CCFR vs (gov't of) CANADA (gun ban)

Federal Court of Appeal CA

Day 1 - Appellants

Live tweet thread 📝 #bookmarkit

I'll be live tweeting the entire thing from inside the courtroom

The courtroom is surprisingly small. The 4 legal teams are on the left side of the room and the government's lawyers have filled the entire right side. The atmosphere is serious but confident. It's really nice to see everyone since the federal court challenge.

Bob Freberg from SK (Firearms Commish) and Dr Teri Bryant (AB CFO) are in attendance with their lawyers as intervenors.

Zoom recording has begun. Generoux (self rep and total boss babe hero) has arrived.

Court is called to order and the 3 judges enter.

Clerk introduces all the legal teams.

Some housekeeping. Judge says we are free to begin.

CCFR lawyer (Miller) begins.

Miller is a little sick today (me too).

Miller says her submissions will take about an hour and she explains which team will take which arguments and outlines the timeline.

Intervenors will go last.

Miller lays out her plan - the administrative law sections

Miller continues, lays out the areas of law that will be addressed and how the government violated the law by way of using an OIC.

Speaks to Sec 117.5 of the CC - which outlines the authority of the government under the law.

Miller says the court has the responsibility to follow the law.

The OIC violates that law.

Judge asks if they will be dealing with the effectiveness. No

Miller speaks to the restraint on the legal authority of the Governor in Council.

Miller explains how it is ultra vires because it is beyond the scope of the authority of the GIC.

Restraint is imposed on the government to restrict their actions.

Speaks to the primary statutory authority. Says the guns are and have been deemed reasonable for use.

Miller continues, says that while public safety is the over riding reason for restrictions, they can not override the law. These firearms were deemed reasonable for use, which is the requirement.

Judge asks for clarity on who decides what is reasonable. She says that's her submission, was already reasonable.

The judges ask for the page and tab of her submission so they can follow along. She provides.

Miller goes on, describes the wording of the OIC and the "list". Speaks to the "families" of firearms affected. Goes on, variants - named variants vs unnamed variants. Explains that the RIAS details how the use of unnamed variants leave the door wide open.

Miller says the RIAS says it's the RCMP and CFP's responsibility to decide on variants.

Judge asks about the use of the term "variant". While it's been used previously, it's very nebulous and is interchangeable. It's undefined and the AGC has refused to define it.

Miller speaks to the vagueness of the term "variant". Judge asks about this already being disputed. Miller says Justice Kane's decision failed to define it. A number of firearms banned failed to meet the criteria for a variant, still banned.

Judge asks Miller about the difference between a difficult term or an impossible to define term in case law. Miller agrees, but says that in this case it is impossible for an owner to know if it will be deemed a variant.

Miller says on vagueness, the order should only include named variants. Judge says the order would have to be amended on a weekly basis. Miller says if they can update the FRT weekly, they could update the OIC too. They must. They must explicitly list the firearms prohibited.

Judge asks how did it work before in legislation. Miller says the RCMP were relatively constrained by the classification system. The word variant has no meaning and is being misinterpreted by the RCMP with no guidance.

Miller points to the testimony of Smith. Judge asks about it being impossible for gun owners to interpret the term variant, if the court can determine it?

Miller says it's the owners who are subject to criminality.

Miller says how the trial judge was quite conflicted on the interpretation of the term variant and how it impacts citizens.

Moves on to the RIAS tabled with the OIC. Points to the use of the made up term "assault style" firearms. A term with no meaning.

The RIAS says these firearms are not reasonable for hunting and sporting uses despite being used for exactly those reasons for decades.

Speaks to the 9 families of firearms. Reads the criteria. Semi, modern design and commonly owned.

Speaks to the affidavits of CCFR appellants who outlined the reasonable use for hunting and sporting uses. Judge asks if there are less dangerous alternatives that can be used. Miller details sub section 2 that details what's reasonable for hunting and sporting.

Miller says our evidence shows that they are reasonable. Judge says the RIAS says they are tactical and military style and that's why they're not reasonable. Says the RIAS says they are inherently more dangerous.

Miller responds - the assertion that these are for military use is convincing to someone who isn't familiar with firearms. Miller points out most of the models have no military lineage.

Reads from Robinsons affidavit (Robinson Arms) who designed a banned gun specifically for civilian use.

Miller says while the RIAS may be compelling, the evidence disputes this. Speaks to Hipwell's bolt action hunting rifle that was banned. Says the statement that this was for safety cannot be upheld. Judge asks if it's the wording or the regulation itself?

Judge asks about the possibility of challenging the FRT. it can be done. Today we are saying the OIC is unreasonable and the 1500 guns on the OIC do not meet the criteria. Judge asks about Sec117.2 - does the GIC have the authority?

Miller says while the GIC repeated the wording of Sec117 but didn't respect the language of "reasonableness". Judge thanks Miller for taking so many questions.

Judge says reasonableness is a 2 step process. Interpretation and application.

Judge asks Miller what her vision of reasonableness. Speaks to the authority of cabinet. How they are unconstrained. Asks if they have broad discretion?

Miller says sub section 2 is very specific. Continue to debate the word reasonableness.

Miller outlines the history of using reasonableness. Judge asks if they are reasonable in light of the public safety concern. Says cabinet has been given broad discretion on this.

Miller says she will refer to her submission.

Miller says she wants to deal with this now in light of time constraints. Judge agrees.

Miller begins - refers to case law with regards to the expertise of cabinet and the widening of their target. Says there is nothing about the executive that is specialist on this topic. The RCMP lab has some of this and they previously deemed them reasonable.

Miller speaks to the specificity of firearm regulations. Judge challenges her on expertness - cabinet isn't experts on anything (true lol)

Miller says they may be the decision makers but they don't have authority to go beyond the law.

Miller refers to case law that deals with expertise vs decision making authority. Says in this case, the executive does not have expertise to determine reasonableness. Points to previous case law that highlights the lack of expertise in order to make decisions.

I can see one of the government lawyers with my Twitter feed open

Hello sir 👋🏻

Murray Smith is in the courtroom today #snake

Miller goes back and forth with the judge over reasonableness and authority.

