

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

BETWEEN:

CHRISTINE GENEROUX, JOHN PEROCCHIO, VINCENT PERROCHIO

Appellants

-and-

THE 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)

**FACTUM OF THE INTERVENER,
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(Pursuant to rules 37 and 42 of the Rules of the Supreme Court of Canada)

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(SCC File No.: 41858 Style of cause continued)

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SPORTS ASSOCIATION, INTERNATIONAL PRACTICAL SHOOTING
CONFEDERATION CANADA, SAFARI CLUB INTERNATIONAL,
CANADIAN COALITION FOR GUN CONTROL, BRITISH COLUMBIA
CIVIL LIBERTIES ASSOCIATION and ONTARIO RIFLE ASSOCIATION**

Interveners

SCC File No.: 41859

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

BETWEEN:

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

Appellants

-and-

THE ATTORNEY GENERAL OF CANADA

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, ONTARIO RIFLE
ASSOCIATION and CANADA'S NATIONAL FIREARMS ASSOCIATION**

Interveners

SCC File No.: 41860

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

BETWEEN:

**MICHAEL JOHN DOHERTY, NILS ROBERT EK, LINDSAY DAVID
JAMIESON, MARK ROY NICHOL and PETER CRAIG MINUK**

Appellants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

-and-

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and ONTARIO
RIFLE ASSOCIATION**

Intervenors

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PART I - OVERVIEW

1. The Attorney General of Ontario files this factum in three appeals being heard together on the constitutional validity of federal regulations prohibiting approximately 1,500 firearms previously legal for licensed ownership and use.

2. Ontario submits that the regulations are unconstitutional. They are not a valid exercise of the federal criminal law power because they do not contain a prohibition delineated with sufficient precision for licensed and otherwise law-abiding firearms owners to understand whether they have committed a crime. The regulations at issue do not comply with the constitutional presumption of precision, which Ontario submits is embedded in s. 91(27) of the *Constitution Act, 1867*, as they use imprecise language in the absence of express statutory authority to do so.

PART II - QUESTIONS IN ISSUE IN THE APPEALS

3. Ontario intervenes on the constitutional question in response to the three Notices of Constitutional Question served in these appeals concerning the constitutionality of the *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, SOR/2020-96 (“the Regulations”).

4. Ontario intervenes solely on the issue of the presumption of precision in criminal law. Ontario takes no position on whether the Regulations violate the *Charter* or on the non-constitutional issues raised in the appeals.

PART III - STATEMENT OF ARGUMENT

A. The presumption of precision: a criminal prohibition delineated by regulation must be precise in the absence of express statutory authority to the contrary

5. Ontario accepts that Parliament may prohibit firearms in primary legislation. Ontario also accepts that Parliament may delegate to the Governor in Council the ability to prescribe which firearms fall within a prohibition created by primary legislation.

6. Ontario does not accept, however, that it is constitutionally valid for the Governor in Council to exercise this discretion using imprecise language in the absence of express statutory authority to do so. Instead, the courts should presume that a criminal prohibition delineated by regulation is required to be precise.

7. This argument is not grounded in the administrative law question of whether the Regulations are *intra vires* the Governor in Council pursuant to the principles set out in *Vavilov* and *Auer*.¹ Instead, Ontario submits that there is a presumption of precision embedded in s. 91(27) of the *Constitution Act, 1867* because the language used to create or delineate a prohibition is integral to the creation of a crime.

8. The presumption of precision in Parliament's exercise of its criminal law power operates analogously to the requirement in s. 53 of the *Constitution Act, 1867* that taxes be expressly authorized by primary legislation.² Just as a court will not presume that a delegate has the authority to levy a tax, a court should not presume that a delegate has the authority to delineate the scope of crimes using imprecise language. These are not mere rules of statutory interpretation that can be modified by Parliament, but instead constitutional requirements that determine how the courts

¹ *Auer v Auer*, [2024 SCC 36](#); *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#).

² *Eurig Estate (Re)*, [\[1998\] 2 SCR 565](#), at [para 32](#).

interpret the laws of Parliament and therefore how delegates understand the scope of their authority.

