Federal Court

Court File # T-735-20

BETWEEN :

APPLICANTS: CHRISTINE GENEROUX, JOHN PEROCCHIO & VINCENT PEROCCHIO

AND

RESPONDENT: THE ATTORNEY GENERAL OF CANADA

MEMORANDUM OF FACT AND LAW OF THE APPLICANTS

(APPLICANTS ON THE MOTION): Christine Generoux, John Perocchio, Vincent Perocchio

(Rules: 364-369 and 373)

INTRODUCTION & DISCUSSION:

1. In compliance with Rule 366 of The Federal Court Rules, we write this Memorandum of Fact and Law, to replace the written representations in our Motion Record. We recognize that the various issues of facts and law between our Application and our Motion for Interlocutory Injunctive Relief are intertwined but the legal tests applied to each do differ. Thus, we will do our best to separate the legal and factual arguments surrounding the merits of our request for relief, our research, and the merits of the Respondents affidavits, to prove our case for injunction is worthy of a favorable ruling.

2. The response affidavits provided by the Respondents provide no relevant reason why we should not be granted the relief we seek in our Motion for Injunction. Federal Court Rule 373 (1) applies and we ask for a declaration that the devastating and unconstitutional effects of this OIC, which we will and have demonstrated, be stayed until the outcome of our application is decided. The liberty of Canadians is continuously jeopardized by the vague and un-defined terminology in the OIC and by the secretive and continuing re-classification decisions of the RCMP SFSS. The property of a bare minimum 75,000 individual Canadians (and hundreds of thousands of others who own the previously non-restricted firearms), plus thousands of businesses has been effectively seized without compensation, a large group of identifiable Canadians have been discriminated against "*based on a characteristic (s) which are only changeable at an unacceptable cost to our personal identities*". [1]

3. The lawful, cultural and economically important activities of hunting, sport shooting and historical firearms collecting have been irreparably harmed and impeded by the impugned legislation. Several legal doctrines have been violated and the GiC is in direct contravention of the Hunting and Sporting Restriction in the Criminal Code section 117.15 (2). We repeat all allegations of fact and legal arguments put forward in our Application, Notice of Constitutional Question and our Notice of Motion of Injunction thus far.

4. Every legal action taken in the case of the self-represented Applicants is the first attempt by us at any such procedure; we have made progress but still have much to learn. The cross-examination transcripts we have attached to this Motion Record were the first cross-exams we had ever attended, let alone participated in. This case is exceedingly difficult and complex. Such a high-level litigation and to be so lacking in experience and counsel has been a slight disadvantage in communicating our case to the courts. However, with the patience of the Honourable courts, the understanding and co-operation of other counsel and support from friendly registry staff, we are making our best effort to observe Canadian law and practice and not to be a burden to

[1] Respondents Memorandum in Nell Toussant v AGC para 41.

others in the process. Conducting these first cross-examinations and receiving some form of response affidavits from the Crown was a learning experience and we have begun to hone our argument into a sharper more focused version of the former. This document is the result of our cumulative efforts and learning thus far and we have clarified both our legal and situational understanding of the matters at hand.

5. In our Notice of Motion we stated we are sure the violation is un-justifiable and that the OIC should be of no force or effect. We are more certain of those statements than ever before.

6. Thankfully, the Respondents have produced some form of response evidence to our Motion for Injunction. After careful examination, this response evidence confirms our allegations thus far; that there is no justification for our rights to be violated, no credible science indicating that this violation of our rights is connected to public safety and so this violation is un-justified. In legal speak the impugned OIC is not rationally connected to its objective; its arbitrary. There are clear and terrible: legal, emotional and financial consequences to all Applicants and many others, consequences for which there is no legitimate excuse, and we are suffering irreparable harm. No high profile lawyers were willing to swear an affidavit with the erroneous documentary exhibits, and risk their reputation to submit the scientific dishonesty, so they chose a junior legal assistant, who had plausible deniability (who did not read nor understand the exhibits) to sign the affidavit.

7. Further, since the Government of Canada is well aware that this OIC will not reduce firearm homicide or suicide (aware by their own data) and they know Canadian firearm licensee's typically do not illegally sell their firearms or commit violence with them—the Government enacted this OIC for some undisclosed reasons which must be un-related to public safety. We imagine the OIC may have been announced, to our detriment, to enact a personal or political agenda, while the dis-honest reason of public safety was used because it is the only way to accomplish the real objective (to seize our firearms and damage gun culture). The impugned provisions of this OIC are different from cases such as the Firearms Act 2000, S.C.C[2], this OIC is not just "property regulation" to keep firearms away from those not qualified to use them, it is a total seizure on fraudulent grounds. This OIC is confiscation of property and this confiscation is not the means -but the ends of the legislation. Not confiscation for public safety, but confiscation on discriminatory grounds for an un-spoken reason.

8. In our Motion for Injunction, we stated with certainty and evidence that we have a serious issue to be tried here with a good chance of success, our Charter rights are being unjustifiably violated and severe irreparable

[2] *Firearms Act* (Can.), [2000] 1 S.C.R. 783

harm is being done to us by this OIC and by the RCMP's subsequent FRT re-classifications. The balance of convenience and the interests of justice dictate that we must obtain some relief from these injustices. The UN agenda of which Canada is a signatory[3] and Canadian officials themselves indicate one ultimate goal/ purpose is to reduce the lawful use and ownership of firearms. On this basis we conclude that the OIC, in it's pith and substance, is not designed to protect public safety from the misuse of firearms (illegal, violent use) but designed to seize property for a nefarious reason which is not rationally connected to public safety. Lawful use and possession by us of these firearms, is known to be no danger to the public; acknowledged by Public Safety in our documents and by the RCMP CFP simply by granting us licenses, they deem us no threat.

PART 1. Statement of Facts & Assumptions

9. In our Motion for Interlocutory Injunction, we ask for a range of potential declaratory relief from this oppressive legislation to preserve our legal rights and halt some of the harm done to ourselves and other Canadians. We have several main points to attend to: our section 7, 8, 9, 15(1), 26, and 27 Charter Rights and our section 1a and 1b of the Canadian Bill of Rights are being violated for un-just reasons, which simply put is, academic fraud, political pandering and un-warranted discrimination. We ask for this relief because the proven[4] ill effects of the OIC on the individual Applicants, hunters, sport shooters, collectors, business owners, employees, manufacturers, ranchers, farmers, police, military, wildlife officers, Indigenous groups and other members of Canadian Gun Culture are grossly disproportionate to the erroneous and capricious "public safety" objective stated in the OIC. Why is this being done to firearm owners?

10. The way these firearms were prohibited (and the criminal code significantly altered) by the OIC instead of by way of a Legislation/reading of a Bill in the House of Commons was an abuse of the purpose and scope of an OIC and did violate our property and legal rights. I think that's why organizations who have no interest in firearms, such as the Ontario Landowners Association and Canadian Taxpayers Federation have gotten involved in fundraising for some of the other cases. Previous firearms legislations (Bill C-71) did not seize the property or prevent current owners from using it, precisely because we are known to be no threat.

11. The un-defined terminology in the OIC and the RIAS is hopelessly and purposefully vague to the point that it jeopardizes the liberty of Canadians and brings the administration of justice into disrepute. Our property is unreasonably seized and we have been discriminated against and are not provided equal protection and benefit

[3] Affidavit of Christine Generoux , Exhibits U1-U6, UN documents

[4] The sworn affidavits of Generoux, J. Perocchio, V. Perocchio, A. Bernardo, Maj Baker, M. Hipwell, Delve, Overton, Jamieson, Nichol, Ek, Minuk, McBride ect…

of this OIC. This has been done in order to eliminate Canadian Gun Culture or it's possible our beloved Gun Culture is just an unfortunate casualty.