Miller says Sec117 restricts reasonableness. Judge says that's her interpretation. Miller speaks to interpretive analysis. Miller details how the restraint has been broadened.

This is administrative law stuff - boring, but the area of law we have the best chance to win in.

Miller has only 10 minutes left. Ugh.

Miller continues - speaks to cabinet privilege. Says the RIAS is the only source of evidence provided by the AGC.

Miller outlines how the AGC failed to provide any evidence and Justice Gagne ruled against them to compel them to provide their evidence.
Miller says the lack of evidence from AGC doesn't compare to the mountains of evidence provided by the appellants.

Miller speaks to the affidavits of the government witnesses that were finally provided. Says they admitted to not having any relevant knowledge or evidence. Miller destroys the government witnesses and quotes their specific testimony.

Continues to expose lack of knowledge on government witnesses. Speaks to the lack of relevance of Blake Brown, Naj Ahmed, Chapman.

Baldwin spoke to necessity vs reasonableness - non sensible.

Miller speaks to the delegation of authority. Says the Supreme Court provides a how to on interpreting authority.

Points to case law. Says there are fatal flaws, irrationality. Says there is a connection between the expertise of the decision maker and the reasonableness of the decision.

Miller speaks to the lack of definition of "assault style". Reads from the Giltaca affidavit. These firearms are not of military grade and the term assault style has no definition or meaning and these guns are no more inherently dangerous than any other.

Reads from a variety of affidavits of our appellants.

Speaks to the criteria in the RIAS - shows the appellants provided many examples of banned guns that didn't meet the criteria.

Mentions Hipwell affidavit. Again, no definition of assault style. Speaks to the commonly owned criteria. Giltaca affidavit shows the modern design criteria can be disproven and only applies to the appearance not function.

Miller says there is no evidence that the guns banned are any more dangerous than any others.

She's out of time. Bouchelev will take the "vagueness" argument. Says the OIC should be illegal.

Fin. Court adjourns for 20 minute break

Ok we are back. Court is in session.

Up next are Meehan and Slade for the Eichenberg case.

Meehan begins in French. Introduces his colleagues.

Meehan has 4 points. Says this isn't just a case about firearms, but about a state actor acting without authority.

Does the state have the authority to do what they are doing? And where is the link back to government. And could this have been done properly? Yes it could.

Meehan speaks to his client Eichenberg. She's a competition shooter. Mentions this mornings question about reasonableness. Says Olympic firearms have been prohibited. Can they borrow? Yes but it's not reasonable. Judge says bad policy isn't the test.

Meehan argues that reasonableness demands, is it reasonable to ban Olympic athletes firearms. Judge says if it's bad or good policy isn't part of legality. Meehan says ok, but it ties back to reasonableness.

Meehan speaks to cabinet power being limited by legislation. Points to a specific part of the RIAS. Meehan points out that "future models" is in the RIAS but not the regulation. Says they are add ons. Refers to a FN case decision.

Meehan says the RIAS adds two key elements that are not in the regulation. Meehan says they could have easily put it in the regs but didn't. Refers to case law. Says neither the RIAS nor the FRT are in the regs.

Meehan points to Murray Smith affidavit. He speaks to variants outside the regulation. Meehan says the police write the FRT then use it to decide what is legal and then arrest and charge.

Meehan says there is no definition within law for variant. The police rely on the FRT. they use it to formulate charges. Judge says the FRT does not bind the court. Meehan says yes but it is what's used to lay charges.

The FRT is only opinions according to the last judge.

Meehan says the FRT identifies firearms by their classification. Is it informational only or is it proof? It's a problem because police don't have the authority to write the law and then enforce it.

Meehan reads about rule making authority. Judge questions relevance here. Meehan says that's a fair question. Takes the judge to the next case law. Goes back and forth with Meehan. They're picking through Justice Kane's decision. She's omitted the case law she referred to.

Meehan asks by what authority they have to include the 2 add ons without putting them in the regs? They don't.

Meehan says he has fresh evidence of other case law. The judge accepts it.

Meehan ran a complete search of all laws and regulations for the FRT. it's not there. It doesn't exist in law.

Meehan says the state puts out many messages or information. Smokes, drinking. Yet they provided nothing on this.

Meehan asks where is the authority for the add ons? Judge asks if we do away with the FRT, would that make it better? Meehan suggests suspending the regulation for 6 months or a year for the government to fix this. The judge says that's complicated and would have to be amended almost daily for new firearms.

Meehan argues with Judge on how the legislation could be redone. Meehan says he could have drafted it over lunchtime. Says the government has tons of lawyers. Judge asks for clarity on what would be a better way of drafting this. Meehan says that's the government's problem.

Meehan says there must be a definition for variant. Or at least guiding principles. Says the government has significant expertise to define it. So does the firearms community and industry.

Judge asks can't we say that it's not reasonable for hunting and sporting due to public safety.
Meehan says no.

Slade is up next. Same appellant.

Slade is going to tackle the broad claim of cabinet confidence used in Kane's decision. This was disputed by the case judge.
Slade points to the Kane decision. Indicates a number of errors in her decision. Says the process is long and drawn out.

Refers to Justice Gagne's ruling on our motion to compel for evidence. Government lawyers claimed cabinet confidence.
Gagne ordered disclosure. Gagne's ruling pointed out four ways the respondent failed. Slade points out how Kane didn't consider any of Gagne's rulings against the govt.

The Sec39 certificate should have been challenged.

Says it's open to the court to deem adverse inference. There is little case law about that, but Kane should have considered it. Judge speaks to some of the provincial case law where the government refused to disclose and draw an adverse inference decision.

Slade continues, says we have a massive amount of evidence and the government simply claimed cabinet confidence. Judge says he's worried about setting precedent by ruling on adverse inference. Slade claims it was tactical misbehaviour by the government.

Slade says this is a unique situation where the GIC had to form an opinion on reasonableness for hunting and sporting. Evidence should have been provided. References previous court law addressing secrecy in court proceedings.