9. While s. 7 of the *Charter* protects against vagueness in any context where life, liberty or security of the person are engaged, the threshold is appropriately “a relatively high one”.³ A stricter rule is required in the context of Parliament’s use of the federal criminal law power for two reasons.

10. First, a criminal conviction alone carries the stigma associated with having been found to have committed “conduct that is highly culpable — conduct that is viewed as harmful to society, reprehensible and unacceptable.”⁴ As Professor Tanovich observes, “It is this reprehensible or blameworthy character that distinguishes conduct reasonable people think of as criminal from other regulatory mechanisms such as civil tort law or regulatory and provincial offences.”⁵ The *Criminal Code* offences related to possession of a prohibited firearm, for example, are objectively serious, carrying maximum terms of imprisonment ranging from five to fourteen years.⁶ A stronger safeguard against the risk of conviction based on an imprecisely defined offence is uniquely appropriate here.

11. Second, the criminal law power is one of Parliament’s broadest, given that it is only constrained by the minimal requirements of: (1) a prohibition, (2) backed by a penalty, (3) in furtherance of criminal law purpose.⁷ The lack of a consensus on the meaning of the third

³ *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, [2025 FCA 82](#) [**FCA Decision**], at [para 82](#), citing *Winko v British Columbia (Forensic Psychiatric Institute)*, [\[1999\] 2 SCR 625](#) at [para 68](#).

⁴ *R v Mabior*, [2012 SCC 47](#) at [para 19](#).

⁵ David M Tanovich, A Normative Approach to Criminal Law Purpose Under 91(27), [2026 CanLIIDocs 748](#) [**Tanovich**].

⁶ *Criminal Code*, [RSC 1985, c C-46](#), ss [91\(3\)](#), [92\(3\)](#), [93\(2\)](#), [94\(2\)](#), [95\(2\)](#).

⁷ *Reference re Genetic Non-Discrimination Act*, [2020 SCC 17](#) at [para 67](#) (per Karakatsanis J., Abella and Martin J.J. concurring), [para 137](#) (per Moldaver J., Côté J. concurring); *R v Malmo-Levine*, [2003 SCC 74](#) at [para 74](#); *Reference re Assisted Human Reproduction Act*, [2010 SCC 61](#) at [para 35](#) (per McLachlin C.J., Binnie, Fish and Carron J.J. concurring); *Reference re Firearms*

requirement⁸ risks turning the criminal law power into an overbroad federal power to prohibit and penalize anything.

12. The presumption of precision, by adding content to the otherwise easily met requirement of a prohibition, contributes to the balance of powers between the two levels of government. It ensures that Parliament’s delegated authority is no broader than necessary to achieve a particular criminal law purpose. As Chief Justice McLachlin noted in *Reference re Assisted Human Reproduction*, a “limitless definition” of the criminal law power “has the potential to upset the constitutional balance of federal-provincial powers.”⁹ The presumption of precision embedded in s. 91(27) addresses these concerns about the potential scope of the criminal law power. The presumption is also consistent with this Court’s recent jurisprudence in which it has “circumscribed the scope of the federal criminal law power.”¹⁰

13. The presumption of precision is not an onerous one. It allows Parliament to create offences which are defined through less precise regulations where Parliament has turned its mind to the matter and determined that such flexibility is necessary. The presumption of precision means that Parliament must expressly authorize the use of imprecise language in delegated exercises of its criminal law power, such as the enactment of regulations which delineate the scope of criminal offences.

14. Parliament has done exactly that, for example, in the *Controlled Drugs and Substances*

Act (Can), [2000 SCC 31](#), at [para 27](#); *RJR-MacDonald Inc v Canada (Attorney General)*, [\[1995\] 3 SCR 199](#); *R v Hydro-Québec*, [\[1997\] 3 SCR 213](#); *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1948 CanLII 2 \(SCC\)](#), [1949] SCR 1.

