHELEV: Okay. So do you see section 1
10 "Keeping and amendment of records"?

11 A. Yes, I see that.

12 Q. Okay. So paragraph 1 states: (as read)

13 "Only the Registrar may keep or amend
14 records of determinations made under the
15 Firearms Act that firearms of a
16 particular type, make and model are
17 prohibited firearms, restricted firearms
18 or neither prohibited firearms nor
19 restricted firearms."

20 Now, is the SFSS the registrar within the meaning of
21 this regulation?

22 A. No.

23 Q. Okay. And you would agree with me that this regulation
24 states that only the registrar may keep or amend
25 records?

1 **A.** No. It says, "Only the Registrar may keep or amend
2 records of determinations made under the Firearms Act,"
3 et cetera.

4 **Q.** Right. So do you agree that this regulation states
5 that, you know, the SFSS, not being the registrar, may
6 not keep or amend records of determinations made under
7 the Firearms Act?

8 **A.** It would probably apply, but it's moot because SFSS
9 does not make determination under the Firearms Act.

10 **Q.** And what kind of determinations does the SFSS do?

11 **A.** SFSS makes determinations on firearms classification
12 from the Criminal Code.

13 **Q.** Okay. And that is the reason why you say that this
14 regulation does not apply to you, correct?

15 **A.** Correct. It has no impact on SFSS or FRT operations.

16 MR. BOUCHELEV: Okay. Give me one moment.

17 Okay. Well, actually, Mr. Smith, that's all the
18 questions that I have for you. I'll now pass it over
19 to Ms. Generoux, who I understand will have some
20 questions for you, as well.

21 So thank you for your patience in answering my
22 questions.

23 **A.** You're welcome.

24 MS. GENEROUX QUESTIONS THE WITNESS:

25 **Q.** Good afternoon, Mr. Smith.

1 **A.** Good afternoon.

2 **Q.** You understand you're still under oath?

3 **A.** Yes.

4 **Q.** Yes. Okay. I would like you to answer the following
5 questions for me, and to try to whittle it down and
6 save everybody time, -- I know you don't want to be
7 coming for more days -- it would be convenient if you
8 could answer them with either yes, no, or I don't know.
9 That would probably make things speed along.

10 So you read and understand the regulations in the
11 Amnesty Order, correct?

12 **A.** Yes.

13 **Q.** And you mentioned in a previous cross-examination that
14 you actually helped write the Regulatory Impact
15 Analysis Statement?

16 **A.** What I said previously is that I had input into it.

17 **Q.** Okay. And, now, do you recall the part in the
18 Regulatory Impact Analysis Statement where they mention
19 the public consultations which took place in 2018 and
20 2019 undertaken by Public Safety?

21 **A.** Yes, I recall that being mentioned.

22 **Q.** Did you participate in the public consultations in any
23 capacity?

24 **A.** I -- in the consultations?

25 **Q.** Yes.

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

2 **Q.** Okay. So you agree that the firearms listed in the
3 regulation as prohibited can no longer be used by the
4 owner for anything except for as provided in the
5 Amnesty Order, correct?

6 **A.** Yes, that's my understanding. The Amnesty gives the
7 terms and conditions for the uses of the firearms
8 during the life of the Amnesty.

9 **Q.** Sure. Okay. So -- and the unnamed variants after
10 the -- that are not named in the regulation but in the
11 opinion of the RCMP are also prohibited, those also
12 cannot be used for hunting and sporting purposes,
13 correct?

14 **A.** In my view, yes.

15 **Q.** Okay. Now, is that because the registration
16 certificates are administratively expired now?

17 **A.** That's my understanding. That's what I referred to in
18 the "Notices" section of my affidavit at paragraph 16
19 onwards where the -- where notices were given to
20 firearms owners.

21 **Q.** Right. So would you agree that without the Amnesty
22 Order, the owners would be in illegal possession as of
23 May 1st?

24 **A.** Yes. The Amnesty protects owners from the consequences
25 of being in illegal possession. Yes.

1 Q. Okay. Now, when the certificates are expired, the
2 Canadian Firearm Registry does not list them as being
3 owned by the previous owner any longer, correct?

4 A. I don't know what kind of record the Registry is
5 keeping now that the records are expired. They're not
6 registration records anymore, but apart from that, I
7 don't know what they did with them.

8 Q. Okay. So would you agree that a registration
9 certificate is the only way to show lawful ownership by
10 a person in possession of a restricted or prohibited
11 firearm?

12 A. That would depend on the context, but it certainly is a
13 convenient way. However --

14 Q. It's a requirement, no?

15 A. Well, even if you had a registration certificate and
16 showed it, that doesn't mean the registration
17 certificate is still valid.

18 So the registration certificate, itself, is
19 evidence of registration, but it's not -- I wouldn't
20 consider it to be proof in and of itself. It's subject
21 to verification.

22 Q. So let's say somebody did possess a restricted or
23 prohibited firearm and they didn't have the appropriate
24 registration certificate. That would be a crime,
25 correct?

1 MR. MACKINNON: He's not here to determine whether
2 something is a crime or not. That's a legal question.

3 MS. GENEROUX: Well, he said in his affidavit
4 that he had experience with firearm registration
5 certificates.

6 Q. So I was just wondering, since I'm not an expert, is do
7 you require a registration certificate to hold a
8 restricted or a prohibited firearm legally?

9 A. That depends on who you are and what you're doing.
10 The -- for individuals to possess a restricted firearm,
11 they must meet all the requirements under the Firearms
12 Act, including registering the firearm and obtaining a
13 registration certificate.

14 For others entities, like, police, military,
15 firearms businesses, there's a different set of rules,
16 so it depends on the exact context you're referring to.

17 Q. For citizens it is one of the requirements?

18 A. It's a requirement to register a restricted firearm,
19 yes.

20 Q. Okay.

21 A. For an individual.

22 Q. So in the cases where their certificates are
23 automatically expired and the person in possession does
24 not currently have the license allowing them to have a
25 prohibited firearm, who owns the firearms now? Is it

1 the Federal Government?

2 MR. MACKINNON: Again, you're asking a legal
3 question, and it's hard to see how that legal question
4 is directly relevant here, in any event.

5 Q. MS. GENEROUX: Okay. Well -- all right.

6 So you don't know, then, or you refuse to answer?

7 A. Well, my understanding of how it works is that
8 registration is a legal obligation on the part of
9 individual owners to record their restricted firearms
10 with the registrar. However, a registration
11 certificate is not proof of ownership.

12 The registration certificate determines who is in
13 lawful possession of the firearm and who is responsible
14 for safeguarding the firearm.

15 So ownership and registration are different
16 things, and they don't -- and having one doesn't imply
17 the other.

18 Q. But you need to have both in order to be in lawful
19 possession; I think we can all agree to that.

20 A. No, I don't think that's correct. Because you can be
21 in possession of someone else's restricted firearm.

22 Q. That's fair.

23 A. With a storage permit or something like that.

24 So, again, they are separate concepts that have
25 separate independent requirements.

1 **Q.** Okay. The reason I ask is because you had previously
2 stated in cross-examination that you agreed with the
3 legal assessment of the RCMP SFSS that the -- there is
4 no opportunity for owners to bring a section 74 because
5 the certificates have been automatically expired or
6 nullified.

7 And the only legal way that I can find for that is
8 in section 66 of the Firearms Act where it says:
9 (as read)

10 "A registration certificate for a
11 prohibited firearm or a restricted
12 firearm expires when the holder of the
13 registration certificate ceases to be
14 the owner or the firearm ceases to be a
15 firearm."

16 So, I mean, basically we're just trying to determine if
17 we have ceased to be the owners or if the firearms have
18 ceased to be firearms, at this point?

19 **A.** I think you're mixing metaphors there. The reason the
20 registration certificates expired where they did was
21 because the firearms were formally restricted and are
22 now prohibited.

23 And so the -- in the newly prohibited legal
24 classification, the individual owner is no longer in
25 lawful possession, is no longer eligible for a

1 restricted firearm registration certificate. That's
2 the reason they are expired.

3 So it has nothing to do with the elements in
4 section 66, that you referred to. And, also, just to
5 clear the air, when I spoke last week about the
6 reference hearings, it was in the context of the
7 registrar not having made a decision, and that counts
8 for the lack of eligibility.

9 **Q.** Right. So what you were just speaking to before that
10 last sentence is you were speaking of section 13 of the
11 Firearms Act where a person is not eligible to hold the
12 registration certificate for a firearm unless that
13 person holds a license authorizing them to possess that
14 type of firearm, i.e., restricted, prohibited?

15 **A.** Essentially, yes.

16 **Q.** Okay. I'm going to switch over topics now. Can you
17 tell me which person from the Attorney General's office
18 specifically retained you as an expert?

19 **A.** Which person?

20 **Q.** Yes. Which counsel? Mr. MacKinnon or Ms. Oxaal or
21 Ms. Jiwan?

22 **A.** None of them. The counsel approached the Canadian
23 Firearms Program for expertise, and it's the RCMP
24 Firearms Program that offered me up.

25 **Q.** Okay. So --

1 MR. MACKINNON: Ms. Generoux, could you just speak
2 just a little slower because it's sometimes hard to
3 keep up, and I don't know if the court reporter has the
4 same issue. You're very excited, I know. But if you
5 could just speak a little slower, it would help, at
6 least, me, and I think Murray, too, just to get
7 everything you're saying.

8 MS. GENEROUX: Sure, I'll try. I just -- I know
9 we're very pressed for time, and you had made it very
10 clear that you did not want this to go on for more
11 days.

12 So I'll do my best to speak slowly but get through
13 this quickly.

14 Q. So, Mr. Smith, in your career and in your resume, you
15 say you've given advice on and consulted and worked in
16 technical firearms related matters for a number of
17 purposes and bodies for a number of years; Is that
18 correct?

19 A. I believe it says that in my affidavit. Are you asking
20 me to confirm the exact wording?

21 Q. No. I've paraphrased here. You mostly said that you
22 consulted and worked in technical firearms related
23 matters, and you name a number of different positions,
24 and you've said you've been doing this since the 1970s,
25 and you started off as a technician and all that.

1 So just --

2 **A.** Yes. They --

3 **Q.** Yeah.

4 **A.** -- all relate to firearms technical matters, the
5 firearms identification, classification, forensics,
6 ballistic, and technical matters of that nature.

7 **Q.** Okay. So to help me understand what would be
8 considered a firearm technical matter, like, is that --
9 I mean, you can just answer yes or no. Like,
10 identifying different firearms classifications?

11 **A.** Yes. Making a classification determination is, for the
12 most part, a firearms technical exercise.

13 **Q.** And, like, different firearms styles?

14 **A.** Well, style affects classification only if it meets
15 certain conditions, so --

16 **Q.** Is that --

17 **A.** -- for example --

18 **Q.** -- a firearm technical matter?

19 **A.** Yeah. The design of a firearm, regardless of what the
20 purpose of it is, falls into firearms technical
21 matters.

22 **Q.** And you also had mentioned that you identified
23 different firearms purposes and you're familiar with
24 them?

25 **A.** Yes.

1 Q. Okay. Now, in your CV you said, and I quote, you were:
2 (as read)

3 "Advisor to the Government of Canada on
4 matters of firearm related technical
5 matters, Criminal Code firearms
6 regulations (1999, 2000, 2015, 2020 and
7 ongoing), which adapted and expanded the
8 former firearms orders-in-council."

9 Correct?

10 A. I would be happy to verify that. Can you help me out
11 with the paragraph you're referring to?

12 Q. Sure. It's actually -- it's in your CV, and I believe
13 it's page 2 of your Exhibit A, your CV. I'll just
14 verify that.

15 A. Page 2.

16 Q. Actually, I think it -- which page. I think it is
17 page 3.

18 A. It's under -- you're talking about section 2 where
19 "Advisor to the Government of Canada"?

20 Q. Give me a minute. "Notable Milestones." Oh, yes.

21 So under -- yes. Section 2, "Notable Milestones."
22 "Advisor to the Government of Canada on firearms
23 technical matters."

24 And then down on -- so it's actually page 34 of
25 page 79 of your affidavit. It says: (as read)

1 "Criminal Code firearms regulations
2 (1998-1999, 2000, 2015, 2020 and
3 ongoing), which adapted and expanded the
4 former firearms orders-in-council."

5 Correct?

6 **A.** I'm still having trouble finding exactly what you're
7 referring to.

8 MR. MACKINNON: I think its under section 2,
9 still.

10 MS. GENEROUX: It is, yeah.

11 MR. MACKINNON: So under section 2, she's looking
12 at the paragraphs under that section.

13 **Q.** MS. GENEROUX: It's quite far down. It's only
14 about four paragraphs above section 3.

15 **A.** Okay. Oh, yes. Okay. Sorry. I just didn't see it in
16 time. Yes. So, yes, I assisted the government with
17 the Criminal Code firearms regulations over the years.

18 **Q.** Yeah. So are you aware of any other orders in council
19 related to firearms that have been released in 2020
20 other than the regulations in question? Publicly
21 released?

22 **A.** No. In 2020, to the best of my knowledge, it's the
23 regulation which amended the existing regulations plus
24 the Amnesty. Those are the only two that I'm aware of.

25 **Q.** Yeah. Me, as well.

1 So, now, you said that you're a firearms owner and
2 you did receive one of the generic information sheets
3 mailed to 2.2 million firearm owners, correct?

4 **A.** Yes, I did.

5 **Q.** So you never mentioned receiving one of the
6 individualized letters. Did you receive one?

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

8 **Q.** So you don't own one of the newly prohibited firearms?

9 **A.** No, I do not own any restricted firearm which became
10 prohibited.

11 **Q.** Have you ever owned one of them?

12 **A.** One of them meaning one of the nine?

13 **Q.** One of the nine families, yes.

14 **A.** Or have I ever owned a restricted firearm?

15 **Q.** Have you ever owned one of the newly prohibited
16 firearms from the nine families or the unnamed variants
17 that were prohibited after the regulation?

18 **A.** No.

19 **Q.** Okay. Never.

20 Okay. So now that you're consulting for the RCMP
21 part time, do you work from home?

22 **A.** Yes, I do.

23 **Q.** Okay. On average, how many hours per week do you do
24 work consulting for the RCMP at this time? Just
25 average, ballpark?

1 **A.** I work a full 40-hour week.

2 **Q.** Okay. Now, in paragraph 9 of your affidavit, you do
3 mention that the SFSS employs firearm technicians who
4 collect and assess technical information and classify
5 firearms. And I was wondering what years of experience
6 or education would the technicians typically have?

7 **A.** Well, the education level of the firearms technicians
8 varies from one individual to the next. There are some
9 individuals who have stopped their education in high
10 school; others are accredited engineers.

11 So it varies in between depending on the person.
12 Virtually all of them have got considerable personal
13 experience either in the firearms retail industry, in
14 large business enterprises dealing with firearms, or
15 police or military or culminations of that.

16 **Q.** Okay. That's helpful.

17 Now, during your time working for the RCMP or the
18 Canadian Firearms Program, have you collaborated or had
19 any meetings with Dr. Wendy Cukier?

20 **A.** I know her. I recall having met her in the 1990s
21 during the formulation of Bill C-68. I haven't seen
22 her in a decade or better. I believe we might have
23 bumped into each other one time at a UN meeting, but
24 that's it.

25 **Q.** Okay. Now, have you ever heard the term "gun culture"?

1 **A.** Yes.

2 **Q.** Can you tell me three adjectives that come to your mind
3 when you hear that? That work, that term?

4 **A.** It's a very loose term. It can mean many things,
5 depending on who's saying it and why they're saying it.
6 It can be used in a negative way by individuals who
7 would seek to regulate firearms more severely. It's
8 also used within the firearms community itself to
9 reflect the ethics of firearms ownership.

10 **Q.** How do you personally perceive the term? As negative
11 or positive?

12 **A.** I don't use the term, so I don't have a perception one
13 way or the other.

14 **Q.** Okay. Well, you mentioned that the FRT software, the
15 one that's updated every 24 hours that's only available
16 to licensed firearms businesses but not individual PAL
17 holders, is that up-to-date software version available
18 24/7?

19 **A.** I'm not sure I understand the question.

20 **Q.** The software that licensed firearm businesses use, the
21 FRT version that's not viewable to me as a PAL owner or
22 a citizen but that would be viewable to firearm
23 businesses, can they view it -- is it available 24/7?

24 **A.** Yes. I believe it is available 24/7 except for
25 maintenance windows.

1 Q. Okay.

2 A. There's a -- because it's updated every night, there's
3 going to be a period of time when it's down while it's
4 going through an update.

5 Q. Okay. So do you know if it's ever been unavailable for
6 a period of, say, 12 hours or more?

7 A. Yes. There has been a number of occasions where
8 there's been power outages, where there's been a
9 significant software update where the FRT service has
10 been discontinued for a short period of time.

11 So it happens a few times a year, I would say on
12 average, depending on how lucky we are with respect to
13 the power supply and software updates.

14 Q. Okay. Now, is it true that the Canadian Border
15 Services was stopping shipments of AR parts at the
16 border before May 1st on the RCMP's orders?

17 A. Well, first of all, the RCMP can't order CBSA to do
18 anything.

19 Q. Request.

20 A. They're an independent agency, and they make up their
21 own mind.

22 CBSA has had a long-standing policy of
23 intercepting parts for AR-15 firearms which are
24 regulated. So things like magazines, full-automatic
25 fire control components, and so on. Receiver

1 components.

2 So they have a responsibility to ensure that those
3 kinds of regulated products are properly imported, and,
4 to the best of my knowledge, they do so diligently.

5 **Q.** Right. But my question was -- by stopping the imports,
6 what I meant was turning them back, not allowing them
7 into the country.

8 **A.** Well, CBSA has a variety of options. If they detect
9 contraband at the border, they can seize it, they can
10 detain it, or they can allow the exporter to re-export
11 it. And many times the exporter chooses the re-export
12 option.

13 **Q.** Right. Well, in your affidavit you said that the FRT
14 was updated between May 1st, and the last time that,
15 you know, that it was updated with classification
16 changes in regards to the regulation was June 15th.

17 Now, do you know between May 1st and June 15th,
18 like, how many separate times the FRT was updated with
19 classification changes? Like, approximately how many
20 batches? Was it daily? Weekly? Monthly?

21 **A.** I don't have the exact details from memory, but there
22 was on the order of four or five separate days when
23 batches were updated.

24 **Q.** Okay.

25 **A.** So May 15th, May 19th, June 15th come to mind. There's

1 probably others, but I don't have a complete list, and
2 it's another -- it was a member of my staff that was
3 the database administrator that looked after that, so I
4 didn't keep track of the days when updates took place.
5 That was a delegated responsibility.

6 **Q.** And which staff member was that? What was their name?

7 **A.** Kimberley Glass.

8 **Q.** Oh, okay. The incoming manager?

9 **A.** Yes. She's the interim manager, yes.

10 **Q.** Okay. Now, you said under your Notable Milestones in
11 your CV that you were a co-developer of the FRT in
12 1996. Do you have any other experience in developing
13 databases?

14 **A.** Yes. I've been involved in the creation of a number of
15 forensic databases. The FRT was the one where I
16 probably had the most involvement and most direct
17 control.

18 **Q.** Okay. So seeing as you were the developer, and -- I
19 mean, I think this was answered in a previous
20 cross-examination when Ms. Warner asked you if you were
21 aware of any design flaws in the FRT, and you said you
22 were not aware. Is that what you said?

23 **A.** No. There are no design flaws in the sense that it
24 would cause the FRT to give an incorrect answer or fail
25 to function; I'm simply not aware of that.

1 And when we do become aware of bugs in the
2 software, they are corrected. There's a regular
3 process for identifying and fixing bugs which occurs in
4 virtually any kind of enterprise software.

5 **Q.** Sure. I also have designed databases in the past.

6 So one of the distinct things I noticed about the
7 FRT is that a user is unable to search for both the
8 make and model together in one search, that you must
9 search either the make or model because the FRT
10 headings and subheadings are separated as such; at
11 least in the PDF civilian version that I have access
12 to.

13 For example, Norinco -- you can search Norinco, or
14 you can search 97-A, but you can't search a
15 Norinco 97-A. You can search for Remington, or you can
16 search for Remington 700, but you can't search for -- I
17 mean you can search 700 or Remington, but you can't
18 search for them together, and that results in thousands
19 of irrelevant returns when I try to search for the
20 firearms that I own. Is that something --

21 **A.** Yes.

22 **Q.** -- that you're aware of?

23 **A.** Yeah. I believe you're referring to the PDF version of
24 the FRT?

25 **Q.** The only one that I'm able to view, yes.

1 **A.** And in that particular instance, the PDF format was
2 chosen because it was readily accessible to most
3 Canadians, being a standard computer file format, but
4 one of the consequences of that choice is we were
5 limited to the nature of the inbuilt search that the
6 FR -- that the PDF Adobe software supplies.

7 It has been the intention for quite some time
8 within the FRT planning cycle to allow external users
9 to directly access the main database, but the
10 programming is simply not ready for that, as yet.

11 **Q.** Do you know the file size of the civilian FRT PDF?

12 **A.** The last time I checked, it was about 200 megabytes.

13 **Q.** Yeah. 167 on my computer.

14 Now, it's over 101,000 pages. I have never seen a
15 document that large. Have you?

16 **A.** I can't say that I have.

17 **Q.** Okay. Now, do you know how much ram it typically takes
18 to open the civilian version of the FRT?

19 **A.** I have no idea.

20 **Q.** 6 megabytes -- or 6 gigabytes, I'm sorry. And a simple
21 Google search tells us that the average available ram
22 in an average home PC is simply not enough. It's about
23 4 gigabytes of ram.

24 So I believe earlier when other counsel was
25 talking about, you know, reports, whether they were

1 credible or not of the FRT crashing and not really
2 being searchable, you know -- I did include a document
3 for Mr. MacKinnon to show you. I'm not sure if he's
4 going to put the document to you, in which case I can
5 bring it up on my computer for you, but either way, it
6 doesn't really matter.

7 Now, do you think the FRT was made available to
8 the public to 2020 -- in 2020 to increase transparency
9 on information about firearms as stated by Public
10 Safety? Would you agree with that?

11 **A.** The FRT was put in the public domain as part of a
12 long-standing goal of SFSS to share the FRT, not just
13 for transparency, but also for the convenience of the
14 firearms owning public.

15 **Q.** Right. So what you're saying is this decision was
16 primarily -- like, I remember you said in a previous
17 cross-examination that this has been in the works for
18 many years. And so what you're saying now is this
19 decision was primarily by the RCMP SFSS?

20 **A.** I can tell you that during my term as manager and in
21 the -- in circa 2015, 2016, perhaps earlier, the -- a
22 public facing version of the FRT was part of the
23 planning cycle, and -- for updating the FRT software.

24 The software updates were prioritized, and the
25 public facing version was not executed. It's still in

1 the queue. It's still part of the plan, but it has not
2 been accomplished as yet. And the FRT PDF was put out
3 as a stopgap temporary measure.

4 Q. Well, was this done quickly in 2020 in light of the
5 expected confusion the new regulations might cause?.

6 A. No. The work on the PDF version began in 2018 or 2019,
7 and it just happened to be ready at about the same
8 time, but the work began on it far earlier.

9 Q. It was just a coincidence that it was ready around the
10 same time as the regulation?

11 A. Well, it seems to me it came about six months ahead of
12 the regulations or close to it, five or six months.

13 So the -- it was part of the RCMP roll-out plan.
14 It was completely independent of the regulations.

15 Q. Okay. Well, I would like you now to flip to a document
16 that I sent Mr. MacKinnon. And if you don't have it, I
17 can easily share my screen with you. It's called,
18 "Stats Can Internet Usage in Canada." Do you have that
19 document? Well, it's actually a screenshot.

20 MR. MACKINNON: It's probably easiest if you just
21 show him.

22 MS. GENEROUX: Sure.

23 Q. This is just something I found on Stats Can. I will
24 share my screen with you right now. I'm not sure if
25 you can see it. Can you see that? "Canadian Internet

1 Use Survey."

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

3 **Q.** Okay. Well, I was just wanting to record for the
4 record -- and I will have this marked either as an
5 exhibit or for identification purposes -- that only
6 71 percent of seniors in Canada, right here, can use or
7 do report being able to use the internet. So I just
8 thought you should be aware of that.

9 Now, one of the other alternatives you gave to --
10 for an average citizen to find out if their firearm has
11 been newly prohibited under the regulation was to call
12 the RCMP Canadian Firearms Program at the 1-800 number,
13 and I was just wondering if you know the average wait
14 time on hold with the Canadian Firearms Program at this
15 time?

16 **A.** I don't know what today's wait time is. The wait times
17 vary depending on how many people are in the queue.

18 I do know that my sub-unit that is stationed with
19 the Firearms Registry receives hundreds of calls a day.
20 They are constantly on the phone.

21 **Q.** Yes. Yes. I actually waited on hold with them last
22 week for several hours.

23 So I will just share my screen with you again to
24 bring up the RCMP's modified services due to COVID.
25 And I definitely will mark this as an exhibit or also

1 for identification purposes, if that's allowed.

2 And I just wanted to note for the record that the
3 average wait time on hold with the CFP is longer than
4 normal because of COVID-19 and a reduced workforce. So
5 we'll see, eventually, where I can go with this.

6 So, basically, what it seems like to me, in order
7 for me to stay informed of frequent and unannounced
8 changes to the firearms classifications in the FRT in
9 Canada, and, basically, for me to stay on the right
10 side of the law as a citizen, I would either have to
11 have a speedy internet connection and a high-quality
12 powerful computer or a telephone and time to wait.
13 Would you agree?

14 **A.** No. I don't think those are your only options. The --
15 I don't think that the announcement of the regulations
16 was a secret to any firearms owner unless you were
17 very, very disconnected from mainstream media.

18 **Q.** Mr. Smith, if I just may, I don't mean to interrupt
19 you, but I meant to -- I said to stay informed of
20 frequent and unannounced changes to firearms
21 classifications in the FRT; not in the regulations.

22 **A.** Well, the FRT does not change the classification of a
23 firearm. The FRT merely records the classification as
24 it stands according to the legal framework in effect at
25 the time the record was created or updated.

1 So if you're referring to the FRT records which
2 were changed after May 1st, you must understand that
3 those firearms changed classification on May 1st. The
4 recording of the change in the FRT merely made it more
5 visible, but the actual change took place on May 1st.

6 **Q.** Well, I think that will be settled in court, but I'm
7 definitely not clear on that because it does seem that
8 the RCMP SFSS has determined and made decisions
9 regarding the classification of the firearms
10 considering the term variant. And, also, the way that
11 bore diameter and muzzle energy is measured is not
12 defined in the regulations.

13 So the RCMP SFSS has set the legal definition, it
14 seems like to me. I mean, I know you say you're
15 working under the regulation, but at the same time,
16 it's not defined in the regulation, so...

17 **A.** The RCMP evaluates firearms to assess their
18 classification and publishes that information and does
19 its best to make that information available to the
20 public.

21 The ultimate reference, however, for anyone, is
22 the regulations themselves. No one is obligated to use
23 the FRT. It's not forced on anyone. You don't have to
24 use it. You can come to your own independent
25 conclusion, if you so choose. It's put out there as a

1 convenient reference for firearms owners and
2 businesses.

3 **Q.** But non-binding?

4 **A.** It's not binding on anyone.

5 **Q.** So in paragraph 12 of your affidavit, you stated the
6 FRT is "not intended to legally bind law enforcement
7 officers, judges, or administrative decision-makers."
8 But the classifications as written in the FRT can be
9 legally binding on civilians. Is that true or false?

10 **A.** The FRT determinations are not binding on anyone.

11 **Q.** Right. So the classifications as written in the FRT
12 will not have serious legal consequences to Canadians
13 if they're in possession of one in which the RCMP's
14 opinion is that it's prohibited?

15 **A.** Well, if a firearm is in the possession of an
16 individual and it falls under the regulations, then an
17 individual will have to take steps to ensure they're in
18 compliance with the regulations.

19 Whether the firearm is listed in the FRT or not is
20 not relevant to that. It's merely a convenience. It
21 helps notify firearms owners of a change that they have
22 to adapt to.

23 But the firearms owners are welcome to go to the
24 source material themselves, directly to the
25 regulations, and draw their open interpretation. The

1 difference is -- and this is where --

2 **Q.** How can they do that when --

3 **MR. MACKINNON:** Just -- let's let him finish the
4 thought, please.

5 **A.** The value of the FRT is that it provides a reasoned and
6 rationed assessment of the firearms classification and
7 saves the firearms owner from having to do the same
8 work. But it does not preclude anyone from arriving at
9 their own decision, but if they do that, if they choose
10 to do that, then that individual is responsible and
11 accountable for defending their choices.

12 **Q.** Of course. So, basically, what you're saying, then, is
13 that any of the unnamed variants that were not listed
14 in the regulation, that it's my own choice to possess
15 them or not, and since they were not listed in the
16 regulation as prohibited, they're not prohibited, and I
17 can possess them and use them. Is that correct?

18 **A.** No, that's not correct. What I said was that the
19 firearms, even the ones which are unnamed variants,
20 became prohibited on May 1st when the regulations --

21 **Q.** Sir, how can something that's unnamed be prohibited? I
22 don't -- maybe I'm not smart enough. I don't
23 understand, maybe. But if it's not listed in the
24 regulation, then how can it be prohibited by the
25 regulation?

1 **A.** It's because the regulations have a clause in them
2 which includes any variant or modified version of a
3 firearm named in the header paragraph.

4 So the regulations themselves result in firearms
5 being declared to be prohibited because they are a
6 variant or modified version.

7 **Q.** And who says what's a variant?

8 **A.** Pardon?

9 **Q.** And who dictates what is a variant?

10 **A.** That's a term that's used in the law. And the ultimate
11 adjudicator of anything to do with the law is the
12 Courts.

13 **Q.** Right. And the Courts use whose definitions of a
14 variant to come to the conclusion that somebody is in
15 possession of an unnamed variant?

16 **A.** My experience with the Courts is they are completely
17 independent. They make up their own mind on these
18 sorts of issues, and everyone else adapts to the Court
19 determination.

20 **Q.** And the Courts have used the FRT in the past, though,
21 to seize property and make -- convict people, correct?

22 **A.** Not that I'm aware of. FRT records have been presented
23 as evidence in court, but whether the FRT records are
24 accepted or used by the Court is ultimately up to the
25 Court itself. The FRT is not binding on a Court.

1 Q. Sure. It's just a tool for the Courts to use to see
2 what the RCMP thinks?

3 A. Yes. The RCMP has got a team of experts who
4 collectively have hundreds of years of firearms
5 experience. They diligently apply that knowledge to
6 describe and classify firearms, and that information is
7 made available to the police, other law enforcement
8 bodies and firearms regulators as well as the public so
9 that everyone has the benefit of our views on the
10 proper description and classification of a firearm.

11 However, that does not require any particular
12 entity to either rely on or feel bound by the FRT.

13 Q. But you would think the Courts would give the RCMP's
14 opinion of a prohibited firearm a lot more weight than
15 they would give what my opinion is, wouldn't you?

16 A. I've been to court on many occasions dealing with
17 firearms classification determinations, and my
18 experience is the Courts want a full and clear
19 explanation from the RCMP as to why they view a firearm
20 in a certain way, and that information is subject to
21 cross-examination, and it's subject to independent
22 experts, and ultimately, the Court makes up its own
23 mind on what the classification of the firearm is.

24 Q. Okay, Mr. Smith. Well, I mean, you can answer this
25 question hopefully with a yes or no. Is an FRT entry

1 required for import and export of a firearm?

2 **A.** There is nothing in the law that stipulates that an FRT
3 record is required for import and export.

4 However, the Global Affairs office, which issues
5 import permits and export permits -- that's the export
6 and import permits office which operates under the
7 Export and Import Permits Act -- generally relies on
8 the FRT unless there's evidence to the contrary.

9 **Q.** Okay. Now, I've read your affidavit several times,
10 and, you know, I'm a citizen. I try to do my due
11 diligence with regards to firearm classifications.

12 So in your affidavit, laid out for a civilian to
13 do their due diligence, and I believe you referred to
14 it in cross-examination as "people figuring it out
15 themselves." In order for a civilian to do their due
16 diligence with regards to firearm classifications, they
17 would need to read and understand the Criminal Code,
18 the Firearms Act, the new regulations, and either call
19 and wait on hold for hours or email the Canadian
20 Firearms Program with their inquiries and possibly wait
21 days or weeks, and that is only to find out the RCMP's
22 opinion, which is no guarantee that it is the law. And
23 then they would also need to consult the FRT on a
24 regular basis to monitor for changes and monitor the
25 Gazette or the news to keep abreast of new regulations,

1 and also maybe learn to convert foot-pounds to joules
2 and learn how the nominal bore diameter is measured on
3 a firearm and check that often to make sure the RCMP
4 hasn't changed their mind on the way that's done.

5 Would you call that a due diligence? Would you
6 say that would be doing my due diligence, then?

7 **A.** I'll respond by saying that the firearms laws are no
8 different than any other law in Canada, and there's an
9 obligation on the individual to maintain currency with
10 the legal framework.

11 Secondly, firearms owners are required to take a
12 certain amount of training before they get their
13 firearms licence and wish to be in possession of a
14 highly regulated product.

15 So there is some obligation on the firearms owners
16 and firearms businesses to ensure that what they have
17 in their possession is legal for them to have.

18 So I don't think it's fair for a firearms owner to
19 throw up their hands and say they have no idea and no
20 responsibility to determine what -- whether they're
21 operating legally or not.

22 **Q.** Well, they do have a responsibility, as we know, from
23 the reverse onus clause, and I'm well aware of the
24 training firearms owners need to take; I scored very
25 high.

1 Now, anywhere in the training, the PAL or the
2 RPAL, is the definition of variant laid anywhere out in
3 there?

4 **A.** I don't believe variant is discussed using the variant
5 word itself; however, prohibited firearms are discussed
6 within the scope of that training.

7 **Q.** So I'm just going to skip a couple of questions because
8 we're trying to save time, and I think Arkadi got
9 sufficient answers to those questions.

10 One question I do have is the individualized
11 letters which you refer to in paragraph 16 of your
12 affidavit sent to the owners of previously -- firearms
13 that were previously registered as restricted which are
14 now prohibited, the purpose of those letters was to
15 help people understand the law, stay within the law,
16 notify them that they were now in possession of
17 prohibited firearms, correct?

18 **A.** Yes. The purpose of the notification was to advise
19 owners of formally restricted firearms the
20 classification of the firearm had changed and that --

21 **Q.** Were those -- oh, sorry. Go ahead.

22 **A.** -- they were required to take certain steps to be in
23 compliance with the law.

24 **Q.** Right. And were those letters comprehensive of all
25 firearms previously registered as restricted, which are

1 now prohibited, which are known to the CFP?

2 **A.** Well, I would argue that if the firearm is not known to
3 the CFP, then it's not legally registered.

4 So the letter was sent to all registrants who were
5 in good standing.

6 **Q.** Right. That's not what I'm asking. I'm asking -- it
7 would be, basically, logical and safe to assume that if
8 I have a restricted firearm which is registered -- so
9 the CFP knows about it -- that is not in the
10 individualized letter, that it's safe to assume that
11 it's not currently prohibited? I'm asking if the
12 letters were comprehensive?

13 **A.** The letters were only sent to individuals who had
14 registrations for restricted firearms as a courtesy to
15 explain the changes in the law.

16 **Q.** Oh, okay. So they were sent as a courtesy?

17 **A.** Absolutely.

18 **Q.** Okay.

19 **A.** There's no legal requirement for the RCMP to have done
20 that.

21 And the -- as for an individual who is in illicit
22 possession of a restricted firearm prior to May 1st,
23 was already breaking the law, and they continue to do
24 so now with the newly prohibited firearm, because my
25 understanding is that those firearms are protected by

1 the Amnesty only if the owner was in lawful possession
2 on the transition date.

3 **Q.** That's right. What I was asking -- I'm sorry if I
4 wasn't clear. It has nothing to do with illicit
5 firearms. I was just asking that if the CFP -- if it's
6 reasonable to believe the CFP would not have missed any
7 or overlooked any, that they were aware of, that are
8 now prohibited? But since you said the letter was just
9 a courtesy, I assume that there is no guarantee that
10 the letter includes all registered as previously
11 restricted, now prohibited firearms that the CFP knows
12 that somebody owns that's registered to them? It --

13 **A.** To the best of my knowledge -- to the best of my
14 knowledge, everyone who got a letter had a restricted
15 firearm currently registered to them, and every
16 restricted firearm that was in the registry had the
17 owner identified and a letter sent to that owner.

18 I don't think anyone was overlooked. Now, can I
19 guarantee that? No. No system is perfect, especially
20 when you're dealing with the large quantities of
21 records, but I'm not aware of anyone who was missed.

22 **Q.** Okay. That's good enough for me.

23 I don't know if Mr. MacKinnon shared the -- my
24 Exhibit Y2 with you, but if you have it, turn to
25 page 289; if not, I'll share my screen with you right

1 here.

2 So this is an access to information request done
3 by a researcher, Dennis Young, and -- now, in my next
4 line of questioning, I would like everyone to consider,
5 including you, Mr. Smith, that I am making a
6 distinction between two types of grandfathering:
7 Proper grandfathering of continued use, as we've seen
8 in Canada in the past, and false grandfathering with
9 destruction. All these questions, all they require is
10 a yes or no.

11 Mr. Smith, in your affidavit, you mentioned the
12 Swiss Arms Classic Green and Four Seasons rifles. You
13 mentioned it in paragraph 20 (i) of your affidavit.

14 Do you know if the new regulations revokes the
15 grandfathering of continued use granted to them under
16 Bill C-71?

17 **A.** Do I know if any regulations do what? I'm sorry. You
18 were really fast.

19 **Q.** Sorry. The new regulations in question that we're
20 speaking about here today, did they revoke the
21 grandfathering that was granted to the affected owners
22 under Bill C-71? The affected owners of the Swiss Arms
23 Classic Green and the Four Seasons that you mention in
24 your affidavit. Do you know?

25 **A.** The two did not interact at all. The measures you're

1 referring to about the grandfathering of the CZ and
2 Swiss Arms firearms from Bill C-71 have never been
3 brought into force.

4 So they've never had any effect, and they won't
5 have any effect until and unless the Governor in
6 Council actually brings them into force. So the -- so
7 there was no historical grandfathering for those
8 firearms that ever was in effect.

9 And as for the firearms prohibited by the
10 amendments made on May 1st, there are no provisions
11 made for the future of those firearms, as yet. As I
12 understand it, from publicly available materials, that
13 the government is considering its options on what to do
14 with those firearms.

15 So it's premature to say whether there's
16 grandfathering or not, or if there is grandfathering,
17 what type of grandfathering it would be.

18 **Q.** Yeah. Oh, yeah. We'll get to that.

19 Basically my question is, is that -- and I know
20 that Bill C-71 did receive royal assent, but it is not
21 in effect yet. And so if you'll look here on
22 page 289 -- I'm sharing my screen with you -- this is a
23 Public Safety question and answer period where
24 basically, anti-firearm activists were concerned about
25 the grandfathering for these owners, and Public Safety,

1 they answer that we were not a risk to public safety.
2 They said that we've been in possession of them without
3 significant incident.

4 And the alternatives to grandfathering in Q7 here
5 were not given any thought because of the safety record
6 of these owners and their significant investments that
7 they made. So, basically, no risk to the public and
8 expensive to do a buy-back.

