

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

CHRISTINE GENEROUX, JOHN PEROCCHIO, VINCENT PERROCHIO

Appellants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

-and-

**THE ATTORNEY GENERAL OF SASKATCHEWAN,
THE ATTORNEY GENERAL OF ALBERTA, and THE ATTORNEY GENERAL OF
ONTARIO**

Interveners

(Style of cause continued on next page)

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

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Appellants

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PART I – OVERVIEW AND FACTS

A. Overview

1. In Canada and around the world, assault-style firearms have been used in deadly mass shootings, for example, in: Portapique, Nova Scotia; L'École Polytechnique, Dawson College, and Islamic Cultural Centre, Québec; Mayerthorpe, Alberta; Moncton, New Brunswick; Sandy Hook, Las Vegas, and Parkland, United States; Port Arthur, Australia; and Christchurch, New Zealand. Gun violence is a multifaceted problem that the Government of Canada has been combatting through complex interrelated legislative, regulatory, and program measures. As part of that effort, and in response to the serious public safety threat posed by mass shootings, in May 2020, the Governor in Council (GIC) amended the regulations and prohibited the most common assault-style firearms pursuant to s. 117.15 of the *Criminal Code*.

2. Parliament has long empowered the GIC with broad discretionary authority to prohibit firearms in the interest of public safety. The GIC's 2020 regulations added to Canada's existing list of prohibited firearms and weapons, which had not been comprehensively updated since the 1990s. The GIC prohibited nine families of assault-style firearms by make and model. It also prohibited "variants or modified versions" of these firearms to close loopholes for any future or non-listed firearms that have the same lineage as those prohibited. The GIC's exercise of its broad discretion was reasonable and justified by the serious public safety concerns these firearms pose.

3. In this 2020 update, the GIC complied with the condition precedent in s. 117.15(2) that prevents firearms from being prescribed if, in the GIC's opinion, they are "reasonable for use in Canada for hunting or sporting purposes." The GIC's opinion was that the continued use of these assault-style firearms for hunting or sport shooting is not reasonable. The Regulatory Impact Analysis Statement supports the GIC's opinion: while some hunters and sport shooters lawfully used some of these firearms in the past, these firearms can increase the severity of mass shootings and have in fact been used in mass shootings in Canada and in other countries. The firearms prohibited in 2020 were owned by a small minority of Canadian firearms owners, estimated at between 3% and 5%. Thousands of alternative firearms remain legally available for hunting and sporting use. The GIC's opinion, balancing public interest policy considerations, was reasonable.

4. The courts below did not err in finding that the GIC acted within its authority and that its decision to promulgate the regulations was reasonable. The GIC prescribed which firearms are prohibited by including the listed makes and models and variants of those firearms. The GIC did not subdelegate its authority to prohibit firearms to the RCMP. The RCMP's Firearms Reference Table, which includes technical assessments of which firearms are variants of those listed in the regulations, is a reference guide only and does not have the force of law. The GIC did not purport to delegate any legal authority to prohibit firearms to the RCMP, and the RCMP does not exercise any such power.

5. The ban on variants of named firearms does not render the regulations unconstitutionally vague, overbroad, or arbitrary. Section 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*) requires only that the regulations provide sufficient guidance for legal debate as to the scope of risk. Firearms owners have sufficient notice of the area of risk, so s. 7 is not infringed, and if it were, any *Charter* breach would be justified under s. 1. Firearms owners enjoy a privilege that requires them to exercise significant responsibility to ensure they comply with all legal requirements. They have numerous resources available to help them do so, including the ability to confirm whether a particular firearm is a variant, a well-known term in the firearms industry.

6. Finally, the courts below made no palpable and overriding error in declining to draw an adverse inference from the filing of s. 39 *Canada Evidence Act* certificates. All four appeals should therefore be dismissed.

B. Statement of Facts

7. Below is Canada’s summary of the relevant facts, as found in the decisions of the Federal Court and the Federal Court of Appeal, as well as the evidentiary record accepted by both courts. While the Appellants liberally cite their own affidavit evidence as if it had been accepted as fact, the courts below generally preferred Canada’s evidence where there was a conflict in opinion or fact.¹

1. Gun control in Canada has been achieved through regulatory authority for decades

8. Gun control is a multi-faceted matter of public safety, the complexity of which is demonstrated by the sheer number of makes and models of firearms. There are an estimated 7-million privately-owned firearms in Canada and the number of firearms in the market has proliferated over the years to the point where the RCMP is now aware of over 200,000 unique firearms.²

9. The Government of Canada has implemented gun control measures through both statute and related regulations for more than five decades.³ Subsection 84(1) of the *Criminal Code* classifies firearms as non-restricted, restricted, or prohibited.⁴ Under the *Criminal Code*, firearms have been classified as restricted or prohibited by both Parliament and the GIC.

10. In 1969, Parliament initially classified automatic firearms, among others, through statutory definition, as restricted.⁵ Then in 1977, Parliament expanded the definition of “prohibited weapon”

¹ Order and Reasons of the Federal Court (FC), dated October 30, 2023, *Parker v Canada (Attorney General)*, [2023 FC 1419](#) at paras [176-78](#) [**FC Decision**] (Appellants’ Joint Record (**AR**) Part I Tab 3); Reasons for Judgment of the Federal Court of Appeal (FCA), dated April 15, 2025, *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, [2025 FCA 82](#) at paras [83-84](#) [**FCA Decision**] (AR Part 1 Tab 4).

² Affidavit of R. Blake Brown affirmed December 3, 2021 at para 33 (**Brown Affidavit**) (AR Parts II-IV FCA Appeal Book (**AB**) Volume (**V**) 5 Tab 5F.iii 6988); Affidavit of Murray Smith sworn December 9, 2021 at para 12 (**Smith Affidavit**) (AB V5 Tab 5F.ii 6624).

³ See generally R Blake Brown, “A Legal History of the Regulation of Assault-Style Rifles in Canada” (2023) 46-2 Dal LJ 505, [2023 CanLII Docs 2081](#).

⁴ *Criminal Code*, [RSC 1985, c C-46](#), s [84](#) [**Criminal Code**].

⁵ Brown Affidavit at para 64, App A1 (*Criminal Law Amendment Act, 1968-1969*) (AB V5 Tab 5F.iii 7009, 7052-70).

to prohibit automatic firearms, which also prohibited their commercial sale.⁶ At the same time, Parliament restricted short-barreled semi-automatic firearms. In making this change, then Minister of Justice Ron Basford explained to Parliament that “there is no proper hunting use” for these types of semi-automatic assault-style firearms.⁷

11. Also since 1969, Parliament has permitted the GIC to prescribe firearms as restricted or prohibited.⁸ The GIC has exercised its prescription authority on numerous occasions, including in 1974, 1977, 1982, 1992, 1994, and 1998.⁹

12. Initially, the GIC’s delegated authority to prohibit or restrict firearms was more constrained: the GIC could not prescribe firearms as prohibited or restricted if they were “commonly used” for hunting or sporting purposes.¹⁰ In 1977, Parliament gave the GIC broader authority to restrict (but not prohibit) firearms that “in the opinion of the GIC” were not reasonable for hunting and sport shooting.¹¹ The GIC restricted certain long-barrelled semi-automatic firearms using that provision.¹²

13. In 1995, Parliament further broadened the GIC’s authority by enacting the current s. 117.15 of the *Criminal Code* and eliminating entirely the reference to the “common use” of the firearm.¹³ The current s. 117.15(1) retains the GIC’s authority to make regulations prescribing firearms as restricted or prohibited, but now only limits that authority to exclude firearms that, in the GIC’s

⁶ Brown Affidavit at para 75, App A4 (*Criminal Law Amendment Act, 1977*) (AB V5 Tab 5F.iii 7013, 7073-115).

⁷ *Canada, House of Commons Standing Committee on Justice and Legal Affairs*, 30-2, Vol 2, No. 14-25 ([16 June 1977](#)) at 7210 (Hon Ron Basford) (**Standing Committee re Justice and Legal Affairs, 30-2, No. 14-25 (Hon Ron Basford)**); Brown Affidavit at para 71 (AB V5 Tab 5F.iii 7011).

⁸ Brown Affidavit at paras 64-65, App A1 (*Criminal Law Amendment Act, 1968-1969*) (AB V5 Tab 5F.iii 7009, 7052-70).

⁹ Brown Affidavit at paras 67, 78, 81, 93-95, 99-100, App A2, A3, A5, A8, A9, A11, A12, A13, A14, A15 (including e.g. *Restricted Weapons Order 1974*, *Prohibited Weapons Order, No. 11*, etc) (AB V5 Tab 5F.iii 7010, 7014-15, 7020-23, 7071-72, 7116, 7119-20, 7124-63).

¹⁰ FC Decision at para [39](#); Brown Affidavit at paras 62-67, App A1 (*Criminal Law Amendment Act, 1968-1969*) (AB V5 Tab 5F.iii 7008-10, 7052-70).

¹¹ Brown Affidavit at paras 68-74, App A4 (*Criminal Law Amendment Act, 1977*) (AB V5 Tab 5F.iii 7010-12, 7073-115).

¹² Brown Affidavit at para 78, App A5 (*Restricted Weapons Order, 1977*) (AB V5 Tab 5F.iii 7014, 7116).

¹³ FC Decision at para [47](#); FCA Decision at para [9](#); Brown Affidavit at paras 101-107, App A16 (Bill C-68, *Firearms Act*) (AB V5 Tab 5F.iii 7023-25, 7164-207).

opinion, are reasonable for use in Canada for hunting or sporting purposes:¹⁴

(1) Subject to subsection (2), the Governor in Council **may make regulations prescribing anything** that by this Part is to be or may be prescribed.

(2) In making regulations, the Governor in Council **may not prescribe** any thing to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition **if, in the opinion of the Governor in Council**, the thing to be prescribed is **reasonable for use in Canada for hunting or sporting purposes**. [Emphasis added]

(1) Sous réserve du paragraphe (2), le gouverneur en conseil **peut, par règlement, prendre toute mesure d'ordre réglementaire** prévue ou pouvant être prévue par la présente partie.

(2) Le gouverneur en conseil **ne peut désigner** par règlement comme arme à feu prohibée, arme à feu à autorisation restreinte, arme prohibée, arme à autorisation restreinte, dispositif prohibé ou munitions prohibées toute chose **qui, à son avis, peut raisonnablement être utilisée au Canada pour la chasse ou le sport**. [Emphase ajoutée]

This means that when promulgating regulations respecting firearms, a firearm cannot be prescribed if the GIC forms the opinion that it is reasonable for use for hunting or sporting purposes.

14. In the Standing Committee, at the time of the 1995 amendments, Minister of Justice Allan Rock acknowledged that he understood “the importance of firearms to people who have legitimate uses for them.”¹⁵ However, he confirmed that these uses must be “carried on in a context that is consistent with public safety” and that the object of the regulation of firearms is the “preservation of the safe, civilized and peaceful nature of Canada.”¹⁶ Minister Rock added that Parliament intended for the GIC to prohibit firearms which are “totally inappropriate,”¹⁷ including some new firearms that were evading the GIC’s power to prohibit because they were entering Canada and being used in a shooting contest or competition to qualify as “commonly used.”¹⁸

15. Statements from the Honourable Kim Campbell in 1991, then Minister of Justice, speaking

¹⁴ *Criminal Code*, [s 117.15](#).

¹⁵ “Bill C-68, An Act respecting firearms and other weapons”, House of Commons, Standing Committee on Justice and Legal Affairs, *Minutes of Proceedings and Evidence*, 35-1, No. 147 ([19 May 1995](#)) at [0945](#) (Hon Allan Rock) (**Standing Committee re Bill C-68, 35-1, No. 147**).

¹⁶ House of Commons Debates, 35th Parl., 1st Sess., No. 154 ([16 February 1995](#)) at [9706-7](#).

¹⁷ Standing Committee re Bill C-68, 35-1, No. 147 at [1025](#).

¹⁸ Standing Committee re Bill C-68, 35-1, No. 147 at [0955](#); see also Brown Affidavit at paras 106-7 (AB V5 Tab 5F.iii AB7024-25).

to earlier legislative changes, also reveal Parliament’s intent that regulation by the GIC be an important component of gun control to allow flexibility and clarity, which would not be possible using a statute alone.¹⁹

16. In 1998, the GIC consolidated the previous regulations listing prohibited and restricted firearms, which at that time included 86 families of prohibited firearms and other weapons (*1998 Regulations*).²⁰ The *1998 Regulations* were the last substantial regulatory update prior to the 2020 amendments at issue in these appeals.²¹

17. The enactment of the *Firearms Act* in 1995 extended the regulation of firearms by requiring that all firearms owners obtain licences and register their guns.²² This Court subsequently found that the *Firearms Act* was in pith and substance about public safety.²³

18. In 2012, the *Ending the Long Gun Registry Act* came into force, removing the requirement for Canadians to register non-restricted firearms.²⁴ At that time, it was noted in Parliament that Canadians “understand and accept the need to follow reasonable and fair regulations as part of a nation that adheres to the rule of law.”²⁵

2. Addressing the serious public safety issue of mass shootings

19. Canada, like other countries, has experienced mass shootings²⁶ in recent years, with

¹⁹ FC Decision at para 44; Brown Affidavit at paras 90-91 (AB V5 Tab F.iii 7019), citing Bill C-17, *an act to amend the Criminal Code and the Customs Tariff*, 2nd reading, *House of Commons Debates*, 34-3, No 1 (June 6, 1991) at 1256-57 (Hon Kim Campbell).

²⁰ *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, [SOR/98-462](#) (version as promulgated 16 September 1998) in Brown Affidavit, App 15 (AB V5 Tab 5F.iii 7143-63); current version: [SOR/98-462](#) [*1998 Regulations*].

²¹ Affidavit of Randall R. Koops affirmed December 9, 2021 at para 89 (*Koops Affidavit*) (AB V5 Tab 5F.v 7351-52).

²² FC Decision at para 47; *Firearms Act*, [SC 1995, c. 39](#) [*Firearms Act*]; *Reference re Firearms Act (Can.)*, [2000 SCC 31](#) at paras 6-8 [*Firearms Reference*].

²³ *Firearms Reference* at para 24.

²⁴ *Ending the Long-gun Registry Act*, [SC 2012, c 6](#); FC Decision at para 49.

²⁵ *House of Commons Debates*, 41st Parl., 1st Sess., No. 79 ([13 February 2012](#)) at 1745.

²⁶ FC Decision at paras 65, 367, 597; [Regulatory Impact Analysis Statement \(RIAS\)](#), “[Background](#)” (AB V1 Tab 4B 692-93). For Canada, see Brown Affidavit at paras 34-35 (AB V5 Tab 5F.iii 6989-94); Koops Affidavit at paras 22-36 (AB V5 Tab 5F.v 7327-32). For other

devastating consequences for victims, families, and whole communities including loss of life, injury, and lifelong grief.²⁷ Many mass shootings have been perpetrated by shooters armed with assault-style firearms, a term used by the Government of Canada for firearms such as the M-16, AR-15, AR-10, and M4 carbine, and other prevalent and modern firearms with semi-automatic actions and sustained rapid-fire capability (tactical/military design with large magazine capacity).²⁸

20. Commonwealth nations including Canada, Australia, and New Zealand, have all sought to address this serious and growing public safety issue by prohibiting the type of firearms capable of causing and increasing the severity of mass shootings. This policy decision by the Government of Canada was a direct response to the growing public concern about the continued availability of such firearms in Canadian society.²⁹

21. In May 2020, shortly after the mass shooting in Nova Scotia (Portapique), and following numerous other mass shootings, including in Alberta (Mayerthorpe), Québec (École Polytechnique, Dawson College, Islamic Cultural Centre), and New Brunswick (Moncton), the GIC passed an Order in Council (**OIC**),³⁰ the subject of the present appeals, promulgating amendments to Canada's federal firearms regulations under the *Criminal Code* (**Regulations**).³¹ A Regulatory Impact Analysis Statement (**RIAS**) accompanied the *Regulations*, explaining the GIC's conclusion that the newly prohibited firearms are not suitable for civilian use.³²

22. The OIC constituted the first significant prescription of prohibited firearms since the 1990s.³³ In the intervening decades, assault-style firearms entered the Canadian market in

countries, see Brown Affidavit at paras 36-37 (AB V5 Tab 5F.iii 6994-96); Koops Affidavit at paras 17-21 (AB V5 Tab 5F.v 7324-26).

²⁷ Affidavit of Dr. Najma Ahmed affirmed December 6, 2021 at paras 4-10 (**Ahmed Affidavit**) (AB V5 Tab 5F.viii 8026-27).

²⁸ Koops Affidavit at paras 93-94 (AB V5 Tab 5F.v 7353).

²⁹ FC Decision at paras 65, 68, 339-340; **RIAS**, "**Objective**" and "**Rationale**" (AB V1 Tab 4B 693, 701-702); Koops Affidavit at paras 37-60, Ex I-K (AB V5 Tab 5F.v 7332-41, 7560-75).

³⁰ [PC 2020-298, \(May 1, 2020\) C Gaz II, Vol 154, No 3 \[May 2020 OIC\]](#) (AB V1 Tab 4Ai 635).

³¹ *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*, [SOR/2020-96 \[Regulations\]](#).

³² **RIAS**, "**Background**" (AB V1 Tab 4B 692-93).

³³ Brown Affidavit at para 100 (AB V5 Tab 5F.iii 7023).

increasing numbers and were legal for individuals to possess despite their similarities to other prohibited firearms.³⁴ Many assault-style firearms were classified as restricted, and thus limited to use in sport shooting at ranges or in competition. Many were non-restricted and available to be used for hunting by the minority of hunters who chose these firearms rather than common hunting rifles or shotguns.³⁵

3. 2020 OIC and the Regulatory Impact Analysis Statement

23. The May 2020 OIC, amended the *1998 Regulations* to list newly prohibited assault-style firearms. These amendments are reflected in the *Regulations*. The accompanying RIAS explains why the GIC prohibited the firearms.³⁶ It states that Canada has experienced mass shootings, and that in both Canada and abroad, “the deadliest mass shootings are commonly perpetrated with assault-style firearms.”³⁷ The RIAS notes that the *Regulations* address gun violence and the threat to public safety from the now banned firearms whose “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.”³⁸

24. The RIAS further notes that a purpose of prescribing firearms as prohibited is “to limit the access to firearms that are characterized by their design and their capability of inflicting significant harm.”³⁹ It confirms the amendments “address a growing public concern regarding the safety risk posed by assault-style firearms and their suitability for civilian use.”⁴⁰

25. The term “assault-style firearms” used in the RIAS has been employed by the Government of Canada to avoid using terminology that conveyed specific legal meanings defined in other

³⁴ Smith Affidavit at paras 22, 36-37 (AB V5 Tab 5F.ii AB6627, AB6630-31); Koops Affidavit at para 89 (AB V5 Tab 5F.v 7351-52).

³⁵ Smith Affidavit at para 22 (AB V5 Tab 5F.ii 6627); Affidavit of Chris Baldwin affirmed on December 2, 2021 at para 12 (**Baldwin Affidavit**) (AB V5 Tab 5F.vii 8007); Brown Affidavit at para 32 (AB V5 Tab 5F.iii 6988).

³⁶ FCA Decision at para [60](#); [RIAS](#) (AB V1 Tab 4B 691).

³⁷ FC Decision at para [65](#); FCA Decision at para [60](#); [RIAS](#), “[Issues](#)” (AB V1 Tab 4B 691-92).

³⁸ FC Decision at para [65](#); FCA Decision at para [58](#); [RIAS](#), “[Issues](#)” (AB V1 Tab 4B 691-92).

³⁹ FC Decision at para [332](#); FCA Decision at para [90](#); [RIAS](#), “[Objective](#)” (AB V1 Tab 4B 693).

⁴⁰ FC Decision at paras [68](#), [332](#); FCA Decision at para [92](#); [RIAS](#), “[Objective](#)” (AB V1 Tab 4B693).

jurisdictions (e.g. United States). Neither Parliament nor the GIC have defined “assault-style firearms,” which was not necessary given the GIC’s ability to prescribe specific models or characteristics.⁴¹

4. **Firearms owners notified about the Regulations**

26. Between May and June 2020, the RCMP took steps to notify firearms owners about the *Regulations*. All 2.2 million firearms licensees in Canada were sent an information sheet about the changes made by the *Regulations*.⁴² 4,500 firearms businesses with a valid firearms licence were similarly sent letters.⁴³ Owners of firearms that had been classified as restricted and therefore required to be registered prior to May 1, 2020 were also sent individualized letters about the regulatory changes, informing each owner that their specific make and model of firearm was now prohibited.⁴⁴ However, due to the *Ending the Long Gun Registry Act*, individualized letters could not be sent to owners of previously non-restricted firearms since the Registrar does not have information on the ownership of firearms not required to be registered.

5. **Amnesty Order promotes transition into compliance with the law**

27. Recognizing that a period of transition would be necessary to allow firearms owners, who previously legally possessed assault-style firearms, to come into compliance with the law, the GIC promulgated the *Order Declaring an Amnesty Period (2020)* (***Amnesty Order***).⁴⁵ It allows those who were in possession of firearms that became prohibited as a result of the *Regulations* to temporarily possess and store those firearms, in accordance with certain safety requirements, without facing criminal sanctions, while they come into compliance with the law.⁴⁶ The amnesty period was originally scheduled to expire on April 30, 2022, but it has since been extended until 90 days after this Court renders its decision in these appeals.⁴⁷

⁴¹ Koops Affidavit at paras 93-94 (AB V5 Tab 5F.v 7353).