12. We know the previous Attorney General refused to legally define terminology in the OIC and RIAS ("variant" and "present in large volumes")[5]. Officials and policy writers acknowledged the need for and lamented the lack of a legal definition of "military assault style" and the lack of data[6] surrounding how often (or rather how rarely) Canadian firearm licensee's are involved in crime. The Government was warned by the Standing Joint Committee on the Scrutiny of Regulations that the un-defined terms were hopelessly vague, had precipitated legal trouble previously and needed to be defined to conform with Canadian legal tradition. Common sense dictates this warning was ignored and the terminology was left un-defined exactly for the purpose of achieving vagueness and arbitrary application, leaving which property can be seized open to an "evergreen process" and paving the way for broader future violations—this is open season on firearm owners so to speak.

13. We believe the terms were left legally un-defined in hopes of secretly granting sweeping powers to un-elected officials to prohibit any and possibly all firearms with the unfortunate side effect of criminalizing un-suspecting Canadians with the stroke of a keyboard (FRT re-classifications). The consequences of this is severe legal jeopardy to Canadians and so much legal un-certainty to firearm owners and businesses as to enact the end game strategy[7] of reducing the number of firearm owners and businesses, by any means, for a future total elimination. For future total control.[8]

14. The Respondents key witness Murray Smith states (cross-exams) that the firearms are effectively seized, the registration certificates, which are the only way to prove lawful ownership, are "administratively expired" and he is un-sure who owns the firearms now. He states, if not for the Amnesty order, that we would be in criminal possession of them right now.[9] They told us our only options are to wait for an (unlikely) buy back, have our firearms de-activated (damaged at our expense) or to legally export our firearms through a certified business. They told us after April 30, 2022 we will become criminals, if we resist the theft of our property.

15. Individualized letters were mailed out to about 75,000 owners, who possessed firearms previously registered as restricted which had now been re-classified as prohibited due to the OIC. Mr. Smith claims these letters

[5] Exhibit Y2, affidavit of Christine Generoux, pages 2-4
[6] Exhibit Y2, affidavit of Christine Generoux, pages 199-200, internal Public Safety emails
[7] Exhibits V1 and V2 in the affidavit of Christine Generoux
[8] Exhibit N1 and N2 in the affidavit of Christine Generoux
[9] Nov 05, 2020 cross exam of Mr. Smith, page 143- 148 (end para 15)

were a courtesy only[10] and the CFP had no obligation to mail these letters. He has claimed that the best way for average firearm owners to determine if their firearms have been prohibited under either the grounds it is a "variant" or that it surpasses the "bore diameter or muzzle energy restriction", is to simply "figure it out for themselves"[11]. He says we may do this using the public version of the FRT, which we purport is an un-manageable and unreliable document. The public version of the FRT is 167 MB to download, is over 101,000 pages, has over 190,000 entries and takes more ram or computing power to open and run than the average home PC has available.

16. The RCMP SFSS admits they have changed the classifications of firearms from non-restricted or restricted to prohibited, many times between May 01- June 15, 2020 (without notice), the publically accessible version of the FRT is only updated every 2 weeks. Yet the version available for law enforcement to use as a tool to determine if someone is in illegal possession of a (newly) prohibited firearm, is updated every day; the public has no way to view this. In Mr. Smith's affidavit he claims that there are no more planned updates that he is aware of but concedes that since he is not the manager any longer, he might very well not be informed and there is nothing stopping the RCMP from continuing to prohibit without notice[12]. Mr. Smith claims that the public can reach out to local firearms businesses to ask if their firearms are prohibited, effectively putting a legal burden to assist in our destruction on the very people who are most harmed by this OIC.[13]

17. He denies knowledge of any serious flaws in the FRT system which might prevent average people from getting the information, but answered that he is aware that a user of the PDF is unable to search for both the make and model of their firearm together in one search. He said it's because PDF is limited to such a search function. A user must search either the make or model, because the FRT headings and sub headings are separated as such, ie: Norinco or 97A, Remington or 700. This issue often results in thousands of irrelevant returns, taking average 2 hours to search for a popular make/ model. He acknowledges he does not recall ever seeing a document as large as this.[14]

18. Mr. Smith seemed to be totally un-aware of the Doctrine of the Duty of Care[15], which surprised us because he was in a position of authority and his decision making power and capability have had legal and financial consequences to Canadians. We are disappointed he is unaware of his obligation to execute his duties/

[10] Nov 05, 2020 cross exam of Mr. Smith, page 173 (para 6) to
[11] Oct 29, 2020 cross exam of Mr. Smith page 43 (para 5)-page 44
[12] Oct 29, 2020 cross exam of Mr. Smith page 84 (para 24) to page 85 (to para 9)
[13] Oct 29, 2020 cross exam of Mr. Smith page 45 (para 5-9)
[14] Nov 05, 2020 cross exam of Mr. Smith, page 158 (para 10)- page 161 (para 6)
[15] Nov 05, 2020 cross exam of Mr. Smith page 241 (para 3)-page 242 (para 5)

decisions in a clear and fair manner to protect the public he serves. I put it to Mr. Smith that Stats Can states that in 2018 only 71% of Canadian seniors accessed the internet[16]. For an individual who is not "tech savvy" locating and navigating the FRT may not be possible. People have not been directed to the FRT by any authorities, the Gazette or the mailed letters.

19. Since Mr. Smith insists the FRT is "not legally binding on law enforcement, judges or administrative decision makers" how can we rely on just the opinion of a technician to ensure we are in compliance with the law? Mr. Smith, although denying the FRT is legally binding, has no choice but to accept that the classifications as written in the FRT held serious legal consequences to Canadians. It is a safe bet that the RCMP's opinion of what is a prohibited firearm are given more weight by "law enforcement, judges and decision makers" than our opinions ever would be.[17]

20. Mr. Smith maintains the public can call or email the RCMP CFP for information on their specific firearm in cases where they are un-sure. We put it to Mr. Smith that RCMP CFP's wait times on hold (and for responses to emails) are un-manageably long, stated on their website[18] and he didn't have an answer for that. Common sense tells us it is unlikely that a firearm owner, seeing their firearm is not found in the FRT, and living in fear of having their possessions seized would not want to bring attention to a firearm which has escaped the ban thus far. We certainly don't want to give the RCMP any ideas about adding more firearms (currently not prohibited) to their growing prohibited list.

21. The OIC is *ultra vires* the Charter of Rights and Freedoms, The Criminal Code of Canada's Hunting and Sport Shooting Restriction (117.15 (2), the Bill of Rights and was engineered to achieve the outcome of Gun Culture extinction and licensee imprisonment. The criteria in the OIC used to seize our property, by deeming it as now prohibited (and later in the FRT) seems to be primarily focused on arbitrary visual characteristics such as plastic carrying handles and accessories[19], as well as characteristics which could be useful for self defense (tactical)[20]. One such example, in the RIAS, "firearms of modern design" are up for prohibition; in the affidavit of Murray Smith he points out 3 basic components of modern firearms-specifically that they consist of "a stock, an action and a barrel". All firearms, except potentially black powder muskets consist of these 3 components.