9 But, effectively, the new regulations that are in
10 question today have prohibited those firearms, so
11 they're not -- they're no longer going to -- planning
12 to grandfather these owners under Bill C-71. As you
13 said, it hasn't taken effect yet?

14 **A.** That doesn't mean it won't, though. The prohibition of
15 the firearms and the grandfathering of the firearms are
16 separate legal processes.

17 So the regulations that took force on May 1st,
18 2020, changed the classification of the nine families
19 of firearms to prohibited. The legal possibility of
20 grandfathering those firearms remains. It's still
21 possible to grandfather them. There's a new section in
22 the Firearms Act, (12) (9), which could be used if the
23 government chose to do so.

24 But that's a decision that lies with the
25 government to make, as to whether there will be

1 grandfathering or not, and if there is grandfathering,
2 what the terms and conditions will be.

3 **Q.** Sure. I think we can both agree that in pretty much
4 all cases of previous grandfathering, the owner holding
5 a continuous registration certificate was a requirement
6 for grandfathering; was it not?

7 **A.** Yes. Continuous from the point in time when the
8 firearm was grandfathered.

9 **Q.** Okay. Now -- give me a second.

10 You said you had a lot of knowledge and input in
11 previous firearm legislation in Canada. I mean, you
12 can answer these questions with a yes or no if you'd
13 like to get through them quicker.

14 You had said you have a lot of knowledge about it,
15 so when previous firearms had been prohibited in
16 Canada, it was normal precedence for previous lawful
17 owners to be given this option of grandfathering; was
18 it not?

19 **A.** It varied depending on which regulation you're
20 referring to. So the Government has three options, in
21 general: One is to prohibit with grandfathering.
22 Another is to prohibit without grandfathering. And the
23 third is to buy back the firearms. All three options
24 have been exercised in the past.

25 **Q.** Right. Commonly, though, like, with the Norinco 97-As

1 in 2010 and with the handgun, the section 12 handgun
2 prohibitions, those owners had the option for
3 grandfathering of continued lawful use at CFO approved
4 ranges.

5 **A.** No, that's not entirely correct. And those are two
6 distinct kinds of issues. The prohibited handguns, the
7 12 (6.1) handguns became prohibited in 1998 as a result
8 of the implementation of Bill C-68. Those handguns
9 became prohibited and were grandfathered according to
10 the 12 (6) provisions of the Firearms Act.

11 The type 97-A rifle was a firearm that was brought
12 into Canada illegally, and the government chose to buy
13 back the firearms that were circulated illegally to
14 firearms owners on the basis that the firearms owners
15 were unwitting purchasers of these things and didn't
16 know that they -- what they were really buying.

17 But the type 97-A issue did not involve any change
18 in legislation.

19 **Q.** Every owner had the chance to bring a section 74
20 reference in that case, right?

21 **A.** Yes. Because in that particular case, it was the
22 registrar's decision to revoke the registration
23 certificate.

24 **Q.** But were they not prohibited firearms?

25 **A.** Yes, they were.

1 **Q.** Okay. So it was still the registrar's decision even
2 though the firearms were prohibited in Canada?

3 **A.** Well, they were prohibited by legislation that already
4 existed.

5 So what happened was a firearms business brought
6 in firearms, declared them to be one thing, and it
7 turned out they were something different when that was
8 discovered, and the firearms were determined to be
9 prohibited firearms.

10 The method of resolving the issue that the
11 government chose to do in 2010 was to buy back the
12 illicit firearms, but they had already -- the law
13 changed that made them prohibited -- has existed since
14 1978.

15 And the registrar, in particular, and the RCMP, in
16 general, were simply applying the law as it existed at
17 the time once it was discovered that these firearms
18 were effectively smuggled into Canada illegally.

19 **Q.** I see. So in your opinion, like, can a grandfathered
20 owner of a converted auto, like an M14, take it to a
21 shooting range legally, or?

22 **A.** Under the current framework, no. The -- you cannot
23 obtain an authorization of transport for that class of
24 firearm.

25 **Q.** Okay.

1 **A.** To go to a shooting range.

2 **Q.** Okay. Well, that clears things up for me on that end.

3 I'll share an image with you now. I was wondering
4 if you recognize this common type of firearm. It says
5 it right down here. It's an RCMP C8 carbine. Do you
6 recognize that firearm, sir?

7 **A.** I'm not seeing anything.

8 **Q.** Oh, you're not? Okay. Give me a second here.

9 Do you see it now?

10 **A.** Yes. So that's an AR pattern firearm. The text at the
11 bottom indicates that they are C8 carbines, which is
12 not exactly the same as what the RCMP acquired.

13 **Q.** Okay. So -- and that's fine. As long as you recognize
14 that. And that is now -- that type of firearm is now
15 deemed prohibited for civilians but not for law
16 enforcement, correct?

17 **A.** Correct. Law enforcement and the military and certain
18 kinds of firearms businesses are permitted to possess
19 prohibited firearms for very particular purposes.

20 **Q.** Now, I'm going to share my Exhibit G with you. And I
21 don't know if you want to read it or if you would like
22 me to read it. It is just a copied word-for-word text
23 of Prime Minister Justin Trudeau's announcement on May
24 1st where he said that: (as read)

25 "These firearms are designed for one

1 purpose and one purpose only, which is
2 to kill the largest amount of people in
3 the shortest period of time."

4 Now, you said you were familiar with police training.
5 Does the RCMP train their officers to kill the largest
6 amount of people in the shortest period of time?

7 **A.** Of course not.

8 **Q.** Yeah. I mean, I didn't think they did. So you would
9 disagree with the Prime Minister's single purported
10 purpose of the firearms, then?

11 MR. MACKINNON: That's a rhetorical question.

12 MS. GENEROUX: So he disagrees. I just wanted to
13 get that for the record.

14 **Q.** And so I suppose the only difference, then, between a
15 police service carbine and a military assault weapon
16 would be the user. Is that --

17 **A.** You're using --

18 **Q.** -- correct?

19 **A.** You're using the term "assault weapon" when I think you
20 mean assault rifle. A military assault rifle, as
21 explained earlier, is generally a selective fire
22 carbine size rifle chamber for an intermediate calibre.
23 So firearms like the M16 and the C8 would all qualify
24 as assault rifles.

25 Assault weapon is a different term; somewhat less

1 accepted meaning universally, but nonetheless, defined
2 in dictionaries and is generally taken to include the
3 derivatives of military firearms.

4 So all of the -- what we would loosely call the
5 variants or modified versions of the assault rifles
6 would fall under the categories of assault weapons.

7 So depending on which one you mean, I would be
8 happy to answer your question.

9 **Q.** Well, thank you for clarifying that for me. I was just
10 wondering if the RCMP refers to them as police service
11 carbines or military assault rifles or weapons?

12 **A.** The RCMP refers to them as patrol carbines because
13 that's the use they are put to. They are carried in
14 RCMP vehicles when on patrol; hence the term "patrol
15 carbine."

16 **Q.** Right. So when the police possess them, they're patrol
17 carbines, and when the public possess them, they're
18 military assault rifles; is that correct?

19 **A.** I don't see that language being used as a way of
20 defining the firearms. I'm not sure what you mean by
21 that question.

22 **Q.** Well, in paragraph 32 of your affidavit, you said,
23 quote: (as read)

24 "In addition to design similarities,
25 other characteristics can factor into

1 the assessment, such as the
2 manufacturer's description, patents, the
3 interchangeability of parts and purpose
4 of the firearms."

5 And I was just wondering whose stated purpose do you
6 use? The prime minister? The manufacturer? The RCMP,
7 their purpose? Whose purpose?

8 **A.** Generally it's the purpose as pointed out by the
9 manufacturer or the wholesaler or retailer or the
10 supply chain, essentially.

11 **Q.** Okay.

12 **A.** However, as I said earlier, all information is taken
13 into account, and it's assessed as to credibility and
14 used to help assess the classification of a firearm.

15 The use of descriptive terms in gun politics does
16 not factor very significantly in the determination of
17 firearms classifications that are recorded in the
18 Firearms Reference Table.

19 **Q.** Okay.

20 **A.** So whether they're called assault weapons by their
21 detractors or whether they're called modern sporting
22 rifles by their aficionados doesn't matter to me. That
23 doesn't factor into the decision.

24 **Q.** Right. So have you heard recent statements, and if you
25 have heard them, would you agree with them, that

1 approximately half of crime guns in Canada are now
2 domestically sourced? Have you heard that before?

3 **A.** I've certainly heard it. It has varying degrees of
4 credibility depending on where and when you're talking
5 about.

6 The Canadian Firearms Program operates the
7 National Firearms Tracing Centre, and I've worked with
8 them quite closely over the years, and our experiences
9 vary. In some locations, smuggling is dominant; in
10 other locations, domestic sourcing is dominant.

11 The pattern also changes over time. In some
12 places in the past, it was heavily sourced through
13 smuggling, and now it's domestic and vice versa. So
14 the --

15 **Q.** So you neither agree nor disagree with the statement?
16 Or it varies?

17 **A.** Well, it doesn't mean anything out of context. In
18 order for -- in order to make a claim that 50 percent
19 of the firearms are domestically sourced or smuggled or
20 whatever requires more information to be meaningful.
21 You have to add in where and when and what kind of
22 firearm for it to have any useful meaning.

23 **Q.** Right. So in your affidavit, I believe in your CV, you
24 mentioned that you're familiar with NWEST. And I was
25 wondering if you were familiar with the 2014 Toronto

1 Police FIEDS study, and if you were aware of the change
2 in the definition of "crime gun" and "gun crime" in
3 Canada, recently?

4 **A.** I mean, I'm generally familiar with that. The term
5 "crime gun" is a term used by police to assist with
6 police investigations.

7 **Q.** Right. Now, you had nothing to do with the definition
8 change, though. You're just -- you're aware of the
9 change?

10 **A.** I'm aware of the change, but I was not party to it.

11 **Q.** Okay. Now, are you ware of how many -- approximately,
12 not a specific number -- are you aware of approximately
13 how many firearms are stolen or misplaced by the RCMP
14 annually? Stolen from or misplaced by?

15 **A.** No. I have no idea what those statistics are.

16 **Q.** Okay. There's no official count, but it's, on
17 average --

18 **A.** No, I didn't say that. There might well be an official
19 count. I suspect the RCMP keeps track of its firearms;
20 I just don't happen to know what the statistics are.

21 **Q.** Right. So -- now, in paragraph 26 of your affidavit,
22 you said that when it comes to variants: (as read)

23 "The great majority of variants are
24 identified and marketed by the
25 manufacturer."

1 And you say: (as read)

2 "It's to capitalize on the popularity of
3 well-known firearms and, as well, to
4 indicate to firearm users certain
5 capabilities of the newly manufactured
6 firearms."

7 And I was wondering which capabilities you are speaking
8 about? Like, the ones listed in the regulations and in
9 the Regulatory Impact Analysis, like, capable of
10 semi-automatic, rapid fire, capable of holding large
11 capacity magazines? Is that the certain capabilities
12 that you are speaking to in paragraph 26?

13 **A.** It depends on what the perspective purchaser is seeking
14 in terms of characteristics of a firearm.

15 However, this is best explained with an example.
16 If -- in Canada, it's my view, that if someone
17 purchases an AR-15 variant, they are primarily
18 purchasing it because it has an AR-15 -- because it is
19 an AR-15 variant and they are familiar with the AR-15
20 characteristics and are seeking a firearm that has
21 those characteristics.

22 And I think that's well-known to the purchasers of
23 those kinds of firearms. The concept of the AR
24 platform is widely known within the firearms community.

25 **Q.** Right. So I noticed in the Regulatory Impact Analysis

1 it gives kind of a loose definition of military assault
2 style rifle, where they say: (as read)

3 "The regulations have been amended to
4 prescribe as prohibited approximately
5 1,500 models of firearms as they have,
6 1, semi-automatic action with sustained
7 rapid fire capability; 2, are of modern
8 design; and, 3, are present in large
9 volumes in the Canadian market."

10 Now, I was wondering, in order for a principal model,
11 which you refer to as one of the nine families, to be
12 classified as prohibited under that description in the
13 regulation, would it have to meet all three of those
14 characteristics, or just one or two?

15 **A.** The determination of which firearms were included was a
16 decision made by the Governor in Council. I was not
17 present when the decision was made. I can't inform you
18 of what rationale they used to select firearms.

19 **Q.** Well, I assume it would be just one or two of them
20 since some of the firearms do not meet all three of
21 those criteria.

22 Can you tell me what year the RCMP's definition of
23 "modern designs" starts at?

24 **A.** I don't believe the RCMP has a definition of modern
25 design. What --

1 Q. Of a firearm. Like, antique is anything before 1898.
2 What would you consider modern?

3 A. Well, you're -- I believe you're using that term in
4 context of the RIAS, the Regulatory Impact Analysis
5 Statement, and so that would be the Governor in Council
6 who would be using that term.

7 And, again, I don't know what they had in mind
8 when they were using that terminology in their
9 document.

10 Q. So the RCMP has no -- and yourself, you also have no
11 opinion on what constitutes a modern firearm?

12 A. Oh, I didn't say that. What constitutes a modern
13 firearm depends on the context. So, for instance,
14 the -- at the time when the ownership of firearms for
15 both military and civilian use migrated from muzzle
16 loading firearms to cartridge loading firearms, that is
17 routinely described as being a move towards modern
18 firearms, so that's one instance of its use.

19 Another instance is in the rearming of NATO in the
20 1980s to more modern firearms for use by the NATO
21 militaries; that's another use of modern.

22 The firearms industry, via the NSSF, the National
23 Sport Shooting Foundation, uses the term "modern
24 sporting rifle;" that began about 2010, so they're
25 using modern again in another context.

1 So modern or modern design does not of itself have
2 a fixed meaning. It depends on the context in which
3 it's used.

4 **Q.** Yeah. No. I would figure it didn't since some of the
5 firearms prohibited in the regulation were invented in
6 1920. I was just wondering what the RCMP thought a
7 modern design was, but I guess there's no official
8 definition that you have, so that's all I really wanted
9 to know.

10 Would it be fair to say that the prohibition could
11 apply to any or all semi-automatics, then, since they
12 would meet the above mentioned criteria?

13 **A.** Well, the criteria that count are the ones that are in
14 the regulations on -- that were put forward on May 1st.

15 **Q.** Right.

16 **A.** And they describe nine families is two categories, so
17 it's those firearms which are affected.

18 **Q.** Right. But in the Regulatory Impact Analysis it gives
19 the three criteria, why they're prohibited, because
20 they're semi-automatic with sustained rapid fire,
21 modern design, and are present in large volumes in the
22 Canadian market.

23 So, to me, that -- like I said, I'm not an expert
24 or anything, but that sounds like it could apply to any
25 and all semi-automatic firearms. Would you agree or

1 disagree?

2 **A.** Well, I would point out two things to you. One is if
3 you look at the RIAS statement itself. At the very
4 beginning of the statement, you'll see that it says
5 that this is not part of the regulation. So it has no
6 impact on defining anything that's governed by the
7 regulations.

8 Secondly, those -- the criteria you mentioned are
9 criteria that were described by the Governor in Council
10 in the RIAS statement, and to the extent that they
11 relied on those criteria, I don't know.

12 Again, I was not present at the Governor in
13 Council decision-making table. I don't know what basis
14 they decided to proceed with the regulations on
15 May 1st, and I simply don't know whether they used that
16 rationale or not.

17 **Q.** I'm not asking about that. I'm just asking, since
18 you're a firearm expert, that -- in your opinion, would
19 that statement, those three criteria, could that not
20 apply to any and all semi-automatic firearms, then?

21 **A.** No, I don't think so.

22 **Q.** Okay. Can you tell me which semi-automatic firearms
23 would not -- that would not apply to?

24 **A.** Well, for example conventional sporting firearms are
25 not, generally, amenable to rapid fire. They're not

1 designed for sustained fire. They overheat very
2 quickly.

3 Also, conventional sporting firearms tend to have
4 smaller magazines, so rapid fire and sustained fire are
5 not possible without continual magazine changes. So
6 the definition doesn't really apply to them.

7 That definition looks, to me, to apply mainly to
8 firearms that are derived from military pattern
9 firearms because those characteristics you refer to of
10 rapid fire, large magazine capacity, high sustained
11 rate of fire, are typically characteristics of military
12 firearms.

13 **Q.** Right. Now, it's a little bit confusing because they
14 say the capability for sustained rapid fire -- not that
15 it was designed for it -- they also say the capability
16 to hold large capacity magazines.

17 So we're not really sure what they're using as
18 capable. If they're using Hasselwander or some other
19 random definition. Like, I was wondering, for example,
20 like, the Remington 742 with the 10-round clip, could
21 it apply to something like that?

22 **A.** Less likely. First of all, a 10-shot magazine is not
23 in the same ballpark as modern military firearms of,
24 you know, magazine sizes of 30 and 40 cartridges. Plus
25 the Remington rifle, itself, is not designed to fire

1 mag after mag after mag without overheating. It's a
2 sporting firearm.

3 Q. So it's not capable of, in your opinion?

4 A. I would have to look at the firearm and assess the
5 firearm in greater detail to give you an answer to
6 that. I was just referring to the characteristics.
7 And a 10-shot magazine on a sporting firearm is not the
8 same thing as a 30-shot magazine on a military firearm.

9 Q. Okay. Well, one of the questions I had was has the
10 RCMP chosen not to define variant because it has been
11 asked by the Government of Canada not to define
12 variant?

13 A. It's not up to the RCMP to define variant in law. The
14 creation of a legal definition of variant is the
15 prerogative of either the Governor in Council or
16 Parliament. So the RCMP, simply, cannot do that. In
17 terms of an --

18 Q. I don't mean --

19 A. -- in-house --

20 Q. -- legally.

21 A. In terms of an in-house --

22 Q. I just mean --

23 A. -- definition.

24 Q. Okay.

25 A. -- the RCMP, and I quite agree with this analysis, has

1 decided not to attempt the word variant because there's
2 a suitable dictionary definition, and it's our --

3 **Q.** Oxford, right?

4 **A.** -- view that -- it's our view that a firearms owner
5 would be no better off with a definition from us than
6 without.

7 **Q.** Okay. Well, the reason I ask if the Government of
8 Canada basically asked you not to define it -- and I'm
9 going to share my screen with you now -- is because,
10 from this access to information request that we have
11 here, it seems as though this has been a hotly debated
12 topic internally in Parliament for quite a while, and
13 on page 4 of my Exhibit Y2, for example --

14 (AUDIO DISTORTION)

15 **Q.** MS. GENEROUX: -- we have some internal
16 communication there.

17 Sorry. It's Exhibit Y2 in my affidavit. I can
18 send you a little email afterwards with naming them, if
19 you need me to. But this is page 4 of my Exhibit Y2
20 and marked to my affidavit, and it's an internal
21 protected B discussion between Jody Wilson-Raybould and
22 Senator Pana Merchant, the joint chair of the Standing
23 Joint Committee for the Scrutiny of Regulations.

24 And, basically, in a nutshell, we have found out
25 that the Standing Joint Committee was particularly

1 concerned that the department seems to have recognized
2 the existence of the ambiguity in the law, which in
3 some cases has required recourse to the Courts for
4 resolution, and yet they appear unwilling to address
5 it. They say: (as read)

6 "Given that there are factors that are
7 already being used administratively to
8 guide application of this law, it
9 remains unclear why the vague terms,
10 'variant' and 'commonly available'
11 should not be clarified in the law
12 itself.

13 It was therefore the consensus of
14 members, in the continuing absence of an
15 agreement to proceed with clarifying --"

16 MR. MACKINNON: Ms. Generoux --

17 Q. MS. GENEROUX: "-- the meaning of these
18 firearms."

19 Yes?

20 MR. MACKINNON: We can't see what you're reading.

21 MS. GENEROUX: Oh. Let's see here. What can I
22 do. I am screen sharing. Okay. Screen share is
23 paused. Let me try it again.

24 MS. MILLER: Ms. Generoux, it's Sarah Miller
25 from JSS Barristers. I think you just needed to scroll

1 down so we could see the entirety of what you were
2 reading rather than the first paragraph.

3 MS. GENEROUX: Oh, okay. So can everybody see
4 this now, this Minister of Justice and Attorney General
5 of Canada letter here?

6 Q. Or can you --

7 A. Okay.

8 Q. -- see that, Mr. Smith? You can see that?

9 A. Yes. But you hadn't scrolled the document down far
10 enough for us to see what you were reading.

11 Q. Okay. So I don't know if you can see this part here
12 where it says: (as read)

13 "However, with regard to the issue of
14 elaborating the phrases 'commonly
15 available' and 'variant' by adding
16 definitions of these terms to the
17 regulations, the government will not be
18 moving forward with these
19 recommendations."

20 Can you see that?

21 A. Yes.

22 Q. So it seems to me that the Standing Joint Committee for
23 the Scrutiny of Regulations had suggested that variant
24 and commonly available needs to be clarified, as there
25 have been several legal actions about it already. And,

1 in fact, I think I read that you actually filled out an
2 affidavit, but it's not relevant. We won't get into
3 that right now.

4 So I'm wondering if you think that purposeful
5 ambiguity in the terms "variant" and in the terms
6 "commonly available in Canada" is on purpose and if the
7 RCMP was directed by the government not to internally
8 define those terms?

9 MR. MACKINNON: He's answered the question about
10 whether the government was asked -- asked the RCMP not
11 to define those terms already.

12 So what's the other part of the question you
13 wanted to ask?

14 Q. MS. GENEROUX: If you think that the vagueness
15 and ambiguity of those terms is on purpose?

16 MR. MACKINNON: I think he answered that, too, but
17 go ahead.

18 A. Sure. I mean, the letter you showed me is one that
19 I've seen for the first time in the context of these
20 proceedings. I take it for what it says. It -- the
21 way it looks to me is that the Standing Joint Committee
22 on the Scrutiny of Regulations was operating within
23 their mandate, identifying areas of regulations which
24 they thought would benefit from improvement, and that
25 the Minister of Justice, acting within her authority,

1 saw differently and declined to follow the Committee's
2 recommendations. So that's all normal process. I
3 would suggest to you that happens every day in the
4 context of law making.

5 As far as the RCMP is concerned, and I have had
6 some involvement with that very committee, is we're of
7 the view that any definition of variant that we could
8 possibly come up with would not serve firearms owners
9 any better than they're being served now; that the
10 dictionary definition and the common usage of the word
11 within the firearms industry is adequate and that a
12 legislated definition would not improve things.

13 **Q.** Right. Thanks.

14 So here's where I'm going with this, is I have
15 made this chart. I made it especially for you. And I
16 was -- can you see it?

17 **A.** Yes.

18 **Q.** Okay. Now, I understand that you did not write the
19 regulations, so you cannot speak to why the SKS and the
20 SKS-D was not prohibited under the regulations, even
21 though it meets every single criteria laid out in the
22 regulations.

23 But I was wondering if -- I think you may have
24 answered this in a previous cross-exam, and I do
25 apologize if I missed it. Was the SLR-Multi firearm

1 prohibited on the grounds that it was a variant or a
2 military assault rifle? I believe it was variant; is
3 that correct?

4 **A.** Well, the SLR-Multi is prohibited due to the action of
5 the May 1st regulations.

6 **Q.** Under section 87 of the regulation, correct? Right?

7 **A.** 87, correct.

8 **Q.** Right.

9 **A.** So it's a variant or modified version of one of the
10 named firearms, so that's why it's prohibited.

11 **Q.** Okay. And, like, I'm going to say since it was never
12 identified and marketed as a variant, but as a totally
13 new design, and it was assessed as such by the RCMP
14 previously, that the RCMP has taken the opportunity to
15 reclassify the SLR, basically, on the fact that it has
16 interchangeable barrel rods with the AR-15, and, also,
17 the appearance and position of the user controls.

18 Is there any other reason why it was counted as a
19 variant under section 87 of the regulation?

20 **A.** Yeah. The story is much more detailed than that. The
21 design and creation of the SLR-Multi was done before
22 the May 1st regulations came into existence, and the
23 business in question sought to avoid any regulation
24 under the existing regulations which restricted the
25 AR-15 family. And they successfully did so. They

1 created a rifle that did not have sufficient AR-15
2 content to be viewed as an AR-15 variant.

3 However, they did incorporate considerable AR-10,
4 design components, which didn't matter at the time, but
5 with the resulting change in the regulations and the
6 enlargement of the scope of the regulations to include
7 the AR-10, means that that firearm now falls within the
8 scope of the regulations as presently written.

9 So that's the explanation in a nutshell.

10 **Q.** Right. So it basically didn't design commonalities and
11 interchangeable parts with an AR-10, then?

12 **A.** Yeah.

13 I think we're just about due for a break, if you
14 wouldn't mind. Five minutes?

15 **MS. GENEROUX:** Oh, I don't mind at all. I could
16 use one, too.

17 **A.** Okay.

18 **MS. GENEROUX:** For your information,
19 Mr. MacKinnon, I am more than halfway done and can
20 foresee myself -- I won't be held to this, by the way,
21 -- but definitely can foresee myself being done here
22 within the next 30 minutes.

23 **MR. MACKINNON:** Okay. I'll inform Ms. Deschamps.

24 **MS. GENEROUX:** Okay. We'll take a five-minute
25 break, then and come back at 4:14.

1 **A.** Thank you.

2 (ADJOURNMENT)

3 **Q.** MS. GENEROUX: Mr. Smith, in section 15 of your
4 affidavit you said you're unaware of any pending
5 updates to the FRT in respect of firearms that would,
6 in the opinion of the CFP's firearm experts, constitute
7 variants.

8 And in the previous cross-exams, we did conclude
9 that there was nothing stopping them from doing that;
10 it's just that you're unaware of any upcoming ones.

11 Now, I wanted to ask you, are you aware of any
12 that will be updated on the grounds that they are
13 deemed military assault that have not been listed in
14 the regulation?

15 **A.** Well, the -- I'm not sure what you mean by military
16 assault ban. The determinations of classification of
17 firearms that are recorded in the Firearms Reference
18 Table are based on the definitions in part 3 of the
19 Criminal Code and on the Criminal Code regulations and
20 nothing else.

21 So I'm not -- don't quite get how you think an
22 assault weapon ban factors into this.

23 **Q.** Well, just based on the firearms that have been
24 prohibited so far. I guess I can explain myself. I
25 have another question about it.

1 So the prohibition, which seems to be about
2 military assault rifles -- or assault firearms,
3 actually, because it includes shotguns -- it has
4 included -- I mean, it has not included firearms which
5 meet the loose definition of military assault given in
6 the RI -- Regulatory Impact Analysis Statement, yet it
7 inexplicably includes certain .22 long rifle Varmints,
8 plinkers, bolt-action shotguns, expensive collector's
9 items, and big game hunting rifles, and in your expert
10 opinion, we were wondering what went wrong with this
11 prohibition that it includes these firearms which are,
12 obviously, not military assault style.

13 **A.** The choice of what was in the regulations was made by
14 the Governor in Council according to criteria that I do
15 not know. I was not present at the time. I cannot
16 speak to what their motivations or criteria were.

17 **Q.** Okay. So, like, for example, the AP-74 .22 long rifle
18 that was prohibited as a variant after the fact,
19 basically, in the RCMP's opinion, that's a variant of
20 one of the firearm families listed in the prohibition,
21 correct?

22 **A.** You're talking about the Armi Jager AP-74?

23 **Q.** Yes.

24 **A.** That was listed in the regulations both before and
25 after May 1st.

1 Q. Okay. And the Adler B-210 for example that you
2 discussed with Arkadi, was that listed in the
3 regulation originally?

4 A. No. That's an unnamed variant that was added after
5 May 1st to the FRT, but, again, I have to re-enforce
6 the fact that that particular shotgun became prohibited
7 on May 1st due to the action of the regulations.
8 Publication in the FRT is not what made the firearm
9 prohibited.

10 Q. Well, I mean, it wasn't listed in the regulations, so I
11 still don't really understand how the regulation
12 prohibited it?

13 A. Because the regulations have a clause in them which
14 includes any variant or modified version of the
15 firearms named in the heading. And the B-210 is one of
16 those firearms.

17 Q. In the RCMP's opinion?

18 A. Yes. In our opinion and published in the FRT as an
19 opinion.

20 Q. Okay. So in paragraph 34 of your affidavit you said
21 the regulation includes a prohibition that affects both
22 shotguns and rifled firearms. So I suppose it's
23 definitely fair to say that Minister Blair's comments
24 in the House of Commons on May 7th and 14th regarding
25 the prohibition not including shotguns were untrue,

1 then?

2 **A.** I'm not sure which quote you're referring to.

3 **Q.** Well, in paragraph 34 you said, the prohibition
4 includes shotguns and rifled firearms, and I'm not sure
5 if you're aware -- if you're not, I can screen share
6 with you -- that Bill Blair has repeatedly --
7 repeatedly insisted that the prohibition does not
8 include shotguns. Have you heard that at all?

9 **A.** I don't specifically recall it, and in any case, you'd
10 have to talk to him about it. I didn't make the
11 comment.

12 **Q.** No. But you did make the comment that the prohibition
13 includes shotguns, and you're the expert here and were
14 the manager of the SFSS. So it's fair to say that your
15 opinion on that is more authoritative than Minister
16 Blair's?

17 MR. MACKINNON: Sorry. Have you got something and
18 the time period when Minister Blair said something?
19 Can you give us some clarification, and do you have the
20 document to put to him?

21 MS. GENEROUX: Yeah. I'll see if I can find it.

22 On May 14th, he said, quote: (as read)

23 "The Canadian Firearms Program has made
24 it explicitly clear that 10 and 12 gauge
25 shotguns are not included in this

1 prohibition. All people who were
2 concerned about that need not be
3 concerned."

4 But it turns out that it has. It doesn't include all 10
5 and 12 gauge, but it has included some 10 and 12 gauge,
6 so --

7 MR. MACKINNON: Have you got a statement that you
8 want to put to him to that effect? You're saying it,
9 but have got a quote from some place?

10 MS. GENEROUX: No. I don't have a quote at this
11 time. It's a well-known fact, and if you don't accept
12 it or you don't acknowledge it, that's fine. I'll move
13 on, since we are short on time.

14 Q. So in paragraph 44, you said that you'll: (as read)

15 "...note the FRT includes definitions of
16 bore and choke that would -- may give
17 the reader an indication that the choke
18 is part of the bore. However, the
19 glossary is for general illustrative
20 information and is not meant to be
21 determinative."

22 So I just want to make sure I have this straight; that
23 the classification of firearms in the FRT are
24 determinative of the RCMP's official position or
25 opinion, but the definition given of bore and choke in

1 the FRT is not determinative of the RCMP's official
2 position or opinion?

3 **A.** What I'm saying in paragraph 44 is that those
4 particular definitions were not meant to be
5 determinative at the time that were entered into the
6 FRT, which was circa 2005. However, there are edits to
7 those definitions, which are going to appear in the FRT
8 in due course, which will reflect more accurately the
9 current state of thinking of the RCMP.

10 So that's essentially the circumstance; that at
11 the time that definition was created, it had no legal
12 consequences.

13 **Q.** Okay. And the new definition, which you say is pending
14 for updates, also it will not be legally binding; it's
15 just the RCMP's opinion or their chosen method to
16 measure bore and choke at this time, and it's not
17 legally binding, either?

18 **A.** No, it will not be legally binding.

19 **Q.** Okay. So we can move on to section 53 of your
20 affidavit in paragraph 53. At the very bottom of it,
21 you say: (as read)

22 "Most rifle owners will not come close
23 to owning a firearm with a bore diameter
24 close to 20 millimetres."

25 So I guess rifle owners are safe from the 20 millimetre

1 restriction for now, then. But just for the record,
2 when you say "will not come close," like, how -- what do
3 you say is close? Like, 1 or 2 millimetres?

4 **A.** Well, the -- for conventional cartridge ammunition,
5 there are exceedingly few rifles that have a bore
6 diameter greater than 50 calibre. That's --

7 **Q.** I understand that.

8 **A.** -- very, very uncommon. So 50 calibre is
9 12.7 millimetres which, in my books, is nowhere near
10 20.

11 If you were to include muzzle loaders, you know,
12 59 calibre is -- or pardon me. 58 calibre is a
13 relatively muzzle loading calibre, but even at that,
14 it's still nowhere near 20 millimetre.

15 **Q.** Right --

16 **A.** So --

17 **Q.** -- but my question is what would you call close within
18 1 or 2 millimetres? Is that what you -- something you
19 would call close?

20 **A.** Well, the intention of that paragraph is to say that
21 there's not much risk of a firearms owner having any
22 difficulty interpreting 20 millimetre when it comes to
23 rifles because they're not likely to be coming anywhere
24 close --

25 **Q.** Close.

1 **A.** -- to 20 millimetres. So it --

2 **Q.** So what do you call close? 1 or 2 millimeters? Is
3 that close? Or more? Or less?

4 MR. MACKINNON: Okay. He's answered your
5 question. You've asked --

6 MS. GENEROUX: No, he didn't.

7 **Q.** What is close, sir?

8 MR. MACKINNON: He's given his answer.

9 **Q.** MS. GENEROUX: So your answer is --

10 MR. MACKINNON: You may not like it, but he's
11 given it.

12 **A.** So the answer is, is the largest common calibre in use,
13 if you include muzzle loaders, that is a rifled calibre
14 is 58 calibre, and that is very far from 20 millimetre.

15 **Q.** MS. GENEROUX: So you refuse to answer what --
16 how many millimetres you would call close, then? Is
17 that --

18 **A.** I don't have a fixed number to provide.

19 **Q.** Okay. Would it be fair to say that most shotgun owners
20 would come very close?

21 **A.** Well, that's shotguns; not rifles.

22 **Q.** I know. I'm asking about shotguns because we obviously
23 know that rifles don't come close, but do most
24 shotguns?

25 **A.** Shotguns do come quite close; particularly 10 gauge.

1 **Q.** Thank you.

2 In section 54 you said -- at the end of your
3 paragraph 54, you said: (as read)

4 "Thus, firearms of all types used for
5 hunting have a bore diameter of less
6 than 20 millimetres."

7 And I wouldn't argue with that. I'm very glad that our
8 hunting firearms are safe from the 20 millimetre
9 restriction, for now. But are our hunting firearms safe
10 from the military assault rifle ban, and are they safe
11 from the 10,000 joule limit?

12 **A.** You're asking me to give you a political opinion; I
13 can't do that. I don't know what future governments
14 are going to do in terms of gun control activities.

15 **Q.** Well, actually what I'm asking is -- you've commented
16 that firearms of all types used for hunting are safe
17 from the 20 millimetre restriction, but you haven't
18 said anything about firearms used for hunting and a
19 10,000 joule restriction.

20 You know, it's my understanding that the
21 10,000 joule restriction limited several big game
22 hunting rifles that are popular in Canada, including
23 the Montana DGR, the Weatherby Magnum in .460, the
24 custom firearm bolt-action 1908 Brazilian Mauser in
25 .460.

1 So I guess it would not be fair to say that our
2 hunting firearms are less than 10,000 joules; is that
3 correct? Or --

4 **A.** Well, paragraph 54 is referring to bore diameter --

5 **Q.** Right.

6 **A.** -- and --

7 **Q.** I notice it conspicuously leaves out the joules.

8 **A.** Well, there are, indeed, firearms that have been used
9 for hunting which produce more than 10,000 joules, and
10 the .460 Weatherby calibre firearms you referred to are
11 an example.

12 So, yes, there are firearms used for hunting
13 elephants and other large African game which will
14 become prohibited firearms in Canada. However, I don't
15 see how that affects hunting in Canada, seeing how we
16 don't have elephants.

17 **Q.** No. I mean, I know a lot of Canadian hunters that
18 prefer the .460 Weatherby Magnum, and they're not only
19 for elephants; they can be useful for several large
20 game in Canada, as well.

21 So anyway, it's not up for discussion. I was just
22 wondering why you left that out and why you only chose
23 to comment on the 20 millimetre restriction on
24 paragraph 54 and left out the 10,000 joules, and I see,
25 now, why you did. So --

1 MR. MACKINNON: Well, Ms. Generoux, to be fair to
2 him, there's another section of his affidavit that
3 deals with 10,000 joule limits, and it mentions
4 hunting, as well.

5 MS. GENEROUX: Okay. And I'm sure I'll get to
6 that in time.

7 Q. So in section 55, you say: (as read)

8 "Calibres equal to or larger than
9 20 millimetres are almost exclusively
10 for military use, including heavy
11 machine guns, rocket launchers, grenade
12 launchers, and mortars."

13 Now, you said you had researched mass shootings in
14 Canada and firearms used in them, and I was wondering if
15 there ever was a mass shooting where a citizen was
16 murdered with a sniper rifle or a rocket launcher or a
17 grenade launcher or a highly-prized collectible military
18 memorabilia such as a mortar or .50 BMG, something like
19 this. Can you recall any mass shootings or murders of
20 civilians using those firearms?

21 A. I'm not aware of any in Canada.

22 Q. Okay. So I guess they haven't been a threat to public
23 safety thus far?

24 MR. MACKINNON: That's a rhetorical question
25 again, Ms. Generoux.

1 MS. GENEROUX: Okay.

2 Q. Well, in paragraph 57 you said: (as read)

3 "From a practical standpoint, in my
4 view, it's clear to the average firearm
5 owner, gun owner, using a rifle for
6 hunting and shooting as to whether their
7 rifle has a bore diameter of less than
8 20 millimetres."

9 But I was wondering, from a practical standpoint, is it
10 clear to you that the average shotgun owner has a bore
11 diameter of less than 20 millimetres. Do you think it's
12 clear to that average shotgun owner?

13 A. I think it's quite clear. I think we've made our
14 position clear on that; that if you own a shotgun which
15 is a 10 gauge or 12 gauge or anything smaller, that it
16 is unaffected by the bore diameter provision in the
17 firearms regulations.

18 If you have a shotgun which is of a gauge larger
19 than 10 gauge, such as 8 gauge or 4 gauge, then the
20 firearm is likely going to go prohibited. I think
21 that's relatively understandable. The average hunter
22 knows what gauge is, knows what it means, and needs to
23 know that in order to purchase ammunition for the
24 shotgun.

25 So I don't see any ambiguity or difficulty for the

1 average shotgun owner in that respect.

2 **Q.** Okay. So then I'm going to skip ahead to paragraph 74
3 of your affidavit where you talk about, you know, how:
4 (as read)

5 "Thus there may be a preference by some
6 of the applicants to hunt with firearms
7 from the nine families. Such firearms
8 are not required by any technical aspect
9 of hunting."

10 Now when you mention some applicants may prefer it in
11 that statement but the firearms are not required, you
12 mean required by whom? Me, with my Ruger Mini for small
13 game? Mr. Delve, with his Black Creek Labs 102, or the
14 Indigenous people of Haida Gwaii? Or just generally?

15 **A.** I'm referring to the technical aspects of the firearms
16 and that, of the nine families, to the extent that they
17 can be and are used in hunting, is something that can
18 be replaced with a firearm other than one in the nine
19 families with no ill effects.

20 So there are all kinds of conventional sporting
21 firearms available to hunters which would serve them
22 just as well as any of the firearms of the nine
23 families.

24 **Q.** So you're talking generally, and you're not speaking to
25 the affidavit of Mr. Knowles and the people of Haida

1 Gwaii, nor to myself, nor Mr. Delve?

2 **A.** I'm speaking in general terms, but, yes. Okay, I'll go
3 with that.

4 **Q.** Okay. So would you agree that to hunt I only would
5 require a rock or a sharp stick?