⁴² Smith Affidavit at para 23, Ex E(1) (AB V5 Tab 5F.ii 6627, 6701).

⁴³ FC Decision at para [547](#); Smith Affidavit at para 24, Ex E(2) (AB V5 Tab 5F.ii 6627, 6702-3).

⁴⁴ See e.g. Affidavit of Ryan Steacy sworn September 22, 2021 at para 8, Exhibit A (AB V2 Tab 5A.v 1354, 1360).

⁴⁵ *Order Declaring an Amnesty Period (2020)*, [SOR/2020-97](#) [***Amnesty Order 2020***].

⁴⁶ FC Decision at para [74](#); FCA Decision at para [15](#).

⁴⁷ *Amnesty Order (2020)*, s [2\(3\)](#); *Order Amending Certain Orders Declaring an Amnesty Period*, [SOR/2026-114](#), s [1\(3\)](#).

28. The *Amnesty Order* allows for temporary and limited use of some prohibited firearms. Newly prohibited firearms that were non-restricted prior to May 1, 2020 can be used during the amnesty period for hunting in the exercise of a s. 35 right under the *Constitution Act, 1982*,⁴⁸ or for sustenance hunting purposes for the owner or their family, until they can obtain another firearm for that use.

6. Firearms prohibited by the 2020 OIC's amendments to the 1998 Regulations

a. Nine families of firearms prohibited by make and model

29. The *Regulations* added nine “families” of makes and models (**Nine Families**) to the existing list of prohibited firearms found in the *1998 Regulations*.⁴⁹ The heads of the Nine Families (**heads of family**) are:

- M16, AR-10, and AR-15 rifles and M4 carbine;
- Ruger Mini-14 rifle;
- US Rifle M14;
- Vz58 rifle;
- Robinson Armament XCR rifle;
- CZ Scorpion EVO 3 carbines and pistols;
- Beretta Cx4 Storm carbine;
- SIG Sauer SIG MCX and SIG Sauer SIG MPX carbine and pistol; and
- Swiss Arms Classic Green and Four Seasons series.⁵⁰

30. The RIAS states that the heads of the Nine Families (“nine principal models”) were prohibited “as they (a) have semi-automatic action with sustained rapid-fire capability (tactical/military design with large magazine capacity), (b) are of modern design, and (c) are present in large volumes [in Canada].”⁵¹

⁴⁸ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), [1982, c 11](#).

⁴⁹ FC Decision at para [31](#); FCA Decision at para [11](#); [Regulations](#); *1998 Regulations*, Schedule, Part [1](#), Items [83](#), [87-94](#).

⁵⁰ FC Decision at para [32](#); [Regulations](#); *1998 Regulations*, Schedule, Part [1](#), Items [83](#), [87-94](#); Smith Affidavit at para 27 (AB V5 Tab 5F.ii 6628). For illustrations see Smith Affidavit, Ex F (AB V5 Tab 5F.ii 6705-14).

⁵¹ FC Decision at para [69](#); FCA Decision at para [60](#); [RIAS](#), “[Description](#)” (AB V1 Tab 4B 693-96).

b. Variants and modified versions prohibited

31. The *Regulations* also prohibit any “variants” or “modified versions” of the heads of the Nine Families (collectively, **variants**). Both terms are referred to in the remedies sought by the Appellants, but only the term “variant” forms the basis of their arguments.

32. The term “variant” refers to a firearm’s lineage: a firearm whose design was derived from an original firearm (head of family).⁵² In contrast, the term “modified version” refers to a firearm that is part of a family but was modified post-factory production.⁵³ The terms “variant” and “modified version” were employed by the GIC in the 1992 and 1998 regulations,⁵⁴ and are also widely used in the firearms industry, including by manufacturers and in firearms industry and consumer literature.⁵⁵

33. The *Regulations* include a non-exhaustive listing of firearms prohibited as variants of the heads of the Nine Families (**named variants**). The *Regulations* prohibit variants by referring to “[named guns], and any variants or modified versions of them, including ...[named variants].”⁵⁶

34. Additional variants of the heads of the Nine Families are also prohibited, by this same regulatory text (“any variants”), even though they are not expressly named (**unnamed variants**).⁵⁷

⁵² FC Decision at paras [444](#), [536](#), [538](#); Smith Affidavit at para 32 (AB V5 Tab 5F.ii 6629); Murray Smith transcript dated October 30, 2020 at 185:7-186:2; 188:1-4; 189:16-21 (**Smith Oct 30 Transcript**) (AB V6 Tab 6B 8864-65, 8867-68).

⁵³ Smith Affidavit at para 32 (AB V5 Tab 5F.ii 6629).

⁵⁴ *Prohibited Weapons Order, No. 11*, [SOR/92-465](#) in Brown Affidavit at App A11 (AB V5 Tab 5F.iii 7124-28); *Prohibited Weapons Order, No. 12*, [SOR/92-466](#) in Brown Affidavit at App A12 (AB V5 Tab 5F.iii 7129-30); *Restricted Weapons Order*, [SOR/92-467](#) in Brown Affidavit at App A13 (AB V5 Tab 5F.iii 7131-36); [1998 Regulations](#) (version as promulgated 16 September 1998) in Brown Affidavit, App 15 (AB V5 Tab 5F.iii 7143-63).

⁵⁵ FC Decision at paras [500](#), [534](#); FCA Decision at para [83](#); Smith Affidavit at paras 36-47 (AB V5 Tab 5F.ii 6630-34). See also Smith Affidavit at para 37 listing manufacturer descriptions; at para 38, Ex G, citing *AR Platform Firearms & Calibers*; at para 39, Ex H, citing *Shooter’s Bible Guide to AR-15s: A Comprehensive Guide to Modern Sporting Rifles and Their Variants*; at para 44, Ex I, citing *Jane’s Weapons: Infantry* (AB V5 Tab 5F.ii 6630-32, 6633-34, 6716-24, 6726-28, 6730-39).

⁵⁶ [Regulations](#), Items [83](#), [87-94](#).

⁵⁷ FC Decision at para [58](#); FCA Decision at para [11](#); Smith Affidavit at para 18 (AB V5 Tab 5F.ii 6626); Murray Smith transcript dated October 29, 2020 at 42:1-4 (**Smith Oct 29 Transcript**) (AB V6 Tab 6A 8663).

These include unnamed variants already in the Canadian market and unnamed variants that may enter the market in the future (**future variants**).⁵⁸

35. Neither the *1998 Regulations* nor the *Regulations* define the terms “variant” or “modified version.” While some have called for a definition, the government has favoured continued reliance on the plain meaning of the term because a definition: (1) would add little clarity to the plain meaning; (2) could have unintended negative implications for the body of existing classifications; and (3) could “create the opportunity for manufacturers to look for loopholes through which they could introduce new firearms that are largely similar to existing prohibited or restricted firearms.”⁵⁹

36. Firearms owners who are in any doubt about whether their firearm is a variant of any of the heads of the Nine Families can check by: (i) reviewing the *Regulations* to see if their make and model is named as a variant; (ii) consulting other sources such as the RCMP’s Firearms Reference Table, as described below, or with the Canadian Firearms Program, firearms manufacturers, retailers, other industry sources or experts. These are easily accessible resources that assist owners in assessing whether a firearm is a variant.⁶⁰

c. Firearms prohibited based on bore diameter and muzzle energy, and prohibited upper receivers

37. The *Regulations* also prohibit firearms with a bore diameter of 20 mm or greater and firearms capable of discharging a projectile with a muzzle energy greater than 10,000 joules.⁶¹ The RIAS explains that these firearms are primarily designed to produce mass human casualties or cause significant property damage at long ranges, and therefore their potential power exceeds safe or legitimate civilian use.⁶² The *Regulations* do not exhaustively list these firearms, but owners

⁵⁸ FC Decision at paras 64, 70; RIAS, “[Issues](#)” and “[Objective](#)” (AB V1 Tab 4B 691-92, 693); Smith Affidavit at para 33 (AB V5 Tab 5F.ii 6629).

⁵⁹ Koops Affidavit at paras 90-92 (AB V5 Tab 5F.v 7352), citing Minutes of the Proceedings of the Standing Joint Committee for the Scrutiny of Regulations, Issue 26 ([23 November 2017](#)); FC Decision at paras 51, 501; FCA Decision at para 85. Contrast with CCFR factum at para 74; Doherty factum at paras 28, 35; Affidavit of Travis Bader affirmed on October 1, 2021, paras 15-21, 72-75 (AB V3 Tab 5c.ii 2796-97, 2808-9).

⁶⁰ Smith Affidavit at para 16 (AB V5 Tab 5F.ii 6625-26); Smith Oct 29 Transcript at 43:21-44:9 (AB V6 Tab 6A 8664-65); FC Decision at paras 549-550; FCA Decision at para 85.

⁶¹ *Regulations*, ss [95-96](#).

⁶² RIAS, “[Description](#)” (AB V1 Tab 4B 693-96).

can easily determine whether a firearm has a bore diameter equal to or greater than 20 mm⁶³ and obtain information concerning the muzzle energy of their firearm.⁶⁴ In addition, the upper receivers of certain firearms⁶⁵ that could otherwise “be used with illicitly manufactured or acquired lower receivers”⁶⁶ are prohibited. The Appellants refer to these prohibitions, but their arguments do not challenge these parts of the *Regulations*.

7. **RCMP’s Firearms Reference Table (FRT)**

38. The RCMP has no statutory authority to prohibit firearms. It does, however, provide support services relating to firearms for the benefit of law enforcement, government officials with decision-making roles relating to firearms, and to the public.

39. The Specialized Firearms Support Service (SFSS) is a sector within the RCMP’s Canadian Firearms Program. The SFSS employs firearms technicians who collect and assess technical information to ascertain the classification of firearms for assisting officials responsible for firearms registration, import/export control, and national and international law enforcement agencies with firearm identification and investigations.⁶⁷

40. The SFSS maintains a database called the Firearms Reference Table (**FRT**). It lists, describes, and provides a technical assessment of each firearm known to the RCMP, to convey the RCMP’s view on whether they are non-restricted, restricted, or prohibited.⁶⁸

41. The FRT does not legally bind judges, law enforcement officers, or administrative decision-

⁶³ FC Decision at paras [577-579](#); FCA Decision at para [88](#); Smith Affidavit at paras 56-58, 75, 83-84 (AB V5 Tab 5F.ii AB6636-37, 6643, 6644-45); Smith Nov 5 Transcript, 399:1-400:9 (AB V6 Tab 6C 9104-105).

⁶⁴ FC Decision at paras [577](#), [580-581](#); FCA Decision at para [88](#); Smith Affidavit at paras 90-92 (AB V5 Tab 5F.ii 6646-47).

⁶⁵ *Regulations* at s [4](#).

⁶⁶ *RIAS*, “[Description](#)”, “[Rationale](#)” (AB V1 Tab 4B 693-96, 701-703).

⁶⁷ FC Decision at para [56](#); FCA Decision at para [12](#); Smith Affidavit at para 10 (AB V5 Tab 5F.ii 6624).

⁶⁸ FC Decision at para [56](#); FCA Decision at para [13](#); Smith Affidavit at paras 11-14 (AB V5 Tab 5F.ii 6624-25).

makers under the *Firearms Act*, *Criminal Code*, or other relevant statutes.⁶⁹

42. The FRT is publicly available through software available to businesses, and to the public in downloadable PDF form. Firearms businesses and members of the public can also contact the Canadian Firearms Program's Call Centre with specific questions by telephone or email.⁷⁰ Individuals or businesses can also request a reconsideration of an FRT assessment.⁷¹ The FRT includes a disclaimer noting that it is an "administrative document" and "not a legal instrument."⁷²

8. Specialized Firearms Support Service's assessment of variants

43. If a firearm is a named variant, the SFSS will identify it as such in the FRT.⁷³ If a firearm is not expressly listed in the *Regulations*, the SFSS will assess it to determine whether it is prohibited as an unnamed variant of a prohibited firearm.⁷⁴ Unnamed variants make up only a small percentage of the firearms of the Nine Families prohibited by the *Regulations*.⁷⁵

44. The SFSS, in assessing a firearm for its FRT entry, considers the design of the firearm to determine whether it is an unnamed variant.⁷⁶ For the vast majority of firearms, their lineage, history, and relationship to other firearms will be well-known; it is only a small percentage of

⁶⁹ FC Decision at paras [422-433](#); FCA Decision at paras [71-73](#); Smith Affidavit at para 14 (AB V5 Tab 5F.ii 6625); Smith Oct 29 Transcript at 34:5-15 (AB V6 Tab 6A 8655). See also CCFR factum at para 75 and *contra* Eichenberg factum at para 22.

⁷⁰ FC Decision at para [61](#); FCA Decision at paras [13](#), [85](#); Smith Affidavit at para 16 (AB V5 Tab 5F.ii 6625-26).

⁷¹ FC Decision at paras [446](#), [541-542](#); FCA Decision at para [76](#); Smith Affidavit at paras 15, 17 (AB V5 Tab 5F.ii 6625-26); Smith Oct 30 Transcript, 318:24-319:11 (AB V6 Tab 6B 8997-98).

⁷² FCA Decision at para [72](#); Smith Oct 29 Transcript at Ex 1 (AB V6 Tab 6A 8826-28).

⁷³ FC Decision at paras [34](#), [406](#), [635](#); FCA Decision at para [11](#); Smith Affidavit at paras 34-35 (AB V5 Tab 5F.ii 6630); Smith Nov 5 Transcript at 606:20-607:16 (AB V6 Tab 6C 9311-12).

⁷⁴ FC Decision at para [445](#); FCA Decision at para [13](#); Smith Affidavit at paras 13, 33 (AB V5 Tab 5F.ii 6625, 6629).

⁷⁵ Smith Affidavit at paras 34-35 (nine families) (AB V5 Tab 5F.ii 6630); Smith Nov 5 Transcript at 606:20-607:16 (AB V6 Tab 6C 9311-12); see also FC Decision at paras [34](#), [59](#), [406](#); FCA Decision at para [13](#) (total includes nine families plus firearms with prohibited bore size and muzzle energy).

⁷⁶ FC Decision at paras [444-445](#), [536](#), [538](#); Smith Affidavit at paras 32, 49 (AB V5 Tab 5F.ii 6629, 6635); Smith Oct 30 Transcript (AB V6 Tab 6B 8864-65, 8867-68).

firearms for which this is not the case.⁷⁷ In those rare cases, other characteristics can factor into the assessment, such as the manufacturer’s description, patents, the interchangeability of parts, and the firearm’s purpose.⁷⁸

45. Variants will usually share the rapid-fire capabilities of the head of family. In a small number of cases, a variant may not have those characteristics when assessed, but because it is derived from the head of family, can easily be adapted back to share those characteristics. For example, the AR-15 is a head of family, well known for its modular design, and has been referred to as a “LEGO Gun” with the ability to “mix and match” various parts of the firearm to make it like “customizing a car.”⁷⁹ This modularity means that any AR-15 variant either already poses, or can easily be adapted to pose, the same public safety risks posed by the AR-15 itself.

46. Beginning on May 1, 2020, the SFSS updated the existing entries in the FRT to reflect the firearms specifically listed in the *Regulations*, as well as those that would, in the opinion of SFSS, constitute unnamed variants. The last significant update occurred on June 15, 2020.⁸⁰ The evidence at the time of the lower court hearing was that, since June 2020, the only update to the FRT was to add two firearms in 2021, and to add entries for firearms newly introduced into the Canadian market after the *Regulations* were promulgated.⁸¹

9. Other firearms remain available for hunting and sporting purposes

47. None of the firearms prohibited by the *Regulations* are necessary for hunting or sport

⁷⁷ *Contra* Doherty factum at paras 36-44; FC Decision at para [540-541](#); FCA Decision at paras [83-84](#); Smith Affidavit at para 48 (AB V5 Tab 5F.ii 6634-35); Smith Oct 29 Transcript at 42:1-43:3 (AB V6 Tab 6A 8663-64); Smith Oct 30 Transcript at 207:11-210:20, 211:15-216:3; 221:9-223:14 (AB V6 Tab 6B 8886-89, 8890-95, 8900-8902).

⁷⁸ FC Decision at paras [444-445](#); Smith Affidavit at para 50 (AB V5 Tab 5F.ii 6635); Smith Nov 5 Transcripts at 365:24-376:5 9081-82).

⁷⁹ Affidavit of Cheryl Mancell sworn on December 10, 2021 at Ex I (AB V5 Tab 5F.ix 8168-76); Rodney Giltaca Transcript dated December 17, 2021 at 35:16-36:15 (AB V6 Tab 6R 14033-34).

⁸⁰ FC Decision at paras [59](#), [406](#); Smith Affidavit at paras 19-21 (AB V5 Tab 5F.ii 6626-27);

Smith Nov 5 Transcript at 516:13-517:5 (AB V6 9221-22). The majority of updates to the FRT were published on May 1, 2020, concurrent with the announcement of the [Regulations](#). However, a complete review of the FRT could not be completed until June 15, 2020.

⁸¹ FC Decision at para [406](#); Smith Affidavit at para 20 (AB V5 Tab 5F.ii 6627).

shooting.⁸² Many of the newly prohibited firearms were already classified as restricted before May 2020,⁸³ meaning they were not permitted to be used for hunting.⁸⁴ But even after the 2020 OIC added more than 1,500 firearms to the prohibited list, thousands of firearms that are commonly used in hunting remain available for use in Canada.⁸⁵ As of May 2025, over 19,000 non-restricted makes and models, remain legally available for hunting and sport shooting in Canada.⁸⁶

48. Distinct from hunting use, target shooting is the principal sporting purpose of firearms, be it informal target shooting in the field, organized shooting at a range facility, or in competition.⁸⁷ Many kinds of competitions and informal target shooting activities use firearms other than those prohibited by the OIC. The firearms prohibited by the *Regulations* were used primarily in tactical competitions designed to mimic warfare and battlefields.⁸⁸

10. Statutory and regulatory changes, and other related matters, since May 2020

49. Since the *Regulations* were enacted in May 2020, Parliament and the GIC have continued to make statutory and regulatory changes to further advance their goals of public safety. In 2023, Parliament amended the definition of prohibited firearm in s. 84 of the *Criminal Code*.⁸⁹ In addition, the GIC further amended the *Regulations* in 2024⁹⁰ and 2025⁹¹ to prohibit additional

⁸² *Contra* CCFR factum at para 54; FC Decision at paras [370](#), [521](#), [665](#), [679](#); FCA Decision at para [61](#); Baldwin Affidavit at paras 12, 43 (AB V5 Tab 5F.vii AB8007, 8014); Chris Baldwin transcript dated January 5, 2022 at 155:21-156:3 (**Baldwin Jan 5 Transcript**) (AB V6 Tab 6J 12378-79).

⁸³ Murray Smith transcript dated November 5, 2020 at 610:16-611:3 (**Smith Nov 5 Transcript**) (AB V6 Tab 6C 9315-16); [RIAS](#), “[Description](#)” (AB V1 Tab 4B 693-96).

⁸⁴ Smith Affidavit at para 102 (AB V5 Tab 5F.ii 6649-50).

⁸⁵ Baldwin Affidavit at paras 12-18 (AB V5 Tab 5F.vii 8007-9).

⁸⁶ *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, [SOR/2025-86](#) [**2025 Regulations**], [RIAS “Background”](#).

⁸⁷ Smith Affidavit at para 106 (AB V5 Tab 5F.ii 6650-51).

⁸⁸ FC Decision at para [284](#); Smith Affidavit at para 107 (AB V5 Tab 5F.ii 6651); Brown Affidavit at para 153 (AB V5 Tab 5F.iii 7045-46).

⁸⁹ *An Act to amend certain Acts and to make certain consequential amendments (firearms)*, [SC 2023, c 32](#) at s [1\(1\)-\(2\)](#).

⁹⁰ *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, [SOR/2024-248](#).

⁹¹ [2025 Regulations](#).

makes and models of assault-style firearms, and their variants. Neither the statutory nor regulatory additions post-2020 affect the present appeals.

50. The 2020 RIAS referred to the government’s intent to implement a buy-back program for the newly prohibited assault-style firearms to compensate affected firearms owners during the amnesty period.⁹² The compensation program is also not the subject of the present appeals.

11. Decisions of the courts below

51. Six applicant groups applied for judicial review of the GIC’s decision to promulgate the *Regulations* by OIC (collectively, the **Applications**).⁹³ The Federal Court case-managed and heard the Applications together.

52. Following an eight-day hearing on the merits, the Federal Court dismissed the Applications with lengthy written reasons and a detailed summary of the evidence at Annex B to the decision.⁹⁴ The Federal Court found that the *Regulations* are *intra vires* the *Criminal Code*;⁹⁵ the GIC did not subdelegate its authority to prescribe firearms as prohibited to the RCMP;⁹⁶ the *Regulations* do not infringe the *Charter*, including s. 7, and any infringement would be justified pursuant to s. 1;⁹⁷ and the *Regulations* do not infringe the *Canadian Bill of Rights*.⁹⁸ The Federal Court declined to draw an adverse inference from Canada’s reliance on s. 39 of the *Canada Evidence Act*.⁹⁹

53. In making these findings, the Federal Court relied upon, and preferred the evidence of, Canada’s 8 affidavits¹⁰⁰ instead of the applicants’ 54 affidavits, which often “described [the affiants’] own preferences for their use of their now prohibited firearms and their personal views about what is reasonable for use.”¹⁰¹ In addition to the RIAS, Canada’s record included background

⁹² [RIAS](#), “[Issues](#)” and “[Description](#)” (AB V1 Tab 4B 691-92, 693-96).