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[16] Exhibit D for identification purposes (Nov 05, 2020 cross exam of Mr. Smith, by Christine Generoux) Stats Can Internet
[17] Nov 05, 2020 cross exam of Mr. Smith page 164 (para 18)-page 169 (para 23)
[18] Exhibit E for identification purposes (Nov 05, 2020 cross exam of Mr. Smith, by Christine Generoux) RCMP wait times
[19] Oct 30, 2020 cross exam of Mr. Smith page 145 (para 4)- page 147 (para 9), page 127 (para 10)-131 (para 12), page 32 (para 12)
[20] Nov 05, 2020 cross exam of Mr. Smith page 78 (para 16) page 81 (para 25)

22. The decisions of the RCMP to re-classify as "prohibited variants", it now comes to light, have been heavily influenced by other un-stated criteria. Criteria un-stated in the Regulation (OIC & RIAS), un-stated by the RCMP and un-stated in Mr. Smiths affidavit. Murray Smith admits upon cross exam, the criteria or factors which they use to determine what is a "variant", are exclusively and elusively orally passed down at the RCMP SFSS[21]. Criteria which are given more consideration than the parentage of the firearm, the marketing of it or the actual mechanical capability of the firearms. Reminiscent of how the GiC prohibited thousands of firearms based on visual characteristics, rather than their potential for/ frequency of misuse, impact upon public safety or the reasonability of use. The affidavit of the Respondents witness Mr. Murray Smith implies that he clearly lays out how the RCMP defines and applies the term "variants" but during cross-exam, he strayed from that testimony considerably.

23. We ask the injunctive or declaratory relief to stop some of the ill effects on the general administration of justice and sacred Charter Rights of citizens, those citizens are firearm owners. The relief sought is appropriate in the circumstances and directly related to this unprecedented situation, since we explain why our Charter Rights are unreasonably violated and the Respondents have not explained why it could be justifiable. Our rights have not been violated justifiably because of some pressing national emergency no, but due to legislative bias, discrimination against us for the personal enrichment of others and we insist academic fraud and statistical dishonesty has been perpetrated against us. Not only have our rights been violated, our liberty put at real jeopardy and our property seized, there is another legal scandal here- this impermissible sub-delegation of authority by the GiC to the RCMP to decide which firearms are unreasonable (can be prohibited). The RCMP SFSS are making up law with their ambiguous (FRT) and it's consequences upon Canadians are un-constitutional.

24. That is why we requested the additional relief of "An injunction or order to stop the (RCMP SFSS) from re-classifying as prohibited (changing) any further (previously non-restricted or restricted) firearms in (FRT)". After cross exams, our suspicions are confirmed- the RCMP CFP are extra judicially inventing law and then un-evenly enforcing that invented law. This is a serious situation, and in the FRT, Canada now has an ever-growing document (un-wieldy, un-accessible and illegitimate) which the RCMP falsely claims is just a simple non-binding opinion with no real force or effect. This is un-true, the FRT and the classifications of firearms contained in it seem to have been given all the power and might of Canadian law with none of the cautionary checks and balances.

[21] Oct 30, 2020 cross exam transcript Mr. Smith page 24 (para 22)-page 25 (para 5)

25. The classifications as written in the FRT absolutely have serious legal consequences to Canadians and Canadian businesses, the FRT is used to guide officers when seizing property and making arrests, it's used by CFO's to revoke and grant licenses to sell and possess firearms and by the Canadian Border Services Agency (CBSA) to allow import and export of firearms. To our horror, it could be utilized by the judicial system to convict citizens on the charges of un-lawful possession, manufacture and sale of firearms. Literally, the text in the OIC "un-named variants and modified versions" impermissibly gives power to the RCMP and CFP technicians and beaurocrats with no legal training, to make up definitions (or rather interpret terms which are un-defined and apply their own definition, opinion and bias to it). The terminology, which is defined nowhere in the law or otherwise, can then lead to the imprisonment of people based on vague, arbitrary and mysterious/un-knowable terms.

26. Mr. Rick Timmins, who owns Alberta Tactical Rifle Supply (ATRS), was initially relieved to see that his firearms (which he designs and sells) the "Modern Varmint" and "Modern Hunter" had escaped the ban list in the OIC on May 01, 2020. He was later devastated to find out the RCMP had re-classified them in their FRT under the auspices they are now "variants" of the newly prohibited firearms. This is a serious issue as Mr. Timmins never designed them as variants of anything and the RCMP had previously not classified them as variants. Since the FRT re-classifications are not "legally binding", it must be safe to continue filling previous and new orders for these firearms. The letter sent to Mr. Timmins from the Alberta CFO paints a much different picture[22]. What we are specifically concerned about in this letter is that the FRT designations are the only thing mentioned or relied upon to accuse Mr. Timmins of selling prohibited firearms. The letter states that un-suspecting new owners of these firearms are not protected by the Amnesty order and are in immediate criminal possession of the firearms. The FRT classifications have serious legal consequences, period.

27. The way we understand the law and we know the RCMP understands it (in part because of Mr. Smiths carefully crafted testimony on cross-exams), is that the RCMP has NO authority or qualifications to invent laws or legal definitions. Mr. Smith claims the RCMP SFSS does not deem, decide or prohibit he claims that is solely up to the GiC and law makers—he claims the RCMP SFSS only enforce and work under the definitions set out in the Criminal Code-he had no answer when we kept asking which definitions. He claims the courts are the ultimate authority; in other words when a citizen/business falls into the "trap" of this vague legislation (OIC & FRT) that their only option is to find out the truth as a prisoner and their entire life and livelihood is on the line.

[22] Office of the CFO Alberta and NWT (Ken Dobie) letter, Oct 30, 2020 to Richard Timmins and Gregg Dunn (Timmins affidavit #2)

28. Mr. Smith's claims, that the RCMP doesn't define, deem or decide, is non-sense. The terms in the OIC and RIAS "Military Assault Style Firearms", "Variant or Modified version", "Commonly Available or present in large volumes", "tactical or military design", "Modern Design", "Capable of" and how to legally measure "Bore Diameter" and "Muzzle Velocity in Joules" is not defined anywhere in this OIC, Criminal Code or other Canadian law. It appears to have been left up to random and faceless RCMP/CFP employees to decide the legal definition and how-when and to whom- it will be applied. In addition, to change how that's applied when it suits them.

29. Worse—they intentionally chose not to transparently define these terms, even internally within the RCMP, since they are aware they don't have the authority to make these definitions and they would not want their definitions to 1. attract scrutiny or attention and 2. allow any firearm owners or businesses to escape the agenda to destroy them. Mr. Smith claims upon cross-examinations, when pressed and finally backed into a corner that the RCMP does not have an official definition for "variant" or the other terms. He stated that the RCMP generally use an Oxford Dictionary definition of "variant"[23]. When Mr. Bouchalev pointed out several firearms which the RCMP has prohibited (not named in the regulation on May 01, 2020) do not in any way meet that Oxford definition or the description of criteria laid out in Smith's affidavit, Mr. Smith adds there are other criteria or determining factors used when re-classifying as a "variant"[24]. He claims the factors or criteria are not written down anywhere[25]. He claims he cannot recall the reasons or does not have the "paperwork" with him. An undertaking to get this information (and other answers and information) was refused.

30. If Mr. Smith was trying to justify the harm perpetuated on us by this OIC, or trying to prove we shouldn't get the relief we seek he did a poor job. Upon cross-examination he seemed to insinuate that the Regulation and un-defined terms were reasonably clear but he could not justify or properly explain them. He insinuated that we don't really "need" the firearms, such as Mr. Delve with his BCL 102, but could provide no alternative suggestions or justification, since he conducted no laboratory recoil tests[26]. He thought that sustenance hunters, such as the Haida Gwaii Nation could just be more careful with their shots, and that it's unlikely that our lives are very much at risk. Finally, in his offensive chart of "mass shootings" "which were done with firearms prohibited by virtue of the regulation", he denied (under oath) having selected these 5 high profile incidents on the basis that these specific incidents were perpetrated by persons who happened to have had (at

[23] Oct 29, 2020 cross exam of Mr. Smith page 114 (para 14) –page 116 (para 22) and page 165 (para 20) –page 175, end. Continuing Oct 30, 2020 cross exam transcript Mr. Smith page 6-41 (para 22)
[24] Oct 30, 2020 cross exam transcript Mr. Smith page 81-103 (para 19)
[25] Oct 29, 2020 cross exam transcript Mr. Smith page 157 (para 14-20)
[26] Nov 05, 2020 cross-exam transcripts Mr. Smith page 213 (para 2)- page 219 (para 13)

one time) some sort of firearms license[27]. I may not be a lawyer but I wasn't born yesterday. He said it must just be a coincidence, but that is statistically impossible. This chart is actually useful to my case. These are just about every single known public shooting in Canada's history by a person who happened to (at one time) hold a valid license. This proves the likelihood and risk is astronomically low.

