

**FORM 359 - Rule 359**

**FEDERAL COURT**

BETWEEN:

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

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Applicants will make a motion to the Court to be heard in a special hearing, as so directed by the Court or the Case Management Justice pursuant to Rule 35(2) of the *Federal Courts Rules*, SOR/98-106. We propose this motion will take two hours or less and should be heard virtually through remote video appearance.

**THE MOTION IS FOR** interim or interlocutory relief under sections 18.2 and 44 of the *Federal Courts Act*, RSC 1985, c F-7, Rule 373 of the *Federal Courts Rules*, SOR/98-106, the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (***Constitution Act, 1982***), and the Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, (***Charter***), and the *Canadian Bill of Rights*, SC 1960, c 44 (***Bill of Rights***).

Specifically, the Applicants seek an Order:

(a) Granting an interlocutory injunction to extend the current amnesty as set out in the *Order Amending the Order Declaring an Amnesty Period (2020)*, SOR/2022-45 and previously in the *Order Declaring an Amnesty Period (2020)*, SOR/2020-97 (collectively, the **Amnesty Orders**) and staying the effects of the *Regulations Amending Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted, or Non-Restricted*, SOR/2020-96 (**Regulation**) for the limited purpose of permitting a person to:

- a. deactivate the specified firearm so that it is no longer a firearm or deactivate the specified device so that it is no longer a prohibited device;
- b. deliver the specified firearm or specified device to a police officer for destruction or other disposal;
- c. if the person is not the owner of the specified firearm or specified device, deliver it to its owner;
- d. export the specified firearm or specified device in accordance with all applicable legal requirements, including the legal requirements of the country to which it is exported;

- e. if the person is a *business*, as defined in subsection 2(1) of the *Firearms Act*, return the specified firearm or specified device to the manufacturer;
- f. transport the specified firearm or specified device by vehicle, for the purpose of doing any of the things described in paragraphs (a) to (e), by a route that, in all the circumstances, is reasonably direct, as long as, during transportation,
  - i. in the case of a firearm, it is unloaded and no ammunition is present in the vehicle,
  - ii. the firearm or device is in the trunk of the vehicle or, if there is no trunk, the firearm or device is not visible from outside the vehicle, and
  - iii. the vehicle is not left unattended;
- g. before doing any of the things described in paragraphs (a) to (f), store the specified firearm in accordance with section 5 or 6 of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* according to the classification of the firearm on the day before the day on which it became a prohibited firearm;
- h. transport the specified firearm by vehicle, for the purpose of doing the thing described in paragraph (g), by a route that, in all the

circumstances, is reasonably direct, as long as, during transportation,

i. the firearm is unloaded and no ammunition is present in the vehicle,

ii. the firearm is in the trunk of the vehicle or, if there is no trunk, the firearm is not visible from outside the vehicle, and

iii. the vehicle is not left unattended;

i. if the specified firearm was, on the day before the day on which this requested Order comes into force, a non-restricted firearm, use it to hunt in the exercise of a right recognized and affirmed by section 35 of the *Constitution Act, 1982* or to sustain the person or their family — until they are able to obtain another firearm for that use — and, for that purpose, transport the firearm in accordance with section 10 of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*; and

j. possess the specified firearm or specified device before doing any of the things described in paragraphs (a) to (i);

All of which is currently permitted under the Amnesty Orders from May 1, 2020 to October 31, 2023 (the **Amnesty Period**);

- (b) The Applicants seek an extension of the Amnesty Period until either (i) the Buy-Back Program (as defined below) is implemented by the federal government, or (ii) the within Application for Judicial Review of the Regulation (**JR Application**) has been finally determined on its merits and the appeal period of that decision has lapsed, whichever occurs later;
- (c) Directing that the Applicants are not required to give an undertaking for damages under Rule 373(2); and
- (d) Granting such further and other relief as Counsel for the Applicants may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**I. INTRODUCTION**

1. The Applicants repeat and adopt all allegations of fact in the Notice of Application filed on May 26, 2020, and amended on December 10, 2021 (the **Amended Notice of Application**).
2. On May 1, 2020, a change to Canadian firearm laws was effected through the Regulation, made by the Governor in Council (**GIC**) through Order in Council P.C. 2020-298. The Regulation criminalizes a specific enumerated list of firearms and devices (the **Prohibited Items**) which are otherwise reasonable for sporting or hunting purposes within Canada.