Slade reviews the 2 key principles - claims public scrutiny applies here. Judge says these are legitimate concerns. But says there is also the need to foster free discussion at the cabinet table. Slade says there must be balance. There should be meaningful review.

Slade says there is a "trust us we got it right" here and a refusal to consider any review. Rule 17 was abused here as a tactical decision to hide the evidence.

Refers to more case law. Shows how previous cases drew adverse inference in such cases.

Slade reads from case law. Shows how it applies here. Provided multiple examples. The government continues to hide information. That's the case here. They refuse to disclose why they are now unreasonable.
Judge says they used a blanket Sec 39 certificate to cover a broad array of information. Maybe there was something damaging to the government in there. Slade says they have disclosed absolutely nothing. Says there must be balance.

Judge says how would you prove an error here. Slade says the tactical nature of the respondents behaviour was intentional here and omitted in Kane's decision. Gagne saw it and ruled yet Kane didn't acknowledge it.

Slade brings us back to the RIAS. Speaks to an abstract - "many voiced an opinion that a ban was needed". In another place it says 77% don't want more bans. The entire thing is contradictory. There are too many inconsistencies. What they did disclose was inaccurate with the information.

Judge says only a few could also mean "many". Slade says it's intentionally misleading but he won't push that.

Slade speaks to the limited availability to review classification decisions. Speaks to the inability to file a Sec74 here.
Slade asks what does meaningful review really mean here?

That's it - he's done.

We adjourn for an hour and a half for lunch
Ok we are back from lunch. Up first is Bouchalev for the Doherty case followed by a break and then Generoux, the self rep (I call her the voice of the common people).

She'll likely be the most entertaining to listen to. Tomorrow the government responds

Here we go!!
The judges enter and the proceedings continue. Bouchalev introduced himself. He's going to focus on whether the OIC is ultra vires.

Speaks to firearm classification in Canada. Explains the historic classification system.

Bouchalev speaks to Sec117.1 and .2 - the GIC may not prohibit any firearm that is reasonable for use in Canada for hunting or sporting use.

He says there must be a process that deems a firearm not reasonable.

Bouchalev says that never before has the GIC used their powers to prohibit such a large list of previously legal firearms. Up to now, prohibition of firearms by way of regulation was extremely uncommon.
Judge responds - if "variant" is too vague in limiting a large amount of guns, wasn't it too vague for a small number? Bouchalev replies it hasn't been litigated before because the amount was smaller. Not as much interest.

Bouchalev continues. Opinion - the GIC has decided these guns are not reasonable. The respondents suggest the GIC is beyond criticism. Bouchalev continues - they have not provided a single example of a gun that can't be banned. With a stroke of a pen they can decide anything
This goes beyond the spirit of Sec117. Bouchalev argues that the SCC has already decided you can't have regs that make legislation meaningless.

If the GIC can prohibit anything, why even have Sec117 or subsection 2
Bouchalev says if we accept the argument that any firearm can be prohibited, what exactly is the constraint? Judge says the RIAS provides some criteria so how can you argue anything can be banned?

Bouchalev says the RIAS says "can be lethal" and Justice Kane's decision says any firearm can be lethal. Bouchalev uses the car comparison. If the government wants to ban sports cars, what would make it a sports car.

Judge reads directly from the RIAS "kill large number of people in a short amount of time". Bouchalev says you could apply that to any firearm. Points out they didn't ban just semi autos. They banned shotguns and bolt action too.

Judge and Bouchalev go back and forth over the criteria. Bouchalev refers to parts of Justice Kane's decision where she says these firearms are unreasonable. Bouchalev says it's a fallacy - any firearm can be inherently dangerous

Bouchalev quotes the charter and the criminal code. Bouchalev argues that despite firearms being inherently dangerous, they can not be banned if they are reasonable for hunting and sporting. It's right in Sec117 of the CC

Bouchalev says if they wanted to ban these guns, it should be done through legislation and not regulation. Judge asks him to flesh this out further. Says that there is a built in constraint in Sec117 that they ignored.

FA not CC (sorry)

Bouchalev says there are clearly some firearms that can be used to disable a vehicle for example. Not guns we used for hunting and sporting. They've gone too far with the OIC.

Bouchalev continues. Judge asks again about the criteria in the RIAS.
She says the RIAS says that although these guns may have been used for hunting and sporting, they are disproportionate and pose too much risk to public safety. Bouchalev says this is in the RIAS but does not appear in the regulation. They've provided no example or evidence of this

Bouchalev says they've been used for decades and suddenly now they are disproportionate? Judge speaks up. Says you can't say there has been no explanation as it's right there in the RIAS.

Judge says all that is needed is the opinion of the GIC, and that's what this is.

Bouchalev responds, says the 1500+ models are of all varieties. Some are shotguns, some are bolt action. Not all were used in mass shootings.
The judges ask does a gun need to be used in a mass shooting to be regulated? Ugh. He's getting hung up here.

The judge says the explanation in the RIAS gives some justification, whether right or wrong, it is provided and back up with affidavits

Bouchalev responds that there is no evidence that any of these guns have been used by any military. Judge says the RIAS contains a description - reads it aloud. Bouchalev strikes back at "large capacity magazines" - already illegal in Canada. Judge says they may be illegal but there are still ways to get them (the irony is killing me)

Bouchalev continues to go back and forth with the judges on the criteria for banning and the reasonableness. The judge says you can quibble over the criteria but it's there. It exists. Bouchalev says if there is no definition of "assault style" how do we know what is "assault style"?

Bouchalev moves to adverse inference. Quotes a section from Justice Kane's decision. Disputes the dates of the government's claim of cabinet confidence. Judge asks about what would happen if they upheld adverse inference here, would they expose cabinet and remove the Sec39 protections

Bouchalev and the judges volley over the Sec39 certificate. Bouchalev says if we want to review the justification for the regulation we must have access to the evidence. The RIAS is an opinion not evidence.

Bouchalev reminds the court that Justice Gagne had ruled to compel the government to provide their evidence. Judge asks why this wasn't challenged at that time. Bouchalev suggests the timing of the expiration of the amnesty moved focus.