⁹³ See in part Notices of Application (AB V1 Tabs 3A-3D 333-458); FC Decision at paras [84-143](#).

⁹⁴ FC Decision at [pp 201-63 \(Annex B\)](#) (AB V1 Tab 2 267-329).

⁹⁵ FC Decision at paras [14](#), [291-380](#).

⁹⁶ FC Decision at paras [15](#), [412-57](#), [466-71](#).

⁹⁷ FC Decision at paras [17-18](#), [524-639](#), [668-84](#).

⁹⁸ FC Decision at paras [19](#), [687-93](#).

⁹⁹ FC Decision at paras [209-23](#).

¹⁰⁰ See Canada’s affidavits in AB V5.

¹⁰¹ FC Decision at paras [176-178](#); [FC Decision](#) at Annexes [A](#) and [B](#).

contextual evidence from an RCMP firearms expert,¹⁰² a director general in federal firearms policy,¹⁰³ a provincial wildlife manager with expertise in hunting,¹⁰⁴ a trauma surgeon dealing with firearms casualties,¹⁰⁵ and academic experts in gun control including a Canadian legal historian¹⁰⁶ and social scientists from the United States¹⁰⁷ and Australia.¹⁰⁸

54. Four of the applicant groups appealed to the Federal Court of Appeal.¹⁰⁹ The Federal Court of Appeal concluded that there were no errors in the Federal Court’s “thorough, well-reasoned and legally sound” written reasons, and accordingly dismissed the appeals.¹¹⁰ The Federal Court of Appeal specifically upheld the Federal Court’s findings that: the *Regulations* are *intra vires*;¹¹¹ the GIC did not subdelegate its prescriptive authority to the RCMP;¹¹² the *Regulations* do not violate the *Charter*;¹¹³ and the *Canadian Bill of Rights* does not apply.¹¹⁴ Having found no *Charter* breach, the Federal Court of Appeal declined to engage in a s. 1 justification analysis.¹¹⁵

55. The Federal Court of Appeal also found that the Federal Court had properly refused to draw an adverse inference, noting that Canada was entitled to rely on s. 39 of the *Canada Evidence Act*¹¹⁶ and Canada’s course of action in asserting Cabinet confidence was not “reprehensible or even out of the ordinary.”¹¹⁷

¹⁰² Smith Affidavit (AB V5 Tab 5F.ii 6618); Affidavit of Murray Smith affirmed October 9, 2020 (AB V5 Tab 5F.i 6539).

¹⁰³ Koops Affidavit (AB V5 Tab 5F.v 7315).

¹⁰⁴ Baldwin Affidavit (AB V5 Tab 5F.vii 8002).

¹⁰⁵ Ahmed Affidavit (AB V5 Tab 5F.viii 8023).

¹⁰⁶ Brown Affidavit (AB V5 Tab 5F.iii 6975).

¹⁰⁷ Affidavit of Simon Chapman affirmed December 3, 2021 (**Chapman Affidavit**) (AB V5 Tab 5F.vi 7695).

¹⁰⁸ Affidavit of Dr. Louis Klarevas affirmed December 9, 2021 (**Klarevas Affidavit**) (AB V5 Tab 5F.iv 7237).

¹⁰⁹ FCA Decision at para [6](#).

¹¹⁰ FCA Decision at paras [6](#), [105](#).

¹¹¹ FCA Decision at paras [42-65](#).

¹¹² FCA Decision at paras [66-77](#).

¹¹³ FCA Decision at paras [78-93](#).

¹¹⁴ FCA Decision at paras [94-104](#).

¹¹⁵ FCA Decision at para [93](#).

¹¹⁶ FCA Decision at paras [32-41](#).

¹¹⁷ FCA Decision at para [41](#).

PART II – STATEMENT OF ISSUES

56. The Attorney General of Canada states that the issues in these four appeals can be combined as follows:

1. The applicable standards of review for the questions raised in these appeals.

2. Whether the *Regulations* are a reasonable exercise of the GIC's authority including:

(a) whether the GIC reasonably formed an opinion that the prohibited firearms are not reasonable for hunting or sporting purposes; and

(b) whether the *Regulations* are a reasonable exercise of the GIC's authority and not a subdelegation.

3. Whether the *Regulations* violate the *Charter* or *Canadian Bill of Rights* including:

(a) Whether they are impermissibly vague, overbroad, or arbitrary, contrary to s. 7;

(b) Whether they violate s. 15;

(c) Whether they are justified under s. 1; and

(d) Whether they violate the *Canadian Bill of Rights*.

4. Whether the courts below erred by refusing to draw an adverse inference from the Clerk of the Privy Council's filing of *Canada Evidence Act* s. 39 certificates.

PART III – STATEMENT OF ARGUMENT

1. The standard of review: different issues attract different standards

57. These appeals raise issues that attract differing standards of review: (a) the review of the GIC’s decision to promulgate the *Regulations*; (b) the review of regulations for *Charter* compliance; (c) questions of fact and mixed fact and law determined by the Federal Court as a matter of first instance; and (d) the role of the appellate court on an appeal from a judicial review.

a. The standard of review for the GIC’s decision is reasonableness

58. Reasonableness is the presumptive standard for reviewing all decisions by a statutory decision-maker including the *vires* of subordinate legislation.¹¹⁸ Nothing about the non-constitutional issues raised by the Appellants rebuts this presumption.¹¹⁹ *Vavilov* provides a comprehensive and generally applicable framework for conducting reasonableness review, and *Auer* incorporates many pre-existing principles relating to *vires* challenges into the *Vavilov* framework.¹²⁰

59. In accordance with this Court’s instruction in *Vavilov* and *Auer*, the overarching question is whether the decision is reasonable in light of the applicable factual and legal constraints.¹²¹ These constraints “dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt.”¹²² Deferential judicial review under *Vavilov* contemplates that, where the judicial review court agrees that the reasoning of the decision-maker is tenable in light of the applicable constraints, it ought not intervene.¹²³

60. In cases involving a statutory condition precedent, the judicial review court is to look first at the reasonableness of the decision-maker’s determination that the statutory condition precedent has been met. The Court’s guidance on deferential review in *Vavilov* and *Auer* is broad enough to

¹¹⁸ *Auer v Auer*, [2024 SCC 36](#) at paras [24-28](#) [*Auer*].

¹¹⁹ *Auer* at paras [24-25](#), see also paras [29-40](#); *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at paras [17](#), [53](#) [*Vavilov*].

¹²⁰ *Auer* at para [32](#), see also paras [29-40](#); *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, [2013 SCC 64](#) [*Katz Group*].

¹²¹ *Vavilov* at para [90](#).

¹²² *Vavilov* at para [90](#).

¹²³ *Vavilov* at paras [89-90](#), [101](#).

cover statutory schemes with restrictive language or conditions precedent: all enabling authorities contain limits,¹²⁴ whether in an express restrictive clause or not, and the fundamentals of *vires* review remain the same.

61. If the condition precedent is met, the second question is whether the regulations themselves are a reasonable exercise of the decision-maker’s authority. The court looks at the reasonableness of “the regulation-making authority’s interpretation of its statutory regulation-making power.”¹²⁵ The court does not assess whether the regulations are “necessary, wise, or effective in practice.”¹²⁶

62. Contrary to the Appellants’ suggestion,¹²⁷ American jurisprudence in *Loper Bright* and related cases is irrelevant – this Court has consistently affirmed the *Vavilov* framework for judicial review since 2019.

b. The standard of review for *Charter* issues is correctness

63. On *Charter* issues, the standard of correctness applies to findings of law and findings of mixed fact and law that arise in connection with a constitutional question.¹²⁸ However, deference is owed to findings of pure fact that can be isolated from the constitutional analysis.¹²⁹ This includes adjudicative, social, and legislative facts.¹³⁰ The Federal Court’s findings of pure fact include the nature and uses of the FRT,¹³¹ as well as resolving the differing expert evidence,¹³² including expert evidence on how the term “variant” is understood.¹³³ The Federal Court of Appeal appropriately afforded deference to these findings.¹³⁴

¹²⁴ *Auer* at paras [77-79](#).

¹²⁵ *Auer* at para [56](#).

¹²⁶ *Auer* at para [56](#), citing *Katz Group* at para [27](#).

¹²⁷ Eichenberg factum at para 105.

¹²⁸ *Société des casinos du Québec inc. v Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#) at paras [45](#), [93-95](#) [*Société des casinos*]; *Vavilov* at paras [17](#), [55](#).

¹²⁹ *Société des casinos* at paras [97](#).

¹³⁰ *Canada (Attorney General) v Bedford*, [2013 SCC 72](#) at paras [48-56](#) [*Bedford*].

¹³¹ FC Decision at paras [422-40](#), applied to the constitutional analysis at para [550](#).

¹³² FC Decision at paras [176-78](#) and Annex B; FCA Decision at paras [83-84](#).

¹³³ FC Decision at paras [532-49](#); Smith Affidavit at paras 31-32 (AB V5 Tab 5F.ii 66929).

¹³⁴ FCA Decision at paras [83-84](#), [88](#).

c. The *Housen* appellate standards of review apply to decisions of first instance made by the Federal Court

64. As this Court held in *Horrocks*, when an application judge acts as a decision-maker at first instance on judicial review, “there may be good reason to apply the *Housen* standard.”¹³⁵ This Court has also said that it will be “hesitant to intervene and disturb findings of fact” when an appellate court has refused to interfere with the factual findings of a court at first instance.¹³⁶ Many appellate courts have found that where an application judge makes their own findings of fact or findings of mixed fact and law based on the consideration of evidence at first instance, as opposed to reviewing the findings of an administrative decision-maker, the *Housen* standards of appellate review apply.¹³⁷

65. As a result, the standard of palpable and overriding error should be applied to the findings of fact made by the Federal Court as a matter of first instance. Those include the Federal Court’s factual findings and exercise of discretion in refusing to draw an adverse inference,¹³⁸ and its factual findings in the face of conflicting expert evidence.¹³⁹ This standard also applies to the Federal Court’s findings of mixed fact and law concerning subdelegation.¹⁴⁰

d. Appellate court’s role in an appeal from a judicial review

66. As this Court held in *Agraira*, in an appeal from a judicial review, the appellate court “step[s] into the shoes of the lower court” and determines for itself whether the application judge

¹³⁵ *Northern Regional Health Authority v Horrocks*, [2021 SCC 42](#) at para [12](#) [*Horrocks*]; *Housen v Nikolaisen*, [2002 SCC 33](#) at para [10](#).

¹³⁶ *St-Jean v Mercier*, [2002 SCC 15](#) at para [45](#); *Montréal (Ville) v Lonardi*, [2018 SCC 29](#) at para [76](#).

¹³⁷ FCA Decision at para [30](#); *Apotex Inc. v Canada (Health)*, [2018 FCA 147](#) at para [57](#) and citations therein; Donald JM Brown & David Fairlie, *Civil Appeals*, (2009) at 14:45-14:46 online: WL Can (Respondent’s Book of Authorities, Tab 1 (RBOA)); Guy Régimbald, Mark Mancini & John J Wilson, *Canadian Administrative Law*, 4th ed (Toronto, ON: LexisNexis Canada Inc, 2026) at §8.02[7] (RBOA Tab 2).

¹³⁸ FC Decision at paras [209-223](#); *Phillips v Nagy*, [2006 ABCA 227](#) at para [16](#), citing *Pfeifer v Westfair Foods*, [2004 ABCA 422](#) at para [20](#).

¹³⁹ FC Decision at paras [176-178](#), [290](#), [357-64](#), [375](#), [418](#), [421-30](#), [441-45](#), [546](#), [548-51](#), [577-81](#), [622-28](#), [630-33](#), [Annex B](#); *Harwood Farms Ltd v Western Irrigation District*, [2023 ABCA 16](#) at para [13](#) [*Harwood*].

¹⁴⁰ FC Decision at paras [416-57](#).

“identified the appropriate standard of review and applied it correctly.”¹⁴¹ The focus is on the administrative decision under review.¹⁴² This was precisely the approach taken by the Federal Court of Appeal. Its reasons show that, other than where deference was owed to the Federal Court’s findings of fact and mixed fact and law as described above, the Court of Appeal conducted its own assessment of the *Regulations* and came to its own conclusions.¹⁴³

67. Contrary to the Appellants’ suggestion,¹⁴⁴ the Federal Court of Appeal’s reference to a “tactical burden” did not change the *Agraira* test. It simply reflects the reality that the appellate court will review the reasons of the lower court closely, particularly where there is a thorough analysis and compelling reasons.¹⁴⁵ In such cases, the reasons of the Federal Court cannot be ignored, and due regard must be given to them in an appellant’s arguments.¹⁴⁶ This does not detract from the Federal Court of Appeal correctly recognizing that the focus on an appeal from a judicial review is the underlying administrative decision.¹⁴⁷

2. The Regulations are a reasonable exercise of the GIC’s authority

a. The GIC reasonably formed an opinion that the prohibited firearms are not reasonable for hunting or sporting purposes

68. The GIC’s authority to enact the *Regulations* pursuant to s. 117.15(1) depends on it having formed an opinion that the firearms in question are not reasonable for hunting or sporting purposes

¹⁴¹ *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, [2013 SCC 36](#) at paras [45-47](#) [*Agraira*]; *Horrocks* at paras [10-12](#).

¹⁴² *Horrocks* at para [10](#).

¹⁴³ FCA Decision at paras [52](#), [65](#).

¹⁴⁴ *Eichenberg* factum at paras 35-45.

¹⁴⁵ FCA Decision, at para [25](#); *Bank of Montreal v Canada (Attorney General)*, [2021 FCA 189](#) at para [4](#) [*Bank of Montreal*], leave to appeal to SCC refused [2022 CanLII 26237 \(SCC\)](#); *Kandasamy v Canada (Attorney General)*, [2024 FCA 181](#) at para [7](#); *Sun v Canada (Attorney General)*, [2024 FCA 152](#) at para [4](#) [*Sun*]; *Power Workers’ Union v Canada (Attorney General)*, [2024 FCA 182](#) at para [181](#).

¹⁴⁶ *Bank of Montreal* at para [4](#), leave to appeal to SCC refused [2022 CanLII 26237 \(SCC\)](#); *Patel v Canada (Attorney General)*, [2026 FCA 45](#) at para [3](#) [*Patel*]; *Grewal v Canada (Attorney General)*, [2022 FCA 114](#) para [11](#); *Merck Canada Inc. v Canada (Health)*, [2021 FCA 224](#) at para [2](#).

¹⁴⁷ FCA Decision at para [52](#). See also e.g. *Canada (Attorney General) v Responsible Plastic Use Coalition*, [2026 FCA 17](#) at para [27](#); *Patel* at para [3](#); *Ponomarov v Canada (Attorney General)*, [2026 FCA 50](#) at para [3](#); *Palmer v Canada (Attorney General)*, [2025 FCA 185](#) at para [3](#); *Sun* at para [4](#).

as described in s. 117.15(2). Therefore, prior to reviewing the content of the *Regulations*, the first step is to review whether the GIC’s interpretation of s. 117.15(2) was reasonable, and whether the GIC’s opinion was reasonable in light of that interpretation.

69. The GIC’s reasons, both for forming the opinion required by s. 117.15(2), and for exercising its power under s. 117.15(1), are demonstrated by the *Regulations* themselves and are set out in the RIAS. Formal reasons are not necessary when the GIC promulgates regulations.¹⁴⁸

(i) The GIC’s interpretation of s. 117.15(2)

70. The GIC’s interpretation of the restriction in s. 117.15(2) is evident from the OIC and the RIAS. The GIC recognized s. 117.15(2) acts as a condition precedent. The OIC’s first paragraph references that the GIC “is not of the opinion that any thing [herein] prescribed to be a prohibited firearm . . . is reasonable for use in Canada for hunting or sporting purposes.”¹⁴⁹ This reflects the GIC’s understanding that, before it could exercise its authority in s. 117.15(1), it was required to form an opinion about whether the firearms in question were reasonable for hunting or sporting use.

71. In deciding whether firearms are “reasonable for use in Canada for hunting or sporting purposes,” the GIC interpreted s. 117.15(2) as allowing it to balance competing public policy considerations, consistent with the purposes of the *Criminal Code*. Those considerations included the availability of such firearms for hunting and sporting purposes and public safety risks, including the potential for use in mass shootings.

72. The GIC understood that s. 117.15(2) did not require it to base its opinion on a narrow technical assessment of whether the firearms in question were suitable or effective for hunting or sporting purposes. Where the GIC considers that the public safety risks outweigh the continued availability of the firearms for hunting and sport shooting, then use for those purposes is not reasonable and the GIC is empowered to prohibit them.

73. A close reading of the RIAS shows that in forming its opinion, the GIC considered:

¹⁴⁸ *Auer* at paras [52-54](#).

¹⁴⁹ [May 2020 OIC](#) (AB V1 Tab 4Ai 635).

- “the deadliest mass shootings are commonly perpetrated with assault-style firearms;”¹⁵⁰
- “the Regulations prohibit approximately 1 500 models of assault-style firearms, including current and future variants;”¹⁵¹
- “the newly prescribed firearms are primarily designed for military or paramilitary purposes with the capability of injuring, immobilizing or killing humans in large numbers within a short period of time given the basic characteristics they possess, such as a tactical or military design and capability of holding a quickly reloadable large-capacity magazine;”¹⁵²
- “nine prohibited models of assault-style firearms are prohibited as they (1) have semi-automatic action with sustained rapid-fire capability (tactical/military design with large magazine capacity), (2) are of modern design, and (3) are present in large volumes in the Canadian market;”¹⁵³ and
- “the growing public safety concern that these firearms are not suitable for civilian use as they can and have been used in mass shootings in Canada and internationally.”¹⁵⁴

74. As explained in the RIAS, these considerations led the GIC to conclude that:

- “the fact that these firearms are **sometimes used for hunting or sport shooting** does not supersede the fact that they were built with the intent to be used by the military and are **capable of killing a large number of people in a short period of time**;”¹⁵⁵
- “the significant risk that these firearms pose to the **public’s safety outweighs any justification for their continued use** and availability within Canada given that numerous types of firearms remain available for lawful ownership for hunting or sport shooting purposes;”¹⁵⁶
- “[these firearms’] 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**;”¹⁵⁷
- “[a]ssault-style firearms are not suitable for hunting or sport shooting purposes

¹⁵⁰ RIAS, “[Issues](#)” and “[Background](#)” (AB V1 Tab 4B 691-93).

¹⁵¹ RIAS, “[Issues](#)”, “[Objective](#)”, and “[Description](#)” (AB V1 Tab 4B 691-92, 693-96).

¹⁵² RIAS, “[Background](#)” and “[Description](#)” (AB V1 Tab 4B 692-96).

¹⁵³ RIAS, “[Description](#)” (AB V1 Tab 4B 693-96).

¹⁵⁴ RIAS, “[Issues](#)”, “[Background](#)”, and “[Objective](#)” (AB V1 Tab 4B 691-93).

¹⁵⁵ RIAS, “[Rationale](#)” (AB V1 Tab 4B 701-703).

¹⁵⁶ RIAS, “[Background](#)” (AB V1 Tab 4B 692-93).

¹⁵⁷ RIAS, “[Issues](#)” and “[Background](#)” (AB V1 Tab 4B 691-93).

given the inherent danger that they pose to public safety;”¹⁵⁸ and

- “[d]ue to the public safety concerns posed by these firearms, **they are not reasonable for use** in Canada for hunting or sport shooting purposes.”¹⁵⁹
[emphasis added]

75. The GIC therefore issued the OIC amending the *Regulations*, intending “to reduce the number and availability of assault-style firearms and other firearms that exceed safe civilian use in Canada, and to reduce the possibility of these firearms being diverted to the illegal market.”¹⁶⁰ All of the facts referenced in the GIC’s reasoning are amply supported by contextual evidence in the record before the Court.

(ii) The GIC’s interpretation is reasonable

76. The reasonableness of the GIC’s interpretation of s. 117.15(2), reflected in the reasoning articulated in the RIAS, is evident from a broad and purposive reading of the statutory scheme.

Text of s. 117.15(1) and s. 117.15(2)

77. The language chosen by the legislature in an enabling statute describes the limits and contours of a delegate’s authority.¹⁶¹ Parliament may constrain a delegate’s authority by using precise and narrow language to delineate the power in detail. Alternatively, Parliament may use broad, open-ended or highly-qualitative language, thereby conferring broad authority on the delegate.¹⁶² The text of s. 117.15, both the enabling authority in s. 117.15(1) and the restriction in s. 117.15(2), demonstrates the broad discretion that Parliament afforded the GIC.

78. This discretion is at its broadest in s. 117.15(1), which permits the GIC to “make regulations prescribing anything that by this Part is to be or may be prescribed.” The GIC can prescribe any firearm, weapon, device, or ammunition as prohibited or restricted unless, pursuant to s. 117.15(2), the GIC forms the opinion that it is “reasonable for use in Canada for hunting or sporting purposes.”