3. In addition to criminalizing the Prohibited Items, the Regulation also purports to include “variants or modified versions” of those firearms which are not enumerated (i.e., the “unnamed variants”).

4. The phrase “variant or modified versions” is undefined and nondescript, creating the risk of criminal liability, arrest and detention for persons who have no ability to ascertain which firearms may fit within that designation. Further uncertainty arises from the bore diameter and energy restrictions as described in the Regulation.

5. The determinations as to whether a firearm is a “variant” (and therefore prohibited under the *Criminal Code*) are made by the Royal Canadian Mounted Police Firearms Support Services Unit (**RCMP SFSS**), through maintenance of the Firearms Reference Table (**SFSS Re-Designations**).

6. The SFSS Re-Designations are made by an unelected body without any statutory authority, with no apparent oversight, and without notice to the public.

7. The Regulation and SFSS Re-Designations significantly impact tens of thousands of Canadians, including (1) lawful owners of the Prohibited Items and items that are the subject of the SFSS Re-Designations, (2) retailers, training facilities, and target and shooting ranges, (3) manufacturers, (4) sport shooters, and (5) hunters.

8. If the JR Application is successful, then the Regulation would be declared to be of no force and effect, the GIC would be the only entity authorized to restrict or prohibit firearms under section 117.15(1) of the *Criminal Code*, the RCMP SFSS would cease to classify firearms as restricted or prohibited based on

its interpretation of variants, and the Prohibited Items along with any variants would revert to their previous legal classification under the *Criminal Code*.

9. The JR Application was heard before The Honourable Catherine M. Kane from April 11 to 20, 2023. A decision on the JR Application remains outstanding.

10. At the time the Regulation was made, it was accompanied by an amnesty which was later extended. The Amnesty Orders allow Canadians who own Prohibited Items to:

- a. Possess and store them in accordance with the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* according to the classification of the firearm on the day before the day on which it became a prohibited firearm;
- b. Deactivate the Prohibited Items until they are no longer a firearm or prohibited device;
- c. Deliver the Prohibited Items to a police officer for destruction;
- d. Export the Prohibited Items to different countries; and
- e. Transport the Prohibited Items to destruct or export them.

11. The Amnesty Period was set to originally expire on April 30, 2022, but it was extended on March 3, 2022. The Amnesty Period is now set to expire on October 30, 2023. At that time, the relief afforded by the Amnesty Orders from the criminal sanctions arising from the Regulation will no longer be in effect.

12. Under the Amnesty Orders, Canadians who own Prohibited Items effectively have two options available to them: (i) submit the Prohibited Item to a police officer for destruction; or (ii) export it out of the country. Since individual Canadians may not receive the proper authority to export or may not be aware of how or where to export Prohibited Items, the only option is destruction.

13. However, the RIAS and other public statements made by the Government of Canada state that the Government intends to (i) implement a buy-back program (**Buy-Back Program**) to compensate affected Canadians for the value of their firearm after they are delivered to a police officer for safe destruction; and (ii) provide affected Canadians with an option to participate in a grandfathering regime (**Grandfathering Regime**).

14. As of the date of filing the within Notice of Motion, a Buy-Back Program continues to be suggested as a future option available to Canadians. However, a Buy-Back Program has not been established by the Government as of the date of filing. While contemplated in the RIAS, no further information has been provided with respect to the Grandfathering Regime.

15. Accordingly, absent the Order requested in this Application, before the underlying JR Application is decided by this Honorable Court, tens of thousands of affected Canadians would have to turn in their Prohibited Items for destruction, with no compensation whatsoever, or be subject to criminal liability despite the Government publicly stating that it will implement a Buy-Back Program.



16. The Affiant Rodney Giltaca (**Mr. Giltaca**) is an individual resident in Chilliwack, British Columbia. Among other things, Mr. Giltaca is the owner and operator of Civil Advantage Management Inc., a firearms training business. Mr. Giltaca currently owns eight Prohibited Items and “variants” deemed prohibited by the SFSS Re-Designations.

17. In addition to the named Applicants, the Court may and should consider the effect of the Regulation, SFSS Re-Designations, and the expiry of the Amnesty Orders on non-parties who are in the same or substantially similar positions to or circumstances as the Applicants.