Bouchalev speaks to the testimony of Murray Smith - admitted there is no definition for variant. There's even been a PMB to force a definition that was unsuccessful. Reviews our cross examination of Smith. Reads aloud.

Bouchalev submits that the criteria provided by Smith is hopelessly confusing. It is impossible to determine if something is a variant. Judge says the term

variant has been used 30+ times in legislation or regulation. Bouchalev says it appears but without definition.

Judge says it may be difficult but not impossible. Bouchalev says it is impossible. Reads Smith's statement "a firearm that is not an exact copy and is different from another firearm" - what does that even mean? It's so broad it can be anything.

Judge says you can define variant. There are 1000 firearms that have been deemed a variant of another. Says the list is a 1000 examples of it. Bouchalev says there are unnamed variants, or variants in the future that don't exist yet. Judges argue that there was a general misunderstanding of what a variant is.

Bouchalev disagrees and says we have affidavits to the contrary from experts within the industry. Even Smith said he couldn't find a definition. Bouchalev says it's a definition that can change.

Bouchalev says they adapt the definition of variant to apply to certain guns. Refers to Coombs' affidavit. He stated that the government refused to define variant and had no plan too. He said there would be consequences to defining it and would expose loopholes.

Bouchalev says they have deliberately kept the definition vague. Judge refers back to Kane's decision. She said owners could email the CFP to ask if there gun is a variant. Bouchalev says the CFP use the FRT which is just an opinion and not law.

Judge says manufacturers use the term variant in their marketing. This demonstrates an understanding. Bouchalev cites other errors in Kane's decision. Says Murray Smith's opinion can't be the only expert evidence.

Bouchalev refers to case law to demonstrate "confused or contradictory views" to discredit Smith's opinion. The judge says Kane found Smith more credible than the experts provided. He says that's all that's required - she found some evidence more compelling than others.

Bouchalev says she provided no explanation why that evidence is preferable? Judges nod.

He's running out of time.

Bouchalev speaks to the constant updating of the regulations. We wouldn't have to if they clearly defined variant.

And he's done. We go to break for 20 minutes.
Sidebar: up next is Christine Generoux. She's the self rep. She is not a lawyer. She doesn't have a lawyer. This girl is so brave and powerful I don't think she realizes how cool she is.

Anyways. That last one was a bit rough. I admit it.

After Generoux, both AG's from AB and SK will respond as intervenors (on our side) and then tomorrow is a full day of torture listening to the government lawyers. Trust me - it'll be painful. 😖

Court resumes. Generoux begins. She introduces herself and explains she's here just as a layperson. Addresses some of the questions the judges had earlier. Says good policy or bad policy may not matter, but the effects on citizens does.

Generoux says she purports that it isn't about the guns but preserving our culture and heritage. Sec117 is there to protect that. Kane's decisions spoke to the inherent deadliness of these guns. Reads from a Supreme Court case, mentions the "ordinariness" of the guns, including semi

Generoux reads the definition of a firearm - deadly and dangerous of course. Any firearm is capable of killing. Says the criteria laid out in the RIAS don't support a risk to public safety. Reads from the Hansard - this was quoted by Blake Brown.

Speaks about some parliamentary debate surrounding the change of wording. Sec117 used to say "commonly used" not "reasonable for". Now being commonly owned is a criteria for banning them.

Generoux says we have generations of Canadians who've used these firearms without issue. She continues to refer to the Hansard debate and what was considered reasonable. Says the important part is that full auto wasn't banned because they were particularly dangerous, but because they were not reasonable for hunting and sporting.

Generoux says if you take the Hansard debate minutes, it was never meant to be used to ban wide swaths of guns. The purpose of Sec117 is to protect the heritage of hunting and shooting. Speaks to the rights of owners under their firearm license

Speaks to grandfathering and continued use of full auto machine guns that were deemed unreasonable yet these semi autos are not. Says owners, hunters and sport shooters should be protected by Sec117 as that was the original intent.

Generoux says semi autos are defined as reasonable and helpful tools used by Canadians in the CC, FA.

Says that non restricted firearms are reasonable by nature due to their classification. It is not reasonable to prohibit them.

Generoux says the governments witnesses are irrelevant as they were not before the GIC at the time of the regulation. Says "sustained rapid fire" is fraudulently used in the OIC. Explains what sustained fire means, and it isn't 3 round semi autos.

Generoux says maintaining a balance is just as important as public safety. Quotes section 84 of the FA. There are a number of protections in the Firearms Act and a number of other pieces of legislation.

Says destroying guns is destroying Canadian cultural property and it's illegal. Speaks to some antique firearms owned by her co applicant. Says Smith testified there have never been any shootings with these relics or antiques.

Generoux speaks of the Hunting, Fishing and Trapping Act, many other laws that protect our sport as Canadian culture. Says most of the banned guns were previously NR. Moves to the RIAS and negative inference.

Generoux reads about the public consultation hosted by Blair. They stated that people wanted these bans yet they refused to release the results. This is a form of selective disclosure. The claims in the RIAS don't match the results of the consultations

Generoux continues, quotes previous parliamentarians. Speaks to some of the elements of Kane's decision and how they contradict the results of the survey conducted. Half of all owners are affected. The damage to one's liberty is too much.

Generoux speaks to the number of affected people who spoke of how integral their firearms were to their identity. Kane dismissed this, but didn't explain why? The GIC is aware they have a duty of procedural fairness.

Generoux continues, speaks to how we aren't claiming an absolute right, but we are a large enough group that there should be recognition of that. Quotes FN case law. Says she has Canadian cultural rights. Asks why some Canadians have different rights.

Generoux says what's changed? The guns haven't changed, we haven't changed - but the regulations sure have changed.

Quotes previous bans - why do we leave these guns in the hands of their owners (grandfathering) Minister - to be fair to the owners. What's changed

Generoux references the Study on Gun Bans - this was part of crafting this regulation. They quote foreign studies that show a ban was not effective. Speaks to how the Coalition for Gun Control was disallowed as an intervenor because she is of no value to this debate.

Generoux speaks about other governments witnesses, Blake Brown. He wrote how the Canadian government encouraged young men to own these guns - what's changed?

Brings up Baldwin - says firearms are an important part of Canadian heritage.