⁸ Tanovich at [p 4](#), “no majority view”; *Reference re Assisted Human Reproduction Act*, [2010 SCC 61](#); *Reference re Genetic Non-Discrimination Act*, [2020 SCC 17](#).

⁹ *Reference re Assisted Human Reproduction Act*, [2010 SCC 61](#) at [para 43](#) (per McLachlin C.J., Binnie, Fish and Charron J.J. concurring).

¹⁰ *Murray-Hall v Quebec (Attorney General)*, [2023 SCC 10](#) at [para 99](#).

Act, by providing the statutory definition of “analogue”, which means “a substance that, in relation to a controlled substance, has a substantially similar chemical structure”.¹¹ Parliament included reference to “analogues” in the original version of the Schedules of the *Act* that it enacted.¹² In granting the Governor in Council the authority to modify those Schedules, it necessarily granted authority to use the same term.¹³

15. In other cases, where Parliament has not authorized the use of imprecise language, all the presumption of precision requires is that a regulation be specific. Where Cabinet has determined that a particular regulation subject to the presumption is under-inclusive, a simple regulatory amendment is all that is needed. The Federal Court of Appeal erred in holding it would “hardly be practical” “to amend the Regulations every now and then to add unnamed variants as they appear on the market”.¹⁴ The ease with which Cabinet can amend regulations is the very point of Parliament’s delegation and something that Cabinet does regularly.

B. The Regulations do not comply with the presumption of precision for crimes delineated by regulation

16. The relevant *Criminal Code* provisions do not expressly or implicitly authorize the Governor in Council to imprecisely delineate the scope of a crime, as it has done in the Regulations.

17. Subsection 84(1) of the *Criminal Code* defines a prohibited firearm as including “any firearm that is prescribed to be a prohibited firearm”.¹⁵ Subsection 117.15(1) simply confirms that “the Governor in Council may make regulations prescribing anything that by this Part... may be

¹¹ *Controlled Drugs and Substances Act*, [SC 1996, c 19](#) [*CDSA*], [s 2\(1\)](#), “analogue”, as amended.

¹² *Controlled Drugs and Substances Act*, [SC 1996, c 19](#), s 2(1), “analogue” (1996 version).

¹³ *CDSA*, [s 60](#)

¹⁴ FCA Decision [para 73](#)

¹⁵ *Criminal Code*, [s 84\(1\)](#), “prohibited firearm”, (d)

prescribed”.

18. This generic language does not meet the constitutional standard for authorizing imprecise language in a regulation laying out the scope of a criminal prohibition. It is simply a generic reference to prescription and the making of regulations. The *Code* does not define “variants” in the way that the *Controlled Drugs and Substances Act* defines “analogues”.

19. The Regulations, however, use such imprecise language. While they prescribe certain specific makes and models of firearms, they also prescribe “any variants or modified versions” of the expressly prohibited makes and models.¹⁶ Neither the term “variant” nor the phrase “modified version” is defined in the Code, the Regulations, or elsewhere in federal law.

20. This inexact language is separate from the prescription of firearms based on physical characteristics, such as bore diameter or muzzle energy, which provide fair notice to owners on what types of firearms it would be a crime to retain.¹⁷ The federal government interprets the broader language of “any variant” to sweep in hundreds of models of guns not actually identified in the text of the Regulations.¹⁸

21. The Federal Court of Appeal erred by relying on opinion evidence to interpret the term “variants”.¹⁹ The interpretation of legislation is a question of law on which the courts need no assistance from a forensic scientist.²⁰

22. The fact that three expert public law judges felt the need to endorse reliance on such a

¹⁶ *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**], s 3(1), Item 83; s 3(2), Items 87-94.

¹⁷ [Regulations](#), s 3(2), Items 95 and 96.

¹⁸ FCA Decision at [para 13](#).

¹⁹ FCA decision [para 83](#).

²⁰ *R v Comeau*, [2018 SCC 15](#), at [para 40](#).

factual opinion – and not provide any legal interpretation themselves – is telling. It suggests an unusually high level of imprecision in the Regulations which should give this Court pause. The presumption of precision embedded in s. 91(27) presents an opportunity to resolve that obvious concern on narrow grounds.