6 MR. MACKINNON: Again, that's a rhetorical
7 question.

8 MS. GENEROUX: Well, I mean, he's talking about
9 what's required, and if we really want to get down to
10 it, I make a bow and arrow. I could hunt with a sharp
11 stick. That's all I require, really.

12 **A.** No. I don't think that argument holds water. Most
13 hunters are firearms owners because owning a firearm is
14 a practical way to hunt, and there is a huge industry
15 which services that market with conventional sporting
16 firearms.

17 **Q.** Right. So, you know, would you agree or disagree that
18 the reality of sustenance hunting is that seconds could
19 make the difference between eating or your family going
20 hungry?

21 **A.** I doubt that. I haven't seen any evidence that
22 requires that. And I further point out that a
23 connection with that particular discussion in
24 paragraph 75 of my affidavit, we were talking about the
25 BCL 102, and the BCL 102 has only been in existence for

1 the past decade, at most, and it seems to me there was
2 all kinds of sustenance hunting that occurred long
3 before that.

4 So I fail to see how that's a necessity, that
5 particular firearm.

6 **Q.** Okay. Now, I'm not really speaking to that particular
7 firearm. I mean, you go in 74 and say that: (as read)

8 "Some of the semi-automatic firearms in
9 the nine families do allow for quick
10 successive shots and retaining the rifle
11 at the shoulder between shots, but the
12 difference between these and the
13 successive shot capabilities of a
14 non-prohibited firearm that is suitable
15 for hunting is a matter of seconds."

16 And I was just wondering if you are discounting the fact
17 that seconds do matter when you are trying to feed your
18 family, but you're saying you're not doing that? You're
19 just talking specifically about the BCL?

20 **A.** Well, the context of the use of the word "seconds" is
21 in the second and subsequent shot. One would presume
22 that if you are a sustenance hunter you would be very
23 careful with your very first shot and wouldn't need a
24 second or a third.

25 So the whole premise of the argument to me doesn't

1 seem realistic. And I would further point out that
2 most of the firearms in the nine families -- there's a
3 few exceptions -- but most of those firearms didn't
4 exist 20 years ago, but sustenance hunting did. So
5 obviously they were able to make do somehow without the
6 use of these firearms.

7 **Q.** Right. They can make do. Okay.

8 So, I mean, in the case of an injured large
9 charging animal, for example, you know, would you agree
10 or disagree that having a high cyclic rate of fire can
11 mean the difference between living and dying?

12 MR. MACKINNON: Okay. We've gone through many,
13 many questions already concerning this already with
14 Mr. Bouchelev. Do you have a new question? Because
15 he's already answered many questions concerning the
16 seconds and its effect, you know, in order to end peril
17 life, and so forth. There were a number of questions
18 along the same lines.

19 MS. GENEROUX: Okay. So you don't like that
20 question.

21 **Q.** Well, at paragraph 76 you said when chambered with the
22 .308 Winchester cartridge, the Black Creek Lab has a
23 significant recoil, but we got through with
24 Mr. Bouchelev that you have never shot the Black Creek
25 Lab. And I was wondering, have you conducted any

1 forensic laboratory tests on the Black Creek Lab's
2 recoil in different calibres?

3 **A.** No. But I don't need to because the physics of
4 discharging a .308 Winchester calibre cartridge is all
5 I need to know to determine that that firearm will have
6 significant recoil.

7 **Q.** Okay.

8 **A.** Because the calibre of the firearm is the primary
9 determinant of recoil.

10 **Q.** Right. And you suggested there are alternative
11 non-restricted firearms in the marketplace that are
12 chambered for .308 Winchester cartridge that produce the
13 same or less recoil as that firearm. You did suggest
14 that.

15 I was wondering, since Mr. Delve requires
16 semi-automatic for his disability, can you name a few
17 alternatives that have less recoil?

18 **A.** Well, I'll make a couple of comments there. One is I'm
19 not -- there's no explanation as to why he requires
20 semi-automatic, which makes it difficult to find
21 alternative firearms because I don't know what
22 precisely the issue is that he's dealing with that
23 requires a semi-automatic firearm. However there are
24 semi-automatic sporting firearms still sold these days.
25 The Browning BAR is an example that comes to mind.

1 Q. And have you -- you have not done any forensic
2 laboratory testing on recoil on any of those firearms,
3 as well?

4 A. Well, as far as the BAR is concerned, I own one, so I
5 know what the recoil is.

6 Q. Okay. And, I mean -- like, back to the sustenance
7 hunting bit, you've said that, you know, these firearms
8 are relatively new and people got by without them 10 or
9 20 years ago, but sustenance hunting did take place
10 hundreds or thousands of years ago before the
11 intervention of firearms; however I don't know why --
12 like, in your affidavit you were speaking to what's
13 required. I thought that in Canada we acted upon,
14 like, democratic principles of what was reasonable and
15 wanted and not necessarily what was needed.

16 So I just -- I'm not really clear on that, like,
17 why you don't think that people want and need the
18 easiest most efficient firearms for sustenance hunting
19 that they could get?

20 A. Well, there's a couple of things there. First of all,
21 the opinion you offered that these firearms are the
22 most efficient and the most effective is not one that I
23 agree with. Second of all, the determination of what
24 constitutes an acceptable firearm in circulation in
25 Canada falls to Parliament and the Governor in Council;

1 not to me.

2 **Q.** Okay. So you just -- you added that as a personal
3 opinion in your affidavit instead of an official RCMP
4 or expert opinion?

5 **A.** No. What I'm referring to in that paragraph is that
6 for any of the nine families of firearms that someone
7 might choose to use for hunting, if they can no longer
8 use it for hunting, there is a suitable alternative
9 available from the sporting firearm class. So that, in
10 that sense, the use of the firearms in the nine
11 families is a choice exercised by their owners. It's
12 not an absolute necessity.

13 **Q.** Okay. Well, no longer a choice, but it was. Yes, I
14 agree. So -- and I remember I had lost internet
15 connection there for a while last week, but I remember
16 you speaking to the change statement saying that owners
17 may be relatively safe purchasing replacement firearms
18 if they basically stay away from -- what is it you
19 said? Firearms of a military parentage?

20 **A.** Well, if you look at the history of regulation of
21 firearms in Canada, the majority of the regulation
22 efforts have been focused on military and paramilitary
23 firearms. That isn't to say that the future government
24 might choose to do something different; that's entirely
25 up to future Parliaments and future Governor in

1 Councils, but that's been the history.

2 So if someone were to ask me what kinds of
3 firearms to avoid that would be my answer.

4 **Q.** Right. I just found that a little bit strange because
5 it was my understanding that -- like, the K98, you
6 know -- the K98 concept is the first generation most
7 popular hunting guns, and that is in military
8 parentage. Winchester 70, Remington 30S, Ruger 725,
9 the Remington 700 all stem from the K98 parentage.

10 So we were just, kind of, all wondering which
11 hunting firearms don't have a military parentage? But
12 I'm not sure if you can speak to that.

13 **A.** Well, I believe in that question I was referring to
14 firearms of the type that the nine families represent.
15 The K98 -- a Mauser K98 is a bolt-action rifle from the
16 1890s. That's hardly a modern military firearm.

17 **Q.** But pretty much every modern hunting firearm stems from
18 that firearm.

19 **A.** There were bolt-action rifles that existed prior to
20 that rifle. I don't see that as being the seminal
21 firearm for every bolt-action or hunting rifle that
22 ever existed. Certainly it was a key development in
23 the technology, but I don't think you could make the
24 argument that if the K98 had never existed that the
25 bolt-action would never have been invented. I think

1 that's a false claim.

2 **Q.** Okay. Well, we'll move on. I'm almost finished here.

3 I noticed in paragraph 77 of your affidavit when
4 you explained the goal and the various forms of sport
5 shooting that you left out distance shooting. And I
6 thought that distance shooting was a big part of
7 certain sport shooting competitions, such as the DCRA
8 Class F competitions at 300, 400, and 900 metre ranges?

9 **A.** Go ahead.

10 **Q.** Sorry. I was just wondering, in your opinion, would
11 the 10,000 joule limit affect those competitions as
12 well as the sports rifle?

13 **A.** First of all, I don't see how the language in
14 paragraph 77 of my affidavit removes distance shooting
15 as an option because I'm talking about shooting at
16 conventional paper targets or electronic scoring
17 targets, both of which could be done in a distance
18 shooting context. So I don't see that as being
19 concluded there.

20 **Q.** Okay. So just -- it wasn't specifically mentioned, but
21 you're right. You still shoot at targets
22 conventionally. And, I mean, in 78 of your affidavit,
23 or, actually, no. Sorry. Not 78. In 83 you said:
24 (as read)

25 "Broadly speaking, the only sport

1 shooting competitions of the DCRA that
2 are affected by the regulation are the
3 ones that involve the service rifle
4 component."

5 So I was just wondering if the DCRA F Class distance
6 shooting competition has also been affected by the
7 regulation, considering the 10,000 joule limit?

8 **A.** If anyone is using 50 calibre firearms for that
9 competition, it could potentially affect it, but I'm
10 not aware of that being the case.

11 **Q.** Well, I noticed in the regulation in section (z.068) to
12 (z.074), the regulation prohibited all the -- a lot of
13 the McMillan family of firearms, which are, like, world
14 renowned for their long distance and their accuracy.
15 So there are several sport shooters that prefer to use
16 those firearms that were prohibited by the regulation
17 for distance shooting. So it's not only the service
18 rifle competition at the DCRA that was affected?

19 **A.** It's possible. I don't think so. I don't think
20 shooters were using high energy calibres in that
21 particular competition, but that's subject to being
22 verified.

23 **Q.** Okay.

24 **A.** As for the McMillan firearms that you had mentioned, in
25 chambered for 50 calibre BMG, those were as much a

1 military firearm as they were anything else. There are
2 certain people who repurpose them for long-range target
3 shooting or long-range hunting.

4 **Q.** So in paragraph 83 of your affidavit when you said the
5 only individuals truly affected are the civilians
6 competing with civilians versions of military or law
7 enforcement service weapons, just to clarify, you meant
8 the only individuals competing at the DCRA that were
9 affected? Or in Canada?

10 **A.** Yes. We're talking about DCRA there.

11 **Q.** Okay. So that part when you said you read the -- you
12 said you read the affidavits of Matthew Hipwell --
13 yeah. So you said you read the affidavit of Matthew
14 Hipwell, and this response in section 83 of your
15 affidavit was a direct response to the claims in his
16 affidavit about the DCRA competitions?

17 **A.** The claims in those affidavits were that the success of
18 the training of the Canadian Armed Forces and the
19 success of the training of the police across the
20 country all depended critically on civilian
21 participation in the DCRA annual shoot. That's what
22 I'm disagreeing with, and that's what those paragraphs
23 are dealing with, primarily.

24 **Q.** Okay. So you chose not to address the parts in
25 Mr. Hipwell's affidavit where he says: (as read)

1 "Civilian practice opportunities ensure
2 that RCMP members have the necessary
3 training that is required during
4 service."

5 I noticed when you were speaking, I think, to
6 Mr. Bouchelev last week you said that the military and
7 the police are not affected because they are allowed to
8 possess prohibited weapons -- prohibited firearms,
9 still.

10 Now, that's not in question, that while they're on
11 duty they're allowed to possess those but they have to
12 sign them out and use them -- in the military, only sign
13 them, out use them at the range and put them back. So
14 this has, effectively, eliminated their ability to
15 practice outside of the very short period of time that
16 they are given on duty.

17 So Mr. Hipwell says in paragraph 93 of his
18 affidavit that the regulation prevents off-duty
19 practice. This is true. And do you agree that this
20 regulation preventing officers and military people from
21 practicing off duty puts Canadian lives at risk? Do you
22 agree or disagree with that?

23 **A.** I don't think it's relevant. I mean, if off-duty
24 training were essential to the military then everyone
25 in the military would be required to do it as opposed

1 to just the people who feel like it.

2 So I don't see how you can make the activity
3 voluntary as a recreational activity and say it's core
4 and critical to military training if not everyone in
5 the military is required to do it to maintain their
6 skill set.

7 **Q.** So do you agree that since your time in the military
8 40 years ago that training methodologies have changed
9 and the time allocated to training has changed and they
10 have faced budget reductions?

11 **A.** That may all be so, but the principle behind what I
12 said before still stands, that if this kind of activity
13 were critical to the success of the training, whatever
14 means they do their training, then all of the military
15 personnel would be required to engage in that;
16 otherwise it doesn't make any sense. The soldiers
17 aren't trained only in the areas they feel like getting
18 trained in. They are trained according to the needs of
19 the organization.

20 **Q.** Right. So have you ever heard of companies called
21 Millbrook Tactical, Reticle Ventures, Agoge Tactical,
22 and Specialist Firearms Training?

23 **A.** No, I don't recognize those names.

24 **Q.** I was just wondering if -- this is going to be tying
25 into the Moncton inquiry about the tragedy of the RCMP

1 officers that were murdered in Moncton that you
2 included in your chart of mass shootings in your last
3 page of your affidavit.

4 And there were several inquiries into this
5 shooting, and, basically, what they saw was that the
6 RCMP have identified gaps in their arming of RCMP
7 officers. Those officers that were killed in Moncton
8 were only armed with their service pistols. And the
9 outcome of these inquiries was, A, to arm RCMP officers
10 with service carbines and, B, to ensure that they
11 received the training that they needed.

12 Now, it's my understanding that after these
13 inquiries, programs were developed and money was spent
14 by the RCMP in order to develop job applications for
15 Emergency Response Team in which professional sport
16 shooters engaged in training the RCMP so that they
17 could, basically, stay safe.

18 Have you heard anything about this?

19 **A.** Well, I would agree with you that the RCMP embarked on
20 a program to ensure that the RCMP members were armed
21 with patrol carbines, where required. And that the
22 individuals who were assigned to use them, at any time,
23 were -- also went through a training program. I would
24 point out that the training that they got was
25 mandatory. Not just those members of the RCMP who felt

1 like doing it on their off time did it. Everyone who
2 had a requirement got the training.

3 And as for the use of civilian outsiders for
4 training. The RCMP contracts out all kinds of things
5 every year for services of various sorts, so I'm not
6 the least bit surprised that the RCMP would contract
7 out its needs to civilian organizations. So that
8 doesn't -- that's not unusual, in the least.

9 **Q.** Do you agree that the only reason the RCMP would
10 contract out to civilians is because they were unable
11 to meet those needs internally?

12 **A.** I didn't hear anything -- any rationale to that effect.
13 The RCMP has been using rifles for decades, has
14 internal programs for training officers for decades.
15 This is just another rifle with another training
16 program.

17 So the RCMP adapts and puts in the programs that
18 it needs in order to meet its goals.

19 **Q.** Right. And it had a program for civilians to train the
20 RCMP because it needed that. And, actually, we have
21 some documents to state that. We have several
22 affidavits, including Mr. Hipwell, Mr. Overton, game
23 wardens, military and police officers who claim they do
24 not have enough access to these firearms and ammunition
25 through their work environment and, therefore, have

1 purchased their own ammunition to develop, maintain,
2 and enhance their skills. And that the prohibition of
3 these firearms has eliminated their development in this
4 area, which has an effect on Canadians' safety.

5 So do you agree or disagree with those affidavits
6 and those statements?

7 **A.** Well, a bit of both, actually. I agree that the
8 prohibition of the firearms will curtail those
9 voluntary training activities, but I would also say
10 that if those training activities were vitally
11 important, as was suggested, then the RCMP would
12 require it of all officers; not just the ones who feel
13 like doing it when they're off duty.

14 **Q.** Right. So in paragraph 79 of your affidavit, you
15 stated: (as read)

16 "I have previously competed in service
17 rifle competitions as a member of the
18 Armed Forces."

19 And I was wondering what was your best score?

20 **A.** Oh, I don't think I won anything important, but I did
21 compete.

22 **Q.** Okay. In your opinion, how many hours on average would
23 one need to practice in order to achieve excellence in
24 marksmanship?

25 **A.** For target shooting at a national competition level

1 requires considerable investment in time and materials.

2 Q. So five to ten hours per week?

3 A. I don't think there's a fixed amount of time. I think
4 it varies according to the type of sport. So I don't
5 think you can lump together handgun shooting, target
6 rifle shooting, shotgun clay bird shooting as if they
7 were all the same thing. Each of those sports has
8 their own needs.

9 Q. Okay. But specifically for police service carbines, it
10 would have to be considerably more than one hour a
11 month; would it not?

12 A. Well, that's for the training branch of the RCMP to
13 determine. I don't know offhand what the performance
14 standard is, and in order to do -- in order to execute
15 a training program, you must first have a performance
16 standard, and then you build training to achieve it. I
17 don't know what those are from memory.

18 Q. Okay. So do you remember how much you needed to
19 practice to become proficient or --

20 MR. MACKINNON: Ms. Generoux, did you have any
21 more questions left?

22 MS. GENEROUX: Yeah. I've got about -- maybe
23 less than five, six questions left. We can end this in
24 the next, hopefully, ten minutes.

25 Q. Okay. Well, we're just going to move on now. And --

1 okay.

2 Now, I would like you -- I'm on the last page of
3 your affidavit now, and I would like you to check out
4 my screen. I'm going to try to share this with you.
5 Sorry, bear with me. There we go.

6 Okay. So the first thing I'm going to share with
7 you is going to be homicide of police officers from
8 Stats Can. So hopefully you can see that. I got that
9 from Stats Can. And --

10 **A.** What I've got there is a menu of icons.

11 **Q.** Okay. Oh, the share window is closed. Sorry about
12 this. Let's see. How about that? Can you see that
13 chart? Chart 1, "Homicides against police officers in
14 Canada"?

15 **A.** Yes, I see the chart.

16 **Q.** Okay. So I just wanted us to consider for a moment
17 that Statistics Canada shows the homicide of police
18 officers in the line of duty, and it shows the total
19 police officers -- I have it in a second document here.
20 Okay. It's not functioning. Apologies. There we go.

21 Can you see that there?

22 **A.** The chart is -- needs to be scrolled up.

23 **Q.** Right. Just the text where it says, "Between 1961 and
24 2009, 133 police officers were murdered in the line of
25 duty." Can you see that?

1 **A.** Okay. That's what the documents says. Yes.

2 **Q.** Yeah. So, you know, I'm not a mathematician or
3 anything, but I did the math on that. So out of 133
4 officers killed in 48 years, that works out to an
5 average to 2.77 per year from 1961 to 2009.

6 So, on average, 2.77 officers per year lose their
7 lives in the line of duty. Now, some years it's none;
8 some years it's many, but the point is it's less than 3
9 per year.

10 Now, I would like to show you another small
11 comparison that I have, and what I'm going to propose
12 is that this here is the Wikipedia list of killings by
13 police officers, by law enforcement officers in Canada.
14 Can you see that, sir?

15 **A.** Yeah, I can see that.

16 **Q.** Okay. So I did the math on that, and it shows
17 461 fatal police encounters in 17 years. So that works
18 out to 27 per year. So ten times as many citizens are
19 killed in police encounters than police are killed in
20 citizen encounters.

21 And I also did the math in your mass shooting
22 chart that you put to us on the last page of your
23 affidavit in paragraphs 84 and 85 of the mass shooting
24 chart, and, in those years, 27 -- in 27 years,
25 25 people were killed by those shootings done by

1 licensees. Now, that's, on average, 0.925 per year.
2 We do not have data. Stats Can does not collect data
3 on how many of the killings of citizens by police were
4 justified or unjustified, but I would like to point out
5 that even if 5 percent of those killings were
6 unjustified, it's still far higher than citizens killed
7 by licensees in your chart.

8 But I hope that we can all agree that the good
9 done by police far outweighs the bad; would you agree?

10 **A.** The statistics you showed me are interesting, and I
11 have no reason to dispute them, but they all deal with
12 disparate issues. I don't see how you can draw a
13 connection between any of them.

14 **Q.** Well, it's pretty simple. There's people being killed.
15 We do not have numbers on justified or unjustified
16 shootings of citizens by police. But my point is 2.77
17 police are killed in citizen encounters every year;
18 27 citizens are killed in police encounters every year;
19 and less than one citizen is killed in licensee
20 encounters every year in your chart that you have put
21 forward. And I would like to know if you agree that
22 the good done by police outweighs the bad?

23 **MR. MACKINNON:** He's not here to give some
24 weighing of good against not good, so he's not going to
25 answer that question.

1 **Q.** MS. GENEROUX: Okay. That's fine. You don't
2 need to answer it.

3 At paragraph 84 of your affidavit, you give
4 examples of semi-automatic centre-fire rifles which
5 have been used in mass shootings in Canada.

6 Now, you've said in the cross-examination just
7 recently that ended with Arkadi that you're using the
8 US definition of four or more dead in mass shootings.
9 So, sir, why did you include Moncton, Parti Quebecois
10 and Dawson College shooting? They would not count, as
11 Parti Quebecois only included one dead and one injured;
12 Moncton included three dead; and Dawson College
13 included one dead and 19 injured. So why did you say
14 you were using the US of four or more dead? US
15 definition of mass shootings?

16 **A.** Yes. I believe I misspoke there. We're -- I'm not
17 using that definition. I was using the US definition
18 in the context of the worldwide statistics, but the
19 Canada statistics don't match that, as you correctly
20 pointed out.

21 **Q.** Okay. So did you have a certain criteria for the mass
22 shootings that you selected for this chart or -- other
23 than the -- of course, the firearms that were
24 prohibited by virtue of the regulations?

25 **A.** Well, these were -- these are simply factual reports of

1 shootings where there were many causalities or
2 potential casualties which were widely reported by the
3 media and, in Canada, referred to as "mass shootings."

4 **Q.** So the fact that they were done by people with firearms
5 licences was not part of your selection criteria?

6 **A.** No. Some of the perpetrators had firearms licences;
7 some did not. That wasn't a factor in selecting
8 anything.

9 **Q.** Every single one of these mass shootings was done by a
10 licensee except Moncton; the person's firearms license
11 was expired. So you are telling me right now that it's
12 just a coincidence that these five shootings that you
13 included in your chart were done by licensees and you
14 did not select them based on that criteria?

15 MR. MACKINNON: Ms. Generoux, you're putting a
16 fact to him to which there's no evidence filed.

17 MS. GENEROUX: Okay. All right. Well, I mean,
18 he said he was familiar with mass shootings in Canada,
19 so I think anybody would be familiar that these are
20 just about every example of any mass shooting done by
21 licensees, but we can move on. I'm on my last few
22 questions.

23 **Q.** I noticed that Nova Scotia arsonist and shooter Gabriel
24 Wartman was left out of the chart that you selected,
25 although his actions were the one primarily used when

1 enacting the OIC as a reason for the ban. Why did you
2 choose not to include Mr. Wartman?

3 **A.** The firearms that were used in that particular shooting
4 had not been officially determined at the time that
5 chart was produced.

6 **Q.** Okay. So, for example, in Moncton, Justin Bourque, he
7 carried a M305 .308 semi-automatic rifle, and you name
8 it as an M14.

9 There was media reports -- which I have here, if
10 you would like to seem them -- that said he was
11 carrying a Mossberg 500 12 gauge shotgun, as well,
12 during the shootings, but I notice you left that out of
13 your chart. Were you aware that he was carrying a
14 Mossberg 500?

15 **A.** I believe there is a -- there was a shotgun carried,
16 and I believe it was, in fact, a Mossberg.

17 **Q.** Okay.

18 **A.** I don't think it figured in the shooting, though.

19 **Q.** Okay. So, let's see. Would you like to venture a
20 guess of what else these people had in common other
21 than the fact that they were licensees and they were
22 carrying firearms now prohibited by the virtue of the
23 regulation?

24 MR. MACKINNON: Okay. Ms. Generoux, again, you're
25 putting in evidence -- in the question for which

1 there's no evidence on the record.

2 MS. GENEROUX: Well, he selected them based,
3 potentially, at random, except for the fact that they
4 were carrying firearms prohibited by virtue of the
5 regulation, he said.

6 So I was wondering, since he says he studies and,
7 you know, is interested in mass shootings and in
8 firearms used in those mass shootings in Canada, I was
9 wondering if he was aware of anything else that the
10 five murderers had in common?

11 A. No. Because the point of the paragraph was to discuss
12 the firearms; not the individual perpetrators.

13 Q. So the point of the paragraph was to discuss the
14 firearms? Why?

15 A. The point of the paragraph was to give examples of --
16 exactly what it says in para 84 simply. It says simply
17 examples of semi-automatic centre-fire firearms that
18 have been used in mass shootings in Canada.

19 So there's no claim that the list follows a
20 particular theme or is exhaustive or not. It's simply
21 what it says. They are examples of firearms that were
22 used in mass shootings.

23 Q. I just don't see the relevance at all. Like, do you
24 remember the Toronto van attack of 2018? Like, I mean,
25 do you think that tragedy could be addressed with

1 stricter regulations prohibiting vans? I don't
2 understand the point of including those shootings in
3 your affidavit, if not to say that that would eliminate
4 their motive means an opportunity to kill.

5 MR. MACKINNON: I think he's answered the
6 question. He's giving you examples. And I guess we'll
7 make legal submissions concerning the relevance.

8 MS. GENEROUX: Okay.

9 Q. Well, so under your Notable Milestones in your CV, you
10 say that you were a member of the Canadian delegation
11 representing Canada at the United Nations for several
12 years, the UN Plan of Action on Small Arms and Light
13 Weapons in '03, '05, '06, '08, 2010, 2018, and ongoing.

14 So we were wondering who pays for your expenses to
15 attend the UN conferences?

16 A. The sound broke up. Could you repeat the last
17 sentence.

18 Q. We were just wondering who pays the expenses for you to
19 travel to the UN conferences?

20 A. I was a member of the Canadian delegation, so the --
21 all of the expenses were funded by the Canadian
22 government.

23 Q. So since you've attended so many of the meetings, are
24 you familiar with the UN Office of Disarmament agenda?

25 A. In general, but that's not the reason I went to the UN.

1 I was a member of the Canadian delegations that were
2 negotiating instruments that were of specific interest
3 to Canada and then to the RCMP.

4 Q. Right. Like the Arms Trade Treaty, the Tracing
5 Instruments, and the UN Plan of Action on Small Arms
6 and Light Weapons, correct?

7 A. Correct. Those are examples. That's not a complete,
8 but --

9 Q. Right.

10 A. -- yes, that's the tone.

11 Q. So are you aware that the UN Plan of Action on Small
12 Arms and Light Weapons is insisting that the lawful
13 civilian possession of small arms is more dangerous
14 than government possession of small arms and must be
15 tightly controlled or banned? Are you aware that they
16 say that?

17 A. I believe that is found in the UN documents, yes. And
18 to the best of my knowledge, those are based on UN
19 studies, comparative studies.

20 Q. Are you aware that that allegation is historically
21 grossly incorrect?

22 MR. MACKINNON: Okay --

23 A. Maybe it is; maybe it's not. I don't -- I didn't write
24 the study, so --

25 Q. MS. GENEROUX: Okay. Are you aware that the UN

1 Plan of Action on Small Arms and Light Weapons says
2 that countries must stop manufacturing firearms and
3 ammunition, must destroy their existing stockpiles
4 because they've overestimated their security concerns,
5 and -- did you know that they say that we must do that?

6 MR. MACKINNON: Ms. Generoux, the line of
7 questioning, it's hard for me to see the relevance of
8 those questions, and I -- you've mentioned about 15 or
9 20 minutes ago you would be done by now.

10 MS. GENEROUX: Yeah. I'm on my last couple of
11 questions, Mr. MacKinnon. They're extremely relevant
12 considering he's signed an Expert Witness Code of
13 Conduct and that he has a list of UN meetings that he's
14 attended, you know, including -- they're highly
15 relevant because they're contained in my affidavit as a
16 major concern. That and it does speak to his
17 impartiality here.

18 Q. Mr. Smith, are you aware that the UN says that it's
19 illogical to own firearms for self-defence or to retain
20 lawful control of a situation?

21 A. Perhaps they do. I haven't seen the document or the
22 context in which that is used, so I can't really
23 comment on it.

24 Q. Okay. Are you aware the UN states that countries must
25 require proof of or a need for a particular firearm,

1 and that's self-defence, sport shooting, and
2 collecting, and in some cases, hunting is not a
3 legitimate need?

4 **A.** Again, without seeing the document that that comes
5 from -- the UN is a large organization with 182 or more
6 member countries. Some UN documents are simply
7 position papers put there by various governments. Some
8 are authored by the UN secretariat.

9 Without knowing the context of the document, I
10 can't agree or disagree with you as to whether those
11 statements actually represent the position of the
12 United Nations.

13 **Q.** Oh, they do. They're actually filed as exhibits in my
14 affidavit, and I was just wondering if you were aware
15 that they take that position; not if they're true or
16 not. I already have the documents.

17 But I was just wondering if you personally are
18 aware, like, for example, that the UN has mandated that
19 governments must engage and fund civil society groups,
20 such as the Coalition for Gun Control, to further the
21 disarmament agenda? And if you are aware --

22 **A.** Again, without knowing the context of that document, I
23 really can't comment on it. My participation in the UN
24 was specifically related to the negotiation of
25 treaties, which furthered the interests of police

1 around the world in terms of tracing and tracking
2 firearms, primarily.

3 Q. Okay. So you can't confirm that you were aware of any
4 of these positions of the UN for sure?

5 A. They weren't relevant to me then, and they're not
6 relevant to me now; especially without context.

7 Q. Okay. Canada did sign some of these treaties that do
8 dictate this, so I would say it is highly relevant;
9 especially to you.

10 Have you ever heard of the doctrine of the duty of
11 care, Mr. Smith?

12 MR. MACKINNON: Ms. Generoux, we are getting a
13 little bit off topic, and he's answered your questions.
14 If you want to -- I'm sure you'll have legal
15 submissions or relevance for the UN documents, so --

16 MS. GENEROUX: This is highly relevant to
17 Mr. Smith, considering he's a decision-maker that holds
18 my freedom and my property in his hands, and I want to
19 know if he's heard of the doctrine of the duty of care.

20 Q. Have you heard of it Mr. Smith?

21 A. What doctrine? And duty of care for what? It's --

22 Q. For you as a person in a position of power, you should
23 have heard of something called the duty of care. It
24 basically dictates that with great power comes great
25 responsibility, and I wanted to know if you have heard

1 of that?

2 MR. MACKINNON: Okay. Ms. Generoux, he's not
3 going to answer questions that concern legal concepts,
4 here.

5 MS. GENEROUX: Okay. So refusal to answer.

6 OBJECTION TAKEN to answering the question: For you as a
7 person in a position of power, you should have heard of
8 something called the duty of care. It basically
9 dictates that with great power comes great
10 responsibility, and I wanted to know if you have had
11 heard of that?

12 Q. MS. GENEROUX: Last couple of questions. How
13 many years have you known Crown Counsel MacKinnon?

14 A. I don't know.

15 MR. MACKINNON: Less than one.

16 A. Six weeks, eight weeks, maybe.

17 Q. MS. GENEROUX: So less than one year?

18 A. Yes.

19 MS. GENEROUX: Okay. No further questions. I
20 guess I'll pass it along to JSS to start with the
21 cross-examination of Ms. Deschamps.

22 MR. MACKINNON: Okay. Why don't we do two things.
23 One is can you tell me which documents that you put to
24 him that you want to make an exhibit?

25 MS. GENEROUX: Okay. The pictures of the C8, the

1 chart of the SKS and the SLR-Multi, my Exhibit G in my
2 affidavit, my Exhibit Y2 in my affidavit, RCMP --
3 screen shot of RCMP phone call wait times, Stats Can
4 homicide of police officers, Stats Can Internet use in
5 Canada, and Wikipedia fatal police shootings. And I
6 think that will just about do it. I don't need to use
7 the other documents.

8 MR. MACKINNON: Okay. So the ones that are
9 attached to your exhibit that you've filed in this
10 injunction motion, right?

11 MS. GENEROUX: Right.

12 MR. MACKINNON: I don't have a problem with you
13 putting them in as an exhibit because it's an exhibit
14 to your affidavit.

15 MS. GENEROUX: Sure.

16 MR. MACKINNON: The other ones, I'm content to
17 have them put in for identification because there's no
18 evidence as to their authenticity.

19 MS. GENEROUX: Okay. So I'll send them to the
20 reporter, and we'll have them marked as exhibits for
21 identification.

22 (DISCUSSION OFF THE RECORD)

23 MS. GENEROUX: So Exhibit 1, I believe, was the
24 Stats Can internet usage.

25 MR. MACKINNON: So that would be identification.

1 EXHIBIT D FOR IDENTIFICATION - Stats

2 Can internet usage

3 MS. GENEROUX: Exhibit 2 that I would like marked
4 is the RCMP wait times, a screenshot of their phone
5 call wait times.

6 MR. MACKINNON: So, again, these two exhibits are
7 filed for identification.

8 MS. GENEROUX: Okay.

9 EXHIBIT E FOR IDENTIFICATION -
10 Screenshot of RCMP phone call wait
11 times

12 MS. GENEROUX: And Exhibit 3 is going to be the
13 picture of the C8 RCMP police carbine.

14 MR. MACKINNON: Again, for identification.

15 MS. GENEROUX: Okay.

16 EXHIBIT F FOR IDENTIFICATION - Picture
17 of C8 RCMP police carbine

18 MS. GENEROUX: Exhibit 4 is going to be the chart
19 that I have made up. I call it the "Chart of
20 arbitrary," I believe.

21 MR. MACKINNON: All right. That's, again, for
22 identification.

23 MS. GENEROUX: Okay.

24 EXHIBIT G FOR IDENTIFICATION - Chart of
25 Arbitrary created by Ms. Generoux

1 MS. GENEROUX: Now, what are we on. That's
2 Exhibit 4. Exhibit 5 is -- oh, yeah. Okay. Exhibit G
3 of my affidavit, the statement by Justin Trudeau on the
4 purpose of the firearms.

5 MR. MACKINNON: Okay. Well, that can be an --
6 since it's attached to your affidavit, that doesn't
7 have to be for identification. It's an exhibit.

8 MS. GENEROUX: Okay.
9 EXHIBIT 2 - Exhibit G to Ms. Generoux's
10 affidavit, statement by Justin Trudeau
11 on the purpose of the firearms

12 MS. GENEROUX: And the other exhibit that will
13 not have to be for identification is Exhibit Y2 to my
14 affidavit, the ATIP request from 2018.

15 MR. MACKINNON: That's fine.

16 MS. GENEROUX: Okay.
17 EXHIBIT 3 - Exhibit Y2 to
18 Ms. Generoux's affidavit, ATIP request
19 from 2018

20 MS. GENEROUX: And then the last couple is the
21 Stats Can screenshots homicide of police officers 1 and
22 2. So I guess you'll mark that for identification, and
23 so that would be Exhibit...

24 MR. MACKINNON: Well, they do them in As and Bs,
25 so she'll know what to do.

1 MS. GENEROUX: Okay. So Stats Can homicide of
2 police officer A and B.

3 MR. MACKINNON: Yes, for identification.

4 EXHIBIT H FOR IDENTIFICATION - Stats
5 Can homicide of police officer A

6 EXHIBIT I FOR IDENTIFICATION - Stats
7 Can homicide of police officer B

8 MS. GENEROUX: And there is two more. The
9 Twitter shot of Commissioner Paulson arrives at Moncton
10 courthouse, the screenshot of the Twitter feed from the
11 Moncton shooting of the RCMP officers.

12 MR. MACKINNON: Sorry, no. That wasn't put to
13 him.

14 MS. GENEROUX: Oh, okay. Then I guess we'll just
15 go to the last one, which is the Wikipedia fatal police
16 shootings -- list of fatal police shootings.

17 MR. MACKINNON: Okay. For identification.

18 MS. GENEROUX: Yeah.

19 EXHIBIT J FOR IDENTIFICATION -
20 Wikipedia list of fatal police
21 shootings

22 MS. GENEROUX: And I believe that's it.

23 MR. MACKINNON: All right. If we could take two
24 minutes. Because from all those three
25 cross-examinations, I have a couple of questions for

1 re-exam, but I just want to have a brief chat with
2 counsel for a second in the absence of the witness.

3 (ADJOURNMENT)

4 MR. MACKINNON QUESTIONS THE WITNESS:

5 Q. I just have a few re-examination questions.

6 You were asked regarding the annual salary that
7 you are being paid currently as a consultant; do you
8 recall that?

9 A. Yes.

10 Q. Just to clarify, how does that compare to your annual
11 salary before you became a consultant? That is, as an
12 employee?

13 A. Oh, it's substantially less now.

14 Q. The amount that you're being paid now?

15 A. The amount I'm being paid now is substantially less
16 than I was when I was manager of Specialized Firearm
17 Support Services.

18 Q. On an annual basis?

19 A. On an annual basis.

20 Q. All right. Over a number of days, you were asked a
21 number of questions on named variants and unnamed
22 variants, but just to clarify, what is the estimation
23 of the number of named and unnamed? Is there a
24 percentage? Or which is more?

25 A. Well, by far the number of named variants is larger.

1 There's -- there are approximately 1,500 individual
2 firearms named in the regulatory text. Now, not all of
3 them dealt with the nine families, so on the order of
4 1000, 1100 we're dealing with the nine families.

5 For the ones that were added after May 1st as
6 unnamed variants, there is a total of about 180 for
7 both the nine families and the two categories.

8 Looking at the nine families exclusively, there
9 was around 80 added. So 80 versus, you know, 100 --
10 pardon me. Versus 1000. So I'm looking at less than
11 10 percent being added after May 1st.

12 **Q.** So in terms of percentages, what percentage would make
13 up named variants, and what percentage would make up
14 unnamed variants, in general?

15 **A.** In very general terms, it's about a 90/10 split. So
16 90 percent named variants; 10 percent unnamed.

17 **Q.** Okay. You were asked questions and gave instances that
18 you were qualified as an expert, and in a number of
19 cases, you spoke about civil and criminal cases. Have
20 you ever been qualified as an expert before any
21 administrative tribunal, such as the CITT? And if so,
22 in what area or areas?

23 **MR. BOUCHELEV:** I'm going to object to this
24 question. It doesn't specifically arise out of any
25 question that was asked on cross-examination. There

1 was no discussion of any administrative tribunal
2 hearings, so that is not a proper re-examination
3 question.

4 MR. MACKINNON: Okay. Well, you had,
5 Mr. Bouchelev, asked him about a number of the civil
6 and criminal cases leaving it vague as to whether he
7 was qualified anywhere else. So I'm asking him if he
8 has been qualified anywhere else besides those.

9 MR. BOUCHELEV: I don't -- well, actually, we have
10 the transcript. Maybe you can show me in the
11 transcript where I've asked that question. Because I
12 don't believe that I specifically asked him if he was
13 qualified anywhere else.

14 MR. MACKINNON: Sorry, how do you have the
15 transcript and we don't?

16 MR. BOUCHELEV: My understanding is that -- I'm
17 not sure why you don't.

18 MR. MACKINNON: Okay. Well, you can address that
19 later.

20 MR. BOUCHELEV: Yeah.

21 MR. MACKINNON: But, anyways, it arose out of a
22 question you asked about his civil and criminal cases,
23 and so it left open the question, vaguely, as to other
24 areas in which he has testified; that's all.

25 MR. BOUCHELEV: Right. But, of course, if you ask

1 that question, then, you know -- I never had a chance
2 to cross-examine him on any other, you know, areas
3 where he may have given --

4 MR. MACKINNON: All right. I'll leave it. It's
5 not that important.

6 MR. BOUCHELEV: Okay.

7 OBJECTION TAKEN to answering the question: You were asked
8 questions and gave instances that you were qualified as
9 an expert, and in a number of cases, you spoke about
10 civil and criminal cases. Have you ever been qualified
11 as an expert before any administrative tribunal, such
12 as the CITT? And if so, in what area or areas?