¹⁵⁸ RIAS, “[Background](#)” (AB V1 Tab 4B 692-93).

¹⁵⁹ RIAS, “[Rationale](#)” (AB V1 Tab 4B 701-703).

¹⁶⁰ RIAS, “[Objective](#)” (AB V1 Tab 4B 693).

¹⁶¹ *Auer* at para [62](#), citing *Vavilov* at para [110](#).

¹⁶² *Auer* at para [62](#).

79. Significantly, even where Parliament has restricted the GIC’s authority, in s. 117.15(2), it has still left the GIC with broad discretion. Parliament leaves it to the “opinion” of the GIC whether a firearm is “reasonable” for use in Canada for hunting or sporting purposes. As noted by the Federal Court, the language chosen by Parliament to describe the GIC’s authority in s. 117.15(2) is “broad and highly qualitative,” signaling that the GIC “has greater flexibility in interpreting its meaning.”¹⁶³ While there may be different perspectives on the reasonableness of certain firearms for hunting and sport shooting, only the GIC’s perspective matters.¹⁶⁴

80. Nothing in the wording of s. 117.15(2) restricts the GIC to considering the potential use of a firearm for hunting or sport purposes to the exclusion of other valid policy considerations consistent with the purposes of the *Criminal Code*. As noted by the Federal Court, the term “reasonable” in s. 117.15(2) is a “more flexible concept” that is “informed by various factors that depend on the context.”¹⁶⁵ The term “reasonable” permits the GIC to consider matters of public safety in arriving at its opinion and must be interpreted in line with the public safety purpose of the *Criminal Code* to ensure the exercise of discretion pursuant to s.117.15(2) is tied to that purpose.¹⁶⁶ This interpretation aligns with the context, the plain and ordinary meaning interpreted harmoniously with the statutory scheme, the objects of the *Criminal Code*, and Parliament’s intention.¹⁶⁷

81. Parliament did not impose on the GIC a particular procedure to follow in reaching its opinion. It left the GIC with the discretion to determine, in forming its opinion, how to balance competing policy considerations.

82. Furthermore, it is evident from Parliament’s choice of lawmaker, the GIC, that Parliament intended s. 117.15(2) to enable the balancing of public interests, as opposed to enshrining rights for hunters or sport shooters. Significantly, Parliament chose to make the GIC the decision-maker, rather than, for example, a specialized hunting organization or sectoral body. The GIC, the apex executive body, is unique in its ability to assess the public interest and balance varying

¹⁶³ FC Decision at para [301](#).

¹⁶⁴ FC Decision at paras [302-303](#), [377](#).

¹⁶⁵ FC Decision at para [372](#).

¹⁶⁶ *Firearms Reference* at para [37](#).

¹⁶⁷ *Vavilov* at para [117](#).

considerations.¹⁶⁸ The choice of lawmaker reveals the nature of the opinion-forming task envisaged by Parliament.

Legislative history

83. In addition to the text itself and its context, the legislative history of s. 117.15(2) reveals Parliament intended to broaden the GIC’s authority to prescribe firearms, not to narrow it.

84. Prior to 1995, firearms that were “commonly used” for hunting and sport shooting could not be prescribed as prohibited by the GIC. Parliament amended the legislative language in 1977 to allow firearms to be prescribed as restricted (but not prohibited) if the GIC was of the opinion that they were not reasonable for hunting or sport shooting. In 1995, Parliament entirely removed the “common use” restriction. It empowered the GIC to form its own opinion on the reasonableness of use for hunting or sporting purposes when prescribing firearms as both restricted and prohibited.¹⁶⁹ Parliament saw it as necessary for the GIC to be empowered to regulate given some “commonly used” firearms were “totally inappropriate for hunting and sporting purposes in Canada.”¹⁷⁰

85. The full Standing Committee record from 1995 demonstrates that s. 117.15(2) strikes a balance between “proper ownership and use” of firearms for legitimate hunting and sport shooting pursuits, and the public interest in prohibiting firearms which were “not reasonable for use in hunting and sporting purposes.”¹⁷¹ The firearms prohibited in 1995 were described as “paramilitary-type assault weapons, emblematic of military use, designed only for the purpose of combat and killing,” and “totally inappropriate for hunting and sporting purposes”¹⁷² and Minister Allan Rock resisted the Chair’s request to “make it clear” that other specific firearms could never be prohibited in the future.¹⁷³

86. The Appellants emphasize one portion of Minister Rock’s comments and invite the Court

¹⁶⁸ FCA Decision at para [56](#).

¹⁶⁹ FC Decision at para [47](#); Brown Affidavit at paras 63-76, 104-106 (AB V5 Tab 5F.iii 7009-13, 7024-25).

¹⁷⁰ Standing Committee re Bill C-68, 35-1, No. 147 at [1025](#) (Hon Allan Rock).

¹⁷¹ Standing Committee re Bill C-68, 35-1, No. 147 at [1045](#) (Hon Allan Rock).

¹⁷² Standing Committee re Bill C-68, 35-1, No. 147 at [1025](#) (Hon Allan Rock).

¹⁷³ Standing Committee re Bill C-68, 35-1, No. 147 at [1025](#) (The Chair).

to read constraints into s. 117.15(2) which are not in the text.¹⁷⁴ Such an approach is contrary to the principles of statutory interpretation. Comments made by a government minister in committee can assist in interpretation, but they do not drive the meaning. The text enacted by Parliament is the anchor.¹⁷⁵

87. Parliament deliberately chose to empower the GIC to prohibit firearms by regulation, and for the GIC to decide, in its view, whether firearms were reasonable for hunting or sport purposes rather than leaving it to Parliament to prohibit by way of statute.¹⁷⁶ As explained in the statements of then Minister Campbell in 1991, “the fundamental goal of gun control in Canada is to protect the public from firearms violence,” and “attempting to use [statutory powers] to accomplish regulatory controls on firearms would result in a much less responsive and effective gun control system.”¹⁷⁷ Prohibition through subordinate legislation (regulation) created “a better system for all concerned because it allows flexibility and clarity which would not be possible using the statute alone.”¹⁷⁸

Practical implications of interpretation

88. As this Court held in *West Fraser Mills*, courts reviewing administrative decisions are obliged to consider not only the text of the law and how its internal provisions fit together, but also practical justifications, notably “the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground.”¹⁷⁹

¹⁷⁴ Generoux factum at paras 40, 51; CCFR factum at paras 7-9; Doherty factum at paras 79-80; Eichenberg factum at paras 51, 55-56.

¹⁷⁵ *Frank v Canada (Attorney General)*, [2019 SCC 1](#) at paras [130-36](#); *MediaQMI inc v Kamel*, [2021 SCC 23](#) at para [37](#); *R v Brar*, [2024 ONCA 254](#) at paras [77-80](#); *Quebec (Commission des droits de la personne et droits de la jeunesse v Directrice de la protection de la jeunesse du CISSS A*, [2024 SCC 43](#) at para [24](#).

¹⁷⁶ FC Decision at paras [39-48](#).

¹⁷⁷ Brown Affidavit at para 91 (AB V5 Tab 5F.iii 7019), citing to Bill C-17, *an act to amend the Criminal Code and the Customs Tariff*, 2nd reading, *House of Commons Debates*, 34-3, No 1 (June 6, 1991) at [1257](#) (Hon Kim Campbell).

¹⁷⁸ FC Decision at para [44](#); Brown Affidavit at para 90 (AB V5 Tab 5F.iii 7019), citing to Bill C-17, *an act to amend the Criminal Code and the Customs Tariff*, 2nd reading, *House of Commons Debates*, 34-3, No 1 (June 6, 1991) at [1256](#) (Hon Kim Campbell).

¹⁷⁹ *West Fraser Mills Ltd. v British Columbia (Workers' Compensation Appeal Tribunal)*, [2018 SCC 22](#) at para [41](#); *Canada Post Corp. v Canadian Union of Postal Workers*, [2019 SCC 67](#) at para [43](#).

89. The practical implications of the Appellants' interpretation of s. 117.15(2) would be to severely limit the GIC's authority such that firearms regulations would be ineffective. Parliament would be unable to achieve its objective of protecting public safety through GIC regulation if firearms that had previously been used for hunting or sport shooting could not be prohibited by the GIC.

(iii) The GIC's opinion was reasonable

The GIC formed an opinion about whether the firearms were reasonable for hunting or sporting purposes

90. Parliament required the GIC to form an opinion about whether the firearms were reasonable for hunting or sporting purposes in Canada and, contrary to the Appellants' suggestion,¹⁸⁰ both the OIC and the RIAS show that the GIC did form an opinion.

91. As noted by the Federal Court, there is "no reason to doubt" that the GIC formed the required opinion.¹⁸¹ The OIC itself states that the GIC had done so.¹⁸² The RIAS also confirms the GIC formed the necessary opinion, and its rationale. The fact that the Appellants disagree with the GIC's opinion does not negate the fact that the GIC formed it.¹⁸³

The opinion formed by the GIC was reasonable

92. The condition precedent, s. 117.15(2), grants the lawmaker significant flexibility in deciding whether it has been met in that it allows the decision-maker to exercise relatively unconstrained subjective judgment. In that context, most decision-making outcomes will be tenable, and thus reasonable. The elastic design of the condition precedent makes the prospect of judicial intervention unlikely because few opinions will be untenable.¹⁸⁴

93. The GIC acted reasonably in the exercise of its authority, forming its opinion based on the

¹⁸⁰ CCFR factum at para 52; Doherty factum at paras 60, 66; Eichenberg factum at paras 59, 83.

¹⁸¹ FC Decision at para 324.

¹⁸² [May 2020 OIC](#) (AB V1 Tab 4Ai 635).

¹⁸³ *Syncrude Canada Ltd. v Canada (Attorney General)*, [2016 FCA 160](#) at para 98; *Wildlands League v Ontario (Natural Resources and Forestry)*, [2016 ONCA 741](#) at paras 56-58; *Spencer v Canada (Health)*, [2021 FC 621](#) at para 250 [*Spencer*], appeal dismissed for mootness [2023 FCA 8](#).

¹⁸⁴ FCA decision at para 56.

characteristics of the affected firearms and balancing public interest policy considerations that were consistent with the text, context, and purpose of the *Criminal Code*, as expressed in the RIAS. The RIAS provides the reasons why the GIC decided that these firearms were not reasonable for hunting or sport shooting. The heads of families (a) have semi-automatic action with sustained rapid-fire capability (tactical/military design with large magazine capacity), (b) are of modern design, and (c) are present in large volumes in Canada. The RIAS explains the concern that these types of firearms have been used in and increase the severity of mass shootings.

94. In addition to the RIAS, the background and contextual evidence in these proceedings supports the reasonableness of the GIC's opinion. It demonstrates that the firearms in question pose a serious risk to public safety due to: (a) their use in mass shootings in Canada¹⁸⁵ and abroad;¹⁸⁶ (b) their prevalence forcing police to increase firearm power after events that led to officer deaths;¹⁸⁷ (c) the increase in firearm-related violent crime in the last years;¹⁸⁸ (d) the ineffectiveness of existing restrictions on magazine capacity,¹⁸⁹ and (e) the fact that firearms owners have taken advantage of legal loopholes allowing the use of oversized magazines in some assault-style rifles, altered the capacity of the magazine, or illegally acquired larger capacity magazines.¹⁹⁰

95. As the courts below noted, the RIAS specifically observed that other firearms remain available for hunting and sport shooting, and this was a relevant, though not determinative, factor for the GIC to consider.¹⁹¹ Wildlife management laws do not require the use of any of the prohibited firearms, nor do hunter and firearms safety education courses.¹⁹² There are other firearms available that meet the minimum standards for firearm calibre or shot size, as well as ammunition

¹⁸⁵ Koops Affidavit at paras 23, 79-80 (AB V5 Tab 5F.v 7327, 7347-48); Brown Affidavit at para 35 (AB V5 Tab 5F.iii 6989-94).

¹⁸⁶ Koops Affidavit at para 81 (AB V5 Tab 5F.v 7348-49); Brown Affidavit at paras 36-37 (AB V5 Tab 5F.iii 6994-96); Chapman Affidavit at paras 18-24 (AB V5 Tab 5F.vi 7705-7); Klarevas Affidavit at paras 20-28 (AB V5 Tab 5F.iv 7251-59).

¹⁸⁷ Koops Affidavit at paras 31-35 (AB V5 Tab 5F.v 7330-31).

¹⁸⁸ Koops Affidavit at para 36 (AB V5 Tab 5F.v 7331-32); Najma Ahmed transcript dated February 15, 2022 at 180:6-22 (**Ahmed Feb 15 Transcript**) (AB V6 13343).

¹⁸⁹ FC Decision at para [279](#); Brown Affidavit at paras 138-145 (AB V5 Tab 5F.iii 7039-43).

¹⁹⁰ Brown Affidavit at paras 138, 143-144 (AB V5 Tab 5F.iii 7039-40, 7042-43).

¹⁹¹ FC Decision at paras [370](#).

¹⁹² Baldwin Affidavit at paras 12-13 (AB V5 Tab 5F.vii 8007).

prohibitions.¹⁹³

96. Thousands of firearms commonly used in hunting remain available for use in Canada.¹⁹⁴ As attested by Canada's expert witness Chris Baldwin, a provincial wildlife manager experienced in hunting and firearms, alternatives to the prohibited firearms are available, including firearms that can be adapted to suit individualized needs or to assist persons with disabilities.¹⁹⁵ Contrary to the Appellants' suggestion,¹⁹⁶ a wide variety of alternative non-prohibited firearms are available for all kinds of hunting, varmint control, and for protection or defence in encounters with dangerous large wildlife.¹⁹⁷

97. The Appellants also overstate the importance of the prohibited firearms in the overall hunting and sport shooting practice in Canada. The firearms prohibited by the OIC are owned by a small minority of the firearm owners in Canada, estimated at between 3% and 5%.¹⁹⁸ Most current shooting competitions do not require assault-style firearms.¹⁹⁹ Moreover, many of the firearms in the Nine Families were classified as restricted prior to May 2020,²⁰⁰ which meant they could not be used for hunting.²⁰¹

98. It is also noteworthy that the increased use of assault-style semi-automatic firearms is relatively recent. After 2004, following the expiry of the American federal assault weapons ban, gun makers identified assault-style firearms as a growth market. Gun manufacturers and retailers

¹⁹³ Baldwin Affidavit at paras 13-16 (AB V5 Tab 5F.vii 8007-8).

¹⁹⁴ Baldwin Affidavit at paras 12-40, 43 (AB V5 Tab 5F.vii 8007-14); Smith Affidavit at paras 101-105 (AB V5 Tab 5F.ii 6649-50); Brown Affidavit at paras 147-148, 153 (AB V5 Tab 5F.iii 7043-46).

¹⁹⁵ Baldwin Affidavit at para 31 (AB V5 Tab 5F.vii 8011).

¹⁹⁶ CCFR factum at para 54.

¹⁹⁷ Baldwin Affidavit at paras 12, 20-22, 27-29, 31, 34-35, 39-40 (AB V5 Tab 5F.vii 8007, 8009-13).

¹⁹⁸ FC Decision at para [371](#); Smith Affidavit at para 22 (AB V5 Tab 5F.ii 6627).

¹⁹⁹ FC Decision at para [284](#), [363](#); Smith Affidavit at paras 107-115 (AB V5 Tab 5F.ii 6651-53).

²⁰⁰ Of an estimated 150,000 individual firearms affected by the regulations (Smith Affidavit at para 22 (AB V5 Tab 5F.ii 6627)) approximately 90,000 were restricted prior to May 1, 2020 (Smith Nov 5, 2020 Transcript at 610:16-24 (AB V6 9315)); [RIAS](#), [Chart: Previous classification of the newly prohibited firearm models](#) (AB V1 693-96).

²⁰¹ Smith Affidavit at para 102 (AB V5 Tab 5F.ii 6649).

aggressively marketed semi-automatic firearms derived from military designs, including into the Canadian marketplace.²⁰²

99. The availability of other firearms was a valid consideration for the GIC in coming to its opinion on whether continued use of comparatively more dangerous firearms is reasonable. As the Federal Court of Appeal noted, “the fact that other less dangerous firearms remain available was certainly a factor that could legitimately be considered by the GIC in coming to its opinion as to whether the prohibited firearms were reasonable for hunting and sporting.”²⁰³

The GIC formed an opinion on future variants

100. The Appellants’ contention that it is not possible for the GIC to have formed an opinion on future variants is without merit. Future variants of firearms can still be the subject of a present-day GIC opinion. Variants, even future variants, are known to share the lineage of an existing firearm. The GIC identified the characteristics that justified prohibiting the heads of the Nine Families and concluded that those same public safety concerns would extend to any variants of the heads of those families, including future variants. All firearms belonging to those families give rise to distinct public safety concerns and make the firearms, in the GIC’s view, unreasonable for hunting and sport shooting. A yet to be released variant of a firearm will still have the lineage giving rise to the same public safety risks that led to the prohibition of these families of firearms. This does not mean that the GIC purports to prohibit unknown firearms in the abstract. Rather, it prohibits a defined family, some members of which already exist and others of which may emerge later.

Past use of newly prohibited firearms does not render the GIC’s opinion unreasonable

101. The fact that a firearm was not prohibited by regulation in the past does not mean that it has been deemed reasonable for hunting or sport shooting for all time. Subsection 117.15(2) only restricts the prohibition of any firearms if the GIC is of the opinion that they are reasonable for hunting or sporting purposes at the time the OIC is issued. The RIAS specifically acknowledges that some of the newly prohibited firearms may have been used for hunting and sport shooting in the past, but that does not “supersede” the fact the firearms are capable of killing a large number

²⁰² Brown Affidavit at para 32 (AB V5 Tab 5F.iii 6988).

²⁰³ FCA Decision at para [61](#).

of people in a short period of time.²⁰⁴ The Court should reject the Appellants’ suggestion that a firearm cannot be prohibited by the GIC if it has been used previously for hunting or sport shooting.²⁰⁵ That interpretation would negate the authority that Parliament entrusted to the GIC as comprised at any given time. An opinion may necessarily evolve over time as facts and societal attitudes change.

102. The Appellants’ argument also ignores the plain and ordinary meaning of s. 117.15(2) and its legislative history.²⁰⁶ Parliament chose to remove its previous “common use” constraint on the GIC’s power in order to give the GIC more discretion, flexible, and responsive decision-making authority. Firearms that had previously been in common use could now be prohibited so long as the GIC was of the opinion that their use for hunting or sporting was not reasonable.

103. Contrary to the Appellants’ argument, the *Amnesty Order* does not undermine the reasonableness of the GIC’s opinion.²⁰⁷ As noted by the courts below, it allows for persons to make limited use of a prescribed firearm during a transition period for sustenance hunting or to exercise a right recognized and affirmed by s. 35 of the *Constitution Act, 1982*, until they can obtain an alternative non-prohibited firearm for that purpose.

b. The *Regulations* are a reasonable exercise of the GIC’s authority and not a subdelegation

104. Having established that s. 117.15(2) did not prevent the GIC from prescribing the firearms in question, the Court must next assess the content of the *Regulations* themselves. As in *Auer*, this requires the Court to examine whether the GIC reasonably interpreted the scope of its authority under s. 117.15(1) and whether the *Regulations* fall within that scope.

105. The review of the *vires* of the *Regulations* must also assess whether the GIC acted unreasonably and beyond its authority, as alleged by the Appellants, by prescribing unnamed variants and therefore allegedly subdelegating to the RCMP, or whether, as the courts below held,

²⁰⁴ FC Decision at para 366; *RIAS*, “[Background](#)” (AB V1 692-93).

²⁰⁵ Generoux factum at paras 42, 67; CCFR factum at paras 47-48; Doherty factum at paras 19-30, 60, 82.

²⁰⁶ Standing Committee re Bill C-68, 35-1, No. 147 at 0955 (Hon Allan Rock); see also Brown Affidavit at paras 104-107 (AB V5 Tab 5F.iii 7024-25).

²⁰⁷ FC Decision at para 378.

the GIC exercised its own authority to prescribe the unnamed variants as prohibited. As found by the Federal Court of Appeal, this issue was decided at first instance by the Federal Court as a question of mixed fact and law and based on the Federal Court’s own assessment of the evidence.²⁰⁸

(i) The Regulations are a reasonable exercise of the GIC’s authority under s. 117.15(1)

106. If the condition precedent in s. 117.15(2) is met, the focus of analysis shifts to s. 117.15(1) and the content of the *Regulations*. This broad enabling authority empowers the GIC to prescribe firearms for public safety purposes and the range of reasonable outcomes from the GIC’s exercise of that authority will be correspondingly wide.

107. Most of the Appellants’ arguments appear to focus on disputing the reasonableness of the GIC’s *opinion*, an alleged failure by the GIC to comply with s. 117.15(2), rather than a challenge to the content of the *Regulations* themselves. However, to the extent that the Appellants also impugn the *Regulations*’ content, the principles upheld by this Court in *Auer* apply: (1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object; (2) subordinate legislation benefits from a presumption of validity; (3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and (4) a *vires* review does not involve assessing the policy merits of the subordinate legislation.²⁰⁹

108. The reviewing court examines the reasonableness of “the regulation-making authority’s interpretation of its statutory regulation-making power”²¹⁰ and whether its application of that interpretation is reasonable. The court “does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority.”²¹¹ Rather, the court ensures that “the delegate’s exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant

²⁰⁸ FCA Decision at para [77](#); FC Decision at paras [412-457](#).

