

Federal Court



Cour fédérale

Ottawa, October 30, 2023 - A decision in files T-569-20, T-577-20, T-581-20, T-677-20, T-735-20 and T-905-20 was issued today by Justice Catherine Kane of the Federal Court:

**IN THE MATTER OF
CASSANDRA PARKER and K.K.S. TACTICAL SUPPLIES LTD.**

v.

ATTORNEY GENERAL OF CANADA;

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

v.

ATTORNEY GENERAL OF CANADA;

JOHN PETER HIPWELL

v.

ATTORNEY GENERAL OF CANADA;

**MICHAEL JOHN DOHERTY, NILS ROBERT EK, RICHARD WILLIAM
ROBERT DELVE, CHRISTIAN RYDICK BRUHN, PHILIP ALEXANDER
MCBRIDE, LINDSAY DAVID AMIESON, DAVID CAMERON MAYHEW,
MARK ROY NICHOL and PETER CRAIG MINUK**

v.

ATTORNEY GENERAL OF CANADA;

CHRISTINE GENEROUX, JOHN PEROCCHIO and VINCENT PEROCCHIO

v.

ATTORNEY GENERAL OF CANADA;

**JENNIFER EICHENBERG, DAVID BOT, LEONARD WALKER,
BURLINGTON RIFLE AND REVOLVER CLUB, MONTREAL FIREARMS
RECREATION CENTRE, INC., O'DELL ENGINEERING LTD**

v.

ATTORNEY GENERAL OF CANADA

and

ATTORNEY GENERAL OF ALBERTA

Summary: Six Applications for Judicial Review, most of which involved several applicants and raised several common issues, were heard together.

The Applications challenged the regulations promulgated by the Governor in Council on May 1, 2020 – 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]. The Regulations, which came into force on May 1, 2020, prohibit the possession and use of approximately 1500 listed firearms, as well as variants or modified versions of the listed firearms, and firearms that have certain physical characteristics.

Given that the Regulations came into force upon promulgation on May 1, 2020, an Amnesty Order provided a period of time for those who possessed now prohibited firearms to comply with the law. The Amnesty Order was initially for a period ending April 30, 2022, then extended until October 30, 2023 and has recently been further extended until October 30, 2025.

The Applications for Judicial Review raised many issues – some common and others unique. The issue before the Court is a legal issue – whether the Governor in Council acted within its authority to make the Regulations and made a reasonable decision to prescribe as prohibited the firearms that, in its opinion, are not reasonable for hunting and sporting purposes.

The Applicants generally took the position that firearms are not the real threat to public safety, rather people who obtain and/or use firearms illegally pose this threat. The Applicants highlighted that their use of firearms is already highly regulated and that they take safety extremely seriously and abide by all the existing laws, licensing and registration requirements. A common theme was that no further regulation is necessary, and more particularly, that the Regulations will not further contribute to the protection of public safety. The Applicants contended that the Governor in Council has not respected the constraint on its delegated authority and its opinion is not reasonable.

The Respondent, the Attorney General of Canada [AGC], took the position that the Governor in Council acted within its authority in forming the opinion that the firearms are not reasonable for civilian use in hunting and sport because of their various attributes, inherent deadliness, potential to cause serious harm and, more generally, their impact on public safety.

The Applicants made detailed and extensive arguments. Even on the common issues, some of the arguments differed or were nuanced. The AGC responded to all the arguments.

The Court endeavoured to acknowledge all the issues and arguments and focused on the determinative issues, the relevant jurisprudence, and as much of the relevant evidence as was reasonably possible, particularly, the evidence highlighted in the parties' submissions. As is often the case, the Applicants and AGC were critical of each other's evidence and submitted that the Court should attribute little or no weight to this evidence.

The Court dismissed the Applications.

The Court ruled that the Order in Council and Regulations are not *ultra vires*. The Governor in Council did not exceed the statutory grant of authority delegated to it by Parliament pursuant to subsection 117.15(2) of the *Criminal Code*.

The decision of the Governor in Council to promulgate the Regulations is reasonable. The Regulatory Impact Analysis Statement [RIAS], which is accepted as the reasons for the decision of the Governor in Council to promulgate regulations, explains why the Governor in Council determined that the prescribed firearms are not suitable for civilian use and are not reasonable for hunting and sporting purposes due to their inherent deadliness and the serious threat they pose to public safety, including the degree to which they can increase the severity of mass shootings.

The Governor in Council did not sub-delegate its authority to prescribe firearms as prohibited. The prescribed firearms and their variants are prohibited based on the *Criminal Code* and the Regulations. The role of the Royal Canadian Mounted Police's [RCMP] Specialized Firearms Support Service in assessing and classifying firearms as non-restricted, restricted or prohibited and posting the classification on the Firearms Reference Table is not an exercise of legal authority, but rather reflects the opinion of the Specialized Firearms Support Service and provides guidance to firearm owners and others. Where a person is charged with the possession of a prohibited firearm or a variant of a prohibited firearm, the Crown must prove that the firearm is prohibited and a court will make the ultimate determination.

There was no breach of the duty of procedural fairness in the decision of the Governor in Council to promulgate the Regulations.

The Regulations do not infringe section 7 of the *Charter*; the Regulations are not vague, overbroad or arbitrary. Alternatively, if the Court had found that the Regulations infringed section 7 in a manner not in accordance with the principles of fundamental justice, the Court would find that any infringement is justified pursuant to section 1 of the *Charter* as a reasonable limit. The overriding goal of public safety outweighs any possible infringement on the rights of firearm owners who are now more limited in their choice of firearm for hunting and sporting purposes.

The Regulations do not infringe sections 8, 11, 15 or 26 of the *Charter*.

The Regulations do not infringe the *Canadian Bill of Rights*.

A copy of the decision is available on the Federal Court [website](https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/524321/index.do):
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/524321/index.do>.