31. Mr. Smith was reasonable enough to admit that the firearms were not designed for the purpose of mass murder and never had been used for it in Canada[28], but was not reasonable enough to admit that the good done by licensees (and our firearms) greatly outweighs the bad. I put it to Mr. Smith[29] that Stats Can shows us that from 1961-2009, 133 police officers were murdered in citizen encounters. In 48 years it's an average of 2.77 deaths per year. In Mr. Smiths chart, in the years from 1989-2017, 25 people were killed by (religious/political extremist, criminally insane) licensees. In 27 years that's ~0.925 deaths per year, in licensee encounters. From the partial list of police killings on Wikipedia we have 461 deaths in 17 years, in police encounters. In 17 years, that's 27.11 per year. Therefore, police kill 10 times as many citizens, than they kill police. There is no doubt that police overwhelmingly protect and serve the community, as do licensees. If only 10% of the fateful police encounters are un-justified killings, they are still more than twice as likely to shoot someone than licensee's are – for regular citizens, they are almost 3 times as likely. No one is suggesting we take firearms from the police to prevent this, but this is exactly what is being suggested against us. On cross- exams Mr. Smith alluded to the Governments fears about licensee's when he said people possess AR 15's for "defense" purposes and when he said that our 3 gun target competitions may not be legitimate and that we might participate in them for some nefarious reason other than sport/competition.[30]

32. We maintain serious allegations of wide sweeping Constitutional violations in our Motion for Injunction and that is why we are forced to do this. The Respondents have sent forward an "expert witness" who's code of conduct form is inadmissible, as he is the Respondent decision maker we are challenging here today. He was consistently evasive and contradicted his testimony and his affidavit repeatedly throughout cross-exams. He seemed unable to answer simple yes or no questions and it came to light that Mr. Smith actually had input into the OIC and writing the RIAS (we suspect heavy involvement) but he could not say to what extent due to cabinet confidentiality.

[27] Nov 05, 2020 transcripts, cross-exam Mr. Smith page 230 (para 2)- page 234 (para 22)
[28] Nov 05, 2020 transcripts, cross-exam Mr. Smith page 181 (para 10)- page 185 (para 5) and page 211 (para 13-23)
[29] Exhibits H,I,J for identification to Mr. Smith from Christine Generoux. Nov 05,2020.
[30] Oct 30, 2020 cross exams of Mr. Smith page 51 (para 17)- page 52 (para 17) and Nov 05,2020 page 81 (para 8)-page 82 (para 25)

33. The prohibition seems to not include firearms which seem to meet the loose definition of military assault (SKS family)[31] yet inexplicably includes, 22 LR varmint and plinkers, bolt action shotguns, collectors items, and big game hunting rifles—what went wrong here? These mistakes which they either can not or will not answer for-citing the mysterious un-named criteria for their decision making is not written down anywhere and he can't recall why specific firearms were prohibited. The criteria, process & reasoning behind the SFSS re class of variants is so utterly mysterious, complex and hard to understand that even the manager could not explain. But they maintain that it is "easy" for the average firearm owner to figure it out? Does the FRT process and the vague regulation itself, put Canadians constitutional rights in jeopardy? Shall we conclude this to be incompetence or deception?

34. They sent a junior legal assistant with a documentary exhibit affidavit (Ms. Adrienne Deschamps) who claims, "she has no knowledge of the contents of the exhibits, the meaning or importance of them, their context or use, our motions or the OIC/Regulations." She only swears "the exhibit titles, authors and links are accurate to the best of her knowledge."[32] We would like the exhibits struck as hearsay, as we have had no chance to cross- examine anyone regarding their content or use, in the alternative we want to cross-examine someone who can answer. We have added several documents, which we wanted to put to someone who had read the exhibits, upon cross-exam. If the Honourable courts see fit maybe they can allow these documents? If the Crown intends to use the exhibits to any extent in the future, even in a Brandeis Brief, that could be a breach of their discovery obligations. The exhibits in the Deschamps affidavit are but vague insinuations and cowardly attempts to introduce evidence without stating a categorical belief or risking ones reputation. We do not blame the Crowns counsel for trying to do their jobs; sadly, that job is to try to defend the indefensible.

35. We have pointed out specific examples of academic fraud and data obstruction in our documents[33], fraud was used in the OIC, in the RIAS, in statements and studies used by public officials and these officials have responded with yet—more seriously misleading academic fraud and dishonesty. The author of Exhibits E & P and co-author of Exhibit I, Dr. Alpers (affidavit of Ms. Deschamps) is a known anti-firearm activist, paid by the UN[34]. He has used the same trickery of switching definitions (to manipulate data and draw incorrect inferences) as the Government of Canada officials have when changing the definitions of "gun crime and crime gun". This type of fraud, when used to remove our rights, is simply outrageous. It is impossible to address it all, properly, in the 30 page limit but more can be discussed orally we hope.

[31] Exhibit G for identification from Christine Generoux, to Mr. Smith, Nov 05, 2020.
[32] Nov 05, 2020 transcripts, cross-exam of Ms. Deschamps page 37 (para 17)- page 39 (para 22)
[33] Exhibit X1, X2, L ect in the affidavit of Christine Generoux, as well as Prof Kleck's critique of Deschamps Exhibit I
[34] Dr. Alpers profile addition, competing interests

36. I have grouped the Respondents deponent, Adrienne Deschamps exhibits into categories, which are more understandable and manageable and I will comment on some of them briefly.

The Iron Sights Exhibits

37. In Maj (Retd) Cary Baker's affidavit he swears that, he has served this country's military for 35 years, has invested all of their retirement savings in their business and that until the OIC, business was decent. Major Baker swears that "in the blink of an eye, with no warning, they were left with almost 150,000$ of firearms which were un-sellable", which he tried to return to the manufacturers to no avail. The OIC has left him with 150,000-200,000$ in accessories for these firearms, which have not been selling because of this OIC and he does not feel Canadian anymore. He claims that the OIC has nearly bankrupted him (and may bankrupt him) and the OIC and the un-certainty of bankruptcy and letting his employees go is upsetting to him. We gave him zero template, coaching or suggestions on what to put in his affidavit, it is 100% his own language, we had never heard of him before the OIC.

38. Exhibit K and L to the affidavit of Ms. Deschamps are screen shots of Iron Sights Facebook (FB) page, where Mr. Baker reports that Iron Sights has been invited to attend (and then does attend) a round table working group to discuss ways to reduce violent crime. The participants were told it was a discussion where the Minister was "leading an examination of a ban on handguns and "assault weapons" across Canada." The consultations and discussion, which we have referred to (as Public Consultations held in 2018/2019) were framed as a discussion on options to reduce violent gun crime while at the same time protecting the rights of law-abiding Canadian gun owners. Seeing as there is no one to be cross examined about the context of these Deschamps exhibits, we have no way of knowing if these 9 exhibits were included to try to discredit Mr. Bakers testimony.