As firearms progressed, modern firearms were more effective and safe to use. Then in the RIAS they use that criteria to ban. Goes over the 5 criteria and says all these elements is what makes them inherently reasonable not unreasonable.

Generoux cites parts of the 2018 study. Says Justice Kane says this was arbitrary. Says the 5 mass shootings cited in the RIAS were actually spree

shootings. Says the Polytechnic shooting coroner report explicitly said the type of firearm had no bearing.

Generoux speaks about the Vegas shooting. Full auto, bump stock, large number of victims.

Says the RIAS doesn't lay out any benefits of the bans - ruining businesses, causing division, destroying culture - no benefit
Says Brown said the vagueness is a feature not a bug.

Asks judge if they're familiar with reverse onus. Says the vagueness of the term variant puts us at risk and violates our rights.
What if the FRT isn't "law" but is used to charge us? What if a person can't determine the legality of their guns? Our reg certs were administratively nullified.

Says common terms are identified in the criminal code yet we can't define the word variant?
Generoux says Coombs gave other reasons not to define it. Because new guns could be designed to get around it (comply) - so it's intentional to keep it vague.

Says some are banned and some are not - there is no consistency so they can't be inherently dangerous.

Generoux references Kane's decision. Smith said it is the collective weight of the characteristics that could determine if it's a variant. Speaks to the ridiculousness of the many characteristics Smith listed.
She's fucking killing it lol

Generoux speaks to Lynda Keijko, Olympic athlete and former co chair of CFAC. Quotes some of her public safety suggestions from her affidavit. Says the RIAS contradicted the knowledge gained in the study and the committee.

Generoux speaks to the lack of data. What data exists to show my guns are a danger? Speaks to an email chain with Public Safety and Murray Smith who said they had no data. Asks if the study wasn't released because it undercut their claims of widespread public support?

Says there is no academic support for their ban. They used an Australian propagandist. She goes on about her cross examination of him. She tricked him by using the dictionary definition of a propagandist. Destroys the credibility of the witness, shows the medical journal had to insert a disclaimer. They couldn't provide any credible Canadian experts because every one of them testified on our behalf.

Judge warns her on timing.

Judge admits she has proven there are aspects of this regulation that make no sense, that are bad policy, but they can't strike it down

Generoux says the regulation is ultra vires by power because the cc, FA and parliament has defined these guns as reasonable. They are not military assault rifles. They are ordinary firearms that are useful tools for Canadians.

And she's done. 💪🏻

Now up is counsel for the Attorney General of Alberta. She's got 15 minutes. I'll be calling her AG.

She introduces herself. Will be focusing on Sec117

I can barely hear her

She begins. Firearms are of course inherently dangerous if misused. Says you must read Sec117 and Sec84 together to understand how to classify firearms. Says Canada has always tried to strike a balance. Describes the classification for prohib. Typically they showed they had no legitimate purpose.

AG continues - says parliament carved out this classification and limited the GIC on what they can ban. She says you can't just ignore these limits with the excuse of "for public safety" but they did.

She says the GIC does not have the authority to ban these guns
This power belongs to parliament.

That's her submission. Judge asks if the GIC can consider public safety issues as a legitimate reason to ban.

She says there is a limit in legislation n constrain the GIC. They can't just use "for public safety"
Other judge asks about her assertion that only parliament has this power when they've delegated it to the GIC.

She says that's fine, but the GIC also has the constraint in Sec117
Up next is counsel for the Attorney General of Saskatchewan. Will call him SK for this purpose.

Wants to talk about the Bill of Rights

SK says the bill of rights is overlooked but contains important protections when it comes to property. Reads the appropriate section of the bill. SK says the bill of rights clearly applies here: property, enjoyment of property. Was due process followed?

SK speaks to Kane's decision and explains why she was wrong. Cites previous case law, principles of fundamental justice. Says it applies to legislation not regulation. Says because they used an OIC, Canadians were denied process and procedural fairness.

SK asks if legislative decision makers can just do away with the bill of rights. Goes back and forth with judges over legislation vs regulation and the impact on the bill of rights. Judge asks if every citizen has the right to due process?

SK says owners could have been notified and consulted.

Judge asks about the concern of a run on the market if they had notified us. He says he understands that concern but owners should have had a right to consult. SK says there was no process at all. The OIC should be nullified. It violates our bill of rights.

SK says that due process means we are entitled to compensation. They can't deny us our property without a clear plan for compensation. It's nowhere in the legislation or regulation, states it's only contemplated. You can not violate rights without details on how it can be done.

SK says lastly, paragraphs 320, 323 of Kane's decision says that something has changed, a shifting purpose. SK says that's not permitted.

They are bound to do the balancing exercise in parliament. Quotes another decision.
Judge asks about the division of power. Something about Henry the 8th clauses (over my head). Says that when there is a delegation of power that affects rights, there must be limitations.

That's it. For today. Court adjourned until tomorrow morning.

CCFR vs (gov't of) CANADA (gun ban)

Federal Court of Appeal CA

Day 2 - Respondents (the government responds)

Live tweet thread 📝 #bookmarkit

I'll be live tweeting the entire thing from inside the courtroom.

Meet your Justice's 👇🏻

Milne says modern design = better for killing. Says the guns that are most popular guns, in a factual lens, are more dangerous (WTF) #wordsalad

Says owners were mailed an information sheet after the ban and AR owners got letters, shops too.

Milne says the ban was well known in the gun community. Brings back the public engagement process. Gun owners should have known (even though they were invite only)

Brings up a diagram on the screen with pics of the 9 heads of families of banned guns (black and scary)

SFSS found 180 “variants” of the families and banned them too. Judge interrupts - speaks to the timing of updating of the FRT. Milne says they can just call the CFP. Judge says this is a problem we complained about. Why isn’t this public access?

Milne says the OIC listed the 9 families, variants and the SFSS for to work looking for more guns to ban and have been updating the list ever since. Milne says 87% of the ban list is named variants.