²⁰⁹ *Auer* at paras [3](#), [33](#).

²¹⁰ *Auer* at para [56](#).

²¹¹ *Auer* at para [65](#).

constraints.”²¹²

109. As outlined in detail above, the GIC considered the public safety risks of allowing assault-style firearms, used in the deadliest mass shootings, to continue to be lawfully possessed and available in Canada. The fact that, as the Appellants point out, all firearms are dangerous, does not make it unreasonable for the GIC to prohibit some but not all firearms.

110. Furthermore, the GIC’s decision to prohibit unnamed variants was not unreasonable. The GIC interpreted its authority as including the ability to prescribe variants of the named heads of family, something it has done since 1992.²¹³ This interpretation is reasonable in light of the text, context, and purpose of s. 117.15(1). Prohibiting only the heads of the nine families would have allowed hundreds of other firearms belonging to the same family to evade regulation. It was therefore reasonable to prohibit all variants.

111. The enabling provision leaves the GIC a wide scope to determine how to identify a prescribed firearm. It was reasonable for the GIC to prohibit based on (i) the make and model of firearms, as it has done with firearms named in the *Regulations*, (ii) other means of reference such as to “any variants or modified versions” of named makes and models, or (iii) by characteristic, such as bore diameter and muzzle velocity. These are permissible modes of prohibition, employed by decades of firearms regulation in Canada, and subject only to constitutional requirements.

112. As noted above, the practical implications of an interpretation can be taken into account in assessing its reasonableness. The regulatory structure is intended to remove all of the Nine Families from circulation and prevent simple workarounds that would undermine its goals. If s. 117.15(1) did not authorize the GIC to prohibit unnamed and future variants of a head of family named in the *Regulations*, manufacturers could avoid regulation by producing variants with small non-material changes to create a “new” firearm that shared all the characteristics of the prohibited model or by simply renaming a firearm.²¹⁴ Similarly, they could create variations based on a

²¹² *Auer* at para 65.

²¹³ Smith Affidavit at para 31 (AB V5 Tab 5F.ii 6629); Brown Affidavit at paras 94-95, (AB V5 Tab 5F.iii 7020-21).

²¹⁴ See e.g. Koops Affidavit at para 92 (AB V5 Tab 5F.v 7352); Brown Affidavit at para 74 (AB V5 Tab 5F.iii 7012), citing to Standing Committee re Justice and Legal Affairs, 30-2, No. 14-25 at [22:21-22:22](#) (Hon Ron Basford).

prohibited head of family, removing one or more of its characteristics, that could be easily altered back to the original. *Regulations* would be unable to keep up. That would defeat Parliament's objective to protect the public through regulations as "a better system for all concerned" than would be possible "using the statute alone."²¹⁵

113. The regulatory role that Parliament intended for the GIC can only be achieved if the GIC can prevent loopholes by prohibiting expressly named makes and models as well as their unnamed and future variants. The inclusion of unnamed and future variants prevents circumvention of the *Regulations* through renaming, minor redesign or incremental modification of already prohibited families. The practical justification for regulating firearms through broad regulatory discretion, rather than statute, is strong: without it, the efficacy of gun control would be significantly compromised or ineffective.

(ii) There is no subdelegation

114. In prohibiting unnamed variants, the GIC did not subdelegate its authority. The fact that questions may arise as to whether a particular firearm falls within the parameters set out by the GIC does not mean the GIC failed to perform the task delegated to it.

115. The Federal Court, in deciding this question as the decision-maker of first instance, made no palpable and overriding error in its finding of mixed fact and law that the GIC did not subdelegate its prescribing authority to the RCMP by using the term "variants or modified versions" in the *Regulations*.²¹⁶ Nor did the Court err in its findings of fact on the evidence regarding the nature and use of the FRT.

116. Unauthorized subdelegation of legal authority results when a task is performed by someone other than the person or body intended by the legislator. As observed by Macaulay, Sprague and Sossin:

The question in any subdelegation case is not whether or not someone other than the original delegate has been given a role to perform in whatever scheme is

²¹⁵ Brown Affidavit at paras 90-91 (AB V5 Tab 5F.iii 7019), citing Bill C-17, *an act to amend the Criminal Code and the Customs Tariff*, 2nd reading, *House of Commons Debates*, 34-3, No 1 (June 6, 1991) at [1256](#) (Hon Kim Campbell).

²¹⁶ FCA Decision at paras [66-77](#); FC Decision at paras [416-440](#).

established by the original delegate. **The question is whether or not the delegate has performed the task for which Parliament had originally granted it authority.** [Emphasis added]²¹⁷

117. There is no issue of subdelegation in this case because the GIC performed the task entrusted to it. The GIC did not delegate any of its legislative power to the RCMP and nothing in the OIC purports to do so. The GIC formed its own opinion about the reasonableness for hunting and sporting use of the firearms it sought to prohibit, including all variants of those firearms. Having formed the necessary opinion, the GIC then exercised its authority to prohibit the firearms. The GIC itself prohibited all variants both named and unnamed, current and future. The source of the prohibition of variants is the *Regulations*, not the FRT.²¹⁸

118. The Federal Court of Appeal has accepted that similar types of opinions by government officials do not amount to a subdelegation by the GIC. In *Actton Transport Ltd.*, the debate centered around the *Motor Vehicle Operators Hours of Work Regulations* definition of a “city motor vehicle operator.”²¹⁹ The GIC used the term “prevailing industry practice” in the regulations to describe who fell within the definition, which required that departmental officials determine the “prevailing industry practice” in a particular area. The Federal Court of Appeal found that this did not amount to improper subdelegation. The GIC did not have to further articulate this term in the regulation because it could be factually established. Officials determined the content of the prevailing industry standard in a given area, which was a question of fact, not a subdelegation.²²⁰

119. The structure of the regulation in *Actton* is similar to the *Regulations* in this case. Both list specific criteria but also include terminology that is subject to application by officials that can, in turn, be challenged in court (in one case, the “prevailing industry practice” and, in the present matter, “any variants or modified versions”).²²¹

²¹⁷ Robert W. Macaulay, James L.H. Sprague and Lorne Sossin, *Practice and Procedure before Administrative Tribunals*, loose-leaf ed. (Toronto, ON: Thomson Reuters Canada Ltd., 2018) at § 7:19 (RBOA Tab 3).

²¹⁸ FCA Decision at paras [66-67](#).

²¹⁹ *Actton Transport Ltd. v Canada (Minister of Labour)*, [2004 FCA 182](#) at paras [5-12](#)

²²⁰ *Actton* at paras [20](#), [25-27](#).

²²¹ *Actton* at paras [25](#). See also *Calder v Canada (Employment and Immigration)*, [1979 CanLII 4037 \(FCTAD\)](#), [1980] 1 FC 842 at [850-52](#); *Wood v Board of Registration of Nursing Assistants (N.S.) et al.*, [1988 CanLII 5729 \(NS CA\)](#), 51 DLR (4th) 625 at paras [12-15](#).

120. “Absolute precision in the law exists rarely, if at all.”²²² The fact that a regulation may require fact-finding and interpretation by officials to apply or enforce it does not render it an unlawful subdelegation. What is required, as the Quebec Court of Appeal recently held, is that a regulatory norm not be so imprecise as to jeopardize its application in the sense of providing unlimited discretion on the administrative officials responsible for its application.²²³

121. Similarly, as explained by Paul Salembier, rules or standards with *some* inherent uncertainty do not amount to unauthorized subdelegation if the expression used in the regulations delimits: (a) a core meaning generally accepted by the public at large; (b) a meaning generally accepted within the regulated industry; or (c) requires only “fact-judgment” discretion defined as “the judgment necessary to ascertain that an observed set of facts meets (or fails to meet) the requirements of an established rule.”²²⁴ Accordingly, the only decision-making left for enforcement officials is confined to assessing whether a set of facts, criteria, or circumstances fall within the parameters already set out in regulations.²²⁵

122. In the present case, the question of whether a particular firearm is an unnamed variant prohibited by the *Regulations* is an exercise of fact-finding and statutory interpretation. The fact-finding involves assessing the characteristics of a firearm and its lineage. The statutory interpretation involves looking to the regulatory text, context, and purpose as to whether the firearm is a variant. Neither of these exercises connotes a subdelegation.

The FRT is an interpretive aid only, it does not determine rights

123. The FRT is not determinative of a firearm’s classification, nor does it legally bind judges, law enforcement officers, or administrative decision-makers under the *Firearms Act*.²²⁶ Rather, it is “a guide that is related to the implementation of the law, but...the law would be implemented regardless of the FRT.”²²⁷

²²² *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), [1989] 1 SCR 927 at [983](#).

²²³ *Commission des normes, de l'équité, de la santé et de la sécurité du travail c Association des entrepreneurs spécialisés en procédé industriel du Québec*, [2025 QCCA 587](#) at paras [85-86](#).

²²⁴ J. Paul Salembier, *Regulatory Law and Practice*, 3rd ed, looseleaf (Toronto, ON: LexisNexis Canada, 2021) at Part II, Ch 8, VII “Subdelegation and Vagueness” (RBOA Tab 4).

²²⁵ FCA Decision at para [69](#).

²²⁶ FCA Decision at para [71](#); FC Decision at paras [422-440](#).

²²⁷ FC Decision at para [433](#); FCA Decision at para [71](#).

124. The RCMP's technical assessments in the FRT are not a subdelegation of the GIC's authority. The RCMP does not exercise legislative authority on behalf of the GIC because the FRT itself has no legal force. The FRT contains technical opinions that assist decision-makers in applying the *Regulations* to particular firearms. The Federal Court made no palpable and overriding error in finding that the FRT is a database and administrative resource that is best characterized as an "interpretive aid" for the application of the *Regulations*, a finding upheld by the Court of Appeal.²²⁸

Courts determine whether a firearm is prohibited as an unnamed variant

125. Law enforcement's use of the FRT as a reference tool in determining whether to lay firearms-related criminal charges does not make the FRT legally binding nor does it determine rights or interests.²²⁹ As noted by Federal Court of Appeal, "[a]t the end of the day, the onus always remains on the Crown to prove every element of a criminal offence, including that the firearm at issue is prohibited."²³⁰ The ultimate assessment is left to the courts to decide, if necessary. If the FRT ceased to exist, there would be no legal consequences because the *Criminal Code* and its regulations would still prohibit these firearms and their variants.²³¹ Notably, the use of the term "variant" pre-dates the existence of the FRT and was used in regulations prohibiting firearms since 1992.²³²

126. Relying on the *Henderson* decision as an example, both lower courts correctly held that the courts make the ultimate determination of whether a particular firearm is a prohibited variant.²³³ *Henderson* is particularly useful because it dealt with whether a firearm listed in the FRT as an unnamed variant was indeed an unnamed variant. The Ontario Court of Appeal demonstrated how a court can assess what constitutes a prohibited unnamed variant without resort to the FRT. Based on evidence that the alleged unnamed variant at issue was the same firearm as a named variant but

²²⁸ FC Decision at para [433](#); FCA Decision at paras [70-73](#).

²²⁹ *Contra* Eichenberg factum at paras 90 and 98.

²³⁰ FCA Decision at para [71](#); see also *Criminal Code*, s [117.13\(1\)](#).

²³¹ FC Decision at para [433](#), [440](#).

²³² *Prohibited Weapons Order; No. 11*, [SOR/92-465](#), s [3-4](#), Brown Affidavit at App A11 (AB Vol 5 Tab 5F.iii 7124-28); *Prohibited Weapons Order; No. 12*, [SOR/92-466](#), s [2-3](#), Brown Affidavit at App A12 (AB Vol 5 Tab 5F.iii 7129-30); FC Decision at para [557](#).

²³³ FCA Decision at paras [74-75](#); FC Decision at paras [434-38](#).

under a different trade name,²³⁴ the Court held:

This Order-in-Council prescribes in its Schedule firearms that are prohibited for the purposes of the Criminal Code. Section 64 of the Schedule prescribes the AK-47 rifle and “any variant or modified version of it”, including the Mitchell AK-22. In other words, the Governor General in Council has declared the AK-22 to be a variant of the AK-47. If, as is clear, the legislative intent is that the AK-22 is a variant of the AK-47, the same must be true of a weapon which is the same as the AK-22, namely, the AP80. The correct interpretation of the Order-in-Council is therefore that the AP80 is a variant of the AK-47. In finding otherwise, the Provincial Court erred in law.²³⁵

127. Likewise, in *Christensen*, the British Columbia Provincial Court considered expert evidence and the text of the regulations to determine whether the firearm before it was a variant.²³⁶ The *Bako* decision relied on by the Eichenberg Appellants to suggest that the FRT has binding effect does not stand for that proposition. The accused in that case *consented* to reliance on the FRT.²³⁷ Taken together, *Henderson* and *Christensen* illustrate that the term “variant” has been workable in practice: courts can and do apply it using ordinary tools of statutory interpretation and evidence.

No transformation of authority, no discretionary power

128. The subdelegation cases relied on by the Eichenberg Appellants are distinguishable.²³⁸ *Brent*, *Brant Dairy*, and *Canadian Institute* involved impermissible subdelegation because the delegated decision-maker simply repeated the empowering language from the enabling statute.²³⁹ Instead of exercising its delegated authority to make binding prospective rules, the regulation-maker “transformed” its authority by creating a discretionary power exercised on a case-by-case basis, which constituted an unauthorized subdelegation to itself (*Brant Dairy* and *Canadian Institute*) or to a different decision-maker (*Brent*).

²³⁴ *Henderson v Canada (Attorney General)*, [2011 ONCA 696](#) at para 18 [*Henderson*].

²³⁵ *Henderson* at para 46.

²³⁶ *R v Christensen*, [2012 BCPC 210](#) at paras 25-27 [*Christensen*].

²³⁷ Eichenberg factum at para 91, citing *R. v Bako*, [2016 SKPC 83](#) at para 79; see also FC Decision at 439.

²³⁸ Eichenberg factum at paras 81-82.

²³⁹ *Attorney General of Canada v Brent*, [1956 CanLII 5 \(SCC\)](#), [1956] SCR 318 at 320 [*Brent*]; *Brant Dairy Co. v Milk Commission of Ontario*, [1972 CanLII 11 \(SCC\)](#), [1973] SCR 131 at 146-47, 150-51 [*Brant Dairy*]; *Canadian Institute of Public Real Estate Companies v Toronto*, [1979 CanLII 30 \(SCC\)](#), [1979] 2 SCR 2 at 8-9 [*Canadian Institute*].

129. In contrast, in the present case, the GIC did not repeat language from the enabling authority, did not transform its authority, and did not create discretionary powers. The GIC did not delegate to another official the authority to decide *what* to prohibit. The GIC described the makes and models or characteristics of the firearms it was prohibiting, including that it was prohibiting variants. The only question for officials or others applying the *Regulations* is a factual determination of *whether* a particular firearm falls within the regulatory prohibition, not a determination of what firearms *ought* to be prohibited.

130. Furthermore, while the jurisprudence shows that some discretionary component in applying regulations does not constitute subdelegation,²⁴⁰ in this case, the question of whether a particular firearm is an unnamed variant is not an exercise of discretion at all.²⁴¹ It is a question of fact, even if it takes an expert to determine. The fact that no discretion is involved in applying the *Regulations* reinforces that there is no subdelegation. While a discretionary component would not be fatal, its absence further demonstrates that the GIC completed the exercise of its authority.

131. The Eichenberg Appellants’ reliance on the concept of “binding policies” in other contexts does not apply here.²⁴² The issues of whether a policy infringes a *Charter* right (*Greater Vancouver*) or fetters discretion (*Maple Lodge Farms*) raise fundamentally different legal questions than whether there is unauthorized subdelegation.²⁴³

Application of the Regulations over unnamed variants is not immune from review

132. Contrary to the Appellants’ assertion,²⁴⁴ the RCMP’s assessment of unnamed variants listed in the FRT can be challenged in administrative or civil contexts, not just when an individual is charged with a criminal offence. For instance, as the courts below noted, the classification of a firearm in the FRT is neither “the final say,” nor a binding decision without any meaningful

²⁴⁰ See e.g. Patrice Garant, avec la collaboration de Philippe Garant et de Jérôme Garant, *Droit administratif*, 7e éd (Montréal, QC : Yvon Blais, 2017) at IV.4.2 (RBOA Tab 5).

²⁴¹ Smith Oct 30 Transcript at 314:25-315:14 (AB V6 Tab 6B AB8993).

²⁴² Eichenberg factum at para 97.

²⁴³ *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component*, [2009 SCC 31](#); *Maple Lodge Farms v Government of Canada*, [1982 CanLII 24 \(SCC\)](#), [1982] 2 SCR 2.

²⁴⁴ Generoux factum at para 158; CCFR factum at para 75.

recourse for firearm owners.²⁴⁵ The SFSS will reconsider their assessment of a firearm's classification in the FRT where a firearms owner or business makes a request and provides a rationale and supporting material.²⁴⁶ And where the FRT's assessment of a firearm as a prohibited unnamed variant is relied on by officials,²⁴⁷ e.g. for registration and licensing purposes under the *Firearms Act* or by customs decision-makers, to make a legally binding determination, those decisions are also subject to judicial review.²⁴⁸

3. The Regulations do not violate the Charter or Canadian Bill of Rights

133. The Appellants fail to raise any error in law or mixed fact and law in the lower courts' *Charter* analysis. They also do not identify any palpable and overriding error in the Federal Court's findings of adjudicative, social, or legislative facts related to the *Charter* analysis that would warrant this Court's intervention.²⁴⁹ The Federal Court of Appeal properly upheld and applied the Federal Court's thorough review of the evidence and factual determinations, notably on the use and understanding of the term variant.²⁵⁰ In particular, a high degree of deference is owed to the Federal Court's preference of the evidence of Canada's expert Murray Smith as more credible and persuasive than the Appellants' experts and affiants.²⁵¹

a. The Regulations do not violate section 7 of the Charter

134. The Federal Court of Appeal correctly held that the *Regulations* do not infringe s. 7 of the *Charter* because they are consistent with the principles of fundamental justice.²⁵² The *Regulations*

²⁴⁵ FCA Decision at para [76](#); FC Decision at paras [449-451](#).

²⁴⁶ FC Decision at paras [449-451](#) and Annex B "Selected evidence of Murray Smith – FRT Quality Assurance"; FCA Decision at para [76](#); Smith Affidavit at para 17 and Ex C (AB V5 Tab 5F.ii 6626, 6677-82); Smith Oct 30 Transcript at 318:11-322:22 (AB V6 Tab 6B 8997-9001).

²⁴⁷ See e.g. Affidavit of Rick Timmins, sworn November 10, 2020 Ex A (AB V3 Tab 5C.xiii 3335-37).

²⁴⁸ FCA Decision at para [76](#); see e.g. *Filippi v Canada (AG)*, [2021 ABPC 234](#) at paras [24-25](#); and in another context, *Rocheleau v Alberta (Chief Firearms Officer)*, [2023 ABCJ 124](#) at para [61](#), see also paras [56-58](#).

²⁴⁹ *Bedford* at paras [48-56](#).

²⁵⁰ FCA Decision at paras [83-84](#); FC Decision at paras [532-552](#).

²⁵¹ FCA Decision at paras [84](#), [88](#); FC Decision at paras [532-552](#), [560-581](#); *Harwood* at para [13](#).

²⁵² FCA Decision at paras [78-93](#).

are not vague, arbitrary, or overbroad.²⁵³

135. Section 7 involves a two-step inquiry: (1) whether there has been a deprivation of life, liberty or security of the person; and (2) whether the deprivation is in accordance with the principles of fundamental justice.²⁵⁴ The burden is on the Appellants to establish that the alleged deprivation is not in accordance with the principles of fundamental justice.²⁵⁵

136. Canada agrees that the right to liberty is engaged, as a firearms owner who does not comply with the *Regulations* could face charges for possession of a prohibited firearm and the consequences that ensue.²⁵⁶ The only remaining question is whether this potential deprivation of liberty is in accordance with the principles of fundamental justice.

(i) The Regulations are not impermissibly vague

137. The Federal Court of Appeal correctly concluded that the *Regulations* are intelligible and sufficiently delineate the scope of the prohibited conduct, or the “area of risk,” for those subject to its sanctions and to those responsible for its enforcement.²⁵⁷

138. The threshold for finding unconstitutional vagueness is high. As this Court held in *Winko*:

Laws must of necessity cover a variety of situations. Given the infinite variability of conduct, it is impossible to draft laws that precisely foresee each case that might arise. It is the task of judges, aided by precedent and considerations like the text and purpose of a statute, to interpret laws of general application and decide whether they apply to the facts before the court in a particular case. This process is not in breach of the principles of fundamental justice; rather, it is in the best tradition of our system of justice.²⁵⁸

139. There are two rationales for the doctrine of vagueness: (1) fair notice, being an understanding that certain conduct is the subject of legal restrictions; and (2) the limitation of law

²⁵³ FCA Decision at paras [78-93](#).

²⁵⁴ *R v Ndhlovu*, [2022 SCC 38](#) at para [49](#) [*Ndhlovu*]; *Bedford* at para [57](#).