13 Q. MR. MACKINNON: You were taken to a statement by
14 Minister Blaney in which he was referring to a mistake
15 in some Parliamentary transcript; do you recall that?

16 A. Yes, I do.

17 Q. You said you were aware of that statement; do you
18 recall that?

19 A. Yes.

20 Q. And was there a mistake?

21 A. In my view, no. The -- this had to do with the
22 redetermination of the classification of the Swiss Arms
23 and -- Classic Green Series and the CZ-858 tactical
24 series of firearms, and -- in which it was alleged that
25 there was a mistake made in the classification when

1 they were determined to be prohibited in 2014. It was
2 described as a mistake. That's simply not the case.
3 That was the correct classification at that time, and
4 it took an act of Parliament and an issuance of
5 regulations to change the legal classification to get a
6 different outcome.

7 **Q.** Okay. You were asked about the number of registered
8 owners in Canada, firearms owners in Canada, and you
9 answered about 2.2 million. Remember that?

10 **A.** I think I used that term in a number of places. There
11 are 2.2 million licensed firearms owners in Canada at
12 present.

13 **Q.** Okay. But it was unclear, how many of those who own
14 the guns are affected by the prohibitions in this
15 regulation that's at issue here?

16 **A.** Because many of the firearms were non-restricted before
17 they became prohibited, I cannot give an exact answer
18 because there is no statistics available for the number
19 of non-restricted firearms.

20 However, for the ones that were formally
21 restricted, such as the AR-15s, there are about 90,000
22 of those. And we estimate based on the data sources
23 available to us, that there's maybe another 40,000
24 firearms that were non-restricted previously.

25 So the percentage of owners, even assuming the

1 maximum case of one firearm to one owner, the number of
2 owners affected by the regulations is around the order
3 of 5 percent of the population of firearms owners.

4 **Q.** Okay. And my last question --

5 **MR. BOUCHELEV:** No. Mr. MacKinnon, sorry, I have
6 to interject here because we have an issue. This is
7 exactly what I anticipated might happen.

8 So you're asking questions on reply, and then the
9 witness goes into areas that he was never
10 cross-examined on. He mentioned evidence such as some
11 kind of a data source that he never mentioned during
12 his cross-examination in chief -- or I should say
13 during his main cross-examination.

14 So, I mean, how is that admissible? How can that
15 evidence go in and we -- you know, us not being able to
16 ask Mr. Smith as to what data source he is referring
17 to? And if he will agree to provide us with a copy of
18 that data source?

19 **MR. MACKINNON:** Do you want to answer -- okay.

20 This is proper re-examination because I was just
21 clarifying how many were, and you gave a number of
22 about 90,000. So do you want to answer a question on
23 whatever this data source is?

24 **A.** Sure. For the firearms that were previously
25 restricted, the data source is the Canadian Firearms

1 Information System, which is the database that includes
2 the Firearms Registry. And then for an estimate of the
3 number of non-restricted firearms that became
4 prohibited, that was based on the fact that all
5 firearms were registered prior to 2012, and there was
6 an access to information protocol released in 2012 just
7 before the registry was expired by Parliament. That is
8 still active and alive and preserved by the media
9 organization that made the ATIP request.

10 And so that database was used -- and it's publicly
11 available. That database was used as a data source
12 with an estimate on the growth from 2012 to present.

13 MR. BOUCHELEV: Okay. So that wouldn't include
14 any firearms that were acquired after 2012, correct?

15 **A.** We don't know the number because there were no records
16 kept after 2012. We can estimate, but we can't come up
17 with an exact number.

18 For the ones up to 2012, there would be an exact
19 number based on the ATIP of the registration database
20 as it existed then.

21 MR. BOUCHELEV: But after 2012, so in the last
22 eight years, you would have absolutely no information
23 as to how many Canadian owners purchased these types of
24 firearms in that eight-year period and are, therefore,
25 affected by the new regulation, correct?

1 **A.** That's correct. And that's why I use the word estimate
2 rather than measurement.

3 MR. BOUCHELEV: Okay.

4 **Q.** MR. MACKINNON: Okay. So my last question, you
5 were asked a number of questions about the RCMP Oath of
6 Secrecy, or any other oath.

7 So my question, to clarify, is has -- and you said
8 that you didn't have to swear an oath as a consultant?

9 **A.** No.

10 **Q.** Has the RCMP Oath of Secrecy, or any other oath,
11 prevented you from disclosing any information in
12 cross-examination or in your affidavit, apart from the
13 claims for cabinet confidence that have been made?

14 **A.** No. The Oath has had no impact on my testimony
15 whatsoever.

16 **Q.** And has it prevented you from telling the truth in this
17 proceeding?

18 **A.** No.

19 MR. MACKINNON: Okay. Those are all of my
20 redirect questions, so we can finish with Mr. Smith.
21 Thank you.

22 _____
23 (Proceedings ended at 3:52 p.m. MT)
24 _____
25

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 361 to 613 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 12th day of November, 2020.

A handwritten signature in black ink, appearing to read 'Melinda M. Heinrichs', is centered on the page. The signature is written in a cursive style and is set against a light, textured background.

Melinda M. Heinrichs, CSR(A)

Official Court Reporter

- I N D E X -

MURRAY SMITH

November 5, 2020

The following is a listing of exhibits, undertakings and objections as interpreted by the Court Reporter.

The transcript is the official record, and the index is provided as a courtesy only. It is recommended that the reader refer to the appropriate transcript pages to ensure completeness and accuracy.

EXHIBITS

EXHIBIT D FOR IDENTIFICATION - Stats Can internet usage 603

EXHIBIT E FOR IDENTIFICATION - Screenshot of RCMP phone call wait times 603

EXHIBIT F FOR IDENTIFICATION - Picture of C8 RCMP police carbine 603

EXHIBIT G FOR IDENTIFICATION - Chart of Arbitrary created by Ms. Generoux 603

1	EXHIBIT 2 - Exhibit G to Ms. Generoux's affidavit,	604
2	statement by Justin Trudeau on the purpose of the	
3	firearms	
4		
5	EXHIBIT 3 - Exhibit Y2 to Ms. Generoux's	604
6	affidavit, ATIP request from 2018	
7		
8	EXHIBIT H FOR IDENTIFICATION - Stats Can homicide	605
9	of police officer A	
10		
11	EXHIBIT I FOR IDENTIFICATION - Stats Can homicide	605
12	of police officer B	
13		
14	EXHIBIT J FOR IDENTIFICATION - Wikipedia list of	605
15	fatal police shootings	
16		
17	***UNDERTAKINGS REQUESTED***	
18	UNDERTAKING NO. 5 - To check for and provide any	370
19	communications between RCMP staff and the	
20	manufacturer of the Typhoon Defence F12 - REFUSED	
21		
22	UNDERTAKING NO. 6 - To advise where on the Alberta	448
23	Tactical Rifle Supply website the Modern Hunter is	
24	marketed as a member of the AR family - REFUSED	
25		

OBJECTIONS

OBJECTION TAKEN to answering the question: So 372
sitting here today, is it correct that you do not
know, one way or the other, whether any
distributor or retailer promotes this particular
shotgun as an AR variant?

OBJECTION TAKEN to answering the question: Do you 385
agree with me that you had involvement in the
creation of the list of guns that were banned on
May 1st, 2020; yes or no?

OBJECTION TAKEN to entering the Shooting Times 428
article found attached to Travis Bader's affidavit
as an exhibit or attaching it to the transcript of
Mr. Smith's cross-examination

OBJECTION TAKEN to answering the question: Well, 447
Mr. Smith, do you degree with me that this is the
Alberta Tactical Rifle Supply website?

1 OBJECTION TAKEN to answering the question: You 459
2 would agree with me that in a practical sense,
3 there is nothing about the design of the AR-10 and
4 the AR-15 rifles that would make them unsuitable
5 for hunting use?

6
7 OBJECTION TAKEN to answering the question: So 494
8 that I'm not accused of giving evidence,
9 Mr. Smith, why don't you access it on your
10 computer and share a screen with me so that I can
11 follow along?

12
13 OBJECTION TAKEN to answering the question: For 601
14 you as a person in a position of power, you should
15 have heard of something called the duty of care.
16 It basically dictates that with great power comes
17 great responsibility, and I wanted to know if you
18 have had heard of that?

1	OBJECTION TAKEN to answering the question: You	609
2	were asked questions and gave instances that you	
3	were qualified as an expert, and in a number of	
4	cases, you spoke about civil and criminal cases.	
5	Have you ever been qualified as an expert before	
6	any administrative tribunal, such as the CITT?	
7	And if so, in what area or areas?	
8		
9	MS. GENEROUX QUESTIONS THE WITNESS	500
10		
11	MR. MACKINNON QUESTIONS THE WITNESS	606
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

<u>WORD INDEX</u>				
< 0 >	15th 516:16, 17, 25	2.77 590:5, 6 591:16	2M5 363:14	44 392:20, 22 407:3, 5 564:14 565:3
0.925 591:1	167 519:13	200 519:12	< 3 >	447 617:18
03 596:13	1700 363:13	2000 510:6 511:2	3:30 461:19 462:5, 14, 17	448 616:22
05 596:13	180 607:6	2005 407:19 565:6	3:52 613:23	459 618:1
05/05/2020 614:11	182 361:17 599:5	2006 491:17, 18	30 435:8 551:24 559:22	46 396:12
06 596:13	1890s 579:16	2009 589:24 590:5	300 455:19, 21, 23 580:8	460 568:23, 25 569:10, 18
08 596:13	1898 548:1	2010 538:1 539:11 548:24 596:13	304 363:6	461 590:17
< 1 >	18th 387:25	2012 612:5, 6, 12, 14, 16, 18, 21	308 452:22 453:1, 4 455:19 465:13 466:14 472:9, 13, 17 474:10 475:4, 8, 15 476:22 477:5, 8, 10, 18, 23 575:22 576:4 594:7	48 405:4, 7 590:4
1,500 547:5 607:1	1908 568:24	2014 492:11 544:25 610:1	30S 579:8	< 5 >
1:30 462:18, 19	1920 549:6	2015 510:6 511:2 520:21	30-shot 552:8	5.56 452:1, 9, 16
10,000 408:20, 22 409:1, 17 412:20, 21, 25 413:3, 4 415:1 418:20 421:15, 16, 18, 19, 24, 25 428:19 433:14, 21 434:7, 9, 12 568:11, 19, 21 569:2, 9, 24 570:3 580:11 581:7	1961 589:23 590:5	2016 520:21	32 395:7 542:22	5.56x45 451:2, 13, 17
10:37 462:22	1970s 508:24	2018 501:19 521:6 595:24 596:13 604:14, 19 616:6	34 510:24 562:20 563:3	50 364:10 544:18 566:6, 8 570:18 581:8, 25
100 367:3 607:9	1977 487:9, 12, 19	2019 501:20 521:6	35 396:24	500 364:10 421:8, 14 428:17 594:11, 14 619:9
1000 607:4, 10	1978 487:12, 20 539:14	2020 361:22, 24 379:14 381:13 382:5 383:10 384:14 385:6 485:7 510:6 511:2, 19, 22 520:8 521:4 536:18 614:14 615:3 617:11	36 393:25 394:2, 13 395:11 396:4	53 565:19, 20
101,000 519:14	1980s 548:20	222 455:13, 15	361 614:4	54 568:2, 3 569:4, 24
102 471:20, 22, 25 472:18, 21, 25 474:3, 5, 14, 19 478:16 481:3 482:20 572:13 573:25	1989 488:19, 22 489:13 490:8, 14, 24	223 451:1, 12, 16, 25 452:4, 8, 15 453:10, 12, 17, 21, 24 454:6, 8, 12, 15 455:3, 12 465:21 467:2	370 616:18	55 570:7
10-round 551:20	1990s 513:20	22nd 426:24 432:22	372 617:2	57 571:2
10-shot 551:22 552:7	1992 382:6	24/7 514:18, 23, 24	385 617:8	58 566:12 567:14
11:30 462:24	1995 378:20 379:15 382:5	26 545:21 546:12	39 390:22, 24 391:16, 23 392:2	59 408:9, 13 566:12
11:31 463:1	1996 517:12	27 590:18, 24 591:18	40 391:5 489:11 551:24 584:8	< 6 >
110 415:13 416:21 417:20 418:2	1998 538:7	289 533:25 535:22	40,000 610:23	6.1 538:7
1100 607:4	1998-1999 511:2	290 475:11, 14, 20, 23 477:13	400 580:8	601 618:13
12.7 566:9	1999 510:6	297 590:18, 24 591:18	403-266-1744 364:17	603 615:12, 15, 18, 21
12:17 450:16	19th 516:25	298 590:18, 24 591:18	403-571-1520 363:8	604 616:1, 5
12:30 450:19 460:1	1C2 363:7	299 590:18, 24 591:18	40-hour 513:1	605 616:8, 11, 14
12th 614:14	1st 378:20 380:8 381:13 383:10 384:14 385:6 444:13 487:19 502:23 515:16 516:14, 17 524:2, 3, 5 526:20 532:22 535:10 536:17 540:24 549:14 550:15 558:5, 22 561:25 562:5, 7 607:5, 11 617:11	299 533:25 535:22	416-594-1400 363:15	606 619:11
133 589:24 590:3	< 2 >		428 617:13	609 619:1
14th 562:24 563:22	2,000 416:13		43 400:13 401:1 402:11	613 614:4
	2.2 386:12 388:3, 24 512:3 610:9, 11			613-294-5322 363:23
				613-670-6288 364:12
				613-806-0887 363:19
				64 409:11, 12
				65 363:13
				66 414:19

506:8 507:4 69 434:24 435:1 6L2 364:11 < 7 > 7.62 452:23 453:1 455:20 70 436:9, 25 456:9 579:8 700 374:5 414:20, 25 415:6 418:5 518:16, 17 579:9 71 450:24 451:1 522:6 725 579:8 74 463:5, 7 464:6 506:4 538:19 572:2 574:7 742 551:20 75 471:18 482:17 573:24 76 471:22 472:7 482:20 575:21 77 580:3, 14 78 580:22, 23 79 510:25 587:14 7th 562:24 < 8 > 8:08 365:1 80 607:9 800 363:6 83 580:23 582:4, 14 84 487:21, 24 488:4, 9 590:23 592:3 595:16 85 590:23 86 485:6 87 367:16, 18 485:1, 5, 7, 10 486:4, 6, 21 558:6, 7, 19 8th 363:6 < 9 > 90 607:16 90,000 610:21 611:22 90/10 607:15	900 580:8 93 583:17 97 380:20 97-A 518:14, 15 538:11, 17 97-As 537:25 < A > AB 363:7 ability 411:1 469:5 583:14 614:7 abreast 529:25 absence 554:14 606:2 absolute 578:12 absolutely 373:21 496:6 532:17 612:22 AC-556 489:4 accept 368:6, 8 373:24 434:16 469:2 564:11 acceptable 477:24 577:24 accepted 483:7 527:24 542:1 access 416:3, 18, 23 494:8, 17 496:8 518:11 519:9 534:2 553:10 586:24 612:6 618:9 accessible 519:2 accessing 493:21 495:19 accessories 472:24 473:12, 22 474:4 accomplished 422:6 521:2 account 378:25 407:21 543:13 accountable 526:11 accredited 513:10 accuracy 367:3 436:15 581:14 615:9 accurate 386:1 406:9 614:4	accurately 389:14 434:18 565:8 accused 494:7, 16 618:8 achieve 587:23 588:16 acknowledge 454:8 564:12 acquired 540:12 612:14 Act 391:18 499:15 500:2, 7, 9 504:12 506:8 507:11 529:7, 18 536:22 538:10 610:4 acted 577:13 acting 556:25 action 457:12 458:5 466:5, 12 470:7 547:6 558:4 562:7 596:12 597:5, 11 598:1 actions 378:22 555:25 593:25 active 612:8 activists 535:24 activities 568:14 587:9, 10 activity 440:20 584:2, 3, 12 actual 377:8 451:20 524:5 adapt 439:3, 7 449:25 525:22 adapted 510:7 511:3 adapts 527:18 586:17 add 482:4 544:21 added 474:4 562:4 578:2 607:5, 9, 11 adding 555:15 addition 542:24 additional 466:4 address 408:8 459:19 461:22 554:4 582:24 608:18 addressed 392:6, 20 595:25	adequate 437:12 557:11 adjectives 514:2 ADJOURNMENT 419:8 498:13 560:2 606:3 adjudicator 527:11 adjust 430:1 471:5 adjustable 438:15, 18, 21 450:5 471:5 481:8, 14 adjusted 481:12 adjusting 471:8, 15 481:23 Adler 562:1 administrative 525:7 607:21 608:1 609:11 619:6 administratively 502:16 554:7 administrator 517:3 admissibility 424:8 admissible 427:23 611:14 admit 427:4 Adobe 519:6 adopted 395:12 456:13 advance 427:9, 10 advantage 466:25 470:25 471:7 advantages 467:11 advertise 441:23 advertised 368:14 advertising 367:25 370:23 373:18 advice 508:15 advise 366:3 448:13, 16 531:18 616:22 Advisor 510:3, 19, 22 affairs 368:12 529:4	affect 481:18 580:11 581:9 affidavit 361:22 369:24 370:16 372:21 375:6 390:23 391:17 392:7, 14 394:1 396:11 400:14 401:1 403:25 404:9 405:5 407:3 408:9 409:11 414:19 418:16 419:17, 20, 22 424:8, 13, 14, 15, 19 426:24 427:2, 8, 13, 15, 19 428:1, 2, 13 432:23 433:2, 3 434:25 442:20, 23, 25 443:5 450:24 456:7 463:5 471:19 472:7 487:22 488:3, 9 496:22 497:2, 12, 19 502:18 504:3 508:19 510:25 513:2 516:13 525:5 529:9, 12 531:12 534:11, 13, 24 542:22 544:23 545:21 553:17, 20 556:2 560:4 562:20 565:20 570:2 572:3, 25 573:24 577:12 578:3 580:3, 14, 22 582:4, 13, 15, 16, 25 583:18 585:3 587:14 589:3 590:23 592:3 596:3 598:15 599:14 602:2, 14 604:3, 6, 10, 14, 18 613:12 616:1, 6 617:14 affidavits 427:3 495:5 582:12, 17 586:22 587:5 affirm 366:5 affirmed 361:22 366:7 463:2
--	--	---	---	---

aficionados 543:22	11 452:10 453:4, 8, 10, 19 454:15 455:12, 18 456:3, 14, 25 458:6 459:6, 22 462:11, 12 464:22 470:11 477:25 484:7, 14, 23 488:15 491:25 499:23 500:4 502:2, 21 503:8 505:19 520:10 523:13 537:3 543:25 544:15 549:25 552:25 573:4, 17 575:9 577:23 578:14 583:19, 22 584:7 585:19 586:9 587:5, 7 591:8, 9, 21 599:10 611:17 617:9 618:2	allow 516:10 519:8 574:9 allowed 464:11 523:1 583:7, 11 allowing 504:24 516:6 alter 471:16 alternative 472:11 576:10, 21 578:8 alternatives 522:9 536:4 576:17 ambient 365:16 ambiguity 554:2 556:5, 15 571:25 ambiguous 459:11 amenable 550:25 amend 499:13, 24 500:1, 6 amended 379:13 511:23 547:3 amendment 499:10 amendments 535:10 America 453:6 American 440:24 454:3 Amicus 364:16 ammunition 400:5, 7 416:10 429:5, 9, 17 430:2 431:15, 16, 24 432:2 436:12 451:4, 9, 21 452:1 456:8 479:17, 25 480:5, 6, 11 481:22 566:4 571:23 586:24 587:1 598:3 Amnesty 501:11 502:5, 6, 8, 21, 24 511:24 533:1 amount 432:5 435:7 464:24 471:6, 16 473:5 479:15 481:9, 24 530:12	541:2, 6 588:3 606:14, 15 amplified 410:7 Analysis 501:15, 18 546:9, 25 548:4 549:18 552:25 561:6 and/or 365:15 anecdotal 440:11 488:10, 14, 15 animal 436:14, 17 437:13, 22 438:9 465:3 469:3 474:24 478:12 575:9 animals 409:8 468:1 announcement 523:15 540:23 annual 582:21 606:6, 10, 18, 19 annually 545:14 answered 371:18, 20, 25 372:2, 4, 11 373:13 387:3 390:18, 21 392:23 454:24 483:1, 5 492:25 497:12 517:19 556:9, 16 557:24 567:4 575:15 596:5 600:13 610:9 answering 372:14 375:7, 11 376:12, 16 383:13 385:4 424:18 433:1 447:8, 11 448:4 459:22 482:25 494:5, 15 500:21 601:6 609:7 617:2, 8, 18 618:1, 7, 13 619:1 answers 383:23 454:25 531:9 anticipated 611:7 anti-firearm 535:24 antique 548:1	anybody 593:19 anymore 503:6 anyway 569:21 anyways 608:21 AP 380:23 AP-74 380:23 561:17, 22 AP-80 377:12, 17 Apart 489:6 503:6 613:12 Apologies 589:20 apologize 407:23 557:25 appeals 439:5, 9 appear 391:20, 22 397:8, 9 554:4 565:7 appearance 367:20 558:17 APPEARING 363:1 appears 373:18 381:18 apples-to-apples 473:1 Applicant 363:17, 21 Applicants 361:11 362:7, 19 363:3, 10 498:12 572:6, 10 application 456:5 554:8 applications 458:18 585:14 applied 377:5 394:23 applies 396:3 apply 412:19 415:20 452:22 457:7 458:16 500:8, 14 528:5 549:11, 24 550:20, 23 551:6, 7, 21 applying 417:4 539:16 appreciate 499:5 approached 507:22 appropriate 503:23 615:8 approved 538:3
------------------------------	---	---	--	--

<p>approximately 416:5 425:18 490:18 516:19 544:1 545:11, 12 547:4 607:1 AR 367:21, 24 368:3, 7, 15, 16 369:2, 12 370:13, 18 371:4, 16 372:9, 17 373:11 380:25 381:3 444:12, 15 445:11 448:8, 15, 19, 21 449:9 479:3 485:10 515:15 540:10 546:23 616:24 617:6 AR-10 367:5, 24 439:5, 10 440:2 441:6, 20, 23 442:1 444:22 448:23 449:10 459:7, 24 471:23 479:1, 2 481:6 482:21 485:14 486:6 559:3, 7, 11 618:3 AR-15 367:6, 24 368:6, 10 439:5, 10 440:2, 17, 23 441:6, 20, 23 442:1 444:22 446:14, 15 448:24 449:4, 11, 18, 19, 24 450:7 452:12 453:22 454:4, 11 455:2 459:8, 24 471:24 482:21 485:14 486:7 515:23 546:17, 18, 19 558:16, 25 559:1, 2 618:4 AR-15s 610:21 arbitrary 603:20, 25 615:21 area 435:24 469:19 498:15 587:4 607:22 609:12 619:7</p>	<p>areas 556:23 584:17 607:22 608:24 609:2, 12 611:9 619:7 argue 444:5 459:21 461:1 532:2 568:7 argument 387:23 423:8 467:13 573:12 574:25 579:24 arguments 428:6 Arkadi 363:11, 12 531:8 562:2 592:7 arm 585:9 armed 457:5 582:18 585:8, 20 587:18 Armes 432:20 433:15 Armi 377:11 380:23 561:22 arming 585:6 arms 438:24 534:12, 22 535:2 596:12 597:4, 5, 12, 13, 14 598:1 609:22 arose 608:21 arrive 422:2 arrives 605:9 arriving 526:8 arrow 573:10 arsonist 593:23 article 418:15, 21 419:11, 15, 16 420:2, 3, 20 422:5, 12, 16 424:14, 16, 23 425:4, 10, 11, 13 428:12 617:14 ARTS 444:23 AR-type 458:17 463:15 482:12 aside 461:12 asked 371:19 372:12 384:10 387:8 390:7 392:13 407:22 436:22 483:5 491:9 492:25 496:21 497:7, 10 498:17</p>	<p>517:20 552:11 553:8 556:10 567:5 606:6, 20 607:17, 25 608:5, 11, 12, 22 609:7 610:7 613:5 619:2 asking 365:20 366:10 369:7 376:23 379:23 383:7 385:22, 23 386:18 388:1, 2 423:2 424:20 440:1, 19 441:16, 19 443:6 444:1 445:7, 17 447:20 458:21, 24 459:13 473:20 476:16 486:14, 15, 18, 19 494:4 498:1 505:2 508:19 532:6, 11 533:3, 5 550:17 567:22 568:12, 15 608:7 611:8 aspect 572:8 aspects 572:15 assault 377:13 471:24 482:22, 23, 25 483:7, 15, 18, 20, 21, 23 484:6, 7, 15, 21 485:1, 12, 15 486:12, 15, 17, 18, 19, 20, 22, 25 487:8, 15, 16 541:15, 19, 20, 24, 25 542:5, 6, 11, 18 543:20 547:1 558:2 560:13, 16, 22 561:2, 5, 12 568:10 assemble 432:4 assemblies 418:19 assembly 479:4 assent 535:20 assertion 438:2 488:16 asserts 381:17</p>	<p>assess 513:4 524:17 543:14 552:4 assessed 543:13 558:13 assessment 405:9 506:3 526:6 543:1 assigned 585:22 assist 545:5 assisted 382:7, 11 511:16 Association 402:12, 16 assume 386:19 387:4 388:2, 18 495:13 532:7, 10 533:9 547:19 assumes 443:25 assuming 610:25 assumption 385:16 441:14 443:10 495:2 astray 387:19 ATIP 604:14, 18 612:9, 19 616:6 ATRS 444:8, 19 attach 421:4 424:9 428:10 495:21 attached 418:16 424:15 426:1, 4, 8, 14, 18 428:13 602:9 604:6 617:14 attaching 427:23 428:14 617:15 attachment 419:19 attack 465:6 488:13 595:24 attacked 468:4 attempt 553:1 attempting 396:7 attend 596:15 attended 596:23 598:14 Attendees 364:4 attention 438:15 attitude 378:16 ATTORNEY 361:14 362:9,</p>	<p>21 364:1 507:17 555:4 attractive 450:11 audio 365:17, 19, 21 553:14 authenticate 423:6 authenticated 420:16 422:12 423:14 authenticity 419:25 422:16 424:6 602:18 authored 599:8 authoritative 373:12 563:15 authority 382:2 402:4 556:25 authorization 539:23 authorized 430:23 authorizing 507:13 auto 410:23 412:2 539:20 automatic 483:20 487:1, 14 automatically 504:23 506:5 available 368:23 373:17 378:15 386:21 406:21 411:15 412:1 417:2 418:1 425:19 431:15 434:8, 22 440:14 441:1, 2 475:11 514:15, 17, 23, 24 519:21 520:7 524:19 528:7 535:12 554:10 555:15, 24 556:6 572:21 578:9 610:18, 23 612:11 Avenue 363:6 average 385:14 386:4, 10, 12, 14, 15, 24, 25 387:4, 11 388:4, 7, 9, 14, 18, 19 389:16 493:20</p>
--	---	--	--	--

512:23, 25 515:12 519:21, 22 522:10, 13 523:3 545:17 571:4, 10, 12, 21 572:1 587:22 590:5, 6 591:1 avoid 558:23 579:3 aware 373:20 378:6, 10 415:24 418:7, 18 426:9 441:6, 10, 19 442:1 449:9, 10 471:15 488:25 491:4, 7, 19, 21, 23 492:4, 12, 21 494:25 495:15, 18 511:18, 24 517:21, 22, 25 518:1, 22 522:8 527:22 530:23 533:7, 21 545:1, 8, 10, 12 560:11 563:5 570:21 581:10 594:13 595:9 597:11, 15, 20, 25 598:18, 24 599:14, 18, 21 600:3 609:17 < B > B-210 562:1, 15 back 369:22 370:2 372:22, 23 373:2, 3 399:13 407:19 457:20 462:18 465:24 466:2, 17 474:20 477:15 482:17 496:17 516:6 537:23 538:13 539:11 559:25 577:6 583:13 backup 476:11 bad 591:9, 22 Bader 366:12 403:24 404:9 418:14 419:17 424:13 426:24 427:13	Bader's 428:13 432:16, 22 617:14 bag 437:22 ballistic 509:6 ballistics 402:16 ballpark 512:25 551:23 ban 560:16, 22 568:10 594:1 bank 411:11 banned 381:23 383:10 384:14 385:6 487:9 597:15 617:10 BAR 576:25 577:4 barrel 367:9 390:25 391:13 393:5, 8, 11, 14, 20, 23 395:5, 24 396:9 397:15, 19, 20 398:8, 10, 11, 23 403:1 404:14, 15 413:8, 15, 16, 17 415:22 416:22 417:3, 5, 6, 21 418:10, 11, 19 422:4 434:11 473:10 478:18, 21 558:16 barrels 397:22 417:1 418:4 421:4, 10 434:6, 8, 9, 21, 22 478:19 Barrister 363:12 Barristers 554:25 based 370:23 373:16 374:4 391:4 394:20, 22 395:8 396:6 402:17, 19 409:18 410:24 412:13 416:21 431:15 437:9 441:4 455:12, 19 456:9, 16 458:11 481:1 560:18, 23 593:14 595:2 597:18 610:22 612:4, 19	basement 415:25 basic 431:25 basically 391:6 506:16 523:6, 9 526:12 532:7 535:19, 24 536:7 553:8, 24 558:15 559:10 561:19 578:18 585:5, 17 600:24 601:8 618:16 basis 403:18 493:23 529:24 538:14 550:13 606:18, 19 batches 516:20, 23 BCL 471:20, 22, 25 472:18, 21, 25 474:3, 5, 14, 19 478:16 481:3 482:20 573:25 574:19 BCL-102 472:10, 15 bear 468:4, 5, 8 469:1 476:3, 4, 5, 7, 9, 17, 18, 20, 21, 22, 24 477:1, 2, 7, 8, 9, 11 589:5 becoming 452:6 began 521:6, 8 548:24 beginning 365:6 458:2 550:4 believe 367:2 373:13 386:18 392:6 394:3, 12, 17 395:24 399:1 403:5 405:3 406:14 407:23 410:8 422:9 432:3, 22 433:17 434:2 446:14 455:14, 25 463:25 464:9 496:13 508:19 510:12 513:22 514:24 518:23 519:24 529:13 531:4	533:6 544:23 547:24 548:3 558:2 579:13 592:16 594:15, 16 597:17 602:23 603:20 605:22 608:12 believes 437:12 benefit 452:4 528:9 556:24 bereft 388:19, 21 Beretta 491:16 best 382:4 383:14 391:20 394:25 409:5, 9 430:24 433:13 508:12 511:22 516:4 524:19 533:13 546:15 587:19 597:18 614:6 better 441:8 513:22 553:5 557:9 big 561:9 568:21 580:6 Bill 513:21 534:16, 22 535:2, 20 536:12 538:8 563:6 bind 525:6 binding 401:15, 21, 22 525:4, 9, 10 527:25 565:14, 17, 18 bird 588:6 bit 430:2 551:13 577:7 579:4 586:6 587:7 600:13 black 476:5, 20, 22 477:7, 8, 9, 10 572:13 575:22, 24 576:1 Blair 563:6, 18 Blair's 562:23 563:16 Blaney 609:14 blank 393:5, 8, 11 404:14, 15 blanks 393:15 Blaser 418:13 421:12 425:1	432:17, 19 433:6, 8 block 481:2, 5, 12, 14, 23 482:8 blocks 481:8 482:3 blowback 380:24 BMG 570:18 581:25 bodies 508:17 528:8 bolt 367:9 413:8, 18 414:9, 13, 14, 15, 21, 22 415:22 417:21 421:3, 9 422:4 479:18 481:10 bolt-action 413:13 414:12, 15 415:7, 13 418:3 456:16, 22, 25 457:3, 4 465:17 466:21 468:13, 21 473:10 561:8 568:24 579:15, 19, 21, 25 bolts 417:22 418:4 Bond 364:8 books 566:9 Border 515:14, 16 516:9 borderline 477:2 bore 385:10, 12, 18, 22 386:2, 17 387:1 388:10 389:13 390:1, 17, 24 391:10, 11, 12 392:5, 24 393:1, 9, 12, 17, 19, 21 394:3, 5, 17, 19 396:3, 5, 7, 13, 15, 20, 22 397:3 401:2, 5, 9, 18 402:2, 24 403:8, 10, 16, 22 404:1, 5, 7, 22 405:8, 10, 18 406:1, 3, 4, 6, 13, 16 407:2, 7, 9, 15 524:11 530:2 564:16, 18, 25 565:16,
---	--	--	---	---

23 566:5 568:5 569:4 571:7, 10, 16 bored 393:16 bottom 540:11 565:20 Bouchelev 363:11, 12 366:6, 7 370:1, 6, 11 371:21, 23 372:3, 5, 13, 18 373:5 376:9, 11, 13, 15, 18 379:21, 23, 25 380:3, 6 381:20 382:11, 13, 15, 19, 23 383:19, 21, 24 384:1, 3, 5, 10, 25 385:3, 8 387:6, 8, 14, 16, 21 390:20, 22 392:16, 18, 21 395:20 398:21 418:21 419:6, 9, 18 420:1, 11, 17, 22 422:8, 17, 23 423:4, 7, 22, 23 424:3, 10, 20 425:6, 12, 23 426:7, 11, 16, 22 427:8, 25 428:9, 16 433:3 441:16 442:19, 24 443:13, 18 444:4 445:2, 5, 7, 17, 25 446:7, 21 447:1, 5, 14, 20 448:6, 12, 20 450:19, 21, 23 455:1 458:24 459:4, 13, 20 460:1, 6, 14, 18, 22, 24 461:5 462:2, 11, 19, 21 463:3 483:2 485:11 486:4, 16, 18 493:1, 11, 13, 19 494:2, 6, 12, 14 495:4, 7, 12, 14 497:8, 14 498:10, 14, 22 499:1, 9 500:16 575:14, 24 583:6 607:23	608:5, 9, 16, 20, 25 609:6 611:5 612:13, 21 613:3 bought 440:7, 20 bound 401:17 528:12 Bourque 594:6 bow 573:10 brake 472:19, 21 brakes 471:2 473:23 branch 588:12 Brazilian 568:24 break 414:8 419:2, 5, 7, 12 426:19 428:10 450:17, 19 460:2 474:20 498:11 559:13, 25 breakdown 455:9 breaking 532:23 breakout 498:12 brief 606:1 briefly 431:22 bring 506:4 520:5 522:24 538:19 brings 535:6 broadly 379:4 381:9 383:5 436:2 452:1 483:7 580:25 broke 596:16 brought 535:3 538:11 539:5 Browning 576:25 BRUHN 362:18 Bs 604:24 budget 584:10 buffer 471:11 478:17, 21, 22, 23, 24 479:2, 3, 4, 7, 9, 12, 14, 16, 21, 25 480:1, 2, 4, 5, 12, 13, 19, 20, 21 482:3, 9 bugs 518:1, 3 build 588:16 building 461:20 built 431:14	438:20 450:8 Bulgaria 374:3 bull 473:10 bullet 432:6 478:11 bullets 429:11 bumped 513:23 burning 430:12, 15 business 391:5 417:24 513:14 539:5 558:23 businesses 416:9, 14 417:25 504:15 514:16, 20, 23 525:2 530:16 540:18 buy 400:7 414:13 430:2 440:2 537:23 538:12 539:11 buy-back 536:8 buying 440:3, 23 538:16 < C > C-68 513:21 538:8 C-71 534:16, 22 535:2, 20 536:12 C8 540:5, 11 541:23 601:25 603:13, 17 615:18 Cabinet 381:19 385:2 613:13 Calgary 363:7 614:13 calibre 367:11 380:24 395:5 397:5, 14 400:6, 7 405:13 414:11, 14 415:1, 2, 8, 17 421:15, 16 428:18, 24 431:13 432:10, 11 434:16 436:12 437:11 438:7, 9 451:3 452:24, 25 453:9, 11, 12, 15, 17, 21, 25 454:9, 15, 17, 18 455:3,	7, 14, 19, 20, 22 456:2, 4 465:11, 12, 20 466:10 467:2 468:25 474:11, 22, 23 475:5, 8, 9, 25 476:15, 16, 17, 20, 21, 22 477:10 478:2 481:22 483:24 541:22 566:6, 8, 12, 13 567:12, 13, 14 569:10 576:4, 8 581:8, 25 calibres 395:7 413:14 428:20 433:11, 20 434:6, 8, 9, 23 449:21 451:20 452:11 453:5 455:5 475:11 570:8 576:2 581:20 calipers 389:21 call 365:20 395:15 419:23 463:15 484:18 522:11 529:18 530:5 542:4 566:17, 19 567:2, 16 602:3 603:5, 10, 19 615:16 called 377:11 471:20 486:10 521:17 543:20, 21 584:20 600:23 601:8 618:15 calls 522:19 CANADA 361:14 362:9, 21 364:1, 9 370:18, 23 378:11 386:13, 24 388:4, 25 389:5 390:13 391:21 400:10, 20 402:14 409:3, 6, 8, 9 416:6, 10 464:17 484:9 488:7, 23, 24 489:17, 21, 24	490:8, 14 491:8, 20, 22 492:13, 15 510:3, 19, 22 521:18 522:6 523:9 530:8 534:8 537:11, 16 538:12 539:2, 18 544:1 545:3 546:16 552:11 553:8 555:5 556:6 568:22 569:14, 15, 20 570:14, 21 577:13, 25 578:21 582:9 589:14, 17 590:13 592:5, 19 593:3, 18 595:8, 18 596:11 597:3 600:7 602:5 610:8, 11 CANADIAN 362:5, 9, 21 390:16 402:22 432:13 503:2 507:22 513:18 515:14 521:25 522:12, 14 529:19 544:6 547:9 549:22 563:23 569:17 582:18 583:21 596:10, 20, 21 597:1 611:25 612:23 Canadians 406:21 519:3 525:12 587:4 capabilities 463:11 546:5, 7, 11 574:13 capability 383:14 450:8, 10 467:21, 23 468:7 483:24 487:1 547:7 551:14, 15 capable 409:15, 20 410:20 412:4, 20, 21, 24 413:3, 4 417:12 421:24, 25 431:8 434:12 435:3 478:11
---	---	--	---	---