Milne brings us the Robinson - was not used in the military but still banned. Says it was designed for the U.S. army. Says the CZ550 was banned due to muzzle energy even thought it’s a bolt action hunting rifle

Says large calibre hunting rifles have large bullets and cause too much harm so they’re banned. Speaks to the bore diameter criteria. Says there is an industry standard stamp with caliber - that’s the gauge. It’s the caliber that matters.

Milne speaks to muzzle energy. The greater the joules, the further they can shoot. Like sniper rifles. Says the type of ammo used dictates if it’s over the limit and banned. Says they are too big to hunt big game in Canada, mostly used for African hunts. Banned.

Milne says gun owners refer to themselves as “law abiding” gun owners. This is mostly true. Says Giltaca admitted there have been some shootings in Canada by legal owners. Milne says our sport is still alive and well despite the gun bans.

Milne says these guns aren’t necessary for hunting. Judge says that’s not the test - the test is if it’s reasonable. Milne says there are alternatives open to owners. Other judge asks about the Olympic reference yesterday. Mentions Lynda Keijko reference.

Milne says the Olympic sports are using handguns - not at debate here. Milne says we have an obsession with tactical competition, mimicking urban combat. Says the AGC is only concerned with public safety. Milne finishes

McKinnon again for the AGC. Begins, points to Kane’s decision. Says there was some concern with credibility of the studies and polls showing lack of

support for gun bans. Says the public does support bans and only their evidence of this is credible.

McKinnon speaks to the FRT - says it is not open to judicial review. Says there is evidence on the record that the FRT has been challenged previously. Says it's just an administrative tool. Says the nullification of reg certs was open to judicial review.

Judge brings up the Robinson, was designed specifically for sport. Asks if the decision to ban it is challengeable? McKinnon says it's just an opinion (FRT) but the decision makers studied it and it met the criteria. Judge speaks to the impact on businesses. They're putting people out of business.

McKinnon says they get a letter too. Judges upset that a judicial review should be available when it impacts a business so strongly. McKinnon says people can challenge it. Says he doesn't really know the answer. Appreciates the judges concern.

Judges go back and forth with McKinnon on standard of review. Speaking of some technical stuff - factum of law. (Over my head).

Judge asks if the meaning of assault style is well known. Is it constitutional if you can't define it?
They're going to come back to this part after the break. McKinnon and judge go back and forth on the case law for this.

McKinnon continues - says the GIC formed the opinion that these guns were not reasonable.

Details the evidence showing the OIC is valid. Says we have failed to demonstrate the illegality of it. Mentions a SC reference. Cites other case law on interpretation of regulation. Says the burden was on us.

McKinnon says it's not the judges job to determine if the OIC was wise or effective, just that it's legal. Cites case law on this type of challenge, GIC decisions.

I can't stop coughing and sneezing. I'm so annoying.
Reads from the case law example. Says the decision makers studied should have broad discretion even if it's vague.

Judge says he's addressing stuff we didn't challenge. Says we spoke to the reasonableness. He hasn't addressed that.
McKinnon cites the problem with commonly used firearms. Says just because something is popular doesn't mean it can't be banned. It's about public safety. Mocks us for saying they are proper for hunting. Says we don't consider public safety.

He says it's up to the GIC to determine "reasonableness". Judge challenges him on Sec117 - the constraint placed on the GIC. Reads the section aloud. MCKinnon says the GIC just must provide a rationale on why and they provided it

The RIAS is the rationale. Says the GIC considered the use of some of these in shootings. Judge says he's hasn't proved Sec117. MCKinnon debates him - says it's still at the discretion of the GIC to determine.

McKinnon says "reasonableness" is infused with public safety behind it (what?). Judges continue to argue back on the issue of "opinion" of the GIC. Judge asks if it should be an informed opinion?

McKinnon talks about cabinet confidentiality lol - says the evidence was before them. Says you can't argue what was before them because you don't know. Says the broad discretion given to the GIC intentionally.

Judge asks shouldn't the GIC opinion be evidence based? Rational? McKinnon says it's a policy decision to ban these guns used by mass shooters.

Asks for a break. 15 minutes
Ok. We are back. McKinnon says he'll finish off now. Goes back to Sec117 and requires the GIC to turn their mind to these firearms and decide if they're reasonable due to their serious public safety risks.

The justification case law must be examined. Says the language is broad Mentions the language change in the 90's - from commonly used to reasonableness to give the GIC the power. Says what we consider reasonable is not the issue. Pulls up the RIAS.

Speaks to a "threat" to public safety with these guns, their inherent deadliness. Judge asks if there's a difference between unsuitable or

unreasonable in this issue. Asks why they used "unsuitable"? McKinnon says she has a point but you must consider the reasonableness and public safety here
McKinnon says you can't pick the one wrong word. He continues … says Canada has experienced mass shootings and ASF's are not suitable for hunting and shooting. The RIAS also says they're unreasonable and excessive.

Refers again to the RIAS - under the heading "rationale" - it's clear the regulations addresses gun violence and public safety. Used the word reasonable further down. The list has the most prevalent firearms used in shooting. Says the AR wasn't permitted for hunting or sport shooting prior to the ban because it was restricted. That's false

Judge challenges him on the wording again. McKinnon says it's all up to the GIC to decide. Says that although these guns are sometimes used for hunting and sport shooting, the danger of them makes them unreasonable.

McKinnon cites case law, reiterates the change of wording in 95 was intentional, from commonly used to reasonableness. Judge debates him on this. McKinnon says there is plenty of evidence in the RIAS and in the affidavits.

Judge asks about the people who wrote the affidavits, they weren't there at the table when the GIC made the decision. He says they provide context. They provide understanding. Judge says the only evidence we have on the decision is the RIaS

Says the affidavits support the GIC's decision. Gives four reasons why they had to be banned anyways, such as circumventing the mag limits. Says there is still a large number of guns available and not many owners are even affected. McKinnon says the GIC decision is supported by the evidence.

He's done. Next up is … didn't provide name. We'll call him lawyer.
Lawyer says he will address the adverse inference. Cites Kane's decision to dismiss our request for adverse inference. Says the reasons for the decision are found in the RIAS and the regulations.