²⁵⁵ *Ndhlovu* at paras [163](#), [172](#); *Bedford* at para [127](#).

²⁵⁶ FC Decision at para [526](#).

²⁵⁷ FCA Decision at para [82](#); *R v Nova Scotia Pharmaceutical Society*, [1992 CanLII 72 \(SCC\)](#), [1992] 2 SCR 606 at [609](#), [638-639](#) [*Nova Scotia Pharmaceutical*]; *R v Levkovic*, [2013 SCC 25](#) at paras [10](#), [37](#) [*Levkovic*].

²⁵⁸ *Winko v British Columbia (Forensic Psychiatric Institute)*, [1999 CanLII 694 \(SCC\)](#), [1999] 2 SCR 625 at para [67](#) [*Winko*].

enforcement discretion.²⁵⁹ Vagueness offends the principles of fundamental justice where the law, considered in its full interpretative context, is so unintelligible and lacking in precision that it does not provide sufficient guidance for legal debate as to the scope of prohibited conduct or of an “area of risk.”²⁶⁰ Factors to be considered include “(a) the need for flexibility and the interpretative role of the courts, (b) the impossibility of achieving absolute certainty, a standard of intelligibility being more appropriate[,] and (c) the possibility that many varying judicial interpretations of a given disposition may exist and perhaps coexist.”²⁶¹

140. For the first rationale, fair notice, this Court has confirmed that certainty is not required: an enactment need only enunciate *some* boundaries to create an area of risk, it need not *predict* or *direct* the legal consequences of any given course of conduct in advance.²⁶² Individuals are then “expected to refrain from conduct that tests the boundaries of criminal law lest they bear the consequences of the risk they have knowingly assumed.”²⁶³ While extrinsic information, including expert evidence, may be necessary to determine whether an act is unlawful, that is not necessarily fatal to the constitutionality of a provision (e.g. a breathalyzer to know if an individual is over the legal limit for driving, or expert medical evidence to know if an accused’s conduct caused a victim’s death).²⁶⁴

141. For the second rationale, limitation of discretion, a statute cannot be so pervasively vague that it permits a “standardless sweep” or would allow law enforcement officials “to pursue their personal predilections.”²⁶⁵ A “standardless sweep” arises where a provision gives unfettered discretion to the court or enforcement officials;²⁶⁶ in other words, the provision fails to give direction as to how to exercise the discretion.²⁶⁷ However, as this Court affirmed in *Morales*, a

²⁵⁹ *Nova Scotia Pharmaceutical* at [626-27](#), [632-36](#); *R v Morales*, [1992 CanLII 53 \(SCC\)](#), [1992] 3 SCR 711 at [728](#) [*Morales*]; *Levkovic* at paras [10](#), [32](#).

²⁶⁰ FCA Decision at para [82](#); *Nova Scotia Pharmaceutical* at [626-627](#), [643](#); *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, [2004 SCC 4](#) at para [15](#) [*Canadian Foundation for Children*]; *Levkovic* at para [37](#).

²⁶¹ *Nova Scotia Pharmaceutical* at [627](#).

²⁶² *Nova Scotia Pharmaceutical* at [638-640](#).

²⁶³ *Levkovic* at para [35](#), citing *Canadian Foundation for Children* at para [42](#).

²⁶⁴ *Levkovic* at para [72](#).

²⁶⁵ *Morales* at [728](#).

²⁶⁶ *Morales* at [729-730](#).

²⁶⁷ *Morales* at [732](#), citing *Nova Scotia Pharmaceutical* at [642](#).

provision does not violate the doctrine of vagueness simply because it is subject to interpretation by officials or the judiciary.²⁶⁸

142. Once a “minimal intelligible standard” has been met, any further arguments as to the precision of the enactment should be considered under the related concept of overbreadth under s. 7, or under the minimal impairment stage of the s. 1 *Charter* analysis.²⁶⁹

Notice of six clear “areas of risk” and no unfettered discretion

143. The Federal Court of Appeal correctly upheld the Federal Court’s assessment of the “full interpretive context”²⁷⁰ of the *Regulations* to conclude that the prohibition of “variants or modified versions” does not render the *Regulations* impermissibly vague.²⁷¹ Firearms owners and those that sell firearms have been put on fair notice of the six “areas of risk” of prohibited conduct in the *Regulations*: (1) Nine Families; (2) named variants of the heads of those families; (3) unnamed variants of the heads of those families; (4) bore diameter; (5) muzzle energy; and (6) upper receivers. None of these areas of risk provide unfettered discretion to enforcement officials or the courts.

144. First and second areas of risk: The makes and models of the heads of the Nine Families and their named variants are expressly listed in the *Regulations*, thus posing no confusion about the zone of risk. The precision and intelligibility are apparent on the face of the listing.

145. Third area of risk: While the smaller subset of unnamed variants of the heads of Nine Families are not expressly listed by name, the Federal Court of Appeal correctly held that it was possible to discern this zone of risk because: (a) the vast majority of variants are identified and marketed as such by manufacturers; (b) the term is well understood in firearms industry and gun literature; and (c) the language of the *Regulations* itself and sheer number of firearms identified as named variants assists in interpreting what may be an unnamed variant.²⁷² These contextual factors

²⁶⁸ *Morales* at [729](#).

²⁶⁹ *Levkovic* at para [39](#); *Nova Scotia Pharmaceutical* at [627](#), [643](#).

²⁷⁰ *Levkovic* at paras [47-48](#).

²⁷¹ FCA Decision at para [82](#), citing FC Decision at paras [524-90](#).

²⁷² FCA Decision at para [83](#); Smith Affidavit at paras 23-25, 36-39, 44-47 and Ex E, G, H and J (AB V5 Tab 5F.ii 6627-28, 6630-32, 6633-34, 6701-3, 6716-6728, 6741-44); Smith Oct 30

provide intelligible boundaries to assess the zone of risk.

146. Furthermore, the term “variant” is not a new concept and has been in the predecessor regulations since 1992, with limited jurisprudence regarding its meaning, demonstrating that “common sense and common understanding have been workable.”²⁷³ If firearms owners are still in any doubt, they have a range of resources for guidance: the FRT (available online), the Canadian Firearms Program’s Call Centre, and the firearm’s retailer and manufacturer.²⁷⁴ These resources help narrow the area of uncertainty and, where introduced into evidence, can provide guidance to inform any judicial consideration.²⁷⁵

147. Criminal laws are no longer strictly construed to resolve any uncertainty as to the meaning in favour of the accused.²⁷⁶ The courts now aim for a neutral interpretation, having regard to “fair, large and liberal construction and interpretation,” ensuring the intention and goals of Parliament are reflected and compatible with the meaning.²⁷⁷ Only when attempts at a neutral interpretation still leave doubt as to the meaning or scope of the text does the rule of strict interpretation apply, as a principle of last resort.²⁷⁸ Just as this Court held in *Hasselwander*, here, there is no need to resort to the rule of strict construction because any uncertainty is resolved by employing a textual, contextual, and purposive approach.²⁷⁹ This Court’s observations in *Hasselwander* are equally applicable here: “It is because of [automatic weapons’] lethal potential that the definition ... requires a reasonable interpretation based upon the wording of the section and the aim or purpose of the legislation.”²⁸⁰

148. In context-specific subjects aimed at particular purposes, like the regulatory language at

Transcript at 185:7-186:2; 188:1-4; 189:11-21, 191:13-192:2 (AB V6 Tab 6B 8864-65, 8867, 8868, 8870-71).

²⁷³ FC Decision at paras [534](#), [546](#).

²⁷⁴ FCA Decision at para [85](#); FC Decision at paras [541-542](#), [549](#); Smith Affidavit at para 16 (AB V5 Tab 5F.ii 6625-26); Murray Smith transcript dated January 19, 2022 at 13:7-14:17 (**Smith Jan 19 Transcript**) (AB V6 Tab 6D 9799-800).

²⁷⁵ FCA Decision at para [85](#).

²⁷⁶ *R v Hasselwander* [1993 CanLII 90 \(SCC\)](#), [1993] 2 SCR 398 at [411-13](#) [*Hasselwander*].

²⁷⁷ *Hasselwander* at [413-14](#); *Interpretation Act*, [RSC 1985, c I-21](#), s [12](#).

²⁷⁸ *Hasselwander* at [413](#); *R v Jaw*, [2009 SCC 42](#) at para [38](#).

²⁷⁹ *Hasselwander* at [414-15](#).

²⁸⁰ *Hasselwander* at [417](#).

issue in this case, courts look to the ordinary meaning of the words used.²⁸¹ The text of the *Regulations* follows this formulation in English: “[named gun], and any variant or modified version of it, including” And in French: “[arme à feu nommée], ainsi que l’arme à feu du même modèle qui comporte des variantes ou qui a subi des modifications, y compris” The ordinary meaning of the words “variants or modified versions” is what “would be understood by a competent language user upon reading the words in their immediate context ... affected by the sentences coming immediately before or after.”²⁸² The ordinary meaning describes “shared linguistic conventions” and facts, assumptions, and values that contribute to the “common sense” of a community.²⁸³ While dictionary meanings can assist courts by suggesting the outer limits of a plausible interpretation, the ordinary meanings are preferred because they are rooted in the particular context in which the words appear.²⁸⁴

149. Here, the ordinary meanings were established through the evidentiary record, as understood in the firearms industry and the gun literature, and as explained by expert Murray Smith, Forensic Scientist Firearms Consultant with the Canadian Firearms Program.²⁸⁵ In the firearms context, the ordinary meaning of “variant” is “a firearm whose design was derived from an original firearm” (having regard to design, manufacturer’s description, patents, interchangeability of parts, and purpose).²⁸⁶

150. The *Henderson* and *Christensen* decisions, already discussed above, exemplify how courts have assessed what constitutes a prohibited unnamed variant by reference to a named variant in the *Regulations*, supported by factual evidence comparing the two firearms.²⁸⁷ This is precisely

²⁸¹ Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto, ON: Irwin Law Inc., 2016) at 61 (RBOA Tab 6) [Sullivan].

²⁸² Sullivan at 61 (RBOA Tab 6).

²⁸³ Sullivan at 61-62 (RBOA Tab 6).

²⁸⁴ Sullivan at 62, 66 (RBOA Tab 6); *Thomson v Canada (Deputy Minister of Agriculture)*, 1992 CanLII 121 (SCC), [1992] 1 SCR 385 at 399-400; *Hasselwander* at 415-16.

²⁸⁵ Smith Affidavit at paras 31-50, (AB V5 Tab 5F.ii at 6629-35); Smith Oct 29 Transcript at 98:4-99:25, 107:1-21, 111:24-112:5; 113:22-114:13 (AB V6 Tab 6A 8719-20, 8728, 8732-33, 8734-35); Smith Oct 30 Transcript at 185:7-186:2; 188:1-4; 189:11-21, 191:13-192:2 (AB V6 Tab 6B 8864-65, 8867, 8868, 8870-71).

²⁸⁶ Smith Affidavit at paras 32, 49-50 (AB V5 Tab 5F.ii 6629, 6635); Smith Oct 30 Transcript at 185:7-186:2; 188:15-23; 207:1-218:10; 312:1-23; 313:17-314:7 (AB V6 Tab 6B 8864-65, 8867, 8886-97, 8991, 8992-93).

²⁸⁷ *Henderson* at paras 18, 46; *Christensen* at paras 25-27.

the type of interpretive exercise and adjudication approved by this Court in *Nova Scotia Pharmaceutical*, *Winko*, and *Levkovic*, assisted by the statutory text, context, purpose, and evidence. It is not comparable to the “standardless sweep” that this Court criticized in *Morales*, where the term “public interest” in the context of pre-trial detention had not been given a constant or settled meaning by the courts, and was therefore incapable of framing the legal debate.²⁸⁸ Here, the requisite “boundaries” for enforcement officials and courts,²⁸⁹ when interpreting “variants or modified versions,” are achieved by considering the term in the context of the rest of the statutory provision in which it is found: an enumerated list of prohibited firearms.

151. Similarly, the Ontario Court of Appeal’s decision in *Cochrane* illustrates how an enumerated list of referents, followed by a non-exhaustive “substantially similar” phrase, sufficiently delineates an area of risk and provides a basis for intelligible debate and interpretation.²⁹⁰ The legislation at issue defined “pit bull” as three specific breeds and as a “dog that has an appearance and physical characteristics that are substantially similar” to those breeds.²⁹¹ The Court held that the well-defined core definition (the three named breeds) had defined physical characteristics accepted by kennel clubs and dog breeder associations, and that it provided a point of reference to capture the broader non-enumerated class.²⁹² This construction is almost identical to that in the *Regulations*, and was determined not to be unconstitutionally vague.

152. The zones of risk and boundaries achieved by the *Regulations* are more specific than the general language held by this Court not to be unconstitutionally vague in criminal contexts, such as “significant threat to the safety of the public” in *Winko* or “reasonable under the circumstances” in *Canadian Foundation for Children*.²⁹³

153. Fourth, fifth, and sixth areas of risk: The Appellants asserted in the courts below that the references to bore diameter and muzzle energy were vague but, as noted above, no longer advance those arguments before this Court. Accordingly, the lower court findings that these characteristics

²⁸⁸ *Morales* at [732](#).

²⁸⁹ *Nova Scotia Pharmaceutical* at [638](#).

²⁹⁰ *Cochrane v Ontario (Attorney General)*, [2008 ONCA 718](#) at para [41](#), leave to appeal to SCC refused [2009 CanLII 30411 \(SCC\)](#) [*Cochrane*].

²⁹¹ *Cochrane* at paras [8-9](#).

²⁹² *Cochrane* at para [41](#).

²⁹³ *Winko* at para [68](#); *Canadian Foundation for Children* at paras [2](#), [26-44](#).

were readily and easily knowable should stand.²⁹⁴ The Appellants have never taken issue with the prohibition on certain upper receivers and do not do so before this Court.

Flexible statutory language chosen by the GIC to support public safety goals

154. The Federal Court of Appeal correctly noted the need for flexibility in legislative language, especially in complex regulatory regimes where technology evolves rapidly or there is a need to adapt to constantly changing circumstances.²⁹⁵ As this Court has held, the doctrine of vagueness “must not be used to straitjacket the state in social policy fields” and “a strict requirement of drafting precision might well undermine the ability of the legislature to provide for a comprehensive and flexible regime.”²⁹⁶

Responsibility of owner to ascertain zone of risk

155. The s. 7 jurisprudence requires that the *Regulations* be assessed in their full interpretative context, determining whether they provide sufficient guidance for legal debate as to the scope of prohibited conduct. Contrary to the Appellants’ suggestion,²⁹⁷ the areas of risk explained above are outlined by the *Regulations* and their context, not by the FRT. The FRT is simply an administrative resource that provides guidance on the areas of risk. Without the FRT, the same areas of risk exist and permit legal debate on the scope of the prohibitions.

156. Possession and use of firearms is not a right but a privilege in Canada, and a highly regulated activity.²⁹⁸ Firearms owners have a great responsibility to understand and comply with all legal requirements, and to seek out whatever resources they need to do so, such as those noted above (FRT, Canadian Firearm Program’s Call Centre, firearm’s retailer or manufacturer). Furthermore, firearms owners were notified of the amendments to the *Regulations*, as noted above.

²⁹⁴ FCA Decision at para [88](#); FC Decision at paras [569-71](#), [573](#); [RIAS](#), “[Description](#)” (AB V1 Tab 4B AB693-96); Smith Affidavit at paras 86, 92, Ex O, P (AB V5 Tab 5F.ii 6645, 6647, 6766-68).

²⁹⁵ FCA Decision at para [87](#).

²⁹⁶ FCA Decision at para [87](#), citing *Ontario v Canadian Pacific Ltd.*, [1995 CanLII 112 \(SCC\)](#), [1995] 2 SCR 1031 at paras [49-50](#), [52](#), and *Winko* at para [68](#).

²⁹⁷ Generoux factum at paras 142, 145, 148, 159; CCFR factum at paras 75-78, 81, 85, 87, 93-94; Doherty factum at paras 90-91.

²⁹⁸ *R v Wiles*, [2005 SCC 84](#) at para [9](#); *Hasselwander* at [414](#); *The Kiwi Party Incorporated v Attorney General*, [\[2020\] NZCA 80](#) at paras [24-27](#), leave to appeal dismissed [\[2020\] NZSC 61](#) [*Kiwi Party*].

It is expected that they will make efforts to understand the law even where to do so involves technical knowledge, and refrain from testing the boundaries of criminal laws.²⁹⁹ The Appellants unconvincingly allege that it is difficult to understand the well-known and oft-used firearms industry term “variant” and the corresponding areas of risk set out by the *Regulations*.³⁰⁰ Ignorance of the law is no excuse.³⁰¹

157. The Appellants’ criticism of Murray Smith’s expert evidence, and by extension the lower courts’ acceptance of it, is without merit. A close reading of the transcripts from the five cross-examinations of Mr. Smith³⁰² shows that he did not provide contradictory evidence on the definition or determination of variants, nor does his evidence support the Appellants’ contention that the determination of an unnamed variant is difficult to understand, vague, or fails to delineate a zone of risk. The Appellants take Mr. Smith’s testimony out of context in an attempt to create confusion where none exists.³⁰³

158. For example, the phrases used by Mr. Smith to describe the term variant³⁰⁴ all articulated the key idea that a variant “refers to a firearm whose design was derived from an original firearm (head of family).”³⁰⁵ He did not concede that his definition of variant is not widely shared;³⁰⁶ rather, he acknowledged that there is no singular industry definition of the word variant, while also confirming that the common industry meaning of the term can be understood from how it is used

²⁹⁹ *Levkovic* at para [35](#).

³⁰⁰ Generoux factum at paras 148-50, 153, 157-58, 160; CCFR factum at paras 71-75, 78-88, 93-94; Doherty factum at paras 12-13, 34-35, 87-90; Eichenberg factum at paras 79-80, 92.

³⁰¹ *Criminal Code*, s [19](#); *R v Jorgensen*, [1995 CanLII 85 \(SCC\)](#), [1995] 4 SCR 55 at para [4](#); *Nova Scotia Pharmaceutical* at [633](#).

³⁰² Smith Oct 29 Transcript (AB V6 Tab 6A); Smith Oct 30 Transcript (AB V6 Tab 6B); Smith Nov 5 Transcript (AB V6 Tab 6C); Smith Jan 19 Transcript (AB V6 Tab 6D); Murray Smith transcript dated April 8, 2022 (**Smith April 8 Transcript**) (AB V6 Tab 6E).

³⁰³ Doherty factum at para 41, but see Smith Nov 5 Transcript at 374:14-376:5 (AB V6 Tab 6C 9079-81) (factors vary) and Smith Oct 30 Transcript at 207:11-210:13 (AB V6 Tab 6B 8886-8889); Doherty factum at para 44, but see Smith Oct 29 Transcript Cross at 156:14-157:8 (AB V6 Tab 6C 8777-78) (written protocol); Doherty factum at para 44, but see Smith Oct 30 Transcript at 205:5-16 (AB V6 Tab 6B 8884) (differing conclusions); Doherty factum at para 44, but see Smith April 8 Transcript at 157:9 to 159:7 (AB V6 Tab 6E 10322-24) (lottery).

³⁰⁴ CCFR factum at paras 79-80; Doherty factum at paras 37-45.

³⁰⁵ Smith Affidavit at para 32 (AB V5 Tab 5F.ii AB6629).

³⁰⁶ *Contra* Doherty factum at para 43.

in industry publications and by manufacturers, and even by the CCFR Appellants.³⁰⁷ The firearms textbooks cited in Mr. Smith’s affidavit do not define variants differently:³⁰⁸ neither state a definition, but instead use the term descriptively.³⁰⁹

(ii) The Regulations are not arbitrary or overbroad

159. The Federal Court of Appeal correctly held that the *Regulations* are not arbitrary or overbroad.³¹⁰ The burden to prove such alleged legislative infirmities is not easily met and must be borne out by the evidence in each case.³¹¹

160. A law is arbitrary when it imposes limits on an individual that bear *no connection* to its objective.³¹² A law is overbroad when it includes *some* conduct that bears no connection to its objective; in other words, it goes too far and sweeps conduct into its ambit that bears no relation to its objective.³¹³ Overbreadth allows courts to recognize that a law can be rational in some cases but that it overreaches in its effect in other cases.³¹⁴

161. The Federal Court of Appeal did not err in concluding that the *Regulations* bear a connection between their purpose and their impacts: the objective of the *Regulations* is to respond to public safety risks posed by gun violence (guns with particular characteristics that increase the severity of mass shootings) and the corresponding impacts are to prohibit firearms that are capable of causing significant harm.³¹⁵

³⁰⁷ Smith Affidavit at paras 36-47 and Ex G-J (AB V5 Tab 5F.ii 6630-34, 6716-42); Smith Oct 29 Transcript at 98:4-99:25, 107:1-22 (AB V6 Tab 6A 8719-20, 8728); Smith Oct 30 Transcript at 191:17-192:2 (AB V6 Tab 6B 8870-71), 194:19-195:21 (AB V6 Tab 6B 8873-74); see also Brown Affidavit at para 140 (AB V5 Tab 5F.iii 7040-41)

³⁰⁸ *Contra* Doherty factum at para 43.

