

Federal Court



Cour fédérale

Date: 20220912

**Dockets: T-569-20
T-577-20
T-581-20
T-677-20
T-735-20
T-905-20**

Citation: 2022 FC 1244

Ottawa, Ontario, September 12, 2022

PRESENT: The Associate Chief Justice Gagné

Docket: T-569-20

BETWEEN:

**CASSANDRA PARKER and K.K.S. TACTICAL
SUPPLIES LTD.**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

BETWEEN:

Docket T-577-20

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

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-581-20

BETWEEN:

JOHN PETER HIPWELL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-677-20

BETWEEN:

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

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-735-20

BETWEEN:

**CHRISTINE GENEROUX, JOHN PEROCCHIO and
VINCENT PEROCCHIO**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

BETWEEN:

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

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] These six Applications for judicial review concern the validity of the regulations [Regulations] made by the Governor in Council under section 117.15 of the *Criminal Code*, RSC 1985, c C-46, to prohibit a list of previously non-restricted or restricted firearms.

[2] The Coalition for Gun Control seeks leave to intervene in these proceedings to make submissions with respect to the Regulations. It initially requested permission to serve and file an affidavit providing relevant evidence to support its argument, but later advised the Court that it no longer intends to do so.

[3] The Respondent is of the view that the Coalition brings a unique perspective to the debate and that leave should be granted.

[4] On the other hand, the Applicants in five of the six files (the Applicants in T-569-20 Parker file do not take a position) oppose the motion, or alternatively request that the scope of the Coalition's proposed intervention be limited.

I. Nature of the Intervention

[5] The Coalition is a non-profit organization founded in the wake of the 1989 École Polytechnique massacre in Montréal; it is dedicated to the strengthening and defence of Canada's firearm laws.

[6] Since its inception in 1991, the Coalition has (i) advocated for a ban on civilian-owned military-style assault weapons, and (ii) supported strategies to reduce firearm-related deaths, injuries and crime.

[7] The Coalition is supported by over 200 organizations that represent diverse interests spanning the full breadth of Canadian society, including victims, women, physicians, lawyers, religious communities, universities, municipal governments, and law enforcement. Many of these organizations represent victims of gun violence and communities that are disproportionately affected by firearm violence.

[8] According to its president, Dr. Wendy Cukier, the Coalition will bring to bear the distinct voices of those Canadians that the Regulations seek to protect. These voices include victims of gun violence and suicide, and groups such as racialized and religious communities, women and minority groups that are more likely to be victims of hate crimes. Dr. Cukier states that the

existing parties do not represent the interests of these groups and individuals, and that it is essential that the Court hear their voices.

[9] The Regulatory Impact Analysis Statement [RIAS], which accompanies the Regulations and includes a summary of the consultation process, states that “many participants expressed their views that a ban on assault-style firearms was needed to protect public safety.” The RIAS contains several references to the Regulations addressing “increasing public demand” and “a growing public concern”, and at one point notes a “clear need for immediate action to implement the ban on the prescribed prohibited firearms”.

[10] The Coalition participated in the public consultation process that preceded the Regulations and, in my view, it has a genuine interest in the adjudication of any challenge to the Regulations.

[11] If granted intervener status, the Coalition will (i) argue that the Regulations are valid, and (ii) make submissions on the following:

- a. The relationship between the prohibitions in the Regulations and its stated purposes; and
- b. The social impacts of the Regulations from the perspective of experts in violence prevention and groups disproportionately affected by firearm violence.

II. Issues

[12] These Motions raise the following issues:

A. *Should the Coalition be granted leave to intervene in these proceedings?*

B. *If so, what is the appropriate scope of intervention for the Coalition?*

III. Analysis

A. *Should the Coalition be granted leave to intervene in these proceedings?*

(1) The Applicable Law

[13] Leave to intervene may be granted under Rule 109 of the *Federal Courts Rules*, SOR/98-106 [Rules] considering the following relevant factors (*Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1990] 1 FC 74 (TD), at para 12, aff'd [1990] 1 FC 90 (CA); as restated in *Sport Maska Inc. v Bauer Hockey Corp.*, 2016 FCA 44, at para 37):

- a. Is the proposed intervener directly affected by the outcome; or does the proposed intervener have a genuine interest and possess specialized knowledge and expertise on the issues before the Court?
- b. Is there a justiciable issue and a veritable public interest?
- c. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
- d. Is the position of the proposed intervener adequately defended by one of the parties to the case?
- e. Are the interests of justice better served by the intervention of the proposed intervener? For example, (i) has the matter assumed such a public, important and complex dimension that the Court needs to be exposed to perspectives beyond those offered by the particular parties before the Court?; (ii) what are the interests of the Court and the parties?; and (iii) has the intervener complied with the requirements of the Rules?; and

- f. Can the Court hear and decide the cause on its merits without the proposed intervener?