487:13, 17 546:9, 10 551:18 552:3 capacity 430:4 501:23 546:11 551:10, 16 capitalize 546:2 carbine 483:8, 12 540:5 541:15, 22 542:15 603:13, 17 615:19 carbines 484:18 540:11 542:11, 12, 17 585:10, 21 588:9 care 600:11, 19, 21, 23 601:8 618:15 career 508:14 careful 430:22 574:23 carried 542:13 594:7, 15 carrier 479:18 481:11 carrying 594:11, 13, 22 595:4 cartridge 399:13, 17, 20, 21, 22 403:21 414:23 429:22 430:5, 8 431:24 432:4, 6, 7, 9 451:12, 13, 15 452:20 455:13, 16, 23 456:11 472:10, 14, 16 475:13 477:18 478:11 483:9 548:16 566:4 575:22 576:4, 12 cartridges 408:25 451:6 453:2 455:9 551:24 case 368:5, 19 375:13, 14 377:19, 22 378:2, 7, 11, 12 383:6 409:19, 25 410:3, 5, 7, 9, 10, 13, 16 422:1 423:23 429:22 432:2, 4, 6, 7	452:17 470:21 520:4 538:20, 21 563:9 575:8 581:10 610:2 611:1 cases 395:3 397:11 399:2, 5 410:6 429:11, 12, 23 430:4 484:19 504:22 537:4 554:3 599:2 607:19 608:6, 22 609:9, 10 619:4 casualties 593:2 catalogs 438:24 categorically 435:21 categories 542:6 549:16 607:7 category 439:17 causalities 593:1 caused 470:16, 24 CBSA 515:17, 22 516:8 ceased 506:17, 18 ceases 506:13, 14 centre 393:10 416:18 544:7 centre-fire 592:4 595:17 certain 366:11 392:25 395:23 396:21 418:9 432:18 433:4 439:9, 19, 20 456:4 509:15 528:20 530:12 531:22 540:17 546:4, 11 561:7 580:7 582:2 592:21 certainly 415:7, 18 419:6 427:12 431:3, 23 445:20 466:14 467:24 477:4 485:12 491:1 503:12 544:3 579:22	certificate 503:9, 15, 17, 18, 24 504:7, 13 505:11, 12 506:10, 13 507:1, 12 537:5 538:23 614:1 certificates 502:16 503:1 504:5, 22 506:5, 20 certify 614:3, 9 cetera 388:16 389:23 500:3 CFO 538:3 CFP 401:3 406:14, 17 523:3 532:1, 3, 9 533:5, 6, 11 CFP's 401:17 402:2 409:18 560:6 chain 543:10 chair 553:22 Challenger 432:20 433:15 challenging 443:9 chamber 391:1, 11 403:2, 6, 8, 9, 10, 13, 17, 20, 22 404:12, 16, 21 415:20 451:8 469:15 541:22 chambered 432:11 438:8 451:20 452:3 454:11 472:9, 13, 17 483:9 575:21 576:12 581:25 chambering 404:17 452:5 453:22 454:6 472:16 chance 538:19 609:1 change 385:9 408:5 414:11 418:10, 20 435:24 436:5 470:8 483:25 523:22 524:4, 5 525:21 538:17 545:1, 8, 9, 10	559:5 578:16 610:5 changed 524:2, 3 530:4 531:20 536:18 539:13 584:8, 9 changes 413:19 414:4 430:21 487:11 516:16, 19 523:8, 20 529:24 532:15 544:11 551:5 changing 470:6 chapeau 486:21 Chapuis 432:20 433:15 characteristic 387:18 characteristics 425:1, 3 433:9 439:8 450:2 458:12, 13 463:19 472:4 542:25 546:14, 20, 21 547:14 551:9, 11 552:6 charge 403:22 charged 401:10 charges 430:2 charging 575:9 chart 487:24 557:15 585:2 589:13, 15, 22 590:22, 24 591:7, 20 592:22 593:13, 24 594:5, 13 602:1 603:18, 19, 24 615:21 chat 439:15 440:12 606:1 check 369:19, 22 370:2, 7 372:22, 23 373:3 424:23 426:19 530:3 589:3 616:18 checked 434:4 519:12 checking 408:1 chief 611:12 choice 478:1 479:21 480:4 519:4 526:14	561:13 578:11, 13 choices 475:8 526:11 choke 391:12 403:3 407:7, 9 564:16, 17, 25 565:16 choose 436:20 474:21 475:9, 22, 24 477:17 478:14 524:25 526:9 578:7, 24 594:2 chooses 516:11 chose 475:6 536:23 538:12 539:11 569:22 582:24 chosen 519:2 552:10 565:15 CHRISTIAN 362:18 CHRISTINE 361:7 363:17 circa 407:19 520:21 565:6 circles 451:17, 18 483:23 484:14 circular 386:18, 23 388:22 401:19 circulated 538:13 circulation 577:24 circumstance 465:9 467:25 565:10 circumstances 411:7 437:13 467:12 468:2, 20 470:18 cited 396:11 citizen 514:22 522:10 523:10 529:10 570:15 590:20 591:17, 19 citizens 504:17 590:18 591:3, 6, 16, 18 CITT 607:21
---	--	---	--	---

609:12 619:6 City 614:13 Civil 364:9 457:20 458:3 599:19 607:19 608:5, 22 609:10 619:4 civilian 451:12, 17 452:15, 19, 20, 25 453:3 455:16, 23 456:5 458:14 489:25 518:11 519:11, 18 529:12, 15 548:15 582:20 583:1 586:3, 7 597:13 civilians 525:9 540:15 570:20 582:5, 6 586:10, 19 claim 544:18 580:1 586:23 595:19 claims 582:15, 17 613:13 clarification 372:6 563:19 clarified 410:7 554:11 555:24 clarify 369:2 379:6 396:1 465:1 582:7 606:10, 22 613:7 clarifying 542:9 554:15 611:21 class 539:23 578:9 580:8 581:5 Classic 534:12, 23 609:23 classification 373:15 395:8, 23 396:17 500:11 506:24 509:5, 11, 14 516:15, 19 523:22, 23 524:3, 9, 18 526:6 528:10, 17, 23 531:20 536:18 543:14 560:16 564:23	609:22, 25 610:3, 5 classifications 509:10 523:8, 21 525:8, 11 529:11, 16 543:17 classified 547:12 classify 513:4 528:6 clause 527:1 530:23 562:13 clay 588:6 clear 380:4 385:20 401:25 407:16 427:1 431:20 440:1 452:24 459:1 460:4 463:14, 22 486:14 498:20 507:5 508:10 524:7 528:18 533:4 563:24 571:4, 10, 12, 13, 14 577:16 clearly 377:22 clears 540:2 clients 495:5, 15 clip 551:20 close 465:5 492:19 521:12 565:22, 24 566:2, 3, 17, 19, 24, 25 567:2, 3, 7, 16, 20, 23, 25 closed 589:11 closely 404:21 436:17 479:12 544:8 COALITION 362:5 599:20 Code 379:13 391:18 485:6 500:12 510:5 511:1, 17 529:17 560:19 598:12 co-developed 452:11 456:19 co-developer 517:11 coincidence 521:9 593:12	collaborated 513:18 collect 513:4 591:2 collectible 570:17 collecting 599:2 collectively 403:21 528:4 collector's 561:8 College 491:17, 18 592:10, 12 come 373:3 393:16 438:14 460:5 461:7, 14, 24 462:5, 14, 15, 18 514:2 516:25 524:24 527:14 557:8 559:25 565:22 566:2 567:20, 23, 25 612:16 comes 451:19 545:22 566:22 576:25 599:4 600:24 601:9 618:16 comfortable 401:15 coming 501:7 566:23 commence 462:1 commenced 365:1 comment 383:12 563:11, 12 569:23 598:23 599:23 commented 568:15 comments 562:23 576:18 commercial 429:7 431:10, 11 Commercially 397:22 399:6 412:1 414:25 431:16 Commissioner 605:9 committed 401:11 Committee 553:23, 25	555:22 556:21 557:6 Committee's 557:1 common 391:3 400:8 418:12 432:13, 14, 15 434:20 449:17 450:4 452:7 454:4 456:24 467:7 484:12 540:4 557:10 567:12 594:20 595:10 commonalities 559:10 commonality 374:20 376:2 commonly 415:24 417:25 434:22 435:7 451:16 457:5 537:25 554:10 555:14, 24 556:6 Commons 562:24 communication 553:16 communications 370:3, 8 616:19 community 416:17 514:8 546:24 companies 584:20 Company 364:16 comparable 442:11 comparative 597:19 compare 606:10 compared 429:6 comparison 466:9 473:1 590:11 compatibility 368:4 375:4 377:16, 23 compete 587:21 competed 587:16 competent 416:1, 3	competing 582:6, 8 competition 581:6, 9, 18, 21 587:25 competitions 580:7, 8, 11 581:1 582:16 587:17 complete 461:3, 7, 9 517:1 597:7 614:4 completed 417:9 completely 429:22 521:14 527:16 completeness 615:9 completion 462:2 compliance 525:18 531:23 complicated 416:25 430:20 470:3 comply 400:3 component 432:1 459:18 581:4 components 367:8 368:7 391:14 414:1 429:11 438:21 479:20 481:4 515:25 516:1 559:4 comprehensive 491:14 492:17 531:24 532:12 computer 365:21 444:24 446:3 493:6, 9 494:8, 17 519:3, 13 520:5 523:12 618:10 concept 391:24 546:23 579:6 concepts 505:24 601:3 concern 598:16 601:3 concerned 535:24 554:1 557:5 564:2, 3 577:4
---	--	--	--	--

<p>concerning 406:15 424:19 433:1 575:13, 15 596:7 concerns 598:4 conclude 560:8 concluded 580:19 conclusion 524:25 527:14 concurrent 413:17 concurrently 468:24 conditions 502:7 509:15 537:2 Conduct 598:13 conducted 575:25 614:9 cone 391:11 403:6, 7, 16, 25 404:4, 7, 12, 17, 20, 23 405:1 conference 365:20 conferences 596:15, 19 confidence 381:19 385:2 613:13 configuration 438:14 439:2 configureable 439:6 configured 449:20 confirm 369:11 419:25 425:1 446:23 508:20 600:3 confirming 420:9 426:3 confusing 551:13 confusion 521:5 connection 365:3 402:21 523:11 573:23 578:15 591:13 conscious 365:4 consensus 554:13</p>	<p>consequences 502:24 519:4 525:12 565:12 consider 373:11 374:23 403:9, 16 404:4 488:8, 9 503:20 534:4 548:2 589:16 considerable 467:4 513:12 559:3 588:1 considerably 425:21 588:10 consideration 436:5 438:6 considered 367:21 373:19 403:7, 8 409:20 412:9 450:14 509:8 considering 524:10 535:13 581:7 598:12 600:17 considers 403:12 consistent 377:1 391:15 425:3, 8, 9, 13 consistently 365:8 conspicuously 569:7 constantly 522:20 constitute 560:6 constitutes 378:17 548:11, 12 577:24 constructed 468:23 consult 529:23 consultant 606:7, 11 613:8 consultations 501:19, 22, 24 consulted 508:15, 22 consulting 512:20, 24 contact 369:1, 4 426:20 contacted 369:11</p>	<p>contained 391:16, 17 392:1, 2, 4 407:24 425:14 492:23 496:21 598:15 contemplates 456:10 content 368:23 497:22 498:9 559:2 602:16 contents 498:3 context 398:18 450:12 463:8 464:8, 10, 23 503:12 504:16 507:6 544:17 548:4, 13, 25 549:2 556:19 557:4 574:20 580:18 592:18 598:22 599:9, 22 600:6 continual 551:5 continue 380:13 383:2 384:9, 21 448:3 532:23 Continued 361:21 534:7, 15 538:3 continuing 554:14 continuous 537:5, 7 continuum 415:9 contraband 516:9 contract 586:6, 10 contracts 586:4 contrary 374:12 383:14 529:8 contributor 408:17 control 515:25 517:17 568:14 598:20 599:20 controlled 597:15 controls 558:17 controversial 455:4</p>	<p>convenience 399:24 520:13 525:20 convenient 419:1 450:18 501:7 503:13 525:1 conventional 413:12 438:25 439:1 464:15 475:10 486:22 550:24 551:3 566:4 572:20 573:15 580:16 conventionally 580:22 conversation's 384:20 conversion 410:17 411:9, 12 412:14 413:7 417:9 convert 412:2, 19 415:8, 11, 12, 17 421:23 530:1 converted 409:22 410:13, 22 411:1, 2 413:1 539:20 converts 412:7 convict 527:21 copied 540:22 copy 377:10 446:14 611:17 core 584:3 corners 411:10 correct 367:1 369:12 371:4, 17 372:7, 15, 24 374:16 378:13 380:10 381:25 383:10 387:2 390:5 391:7 393:13 397:17, 18, 21 398:16 399:22 400:11 401:5 402:18 403:5 405:18, 23 406:24 407:24 409:4 410:15 412:22 413:23 414:14 415:8 416:2, 19, 20 417:12 418:1, 11, 16</p>	<p>423:16, 17 425:4, 15 426:7 428:23 429:2 431:2, 10 432:23, 24 435:18 442:10 453:16 455:6, 16, 24 456:6, 17 457:9, 21 458:3, 20 464:18 466:7 469:12, 15, 18 470:1, 16, 25 471:9 472:5 475:5 477:5, 24 479:1, 9, 15 480:13 481:13 482:5, 10, 13 483:13, 17 484:21 486:9 487:5, 10 488:19 489:17 491:13 492:24 500:14, 15 501:11 502:5, 13 503:3, 25 505:20 508:18 510:9 511:5 512:3 526:17, 18 527:21 531:17 538:5 540:16, 17 541:18 542:18 558:3, 6, 7 561:21 569:3 597:6, 7 610:3 612:14, 25 613:1 617:3 corrected 518:2 correctly 470:17 480:20 592:19 corrosion 398:4 cost 466:22 Council 373:23 378:19 379:1, 3, 7, 15 380:16 381:8 382:2 511:18 535:6 547:16 548:5 550:9, 13 552:15 561:14 577:25 Councils 579:1 counsel 363:11 364:2, 3 365:2</p>
--	---	---	---	---

<p>366:3, 4 371:18 372:18 381:17 422:23 423:7, 18, 20 424:13 426:11, 22 427:1 432:25 450:16 462:12 496:23, 25 497:3, 7, 15, 18 498:8, 12 507:20, 22 519:24 601:13 606:2 count 545:16, 19 549:13 592:10 counted 558:18 counter 474:11 countries 484:3 489:17 598:2, 24 599:6 country 373:9 374:3 397:12 516:7 582:20 counts 507:7 couple 413:1 492:19 531:7 576:18 577:20 598:10 601:12 604:20 605:25 course 388:20 464:16 492:21 526:12 541:7 565:8 592:23 608:25 Court 361:1, 3, 17 362:2, 3, 14, 15 363:3, 10, 17, 21 364:14 365:2 366:1 377:14, 17 402:9 410:2, 7, 17 411:8, 20 423:16, 17 426:3, 8, 19 427:18 431:20 446:25 452:5 508:3 524:6 527:18, 23, 24, 25 528:16, 22 614:20 615:5 courtesy 418:14 532:14, 16 533:9 615:7</p>	<p>courthouse 605:10 Courts 377:19, 21 378:16 394:24 395:1, 13, 22 405:19 410:11 527:12, 13, 16, 20 528:1, 13, 18 554:3 cover 487:15 COVID 461:21 522:24 COVID-19 523:4 crash 494:20 crashing 520:1 created 381:22 496:5 523:25 559:1 565:11 603:25 615:22 creating 381:21 creation 381:15 383:9 384:13 385:5 517:14 552:14 558:21 617:10 creator 402:3 credibility 495:21 543:13 544:4 credible 520:1 Creek 572:13 575:22, 24 576:1 crime 503:24 504:2 544:1 545:2, 5 Criminal 379:13 391:18 401:10, 11 405:24 485:6 500:12 510:5 511:1, 17 529:17 560:19 607:19 608:6, 22 609:10 619:4 criteria 437:5 456:8 547:21 549:12, 13, 19 550:8, 9, 11, 19 557:21 561:14, 16 592:21 593:5, 14 critical 375:5 584:4, 13 critically 582:20 cross 461:25</p>	<p>cross-exam 557:24 cross- examination 373:2 422:24 427:5, 10, 21 428:15 461:4, 8, 9, 14 483:6 496:20 501:13 506:2 517:20 520:17 528:21 529:14 592:6 601:21 607:25 611:12, 13 613:12 617:16 cross- examinations 427:11 460:9 605:25 cross-examine 427:13 460:8 609:2 cross-examined 461:3 611:10 cross-exams 560:8 Crown 601:13 CSR(A 364:15 614:19 Cukier 513:19 culminations 513:15 culture 513:25 currency 530:9 current 384:22 539:22 565:9 currently 366:24 367:13 504:24 532:11 533:15 606:7 curtail 587:8 curve 435:23, 25 custom 438:20 568:24 cut 369:6 375:19 404:17 cutting 383:12 CV 497:22 510:1, 12, 13 517:11 544:23 596:9 Cx4 491:16 cycle 466:5 469:14, 18</p>	<p>519:8 520:23 cyclic 575:10 cycling 466:12 cylinder 481:10 cylinders 393:16 cylindrical 393:21 CZ 535:1 CZ-858 609:23 < D > daily 516:20 damage 398:4 damaged 397:25 damaging 430:18 dangerous 465:4, 5 467:19 469:3 597:13 dangerous-game 421:8 data 397:5, 7, 9, 16, 19, 21, 23, 24 398:10 399:9, 19 400:10 405:13 491:14 492:9, 17 591:2 610:22 611:11, 16, 18, 23, 25 612:11 database 517:3 519:9 612:1, 10, 11, 19 databases 517:13, 15 518:5 date 489:14 533:2 Dated 614:13 dates 407:19 Dawson 491:17, 18 592:10, 12 day 382:24 383:1 436:21 450:5 461:10 462:15 490:20 522:19 557:3 614:14 days 381:6 399:13 411:6 427:6 467:25 501:7 508:11 516:22 517:4 529:21 576:24 606:20</p>	<p>DCRA 580:7 581:1, 5, 18 582:8, 10, 16, 21 dead 490:12 592:8, 11, 12, 13, 14 deal 368:22 422:19 423:1 591:11 dealers 368:18 dealing 380:18 461:21 465:4 497:24 513:14 528:16 533:20 576:22 582:23 607:4 deals 378:8, 11 410:19 485:10 497:22 570:3 dealt 410:13, 17 607:3 debated 553:11 decade 513:22 574:1 decades 394:24 395:14 586:13, 14 decided 374:3 497:3, 17 550:14 553:1 deciding 401:9 437:6 decision 373:14 377:10, 14 378:1 410:1, 19 411:8 507:7 520:15, 19 526:9 536:24 538:22 539:1 543:23 547:16, 17 decision-maker 600:17 decision-makers 525:7 decision-making 550:13 decisions 524:8 declared 527:5 539:6 declined 557:1 decrease 481:13 deemed 540:15 560:13 deep 434:17</p>
---	---	--	---	---

deer 467:13
475:3, 12
Defence 366:14
370:10 440:24
441:24 455:10
616:20
defend 469:3
defending
468:1 526:11
define 379:8
387:12 389:16
390:24 457:15
490:9, 10
552:10, 11, 13
553:8 556:8, 11
defined 397:11
435:7 524:12,
16 542:1
defines 406:12
defining 377:24
388:13 542:20
550:6
definitely
374:19 412:17
416:12 522:25
524:7 559:21
562:23
definition
374:24 391:2, 6,
8, 9, 16, 19
392:1, 5 401:18
402:24 403:4,
14 404:6, 11
406:9, 15, 24
407:2, 15, 19, 23
408:3 483:22
485:13, 15
486:23, 25
487:15, 17
490:11 524:13
531:2 545:2, 7
547:1, 22, 24
549:8 551:6, 7,
19 552:14, 23
553:2, 5 557:7,
10, 12 561:5
564:25 565:11,
13 592:8, 15, 17
definitions
391:3 407:7
527:13 555:16
560:18 564:15
565:4, 7
definitive
373:21, 25 442:4

degree 393:17
423:14 438:22
447:5, 12
457:15 465:10
617:19
degrees 544:3
delegated 517:5
delegation
596:10, 20
delegations
597:1
deliberately
435:5
delivering
478:11
delivery 495:24
DELVE 362:18
572:13 573:1
576:15
democratic
577:14
Dennis 534:3
Department
364:9 484:20
496:12 554:1
depend 386:5
398:18 412:11
413:6 421:17
434:14 458:12
475:17 503:12
depended
582:20
depending
375:17 413:9
428:18, 21
479:10 484:20
513:11 514:5
515:12 522:17
537:19 542:7
544:4
depends 377:3
386:9 389:16
399:10 411:7
414:17 431:19
457:15 465:10
467:1 471:13
476:4, 17 478:7
490:9, 22 504:9,
16 546:13
548:13 549:2
depth 389:22
derivative 450:7
derivatives
542:3

derived 439:18
456:19 551:8
Deschamps
460:5, 10 461:2,
7, 14, 19, 24
462:5 559:23
601:21
describe 374:5
431:21 468:2
528:6 549:16
described
404:15 548:17
550:9 610:2
describes 373:9
374:15 378:7
403:25 442:15
483:14 486:6
describing
430:24
description
375:10, 15, 23
376:25 377:7
498:5, 6 528:10
543:2 547:12
descriptive
543:15
design 374:14
375:9, 13, 16, 22
376:2, 24 377:8
381:3 415:9
432:19 434:14
436:4 458:19
459:7, 24
465:18 479:10
481:6 509:19
517:21, 23
542:24 547:8,
25 549:1, 7, 21
558:13, 21
559:4, 10 618:3
designed
408:23 418:3
421:2, 12
429:14, 21
435:6, 14, 22
436:3 451:24
458:18 470:23
518:5 540:25
551:1, 15, 25
designer 376:4
designs 456:16,
20 547:23
desire 438:3
destroy 598:3

destruction
534:9
destructive
408:15, 18
detail 384:24
397:1 422:2
552:5
detailed 425:21
558:20
details 434:14
516:21
detain 516:10
detect 516:8
determinant
481:21 576:9
determination
373:15 374:7
396:5 398:24
458:14 500:9
509:11 527:19
543:16 547:15
577:23
determinations
395:8, 23
396:18 499:14
500:2, 6, 10, 11
525:10 528:17
560:16
determinative
407:12 564:21,
24 565:1, 5
determine
375:20, 22
377:2, 7 382:2
396:14 397:2
400:6 495:23
504:1 506:16
530:20 576:5
588:13
determined
376:1 406:16
524:8 539:8
594:4 610:1
determines
505:12
determining
377:24
detractors
543:21
develop 585:14
587:1
developed
452:15, 18
453:1 456:17

457:1, 3, 14
458:7 585:13
developer
517:18
developing
517:12
development
452:12, 20
458:15 579:22
587:3
deviate 430:23
deviating 431:1
DGR 568:23
diameter 385:11,
13, 23, 24
386:17 387:2
388:11 389:13,
22 390:1, 17
392:5 393:9, 17
394:3, 18 396:3,
7, 8, 13, 15, 20
397:3 401:3, 5,
9, 18 402:2
403:11 404:23
405:1, 9, 10, 18
406:1, 3, 4, 7, 13,
16 407:2
524:11 530:2
565:23 566:6
568:5 569:4
571:7, 11, 16
dictate 600:8
dictates 527:9
600:24 601:9
618:16
dictionaries
542:2
dictionary
374:24 391:9
393:4 553:2
557:10
difference
404:3 463:10
464:21 465:10,
19 467:17
468:3, 19 469:1
471:12 480:12
526:1 541:14
573:19 574:12
575:11
differences
375:2 451:7
different 367:7,
10, 11 372:12
376:21 378:23

380:25 385:10 386:6 387:22 414:14 415:8, 17 429:5 430:7, 9, 12 437:3 446:11 449:20, 21 451:3 455:22 465:15 468:21 487:25 492:5 504:15 505:15 508:23 509:10, 13, 23 530:8 539:7 541:25 576:2 578:24 610:6 differently 557:1 differs 392:6 difficult 415:10 416:18 474:14 480:3 576:20 difficulties 451:25 496:7 difficulty 474:8 494:21, 24 495:1, 19 496:11 566:22 571:25 diligence 529:11, 13, 16 530:5, 6 diligently 516:4 528:5 dimensionally 451:10, 19 dimensions 403:1, 10 414:22 434:15 451:4, 6, 8 direct 375:4 444:17 446:14 458:10 481:25 517:16 582:15 directed 556:7 directly 385:17 425:2 427:22 481:10 496:13 505:4 519:9 525:24 disability 576:16 disagree 370:19 403:18 420:18 443:20 456:22 541:9 544:15 550:1 573:17	575:10 583:22 587:5 599:10 disagreeing 582:22 disagrees 541:12 Disarmament 596:24 599:21 discharged 481:1, 23 discharging 409:16 417:14 576:4 disclosing 613:11 disconnected 523:17 discontinued 515:10 discounting 574:16 discovered 539:8, 17 discretion 397:10 discuss 428:4 595:11, 13 discussed 431:11 439:15 465:21 531:4, 5 562:2 discussing 440:19 discussion 432:3 460:3 463:7 486:2 499:7 553:21 569:21 573:23 602:22 608:1 disparate 591:12 dispute 591:11 distance 467:5 580:5, 6, 14, 17 581:5, 14, 17 distances 467:9 470:15 distinct 518:6 538:6 distinction 534:6 distinctively 373:24 distinctly 455:21 DISTORTION	553:14 distracted 412:5 distributor 370:17 371:16 372:8, 16 373:8 617:5 distributors 368:18 370:11, 21 371:1 doctrine 600:10, 19, 21 document 370:16 392:2 418:24 419:21, 24 420:2, 23 422:9 424:7, 21 425:14, 17, 25 426:2, 4, 8, 9, 13, 18 428:11 445:13, 22 446:19, 21 519:15 520:2, 4 521:15, 19 548:9 555:9 563:20 589:19 598:21 599:4, 9, 22 documents 586:21 590:1 597:17 599:6, 16 600:15 601:23 602:7 DOHERTY 362:17 doing 419:1 443:17 478:14 494:10 504:9 508:24 530:6 560:9 574:18 586:1 587:13 domain 520:11 domestic 544:10, 13 domestically 544:2, 19 dominant 544:9, 10 doubt 389:3 391:24 573:21 download 493:3 494:19 downloading 493:17 496:6 dozens 369:20	draw 525:25 591:12 drilled 393:9 due 522:24 529:10, 13, 15 530:5, 6 558:4 559:13 562:7 565:8 Duguid 363:5 Dunn 410:8 duty 583:11, 16, 21 587:13 589:18, 25 590:7 600:10, 19, 21, 23 601:8 618:15 dying 575:11 < E > earlier 370:15 382:5 404:15 416:25 438:6 454:1 455:13 457:3 465:21 473:15 477:13 519:24 520:21 521:8 541:21 543:12 ease 409:24 411:3, 17, 18, 19, 21, 23 412:12 413:22 easier 415:8, 18 418:4, 5 449:25 485:17 easiest 418:22 521:20 577:18 easily 416:1 421:23 521:17 easy 413:9 415:11, 17 418:6 eating 462:8 573:19 edits 565:6 education 513:6, 7, 9 effect 367:25 368:1 406:15 470:8 480:25 481:17 487:12 495:11 523:24 535:4, 5, 8, 21 536:13 564:8 575:16 586:12 587:4	effected 411:13 412:16 414:4 effective 577:22 effectively 536:9 539:18 583:14 effects 572:19 efficient 577:18, 22 efforts 578:22 eight-year 612:24 eject 470:4 EK 362:17 elaborating 555:14 electronic 580:16 elements 507:3 elephants 408:24 409:9 569:13, 16, 19 eligibility 507:8 eligible 506:25 507:11 eliminate 596:3 eliminated 583:14 587:3 else's 505:21 email 426:25 529:19 553:18 embarked 585:19 Emergency 585:15 employ 379:4 484:4 employed 408:25 473:14 employee 606:12 employs 513:3 enacting 594:1 encompass 490:23 encounters 590:17, 19, 20 591:17, 18, 20 ended 462:22 592:7 613:23 energy 408:7, 15, 17, 22 409:1, 7, 17, 21 410:15 421:16 428:22 430:16 431:9,
---	--	---	---	---

14 435:16, 18, 25 436:6 524:11 581:20 enforcement 408:1 457:11 525:6 528:7 540:16, 17 582:7 590:13 engage 387:23 423:8 477:20 584:15 599:19 engaged 585:16 engineers 513:10 English 368:22 enhance 587:2 enhances 421:5 enlargement 559:6 ensure 481:15 516:2 525:17 530:16 583:1 585:10, 20 615:8 entered 369:20 565:5 entering 428:12 481:9 617:13 enterprise 518:4 enterprises 513:14 entire 396:22 entirely 428:2 456:1 538:5 578:24 entirety 555:1 entities 504:14 entitled 443:4 447:22 495:8, 16 entity 528:12 entries 394:16 entry 528:25 environment 586:25 equal 397:3 475:19 479:24 480:10, 17 570:8 equally 470:2, 4 equation 470:13 equipment 414:6 471:2 equipped 472:19, 21 era 458:3 483:8 ergonomically 449:25	ergonomics 367:20 438:11, 16 439:3 449:23 especially 533:19 557:15 600:6, 9 essence 410:19 essential 583:24 essentially 408:14 418:10 451:1, 14 507:15 543:10 565:10 established 477:24 establishing 375:24 estimate 610:22 612:2, 12, 16 613:1 estimation 461:13 606:22 ethics 514:9 etymology 393:3 evaluated 374:10 375:18 evaluates 524:17 event 476:12 505:4 events 441:5 eventually 523:5 everybody 501:6 555:3 everybody's 462:8 everything's 496:18 evidence 376:19 383:5 394:8 420:7, 9, 11, 15 422:16 423:5 424:7 432:17 441:1, 2, 18 442:18 443:3, 11, 19 445:12, 15, 24 446:19 447:3, 9, 15 488:10, 11, 14, 15 493:2, 16 494:7, 16 495:10, 16 497:10, 11, 14 503:19 527:23 529:8 573:21	593:16 594:25 595:1 602:18 611:10, 15 618:8 exact 391:23, 25 414:23 479:10 489:14 490:15, 25 504:16 508:20 516:21 610:17 612:17, 18 exactly 381:16 431:19 473:1 511:6 540:12 595:16 611:7 examination 365:10 418:22 422:9, 10 423:10 Examiners 402:13 examining 363:11 example 377:9 378:4, 5 379:1 398:4 403:24 406:3, 22 410:8 411:11, 22 414:18 415:6 421:22 428:17 429:17, 20 433:6 434:10, 21 437:19 439:24 440:14 456:16, 21 465:13 466:14 467:2, 12, 19 469:11 471:4 473:3 475:12 476:3 477:12 479:7 489:24 491:10 509:17 518:13 546:15 550:24 551:19 553:13 561:17 562:1 569:11 575:9 576:25 593:20 594:6 599:18 examples 375:5 379:16 380:20 381:7 395:24 396:11 408:19 449:13 488:5 491:13 592:4 595:15, 17, 21 596:6 597:7	exceed 408:20, 22 415:1 421:15, 16 433:14 exceeded 433:21 exceeding 409:20 434:12 exceedingly 566:5 exceeds 396:6 404:24 405:3 409:7 excellence 587:23 Excellent 408:13 exceptions 399:3 575:3 excess 409:1 429:17 exchanging 422:4 excited 508:4 exclude 464:12 exclusive 382:2 390:25 391:13 exclusively 487:6 570:9 607:8 execute 588:14 executed 520:25 exercise 385:13 415:23 509:12 exercised 537:24 578:11 exhaustive 595:20 exhibit 418:22, 25 422:9, 10, 15, 18, 20, 22 423:9, 21, 24, 25 426:5, 12 427:24 428:14 498:23 510:13 522:5, 25 533:24 540:20 553:13, 17, 19 601:24 602:1, 2, 9, 13, 23 603:1, 3, 9, 12, 16, 18, 24 604:2, 7, 9, 12, 13, 17, 23 605:4, 6, 19 615:12, 15, 18, 21 616:1, 5, 8, 11, 14 617:15	exhibits 599:13 602:20 603:6 615:4, 11 exist 369:14, 16 370:2 371:7, 11, 12 418:12 456:15 482:13 575:4 existed 539:4, 13, 16 579:19, 22, 24 612:20 existence 439:17 554:2 558:22 573:25 existing 511:23 558:24 598:3 exists 369:19 expanded 510:7 511:3 expect 436:2 470:18 482:2 496:17 expected 521:5 expended 455:9 expenses 596:14, 18, 21 expensive 536:8 561:8 experience 391:5 429:8 471:25 472:4 475:16 493:17 494:4 497:22 504:4 513:5, 13 517:12 527:16 528:5, 18 experienced 467:24 495:19 experiences 544:8 expert 394:7 436:19 441:17, 18 504:6 507:18 549:23 550:18 561:9 563:13 578:4 598:12 607:18, 20 609:9, 11 619:3, 5 expertise 386:16 387:1 388:10 389:13 436:23 507:23 experts 496:5 528:3, 22 560:6
--	---	--	---	--

<p>expired 502:16 503:1, 5 504:23 506:5, 20 507:2 593:11 612:7 expires 506:12 explain 426:23 493:20 532:15 560:24 explained 397:1 494:3 541:21 546:15 580:4 explanation 528:19 559:9 576:19 explicitly 563:24 explore 497:16 498:15 export 529:1, 3, 5, 7 exporter 516:10, 11 exports 402:16 expressly 451:24 extensive 413:19 414:6 415:4 441:18 extensively 457:22 extent 377:21 411:19 418:2 441:1 489:21 550:10 572:16 extents 368:4 external 519:8 extra 466:22 extremely 453:19, 24 454:15, 17, 23 490:2 598:11 < F > F12 366:14 368:5 369:11 370:10, 12 380:19 616:20 face 413:18 414:21, 22 faced 584:10 facing 520:22, 25 fact 375:1 387:3 394:24 400:1 424:12 438:17 441:6,</p>	<p>14 442:17, 22 443:6, 15, 25 444:1 471:1 487:2 488:14 489:23 492:22 494:25 495:13 556:1 558:15 561:18 562:6 564:11 574:16 593:4, 16 594:16, 21 595:3 612:4 factor 373:20 374:6 377:24 378:25 437:17, 19 438:12 439:9, 11 469:22 470:22 480:3, 9 542:25 543:16, 23 593:7 factors 373:19 377:20 398:5 429:19 478:9 554:6 560:22 factory 369:22 429:6 434:8 438:13, 19 478:19 facts 374:22 411:20 factual 488:11, 17 592:25 fail 517:24 574:4 failing 470:9 fails 437:21 469:25 476:12 failure 470:4 fair 370:25 406:22 445:11 495:9 505:22 530:18 549:10 562:23 563:14 567:19 569:1 570:1 fairly 413:19 fairness 491:9 fall 413:20 431:17 542:6 falls 412:11 436:25 509:20 525:16 559:7 577:25</p>	<p>false 407:14 443:2 525:9 534:8 580:1 familiar 366:14 415:13 418:13 420:5 432:21 433:6, 16, 25 442:7, 14, 20 443:6 448:20, 21 509:23 541:4 544:24, 25 545:4 546:19 593:18, 19 596:24 families 463:15, 20 464:2 465:17 475:6 484:24, 25 485:3 512:13, 16 536:18 547:11 549:16 561:20 572:7, 16, 19, 23 574:9 575:2 578:6, 11 579:14 607:3, 4, 7, 8 family 367:24 445:11 448:8, 15, 19, 24 471:24 479:3 482:21 558:25 573:19 574:18 581:13 616:24 fast 534:18 faster 430:15 fatal 590:17 602:5 605:15, 16, 20 616:15 feasible 466:20 feature 450:13 features 391:1 FEDERAL 361:3 362:3, 15 505:1 feed 574:17 605:10 feel 528:12 584:1, 17 587:12 felt 585:25 fewer 416:12 490:16 FIESD 545:1 figure 462:4 549:4 figured 594:18 figuring 529:14</p>	<p>File 361:1, 17 362:2, 14 363:3, 10, 17, 21 419:10 492:23 493:6 494:19, 20 495:19 519:3, 11 filed 427:3, 18 495:5 593:16 599:13 602:9 603:7 fill 429:21, 22 filled 556:1 find 392:9 393:4 428:10 445:21 448:14 460:5 485:20 486:1 499:3 506:7 522:10 529:21 563:21 576:20 finding 511:6 findings 401:11 fine 373:6 415:19 419:23 442:23 444:3 540:13 564:12 592:1 604:15 fingertips 490:15 finish 376:8, 10, 14, 16 380:1, 11, 14 382:14, 16, 17, 21 383:16, 25 384:6, 7, 8, 16 468:18 494:5 526:3 613:20 finished 384:18 393:8, 17 460:10, 17 580:2 finishing 404:16 Finland 489:2, 9, 10 491:11 fire 469:7, 8 470:18 483:8, 17, 21, 24 484:1, 8 486:13 487:1, 14 515:25 541:21 546:10 547:7 549:20 550:25 551:1, 4, 10, 11, 14, 25 575:10</p>	<p>FIREARM 362:5 366:13, 15 367:5, 12, 15, 20, 22 368:2, 13, 17 369:8 370:18 373:15, 22 374:8, 17, 19, 21 375:9, 12, 17, 21, 25 376:1, 24 377:6, 11, 20 378:9, 12, 24 381:24 385:11, 14, 18 390:25 397:2, 4, 6, 7, 10, 12 398:23, 24 399:1, 21, 23 400:6 402:12 403:21, 23 405:11, 14, 15 408:18 409:7, 15, 19 410:18, 21, 22, 23 412:3, 4, 7, 9, 10, 20, 21, 24 413:3, 10 414:1, 17, 21 415:3 417:2, 8, 11, 14, 23 418:17 425:2 430:18 431:8, 15 433:11 435:3 437:21 438:3, 4, 8, 19, 20, 21 439:3, 12, 17 440:7, 18, 20 441:23 442:7, 9, 12, 13, 15, 16 443:8, 24 444:7, 11, 15 449:6, 14, 19 450:13 451:24 452:3 454:4, 11 455:11 456:11 457:25 458:7, 12 463:12 464:10, 15 465:11, 12, 16, 25 466:1, 3, 6, 10, 15, 18, 23 467:14, 18 468:13 469:6, 9 470:1, 5, 9, 23 471:9, 10, 19 472:1, 19, 20 473:5, 12, 22 474:2, 9, 11, 15,</p>
---	--	---	---	---