39. If the Respondents are implying something about the validity of this affidavit, the fact that Mr. Baker attended the discussions and public consultations in no way contradict his affidavit. He knew something might happen but in fact, Exhibit L (of Ms. Deschamps) proves he did not have an idea as to what was going to happen. In this Deschamps Exhibit L, he notes the Minister promised to respect "rights of law abiding Canadian gun owners" and "no decisions were made", Mr. Baker refers to steps in a long process, with opportunity for input from firearms advocates.

40. In the Exhibit M of Ms. Deschamps, a FB post from Iron Sights cites their new batch of IWI Tavor X95 firearms, which are desirable because they are non-restricted. "Thanks to the current government's firearm policies, these non-restricted rifles tend to go fast so don't miss out." Simple marketing tactics, based around

truth; some were hesitant to buy restricted rifles for various reasons, including a potential future prohibition. At almost 3000$ each it's no wonder, people do not want to buy firearms which they are un-certain will remain legal. Non-restricted rifles tended to go fast because owners never expected that they would "jump" from non-restricted to prohibited category; skipping the restricted category, the criminal code or legal history doesn't seem to provide for that.

41. The Exhibit Q in the affidavit of Ms. Deschamps, is a FB post dated Dec 06, 2019, where Mr. Baker mentions "the speech from the Throne, with regards to the gun debate". Using the term debate, indicates that he thought an impending gun ban would be debated in the House of Commons and tabled in a legislative bill of some sort. Mr. Baker correctly points out that no law abiding Canadians own "assault rifles", we own sport carbines which are limited to 5 or 10 rounds, assault rifles are defined as fully automatic and banned some time ago. It is obvious that Mr. Baker thought any future ban would be a limited legislative bill and might never happen as well. Everyone was shocked that the OIC included previously non-restricted firearms, a vague variant clause and an arbitrary bore diameter and muzzle energy restriction. He was as shocked as everyone else was, to learn it included bolt action, pump action "ordinary"[35] hunting rifles and shotguns. He didn't imagine that owners and shops would not be grandfathered and compensated, as they have been in the past.

42. In the Exhibit T, in the affidavit of Ms. Deschamps is yet another FB post made by Iron Sights Tactical from May 03, 2020, 2 days after the OIC's announcement (after he stated the OIC would devastate his business in other FB posts). "There are still a lot of fun rifles and shotguns (everything you see here) which didn't make the new naughty list in Canada, that you are still allowed to legally buy and take to the range to have fun with. Just saying!!" This is a simple marketing strategy and an effort to save his business. Poor Mr. Baker knows full well the "change clause" in the OIC stating more firearms will be prohibited in the future (once we buy them) threatens ALL future viability of ANY firearms and businesses, especially ones like his, which focus on "tactical".

43. The Exhibits X, Y, Z and AA, of the affidavit of Ms. Deschamps are various screen shots of Mr. Bakers website showing that he still offers backpacks, hats, knives and other merchandise for sale. The screen captures show that he is still offering various firearms, ammo and accessories for sale. Mr. Bakers affidavit clearly says that these accessories which are sold with and for the prohibited firearms, have not been selling because of the OIC, not that he is not offering them for sale any longer. Mr. Baker maintains that he would have happily clarified his position to the Respondents, to put any doubts to rest, upon cross-examination or a further reply affidavit had that opportunity arisen.

[35] *Firearms Act* (Can.), [2000] 1 S.C.R. 783

44. The fact that the Respondents did not want to cross-examine any of our deponents, Applicants or Mr. Bouchalev's experts is their right, but logically the courts could draw some inferences from this. Maybe they had no reason to question us because they have no argument with our testimony or- no defense to our allegations? Maybe it's because our testimony would harm their case since it is hard to discredit truthful deponents, maybe they just don't wish to pursue that avenue at this time.

The "Academic Fraud" Exhibits

45. The academic fraud exhibits attached to the affidavit of Adrienne Deschamps were an eye opening experience for us. The Applicants & counsel for these injunctions chose to primarily rely on and retain Canadian experts, doctors and criminologists and utilize Canadian case studies and research because we thought that would be the most relevant to our pleadings. One such example is the recent groundbreaking scientific paper by Dr. C Langmann, contained in his sworn affidavit as Exhibit C[36] "The Effects of Firearm Legislation on Homicide and Suicide Rates in Canada from 1981-2016". During the cross-examination of Dr. Langmann, which I viewed (and which transcripts are attached to this record) the Respondents council put some of the "academic fraud and dishonest" exhibits (in the Deschamps affidavit) to Dr. Langmann. He called them out for what they are "incorrect opinions, incomplete, bias, false findings."[37] Shortly after that display, in which Dr. Langmann's testimony hurt the Respondents case, the Respondents counsel sent an email stating that they no longer wished to cross-examine at this time, another expert from the CCFR case (Dr. Mauser).

46. The Respondents have submitted studies purporting to be scientific (through the affidavit of Ms. Deschamps, firearms control and effects on firearm homicide and suicide rates) from Austria, Switzerland, U.S.A and Australia. The Respondents either did not ask any doctors, statisticians, epidemiologists, criminologists or experts to testify on their behalf (to rebuke our allegations that this OIC is not rationally connected to it's objective) or those experts chose not to come and testify.[38]

47. It is obvious why they chose to use Exhibit A (affidavit of Ms. Deschamps) by Nestor D. Kapusta et al, an outdated study from Austria: the study begins with an incorrect and unsupported assumption that "the availability of firearms in homes and at aggregate levels is a risk factor for homicide and suicide". That is incorrect to base research upon and has been repeatedly proven as such, anecdotally the Exhibit B (of Ms. Deschamps) does not support this assumption because the study in Exhibit B deals with suicide rates in

[36] The affidavit of Dr. C Langmann, Exhibit C
[37] Oct 27, 2020 cross-exam of Dr. Langmann page 45 (para 19) – page 49 (para 8) - page 56 end (para 23).
[38] Nov 05, 2020 cross-exam transcript Ms. Deschamps page 39 (para 23)- page 41 (para 7)

Switzerland. Switzerland has one of the highest per capita firearm ownerships by household in the world and has a relatively low number of suicides and homicides.

48. The authors are careful with their choice of wording in the "Results" section claiming "The rate of firearm suicides among some age groups, percentage of firearm suicides, as well as the rate of firearm homicides and the rate of firearm licenses, significantly decreased after a more stringent firearm law had been implemented." This does not indicate in any way that the decrease was, even in part, due to a more stringent firearms law. The authors protect themselves and their reputation from liability by stating the obvious limitations and problems with this study. They maintain that "due to the limiting ecological design of the study, the observed decrease in firearm homicide and suicide rates could be due to socio-economic factors". They address those who argued that the rate of firearms homicide and suicide was already declining and so it may not be due to the legislation by stating that the firearm homicide "rate" was previously steady but declined after the law.

49. The authors are not purporting that the 1997 firearms legislation was the cause of decrease in firearms suicide, if the Respondents wish to make this assumption we would like to know what caused the more significant decrease in hanging suicides in 1996, was there a law limiting access to ropes? Or a sharp decrease in the number of poisoning suicides between 1987-1992, un-related to any new law.