[14] A proposed intervener need not satisfy all of these factors (*Canadian Pacific Railway v Boutique Jacob Inc.*, 2006 FCA 426 at para 21), and the Court has discretion to ascribe the weight it sees fit to any individual factor (*Sport Maska*, at para 41). The Court has the authority to allow intervention on terms and conditions that are appropriate in the circumstances.

[15] In a recent decision rendered by a full bench of the Federal Court of Appeal (*Métis National Council and Manitoba Metis Federation Inc. v Varley*, 2022 FCA 110), Justice Roussel, citing another recent decision rendered by Justice Stratas (*Right to Life Association of Toronto and Area v Canada (Employment, Workforce and Labour)*, 2022 FCA 67), held that the central issue in a motion for leave to intervene is whether the arguments made by the proposed intervener will assist the Court in the determination of the factual and legal issues raised by the parties (and only those raised by the parties).

[16] In *Right to Life Association*, Justice Stratas reminded us that Parliament's intent is paramount and that Rule 109 should prevail over the Court's decisions; and usefulness is central to Rule 109. The proposed intervener should be able to convince the Court at the leave stage, on summary submissions, that they will bring to the table useful submissions, insights and perspectives on the issues raised, that are different from that of the parties to the case.

[17] Once that is established, the Court will look into whether the proposed intervener has a genuine interest in the case and whether it is in the interest of justice to grant leave (*Right to Life Association*, at para 10).

[18] In the case before me, I have no doubt that the Coalition has a genuine interest in participating in the debate that is at the heart of its reason for existence. I also have no doubt that it would bring a unique insight and perspective on the factual issues at stake.

[19] However, not only will the Coalition not be filing its own evidence, but Dr. Cukier admitted on cross-examination that she had not reviewed the numerous affidavits and extensive documentary evidence filed by all the parties in support of their respective positions.

[20] In that context, the Court has to focus on what the Coalition intends to argue on the issues that are raised by the parties, which all turn around the administrative and constitutional validity of the Regulations.

[21] In its Reply submissions, the Coalition states that it has now had the opportunity to review the Respondent's written submissions. Yet, it fails to identify how the legal arguments it intends to make would differ from those of the Respondent or how it intends to approach these issues from a different angle.

[22] What the Coalition has been advocating for over the past 30 years has found its way in large part into the RIAS issued with the Regulations and in the Respondent's evidentiary record filed with the Court.

[23] In fact, the very perspective the Coalition would bring forward is reflected at the onset of the RIAS:

Canada has experienced mass shootings in rural and urban areas such as in Nova Scotia, city of Québec, Montréal, and Toronto. Whether at home or abroad, the deadliest mass shootings are commonly perpetrated with assault-style firearms. These events, and concerns about the inherent deadliness of assault-style firearms used in them, have led to increasing public demand for measures to address gun violence and mass shootings in Canada.

The Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted (Regulations) amend the Regulations that classify firearms (Classification Regulations) to prescribe certain firearms as prohibited firearms. The Regulations prohibit approximately 1 500 models of assault-style firearms, including current and future variants. The Regulations also prescribe the upper receivers of M16, AR-10, AR-15 and M4 pattern firearms to be prohibited devices.

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

[24] In addition to its arguments on the administrative and constitutional fronts, that is exactly the perspective the Respondent will be defending on the merits of these Applications.

IV. Conclusion

[25] Therefore, for the foregoing reasons, I will dismiss the motions.