18 475:2 476:11, 12 478:14, 20 479:10 480:11 481:5, 15 482:5, 12, 16 483:25 487:13 488:12 490:2, 4, 5 491:15, 23 492:6 503:2, 11, 23 504:4, 8, 10, 12, 18, 25 505:13, 14, 21 506:11, 12, 14, 15 507:1, 12, 14 509:8, 18, 19 510:4 512:3, 9, 14 513:3 514:20, 22 522:10 523:23 525:15, 19 527:3 528:10, 14, 19, 23 529:1, 11, 16 530:3 531:20 532:2, 8, 22, 24 533:15, 16 537:8, 11 538:11 539:24 540:4, 6, 10, 14 543:14 544:22 546:4, 14, 20 548:1, 11, 13 550:18 552:2, 4, 5, 7, 8 557:25 559:7 560:6 561:20 562:8 565:23 568:24 571:4, 20 572:18 573:13 574:5, 7, 14 576:5, 8, 13, 23 577:24 578:9 579:16, 17, 18, 21 582:1 598:25 606:16 611:1 firearms 366:11, 23 367:14, 16, 17 369:21 373:16 375:13, 14 377:16 378:21 380:23 381:1 386:7, 8, 19 388:6, 18 389:9, 16 390:3,	6, 12 391:17 394:16 395:13 396:16 397:16, 18 398:2 399:6, 14, 17, 24 400:4, 5, 17, 20, 25 402:3 405:9, 12 407:1 410:13, 14 413:25 415:9, 10 416:9, 14, 17 432:21 434:4, 20 435:9, 10 436:11, 24 438:13 439:15, 18, 20 440:16, 20 441:3, 4, 17 444:9, 21 446:12 448:22, 25 450:5 451:9, 20 453:22, 23 456:18 458:10 463:15, 16, 19, 20, 21, 23 464:1 465:19 467:11 470:3 472:12, 17 473:16 475:7, 10 481:8 482:6 485:2, 4 486:12, 17, 21, 24 487:25 488:2, 6 489:18 497:25 498:5, 6, 24 499:8, 15, 17, 18, 19 500:2, 7, 9, 11 502:2, 7, 20 504:11, 15, 25 505:9 506:8, 17, 18, 21 507:11, 23, 24 508:16, 22 509:4, 5, 10, 12, 13, 20, 23 510:5, 8, 22 511:1, 4, 17, 19 512:1, 8, 16 513:5, 7, 13, 14, 18 514:7, 8, 9, 16 515:23 518:20 520:9, 14 522:12, 14, 19 523:8, 16, 20 524:3, 9, 17 525:1, 21, 23 526:6, 7, 19 527:4 528:4, 6, 8, 17 529:18, 20	530:7, 11, 13, 15, 16, 18, 24 531:5, 12, 17, 19, 25 532:14, 25 533:5, 11 535:2, 8, 9, 11, 14 536:10, 15, 19, 20, 22 537:15, 23 538:10, 13, 14, 24 539:2, 5, 6, 8, 9, 12, 17 540:18, 19, 25 541:10, 23 542:3, 20 543:4, 17, 18 544:6, 7, 19 545:13, 19 546:3, 6, 23, 24 547:5, 15, 18, 20 548:14, 16, 18, 20, 22 549:5, 17, 25 550:20, 22, 24 551:3, 8, 9, 12, 23 553:4 554:18 557:8, 11 558:10 560:5, 17, 23 561:2, 4, 11 562:15, 16, 22 563:4, 23 564:23 566:21 568:4, 8, 9, 16, 18 569:2, 8, 10, 12, 14 570:14, 20 571:17 572:6, 7, 11, 15, 21, 22 573:13, 16 574:8 575:2, 3, 6 576:11, 21, 24 577:2, 7, 11, 18, 21 578:6, 10, 17, 19, 21, 23 579:3, 11, 14 581:8, 13, 16, 24 583:8 584:22 586:24 587:3, 8 592:23 593:4, 6, 10 594:3, 22 595:4, 8, 12, 14, 17, 21 598:2, 19 600:2 604:4, 11 607:2 609:24 610:8, 11, 16, 19, 24 611:3, 24, 25 612:2, 3, 5, 14,	24 616:3 firearm's 411:11 fired 432:10 firing 376:3 417:12 481:25 487:17 firm 389:2 440:13 firmearms 432:11 fit 450:5 485:13, 14 486:25 fits 395:11 five-minute 559:24 fixed 549:2 567:18 588:3 fixing 518:3 flaws 517:21, 23 flip 521:15 flow 365:10 focus 383:6 432:3 focused 383:17 578:22 follow 494:9, 18 496:15 557:1 618:11 following 497:11 501:4 615:4 follows 595:19 followup 467:7, 10, 20, 23 468:6 footnote 402:11, 25 foot-pounds 530:1 for.308 576:12 force 402:6 479:18 484:3 535:3, 6 536:17 forced 524:23 forces 457:5, 23 484:3, 9 582:18 587:18 forcing 391:11 403:6, 7, 16, 25 404:4, 6, 11, 17, 20, 23 405:1 forego 417:10 foregoing 614:3	forensic 402:16 517:15 576:1 577:1 forensics 509:5 forerunner 433:8 foresee 559:20, 21 form 377:19 385:25 427:5 formally 506:21 531:19 610:20 format 392:3 519:1, 3 former 510:8 511:4 forms 580:4 formulation 513:21 forth 575:17 forward 403:2, 6 549:14 555:18 591:21 found 377:14, 17 420:8 428:13 443:16 488:4 521:23 553:24 579:4 597:17 617:14 Foundation 440:15 454:2 548:23 FR 519:6 fraction 468:2 frame 497:7 framework 497:12 523:24 530:10 539:22 frankly 480:25 fraud 398:13, 15 free 430:1 freedom 600:18 freezes 469:8 frequent 523:7, 20 front 375:21 485:18 493:5 495:10 FRT 392:4, 5, 14 394:25 396:17 401:14, 21 402:5, 7 406:2 407:6, 13, 14, 24 408:2, 4 492:23 493:21 495:25
--	---	--	--	---

500:15 514:14, 21 515:9 516:13, 18 517:11, 15, 21, 24 518:7, 9, 24 519:8, 11, 18 520:1, 7, 11, 12, 22, 23 521:2 523:8, 21, 22, 23 524:1, 4, 23 525:6, 8, 10, 11, 19 526:5 527:20, 22, 23, 25 528:12, 25 529:2, 8, 23 560:5 562:5, 8, 18 564:15, 23 565:1, 6, 7 full 410:23 412:2 487:13 513:1 528:18 full-automatic 515:24 fully 449:1 483:20 fully-automatic 410:14, 18 412:4, 8 483:16 484:10 486:13 487:10, 18 489:3 491:11 function 437:21 476:13 517:25 functioning 451:25 471:9 479:13, 22 481:15 589:20 fund 599:19 fundamentally 474:6 funded 596:21 furthered 599:25 future 490:5 535:11 568:13 578:23, 25 < G > Gabriel 593:23 game 408:24 409:4, 7 436:16 437:13, 22 438:9 453:13, 18 454:10, 19 475:3 561:9 568:21 569:13,	20 572:13 586:22 gaps 585:6 gas 471:5, 8, 15 481:2, 5, 8, 9, 12, 14, 23, 24 482:3, 7 Gaudet 364:6 gauge 367:11 381:4 396:15 397:14 398:10, 11 400:6, 7 404:15, 24 405:2, 14 563:24 564:5 567:25 571:15, 18, 19, 22 594:11 gauges 389:23 415:21 417:7, 11 Gazette 529:25 gears 385:9 408:5 GENERAL 361:14 362:9, 21 364:1 366:16 367:25 373:14 407:10 412:23 413:20, 23 415:15 416:16 422:13 431:17, 18 433:17 434:19 435:21, 23 438:16, 25 443:4, 19 454:14, 21 455:3 456:14 458:25 470:11, 15 473:17 477:16, 25 478:3, 10 479:11 481:6 495:8, 16 537:21 539:16 555:4 564:19 573:2 596:25 607:14, 15 generally 429:8 437:11 448:10 467:5 480:5 529:7 541:21 542:2 543:8 545:4 550:25 572:14, 24	General's 507:17 generate 408:25 generates 480:7 generating 430:15 431:8 generation 579:6 generic 512:2 GENEROUX 361:7 363:17 460:8, 12, 20 462:1 500:19, 24 504:3 505:5 508:1, 8 511:10, 13 521:22 541:12 553:15 554:16, 17, 21, 24 555:3 556:14 559:15, 18, 24 560:3 563:21 564:10 567:6, 9, 15 570:1, 5, 25 571:1 573:8 575:19 588:20, 22 592:1 593:15, 17 594:24 595:2 596:8 597:25 598:6, 10 600:12, 16 601:2, 5, 12, 17, 19, 25 602:11, 15, 19, 23 603:3, 8, 12, 15, 18, 23, 25 604:1, 8, 12, 16, 20 605:1, 8, 14, 18, 22 615:22 619:9 Generoux's 604:9, 18 616:1, 5 gigabytes 519:20, 23 GILTACA 362:5 gist 457:18 give 373:1 378:3, 4 388:12 394:8 407:8, 14 408:19 442:4 445:14 469:11 480:23 495:22 500:16 510:20 517:24 528:13,	15 537:9 540:8 552:5 563:19 564:16 568:12 591:23 592:3 595:15 610:17 given 370:4 374:9, 11 381:7 384:18 386:21 431:12 441:18 445:12 446:6 448:9 454:25 461:10 467:22 480:18 494:11 502:19 508:15 536:5 537:17 554:6 561:5 564:25 567:8, 11 583:16 609:3 gives 407:16 459:11 502:6 547:1 549:18 giving 383:5 401:15 420:11 448:11 492:5 493:15 494:7, 16 596:6 618:8 glad 568:7 Glass 517:7 Global 529:4 glossary 407:10 564:19 goal 365:13 430:15 478:4, 5 520:12 580:4 goals 586:18 good 365:9 366:8, 9 411:22 468:10 475:12, 25 500:25 501:1 532:5 533:22 591:8, 22, 24 Google 519:21 goverment 597:14 governed 550:6 government 400:21 402:22 505:1 510:3, 19, 22 511:16 535:13 536:23, 25 537:20 538:12 539:11 552:11 553:7 555:17 556:7,	10 578:23 596:22 governments 568:13 599:7, 19 Government's 383:6 Governor 373:22 378:19 379:1, 3, 7, 15 380:15 381:8 382:1, 13 535:5 547:16 548:5 550:9, 12 552:15 561:14 577:25 578:25 grandfather 536:12, 21 grandfathered 537:8 538:9 539:19 grandfathering 534:6, 7, 8, 15, 21 535:1, 7, 16, 17, 25 536:4, 15, 20 537:1, 4, 6, 17, 21, 22 538:3 granted 534:15, 21 great 368:22 389:20 545:23 600:24 601:9 618:16, 17 greater 397:3 409:17 552:5 566:6 Green 534:12, 23 609:23 grenade 570:11, 17 grizzly 468:5, 8 469:1 476:5, 21, 24 477:1 grossly 597:21 grounds 558:1 560:12 Group 364:16 479:19 groups 599:19 growth 612:12 guarantee 417:16 529:22 533:9, 19 guess 477:15 549:7 560:24 565:25 569:1
--	---	--	---	--

570:22 594:20 596:6 601:20 604:22 605:14 guidance 377:19 379:3, 7 381:11 guide 554:8 guidelines 400:3 gun 374:4 377:1, 3 386:4, 5, 6, 12, 14, 15, 24, 25 387:4, 12, 18 388:3, 4, 5, 14, 24 389:4 390:16 412:2 416:4, 13 421:23 429:1 430:10 432:13 469:12 471:4 478:25 492:2 513:25 543:15 545:2, 5 568:14 571:5 599:20 guns 381:22 383:9 384:13 385:6 399:20 400:11 409:2 418:9 439:21 440:2, 11 441:19 446:11 463:8 487:10 544:1 570:11 579:7 610:14 617:10 gunsmith 411:25 412:1, 7, 25 413:7 416:1, 3, 14, 19 gunsmithing 404:20 413:6 414:6 415:2, 3 gunsmiths 416:5 Gwaii 572:14 573:1 < H > Haida 572:14, 25 half 416:10 460:7 544:1 halfway 559:19 hand 389:20, 21 390:4, 10, 13 429:2, 4, 8, 10, 16, 21 430:1, 12,	22 431:3, 16, 19, 21, 22, 23 432:3, 8, 12 handgun 395:7 538:1 588:5 handguns 464:12, 17 538:6, 7, 8 handled 472:1, 2 hands 530:19 600:18 happen 436:7 437:21 465:2 494:1 545:20 611:7 happened 382:4 521:7 539:5 happens 515:11 557:3 happy 510:10 542:8 hard 413:9 441:2 469:22 505:3 508:2 598:7 Hasselwander 410:1, 6, 9, 12, 16, 19, 24 411:20 412:10, 13 551:18 Hawkes 363:5 header 527:3 heading 444:22 562:15 headings 518:10 heads 421:3, 9 headspace 415:21 417:7, 11 headspacing 413:17 417:13 hear 365:6, 8, 11 483:3 514:3 586:12 heard 404:9 513:25 543:24, 25 544:2, 3 563:8 584:20 585:18 600:10, 19, 20, 23, 25 601:7, 11 618:15, 18 Hearing 366:4 422:19 423:1, 11 hearings 507:6 608:2	heavier 473:3, 16 478:17, 20, 23 479:9, 14, 16 480:1, 2, 5, 12 heavily 544:12 heavy 473:8 570:10 Heinrichs 364:15 614:19 Held 361:23 559:20 He'll 485:20 help 388:23 493:5 499:5 508:5 509:7 510:10 531:15 543:14 helped 501:14 helpful 513:16 helps 525:21 Henderson 377:10 378:1, 7 heritage 441:5 high 416:7 513:9 530:25 551:10 575:10 581:20 high-energy 434:16 higher 430:16 435:16, 18, 22 437:20 451:5 465:19 591:6 highlighted 420:25 425:16 highly 387:16 388:5 469:20 530:14 598:14 600:8, 16 highly-prized 570:17 high-quality 523:11 Hipwell 582:12, 14 583:17 586:22 Hipwell's 582:25 historical 395:12 455:20 535:7 historically 597:20 history 578:20 579:1	HMS 432:20 433:25 Hold 384:15 420:6 422:11 462:1 504:7 507:11 522:14, 21 523:3 529:19 551:16 holder 506:12 holders 514:17 holding 537:4 546:10 holds 507:13 573:12 600:17 home 440:24 441:24 455:10 494:22 512:21 519:22 homicide 589:7, 17 602:4 604:21 605:1, 5, 7 616:8, 11 Homicides 589:13 hope 591:8 hopefully 461:25 528:25 588:24 589:8 host 438:13 hot 429:17 hotly 553:11 hour 414:5 460:7 588:10 Hours 411:6 412:16 413:1 512:23 514:15 515:6 522:22 529:19 587:22 588:2 House 562:24 huge 467:17 480:25 573:14 hugely 465:15 468:21 human 469:19 humane 436:14 437:12 478:3, 13 hundreds 487:4 522:19 528:4 577:10 hungry 573:20 hunt 409:9 436:15 437:14 475:20 476:9	572:6 573:4, 10, 14 hunted 476:8, 9 hunter 388:8, 9 437:3, 4, 5, 9, 12, 13, 14 438:10, 19, 20 439:3 442:7, 11 443:7, 22 444:7, 9 446:11, 13 448:15, 18 456:10 467:14 468:1 469:4, 8 474:2 478:1, 4, 8 571:21 574:22 616:23 hunters 389:8 436:11, 20 437:11 438:3, 13 456:13 457:9 458:10 473:15 474:21 475:22 569:17 572:21 573:13 hunting 374:5 408:21, 24 409:3 413:14 434:23 436:9, 20 437:24 438:1, 17, 25 439:1 440:21 441:7, 8, 12, 20, 25 442:2, 10, 12, 15, 16 443:8, 24 444:7, 11 448:25 449:6, 11, 14, 18, 22 450:1, 11 453:5, 11, 14, 16, 18, 20, 25 454:3, 8, 10, 16, 19 455:6, 8, 10 456:2, 6, 8, 10, 12, 23 457:10 458:8, 11, 20 459:9, 25 463:8, 13, 17, 23 464:3, 11, 15, 18, 23 465:12 466:25 467:1, 3, 6, 8, 25 470:12, 14 475:2, 25 476:3, 7 477:19, 20, 22 478:10 482:5, 6 502:12 561:9 568:5, 8,
---	---	--	---	---

9, 16, 18, 22 569:2, 9, 12, 15 570:4 571:6 572:9, 17 573:18 574:2, 15 575:4 577:7, 9, 18 578:7, 8 579:7, 11, 17, 21 582:3 599:2 618:5 hypothetical 373:7 374:9, 13 387:19	image 446:24 540:3 imagine 465:9 467:25 472:22 491:3 imitation 375:4 immediate 478:12 impact 473:5 482:2 490:5 500:15 501:14, 18 546:9, 25 548:4 549:18 550:6 561:6 613:14 impartiality 598:17 impediment 409:6 impinging 481:10 implementation 538:8 implies 484:1 imply 477:19 505:16 import 529:1, 3, 5, 6, 7 important 374:15, 22 375:9, 14, 15, 23, 24 377:2, 7 383:3 437:17, 18 438:12 467:10, 20 468:6, 15 470:22 587:11, 20 609:5 imported 397:13 516:3 importer 369:22 376:5 imports 516:5 impression 407:14, 16 Improperly 417:13 improve 365:19 557:12 improvement 556:24 inability 469:7 inadmissible 419:21 424:19	427:22 428:8 433:2 inadvertently 469:5 inappropriate 427:7 inbuilt 519:5 incapable 478:14 incident 488:19 491:4 492:12 536:3 incidents 488:2 include 379:2 457:16 490:19 497:3, 17 520:2 542:2 559:6 563:8 564:4 566:11 567:13 592:9 594:2 612:13 included 374:12 380:16 436:23 547:15 561:4 563:25 564:5 585:2 592:11, 12, 13 593:13 includes 407:6 527:2 533:10 561:3, 7, 11 562:14, 21 563:4, 13 564:15 612:1 including 456:15 504:12 534:5 562:25 568:22 570:10 586:22 596:2 598:14 incoming 517:8 incorporate 407:1 559:3 incorrect 464:4 517:24 597:21 increase 431:1 520:8 increasing 430:6, 17 increasingly 452:6 independence 497:9 independent 405:19 505:25 515:20 521:14	524:24 527:17 528:21 index 615:6 indicate 546:4 indicated 451:14 454:2 458:9 461:25 indicates 411:9 540:11 indication 407:8 496:19 564:17 Indigenous 572:14 indirect 427:23 individual 395:9 430:25 437:5 465:23 469:21 474:9, 16 504:21 505:9 506:24 513:8 514:16 525:16, 17 526:10 530:9 532:21 595:12 607:1 individualized 512:6 531:10 532:10 individually 373:24 individuals 464:2 495:18 496:16 504:10 513:9 514:6 532:13 582:5, 8 585:22 industry 368:1 375:3 391:15 396:11 399:24 400:1 404:4 429:14 434:20 438:15 513:13 548:22 557:11 573:14 inexplicably 561:7 infer 411:19 454:5 inferred 379:10 influence 429:20 inform 399:22 547:17 559:23 informal 439:16 information 369:9, 10, 13 370:15 371:6	372:20, 21 373:3, 11, 17 374:1, 6, 10, 12 375:18 376:21 377:20 378:14, 15 389:2 395:5 397:14 398:22 399:3 406:14 407:11 425:16, 18, 20 433:23 439:16 440:11 445:21 447:21 454:18, 20 464:4 488:8, 17 495:23 512:2 513:4 520:9 524:18, 19 528:6, 20 534:2 543:12 544:20 553:10 559:18 564:20 612:1, 6, 22 613:11 informative 399:16 informed 381:20, 23 523:7, 19 inherited 450:3 in-house 552:19, 21 initially 380:18 436:21 498:8 initiative 497:4 injunction 387:20, 23 602:10 injured 575:8 592:11, 13 input 501:16 537:10 inquiries 529:20 585:4, 9, 13 inquiry 584:25 inserts 421:10 inside 389:22 insisted 563:7 insisting 597:12 inspection 472:2 inspirations 455:14 inspired 455:21 install 478:17, 23 479:9 installation 417:3, 6
--	--	--	---	---

<p>installing 479:14 480:12</p> <p>instance 395:25 464:12 472:19 491:7 519:1 548:13, 18, 19</p> <p>instances 492:5, 16 495:15, 22 607:17 609:8 619:2</p> <p>instructions 432:8</p> <p>instructive 381:9</p> <p>instruments 597:2, 5</p> <p>insufficient 468:14</p> <p>insular 389:5</p> <p>intend 459:20</p> <p>intended 401:21, 22 422:6 442:13 525:6</p> <p>intends 437:14</p> <p>intent 477:19</p> <p>intention 402:4 519:7 566:20</p> <p>intentional 398:19</p> <p>intentionally 398:7</p> <p>intentions 402:8</p> <p>interact 389:6 534:25</p> <p>interacted 389:4, 9, 11, 19, 24 390:4, 6 429:1</p> <p>interactively 445:14</p> <p>intercepting 515:23</p> <p>interchangeability 543:3</p> <p>interchangeable 418:19 433:11 434:5, 7 451:9, 21 452:2 558:16 559:11</p> <p>interchangeably 451:2</p> <p>interchanged 421:3</p> <p>interest 441:3 597:2</p>	<p>interested 369:7 455:3 493:21 595:7</p> <p>interesting 591:10</p> <p>interests 599:25</p> <p>interfere 469:5</p> <p>interim 517:9</p> <p>interior 385:18 390:25 393:19 403:1</p> <p>interject 611:6</p> <p>intermediate 483:9 541:22</p> <p>internal 553:15, 20 586:14</p> <p>internally 553:12 556:7 586:11</p> <p>internet 445:4, 8, 15, 24 447:4, 19 448:5 493:14, 25 495:20 521:18, 25 522:7 523:11 578:14 602:4, 24 603:2 615:12</p> <p>interpretation 394:8 395:11 406:6 458:22 459:12, 16 525:25</p> <p>interpreted 394:9 615:5</p> <p>interpreting 459:2 566:22</p> <p>interrupt 365:8, 12 523:18</p> <p>interrupted 384:17</p> <p>intertwined 456:20</p> <p>intervention 577:11</p> <p>intrinsic 473:11 474:15</p> <p>introduces 403:22</p> <p>introduction 458:4</p> <p>invented 549:5 579:25</p> <p>invest 413:7</p>	<p>investigate 496:2</p> <p>investigations 545:6</p> <p>investment 588:1</p> <p>investments 536:6</p> <p>invisible 398:3</p> <p>involve 538:17 581:3</p> <p>involved 369:22 377:11 411:21 422:4 457:6 517:14</p> <p>involvement 380:10 381:14, 16 383:9 384:13, 23 385:5 517:16 557:6 617:9</p> <p>involves 417:3</p> <p>involving 414:20</p> <p>irrelevant 518:19</p> <p>isolate 469:22</p> <p>isolation 480:3</p> <p>issuance 610:4</p> <p>issue 378:8 406:16 410:17 434:3 461:18 470:6 484:4 508:4 538:17 539:10 555:13 576:22 610:15 611:6</p> <p>issues 527:18 529:4 538:6 591:12</p> <p>items 561:9</p> <p>< J > Jager 377:11 380:23 561:22</p> <p>jamming 470:9</p> <p>January 387:24 487:20</p> <p>Jeffery 421:8, 15 428:18</p> <p>Jennifer 364:8</p> <p>Jensen 363:5</p> <p>jet 465:3</p> <p>Jiwan 364:7 507:21</p>	<p>job 389:6 585:14</p> <p>Jody 553:21</p> <p>JOHN 361:8 362:17 363:21</p> <p>joint 553:22, 23, 25 555:22 556:21</p> <p>Jordan 364:5</p> <p>joule 568:11, 19, 21 570:3 580:11 581:7</p> <p>joules 408:20, 22 409:1, 17 412:20, 21, 25 413:3, 4 415:2 418:20 421:15, 16, 24, 25 428:19 431:8 433:14, 21 434:7, 9, 12 530:1 569:2, 7, 9, 24</p> <p>JSS 554:25 601:20</p> <p>Judge 428:5 461:10</p> <p>judges 401:8, 17 402:1, 5 405:17, 23 525:7</p> <p>June 516:16, 17, 25</p> <p>Justice 364:9 555:4 556:25</p> <p>justified 591:4, 15</p> <p>Justin 540:23 594:6 604:3, 10 616:2</p> <p>< K > K1P 364:11</p> <p>K98 579:5, 6, 9, 15, 24</p> <p>Keeping 499:10 503:5</p> <p>keeps 545:19</p> <p>kept 612:16</p> <p>key 579:22</p> <p>kill 436:14 437:12 478:3, 13 541:2, 5 596:4</p> <p>killed 489:11 585:7 590:4, 19,</p>	<p>25 591:6, 14, 17, 18, 19</p> <p>killings 590:12 591:3, 5</p> <p>Kimberley 517:7</p> <p>kind 373:10, 18 374:1, 6 379:6 385:17, 20 386:4 389:24 398:12 400:24 409:7 413:13 414:17 425:18 427:4, 19 431:15 449:19 456:10 461:7 476:4 500:10 503:4 518:4 544:21 547:1 579:10 584:12 611:11</p> <p>kinds 386:6 390:6 395:2, 23 475:11 488:5 498:4 516:3 538:6 540:18 546:23 572:20 574:2 579:2 586:4</p> <p>knowing 426:4 599:9, 22</p> <p>knowledge 373:1 382:4 388:9 389:13 391:4, 20 394:25 409:5, 10 415:1 416:4, 16, 21 420:19 422:15 433:13 436:23 484:11 511:22 516:4 528:5 533:13, 14 537:10, 14 597:18</p> <p>KNOWLES 362:6 572:25</p> <p>known 455:13 532:1, 2 546:24 601:13</p> <p>knows 532:9 533:11 571:22</p> <p>KR1 432:20 433:10</p> <p>< L > Lab 575:22, 25</p>
--	---	--	---	--

<p>laboratory 576:1 577:2 Labs 572:13 Lab's 576:1 lack 507:8 laid 529:12 531:2 557:21 language 464:7 542:19 580:13 laptop 485:20, 22 large 408:24 409:3 413:14 434:15 440:16 491:1 513:14 519:15 533:20 546:10 547:8 549:21 551:10, 16 569:13, 19 575:8 599:5 largely 436:11 496:17 larger 466:10 476:21 570:8 571:18 606:25 largest 541:2, 5 567:12 launcher 570:16, 17 launchers 570:11, 12 LAURENCE 362:6 law 377:19, 22 378:2, 12 408:1 409:19, 25 457:11 523:10 525:6 527:10, 11 528:7 529:2, 22 530:8 531:15, 23 532:15, 23 539:12, 16 540:15, 17 552:13 554:2, 8, 11 557:4 582:6 590:13 lawful 503:9 505:13, 18 506:25 533:1 537:16 538:3 597:12 598:20 laws 397:11 530:7</p>	<p>learn 530:1, 2 leave 609:4 leaves 569:7 leaving 608:6 left 476:18 569:22, 24 580:5 588:21, 23 593:24 594:12 608:23 legal 365:15 398:17, 23 400:10 401:13 409:5 423:8 428:6 458:22 459:3, 5, 14, 18 463:24 464:17 504:2 505:2, 3, 8 506:3, 7, 23 523:24 524:13 525:12 530:10, 17 532:19 536:16, 19 552:14 555:25 565:11 596:7 600:14 601:3 610:5 legally 401:15, 17 504:8 525:6, 9 530:21 532:3 539:21 552:20 565:14, 17, 18 legislated 557:12 legislation 537:11 538:18 539:3 legislative 391:21 487:11 legitimate 419:24 599:3 length 395:5 396:22 lengths 395:24 letter 532:4, 10 533:8, 10, 14, 17 555:5 556:18 letters 423:15 512:6 531:11, 14, 24 532:12, 13 level 422:3 435:8, 15 437:20 478:8 495:21 513:7 587:25</p>	<p>lever-action 457:7, 10, 13, 16, 19 458:2 465:17 466:21 468:21 lever-actions 457:8 lever-operated 457:17 licence 530:13 licences 593:5, 6 license 504:24 507:13 593:10 licensed 416:5, 9 417:24 514:16, 20 610:11 licensee 591:19 593:10 licensees 591:1, 7 593:13, 21 594:21 lies 388:16 536:24 life 502:8 575:17 light 467:2 521:4 596:12 597:6, 12 598:1 lighter 473:16 474:17, 18 475:13 479:25 Likewise 491:23 limit 568:11 580:11 581:7 limitation 430:9 limited 475:7 489:21 519:5 568:21 limits 415:3 570:3 lines 575:18 link 375:24 listed 366:11, 23, 25 367:13, 14 378:21 423:20 485:4 487:4 491:15 502:2 525:19 526:13, 15, 23 546:8 560:13 561:20, 24 562:2, 10</p>	<p>listing 488:1 615:4 lists 486:7 literature 368:1 391:22 437:9 Litigation 364:9 lives 416:17 583:21 590:7 living 575:11 LLP 363:5 load 428:18 429:5, 9, 13 430:6, 13 431:10 432:5 435:19 436:3, 8 470:9 481:1, 22 loaded 431:16 451:5 469:15 494:21 loader 429:8, 16 430:13 431:3, 19 432:4 loaders 389:20, 21 390:5, 10, 13 429:2, 4, 8 430:1, 22 431:16 566:11 567:13 loading 399:14 421:17 428:22 429:9, 10, 17, 21, 25 430:6, 13, 19, 21 431:21, 22, 23, 24 432:8, 12 494:21 548:16 566:13 loadings 421:14, 18 loads 421:20 429:20 430:23 431:12 435:1, 2, 5, 21, 24 locations 544:9, 10 logic 377:4 410:10 412:19 458:16 logical 371:13 388:20, 22 437:14 438:2 474:18 490:6 532:7 Logically 367:10 long 380:24 421:7 467:9</p>	<p>470:15 540:13 561:7, 17 574:2 581:14 longer 398:1 411:15 466:12 480:23 502:3 503:3 506:24, 25 523:3 536:11 578:7, 13 long-range 582:2, 3 long-standing 515:22 520:12 looked 374:20 420:21 422:1 433:20 434:16 435:19 517:3 looking 366:18 379:10 392:14 407:13 408:4 418:24 420:12 425:15 432:16 448:1 475:1 511:11 607:8, 10 looks 437:5 551:7 556:21 loose 514:4 547:1 561:5 loosely 542:4 lose 590:6 lost 437:22 578:14 lot 415:8 528:14 537:10, 14 569:17 581:12 lucky 515:12 lump 588:5 lunch 419:2, 3 426:19 428:10 450:17 460:2 462:9 < M > M14 492:10, 12 539:20 594:8 M16 367:6 485:12 486:6 541:23 M305 594:7 M4 367:6 485:12 486:7 M5H 363:14</p>
---	---	--	---	--

<p>machine 386:8, 11 388:5, 15 389:1 570:11</p> <p>MacKinnon 364:2 370:4 371:18, 22 372:2, 4, 11, 25 376:8, 10, 12, 14, 15, 16 379:20, 22, 24 380:1, 5, 11 381:19 382:10, 12, 14, 16, 21 383:11, 20, 22, 24, 25 384:2, 4, 6, 15, 19, 21 385:2 387:3, 7, 10, 15, 17, 21 390:18, 21 392:13, 19 395:19 398:19 419:3, 14, 19 420:6, 14, 19 422:11, 21 423:3, 5, 13 424:1, 6, 18 425:5, 7 426:10, 15, 25 427:17 428:4 432:25 441:13 442:17, 20, 22 443:9, 14, 25 444:5 445:1, 3, 6, 12, 22 446:5, 18 447:2, 8, 18 448:2, 9 450:16, 20, 22 454:24 458:21 459:1, 10, 15 460:4, 13, 16, 19, 23 461:1, 6, 16 462:10, 12, 20 468:18 482:24 483:2, 4 485:9, 19, 23, 25 486:14, 17, 20 492:25 493:10, 12, 14, 24 494:3, 10, 13 495:2, 4, 6, 9, 13, 14 497:5, 10 498:1, 20, 23, 25 499:3, 6 504:1 505:2 507:20 508:1 511:8, 11 520:3 521:16, 20 526:3 533:23</p>	<p>541:11 554:16, 20 556:9, 16 559:19, 23 563:17 564:7 567:4, 8, 10 570:1, 24 573:6 575:12 588:20 591:23 593:15 594:24 596:5 597:22 598:6, 11 600:12 601:2, 13, 15, 22 602:8, 12, 16, 25 603:6, 14, 21 604:5, 15, 24 605:3, 12, 17, 23 606:4 608:4, 14, 18, 21 609:4, 13 611:5, 19 613:4, 19 619:11</p> <p>Madam 425:23 426:16 428:9 446:23 498:10</p> <p>made 379:15 393:20 435:20 439:2 474:14 478:1 496:10 499:14 500:2, 6 507:7 508:9 520:7 524:4, 8 528:7 535:10, 11 536:7 539:13 547:16, 17 557:15 561:13 562:8 563:23 571:13 603:19 609:25 612:9 613:13</p> <p>mag 552:1</p> <p>magazine 413:8, 19 417:22 420:3, 5 421:9 422:5 424:24 551:5, 10, 22, 24 552:7, 8</p> <p>magazines 417:22 418:4 515:24 546:11 551:4, 16</p> <p>Magnum 568:23 569:18</p> <p>mailed 512:3</p> <p>main 367:8 440:23 441:3 519:9 611:13</p>	<p>mainstream 523:17</p> <p>maintain 530:9 584:5 587:1</p> <p>maintenance 514:25</p> <p>major 416:17 598:16</p> <p>majority 388:25 389:12 390:4 399:2, 5 545:23 578:21</p> <p>making 393:23 394:16 396:17 398:23 439:25 443:1 509:11 534:5 557:4</p> <p>manage 461:22</p> <p>manager 517:8, 9 520:20 563:14 606:16</p> <p>mandate 556:23</p> <p>mandated 599:18</p> <p>mandatory 585:25</p> <p>manner 487:18</p> <p>manual 466:20 467:16 469:10</p> <p>manually 466:5 470:1 482:7</p> <p>manually-operated 465:25 466:3, 12 469:12 482:13, 15</p> <p>manual-operated 468:24</p> <p>manuals 430:22</p> <p>manual's 432:8</p> <p>manufacture 374:3 434:21 446:12</p> <p>manufactured 397:13, 22 399:6, 18 414:25 546:5</p> <p>manufacturer 368:15, 19, 20 369:1, 5, 8, 11 370:3, 9 374:15 376:4 397:11 424:25 425:2 429:6, 7 431:9 434:11 441:11,</p>	<p>22 442:10, 15 443:23 444:2, 6 449:13 543:6, 9 545:25 616:20</p> <p>manufacturers 400:3, 4 429:10, 11, 12 431:12 434:21 435:9 438:24 440:17 448:24 449:17</p> <p>manufacturer's 368:21 375:10, 15, 23 376:25 425:19, 20 433:24 543:2</p> <p>manufactures 388:6 446:10</p> <p>manufacturing 434:11 598:2</p> <p>marginal 476:1</p> <p>mark 370:6, 12 372:13 402:13 418:21, 25 422:18, 20 423:9, 21, 23 424:4 448:12 459:21 522:25 604:22</p> <p>marked 397:18 399:4, 21 400:17 422:22, 25 423:4, 15, 19 426:5, 12 522:4 553:20 602:20 603:3</p> <p>market 444:7 449:17 547:9 549:22 573:15</p> <p>marketed 368:14 439:14 440:11 441:7, 11, 19, 20 442:2, 9 443:8, 23 444:18, 21 445:10 448:8, 15, 18, 24 449:6, 11 545:24 558:12 616:24</p> <p>marketing 396:16 445:21 449:14 453:3</p> <p>marketplace 472:13 576:11</p> <p>markets 442:16 444:9, 15</p>	<p>marking 400:19, 24 426:2</p> <p>markings 398:3 399:1, 15</p> <p>marksmanship 587:24</p> <p>mass 488:6, 21 489:16, 18 490:1, 2, 7, 9, 10, 13 491:8, 19, 24 492:2, 6, 13 570:13, 15, 19 585:2 590:21, 23 592:5, 8, 15, 21 593:3, 9, 18, 20 595:7, 8, 18, 22</p> <p>match 592:19</p> <p>material 525:24</p> <p>materials 535:12 588:1</p> <p>math 590:3, 16, 21</p> <p>mathematician 590:2</p> <p>matter 378:21 406:7 411:5 413:1 414:5, 16 434:17 458:15 463:13 464:22, 23 465:1, 7 469:9 488:11 509:8, 18 520:6 543:22 559:4 574:15, 17</p> <p>matters 405:22 461:23 508:16, 23 509:4, 6, 21 510:4, 5, 23</p> <p>Matthew 582:12, 13</p> <p>Mausser 568:24 579:15</p> <p>maximum 429:25 435:8 611:1</p> <p>McMillan 581:13, 24</p> <p>meaning 393:1 410:20 463:25 464:10 483:7 487:17 499:20 512:12 542:1 544:22 549:2 554:17</p>
---	---	--	---	--

<p>meaningful 544:20</p> <p>means 376:1 388:19 396:4 414:21 427:23 452:5 483:24 484:8 559:7 571:22 584:14 596:4</p> <p>meant 407:11 516:6 523:19 564:20 565:4 582:7</p> <p>measure 386:17 387:1, 7 388:10 389:13, 21 390:17 396:8 405:12 481:20 521:3 565:16</p> <p>measured 385:11 524:11 530:2</p> <p>measurement 385:20, 21 386:1 389:25 613:2</p> <p>measurements 395:2, 10</p> <p>measures 534:25</p> <p>measuring 385:12, 17, 18, 23</p> <p>mechanical 374:14, 18 375:9, 13, 16, 22 376:24 377:15, 23 378:22 404:19 411:22 412:15 463:18</p> <p>mechanically 367:7 374:4</p> <p>mechanics 374:21</p> <p>mechanism 375:1, 5 376:3 380:24 457:16 466:21 467:16 468:24 469:10, 25 471:5, 11, 16 479:13, 22 480:20 481:15, 25</p> <p>mechanisms 368:10</p>	<p>media 523:17 593:3 594:9 612:8</p> <p>meet 504:11 547:13, 20 549:12 561:5 586:11, 18</p> <p>meeting 513:23</p> <p>meetings 513:19 596:23 598:13</p> <p>meets 509:14 557:21</p> <p>megabytes 519:12, 20</p> <p>Melinda 364:15 614:19</p> <p>member 367:24 368:3 444:12, 15 445:10 448:8, 15, 19 517:2, 6 587:17 596:10, 20 597:1 599:6 616:24</p> <p>members 448:23 554:14 583:2 585:20, 25</p> <p>membership 402:20</p> <p>memorabilia 570:18</p> <p>memory 370:14 371:7, 10 442:5 516:21 588:17</p> <p>mention 394:14 401:5, 6 501:18 513:3 534:23 572:10</p> <p>mentioned 376:7 380:23 394:12 414:9 418:8 428:6, 17, 25 432:18 434:3 454:1 456:7 467:1 477:13 479:8 483:10, 11 484:25 492:10 501:13, 21 509:22 512:5 514:14 534:11, 13 544:24 549:12 550:8</p>	<p>580:20 581:24 598:8 611:10, 11</p> <p>mentions 368:20 570:3</p> <p>menu 589:10</p> <p>Merchant 553:22</p> <p>merely 481:23 523:23 524:4 525:20</p> <p>Merkel 432:20 433:10</p> <p>met 487:16 513:20</p> <p>metal 393:12, 16, 21</p> <p>metaphors 506:19</p> <p>method 539:10 565:15</p> <p>methodologies 584:8</p> <p>metre 580:8</p> <p>MICHAEL 362:17</p> <p>micrometer 385:25</p> <p>migrated 548:15</p> <p>Milestones 510:20, 21 517:10 596:9</p> <p>militaries 548:21</p> <p>military 408:19 439:18 441:4 450:3, 4, 8, 12 451:4, 13, 17 452:21, 24 455:25 456:4, 12, 17, 19 457:1, 11, 14, 22 458:2, 7, 18 483:23 484:4 486:22 504:14 513:15 540:17 541:15, 20 542:3, 11, 18 547:1 548:15 551:8, 11, 23 552:8 558:2 560:13, 15 561:2, 5, 12 568:10 570:10, 17 578:19, 22 579:7, 11, 16 582:1, 6 583:6, 12, 20, 24, 25</p>	<p>584:4, 5, 7, 14 586:23</p> <p>Millbrook 584:21</p> <p>Miller 363:4 461:16, 17 554:24</p> <p>millimeters 567:2</p> <p>millimetre 565:25 566:14, 22 567:14 568:8, 17 569:23</p> <p>millimetres 394:4, 18 396:6, 21 404:24 405:3 477:14 565:24 566:3, 9, 18 567:1, 16 568:6 570:9 571:8, 11</p> <p>million 386:12 388:3, 24 512:3 610:9, 11</p> <p>Milne 364:5</p> <p>mind 402:8 405:20 422:13 432:14 437:8 514:2 515:21 516:25 527:17 528:23 530:4 548:7 559:14, 15 576:25</p> <p>mine 460:21, 22</p> <p>Mini 572:12</p> <p>Mini-14 488:18, 21 489:3, 25 491:5, 8</p> <p>minimal 462:15</p> <p>minimize 466:23, 24 470:15, 24 471:6 474:10 477:17</p> <p>Minister 540:23 543:6 555:4 556:25 562:23 563:15, 18 609:14</p> <p>Minister's 541:9</p> <p>minor 412:14 481:18, 19, 20</p> <p>minute 510:20</p> <p>Minutes 411:6 428:16 450:18, 21 559:14, 22</p>	<p>588:24 598:9 605:24</p> <p>mis-feed 470:4</p> <p>misfire 469:6</p> <p>mislabelling 398:8, 16</p> <p>misleading 407:18</p> <p>misplaced 545:13, 14</p> <p>misrepresentatio n 398:12, 15, 20</p> <p>missed 533:6, 21 557:25</p> <p>misspoke 592:16</p> <p>mistake 609:14, 20, 25 610:2</p> <p>mistaken 459:16</p> <p>mitigate 473:18, 21</p> <p>mixing 506:19</p> <p>mm 397:4</p> <p>model 414:20, 25 417:2 418:2, 5 442:3, 5, 11 450:8 499:16 518:8, 9 547:10</p> <p>models 547:5</p> <p>Modern 442:6 443:7, 22 444:6 446:11, 12, 13 448:14, 18 466:20 543:21 547:7, 23, 24 548:2, 11, 12, 17, 20, 21, 23, 25 549:1, 7, 21 551:23 579:16, 17 616:23</p> <p>modifications 413:17 414:13</p> <p>modified 438:19 470:24 486:7, 11, 23 522:24 527:2, 6 542:5 558:9 562:14</p> <p>modify 439:7</p> <p>modifying 414:9</p> <p>modular 413:25 418:9 432:19 433:18 449:20</p> <p>moment 365:19 470:13 482:18 500:16 589:16</p>
--	---	--	---	--