³⁰⁹ Smith Affidavit, Ex G, I (AB V5 Tab 5F.ii 6716-24, 6730-39); Smith Oct 30 Transcript at 191:25-192:2 (AB V6 Tab 6b 8870-81).

³¹⁰ FCA Decision at paras [89-92](#).

³¹¹ *Bedford* at para [119](#).

³¹² *Bedford* at paras [98](#), [111](#).

³¹³ *Bedford* at paras [101](#), [112](#), [117](#).

³¹⁴ *Bedford* at para [113](#).

³¹⁵ FCA Decision at para [90](#); [RIAS](#), “[Objective](#)” (describing the means of achieving the objective) and “[Rationale](#)” (articulating purpose) (AB V1 Tab 4B 693, 701-3). See also Ahmed Affidavit at paras 4-10, 19, Appendix A (AB V5 Tab 5F.viii 8026-27, 8029-30, 8035-60); Klarevas Affidavit at paras 13-28, 41-48 (AB V5 Tab 5F.iv 7245-59, 7267-71); Brown Affidavit at paras 34-37 (AB

162. The Court also correctly rejected the Appellants' argument that the *Regulations* are arbitrary because the *Amnesty Order* allows for the continued use of prohibited firearms for sustenance hunting and for exercising s. 35 rights.³¹⁶ The *Amnesty Order* is transitional in nature and allows for otherwise prohibited firearms to be used for very specific purposes (i.e. s. 35 Aboriginal rights or sustenance) only until the owner is "able to obtain another firearm for that use."³¹⁷

163. The fact that the current list of prohibited firearms covers firearms previously classified as non-restricted is not sufficient to make the new list arbitrary or overbroad.³¹⁸ The Federal Court of Appeal properly acknowledged that "[t]he state is certainly entitled to react to changing circumstances, in this case the growing public safety concern that some firearms are not suitable for civilian use and have been used in mass shootings in Canada and abroad."³¹⁹

b. The *Regulations* do not violate section 15 of the *Charter*

164. The Federal Court of Appeal correctly held that the *Regulations* do not violate s. 15(1) of the *Charter*,³²⁰ relying on the Federal Court's findings that gun culture was not an analogous ground.³²¹ The Generoux Appellants have not shown that the *Regulations*: (a) on their face or in their impact, create a distinction based on listed or analogous grounds; and (b) impose burdens or deny a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.³²² While they explain that guns and hunting and sport shooting activities are integral to their personal and collective Canadian identity,³²³ the Federal Court correctly held that this is not a personal and immutable characteristic in law.³²⁴ The Federal Court also made no error in

V5 Tab 5F.iii 6989-96); Chapman Affidavit at paras 18-24 and Table 1 of Ex F (AB V5 Tab 5F.vi 7705-7, 7852); Koops Affidavit at paras 17-23 (AB V5 Tab 5F.v 7324-28).

³¹⁶ FCA Decision at para [91](#); CCFR factum at para 95; Doherty factum at para 94.

³¹⁷ *Amnesty Order 2020* at s [2\(2\)\(a\)\(viii\)](#).

³¹⁸ FCA Decision at para [92](#); *RIAS*, "[Rationale](#)" (AB V1 Tab 4B 701-3); CCFR factum at para 54; Generoux factum at para 161.

³¹⁹ FCA Decision at para [92](#); *RIAS*, "[Rationale](#)" (AB V1 Tab 4B 701-3).

³²⁰ FCA Decision at para [93](#).

³²¹ FC Decision at para [675](#).

³²² *Quebec (Attorney General) v Kanyinda*, [2026 SCC 7](#) at para [48](#).

³²³ Generoux factum at paras 172-73, 181-82.

³²⁴ FC Decision at para [678](#); see also *R v Malmo-Levine*; *R v Caine*, [2003 SCC 74](#) at paras [86-87](#), [185](#) [*Malmo-Levine*].

concluding that the use of firearms for hunting and sport shooting continues to thrive in Canada, and that the Appellants are not prevented from hunting or sport shooting, as there are many other firearms available.³²⁵

165. The proposition that principles from Aboriginal law are analogous to the firearms context is novel, without merit, and should be rejected.³²⁶ Likewise, the Federal Court aptly noted that the Generoux Appellants’ “analogies to ‘genocide’ and the eradication of other cultures is extreme and likely offensive to those who have experienced the loss of their cultural identity.”³²⁷

166. The fact that some guns are defined as cultural property under the *Cultural Property Import and Export Act* and *Canadian Cultural Property Export Control List* does not elevate gun culture to an analogous ground under s. 15 of the *Charter*.³²⁸ This legislation is irrelevant to the s. 15 analysis.

167. The Generoux Appellants also erroneously claim the *Regulations* destroy Canadian cultural property and heritage contrary to s. 430(4.2) of the *Criminal Code*,³²⁹ which makes it an offence for a person to commit “mischief in relation to cultural property” as defined in the *Cultural Property Export and Import Act*.³³⁰ The GIC’s decision to enact the *Regulations* pursuant to its delegated authority is an act of legislative decision-making, not a criminal offence by an individual legal person.³³¹

c. Any infringement is justified under section 1 of the *Charter*

168. The Federal Court of Appeal did not err in declining to engage in a justification analysis under s. 1 of the *Charter*, as it correctly concluded that the *Regulations* did not contravene sections 7, 8, 11, 15, or 26 of the *Charter*.³³² The Federal Court also found there was no contravention of

³²⁵ FC Decision at para [679](#); Baldwin Affidavit at paras 12, 21-22, 27-29, 31, 35-36, 38-40, 43 (AB V5 Tab 5F.vii 8007, 8009-14).

³²⁶ Generoux factum at paras 171, 187-88; FC Decision at para [676](#).

³²⁷ FC Decision at para [681](#); Generoux factum at para 197.

³²⁸ Generoux factum at paras 165-55.

³²⁹ Generoux factum at paras 7, 20, 85, 161, 165-66, 175, 194.

³³⁰ *Criminal Code*, s [430\(4.2\)](#); *Cultural Property Export and Import Act*, [RSC 1985, c C-51](#), s [4\(2\)\(f\)](#); *Canadian Cultural Property Export Control List*, [CRC, c 448](#), Group [III](#).

³³¹ *Authorson v Canada (Attorney General)*, [2003 SCC 39](#) at para [53](#) [*Authorson*].

³³² FCA Decision at para [93](#).

the *Charter* and correctly concluded, in the alternative, that any infringement of s. 7 was a reasonable limit pursuant to s. 1 of the *Charter*.³³³

169. If this Court concludes there is an infringement of a *Charter* right, the Federal Court’s conclusion that it would be justified under s. 1 should prevail. The Federal Court correctly identified the applicable test and guiding principles from this Court’s s. 1 jurisprudence.³³⁴ The government bears the burden of showing that a law has a pressing and substantial objective and that the means chosen are proportional to that objective.³³⁵ Proportionality requires a court to balance the interests of society with those of individuals or groups.³³⁶ A law is proportionate if: (a) the means adopted are rationally connected to that objective; (b) it is minimally impairing of the right in question; and (c) there is proportionality between the deleterious and salutary effects of the law.³³⁷

170. Under this last consideration, “the court is required to weigh the negative impact of the law on people’s rights against the beneficial impact of the law in terms of achieving its goal for the greater public good. The impacts are judged both qualitatively and quantitatively.”³³⁸ Social science and expert evidence may be tendered by the government to justify the law’s impact on society as a whole,³³⁹ including evidence of other countries’ experiences with the same societal issues.³⁴⁰ This evidence can be “supplemented by common sense and inferential reasoning.”³⁴¹ A precise causal link for societal harms is not required – a reasonable apprehension of harm is sufficient and courts are entitled to use common sense and experience.³⁴²

³³³ FC Decision at para [591](#).

³³⁴ FC Decision at paras [592-96](#).

³³⁵ *Carter v Canada (Attorney General)*, [2015 SCC 5](#) at para [94](#) [*Carter*], citing *R v Oakes*, [1986 CanLII 46 \(SCC\)](#), [1986] 1 SCR 103 at paras [69-70](#) [*Oakes*].

³³⁶ *Bedford* at para [126](#); *Oakes* at para [70](#).

³³⁷ *Carter* at para [94](#); *Oakes* at paras [70-71](#).

³³⁸ *Bedford* at para [126](#).

³³⁹ *Bedford* at para [126](#); *R v KRJ*, [2016 SCC 31](#) at para [60](#) [*KRJ*].

³⁴⁰ *Carter* at paras [103-104](#).

³⁴¹ *KRJ* at para [60](#).

³⁴² *Saskatchewan (Human Rights Commission) v Whatcott*, [2013 SCC 11](#) at paras [132-34](#) [*Whatcott*]; *Harper v Canada (Attorney General)*, [2004 SCC 33](#) at paras [77-78](#).

171. While difficult,³⁴³ in the appropriate circumstances, the government may show that the public good justifies infringing a s. 7 right under s. 1, and even more particularly where the competing societal interests are themselves protected under the *Charter*.³⁴⁴

(i) The objective of the Regulations is pressing and substantial

172. The Federal Court correctly held that the following objective of the *Regulations* was pressing and substantial: prohibiting certain firearms that are not reasonable for use in Canada for hunting and sporting purposes because of the firearms’ characteristics and capabilities to cause significant harm to many people in a short period of time.³⁴⁵ This objective was in direct response to a “key and growing public safety concern that these firearms are not suitable for civilian use as they can and have been used in mass shootings in Canada and internationally.”³⁴⁶ The Federal Court properly relied on the RIAS, the evidence of a senior federal public servant in firearms policy and an academic expert legal historian of gun control who both described mass shootings in Canada and abroad, the use of the now-prohibited firearms in mass shootings, Commonwealth jurisdictions’ implementation of restrictions and prohibitions on firearms in response to mass shootings, and a presentation made by Statistics Canada to the Standing Senate Committee on National Security and Defence.³⁴⁷

³⁴³ *Carter* at para 95, citing *Re BC Motor Vehicle Act*, [1985 CanLII 81 \(SCC\)](#), [1985] 2 SCR 486 at 518 [***Motor Vehicle Reference***]; *Bedford* at para 129, citing *Motor Vehicle Reference* at 518; *New Brunswick (Minister of Health and Community Services) v G.(J.)*, [1999 CanLII 653 \(SCC\)](#), [1999] 3 SCR 46 at para 99.

³⁴⁴ *Bedford* at para 129, citing *Malmo-Levine* at paras 96-98; *Carter* at para 95; see also *R v Michaud*, [2015 ONCA 585](#) at paras 83, 144-45.

³⁴⁵ FC Decision at paras 597, 639; RIAS, “[Objective](#)” and “[Rationale](#)” (AB V1 Tab 4B 693, 701-3).

³⁴⁶ RIAS, “[Objective](#)” and “[Rationale](#)” (AB V1 Tab 4B 693, 701-3).

³⁴⁷ FC Decision at paras 597-99; RIAS, “[Objective](#)” (AB V1 Tab 4B 693); Koops Affidavit at paras 17-36, 55-67, 80-82 and Ex G (AB V5 Tab 5F.v 7324-32, 7338-45, 7348-49, 7490); Brown Affidavit at paras 34-59, 125-32 (AB V5 Tab 5F.iii 6989-7007, 7035-37). See also Klarevas Affidavit (United States experience) paras 20-28 (AB V5 Tab 5F.iv 7251-59); Chapman Affidavit (Australian experience) paras 18-35 (AB V5 Tab 5F.vi 7705-11); Ahmed Affidavit (trauma surgeon experience) paras 4-10 (AB V5 Tab 5F.viii 8026-27); *New Zealand Counsel of Licensed Firearms Owners v Minister of Police et al*, [\[2020\] NZHC 1456](#) at paras 1-3, [105-106](#), [130](#); *Kiwi Party* at paras [10](#), [24-27](#).

(ii) The means chosen are proportional to the objective

173. The Federal Court correctly found that the *Regulations* are proportional.³⁴⁸ Proportionality does not require perfection, and s. 1 only requires that the limits on the *Charter* right be reasonable.³⁴⁹ Courts are to afford considerable deference to the legislator’s chosen approach: there may be a number of possible solutions to complex social problems, the outcome may not be scientifically measurable, and the legislator may choose one of several reasonable alternatives.³⁵⁰ A “complex regulatory response” to a social problem will garner a high degree of deference.³⁵¹

Rational connection between the means adopted and the objective

174. The Federal Court acknowledged that firearms laws, including the *Regulations*, “are a complex web of responses to the ongoing concern of the impact of the use of firearms on public safety.”³⁵² Canada only needed to show that it is “reasonable to suppose” that the prohibition “may further the goal, not that it will do so.”³⁵³ The Court correctly held that there was no need for conclusive proof that the *Regulations* will achieve their objective, and the Court could rely on “logic, reason and some social science evidence.”³⁵⁴ Accordingly, the Court did not err in determining that the available social science evidence, buttressed with logic and reason, supported the rational connection between the means adopted (prohibiting the possession, use, and access to assault-style firearms) and the objective (curtailing the significant harm caused by assault-style firearms).³⁵⁵

175. The Court found that Canada “provided sufficient evidence about how further restrictions on certain types of firearms have had some correlation with reducing the harm from mass shootings

³⁴⁸ FC Decision at para [639](#).

³⁴⁹ *Carter* at para [97](#), citing *Whatcott* at para [78](#).

³⁵⁰ *Whatcott* at para [78](#), citing *Canada (Attorney General) v JTI-Macdonald Corp.*, [2007 SCC 30](#) at para [41](#) [*JTI-Macdonald Corp.*].

³⁵¹ *Carter* at para [97](#), citing *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#) at para [37](#) [*Hutterian Brethren*].

³⁵² FC Decision at para [634](#).

³⁵³ *Hutterian Brethren* at para [48](#); *Mounted Police Association of Ontario v Canada (Attorney General)*, [2015 SCC 1](#) at para [143](#).

³⁵⁴ FC Decision at para [629](#), citing *Harper* at paras [77-78](#); see also FC Decision at paras [630-633](#).

³⁵⁵ FC Decision at para [634](#); *RIAS*, “[Rationale](#)” (AB V1 Tab 4B 701-3).

and more generally on public safety.”³⁵⁶ For example, the substantial reduction in exposure to semi-automatic long guns capable of accepting large-capacity magazines was “likely to have been key” in the success of Australia’s law reform, and “it is statistically highly improbable that the reduction in mass shootings since the law reform is merely chance.”³⁵⁷ Further, the United States’ federal ban (1994-2004) and individual states’ bans (1990-2013) “found significant reductions in mass shooting violence and fatalities.”³⁵⁸ The Court properly observed that waiting for proof of the effectiveness of a specific legislative measure before acting “would paralyze governments in responding to complex social issues in a manner reflecting the public good.”³⁵⁹

Minimal impairment of the rights in question

176. The Federal Court correctly held that the *Regulations* minimally impair the liberty interest of firearm owners, as many other firearms remain available for hunting and sport.³⁶⁰ Only a small percentage of firearms owners in Canada are affected by the *Regulations*.³⁶¹ Lesser measures or restrictions would not achieve the objective of reducing significant harm resulting from the use of these types of firearms.³⁶² Despite Canada taking a range of measures over many years, the evidence showed that firearm violence and mass shootings continue to occur and cause significant harm, and the now-prohibited firearms are involved in such events.³⁶³ The GIC is not required to accept options that are less effective at achieving the objective than the one chosen.³⁶⁴ The

³⁵⁶ FC Decision at para [632](#), see also paras [630-32](#); Chapman Affidavit at paras 38, 64-70, 80-84, 137 (AB V5 Tab 5F.vi 7712, 7719-21, 7723-25, 7741); Klarevas Affidavit at paras 41-48, 60 and Ex D (AB V5 Tab 5F.iv 7266-71, 7278, 7310-14); Dr. Louis Klarevas transcript dated January 27, 2022 at 226:12-20 (**Klarevas Jan 27 Transcript**) (AB V6 Tab 6G 11557); Ahmed Affidavit at para 19 and Appendix A (AB V5 Tab 5F.viii 8029-30, 8035-60).

³⁵⁷ FC Decision at para [613](#); Chapman Affidavit at paras 70, 82, 137, Ex G (AB V5 Tab 5F.vi AB7720-21, 7724, 7741, 7859-61).

³⁵⁸ FC Decision at para [617](#); Klarevas Affidavit at paras 41-43 (AB V5 Tab 5F.iv 7267-68).

³⁵⁹ FC Decision at para [633](#).

³⁶⁰ FC Decision at para [635](#); Baldwin Affidavit at paras 12, 21-22, 27-29, 31, 35-36, 38-40, 43 (AB V5 Tab 5F.vii 8007, 8009-14).

³⁶¹ Smith Affidavit at para 22 (AB V5 Tab 5F.ii 6627).

³⁶² FC Decision at para [636](#); Chapman Affidavit at paras 38, 64-70, 80-84, 137 and Ex D (AB V5 Tab 5F.vi 7712, 7719-21, 7723-25, 7741, 7833-34); Klarevas Affidavit at paras 41-48, 60 (AB V5 Tab 5F.iv 7267-71, 7278); Klarevas Jan 27 Transcript at 226:12-20 (AB V5 Tab 6G 11557); Ahmed Affidavit at para 19 and Appendix A (AB V5 Tab 5F.viii 8029-30, 8035-60).

³⁶³ FC Decision at para [636](#). See also *R v Chizanga and Meredith*, [2020 ONSC 4647](#) at paras [10-20](#).

³⁶⁴ *JTI-Macdonald Corp.* at para [137](#).

prohibition of semi-automatic firearms has also been adopted in other Commonwealth countries, thus further supporting the conclusion that Canada's scheme falls within a range of reasonable alternatives.³⁶⁵

177. The CCFR and Doherty Appellants argue that the use of the term “variant” is not minimally impairing because it is undefined and unintelligible.³⁶⁶ As noted above, the government had already determined a legislated definition would bring little clarity to the plain meaning of the term, would have unintended consequences for existing classifications, and manufacturers would look for loopholes.³⁶⁷ Similarly, the lower courts correctly recognized that a legislated or fixed list of firearms would not provide the flexibility and responsiveness needed to address new and evolving firearms coming onto the market, leaving a gap before the *Regulations* could be updated to capture those new firearms³⁶⁸ and would allow manufacturers to simply “tweak” existing versions of firearms to avoid prohibition.³⁶⁹ These two options of a legislated list or definition would not only be less effective at achieving the pressing and substantial objective of the *Regulations*, but would in fact defeat the objective. The Appellants’ suggested approach would put the government permanently in a reactionary mode, responding after-the-fact by prohibition, amnesty, and disposal methods – options that are far less effective for public safety purposes than prospective prohibitions that prevent the firearms from entering the Canadian market in the first place.

Balancing between deleterious and salutary effects

178. The Federal Court did not err in concluding that a minimal infringement to firearms owners is outweighed by the beneficial impact of the *Regulations* in reducing the harm from mass shootings and the inherent danger posed by the now-prohibited firearms, which achieves the broader object of enhancing public safety.³⁷⁰

³⁶⁵ *Bedford* at para 126; *Carter* at paras 103-104.

³⁶⁶ CCFR factum at para 97; Doherty factum at paras 96-97.

³⁶⁷ Koops Affidavit at para 92 (AB V5 Tab 5F.v 7352).

³⁶⁸ FC Decision at paras 275, 310, 418, 552; Brown Affidavit at paras 90-91 (AB V5 Tab 5F.iii 7019); Koops Affidavit at paras 88-89 (AB V5 Tab 5F.v 7351-52).

³⁶⁹ FCA Decision at paras 85-86; FC Decision at paras 405, 418, 452; Brown Affidavit at para 113 (AB V5 Tab 5F.iii 7028-29); Koops Affidavit at para 92 (AB V5 Tab 5F.v 7352).

³⁷⁰ FC Decision at paras 637-39.

179. Gun violence is a multifaceted problem that reflects a complex constellation of social, political, and legal factors that interact over time and through generations.³⁷¹ Restrictions on the types of firearms available to civilians is a well-established and frequently-used policy choice by governments around the world.³⁷² The Government of Canada has been committed to implementing measures to combat gun crime through legislative, regulatory, and program initiatives.³⁷³ The 2020 *Regulations* are part of a complex regulatory regime that must be accorded deference.³⁷⁴

180. As noted above, Parliament and the GIC have been acting in furtherance of this important public safety objective for over 50 years.³⁷⁵ The history of these developments puts the GIC's 2020 decision into perspective: from 1969 through the 1990s, automatic and various semi-automatic firearms were prohibited or restricted through either statute or regulation. In addition, measures were adopted to strengthen background checks, impose waiting periods for firearms acquisition certificates, require mandatory safety training, and increase penalties for firearm-related offences.³⁷⁶ The 1995 *Firearms Act* introduced a universal licensing system and a requirement that the registration system be expanded to include all long guns.³⁷⁷ At the same time, Parliament further expanded the GIC's power to prohibit and restrict firearms.³⁷⁸ Shortly afterward, the 1998 *Regulations* unified the former prohibited weapons orders that had collectively (a) prohibited 86 families of firearms and other weapons, including 207 named variants, and unnamed variants;³⁷⁹ (b) restricted certain firearms and their variants;³⁸⁰ and (c) prohibited certain weapons, devices,

³⁷¹ Koops Affidavit at para 38 (AB V5 Tab 5F.v 7332).

³⁷² Koops Affidavit at para 15 (AB V5 Tab 5F.v 7324).