PART IV – COSTS

23. Ontario seeks no costs and asks that no costs be ordered against Ontario.

PART V – ORDER REQUESTED

24. Ontario requests permission to make a single presentation of 10 minutes of oral argument at the hearing of the three appeals in which the constitutional question is raised.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF SEPTEMBER, 2026.



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Per: Padraic Ryan and Hera Evans

PART VI – TABLE OF AUTHORITIES

Jurisprudence		Cited in paragraph(s)
1.	<i>Auer v Auer</i> , 2024 SCC 36	7
2.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65	7
3.	<i>Canadian Coalition for Firearm Rights v Canada (Attorney General)</i> , 2025 FCA 82	9, 15, 20-21
4.	<i>Eurig Estate (Re)</i> , [1998] 2 SCR 565	8
5.	<i>Murray-Hall v Quebec (Attorney General)</i> , 2023 SCC 10	12
6.	<i>R v Comeau</i> , 2018 SCC 15	21
7.	<i>R v Hydro-Québec</i> , [1997] 3 SCR 213	11
8.	<i>R v Mabior</i> , 2012 SCC 47	10
9.	<i>R v Malmö-Levine</i> , 2003 SCC 74	11
10.	<i>Reference re Assisted Human Reproduction Act</i> , 2010 SCC 61	11, 12
11.	<i>Reference re Firearms Act (Can.)</i> , 2000 SCC 31	11
12.	<i>Reference re Genetic Non-Discrimination Act</i> , 2020 SCC 17	11

13.	<i>Reference re Validity of Section 5(a) of the Dairy Industry Act</i> , 1948 CanLII 2 (SCC) , [1949] SCR 1	11
14.	<i>RJR-MacDonald Inc v Canada (Attorney General)</i> , [1995] 3 SCR 199	11
15.	<i>Winko v British Columbia (Forensic Psychiatric Institute)</i> , [1999] 2 SCR 625	9
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16.	David M Tanovich, A Normative Approach to Criminal Law Purpose Under 91(27), 2026 CanLIIDocs 748	10, 11
Legislation		
17.	<i>Canadian Charter of Rights and Freedoms</i> , being Part B of the Constitution Act, 1982, RSC 1985, Appendix II, No 44 , s 7 <i>Charte canadienne des droits et libertés</i> , partie I de la Loi constitutionnelle de 1982, constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11 , art 7	9
18.	<i>Constitution Act, 1867</i> , RSC 1985, Appendix II, No. 5 ss 53 , 91(27) <i>Lois Constitutionnelles de 1867</i> , LRC 1985, annexe II, no 5 , arts 53 , 91(27)	2, 7-8
19.	<i>Controlled Drugs and Substances Act</i> , SC 1996, c 19 , ss 2(1) , 60 , as amended <i>Loi réglementant certaines drogues et autres substances</i> , LC 1996, ch 19 , arts 2(1) , 60 , telle que modifiée	14
20.	<i>Controlled Drugs and Substances Act</i> , SC 1996, c 19 , s 2(1) (1996 version)	14

	<i>Loi réglementant certaines drogues et autres substances</i> , LC 1996, ch 19 , s 2(1) (version de 1996)	
21.	<i>Criminal Code</i>, RSC 1985, c C-46, ss 84(1), 91(3), 92(3), 93(2), 94(2), 95(2) <i>Code criminel</i>, LRC 1985, ch C-46, arts 84(1), 91(3), 92(3), 93(2), 94(2), 95(2)	10, 17
22.	<i>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</i>, SOR/2020-96, s 3(1), Item 83; s 3(2), Items 87-96 <i>Règlement modifiant le Règlement désignant des armes à feu, armes, éléments ou pièces d'armes, accessoires, chargeurs, munitions et projectiles comme étant prohibés, à autorisation restreinte ou sans restriction</i>, DORS/2020-96, s 3(1), L'article 83; s 3(2), Les articles 87-96	19