Lawyer speaks to the case law on adverse inference. Speaks to the cabinet confidentiality and reviews the criteria for why Sec39 applies here. Says our allegations and speculation isn't sufficient to find adverse inference.

Refers to some other case law on this. Says this court studied this in a similar case. That the reasons for the decision are already provided in the RIAS. Our case was cited in other case law on this
Judge speaks up, speaks to the chronology of the evidence, leaks. Says they responded in a timely fashion despite Justice Gagne ruling against them.

Lawyer goes over the timeline and says they are in compliance with the evidence Act. Speaks to the motion to compel them to provide their evidence. She ordered them to file the material, which they refused.

Says Justice Gagne's ruling was not tactical. Days the federal court recognized their Sec39 certificate. Judge asks about previous adverse inference decisions, they toss around case law on this in the case of Sec39 certificates.

Judge seems to be agreeing with lawyer that he doesn't see adverse inference here. Does complain Sec39 is too broad and covers everything. Says openness is the best disinfectant. Surely there could have been some evidence they could have provided.

Judge says we are forced to just trust the RIAS. Judge debates lawyer on definition of robust. Lawyer says the RIAS is what the court can rely on for the reason of the decision. Judge says we are stuck with case law.
Debates the dates provided by the federal court. Lawyer says Gagne got it wrong. Lawyer says we suggested there are gaps in the evidence. Lawyer says there isn't, refers again to case law, dismisses the tacticalness we suggested.

Lawyer denies withholding evidence for review. Says we had the RIAS, the OIC and the regulations. There are no gaps in evidence. Says we objected to the people opposing the ban not being included in the RIAS. Lawyer says the RIAS does mention that all sides were consulted.

Says it's on the record that people oppose the OIC. Says the RIAS does provide a fulsome explanation on how the decision is made. Cites some more case law examples of GIC decisions. Continues to complain about the Eichenburg appellants submissions.

Lawyer reminds the court that the Sec39 was not challenged. Judge asks about some other cases of adverse inference and asks if it's not applicable here? Lawyer responds, dismisses this issue. Judge asks about timeline. We will continue with sub delegation now.

Lawyer says it's their position the GIC acted within their power. Says the use of the term variant has been common for years. Says the RCMP's input on the FRT is not a sub delegation of duties/power, but is an opinion. Says the FRT is non binding and is just a tool being used.

Lawyer cites sections of Murray Smith's affidavit. Goes on to call him an expert of 40 years. Says there is a disclaimer on the FRT that it is not a legal instrument. Reads it aloud. Says the lab guys just assess guns based on the criminal code.

Says the Act and the regulations are the prevailing authority, not the FRT. it's just a guide to implement the law. Cites two cases that have also said the FRT is not law, proving there is no sub delegation.

Cites more case law on sub delegation. Mentions the Henderson decision regarding a refusal to register his firearm in the FRT. reads the decision aloud. Says the appeal court upheld this decision. Says the court just accepted the opinion of a lab guy.

Lawyer refers to the factum, which cites multiple other cases that support his argument. Says that FRT decisions are opinions of lab experts at the RCMP and not a sub delegation of duty.

Wants to touch on one more issue. Says the RCMP and the SFSS can reconsider their assessment of classification.
Says that there are multiple instances of classifications being changed in the FRT after review. Refers to Smith testimony. Proves a record can be changed after a reassessment.

Says when the FRT is relied upon, and acted upon, it is open to judicial review.
Lawyer provides Ryan Steacy's letter for nullification. Judge asks if owners are notified their gun has been banned? Lawyer doesn't know. The answer is no.

Lawyer provides another piece of case law in reference to import orders. Cites other decisions provided by Smith.

Lawyer continues, says he has proved there is no adverse inference.

We break for lunch back at 1:45 EST

Ok we are back. Just a sidebar: Meehan from the Eichenberg case gave us all delicious sandwiches for lunch. He's the sweetest guy on earth.

Murray Smith is schmoozing around the courtroom. I refuse to shake his hand. Sorry, but I can't.

Court is called to order.

"Lawyer" continues. Can barely hear him.

Speaking to the FRT and sub delegation again. Says it doesn't use mandatory language. Has a disclaimer. Can be reviewed or changed.
Says the primary purpose of the FRT is not to direct the actions of the public. It's for internal purposes. It's for law enforcement. Says the appellants didn't explain how their case law examples supported their position.

Reads some of the conclusions from Kane's decision.
Lawyer speaks to the public availability of the FRT and frequency of updates. Smith testified the public has two ways to access: through shops with daily updates and online through downloadable pdf with updates every two weeks.

He's done
Bond is up next. She will address the charter and bill of rights issues.

Sec 7 - says we have failed to show how the OIC infringed on our liberty interests. Says our rights were engaged, but not violated because the OIC is not vague, broad or arbitrary.
Bond says owners are given fair notice of the regulations (lol)

Repeats that the term variant is well used within the industry and the community. It's within industry publications and advertising.
The test for a Sec7 breach is a 2 step process. Cites case law. We must establish the regs deprive of us life, liberty etc

Says while our liberty interests are engaged but not deprived.

She talks fast. Hard to catch
Bond says the federal court was just saying the regs are not vague, despite the unnamed. Says the bore diameter and joules regs are not vague either.

SC ruled that if the reg is so vague that it is impossible to follow. Cites various case law regarding precision of regulations

Bond continues to read case law decisions. Says vagueness is required to capture a broad range and can not be overly precise. Details the 5 areas of interpretive context to define vague vs precise. Says the federal court was right in their decision on this

Says individuals should refrain from pushing the edges of a law only to complain they are vague. Reviews the sections of Kane's decision on a persons ability to know if their guns are banned. Says unnamed variants are only 13% of the affected guns

Says May 2020 OIC only affected 150k guns (it's actually 518k)

Bond reviews the common use of the term variant, in all forms with respect to guns. Reviews other court decisions involving the term variant.

Bond says there is no consensus on the term variant, yet it is commonly used. Manufacturers market guns as variants of other guns. Mentions a couple publications. Mentions CCFR policies that use the term variant. Bond says Smith is more credible than Bader or other affiants.

Bond continues to detail uses of the term variant, including in legislation.