ORDER in T-569-20, T-577-20, T-581-20, T-677-20, T-735-20 and T-905-20

THIS COURT ORDERS that:

1. The Motions made by the Coalition for Gun Control are dismissed;
2. No costs are granted.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-569-20

STYLE OF CAUSE: CASSANDRA PARKER and K.K.S. TACTICAL SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-577-20

STYLE OF CAUSE: CANADIAN COALITION FOR FIREARM RIGHTS, RODNEY GILTACA, LAURENCE KNOWLES, RYAN STEACY, MACCABEE DEFENSE INC., and WOLVERINE SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-581-20

STYLE OF CAUSE: JOHN PETER HIPWELL v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-677-20

STYLE OF CAUSE: MICHAEL JOHN DOHERTY, NILS ROBERT EK, RICHARD WILLIAM ROBERT DELVE, CHRISTIAN RYDICH BRUHN, PHILIP ALEXANDER MCBRIDE, LINDSAY DAVID JAMIESON, DAVID CAMERON MAYHEW, MARK ROY NICHOL and PETER CRAIG MINUK v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-735-20

STYLE OF CAUSE: CHRISTINE GENEROUX, JOHN PEROCCHIO and VINCENT PEROCCHIO v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-905-20

STYLE OF CAUSE: JENNIFER EICHENBERG, DAVID BOT, LEONARD WALKER, BURLINGTON RIFLE AND REVOLVER CLUB, MONTREAL FIREARMS RECREATION CENTRE, INC., O'DELL ENGINEERING LTD. v ATTORNEY GENERAL OF CANADA

**RULE 109 MOTIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: GAGNÉ A.C.J.

DATED: SEPTEMBER 12, 2022

WRITTEN SUBMISSIONS BY:

Robert MacKinnon FOR THE RESPONDENT IN T-569-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-569-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

Laura Warner FOR THE APPLICANTS IN T-577-20
Ryan Phillips
Joseph Heap

Michael A. Loberg

Robert MacKinnon FOR THE RESPONDENT IN T-577-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-577-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

Edward L. Burlew FOR THE APPLICANT IN T-581-20

Robert MacKinnon FOR THE RESPONDENT IN T-581-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-581-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

Arkadi Bouchelev FOR THE APPLICANTS IN T-677-20

Robert MacKinnon FOR THE RESPONDENT IN T-677-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-677-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

Christine Generoux FOR THE APPLICANTS IN T-735-20

Robert MacKinnon FOR THE RESPONDENT IN T-735-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-735-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

Eugene Meehan FOR THE APPLICANTS IN T-905-20
Thomas Slade

Robert MacKinnon FOR THE RESPONDENT IN T-905-20

Colin Feasby FOR THE PROPOSED INTERVENER IN T-905-20
Thomas Gelbman COALITION FOR GUN CONTROL
Carla Breadon
Kelly Twa

SOLICITORS OF RECORD:

Friedman Mansour LLP FOR THE APPLICANTS IN T-569-20
Ottawa, ON

Attorney General of Canada FOR THE RESPONDENT IN T-569-20
Ottawa, ON

Osler, Hoskin & Harcourt LLP FOR THE PROPOSED INTERVENER IN T-569-20
Calgary, AB COALITION FOR GUN CONTROL

Jensen Shawa Solomon Duguid FOR THE APPLICANT IN T-577-20
Hawkes LLP
Calgary, AB

Loberg Law
Calgary, AB

Attorney General of Canada
Edmonton, AB

FOR THE RESPONDENT IN T-577-20

Osler, Hoskin & Harcourt LLP
Calgary, AB

FOR THE PROPOSED INTERVENER IN T-577-20
COALITION FOR GUN CONTROL

Edward L. Burlew
Thornhill, ON

FOR THE APPLICANT IN T-581-20

Attorney General of Canada
Ottawa, ON

FOR THE RESPONDENT IN T-581-20

Osler, Hoskin & Harcourt LLP
Calgary, AB

FOR THE PROPOSED INTERVENER IN T-581-20
COALITION FOR GUN CONTROL

Bouchelev Law Professional
Corporation
Toronto, ON

FOR THE APPLICANTS IN T-677-20

Attorney General of Canada
Toronto, ON

FOR THE RESPONDENT IN T-677-20

Osler, Hoskin & Harcourt LLP
Calgary, AB

FOR THE PROPOSED INTERVENER IN T-677-20
COALITION FOR GUN CONTROL

Attorney General of Canada
Ottawa, ON

FOR THE RESPONDENT IN T-735-20

Osler, Hoskin & Harcourt LLP
Calgary, AB

FOR THE PROPOSED INTERVENER IN T-735-20
COALITION FOR GUN CONTROL

Supreme Advocacy LLP
Ottawa, ON

FOR THE APPLICANTS IN T-905-20

Attorney General of Canada
Ottawa, ON

FOR THE RESPONDENT IN T-905-20

Osler, Hoskin & Harcourt LLP
Calgary, AB

FOR THE PROPOSED INTERVENER IN T-905-20
COALITION FOR GUN CONTROL