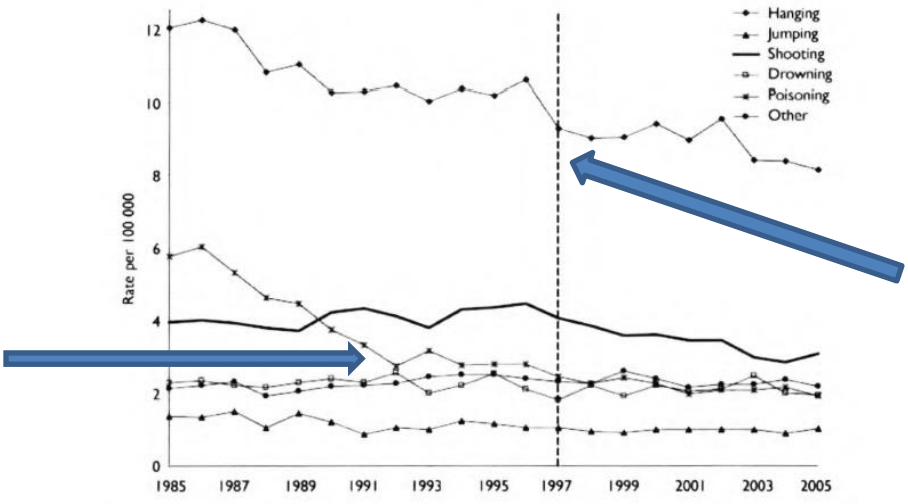


Fig. 3 Course of suicide methods before and after the 1997 firearm legislation.

50. Sadly, it seems they are not being entirely truthful or transparent when admitting the limits of their study, some rudimentary research shows that the firearms homicide rate "trend" may have been steady, but the amount was not previously steady at all, see Fig.4, below. The graph, using such small figures (0.00-0.60/100,000 people) misleads readers. Note the 1985-1997 pre legislation range had a fluctuation/range of +/-0.24 (ranging from it's highest recorded at 0.51/100,000 ppl to its lowest at 0.27/100,000 ppl resulting in a

fluctuation of min to max 0.24/100,000 ppl). The post legislation period had a fluctuation also of +/- 0.24 (ranging from it's highest recorded at 0.40/100,000 ppl to its lowest at 0.16/100,000 ppl, resulting in a fluctuation of min to max 0.24/100,000 ppl.

51. This does not indicate that it is probable that the firearms homicide decrease is due to the 1997 legislation and it does not indicate that the incidence of firearms homicide was previously steady. It does not indicate that the total homicide and suicide rates, nor even the firearms homicide and suicide rates are influenced by legislation restricting firearms; these researchers know as well as I do that those rates are influenced by confounding cultural and socio-economic variables such as un-employment rates, immigration, alcohol abuse and social programs and attitudes towards murder and suicide. The graph below looks like a significant decrease in firearm homicides; it's excellent that they have decreased but it is not possible to draw inferences as to why it decreased. That would be dishonest.

KAPUSTA ET AL

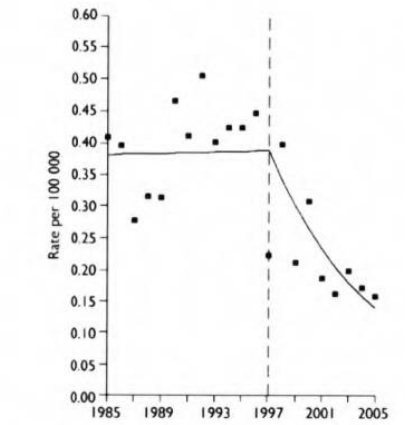


Fig. 4 Firearm homicide rates.

52. Furthermore, these numbers end in 2005 and it is now 2020. That is why we have introduced this graph (Image 1)[39] above which starts off on Austria's firearm homicide rate, where the Respondents graph finishes (in 2005). IF the 1997 legislation is indeed responsible for a total decrease of firearms homicide rate from 1997 to 2005 of approx. 67%, shown in Fig 4 above, what accounts for the 200% increase from 2012 to 2013 or the 50% decrease between 2011 and 2012 (shown in our Image 1)?

[39] Image 1 Austria's Homicide by firearm rate https://knoema.com/atlas/Austria/Homicides-by-firearm-rate

53. We can clearly compare the 2 graphs and see that the 2013 levels of firearm homicide in Austria are near the (pre-legislation) 1989 levels (2013 is 0.30/100,000 ppl in our graph and in the Respondents graph in 1989 it was 0.33/100,000 ppl). We echo Dr. Langmann's sentiments where he explains that when dealing with such small numbers, it is not possible to infer any useful data or results. Several years shown in our Image 1, above (2013, 2008) Austria experiences fluctuations in firearm homicide rates far higher than the decrease in the rates in the respondents Fig 4. That is normal when a 100% increase means 0.5 people of 100,000 people were killed with a firearm one year and 1.0 person out of 100,000 people was killed with a firearm the next year. Insignificant given natural variations and confounding variables, of such a small set of data.

54. It is not obvious at all why the Respondents chose Exhibit B (affidavit of Ms. Deschamps) by Thomas Reitch et al, as the impugned OIC and RIAS in our court case have not even mentioned suicide as a reason to prohibit our firearms. We believe they did not mention it because assisted suicide is the largest contributer of suicide now. This study only deals with suicide and firearm suicide in young men before and after the number of soldiers was halved in Switzerland. The study is irrelevant to their case and in any case proves our point better than it does the Respondents because most households in Switzerland have fully automatic firearms.

55. The authors state: "From March 2003 through February 2OO4, the number of Swiss soldiers was halved as a result of an army reform, leading to a decrease in the availability of guns nationwide." We might start by pointing out the assumption that the Army reform (early retirement) led to a decrease in the availability of guns nationwide is false because the study itself mentions <u>most</u> retiring military choose to keep their guns after retirement. The only control factor, was that the price to keep it increased, the study cited no data on gun ownership or availability neither before nor after the Army reform, and so is not academically proper to infer any decrease in firearms ownership/ availability because of it. Further, we (and Dr. Langmann)[40] point out that retiring 50% of active soldiers will itself reduce suicide rates, because soldiers have higher rates of PTSD and it follows that if they are no longer soldiers that would lead to a decrease in stress & suicide generally.

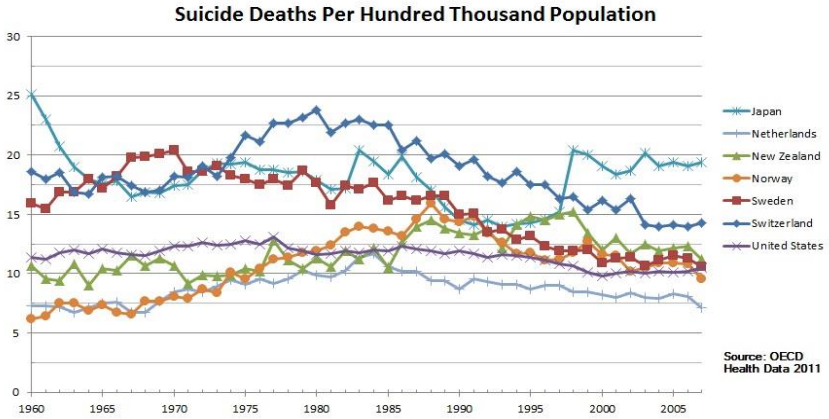
56. The authors again, are careful not to claim correlation or causation with their choice of wording in the Results section to protect their academic reputation. As Dr. Langmann proclaimed in his cross-exams[41], one needs to read the last sentences of these studies carefully to see that the studies claim absolutely no statistically significant findings. The authors "found a reduction in both the overall suicide rate and the firearm suicide rate after the Army XXI reform. No significant increases were found for other suicide methods overall. An

[40] Oct 27, 2020 cross-exam of Dr. Langmann page 64 entire page.
[41] Oct 27, 2020 cross-exam of Dr. Langmann page 51 (para 6-9)

increase in railway suicides was observed… estimated that 22% of the reduction in firearm suicides was substituted by other suicide methods"

57. The authors found a reduction in overall suicide rate in young men and firearm suicide rate after the Army reform, not because of the Army reform. To stretch even farther not because of any reduction in firearms availability. They also capriciously deny that there was any "significant" replacement in suicide method found, while to protect themselves, they do point out an obvious 22% replacement in suicide method observed, by jumping in front of a moving object.