<p>Moncton 492:11, 12 584:25 585:1, 7 592:9, 12 593:10 594:6 605:9, 11 money 585:13 monitor 529:24 Montana 568:23 month 588:11 Monthly 516:20 months 521:11, 12 Montreal 488:19 moose 475:4, 20 476:2 moot 500:8 morning 366:8, 9 mortar 570:18 mortars 570:12 Mossberg 594:11, 14, 16 motion 602:10 motivations 561:16 motive 596:4 MOUNTED 362:10, 21 mouth 432:7 move 365:14 548:17 564:12 565:19 580:2 588:25 593:21 movement 479:20 moving 555:18 MT 365:1 462:22, 24 463:1 613:23 murdered 570:16 585:1 589:24 murderers 595:10 murders 570:19 MURRAY 361:21 365:24 366:1, 7 420:17 460:8 463:2 508:6 615:2 M-U-R-R-A-Y 365:25 muzzle 399:14 408:7, 14, 17, 22 409:16, 21</p>	<p>410:15 428:22 430:16 431:8, 14 435:3, 25 436:1, 5, 6 457:24 471:2 472:19, 21 473:23 524:11 548:15 566:11, 13 567:13 < N > named 367:16, 17 373:22 378:22 379:1 380:16 485:9 502:10 527:3 558:10 562:15 606:21, 23, 25 607:2, 13, 16 names 433:4 451:15 484:17 584:23 naming 553:18 nation 370:22 National 440:15 454:2 484:2 544:7 548:22 587:25 nations 457:5 596:11 599:12 NATO 451:2, 13, 17 452:1, 9, 23 455:20 548:19, 20 nature 374:18 413:25 414:23 439:19 449:20 470:6 474:15 509:6 519:5 n-bore 385:24 near 566:9, 14 necessarily 377:1 397:21 409:2 413:23 414:12 417:15, 16 418:6 425:9 431:18 435:15, 17 451:21 480:18, 22 577:15 necessary 387:1 388:10 428:5 583:2</p>	<p>necessity 374:23 574:4 578:12 needed 554:25 577:15 585:11 586:20 588:18 needs 405:12 555:24 571:22 584:18 586:7, 11, 18 588:8 589:22 negative 514:6, 10 negotiating 597:2 negotiation 599:24 neither 499:18 544:15 new 406:5, 7 407:21 413:16 417:3, 6 435:10 521:5 529:18, 25 534:14, 19 536:9, 21 558:13 565:13 575:14 577:8 612:25 newly 506:23 512:8, 15 522:11 532:24 546:5 news 529:25 night 515:2 NILS 362:17 noise 365:16 nominal 385:22 396:7, 13 401:2, 5, 9, 18 402:2 405:8, 18 406:1, 3, 6, 13 530:2 non-binding 525:3 nonprofit 402:17 non-prohibited 463:12 464:10 574:14 non-restricted 366:25 374:7 444:11 472:12 576:11 610:16, 19, 24 612:3 noon 450:17 Norinco 518:13, 15 537:25</p>	<p>normal 415:3 428:24 523:4 537:16 557:2 normally 397:10 normative 395:15, 17, 19 396:1 norms 391:15 395:1, 21 429:15 North 453:5 Nos 361:17 Notable 510:20, 21 517:10 596:9 note 377:14 407:6 523:2 564:15 noted 409:14 423:9 426:1 451:7 notes 614:6 notice 427:4 461:3 569:7 594:12 noticed 365:17 518:6 546:25 580:3 581:11 583:5 593:23 Notices 502:18, 19 notification 428:7 531:18 notified 496:12 notify 525:21 531:16 notion 375:1 474:7 notwithstanding 424:12 426:17 Nova 593:23 November 361:24 614:14 615:3 NSSF 548:22 nullified 506:6 number 365:20 380:16 396:11 413:24 439:19 441:10, 24 446:11 456:18 465:2 482:24 490:15, 25 491:1 497:6 508:16, 17, 23 515:7 517:14 522:12 545:12</p>	<p>567:18 575:17 606:20, 21, 23, 25 607:18 608:5 609:9 610:7, 10, 18 611:1, 21 612:3, 15, 17, 19 613:5 619:3 numbers 439:23 591:15 nutshell 553:24 559:9 NWEST 544:24 < O > object 422:14 425:10 426:11, 13 436:15 607:23 objected 424:8 426:6 objecting 364:2, 3 365:12 423:1, 18 424:13 426:23 427:15 objection 365:11 366:4 372:14 385:4 422:18 423:9, 10, 20 426:2, 10, 17 428:12 447:11 459:22 493:23 494:15 601:6 609:7 617:2, 8, 13, 18 618:1, 7, 13 619:1 objections 615:5 617:1 obligate 402:4 obligated 401:23 524:22 obligation 401:8 505:8 530:9, 15 observed 452:3 obtain 433:23 539:23 obtained 393:15 obtaining 504:12 obvious 399:7 occasions 447:25 515:7</p>
--	--	--	---	--

<p>528:16 occur 398:13 occurred 574:2 occurs 518:3 O'Connor 364:10 October 361:22 426:24 432:22 O'Dell 414:20 435:4 off-duty 583:18, 23 offence 411:10, 14 offense 401:10, 12 offered 488:5 498:5 507:24 577:21 offhand 378:10 416:8 588:13 office 371:8 426:20 461:20 462:16 494:22 507:17 529:4, 6 596:24 officer 402:9 408:1 605:2, 5, 7 616:9, 12 officers 402:5 525:7 541:5 583:20 585:1, 7, 9 586:14, 23 587:12 589:7, 13, 18, 19, 24 590:4, 6, 13 602:4 604:21 605:11 Official 364:14 400:24 545:16, 18 549:7 564:24 565:1 578:3 614:20 615:6 officially 594:4 offset 479:19 oftentimes 429:4 OIC 458:23 459:2 594:1 old 399:10 older 399:9, 10, 11 ones 369:21, 23 370:22 526:19</p>	<p>546:8 549:13 560:10 581:3 587:12 602:8, 16 607:5 610:20 612:18 one-shot 478:3 ongoing 510:7 511:3 596:13 online 417:23 424:15, 23 440:12, 14 496:11 onus 530:23 onwards 502:19 open 419:9 427:12 485:16 498:11, 16, 19 519:18 525:25 608:23 opening 498:21 operate 417:8 429:14 466:20 469:25 480:19 481:24 operated 482:7 operates 529:6 544:6 operating 435:6 451:15 530:21 556:22 operation 404:16, 18 413:20 operations 500:15 operator 467:13 469:25 opinion 404:3 422:2 502:11 525:14 528:14, 15 529:22 539:19 548:11 550:18 552:3 560:6 561:10, 19 562:17, 18, 19 563:15 564:25 565:2, 15 568:12 577:21 578:3, 4 580:10 587:22 opportunities 583:1 opportunity 427:20 437:22</p>	<p>506:4 558:14 596:4 opposed 395:2, 9 396:7, 22 403:17 410:14 450:12 473:16 583:25 opposite 371:12 option 516:12 537:17 538:2 580:15 options 371:13 414:3 478:18 516:8 523:14 535:13 537:20, 23 or19 487:19 Oral 361:20 order 386:19 399:22 405:10 422:2 474:9 501:11 502:5, 22 505:18 515:17 516:22 523:6 529:15 544:18 547:10 571:23 575:16 585:14 586:18 587:23 588:14 607:3 611:2 orders 457:24 511:18 515:16 orders-in- council 510:8 511:4 ordinary 434:23 437:20 organization 402:15, 17 440:16 584:19 599:5 612:9 organizations 400:2 484:2 586:7 origin 457:19 original 378:23 380:25 412:3 450:7 474:12 485:14 488:16 497:23 originally 456:12, 17 457:1, 14 458:7, 17 562:3 originary 464:14</p>	<p>originate 393:1 458:14 Ottawa 364:11 outages 515:8 outcome 585:9 610:6 outcomes 440:21 outside 389:22 413:21 491:22 492:15 583:15 outsiders 586:3 outweighs 591:9, 22 overall 367:19 470:8 overestimated 598:4 overheat 551:1 overheating 552:1 overlooked 533:7, 18 overriding 437:18 Overton 586:22 owned 503:3 512:11, 14, 15 owner 385:14 386:4, 5, 14, 15, 19, 24, 25 387:4, 12, 18 388:4, 5, 14, 18 389:17 390:16 397:4 399:22, 25 405:11, 12 421:23 440:6 502:4 503:3 506:14, 24 512:1 514:21 523:16 526:7 530:18 533:1, 17 537:4 538:19 539:20 553:4 566:21 571:5, 10, 12 572:1 611:1 owners 386:6, 7, 8, 13 388:3, 24 389:4, 9 390:3, 6, 8, 12 400:5 429:1 432:13 439:9, 20 440:19, 24 441:3 450:14</p>	<p>451:8 502:20, 22, 24 505:9 506:4, 17 512:3 525:1, 21, 23 530:11, 15, 24 531:12, 19 534:21, 22 535:25 536:6, 12 537:17 538:2, 14 557:8 565:22, 25 567:19 573:13 578:11, 16 610:8, 11, 25 611:2, 3 612:23 ownership 503:9 505:11, 15 514:9 548:14 owning 454:4 520:14 565:23 573:13 owns 386:11 388:5 504:25 533:12 Oxaal 364:3 507:20 Oxford 553:3</p> <p>< P > p.m 613:23 pads 365:15 471:2 473:25 pages 519:14 614:3 615:8 paid 606:7, 14, 15 PAL 514:16, 21 531:1 Pana 553:22 paper 580:16 papers 365:15 599:7 para 456:9 485:10 486:21 595:16 paragraph 367:16, 18 380:20 390:22, 24 391:16, 23 392:1, 20, 22 393:25 394:2, 10, 13 395:11 396:4, 12, 24 400:13 401:1 402:11 405:4, 7</p>
--	--	---	---	---

407:3, 4, 5 408:9, 12, 13 409:11, 12 414:19 420:25 425:14 434:24 435:1, 12 436:9, 25 450:24 451:1 463:5, 7, 19 464:6 471:18, 22 472:7 482:17, 20 486:4, 6 487:21, 24 488:4, 9 499:12 502:18 510:11 513:2 525:5 527:3 531:11 534:13 542:22 545:21 546:12 555:2 562:20 563:3 564:14 565:3, 20 566:20 568:3 569:4, 24 571:2 572:2 573:24 575:21 578:5 580:3, 14 582:4 583:17 587:14 592:3 595:11, 13, 15 paragraphs 497:24 511:12, 14 582:22 590:23 parallel 452:21 paramilitary 484:2 578:22 paraphrased 508:21 paraphrasing 408:14 Pardon 425:6 456:11 474:17 483:2 527:8 566:12 607:10 parent 375:25 485:2 parentage 578:19 579:8, 9, 11 Parliament 552:16 553:12 577:25 610:4 612:7	Parliamentary 381:17 384:25 609:15 Parliaments 578:25 part 370:24 374:25 390:1 397:7 403:7, 8, 9, 12, 16, 17, 19, 25 404:4, 7, 12, 17, 21, 22 407:9 436:23 487:6 501:17 505:8 509:12 512:21 520:11, 22 521:1, 13 550:5 555:11 556:12 560:18 564:18 580:6 582:11 593:5 Parti 592:9, 11 partially 393:8 participate 501:22 participated 381:21 participation 582:21 599:23 particular 367:4 368:12 370:18 371:2, 3, 16, 24 372:9, 17 373:10 375:21 377:6 378:8, 9, 12 386:1 387:18 396:5, 8 398:24 407:17, 19 411:13 417:7, 22 424:21 427:15 430:14 432:10, 11 437:6 438:14 440:7 442:3, 5 458:4 459:17 464:3 474:22 491:23 492:2 499:16 519:1 528:11 538:21 539:15 540:19 562:6 565:4 573:23 574:5, 6 581:21 594:3 595:20 598:25 617:5	particularly 390:9 553:25 567:25 PARTIES 363:1 parts 368:4 377:16, 23 411:21 412:1, 16 413:2 418:1 427:24 515:15, 23 543:3 559:11 582:24 party 545:10 pass 500:18 601:20 patents 543:2 patience 500:21 patient 365:13 patrol 484:18 542:12, 14, 16 585:21 pattern 540:10 544:11 551:8 Paulson 605:9 paused 554:23 paws 468:9, 11 pays 438:15 596:14, 18 PC 519:22 PDF 492:23 493:3, 6 494:19 496:3 518:11, 23 519:1, 6, 11 521:2, 6 peak 435:23 pending 560:4 565:13 people 389:18, 24 390:10 430:2 440:1, 9 450:11 460:17 489:11 490:11 494:25 496:11 522:17 527:21 529:14 531:15 541:2, 6 564:1 572:14, 25 577:8, 17 582:2 583:20 584:1 590:25 591:14 593:4 594:20 perceive 514:10 percent 367:3 435:8 440:22 522:6 544:18	591:5 607:11, 16 611:3 percentage 432:14 439:20, 22 440:2, 22 492:6 606:24 607:12, 13 610:25 percentages 607:12 perceptible 481:13 perception 473:24 480:24 514:12 perfect 365:14 533:19 perfectly 438:8 performance 588:13, 15 peril 575:16 period 409:23 411:2, 5 412:12 413:21 414:2 457:20 466:8 480:23 490:22 515:3, 6, 10 535:23 541:3, 6 563:18 583:15 612:24 peripherals 368:6 permit 505:23 permits 529:5, 6, 7 permitted 429:25 449:19 464:11 496:5 540:18 PEROCCHIO 361:8, 9 363:21 perpetrators 593:6 595:12 person 388:7, 15, 19 476:10, 11 493:20, 21 503:10 504:23 507:11, 13, 17, 19 513:11 600:22 601:7 618:14 personal 373:1 471:25 472:4, 6 493:16 494:4 513:12 578:2	personally 389:18, 25 514:10 599:17 personnel 584:15 person's 593:10 perspective 546:13 peruse 438:24 phenomenon 452:2 phone 365:15 522:20 602:3 603:4, 10 615:16 phonetic 395:7 phrases 555:14 physical 430:8 439:8 physically 426:5 429:24 physics 480:15 576:3 pick 374:2 picture 603:13, 16 615:18 pictures 601:25 piece 393:12, 21 pieces 378:15 pistols 431:25 585:8 place 411:9 420:8 501:19 517:4 524:5 564:9 577:9 placed 397:10 places 368:17 397:9 406:23 544:12 610:10 plain 392:25 484:18 plan 521:1, 13 596:12 597:5, 11 598:1 planning 519:8 520:23 536:11 plans 406:25 platform 367:22, 24 368:3, 16 444:12, 15 485:10 546:24 play 480:9 plethora 474:1 plinkers 561:8 plus 511:23 551:24
--	---	--	---	---

<p>point 378:18 385:19 386:1 387:24 394:4 396:8 397:25 404:20 414:24 430:22 445:20 506:18 537:7 550:2 573:22 575:1 585:24 590:8 591:4, 16 595:11, 13, 15 596:2 pointed 401:20 543:8 592:20 points 396:21 polar 476:5 POLICE 362:10, 22 395:13, 21 402:5, 9 484:3, 9, 14, 17, 20 504:14 513:15 528:7 541:4, 15 542:10, 16 545:1, 5, 6 582:19 583:7 586:23 588:9 589:7, 13, 17, 19, 24 590:13, 17, 19 591:3, 9, 16, 17, 18, 22 599:25 602:4, 5 603:13, 17 604:21 605:2, 5, 7, 15, 16, 20 615:19 616:9, 12, 15 policy 515:22 political 568:12 politics 543:15 poor 365:7 popular 453:5, 8, 9, 11, 15, 17, 19, 21, 24 454:6, 9, 16, 17, 18, 23 455:5, 7 456:23 457:9 568:22 579:7 popularity 546:2 populated 378:20 population 416:18 611:3 portion 391:12 403:20 478:12 497:23</p>	<p>portrayed 367:23 posing 388:1 position 419:20 422:17 426:16 427:14 558:17 564:24 565:2 571:14 599:7, 11, 15 600:22 601:7 618:14 positions 508:23 600:4 positive 514:11 possess 503:22 504:10 507:13 526:14, 17 540:18 542:16, 17 583:8 possesses 583:11 possession 411:14 502:22, 25 503:10 504:23 505:13, 19, 21 506:25 525:13, 15 527:15 530:13, 17 531:16 532:22 533:1 536:2 597:13, 14 possibility 399:3 470:2 536:19 possible 394:4 398:2, 6 429:19, 24 438:23 465:9 469:14 478:6, 16, 23 479:8, 11 481:3, 7, 17 536:21 551:5 581:19 possibly 437:4, 25 439:13 529:20 557:8 posted 406:14 potential 374:21 408:15, 18 431:14 478:15 593:2 potentially 422:1 581:9 595:3 powder 429:12 430:10, 14 432:5 powders 430:12</p>	<p>power 430:6 515:8, 13 600:22, 24 601:7, 9 618:14, 16 powerful 430:10 431:2, 4 475:5 477:5, 8, 10, 18, 21, 23 480:6 523:12 practical 459:4, 6, 14, 23 571:3, 9 573:14 618:2 practice 395:12 399:23 423:18 425:24 432:13 476:7 583:1, 15, 19 587:23 588:19 practices 430:24 practicing 583:21 precedence 537:16 precise 395:9 precisely 385:13 386:16 387:1 406:9 485:13 576:22 preclude 526:8 predator 465:4, 5 468:15 predators 467:19 predecessor 418:18 450:3 predominant 457:24 prefer 473:16 569:18 572:10 581:15 preferable 467:22 preference 572:5 preloaded 430:3 premature 535:15 premise 386:21 388:17 474:7, 13 477:16 574:25 preparation 384:23 430:19 prepared 419:17</p>	<p>prerogative 552:15 prescribe 547:4 prescribed 432:5 present 382:8 400:12, 15 406:25 409:8 450:4 476:10 547:8, 17 549:21 550:12 561:15 610:12 612:12 presented 368:2 377:10 391:8, 9 441:17 527:22 presenting 394:7 presently 412:24 559:8 presents 470:8 preserved 612:8 pressed 508:9 pressure 430:17 431:1 435:14, 22, 23, 24 436:3, 4 451:5 pressures 435:6 presume 574:21 presumed 387:10 presuming 479:5 pretty 439:1 462:13 489:10 537:3 579:17 591:14 prevent 417:14 430:5 prevented 613:11, 16 preventing 583:20 prevents 583:18 previous 370:4 490:4 501:13 503:3 517:19 520:16 537:4, 11, 15, 16 557:24 560:8 previously 366:25 379:19 380:9 381:14</p>	<p>394:6 401:14, 20 405:16 406:8 407:4 431:11 449:23 463:2 492:22 501:16 506:1 531:12, 13, 25 533:10 558:14 587:16 610:24 611:24 primarily 408:23 456:2 463:20 481:16 484:7 486:24 520:16, 19 546:17 582:23 593:25 600:2 primary 408:17 410:3 438:6 442:13 456:7 480:25 481:21 576:8 Prime 540:23 541:9 543:6 primer 432:4 principal 436:4 439:11 547:10 principle 470:12 584:11 principles 478:10 577:14 prior 444:12 532:22 579:19 612:5 prioritized 520:24 privilege 381:17 385:1 problem 459:15 476:13 495:24, 25 496:3, 18, 19 602:12 problems 478:15 496:16 procedure 493:25 proceed 550:14 554:15 proceeding 427:11 613:17 Proceedings 365:1, 14, 18 462:22, 24 463:1 556:20 613:23 614:5</p>
---	---	--	--	--

<p>process 395:15, 18 396:2, 10 414:8 431:24 496:4 518:3 557:2</p> <p>processes 536:16</p> <p>produce 380:20 400:2 431:12 435:6 472:14, 17 569:9 576:12</p> <p>produced 400:1 436:1 594:5</p> <p>producers 430:21</p> <p>produces 435:22 479:18</p> <p>producing 435:3</p> <p>product 530:14</p> <p>products 516:3</p> <p>professional 585:15</p> <p>proficiency 469:20</p> <p>proficient 588:19</p> <p>program 498:6 507:23, 24 513:18 522:12, 14 529:20 544:6 563:23 585:20, 23 586:16, 19 588:15</p> <p>programming 496:5 519:10</p> <p>programs 585:13 586:14, 17</p> <p>prohibit 537:21, 22</p> <p>prohibited 366:24 367:13, 15 374:8 381:24 398:25 409:22 410:23 412:3, 10 413:5 448:22, 23 487:19 499:17, 18 502:3, 11 503:10, 23 504:8, 25 506:11, 22, 23 507:14 512:8, 10, 15, 17</p>	<p>522:11 525:14 526:16, 20, 21, 24 527:5 528:14 531:5, 14, 17 532:1, 11, 24 533:8, 11 535:9 536:10, 19 537:15 538:6, 7, 9, 24 539:2, 3, 9, 13 540:15, 19 547:4, 12 549:5, 19 557:20 558:1, 4, 10 560:24 561:18 562:6, 9, 12 569:14 571:20 581:12, 16 583:8 592:24 594:22 595:4 610:1, 17 612:4</p> <p>prohibiting 596:1</p> <p>prohibition 487:13 536:14 549:10 561:1, 11, 20 562:21, 25 563:3, 7, 12 564:1 587:2, 8</p> <p>prohibitions 538:2 610:14</p> <p>prohibits 409:15</p> <p>projectile 409:16</p> <p>promise 392:10, 21</p> <p>promote 370:13 371:1</p> <p>promoted 368:14, 16</p> <p>promotes 370:18 371:16 372:9, 16 617:5</p> <p>proof 435:1, 2, 5, 19, 21, 24 436:2, 7 503:20 505:11 598:25</p> <p>propellant 429:12, 24 430:11 432:5</p> <p>propellants 430:8</p> <p>proper 417:19 445:24 479:22 481:15 528:10</p>	<p>534:7 608:2 611:20</p> <p>properly 383:13 413:16 415:22 427:17 516:3</p> <p>property 527:21 600:18</p> <p>proportion 390:12</p> <p>propose 590:11</p> <p>proposed 375:25 377:12 498:8</p> <p>prosecution 405:24</p> <p>prosecutor 402:9</p> <p>prosecutors 401:7, 17, 23 402:1, 4 405:17, 23</p> <p>protected 532:25 553:21</p> <p>protection 467:19</p> <p>protects 502:24</p> <p>protocol 426:21 612:6 614:10</p> <p>prove 453:7</p> <p>proven 444:1 495:3</p> <p>provide 365:13 370:2, 8 373:3 384:24 386:20 402:6 497:11 567:18 611:17 616:18</p> <p>provided 424:7 427:9 498:8 502:4 615:7</p> <p>provides 526:5</p> <p>providing 370:5 420:7 461:6</p> <p>Province 614:13</p> <p>provision 427:1, 18 571:16</p> <p>provisions 535:10 538:10</p> <p>proximity 465:5</p> <p>psychology 469:19</p> <p>public 435:13 488:12 492:22 501:19, 20, 22 520:8, 9, 11, 14,</p>	<p>22, 25 524:20 528:8 535:23, 25 536:1, 7 542:17 570:22</p> <p>Publication 562:8</p> <p>Publicly 511:20 535:12 612:10</p> <p>published 562:18</p> <p>publishes 524:18</p> <p>pump-action 469:11, 14, 24</p> <p>purchase 571:23</p> <p>purchased 417:23 587:1 612:23</p> <p>purchaser 368:3 440:6 546:13</p> <p>purchasers 439:10 538:15 546:22</p> <p>purchases 546:17</p> <p>purchasing 546:18 578:17</p> <p>purely 404:19 463:18</p> <p>purported 541:9</p> <p>purpose 436:7 437:2, 24 440:23 449:14 454:23 456:13 464:2 471:8 474:12 480:19 481:14 488:1 509:20 531:14, 18 541:1, 10 543:3, 5, 7, 8 556:6, 15 604:4, 11 616:2</p> <p>purposeful 556:4</p> <p>purposes 394:15 396:16 399:25 406:17 423:24 424:2, 5 436:24 441:24 449:16, 21 454:7 457:12 458:8 502:12 508:17 509:23</p>	<p>522:5 523:1 540:19</p> <p>pushed 466:16</p> <p>put 387:3, 17 400:7 422:13 425:5, 7, 9, 25 426:25 428:7 429:24 436:24 437:19 442:17, 22 443:11, 12, 15 445:13, 22 446:19 447:9, 14 461:2 473:17 480:3 495:6, 7 520:4, 11 521:2 524:25 542:13 549:14 563:20 564:8 583:13 590:22 591:20 599:7 601:23 602:17 605:12</p> <p>puts 583:21 586:17</p> <p>putting 417:4 419:21 433:3, 4 441:14 443:21 444:3 447:3 593:15 594:25 602:13</p> <p>< Q ></p> <p>Q7 536:4</p> <p>qualified 607:18, 20 608:7, 8, 13 609:8, 10 619:3, 5</p> <p>qualify 541:23</p> <p>quantities 533:20</p> <p>Quebecois 592:9, 11</p> <p>Queen 363:13</p> <p>question 365:6 370:20 371:9, 19, 24 372:4, 11, 14 373:7, 13 374:18 375:8, 11 376:12, 17 380:2, 12 382:18, 20, 25 383:8, 20, 22 384:8, 10, 12, 17, 22 385:4, 16 386:3, 18, 22, 23,</p>
---	--	--	--	---

24 387:9 388:1, 16, 17, 22 389:15 390:18 392:23 395:16 398:17, 19, 25 401:13, 19 413:4 425:5, 7 428:1, 11 434:17 435:20 439:25 441:10, 15 443:10, 20, 21 445:11 447:11, 20, 22 449:1 453:25 454:14, 24 455:4 457:18 459:14, 18, 22 467:22 470:17 473:17 483:5 484:20 486:10 489:12 490:6 493:18 494:15 495:8, 17 496:21 497:6 498:19 499:2 504:2 505:3 511:20 514:19 516:5 528:25 531:10 534:19 535:19, 23 536:10 541:11 542:8, 21 556:9, 12 558:23 560:25 566:17 567:5 570:24 573:7 575:14, 20 579:13 583:10 591:25 594:25 596:6 601:6 607:24, 25 608:3, 11, 22, 23 609:1, 7 611:4, 22 613:4, 7 617:2, 8 618:1, 7, 13 619:1 question:Well 617:18 questionable 431:4 questioned 366:7 463:2 Questioning 361:20 534:4 598:7 614:9, 11	questions 366:2, 10 383:4, 7, 14, 16 392:22 424:18 433:1 447:3, 9 448:3, 4, 10 482:24 492:19 497:6, 13 498:17 500:18, 20, 22, 24 501:5 531:7, 9 534:9 537:12 552:9 575:13, 15, 17 588:21, 23 593:22 598:8, 11 600:13 601:3, 12, 19 605:25 606:4, 5, 21 607:17 609:8 611:8 613:5, 20 619:2, 9, 11 queue 521:1 522:17 quick 467:7, 20, 23 468:6 574:9 quicker 537:13 quickly 465:24 467:15, 16 508:13 521:4 551:2 quite 415:17 416:1 432:14, 15 434:19, 22 465:14 466:20 492:1 511:13 519:7 544:8 552:25 553:12 560:21 567:25 571:13 quote 403:5 442:3 510:1 542:23 563:2, 22 564:9, 10 < R > R-15 449:2 R8 418:13 421:12 432:17 433:8 434:5 R93 432:19 433:6 434:5 raise 423:11 435:14, 22 436:3, 4	ram 519:17, 21, 23 ran 452:21 random 374:3 551:19 595:3 range 412:11 414:3 431:17 453:13 539:21 540:1 583:13 ranges 538:4 580:8 rapid 546:10 547:7 549:20 550:25 551:4, 10, 14 rare 462:16 492:2 rarely 398:2 rate 410:9 551:11 575:10 rates 430:12 ratio 455:9 rationale 547:18 550:16 586:12 rationed 526:6 raw 393:15 RCMP 369:10 370:8 392:2 405:8, 22 406:1, 3, 12 493:7, 8, 9 496:4 502:11 506:3 507:23 512:20, 24 513:17 515:17 520:19 521:13 522:12 524:8, 13, 17 528:2, 3, 19 530:3 532:19 539:15 540:5, 12 541:5 542:10, 12, 14 543:6 545:13, 19 547:24 548:10 549:6 552:10, 13, 16, 25 556:7, 10 557:5 558:13, 14 565:9 578:3 583:2 584:25 585:6, 9, 14, 16, 19, 20, 25 586:4, 6, 9, 13, 17, 20 587:11 588:12 597:3 602:2, 3 603:4, 10, 13, 17	605:11 613:5, 10 615:15, 18 616:19 RCMP's 515:16 522:24 525:13 528:13 529:21 547:22 561:19 562:17 564:24 565:1, 15 reacquire 466:17, 18 read 396:25 402:25 405:7 407:5 409:12, 13 421:1 424:14 425:12 435:4, 12 436:10 463:9 472:8 495:5 499:12 501:10 506:9 510:2, 25 529:9, 17 540:21, 22, 24 542:23 545:22 546:1 547:2 554:5 555:12 556:1 563:22 564:14 565:21 568:3 570:7 571:2 572:4 574:7 580:24 582:11, 12, 13, 25 587:15 reader 407:8, 14 564:17 615:8 readily 417:2 450:5 519:2 reading 394:10 402:25 424:11 554:20 555:2, 10 ready 366:4 493:17 519:10 521:7, 9 re-aim 465:15 466:18 467:16 real 478:6 realistic 575:1 reality 573:18 really 375:7 378:11 388:13 389:15 405:22 459:11 461:17, 23 469:9 471:13 495:4 520:1, 6 534:18	538:16 549:8 551:6, 17 562:11 573:9, 11 574:6 577:16 598:22 599:23 reamer 415:20 rearming 548:19 rearward 479:18, 20 reason 378:18 440:6, 8, 9 441:3 454:4 464:3, 5 487:8 500:13 506:1, 19 507:2 553:7 558:18 586:9 591:11 594:1 596:25 reasonable 462:7 468:25 475:3 533:6 577:14 reasoned 526:5 reasons 367:19 370:4 440:25 446:6 474:7 494:11 recall 367:2 368:9, 20 369:18 370:14, 22 371:6 411:8 449:7 465:19 478:18 481:4 489:8 492:16 501:17, 21 513:20 563:9 570:19 606:8 609:15, 18 receive 512:2, 6 535:20 received 379:7 496:19 585:11 receiver 367:5, 7 374:21, 25 376:3 434:15 515:25 receivers 378:23 receives 522:19 receiving 496:1 512:5 recess 414:21 re-chamber 414:10
--	--	--	---	--

<p>re-chambering 413:15 414:10</p> <p>reclassify 558:15</p> <p>recognizable 398:1</p> <p>recognize 419:14, 23 420:20 540:4, 6, 13 584:23</p> <p>recognized 420:1 554:1</p> <p>recoil 465:13, 14, 22, 23 466:2, 5, 10, 11, 15, 23 467:2, 15 468:25 470:16, 21, 25 471:2, 6, 11, 17 472:4, 11, 15, 17, 25 473:4, 6, 11, 18, 21, 23, 24 474:3, 10, 14, 16, 18 475:13, 14 477:17 479:4, 15, 23 480:1, 7, 13, 16, 20, 22, 23, 24, 25 481:13, 16, 21 482:1, 9, 11 575:23 576:2, 6, 9, 13, 17 577:2, 5</p> <p>recollection 393:14 421:20 444:8</p> <p>recommence 462:24</p> <p>recommended 463:1</p> <p>recommendation s 555:19 557:2</p> <p>recommended 429:18 615:7</p> <p>reconfigure 414:1</p> <p>reconnecting 365:19</p> <p>record 365:7, 14 366:3 371:22, 24 376:17, 20 380:3 420:9 425:24 426:5, 23 455:20 460:3 461:17 486:2 488:12</p>	<p>499:7 503:4 505:9 522:3, 4 523:2, 25 529:3 536:5 541:13 566:1 595:1 602:22 615:6</p> <p>recorded 373:16 406:2 543:17 560:17</p> <p>recording 524:4</p> <p>records 371:7 498:24 499:8, 10, 14, 25 500:2, 6 503:5, 6 523:23 524:1 527:22, 23 533:21 612:15</p> <p>recourse 554:3</p> <p>recover 465:23 466:10 467:15</p> <p>recovering 466:4, 11</p> <p>recovery 465:14, 22 466:24 468:25 470:16, 21, 24</p> <p>recreational 584:3</p> <p>redetermination 609:22</p> <p>redirect 613:20</p> <p>reduce 473:23, 24 479:15 480:13, 16, 22 481:16 482:11</p> <p>reduced 403:10 523:4</p> <p>reducing 474:13</p> <p>reduction 479:23 482:1</p> <p>reductions 584:10</p> <p>re-enforce 562:5</p> <p>re-exam 606:1</p> <p>re-examination 606:5 608:2 611:20</p> <p>re-export 516:10, 11</p> <p>refer 395:17, 19 404:10 442:24 443:4 484:5 531:11 547:11 551:9 615:8</p>	<p>Reference 366:23 367:14 369:21 373:16 394:16 395:13 402:3 407:1 435:4 497:25 498:7 507:6 524:21 525:1 538:20 543:18 560:17</p> <p>referenced 407:4</p> <p>references 368:1</p> <p>referred 443:3 445:8, 18 484:15 502:17 507:4 529:13 569:10 593:3</p> <p>referring 378:1, 13 394:13 409:25 410:1 414:18 432:22 456:9 464:14 478:24 479:5, 6, 7 485:2, 4, 16 487:11 504:16 510:11 511:7 518:23 524:1 535:1 537:20 552:6 563:2 569:4 572:15 578:5 579:13 609:14 611:16</p> <p>refers 431:23 542:10, 12</p> <p>reflect 514:9 565:8</p> <p>reflected 436:16</p> <p>refusal 370:6 372:3, 13 448:13 459:21 601:5</p> <p>refuse 372:23 505:6 567:15</p> <p>REFUSED 370:10 373:6 448:13, 19 616:20, 24</p> <p>regard 555:13</p> <p>regarding 524:9 562:24 606:6</p> <p>regardless 470:10 509:19</p>	<p>regards 516:16 529:11, 16</p> <p>register 504:18</p> <p>registered 531:13, 25 532:3, 8 533:10, 12, 15 610:7 612:5</p> <p>registering 504:12</p> <p>registrants 532:4</p> <p>Registrar 499:13, 20, 24 500:1, 5 505:10 507:7 539:15</p> <p>registrar's 538:22 539:1</p> <p>registration 502:15 503:6, 8, 15, 16, 18, 19, 24 504:4, 7, 13 505:8, 10, 12, 15 506:10, 13, 20 507:1, 12 537:5 538:22 612:19</p> <p>registrations 532:14</p> <p>Registry 503:2, 4 522:19 533:16 612:2, 7</p> <p>regular 518:2 529:24</p> <p>regulate 514:7</p> <p>regulated 515:24 516:3 530:14</p> <p>regulation 379:10, 12 380:7, 9 381:12, 15, 20, 22 394:3, 9, 14, 21 396:20 401:4, 6 406:5, 7, 17 409:14 448:23 484:25 485:7, 17 498:16, 18, 20 499:21, 23 500:4, 14 502:3, 10 511:23 512:17 516:16 521:10 522:11 524:15, 16 526:14, 16, 24, 25 537:19</p>	<p>547:13 549:5 550:5 558:6, 19, 23 560:14 562:3, 11, 21 578:20, 21 581:2, 7, 11, 12, 16 583:18, 20 594:23 595:5 610:15 612:25</p> <p>regulations 378:20, 22 379:13, 14 380:13, 22 381:2, 7 382:3, 5, 6 384:23 391:18 394:12, 23 407:21 485:6 498:24 499:8 501:10 510:6 511:1, 17, 20, 23 521:5, 12, 14 523:15, 21 524:12, 22 525:16, 18, 25 526:20 527:1, 4 529:18, 25 534:14, 17, 19 536:9, 17 546:8 547:3 549:14 550:7, 14 553:23 555:17, 23 556:22, 23 557:19, 20, 22 558:5, 22, 24 559:5, 6, 8 560:19 561:13, 24 562:7, 10, 13 571:17 592:24 596:1 610:5 611:2</p> <p>regulator 402:22</p> <p>regulators 528:8</p> <p>regulatory 379:2 380:17 381:12 402:13 501:14, 18 546:9, 25 548:4 549:18 561:6 607:2</p> <p>reiterate 455:7</p> <p>relate 395:7 488:2 509:4</p> <p>related 396:15 479:12, 17, 21 480:4 508:16,</p>
--	---	---	---	---