Bond says there were over 700 unnamed variants of the AR15 in the FRT according to Smith affidavit. Continues to review Kane's decision, says there is common understanding in the courts of variants

Says other courts have debated just fine with the understood meaning of variant. She says if the courts were only able to ban named variants they would constantly have to update the banned lists and there are new guns being introduced to the market that also need to be banned.

Bond refers to Brown's evidence. Says vagueness is required for flexibility to capture more models and variants. Cites other examples of cases where

flexibility in law was required. Lists a number of cases where vagueness was required.

Bond refers to Cochrane Pitbull ban - used vagueness to capture named breeds and dogs that are similar but not exactly the same.

There are 1000 named firearms, and another 1000 unnamed variants.
Phone just crashed.

Bond argues owners have a variety of ways to find out if their gun is banned, despite not having real time access to FRT or notice. Bond speaks of nullification letters - sent to owners of R's, says NR owners didn't get that same letter but got a different letter about the OIC.
I never got that letter …

Bond continues - repeats the points made, agrees fully with Justice Kane's decision.

Bond moves to vagueness on bore diameter and joules. Kane accepted Smith's affidavit over the evidence of the applicants.

Bond says the confusion on where to measure the bore, people were told to check calibre and used a specific definition that stated measure without the choke. This was posted publicly and taught in the CFSC. It's a standardized definition.

On muzzle energy, Bond says it's in relation to the caliber. Kane accepted Smith's affidavit. She provides an explanation on Kane's decision. Sorry, dying of sickness here. I missed a part.

Bond repeats that the interest of public safety and the inherent danger of these guns justified the regulations and they were not over-broad. The fact the OIC banned a large number of guns doesn't make it over-broad despite the arguments of the CCFR

Bond moves on to the bill of rights argument. She says the AG of SK misinterpreted the bill of rights and due process. Sec 1 does not entitle citizens to advance notice of the regulations or compensation.

Bond cites SC case law about Sec1 rights. Speaks about the differences between legislative acts vs judicial orders. Judge speaks up. Says that regulations are administrative decision making. They debate central policy vs very specific decisions affecting a specific person.

Bond argues it depends on the type of decision being made. Cites case law. Judge compares it to citizenship, revocation. It goes to cabinet and then to GIC. It only affects one specific person. The GIC doesn't have to clear every decision with the public.

Bond continues, compares other case law regarding inequality vs bill of rights. You can't deem a law inoperable when it applies to many people broadly. Section 1A doesn't apply here she says.

She wraps up. They have no other questions for her.
The Attorney General of Canada rests their case. We will break for 20 minutes, then come back for some brief replies from the appellants. Bouchalev asks for short break and longer replies.

20 minutes break
40 minutes for replies
Sidebar: I dunno if you guys caught that, but the AGC referred to us as "not previously criminal" gun owners 🫠 CA 🆘

Ok court is back. Each group has 10 minutes to respond.

Miller from the CCFR leads: she's got 3 points.

Ultra vires - she quotes previous case law that states the GIC didn't need evidence- based. Those cases have been overruled by more recent case law. The decision must be reasonable.

Miller continues, speaks to the mass shootings brought up by the AGC, we refute the government's evidence. She also destroys the government's Henderson case law. It was a Sec74 challenge. Because it was not a charter challenge, Henderson couldn't raise a Sec7 charter challenge.

Miller debates the ability to do a judicial review on the FRT entries or changes. Two government lawyers said you could - untrue. Miller cites 2

Alberta cases (Sec74 challenges) Alberta Court of Appeal stated the letters were purely informational and not open to judicial review.

Judge asks what's the point? Is there no ability to challenge the FRT? They debate it. The AG said an FRT could be changed at any moment, doesn't mean anything. This isn't true. Miller suggests an owner could do a judicial review on the nullification letter?

Meehan now - begins in French. English now. He's got 3 brief points.

Debates the meaning of the word opinion (of the GIC). It must mean something.

Olympic athletes - AGC wrote off the complaint as a suggestion. It's not a suggestion it's a sworn affidavit.

Judicial Reviews of the FRT -
An individuals rights to their property. Meehan cites case law on this. Speaks to "poses legal obligations" in the case law. Suggests owners may get in legal trouble with questions about the legality of their firearms.

Says the FRT is not just informational. Points to the non static nature of the FRT - constantly changing.
Meehan continues - the FRT is not mentioned anywhere in legislation. Cites the law on prescription drugs - the government Minister has a living list. This could apply here.

Asks for the declaration of validity be suspended for one year
Bouchalev now - he's going to address some of the language in the RIAS.

AGC said "modern design" means ability to be more lethal - that doesn't appear anywhere in the RIAS.

"Presence in large numbers" just means popular because we use them for hunting and sporting.
If they're popular they must be good and appropriate for what Canadians use them for.

Bouchalev speaks to the AGC claim that the overriding principle is public safety.

The constraint mentions hunting and sporting- inserted for a purpose Bouchalev says the previous wording "commonly used" actually offered less protections than "reasonable for hunting and sporting".

The AGC also claimed you couldn't use a restricted AR for sport, also not true.

Speaks to the use of the word variant.

Bouchalev quotes Smith testimony from cross examination, he contradicts the position of the AGC on the use of the word variant. Directs the judges to review Smiths testimony. Provides examples and page numbers.
Bouchalev speaks to the nullification letters - only those with restricted received them. Owners with NR's didn't receive them.

Bouchalev done.

Generoux now. Has a brief reply to some of the respondents statements.

On negative inference, it isn't the timeline that is in question, it's if the certificate was in bad faith. She alleges that the Sec39 certificate was issued to block Justice Gagne's order.

Generoux references the studies Milne referenced. He says gun owners infiltrated the study. Generoux brings up C21 amendments withdrawn.

Concedes her time to SK AG.

He stands by his bill of rights submissions.
Argues the GIC authority to ban guns is a constrained authority. Says public safety and gun ownership go together. Says the use of the reasonableness should be a restraint on the authority.

Chief Justice provides closing remarks and thanks all parties.

Decision is forthcoming.

Court is adjourned.

Fin

The end