



January 13, 2021

Via email: registry-grefe@scc-csc.ca
Supreme Court of Canada Registry
301, rue Wellington Street
Ottawa, Ontario
K1A 0J1

Dear Sir or Madam:

RE: Court File No. 39438
Her Majesty the Queen v Ocean William Storm Hilbach et al.

Please consider this letter as the reply of the applicant to the response filed by the respondent Hilbach:

1. The applicant disagrees that the effect on the victims and the community as well as deference to the will of Parliament are new issues. Rather, these are issues that are integral to the section 12 *Charter* analysis with respect to gross disproportionality.
2. The Alberta Court of Appeal heard the appeal in the respondent Hilbach's case together with the appeal in the respondent Zwozdesky's case. The Court addressed these issues in the context of the two appeals heard in conjunction with one another. Although there were no victim impact statements filed by the victims in Hilbach's case, there were victim impact statements filed by the victims in the Zwozdesky case. While not the same material, the issue regarding gravity of the offence and the impact on victims was before the Court.
3. The effect of the crime of armed robbery on victims and the community at large is inherent in the discussion of the gravity of the offence. In relation to the effects of the armed robbery committed by respondent, Hilbach, the Alberta Court of Appeal's majority judgment states at paragraph 40 that "[t]hose persons being robbed did not know in the present situation that the sawed-off rifle was unloaded. They reasonably anticipated that it was loaded and life-threatening."

4. At paragraph 56 of the majority judgment, the Alberta Court of Appeal further states:

Additionally, as outlined in *R v Hills*, 2020 ABCA 263, para 81-82, any reasonably foreseeable application of the law with respect to firearms involving violence must consider the psychological effect on the victims and on others nearby, the risk of a violent reaction from a target or bystander, and the impact on the feeling of safety in the community.

5. Comment regarding deference to the will of Parliament is found in the dissenting judgment in the instant case. At paragraph 91, Wakeling JA references this specific paragraph from his decision in *R v Hills*:

I am convinced that it is necessary to review the history of the law's evolution in order to explain why the Supreme Court should return to the text of section 12 and recognize that Parliament and not the judicial branch of government has the constitutional authority to determine penological principles that govern Canadian sentencing laws.

6. Finally, the respondent, Hilbach, concedes that this case raises an issue of national importance. The applicant respectfully asks this Court to grant leave to appeal at large.

Sincerely,



Deborah J. Alford
Appellate Counsel
/ad

cc: Lynne Watt, Gowling WLG (Canada) LLP
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