58. At this stage we would like to add that these 2 Exhibits (A & B of Ms. Deschamps affidavit) which try to imply that the presence and availability of firearms is a risk factor that increases suicide and homicide is blatantly false. We promised in our Notice of Constitutional Question so long ago, that we would argue our case using the common sense approach described by Canada's DOJ researcher Allen Young. Here's a simple but specific proof, in the following graph (Image 2)[42] the suicide deaths per 100,000 population is displayed for Japan, Netherlands, New Zealand, Norway, Sweden, Switzerland and the United States from 1960-2005.



59. It is a known fact that Switzerland and the U.S.A have the highest firearms ownership per household in developed nations (Canada is very high up in that list as well). Japan hardly has any firearms ownership and yet has a high suicide rate; the United States has much more firearms ownership but much lower suicide rate. Why? Socio-economic and cultural factors. When we view this graph in the context of Deschamps Exhibits, it is obvious that firearm ownership and firearm suicide and homicide risk are not related the way the studies imply. They key word here is imply, because they simply cannot state it. How could even imply it? Stats Can states the Yukon has the highest firearms ownership per household but in 2018 had zero firearms homicides.[43]

[42] Image 2, Suicide deaths per 100,000 https://en.wikipedia.org/wiki/File:Suicide-deaths-per-100000-trend.jpg

[43] Exhibit S1 and S2 in the affidavit of Christine Generoux

60. In Exhibit C, to the affidavit of Ms. Deschamps, is the study by Andrew Anglemyer, PhD, et al, the authors admitted their study is so methodologically flawed, because they used proxy surveys to obtain information on firearms ownership, that the results are unreliable. They admit widespread misclassification of firearm accessibility has occurred, that there was exposure bias between control group and case patients. Close inspection, reveals that ~ 80% of the studies used in suicides and 50-70% of the studies for homicides were unreliable in that they used military membership or proxy surveys to conclude access to and ownership of firearms. The study only looked at how likely one was to be the victim of a suicide or homicide -not how likely one was to be a perpetrator.

61. Exhibit E, I & P, written by anti firearm activists, were the most erroneous and fraudulent studies. Any semblance of academic posturing goes out the window with Exhibit E, it is nothing more than a bias and slanderous opinion piece and need not be defended against. “If lawful gun owners cause most gun deaths what can we do?” I say “If fishes were wishes, we’d all have riches”. Exhibit I takes up many pages to come to no conclusion at all- “There was a more rapid decline in firearm deaths between 1997 and 2013 compared with before 1997 but also a decline in total nonfirearm suicide and homicide deaths of a greater magnitude. Because of this, it is not possible to determine whether the change in firearm deaths can be attributed to the gun law reforms.”. In fact, this study supports my argument, that the legislation had no effect on firearms homicide or suicide rates but the language and tone of the study to the untrained eye, is very deceptive.

62. Exhibit E, I and P are all linked to give each other “credibility”. Exhibit I cites Exhibit E as a reference and used data from Exhibit P on mass shootings, but only after changing the definition of mass shooting to insinuate that they have brought it in line with a more accepted definition (5+ killed, not including the shooter, in proximate locations, excluding more common family violence). In Exhibit P which, I believe came first, he uses the more narrow FBI definition of 4 or more shot, in proximate locations, in order to come to the conclusion that there were many mass shootings before the firearms legislative reform and not many after. It’s misleading because several of the shootings counted in Exhibits P and I, are not defined as mass shootings, half of them are family violence and several of them are what the FBI refers to as “spree shootings” which happen over multiple locations.

63. While studying Exhibits I and P, I noticed a few issues with the data. The data was not statistically significant in Exhibit I and no confounding variables were factored. The definitions applied to “mass shooting” or “mass gun killings” in Australia, in both Exhibits was misleading and changing, a hallmark of the academic dishonesty. Since I am not a statistician or criminologist I searched for peer reviews of this study. I found

such a critique and have attached it to this Motion Record[44]. The language Prof. Kleck chose to describe this sham science is strong but not exaggerated. I would have liked to see if the crown did any research on peer reviews of the exhibits, they chose and would have discussed this critique, had I been given an opportunity to cross-examine anyone.

Part 2: Legal Issues & Arguments (meeting the RJR MacDonald Test)

Section 7 - Life, liberty and security of person

64. Canada's guide to the Charter of Rights and freedoms[45], which explains the Charters importance in our daily lives in laymen's terms, tells us that "Section 7 guarantees the life, liberty and personal security of all Canadians. It also requires that governments respect the basic principles of justice whenever they intrude on those rights. Section 7 often comes into play in criminal matters because an accused person clearly faces the risk that, if convicted, his or her liberty will be lost."

65. We think, that Section 7 dictates that everyone (even firearms owners) have the right to life, liberty and personal security. It dictates that The Government must respect the basic principles of justice, if intruding upon those rights (especially when enacting criminal [firearms] laws). We do not deny that the courts have long held that public safety, criminal law and firearms legislation are rationally connected, within the Federal scope, and sphere. IF an unambiguous legislation is directly and clearly linked to these (proper objectives of criminal law), some infringement upon the charter can be justifiable in certain circumstances. This isn't just a carte blanche to seize our property.

66. The question (to the courts) for these types of impugned legislations, after of course it is established that a Charter Right has indeed been offended, essentially becomes "does the end justify the means and further, does it justify the consequences of those means upon Canadians"? We unknowingly posed this question in our Motion for Injunction stated as "in the endgame, who wins"? Referring to what we think is the ends of the OIC, not public safety, but a carefully crafted strategy to kill Canadian Gun culture and our shooting heritage.

67. What we are alleging is the OIC, the RCMP SFSS decisions and the un-constitutional consequences, are not saved by section 1 of The Charter. That, in this case, the ends does not justify the means, the ends being of no measurable benefit to anyone and of no logical connection to the means. Importantly the means precipitates a

[44] Critique of Dr. Chapman and Dr. Alpers "Gun Law reforms and Firearm Deaths in Australia". By Prof. G. Kleck
[45] Canada's Guide to the Charter of Rights and Freedoms https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html#a2j3

demonstrable, measurable and grievous irreparable harm to a large and identifiable group. A financial harm to all Canadians, a harm by way of legal precedence to the property and legal rights of all, done by fraud, brings the administration of justice into disrepute. This time it is firearm owners, who's next?

68. Yes, we know from relevant jurisprudence that Governments have the power to enact legislation for their constituents, even stricter firearms legislations; but isn't this power limited and constrained by procedural fairness, logic and law? The Exhibits (in Ms. Deschamps affidavit) showing the Liberal Party Platform and the Ministerial mandate letters, imply both—that Governments can and do promise to enact legislations but that the legislations must be evidence based, non-discriminatory, inclusive and transparent. Yes, campaign promises can be enacted and new legislation tabled, so long as it does not violate the Charter and harm Canadians, so long as the resulting legislation is clear, reasonable and coherent to the objectives. If the legislation will cost a lot, violate rights and negatively affect many people—the ends must be justifiable.

69. Since 80-90% of guns used in violent crime in Canada are smuggled illegally from the USA and since the great vast majority of firearm licensee's do not commit violence with their firearms or illegally sell them (Dr. Mauser affidavit) –the legislation is not connected to its objective. The OIC's effects on us are grossly disproportionate to its objective. Dr. Langmann said in cross exams the majority of emergency room gunshot wounds are gang or self-inflicted.[46] In Dr. Mauser's affidavit the evidence showing substitution methods for suicide when firearms are not accessible is overwhelming.