<p>22 510:4 511:19 599:24 relates 435:25 relationship 481:25 relative 409:24 411:3, 17, 18, 19, 21, 23 412:12 413:21 relatively 409:23 411:2, 4 412:12, 14 413:21 439:23 454:3 466:9 482:2 566:13 571:21 577:8 578:17 released 496:7 511:19, 21 612:6 relevance 387:20 459:12 497:5, 8 595:23 596:7 598:7 600:15 relevant 387:13, 16, 22 395:6 459:19 467:6 505:4 525:20 556:2 583:23 598:11, 15 600:5, 6, 8, 16 reliability 437:16, 18, 20 reliable 399:5 438:4, 8 479:12 reliably 400:5 relied 395:1, 21 550:11 relies 529:7 reload 469:6 470:1 reloading 468:23 rely 370:23 374:24 378:14 379:5 398:22 399:1 528:12 remaining 498:7 remains 536:20 554:9 remember 482:25 489:14 520:16 578:14, 15 588:18</p>	<p>595:24 610:9 reminding 493:1 Remington 374:5 414:20, 24 415:6 418:5 449:2, 6, 7 451:1, 12, 16, 25 452:9 453:10, 17, 21, 24 454:8, 15 455:13, 15 465:21 467:3 518:15, 16, 17 551:20, 25 579:8, 9 Remote 614:10 removal 413:14 removes 580:14 renamed 453:2 renowned 581:14 repeat 376:19 383:20, 22 494:13 596:16 repeatedly 563:6, 7 replace 414:1 430:13 481:4 replaced 416:23 572:18 replacement 397:20, 22 411:21 412:15 413:15 417:1 418:3 578:17 replaces 397:20 replacing 413:8 414:15 417:20, 21 reply 427:2, 19, 20, 25 428:1 611:8 report 366:12 496:17 522:7 reported 464:1 495:22 496:8, 16 593:2 Reporter 364:14 365:2 366:1 423:16, 17 425:23 426:3, 17, 19 428:9 446:23, 25 452:5 498:10 508:3 602:20 614:20 615:5</p>	<p>Reporting 364:16 reports 437:10 495:20 496:10, 11 519:25 592:25 594:9 represent 579:14 599:11 representing 596:11 represents 440:16 repurpose 582:2 reputation 475:12 request 372:23 515:19 534:2 553:10 604:14, 18 612:9 616:6 requested 497:18 616:17 requests 373:5 require 374:25 414:6 415:4 476:21 504:7 528:11 534:9 573:5, 11 587:12 598:25 required 412:14 529:1, 3 530:11 531:22 554:3 572:8, 11, 12 573:9 577:13 583:3, 25 584:5, 15 585:21 requirement 394:17 400:10, 15, 20 406:8 503:14 504:18 532:19 537:5 586:2 requirements 407:21 410:25 504:11, 17 505:25 requires 385:13, 25 394:3 415:19, 21 417:6 479:19 544:20 573:22 576:15, 19, 23 588:1 requiring 473:12 researched 570:13</p>	<p>researcher 534:3 resolution 554:4 resolving 539:10 respect 375:6 382:4 396:17 404:3 406:10 422:24 432:17 515:12 560:5 572:1 respond 383:11 530:7 responded 414:18 Respondent 361:15 Respondents 362:11, 23 responding 428:1 474:8 response 582:14, 15 585:15 responsibility 516:2 517:5 530:20, 22 600:25 601:10 618:17 responsible 505:13 526:10 responsive 382:20, 22 restricted 499:17, 19 503:10, 22 504:8, 10, 18 505:9, 21 506:11, 21 507:1, 14 512:9, 14 531:13, 19, 25 532:8, 14, 22 533:11, 14, 16 558:24 610:21 611:25 restriction 409:21 566:1 568:9, 17, 19, 21 569:23 result 431:4 432:9 435:15, 17, 18 436:5 469:6 527:4 538:7 resulted 487:12</p>	<p>resulting 418:19 559:5 results 518:18 resume 508:14 retail 513:13 retailer 370:17 371:15 372:9, 16 376:5 543:9 617:5 retailers 370:12 371:1 retain 598:19 retained 507:18 retaining 574:10 Reticle 584:21 returns 518:19 reuse 377:23 reverse 439:4 530:23 review 420:3, 18 reviewed 420:2 Revised 614:11 revoke 534:20 538:22 revokes 534:14 rhetorical 541:11 570:24 573:6 rhinos 408:24 RI 561:6 RIAS 548:4 550:3, 10 RICHARD 362:17 Rick 442:21 rifle 377:13 380:24 411:25 413:13 414:12, 15, 20 415:14, 16 417:4 418:3, 13 421:5, 6, 7, 12, 22, 23, 24 422:2 428:24 432:2, 17 433:7, 8, 16, 18 434:1, 15 437:6, 17, 25 438:7 440:4 442:6, 10 443:7, 22 444:6, 8, 14 445:10, 19 446:3, 10, 22 447:6, 13, 16, 23 448:8, 17 449:4, 10, 11, 12, 25 450:1 457:3</p>
---	---	--	--	---

465:18 466:13 468:9 471:23 473:4 474:21 475:17 479:1, 2 482:13, 15, 21, 22, 23 483:7, 9, 15, 18, 21, 23 484:15, 16, 19, 21 486:15, 20, 25 487:16 491:19 538:11 541:20, 22 547:2 548:24 551:25 558:2 559:1 561:7, 17 565:22, 25 568:10 570:16 571:5, 7 574:10 579:15, 20, 21 580:12 581:3, 18 586:15 587:17 588:6 594:7 616:23 617:20 rifled 562:22 563:4 567:13 rifles 367:6 408:21, 23 415:7 431:25 432:18 433:4 434:2, 7 436:20 438:17, 25 439:6 441:7, 8, 11, 12, 20, 21 442:1, 2 449:18 456:15, 16, 22, 23, 25 457:4, 7, 10, 13, 19 459:8, 24 471:24 472:25 482:22, 25 483:20 484:6, 7, 11, 18 485:1, 12, 15 486:19, 22 487:2, 5, 9, 15 534:12 541:24 542:5, 11, 18 543:22 561:2, 9 566:5, 23 567:21, 23 568:22 579:19 586:13 592:4 618:4 RIGHTS 362:5	rimfire 395:6 421:7 risk 536:1, 7 566:21 583:21 robbery 411:11, 14 ROBERT 362:17, 18 364:2 rock 573:5 rocket 570:11, 16 RODNEY 362:5 rods 558:16 roll-out 521:13 room 498:12 rooms 439:15 440:12 rotate 466:15 rough 393:9 roughly 416:8 round 431:2, 4 477:21 rounds 421:7, 8 routinely 548:17 ROYAL 362:9, 21 535:20 RPAL 531:2 Ruger 488:18, 21 489:25 491:5 572:12 579:8 rule 470:15 rules 504:15 running 467:12 RYAN 362:6 RYDICH 362:18 < S > SAAMI 400:2 safe 396:16 429:14 435:8 438:4 532:7, 10 565:25 568:8, 9, 10, 16 578:17 585:17 safeguarding 505:14 safely 417:8 432:10 safety 399:25 437:19 501:20 520:10 535:23, 25 536:1, 5 570:23 587:4	sake 467:13 salary 606:6, 11 Sarah 363:4 364:7 461:16 554:24 Savage 415:13 416:21 417:20 418:2 455:19, 21, 23 save 372:18 501:6 531:8 saves 526:7 scaled 381:4 school 513:10 scientific 488:10 scope 367:21 381:9 436:22 531:6 559:6, 8 score 587:19 scored 530:24 scoring 580:16 Scotia 593:23 scour 445:3, 8 screen 445:20 446:8, 16 494:8, 17 521:17, 24 522:23 533:25 535:22 553:9 554:22 563:5 589:4 602:3 618:10 screenshot 521:19 603:4, 10 605:10 615:15 screenshots 604:21 scroll 554:25 scrolled 555:9 589:22 Scrutiny 553:23 555:23 556:22 Sean 364:6 search 518:7, 8, 9, 13, 14, 15, 16, 17, 18, 19 519:5, 21 searchable 520:2 searching 445:24 searchs 448:5 Seasons 534:12, 23 seat 432:6	Secondly 367:23 530:11 550:8 seconds 411:6 414:16 463:13 464:22, 23 465:2, 7 573:18 574:15, 17, 20 575:16 Secrecy 613:6, 10 secret 523:16 secretariat 599:8 Section 364:9 459:12 485:1, 5, 6, 7 499:9 502:18 506:4, 8 507:4, 10 510:18, 21 511:8, 11, 12, 14 536:21 538:1, 19 558:6, 19 560:3 565:19 568:2 570:2, 7 581:11 582:14 sections 498:7 security 598:4 seek 439:20 514:7 seeking 427:4 546:13, 20 seize 516:9 527:21 select 436:11 437:11 458:10 483:17, 21 486:13 547:18 593:14 selected 592:22 593:24 595:2 selecting 438:7 474:9 593:7 selection 456:8 478:1 593:5 selective 483:8, 24 484:8 541:21 self-defence 598:19 599:1 self-evidently 401:24 Self-represented 363:18, 22 sell 370:12 416:10 417:25	sem-automatic 466:6 semi-automatic 410:18, 22 411:24 412:8, 9 463:21 465:16, 24 467:11, 14 468:13, 20 469:10 470:3, 5 471:8, 10, 13, 23 482:14, 20 484:1, 5, 10, 13, 15 486:24 487:5, 7 489:25 491:5 546:10 547:6 549:20, 25 550:20, 22 574:8 576:16, 20, 23, 24 592:4 594:7 595:17 semi-automatics 549:11 seminal 410:9 579:20 Senator 553:22 send 418:23 553:18 602:19 seniors 522:6 sense 459:4, 5, 6, 23 517:23 578:10 584:16 618:2 sensitive 414:22 430:20 474:16 sentence 435:11 507:10 596:17 separate 419:22 505:24, 25 516:18, 22 536:16 separated 518:10 series 444:9 609:23, 24 serious 525:12 Seriously 387:13 serve 557:8 572:21 served 428:7 557:9 service 400:21 515:9 541:15
--	--	---	---	--

542:10 581:3, 17 582:7 583:4 585:8, 10 587:16 588:9 services 414:7 515:15 522:24 573:15 586:5 606:17 set 417:13 461:12 504:15 524:13 584:6 settled 524:6 severe 470:5 severely 514:7 SFSS 369:4 371:8 392:2 406:12 498:6 499:20 500:5, 8, 10, 11, 15 506:3 513:3 520:12, 19 524:8, 13 563:14 share 445:20 446:7 494:8, 17 520:12 521:17, 24 522:23 533:25 540:3, 20 553:9 554:22 563:5 589:4, 6, 11 618:10 shared 419:10 533:23 sharing 446:17, 24 535:22 554:22 sharp 573:5, 10 Shawa 363:5 sheets 512:2 shelf 413:2 shell 469:15 she'll 604:25 shipments 515:15 shoot 410:22 421:6 580:21 582:21 shooter 388:8, 9 450:1 466:16, 17 469:4 593:23 shooters 389:8 581:15, 20 585:16 Shooting 418:15 419:11	420:4, 5, 7, 12, 18 424:17, 24 428:12 440:15 441:5, 25 454:2 455:10 466:17 470:14 472:6 489:2, 9 490:1, 3, 9, 10 491:8, 18, 20 492:11, 13 539:21 540:1 548:23 570:15 571:6 580:5, 6, 7, 14, 15, 18 581:1, 6, 17 582:3 585:5 587:25 588:5, 6 590:21, 23 592:10 593:20 594:3, 18 599:1 605:11 617:13 shootings 488:6, 21 489:16, 19 490:7, 13 491:24 492:3, 6 570:13, 19 585:2 590:25 591:16 592:5, 8, 15, 22 593:1, 3, 9, 12, 18 594:12 595:7, 8, 18, 22 596:2 602:5 605:16, 21 616:15 shop 386:11 388:6, 15 416:4 shops 386:8 389:1 short 409:23 411:2, 4 412:12 413:21 414:2 466:8, 9 469:14, 18 484:4 498:11 515:10 564:13 583:15 shorter 383:18 467:9 shortest 541:3, 6 shorthand 614:5, 6 shortly 462:6 shot 417:12 463:11 464:25 467:20, 23	468:6, 12, 14, 15, 16, 17 470:19 472:1, 3 475:18 574:13, 21, 23 575:24 602:3 605:9 shotgun 366:14, 19 367:23 369:2 370:3, 12 371:2, 3, 16 372:9, 17 373:10 374:6 381:2, 3 386:2 396:5, 14 398:8 404:24 405:2 406:16 469:11, 14, 24 562:6 567:19 571:10, 12, 14, 18, 24 572:1 588:6 594:11, 15 617:6 shotguns 366:17 368:11 369:20 381:5 396:13 399:9, 14, 18 431:25 439:1 561:3, 8 562:22, 25 563:4, 8, 13, 25 567:21, 22, 24, 25 shots 467:5, 7, 10 468:19 574:10, 11 shoulder 466:16 574:11 show 425:24 426:6 444:17, 24 485:19 503:9 520:3 521:21 590:10 608:10 showed 503:16 556:18 591:10 shows 455:20 589:17, 18 590:16 side 523:10 sight 465:3 sign 583:12 600:7 signed 598:12 significance 465:8 significant 458:4 464:24	465:14 472:10 473:5 489:2 515:9 536:3, 6 575:23 576:6 significantly 471:16 473:11 543:16 silent 403:14 similar 367:20 381:4 391:24 432:18 433:9 446:12 453:23 474:2 similarities 542:24 similarity 377:15 similarly 475:5 simple 382:24 384:11 443:21 447:20 480:15 519:20 591:14 simpler 399:15 simply 371:9 379:10 414:13 421:9 429:23 453:2 454:19 462:13 482:12 488:5, 11 493:1 496:1 517:25 519:10, 22 539:16 550:15 552:16 592:25 595:16, 20 599:6 610:2 single 373:20 437:9 541:9 557:21 593:9 single-shot 457:17 sir 408:5 446:8, 16 450:23 460:24 526:21 540:6 567:7 590:14 592:9 sits 373:1 403:21 sitting 371:15 372:7, 14 617:3 situation 426:21 431:7 438:1 461:21 468:5 469:2, 17 598:20 situations 467:18 495:18	size 430:8 436:16 476:1 477:2 483:8, 12, 25 519:11 541:22 sized 436:13 475:3 483:9 sizes 450:6 551:24 skill 385:13 390:8 416:4 478:7 584:6 614:6 skilled 388:15 skills 587:2 skip 531:7 572:2 SKS 557:19 602:1 SKS-D 557:20 slightly 471:11 slower 508:2, 5 slowly 508:12 SLR 558:15 SLR-Multi 557:25 558:4, 21 602:1 small 430:21 439:24 440:22 453:18 454:10, 19 465:20 482:2 572:12 590:10 596:12 597:5, 11, 13, 14 598:1 smaller 453:13 465:20 476:20 483:12 551:4 571:15 smart 526:22 SMITH 361:21 365:24 366:1, 7, 8 372:19, 22 375:7 376:6 377:2 380:14 383:3 385:8 398:22 419:9 422:14 424:11 425:25 427:7, 19, 25 428:16 446:1, 9 447:5, 11 448:20 460:8, 10 462:3 463:2, 4 494:7, 16 498:14
---	---	--	--	---

500:17, 25 508:14 523:18 528:24 534:5, 11 555:8 560:3 598:18 600:11, 17, 20 611:16 613:20 615:2 617:19 618:9 S-M-I-T-H 365:25 Smith's 428:15 617:16 smuggled 539:18 544:19 smuggling 544:9, 13 sniper 570:16 society 599:19 software 514:14, 17, 20 515:9, 13 518:2, 4 519:6 520:23, 24 sold 435:13 576:24 soldiers 450:6 584:16 sole 449:14 Solicitor 363:12 solid 393:11, 15 Solomon 363:5 somebody 503:22 527:14 533:12 somewhat 389:5 392:6 541:25 soon 428:7 sophisticated 388:5 SOR/2014-198 498:17, 22 Sorry 366:22 369:6 375:7, 19 378:6 379:6, 19 382:9 386:23 388:23 392:19 394:14 395:16 400:14 408:11 412:5 435:3 439:25 452:18 473:20 511:15 519:20 531:21 533:3 534:17, 19 553:17 563:17 580:10, 23 589:5, 11	605:12 608:14 611:5 sorts 527:18 586:5 sought 424:9 558:23 sound 596:16 sounds 430:24 549:24 source 480:25 495:23 525:24 611:11, 16, 18, 23, 25 612:11 sourced 544:2, 12, 19 sources 391:4 439:16 610:22 sourcing 544:10 space 466:19 span 411:13, 15 412:17 speak 396:12 402:7 443:18 508:1, 5, 12 557:19 561:16 579:12 598:16 speaking 365:4 394:15 396:4 436:2 452:1 492:1 507:9, 10 534:20 546:7, 12 572:24 573:2 574:6 577:12 578:16 580:25 583:5 speaks 474:6 specialist 496:8 584:22 specialized 385:14, 25 414:6 606:16 species 476:18 specific 366:11, 15 369:8 385:19 395:2 396:8 443:5, 19 458:22 471:19 485:4 545:12 597:2 specifically 368:9, 20 373:22 374:18 383:4 441:7 442:2, 9 443:8, 23 444:17	445:8 449:7, 11 452:15 455:2 507:18 563:9 574:19 580:20 588:9 599:24 607:24 608:12 specifications 429:5 speed 501:9 speedy 523:11 spell 365:22 Spelled 365:24 spent 585:13 split 607:15 spoke 381:5 507:5 607:19 609:9 619:4 sport 388:8, 9 389:8 440:15 454:2 548:23 580:4, 7, 25 581:15 585:15 588:4 599:1 Sporter 444:10 446:13 sporting 400:24 438:24 456:2 465:18 475:10 482:6, 14, 15 502:12 543:21 548:24 550:24 551:3 552:2, 7 572:20 573:15 576:24 578:9 sports 580:12 588:7 spot 450:17 spread 480:22 spring 479:4, 8, 9, 12, 14, 17, 19, 21, 25 480:1, 2, 4, 5, 12, 13, 19, 20, 21 482:9 springs 482:3 St 363:13 364:10 staff 369:4, 10 370:9 416:14 426:20 462:15 496:13 517:2, 6 616:19 stalked 436:18 stamp 397:5, 7, 9, 16, 19, 21, 23,	25 398:10, 11 399:12 405:13 stamped 397:15 stamps 399:9, 19 400:11 stance 466:18 standard 395:5 406:6 423:13 476:7 487:16 519:3 588:14, 16 standards 395:1, 9, 20 400:1 standing 532:5 553:22, 25 555:22 556:21 standpoint 571:3, 9 stands 523:24 584:12 start 393:20 461:23 462:6 472:24 488:24 601:20 started 375:10 427:21 477:15 508:25 starting 396:12 474:10, 19 487:3 starts 547:23 state 368:11 394:2 464:19 565:9 586:21 stated 376:21 377:22 383:15 404:11 506:2 520:9 525:5 543:5 587:15 statement 421:11 422:14 425:7, 12, 13 443:1 495:3 501:15, 18 544:15 548:5 550:3, 4, 10, 19 561:6 564:7 572:11 578:16 604:3, 10 609:13, 17 616:2 statements 376:4 543:24 587:6 599:11 States 402:18, 19 407:5 464:17 490:19	499:12, 24 500:4 598:24 stationed 522:18 statistical 454:20 statistically 491:25 statistics 453:7 454:1 545:15, 20 589:17 591:10 592:18, 19 610:18 Stats 521:18, 23 589:8, 9 591:2 602:3, 4, 24 603:1 604:21 605:1, 4, 6 615:12 616:8, 11 statutory 394:7 stay 488:16 523:7, 9, 19 531:15 578:18 585:17 STEACY 362:6 stem 579:9 stems 579:17 step 462:7 steps 466:4 493:21 496:2 525:17 531:22 stick 573:5, 11 stipulates 529:2 stockpiles 598:3 stocks 368:6, 7 stolen 545:13, 14 stood 444:12 stools 390:8 stop 365:18 398:7 429:16 434:10 443:14 468:14 598:2 stopgap 521:3 stopped 513:9 stopping 430:25 515:15 516:5 560:9 storage 505:23 Storm 491:16 story 558:20 straight 564:22 strange 579:4 STRASSER 432:20 433:25
--	---	---	---	---

<p>strategies 473:13 474:1</p> <p>strength 479:11</p> <p>strengths 450:6</p> <p>stress 435:10 469:4</p> <p>stressful 469:2, 17</p> <p>stretch 419:5, 7</p> <p>stricter 596:1</p> <p>stronger 479:19</p> <p>studied 489:16</p> <p>studies 595:6 597:19</p> <p>study 545:1 597:24</p> <p>style 486:15, 17, 19 509:14 547:2 561:12</p> <p>styles 509:13</p> <p>subheadings 518:10</p> <p>subject 385:10 408:6 503:20 528:20, 21 581:21</p> <p>submissions 596:7 600:15</p> <p>subsection 487:3</p> <p>subsequent 574:21</p> <p>substantial 456:18 497:23</p> <p>substantially 378:23 606:13, 15</p> <p>sub-unit 522:18</p> <p>success 582:17, 19 584:13</p> <p>successfully 475:23 558:25</p> <p>successive 463:11 574:10, 13</p> <p>sufficient 474:23 495:23 531:9 559:1</p> <p>suggest 370:17 439:10 442:12 452:8 468:8 473:3 483:19 490:1 557:3 576:13</p>	<p>suggested 461:18 496:22, 24 497:2, 15 498:2 555:23 576:10 587:11</p> <p>suggesting 463:14, 16, 22</p> <p>suggests 375:2, 3</p> <p>suitability 456:9 458:11 463:25</p> <p>suitable 413:18 438:9 441:23 453:13 456:5, 12 458:8 463:12, 23 464:5, 9 476:16, 17, 22 477:20, 21 478:2, 11 553:2 574:14 578:8</p> <p>supplied 429:10</p> <p>supplies 519:6</p> <p>Supply 442:6 443:7 444:9 446:10 447:6, 13, 23 448:17 515:13 543:10 616:23 617:20</p> <p>Support 606:17</p> <p>supportive 383:6</p> <p>suppose 398:6, 12 415:25 478:7 541:14 562:22</p> <p>Supreme 410:1, 7 411:8</p> <p>surface 390:25</p> <p>surfaced 414:19</p> <p>surprised 586:6</p> <p>survey 440:5, 19 522:1</p> <p>surveys 437:10 440:17</p> <p>suspect 477:2 545:19</p> <p>sustained 547:6 549:20 551:1, 4, 10, 14</p> <p>sustenance 573:18 574:2, 22 575:4 577:6, 9, 18</p>	<p>SW 363:6</p> <p>swapping 421:9</p> <p>swear 613:8</p> <p>Swiss 534:12, 22 535:2 609:22</p> <p>switch 418:9 507:16</p> <p>switch-barrel 432:19</p> <p>system 400:8 421:2 533:19 612:1</p> <p>systems 418:10</p> <p>< T ></p> <p>T2P 363:7</p> <p>T-577-20 361:17 362:2 363:3</p> <p>T-677-20 361:17 362:14 363:10</p> <p>T-735-20 361:1 363:17, 21</p> <p>tab 485:25</p> <p>Table 366:23 367:14 369:21 373:16 394:16 395:13 402:3 407:1 429:25 430:14 497:25 498:2, 7 543:18 550:13 560:18</p> <p>tables 429:9, 13, 21 430:19, 23</p> <p>tactical 439:12, 19, 21 440:3, 18, 25 441:4, 5 442:6 443:7, 22 444:6, 8, 14 445:19 446:3, 10, 22 447:6, 12, 16, 23 448:14, 17 449:10 453:22 584:21 609:23 616:23 617:20</p> <p>takes 398:9 466:8, 9, 11, 19 519:17</p> <p>talk 385:9 401:2 402:12 408:6 409:12 435:1 436:9 471:19 563:10 572:3</p> <p>talked 419:11</p>	<p>talking 380:4, 7 385:17, 21 386:9, 10, 11, 12 388:7 389:18 395:20 399:14 405:24 411:5 413:12 416:6 418:8 426:9 449:23 453:14 455:2 463:18 469:23, 24 470:17 472:23 476:4 490:21 510:18 519:25 544:4 561:22 572:24 573:8, 24 574:19 580:15 582:10</p> <p>target 441:25 455:10 465:24 466:2, 16, 18 582:2 587:25 588:5</p> <p>targets 580:16, 17, 21</p> <p>team 528:3 585:15</p> <p>technical 391:22 498:9 508:16, 22 509:4, 6, 8, 12, 18, 20 510:4, 23 513:4 572:8, 15</p> <p>technically 451:3</p> <p>technician 508:25</p> <p>technicians 513:3, 6, 7</p> <p>technology 579:23</p> <p>telephone 523:12</p> <p>tells 519:21</p> <p>temporary 521:3</p> <p>tend 551:3</p> <p>ten-minute 382:25</p> <p>term 375:3 392:24 393:1 409:18 414:11 483:23 513:25 514:3, 4, 10, 12 520:20 524:10 527:10 541:19,</p>	<p>25 542:14 545:4, 5 548:3, 6, 23 610:10</p> <p>terminology 459:3 484:19, 24 548:8</p> <p>terms 402:7 415:15 435:21 439:15 475:7 502:7 537:2 543:15 546:14 552:17, 21 554:9 555:16 556:5, 8, 11, 15 568:14 573:2 600:1 607:12, 15</p> <p>test 435:10</p> <p>tested 496:4, 6</p> <p>testified 381:14 394:6 401:14 436:22 473:15 492:22 608:24</p> <p>testimony 613:14</p> <p>testing 577:2</p> <p>tests 576:1</p> <p>text 379:2 380:17 391:21 425:16 497:24 540:10, 22 589:23 607:2</p> <p>texts 381:12</p> <p>Thanks 557:13</p> <p>theme 595:20</p> <p>thereto 391:18</p> <p>thing 373:23 408:15 418:23 466:3 539:6 552:8 588:7 589:6</p> <p>things 377:18 441:24 451:23 464:12 465:2 475:19 482:3, 4, 11 483:10 498:4 501:9 505:16 514:4 515:24 518:6 538:15 540:2 550:2 557:12 577:20 586:4 601:22</p> <p>thinking 565:9</p> <p>thinks 528:2</p>
--	---	--	---	--

<p>third 468:17, 19 537:23 574:24 thoroughly 496:6 thought 380:14 382:17 384:16 390:7 483:5 522:8 526:4 536:5 549:6 556:24 577:13 580:6 thousands 389:9, 11 416:6, 7 429:1 490:21 491:2 518:18 577:10 thread 391:3 threat 570:22 throw 530:19 tightly 597:15 time 365:17 366:10 369:1, 5, 7 372:19 386:13 400:12, 15 406:25 409:23 411:2, 5, 13, 15 412:12, 17 413:21 414:2 419:2, 16 423:8 435:23, 25 457:23 461:7, 12, 13, 23 462:4, 8 464:24 465:14, 22 466:8, 9, 19, 22, 24 467:5 468:23 470:16, 21, 24 471:2 480:23 488:25 490:22 501:6 508:9 511:16 512:21, 24 513:17, 23 515:3, 10 516:14 519:7, 12 521:8, 10 522:14, 15, 16 523:3, 12, 25 524:15 531:8 537:7 539:17 541:3, 6 544:11 548:14 556:19 559:4 561:15 563:18 564:11, 13 565:5, 11, 16</p>	<p>570:6 583:15 584:7, 9 585:22 586:1 588:1, 3 594:4 610:3 timeline 468:22 timelines 427:3 times 376:7 418:15 419:11 420:4, 5, 8, 13, 18 424:17, 24 428:12 515:11 516:11, 18 522:16 529:9 590:18 602:3 603:4, 5, 11 615:16 617:13 Timmins 442:21 tired 419:6 today 366:1 369:9, 14, 15, 24 370:16 371:6, 15 372:7, 15, 20 373:2 383:1 400:9 456:15 460:11, 17 461:3, 4, 9, 15, 24 534:20 536:10 617:3 today's 427:9 522:16 told 368:13 377:3 379:17 380:9 381:11 386:13 388:3 405:16 440:8 tomorrow 383:1 tone 597:10 tool 386:4 402:6, 13 528:1 tooling 417:7 tools 385:14 386:7, 16, 19, 20, 25 387:5 388:10, 20, 21 416:4 417:19 418:11 topic 553:12 600:13 topics 496:21, 22, 23 497:2, 11, 12, 13, 15, 17 498:1 507:16 Toronto 363:14 544:25 595:24</p>	<p>total 589:18 607:6 totally 558:12 touching 463:24 trace 457:19 Tracing 544:7 597:4 600:1 track 489:18 517:4 545:19 tracking 600:1 Trade 597:4 traditional 450:1 465:18 482:5, 6 tragedy 584:25 595:25 train 541:5 586:19 trained 584:17, 18 training 469:20 530:12, 24 531:1, 6 541:4 582:18, 19 583:3, 24 584:4, 8, 9, 13, 14, 22 585:11, 16, 23, 24 586:2, 4, 14, 15 587:9, 10 588:12, 15, 16 transcribed 614:5 Transcript 361:20 426:1, 4, 8, 14 428:14 608:10, 11, 15 609:15 614:1, 4 615:6, 8 617:15 transition 533:2 transparency 520:8, 13 transport 539:23 travel 596:19 travelled 452:14 Travis 366:12 426:24 428:13 617:14 treaties 599:25 600:7 Treaty 597:4 tribunal 607:21 608:1 609:11 619:6 trigger 368:10</p>	<p>trivial 415:23 trouble 511:6 Trudeau 604:3, 10 616:2 Trudeau's 540:23 true 371:12 373:4 401:24 405:1 474:6 515:14 525:9 583:19 599:15 truly 474:16 582:5 truth 613:16 trying 376:23 377:4 424:22 427:14 431:1 446:19 447:9, 14 460:4 461:22 462:4, 10 487:25 497:16 506:16 531:8 574:17 tube 479:3, 4, 7 tubes 389:22 tuning 415:19 Turkey 373:9 Turkish 366:17, 19 368:22 371:3 381:3, 5 turn 533:24 turned 408:12 539:7 turning 516:6 turns 476:13 564:4 Twitter 605:9, 10 twivehour 395:7 two-and-a-half 427:6 tying 584:24 type 373:11 380:19 385:21 399:21 428:21 430:10 439:5 440:4, 18 449:4, 25 450:10 453:15, 20 457:12 458:5 465:16 467:1 470:7, 10, 13 471:13 475:17, 25 477:19, 20 479:1 499:16 507:14 535:17</p>	<p>538:11, 17 540:4, 14 579:14 588:4 types 390:3 430:7 436:20 456:23 477:22 534:6 568:4, 16 612:23 Typhoon 366:14 368:5 369:11 370:10 380:19 616:20 typical 390:16 413:13 478:4, 5 483:15, 18 typically 389:21 393:16 397:14, 22 399:21 400:22 404:25 423:17 441:22 484:22 513:6 519:17 551:11 < U > ultimate 524:21 527:10 ultimately 527:24 528:22 UN 513:23 596:12, 15, 19, 24, 25 597:5, 11, 17, 18, 25 598:13, 18, 24 599:5, 6, 8, 18, 23 600:4, 15 unable 469:8 518:7 586:10 unaffected 571:16 unannounced 523:7, 20 unavailable 515:5 unaware 560:4, 10 unclear 395:16 554:9 610:13 uncomfortable 401:16 uncommon 566:8 undersigned 614:3 understand 365:9, 13</p>
---	--	---	--	--

369:25 372:5 376:6, 23 377:4 412:18 422:17 427:14 430:20 449:1 461:18, 20 462:3 464:7 470:17 476:8 488:1 493:22 494:14 500:19 501:2, 10 509:7 514:19 524:2 526:23 529:17 531:15 535:12 557:18 562:11 566:7 596:2 understandable 571:21 understanding 382:1 391:10 394:20, 21, 22 396:2 405:19 409:18 410:16 411:4, 16, 18 415:18 421:13 429:13 461:19 464:19 479:16 502:6, 17 505:7 532:25 568:20 579:5 585:12 608:16 undertaken 501:20 undertaking 370:1, 5, 7 372:24 373:5 448:6, 16 616:18, 22 undertakings 373:4 448:11 615:4 616:17 undrilled 393:15 unique 421:4 United 402:18, 19 464:17 490:19 596:11 599:12 universally 542:1 unjustified 591:4, 6, 15 unknowable 402:10 unmodified 412:9	unnamed 502:9 512:16 526:13, 19, 21 527:15 562:4 606:21, 23 607:6, 14, 16 unreliable 437:25 unskilled 388:19, 21 unsuitable 458:19 459:3, 8, 25 463:16 618:4 untrue 562:25 unusual 395:4 418:17 586:8 unwilling 554:4 unwitting 538:15 upcoming 560:10 update 407:2 515:4, 9 updated 407:20 514:15 515:2 516:14, 15, 18, 23 523:25 560:12 updates 515:13 517:4 520:24 560:5 565:14 updating 407:20 520:23 up-to-date 514:17 Usage 521:18 557:10 602:24 603:2 615:13 useful 374:11 450:14 468:16 471:1 544:22 569:19 user 413:25 414:4 422:7 430:25 518:7 541:16 558:17 users 454:3 519:8 546:4 uses 368:9 375:3 401:3 405:8, 22 406:1, 3 455:8 502:7 548:23 Uzkon 381:3 < V >	vague 554:9 608:6 vaguely 608:23 vagueness 556:14 valid 503:17 value 526:5 van 595:24 vans 596:1 variable 469:21 481:2, 12 482:3 variant 367:15, 17 368:15 369:3, 12 370:13, 19 371:4, 17 372:10, 17 374:5, 22 375:2, 25 377:12, 17, 21, 25 378:9, 17 379:4, 8 380:20 381:9 471:23 482:21 524:10 527:2, 6, 7, 9, 14, 15 531:2, 4 546:17, 19 552:10, 12, 13, 14 553:1 554:10 555:15, 23 556:5 557:7 558:1, 2, 9, 12, 19 559:2 561:18, 19 562:4, 14 617:6 variants 378:22 379:2 380:16 381:8 485:9 486:7, 11, 23 487:4 502:9 512:16 526:13, 19 542:5 545:22, 23 560:7 606:21, 22, 25 607:6, 13, 14, 16 variation 431:14 varied 537:19 varies 374:17 375:11, 17, 20 377:3 451:23 456:18 464:19 484:19 513:8, 11 544:16 588:4 variety 367:19 368:17 393:23	397:9 431:12 457:11 473:13 484:17 516:8 various 376:1 391:13 580:4 586:5 599:7 varmint 453:14, 18, 25 454:16 455:5 467:3, 6 470:12 Varminter 442:12 444:10 446:13 Varmints 561:7 vary 428:22 481:9 522:17 544:9 varying 368:4 450:6 544:3 vast 389:12 390:4 399:2, 5 vehicles 542:14 vein 448:3 velocity 430:16 435:16, 18 436:1, 6 venture 594:19 Ventures 584:21 verbatim 380:20 verification 503:21 verified 581:22 verify 424:16 441:14 496:2 510:10, 14 Veritext 364:16 versa 480:7 544:13 versatility 421:5 verse 480:7 version 373:10 452:16 489:3 491:6, 12 492:23 514:17, 21 518:11, 23 519:18 520:22, 25 521:6 527:2, 6 558:9 562:14 versions 457:17 484:5, 10 486:8, 11, 23 542:5 582:6 versus 414:5 455:10, 11	465:17 468:20 607:9, 10 vice 416:23 417:4 544:13 videoconferencin g 361:23 363:1 view 378:19 387:22 403:19 404:19, 20 441:2 464:3 471:11 502:14 514:23 518:25 528:19 546:16 553:4 557:7 571:4 609:21 viewable 514:21, 22 viewed 374:11, 22 559:2 views 381:8 528:9 VINCENT 361:9 virtual 365:3 virtually 483:23 513:12 518:4 virtue 412:10 592:24 594:22 595:4 visible 399:4 524:5 vital 478:12 vitally 587:10 volumes 547:9 549:21 voluntarily 400:3 voluntary 584:3 587:9 < W > wait 365:18 376:8 379:20 392:13 441:13 522:13, 16 523:3, 12 529:19, 20 602:3 603:4, 5, 10 615:16 waited 522:21 wanted 366:13 474:17 475:1, 20 523:2 541:12 549:8 556:13 560:11 577:15 589:16
---	---	--	--	---

600:25 601:10 618:17 wanting 426:3 493:24 522:3 War 457:2, 4, 6, 20, 25 458:3 483:8 wardens 586:23 ware 545:11 Warner 498:18 517:20 Wartman 593:24 594:2 waste 462:8 wasting 462:4 water 573:12 ways 372:12 376:22 390:19 393:23 444:10 454:25 473:19, 21 weapon 458:2 469:18, 20 471:14 541:15, 19, 25 560:22 weapons 408:19 410:14 458:17 542:6, 11 543:20 582:7 583:8 596:13 597:6, 12 598:1 wear 397:25 Weatherby 568:23 569:10, 18 website 368:21 406:14, 20 425:19, 20 444:19, 23 445:2, 9, 14, 19 446:3, 22 447:7, 13, 17, 21, 23, 24 448:1, 7, 14, 18 449:8 493:7, 8, 9 616:23 617:20 websites 433:24 week 373:13 377:11 383:2 496:20 498:18 507:5 512:23 513:1 522:22 578:15 583:6 588:2 Weekly 516:20	weeks 529:21 601:16 weighing 591:24 weight 473:4, 22 474:17 528:14 weights 450:6 well-known 546:3, 22 564:11 well-marked 399:7 Wendy 513:19 whatsoever 402:21 613:15 whittle 501:5 wholesaler 543:9 widely 396:10 452:3 546:24 593:2 Wikipedia 590:12 602:5 605:15, 20 616:14 wild 468:1 wildlife 437:10 WILLIAM 362:17 Wilson-Raybould 553:21 Winchester 452:22 453:4 455:19 457:14 465:13 466:14 472:9, 14 474:11 475:5, 14, 15, 21 575:22 576:4, 12 579:8 wind 430:17 window 589:11 windows 514:25 wish 530:13 witness 365:22, 24 366:1, 2, 5 441:16 447:2 448:13 493:2 495:9 500:24 598:12 606:2, 4 611:9 619:9, 11 witness's 497:9 won 587:20 wonder 419:1 wondering 436:19 504:6	513:5 522:13 540:3 542:10 543:5 544:25 546:7 547:10 549:6 551:19 556:4 557:23 561:10 569:22 570:14 571:9 574:16 575:25 576:15 579:10 580:10 581:5 584:24 587:19 595:6, 9 596:14, 18 599:14, 17 won't 383:23 535:4 536:14 556:2 559:20 word 379:4 392:25 393:3 410:20 464:5 531:5 553:1 557:10 574:20 613:1 word-for-word 540:22 wording 508:20 words 371:14 374:14 381:22 390:14 391:23, 25 458:22 459:2 work 411:22 412:15 413:6 415:5 417:17 421:12 422:4 430:11 512:21, 24 513:1 514:3 521:6, 8 526:8 586:25 worked 508:15, 22 544:7 workforce 523:4 working 513:17 524:15 works 382:1 400:9 411:16 461:19 505:7 520:17 590:4, 17 World 457:2, 4 478:6 483:8 581:13 600:1 worldwide 402:15, 20 488:23 489:1, 2, 24 490:17	491:10 592:18 worn 398:3 worse 437:21 would-be 368:2 wrench 416:24 417:4 write 501:14 557:18 597:23 writing 406:12, 20, 24 460:16, 20, 23, 24 written 391:23 400:2 422:5 525:8, 11 559:8 wrong 561:10 wrote 497:23 Wylde 452:4 W-Y-L-D-E 452:4 < X > XTR-12 381:3 < Y > Y2 533:24 553:13, 17, 19 602:2 604:13, 17 616:5 Yeah 371:13 376:11 389:24 392:12, 21 400:18 418:12 419:6 432:24 442:19 451:14 459:15 460:14, 20 462:20 464:9 467:22 476:1 478:23 481:8 495:12 499:1 509:3, 19 511:10, 18, 25 518:23 519:13 535:18 541:8 549:4 558:20 559:12 563:21 582:13 588:22 590:2, 15 598:10 604:2 605:18 608:20 year 515:11 547:22 586:5 590:5, 6, 9, 18 591:1, 17, 18, 20 601:17 years 389:10 391:5 394:24	413:24 489:14, 15 508:17 511:17 513:5 520:18 528:4 544:8 575:4 577:9, 10 584:8 590:4, 7, 8, 17, 24 596:12 601:13 612:22 Young 534:3 < Z > z.068 581:11 z.074 581:12 Zoe 364:3 Zoom 418:23
---	---	---	---	---