## **II. INJUNCTION - LEGISLATIVE STAY**

18. The Applicants seek an injunction for:

(a) A legislative stay of the following aspects of the Regulation:

- (i) Item 83 of Part 1 of the schedule to the Regulation;
- (ii) Item 87 of Part 1 of the schedule to the Regulation;
- (iii) Item 88 of Part 1 of the schedule to the Regulation;
- (iv) Item 89 of Part 1 of the schedule to the Regulation;
- (v) Item 90 of Part 1 of the schedule to the Regulation;
- (vi) Item 91 of Part 1 of the schedule to the Regulation;
- (vii) Item 92 of Part 1 of the schedule to the Regulation;

- (viii) Item 93 of Part I of the schedule to the Regulation;
- (ix) Item 94 of Part 1 of the schedule to the Regulation;
- (x) Item 95 of Part 1 of the schedule to the Regulation;
- (xi) Item 96 of Part 1 of the schedule to the Regulation; and
- (xii) Item 4 of Part 4 of the schedule to the Regulation.

(Collectively, the “**Injunctive Relief**”)

19. The Injunctive Relief is warranted in this case because of the following:

- (a) The JR Application presents a serious issue to be tried;
- (b) Without an injunction being granted, the Applicants and others like them will suffer irreparable harm; and
- (c) The balance of convenience favours granting the injunction and maintaining the status quo that has been in place since May 1, 2020.

**A. Serious Issue to be Tried**

20. On a preliminary investigation of the merits, the JR Application presents a serious issue to be tried. The JR Application presents a number of legitimate, *bona fide* challenges to the *vires* and constitutionality of the Regulation and the SFSS Re-Designations and is neither frivolous nor vexatious.

21. The GIC's regulation-making authority under section 117.15 of the *Criminal Code* is delegated to it from Parliament. All delegations of legislative authority are constrained by the actual grant of authority (*i.e.*, the enabling statute), the *Constitution Act, 1867*, the *Charter*, the *Constitution Act, 1982*, the *Bill of Rights*, and principles of administrative law and natural justice.

22. As outlined in the Amended Notice of Application:

- (a) The Regulation and SFSS Re-Designations are unreasonable in that the Prohibited Items and their unnamed variants are reasonable for hunting and sport shooting in Canada, and thus these decisions are *ultra vires* the *Criminal Code*;
- (b) The SFSS Re-Designations are an impermissible subdelegation of criminal law writing authority;
- (c) The Regulation is unreasonable, in that the rationale for the Regulation, including the RIAS, is unsupported and contradicted by evidence;
- (d) The Regulation and SFSS Re-Designations are unfair and unreasonable, in that the decisions draw unnecessary and irrational distinctions between makes and models of firearms;
- (e) Unfair and unreasonable, in that it draws vague, unnecessary and irrational distinctions between subsistent and non-subsistent hunters;

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

24. The Regulation and the SFSS Re-Designations are vague, disproportionate, arbitrary, and overly broad. Therefore, the Regulation and SFSS Re-Designations are not in accordance with the principles of fundamental justice and infringe on the section 7 *Charter* rights of the Applicants and all other Canadians who possess the Prohibited Items, or items which are the subject of SFSS Re-Designations (or may be so designated in the future).

25. This infringement cannot be justified under section 1 of the *Charter*.

#### **B. Irreparable Harm**

26. The purpose and effect of the Amnesty Orders is to protect individuals who are in lawful possession of the Prohibited Items from criminal liability until the Government implements a Buy-Back Program.

27. When the GIC published the Regulation in Canada Gazette, Part II, Volume 154, Extra Number 3, the RIAS informed Canadians that, during the Amnesty Period (now expiring October 30, 2023), the Government intended to

implement a Buy-Back Program to compensate affected owners for the value of their firearms.

28. Public Safety Canada has published information confirming the federal government's intention to implement a Buy-Back Program, which was updated on July 26, 2023. The program has not been designed, developed, nor commenced.

29. The RCMP also published on its website a notice to the owners of the Prohibited Items, outlining their options during the Amnesty Period. They could (1) destroy the firearms, (2) export the firearms, or (3) wait for further instructions on how to participate in a Buy-Back Program.

30. The RCMP's notice was last modified on March 28, 2022. The public notice advises that the "Government intends to bring forward a mandatory buyback program" and that further information will be communicated "in due course". Owners of Prohibited Items are informed that if they relinquish their firearms before the implementation of a Buy-Back Program, they will not be eligible for compensation once the program is announced.