³⁷³ Koops Affidavit at para 39 (AB V5 Tab 5F.v 7332-33).

³⁷⁴ FC Decision at para [638](#), citing *R v Safarzadeh-Markhali*, [2016 SCC 14](#) at para [57](#) and *Whatcott* at para [78](#).

³⁷⁵ Brown Affidavit at paras 63-100 (AB V5 Tab 5F.iii 7009-23).

³⁷⁶ Brown Affidavit at para 84 (AB V5 Tab 5F.iii 7016).

³⁷⁷ Brown Affidavit at para 101 (AB V5 Tab 5F.iii 7023-24); Koops Affidavit at para 11 (AB V5 Tab 5F.v 7322).

³⁷⁸ Brown Affidavit at paras 102-105 (AB V5 Tab 5F.iii 7024).

³⁷⁹ [1998 Regulations](#) (version as promulgated 16 September 1998), s [2](#), Part [1](#) of Schedule, Items [1-86](#) ("prohibited firearm") in Brown Affidavit, App 15 (AB V5 Tab 5F.iii 7143-52).

³⁸⁰ [1998 Regulations](#) (version as promulgated 16 September 1998), s [3](#), Part [2](#) of Schedule ("restricted firearm") in Brown Affidavit, App 15 (AB V5 Tab 5F.iii 7152-53).

and ammunition.³⁸¹

181. During the two decades following the *1998 Regulations*, there were no substantial regulatory updates. Meanwhile, there were changes in firearms technology, shifts in the marketing and sales of semi-automatic firearms, and the use of such guns in domestic and international shootings.³⁸² In addition, after 2012, the *Ending the Long Gun Registry Act* meant that registration was no longer required for any assault-style firearms that had not been restricted.

182. The GIC's promulgation of the 2020 *Regulations* was therefore a continuation of the Government of Canada's long-term efforts to curb the ownership and use of assault-style firearms. The *Regulations* reflect a critical and further update to Parliament's complex regulatory response to evolving threats to public safety due to the increased availability of assault-style firearms in Canada.

d. The *Regulations* do not violate the *Canadian Bill of Rights*

183. Subsection 1(a) of the *Canadian Bill of Rights* does not apply to the enactment of the *Regulations*. The Federal Court of Appeal was correct that this Court's decision in *Authorson* is a complete answer to the Generoux Appellants' assertions that the *Regulations* violate s. 1(a).³⁸³ Canadian citizens do not have a right to receive notice or a hearing before Parliament passes legislation.³⁸⁴ The same applies for regulations, which are decisions of a legislative nature.³⁸⁵ The Federal Court of Appeal correctly noted that procedural fairness, which is part of due process, also does not apply to such decisions.³⁸⁶

³⁸¹ *1998 Regulations* (version as promulgated 16 September 1998), ss [4](#), [5](#), [6](#), Parts [3](#), [4](#), [5](#) of Schedule ("prohibited weapon", "prohibited device", "prohibited ammunition") in Brown Affidavit, App 15 (AB V5 Tab 5F.iii 7153-57).

³⁸² Brown Affidavit at para 15-37 (AB V5 Tab 5F.iii 6982-96).

³⁸³ Generoux factum at paras 9, 20, 210(f), and Notice of Constitutional Question (AR Part 1 Tab 11); *Canadian Bill of Rights*, [SC 1960, c 44](#), s [1](#); FCA Decision at para [97](#).

³⁸⁴ *Authorson* at paras [12](#), [37](#), [41](#), [44-45](#).

³⁸⁵ *Att Gen of Can v Inuit Tapirisat et al*, [1980 CanLII 21 \(SCC\)](#), [1980] 2 SCR 735 at [757](#) [*Inuit Tapirisat*].

³⁸⁶ FCA Decision at para [101](#), citing *Inuit Tapirisat* at [757](#); *Green v Law Society of Manitoba*, [2017 SCC 20](#) at para [54](#); *Reference re Canada Assistance Plan*, [1991 CanLII 74 \(SCC\)](#), [1991] 2 SCR 525 at [558](#); *Martineau v Matsqui Institution*, [1979 CanLII 184 \(SCC\)](#), [1980] 1 SCR 602 at [628](#).

184. Subsection 1(a) provides two procedural protections that were not carried over to the *Charter*: (a) notice; and (b) an opportunity to contest a government deprivation of property rights.³⁸⁷ However, such protections only arise *after* the enactment of the legislation at issue and only in the context of a court's or tribunal's adjudication of a person's rights and obligations.³⁸⁸ While these protections guarantee a degree of procedural due process in the application of the law in an individualized, adjudicative setting,³⁸⁹ no such adjudication has occurred here. The *Regulations* are not an adjudicative process to hear the Appellants' complaints about the loss of enjoyment of their property.

4. There was no error in the refusal to draw an adverse inference from the Clerk's filing of section 39 *Canada Evidence Act* certificates

185. In accordance with well-established authorities,³⁹⁰ the record that was before the GIC was protected as a confidence of the King's Privy Council for Canada under s. 39 of the *Canada Evidence Act* (*CEA*).³⁹¹ This arose after the Attorney General of Canada's initial objection to producing the record on common law Cabinet confidence grounds, which the Appellants challenged through a disclosure motion before the case management judge. Following the case management judge's order to inspect the record,³⁹² the Clerk of the Privy Council (Clerk) issued certificates under s. 39 of the *CEA* to protect the record.³⁹³ The Appellants did not seek to judicially review the Clerk's issuance of s. 39 certificates.

186. The Eichenberg Appellants have not shown any palpable or overriding error in the lower courts refusing to draw an adverse inference from the Clerk's invocation of s. 39.³⁹⁴ The lower

³⁸⁷ *Authorson* at paras [9](#), [34](#), [42](#).

³⁸⁸ *Authorson* at paras [40](#), [42](#), [61](#).

³⁸⁹ *Authorson* at para [46](#), [61](#).

³⁹⁰ *Babcock v Canada (Attorney General)*, [2002 SCC 57](#) at paras [21-23](#), [27-29](#) [*Babcock*]; *Tsleil-Waututh Nation v Canada (Attorney General)*, [2017 FCA 128](#) at paras [24-28](#), [31-33](#), [49](#) [*Tsleil-Waututh Nation*].

³⁹¹ Letter from Robert MacKinnon to the Federal Court dated June 15, 2021, attaching *Canada Evidence Act* s 39 certificates (AB V1 Tab 4D 728-47).

³⁹² *Parker v Canada (Attorney General)*, [2021 FC 496](#) at paras [39-40](#) (AR Part 1 Tab 2).

³⁹³ Letter from Robert MacKinnon to the Federal Court dated June 15, 2021, attaching *Canada Evidence Act* s 39 certificates (AB V1 Tab 4D 728-47).

³⁹⁴ *Babcock* at paras [36](#), [41](#).

courts properly found that the filing of the s. 39 certificates should not attract an adverse inference: it did not prevent a robust review of the GIC’s decision, and there is no evidence that the Clerk improperly exercised her authority to file the certificates.³⁹⁵

187. In rejecting the Appellants’ argument, the Federal Court of Appeal held that the Federal Court’s conclusions were supported by the record:³⁹⁶

- a. The GIC’s decision and *Regulations* were not immune from judicial review, and the claim of Cabinet confidences did not prevent the Court from reviewing in accordance with the *Vavilov* principles;³⁹⁷
- b. The reasons for the GIC’s decision are “found in the *Regulations*, prior legal instruments, and the RIAs;”³⁹⁸
- c. The s. 39 certificates met the necessary legal criteria established by this Court in *Babcock*:³⁹⁹ they were issued by the Clerk;⁴⁰⁰ they relate to information within s. 39(2) of the *CEA*;⁴⁰¹ they are a *bona fide* exercise of power;⁴⁰² and they aim to protect confidential information;⁴⁰³ and
- d. the purpose of the summary provided with the s. 39 certificates was to “describe the type of information considered by the Governor in Council to explain why the information fell within section 39” and it was “not intended to set out a summary of the information considered by the Governor in Council, as that would defeat the confidential nature of the information.”⁴⁰⁴

³⁹⁵ *Babcock* at paras [24-25](#).

³⁹⁶ FCA Decision at paras [32-41](#); FC Decision at paras [209-223](#).

³⁹⁷ FC Decision at para [222](#); FCA Decision at paras [33-34](#); *Babcock* at paras [24-25](#).

³⁹⁸ FC Decision at para [222](#), see also paras [14](#), [35](#), [37-53](#); FCA Decision at para [65](#).

³⁹⁹ *Babcock* at paras [18](#), [24-27](#); *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, [2024 SCC 4](#) at para [3](#) [**Privacy Commissioner**].

⁴⁰⁰ Section 39 certificates (AB V1 Tab 4D at 728-47).

⁴⁰¹ *Canada Evidence Act*, s [39](#); *Babcock* at paras [24](#), [27](#).

⁴⁰² *Babcock* at para 25.

⁴⁰³ Section 39 certificates, (AB V1 Tab 4D at 728-47).

⁴⁰⁴ FC Decision at paras [220-223](#); FCA Decision at paras [33-34](#).

188. The courts below made no error in coming to these conclusions. The Clerk’s decision to file s. 39 certificates did not create evidentiary gaps in the record that undermined the requirement for a reasoned decision discussed in the jurisprudence cited by the Eichenberg Appellants.⁴⁰⁵ As the courts below recognized, the RIAS provides a detailed rationale and policy basis for the OIC, which allowed for robust review.⁴⁰⁶

189. This case does not raise the spectre of selective disclosure that was discussed in *Babcock*,⁴⁰⁷ as Canada did not disclose *any* of the Cabinet confidence documents in this case. Nor is this case analogous to the adverse inference drawn in *RJR-Macdonald* where the refusal to disclose specific studies prevented a full analysis under s. 1 of the *Charter*.⁴⁰⁸

190. The criticism by the Eichenberg Appellants of the alleged “bare bones” summary provided with the s. 39 certificates conflates the requirement for the Clerk to describe the nature of the information covered by the certificate,⁴⁰⁹ with the type of substantive summary envisaged by the Federal Court of Appeal in *Canadian Council for Refugees*.⁴¹⁰ The Court of Appeal’s reference to summaries in that case was in the context of situations where, in the absence of other evidence of the decision-making process, a summary would be needed for an effective, meaningful, and fair judicial review.⁴¹¹ That was not the purpose of the summaries here, nor were such summaries required to conduct a robust analysis on judicial review.

191. The Eichenberg Appellants have not adduced any evidence to support the suggestion that the Clerk exercised her power to issue the s. 39 certificates for strategic or other improper purposes.⁴¹² Bare allegations or speculation are insufficient to support a finding of bad faith or

⁴⁰⁵ Eichenberg factum at paras 108-110; *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, [2021 FCA 72](#) at para [112](#) [*Canadian Council for Refugees*]; *Tsleil-Waututh Nation* at paras [153](#), [166](#).

⁴⁰⁶ FCA Decision at paras [59](#), [65](#), [92](#); FC Decision at paras [325-336](#), see also paras [62-83](#), [222](#), [292](#), [304](#); see also *Auer* at paras [52-54](#).

⁴⁰⁷ *Babcock* at para [36](#); see also e.g. *Spencer* at para [49](#).

⁴⁰⁸ *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995 CanLII 64 \(SCC\)](#), [1995] 3 SCR 199 at paras [165-166](#).

⁴⁰⁹ *Babcock* at para [28](#).

⁴¹⁰ *Canadian Council for Refugees* at para [114](#); Eichenberg factum at para 120.

⁴¹¹ *Canadian Council for Refugees* at paras [113-114](#).

⁴¹² *Babcock* at para [25](#).

improper purpose, and the lower courts appropriately refused to make such findings.⁴¹³

192. Relying on common law protection prior to invoking s. 39 was not improper. Cabinet confidences are protected as a matter of constitutional convention that is fundamental to Canada's system of responsible government.⁴¹⁴ As this Court recognized in *Babcock*, a s. 39 certificate is not required for the government to claim that certain information is or reveals a Cabinet confidence, however, when invoked, the certificate provides more protection than at common law.⁴¹⁵

193. The fact that the s. 39 certificates were filed subsequent to the case management judge's order to inspect Cabinet documents is not a basis to draw an adverse inference. Such orders are, by necessary implication, subject to a s. 39 certificate.⁴¹⁶ In any event, if the Appellants were concerned that the Clerk had improperly exercised her authority to issue the s. 39 certificates, the appropriate course would have been to bring an application for judicial review of the Clerk's decision, which the Appellants did not.⁴¹⁷

194. Delay has never been held to be the basis for an adverse inference in this context. But even if delay *were* a relevant factor, the time taken to issue the s. 39 certificates would not justify drawing an adverse inference here. The time to produce the certificates had no appreciable impact on the readiness of the six Applications to be heard on their merits. While the motions judge's decision on the disclosure motion noted a delay in the initial Cabinet confidence objection and summary,⁴¹⁸ she did not suggest further consequence should attach and the Court's process was ultimately not disrupted.

195. The procedural timing details relating to the alleged delay are as follows: the applications

⁴¹³ FC Decision at para [222](#); FCA Decision at para [41](#); *Babcock* at para [41](#).

⁴¹⁴ *Privacy Commissioner* at para [28](#).

⁴¹⁵ *Babcock* at paras [19](#), [23](#); *R v Ahmad*, [2011 SCC 6](#) at para [50](#).

⁴¹⁶ *Tsleil-Waututh Nation* at para [141](#).

⁴¹⁷ *Babcock* at paras [28](#), [39](#), citing to *Singh v Canada (Attorney General)* (C.A.), [2000 CanLII 17100 \(FCTAD\)](#), [2000] 3 FC 185 at para [50](#).

⁴¹⁸ *Parker v Canada (Attorney General)*, [2021 FC 496](#) at para [37](#) (AR Part 1 Tab 2).

were filed between May and August 2020,⁴¹⁹ Canada objected to disclosure in September 2020,⁴²⁰ and the Appellants filed their motions for disclosure in October 2020. Attempting to prevent unnecessary litigation of the Cabinet confidence issue, Canada filed a summary in December 2020 describing the documents over which Cabinet confidences were claimed and explained that these descriptions were “an alternative approach to a formal determination by the Clerk of the Privy Council pursuant to s. 39 of the *Canada Evidence Act*.”⁴²¹ The Appellants continued to pursue their disclosure motion, which proceeded in writing and was decided in May 2021.⁴²² The Clerk then signed the certificates within three weeks of the Court’s order on the motion.⁴²³

196. During this same time period, the Appellants were able to pursue procedural motions and an injunction application.⁴²⁴ After the Court’s disclosure decision, the matter proceeded on its merits for nearly two more years before the eight-day hearing of the Applications in April 2023.⁴²⁵

197. Neither this timeline, nor the manner in which the certificates were issued, support the suggestion that s. 39 was invoked to gain an improper tactical advantage, resulted in any unduly delayed schedule, or caused the Appellants any prejudice. Deference is due to the Applications judge’s assessment of these circumstances. As the court of first instance on this issue, she was best-placed to determine any impact on the Court’s process or on the proceeding.

⁴¹⁹ Generoux Notice of Application (July 10, 2020) (AB V1 Tab 3B 380-406); Doherty Notice of Application (June 29, 2020) (AB V1 Tab 3C 409-437); Eichenberg Notice of Application (August 11, 2020) (AB V1 Tab 3D 438-459); CCFR Notice of Application (May 26 2020) (AB V1 Tab 3E 462-513).

⁴²⁰ Letters from AGC to the Federal Court dated September 11, 2020 attaching letters from the Privy Council Office dated September 10, 2020 providing, pursuant to Rule 318, a response to the Applicants’ request under Rule 317 (AB V1, Tab 4A 612-34).

⁴²¹ Letters from the AGC to the Federal Court dated December 4, 2020 attaching letter from the Privy Council Office providing a description of documents which are protected by Cabinet confidences (AB V1, Tab 4C 708-27).

⁴²² Order and Reasons of Associate Chief Justice Gagne dated May 27, 2021, *Parker v Canada (Attorney General)*, [2021 FC 496](#) (AR Part 1 Tab 2).

⁴²³ Letter from Robert MacKinnon to the Federal Court dated June 15, 2021 attaching *Canada Evidence Act* s 39 Certificates (AB V1 Tab 4D 728-47).

⁴²⁴ *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, [2021 FC 130](#) (injunction); *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, [2021 FC 447](#) (Rule 302 application) (AB V7 Tab 7C 14100-113); *Doherty v Canada (Attorney General)*, [2021 FC 695](#) (costs) (AB V7 Tab 7A 14062-70).

⁴²⁵ FC Decision under “[Date of Hearing](#).”

5. Suspension of any relief

198. The Appellants are not entitled to any of the relief sought, including a declaration that the *Regulations* are *ultra vires* the *Criminal Code*, or a declaration reading down the *Regulations* to prohibit only those firearms and variants expressly named.⁴²⁶

199. However, should this Court determine that some form of relief is warranted, special consideration is needed to avoid any unintended effects.⁴²⁷ Quashing all or part of the *Regulations*, or reading down, would not automatically revive the affected firearms' prior classification. For example, firearms that were prescribed as restricted in the 1998 *Regulations* before being prohibited by the 2020 amendments, would be rendered non-restricted as a result of the Court's order. The resulting regulatory gap would be a significant compromise to public safety,⁴²⁸ as non-restricted firearms are the least regulated, requiring only a licence to possess, no federal registration, no oversight by chief firearms officers of transport or transfers, and no monitoring for use.⁴²⁹

200. The Court's discretion to grant relief, whether on administrative law or constitutional grounds, includes the ability to decide the timing of the effect of any order. This is particularly so where an order may disrupt the administration of a complex legislative or regulatory scheme.⁴³⁰ Accordingly, any relief granted in these appeals should be suspended for a period of 12 months to allow the GIC to decide the means by which to give effect to this Court's decision.⁴³¹

PART IV – SUBMISSION CONCERNING COSTS

201. The respondent Attorney General of Canada seeks his costs in these four appeals.

⁴²⁶ Generoux factum at para 210; CCFR factum at paras 98-99; Doherty factum at paras 100-101; Eichenberg factum at paras 122-23.

⁴²⁷ *Ontario v G*, [2020 SCC 38](#) at para [116](#).

⁴²⁸ See also e.g. *Bedford* at para [167](#).

⁴²⁹ *Firearms Act*, ss [5](#), [12.1](#), [17](#), [21](#), [23.2](#), [27-28](#).

⁴³⁰ *British Columbia Ferry Corp. v M.N.R. (C.A.)*, [2001 FCA 146 \(CanLII\)](#) at paras [32](#), [37-38](#), [41](#); *Sparvier v Cowessess Indian Band No. 73*, [1993 CanLII 2987 \(FCTTD\)](#), [1993] 3 FC 142 at [178](#).

⁴³¹ See e.g. *Bedford* at para [169](#).

PART V – ORDER SOUGHT

202. The Attorney General of Canada requests that the appeals be dismissed, with costs.

PART VI – CONFIDENTIALITY

203. There is no sealing or confidentiality order, publication ban, classification of information in the file that is confidential under legislation, or restriction on public access to information in the file that could have an impact on the Court's reasons in these appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Ottawa this 10th day of August 2026.



Zoe Oxaal
Amy Martin-LeBlanc
Jordan Milne
Jennifer S. Bond

Counsel for the Respondent,
Attorney General of Canada

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77.	<i>R v Morales</i> , 1992 CanLII 53 (SCC) , [1992] 3 SCR 711	139, 141-143, 150
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85.	<i>Reference re Firearms Act (Can.)</i> , 2000 SCC 31	17, 80
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87.	<i>Rocheleau v Alberta (Chief Firearms Officer)</i> , 2023 ABCJ 124	132
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	Monographs	Cited at Para(s)
123.	Donald JM Brown & David Fairlie, <i>Civil Appeals</i> (2009), online: WL Can	64
124.	Patrice Garant, avec la collaboration de Philippe Garant et de Jérôme Garant, <i>Droit administratif</i> , 7e éd (Montréal, QC: Yvon Blais, 2017) at IV.4.2	130
125.	Robert W. Macaulay, James L.H. Sprague and Lorne Sossin, <i>Practice and Procedure before Administrative Tribunals</i> , loose-leaf ed. (Toronto, ON: Thomson Reuters Canada Ltd., 2018)	116
126.	Guy Régimbald, Mark Mancini & John J Wilson, <i>Canadian Administrative Law</i> , 4th ed (Toronto, ON: LexisNexis Canada Inc, 2026)	64
127.	Paul Salembier, <i>Regulatory Law and Practice</i> , looseleaf, 3 rd ed. (Toronto, ON: LexisNexis Canada, 2021)	121
128.	Ruth Sullivan, <i>Statutory Interpretation</i> , 3 rd ed. (Toronto, ON: Irwin Law Inc., 2016)	148

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	Bill C-17, <i>an act to amend the Criminal Code and the Customs Tariff</i> , 2 nd reading, <i>House of Commons Debates</i> , 34-3, No 1 (June 6, 1991)	15, 87, 112

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129.	<i>Canada, House of Commons Standing Committee on Justice and Legal Affairs</i> , 30-2, Vol 2, No. 14-25 (16 June 1977)	10, 112
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135.	<i>Order in Council of May 1, 2020</i> , PC 2020-298 , (2020) C Gaz II, Vol 154, No 3, Extra	21, 23, 70, 91