31. To date no information on the Buy-Back Program has been shared, despite the fact that the Amnesty Period is set to expire.

32. On October 31, 2023, the Applicants and thousands of other Canadians will become criminals, unless they relinquish their Prohibited Items for destruction without compensation.

33. The enforcement of the Regulation following the expiry of the Amnesty Period and before the JR Application is decided will cause irreparable harm to the Applicants, and thousands of other Canadians in the same or substantially the same circumstances as the Applicants, in that they will:

- (a) Suffer irreparable harm through the destruction of their personal property, not compensable by damages, because of the Government's failure to implement a Buy-Back Program prior to the Amnesty Period expiring;
- (b) Suffer irreparable harm by facing criminal sanctions for possessing and storing the Prohibited Items following the expiry of the Amnesty Period, if they choose to wait to participate in the Government's Buy-Back Program; and
- (c) Cause individual Canadians non-compensable harm by unjustifiably forcing them to relinquish their property prior to determination in the JR Application regarding the validity of the Regulation and the SFSS Re-Designation.

**C. Balance of Convenience**

34. The balance of convenience favours granting an injunction, as the injunction order will preserve the *status quo* as created by the Amnesty Orders until the *vires* and constitutionality of the Regulation and SFSS Re-Designations are finally determined in the JR Application.

35. Preserving the *status quo* is just and convenient in the circumstances.

36. Multiple times throughout the Amnesty Period, the Government has announced publicly that it will implement a Buy-Back Program. For this reason, owners of Prohibited Items may reasonably have opted not to destroy their firearms, but rather store them in accordance with the Amnesty Orders to preserve their eligibility for compensation pending the Government's implementation of a Buy-Back Program or determination of the present JR Application. In fact, the Government expressly warned owners of the Prohibited Items that if they relinquished their firearm before the implementation of a Buy-Back Program that they would not be eligible to participate.

37. If the Injunctive Relief is not granted, all owners of Prohibited Items will either have to destroy their property without the compensation that they were reasonably led to expect or face criminal charges on October 31, 2023, before this Honourable Court determines the JR Application.

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

- (a) There is a significant public interest in acknowledging that the owners of Prohibited Items, who have followed the law and complied with the Amnesty Orders and RIAS, are not criminally sanctioned before the Government implements a Buy-Back Program;

- (b) There is significant public interest in not forcing owners of Prohibited Items to turn their property in for permanent and irreversible destruction while the validity of the underlying Regulation forcing them to do so is the subject of the ongoing JR Application;
- (c) The destruction of the Prohibited Items and enforcement of those parts of the Regulation which have been stayed during the Amnesty Period will produce significant waste, including millions of dollars for taxpayers in enforcement and implementation of a destruction program and a burden on the police who will be responsible for both the destruction and enforcement of criminal sanctions;
- (d) Staying the Regulation and its effects will ensure that the property rights for thousands of Canadians, who would otherwise suffer irreparable harm from the enforcement of the Regulation following the expiry of the Amnesty Period, are not unjustifiably infringed;
- (e) Staying the Regulation and its effects will ensure that law-abiding firearms owners will not be exposed to criminal liability from the enforcement of the Regulation following the expiry of the Amnesty Period for laws which are vague and unfair and the subject of the within JR Application; and



- (f) Staying the Regulation following the expiry of the Amnesty Period will assist in ensuring that the Prohibited Items are not channeled into a black market of illegal firearms rather than the continued safe and legal storage and preservation as mandated under the Amnesty Orders.

39. Preservation of the *status quo* until the JR Application is finally determined is a just and convenient remedy. Conversely, enforcement of those elements of the Regulation which have been stayed during the Amnesty Period will have a limited or non-existent public benefit and significant risk and cost.

40. The balance of convenience therefore weighs heavily in favour of granting the Injunctive Relief sought.

### **III. CONCLUSION**

41. The Applicants satisfy the test for the Injunctive Relief sought in this Motion, and respectfully request that the relief be granted.

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

- (a) The Affidavit of Rod Giltaca, sworn September 26, 2023;
- (b) The Affidavit of Rod Giltaca, sworn February 16, 2022;
- (c) Any previously filed material in this Application that is necessary for the just determination of this Motion; and

- (d) Such further and other documentary evidence as Counsel for the Applicants may advise and this Honourable Court may permit.

Dated: September 26, 2023



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