70. In the case[47] of Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44 the Federal Minister of Health had granted an exemption (to possession and trafficking of controlled substances) in the past, to the supervised injection site so that they could operate legally. The Minister had failed to reinstate the exemption and the consequences of that failure was an endangerment of the life, liberty and security of those clients. Factual evidence was relied on to show that in the 8 years of the supervised injection site's operation, they had proven to save lives with no known impact on public safety or health. Since the injection site did not have a public safety risk (the refusal was not logically connected to public safety mandate) but would violate a charter right, it was found to be arbitrary and the Minister was forced to grant the exemption. There were those that argued that enabling the drug addicts to carry and use drugs in that area was a risk to public safety and did increase crimes, but that couldn't be satisfactorily proven so the site was allowed to operate.

[46] Oct 27, 2020 cross exams of Dr. Langmann page 12 (para 14-25)
[47] Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44

71. In our case, the RCMP, CFP and the Minister of Public Safety, has granted us (firearm licensee's) the privilege and right to use and possess these firearms for many decades past, so long as we did so within the confines set out in the reasonable and justifiable law (licensing, safety courses, registration). Those laws were deemed rationally connected to public safety, this OIC cannot be. The GiC has deemed our firearms reasonable and safe for many decades past, nothing has changed, except now the GiC arbitrarily withdraws that opinion and support. We rely on factual evidence to prove that we are not a risk to public safety and in many instances contribute to it. The RCMP, CFP and GiC has already recognized we are no threat, because they granted us the licenses, did background checks and allow us to still possess other firearms and the newly prohibited ones (until April 30, 2022). If our possession of these firearms is a public safety threat as they claim, why can we still possess those and other firearms? If we are at risk to become mass shooters or we illegally sell our firearms, why haven't our licenses been revoked? There are those who are bias against us, who say we are a risk, just like about the drug users at the safe injection site, but they cannot prove it. We can prove we are not a threat using Mauser, Langman's data and the Governments own data. Law makers and public officials have repeatedly stated that firearm licensee's are overwhelmingly law abiding and pose no threat. Lives are at risk by this OIC, liberty is violated (metaphorically, physically) and our security is at risk. Why is this happening to us? We are not asking an exemption to break the law, we have followed the law.

72. For example, in the affidavit of Anthony Bernardo, even the insurance companies deem the CSSA's shooting activities low risk[48]. CSSA's activities contribute greatly to the safety of Canadians by providing safety training courses and advice, as do many firearms, shops, organizations and shooting ranges (CCFR, Wolverine, KKS Tactical ect). Gun culture provides economic, ecological and physical benefit and is very low risk for accidents or violence—like the safe injection sites, there is no logical reason to harm or shut down our industries and venues, or needlessly jeopardize and violate our legal, property and equality rights. We contribute to public safety and do not detract from it.

73. Also, the un-defined terms "military assault style" and "variant" which speaks to a military parentage or visual characteristics such as user control position really means that most any and all firearms have been and will be prohibited; most do stem from some military parentage, share the same user controls and basic visual characteristics. These criteria have no logical connection to any stated objective. A semi-automatic AR 15, SLR Multi or a Modern Hunter (now prohibited) are no more or less useful to commit murder than a semi-automatic SKS, which is not prohibited (yet). They have never "increased the deadliness" of a mass shooting tragedy in Canada, as much damage or more could be done with a .44 magnum lever action and I say—any

[48] Affidavit of Anthony Bernardo page 5-6 para 29

firearm. Mass shooters do not shoot down dozens of people at one time and place, they walk through schools, apartments, government buildings with ample time to re-load. They are mentally disturbed and, if unable to get firearms will (and have) used bombs, trucks, knives or other means; they do not ask for a license to kill. They do not give up their guns.

74. The fraudulent and un-justifiable reasoning for the seizure and the vague and un-defined "legal" terminology contained in the OIC and RIAS, we believe, is unprecedented in Canadian law. Re B.C. Motor Vehicle Act, [1985] 2 SCR 486 has shown us that people (even firearm owners) can only be imprisoned based on fair and reasonable laws[49], which they break knowingly. In, R. v. Morgentaler, [1988] 1 SCR 30 we have learned that Canadian people have the liberty to make decisions about their own life and choices[50]. The case of New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 SCR 46 showed us that the Charters protection of the rights to life, liberty and security is not limited to only criminal law cases[51]. Our civil proceeding is walking the line between a criminal and civil matter because, although we maintain our civil rights are violated, this impugned legislation—has real and serious legal consequences. It is our duty to establish that our rights have been violated and the Respondents duty to establish the violation was justifiable in the hearing on the merits, for now we think we deserve the injunction or declaration we seek, especially if we can establish that, our rights may have been violated, causing us severe and ongoing harm.

75. In R v Rogan[52] Provincial Court Judge Demetrick has affirmed that possession of (and we assert this to include modern firearms) is directly linked to the preservation of life and security of the person in Canada, and for some (especially rural) Canadians, it sometimes can logically be, the only way to preserve those rights. This OIC also puts lives at risk by stopping Wildlife, Law Enforcement and Military members from achieving excellence in marksmanship; because they are not afforded enough time to practice while on duty[53]. Mr. Smith, contends that if extra range time to practice was essential to the function of their duties that it logically follows that they would be afforded extra range time.

76. We do not think this is as obvious as Mr. Smith makes it out to be, given our evidence on the murder of RCMP officers in Moncton and how deficiencies (in equipment & training) were identified before but never were addressed. The lack of RCMP access to service carbines was only addressed after the situation unfolded, the RCMP did not have the internal resources to train the officers and so outsourced to civilian expert

[49] Re B.C. Motor Vehicle Act, [1985] 2 SCR 486
[50] R. v. Morgentaler, [1988] 1 SCR 30
[51] New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 SCR 46
[52] R. v Rogan Exhibit O to the affidavit of Christine Generoux
[53] The affidavit of Mathew Hipwell, Robert Leblanc, Mathew Overton

shooters (ERT job postings, Agoge, Millbrook ect). Budget constraints and political posturing have reduced the amount of training these agencies get[54]. That is why the RCMP contracted out to civilian shooters for training. If the personal practice with these firearms was not essential the deponents would not insist that they rely heavily on it to maintain their skillset. These officers would not spend their time or money purchasing and practicing to keep people (including themselves) safe, if they did not KNOW it was necessary.

Section 8 – Unreasonable Search or seizure

77. Canada's guide to The Charter states "..the purpose of section 8 is to protect a reasonable expectation of privacy. This means that those who act on behalf of a government must carry out their duties in a fair and reasonable way. They cannot enter private property or take things unless they can show that they have a clear legal reason. In most cases, they are allowed to enter private property to look for evidence or to seize things only if they have been given a search warrant by a judge. On the other hand, government inspectors may enter business premises without a warrant to check if government regulations are being observed."

78. We have issues with this analysis and since the Government of Canada's website states "This content is not legal advice and should not be taken as legal interpretation of the provisions of the Charter. The legal text of the Charter is published online as Constitution Act, 1982" It's possible that the laymen's terms and analysis published here, may not be whole. We know by past cases that the unreasonable search and unreasonable seizure parts can stand alone on their merits and be applied either together or separately. A main purpose of section 8, may very well be to protect privacy, but that does not mean section 8 does not operate to protect people from an unreasonable seizure of their property. Firearms are our property and they are used for good as well; the courts have consistently held[55]. Property, which is regulated, like many other pieces of property, but it is still our property and it has been effectively (and we insist unreasonably and un-lawfully) seized; we cannot use or sell the property—it has been rendered valueless. Right now, it is in "limbo" because we don't hold valid registration certificates for it, we are not sure who legally owns the property now.

79. The Respondents may feel that because they have instantly prohibited the property with a declaration, that the seizure is reasonable, but we maintain what we have all along---since they have no reason to seize the property for public safety (they repeatedly stated) seizure would be unreasonable. It is irrelevant that now, officials have chosen to try to use some sort of dishonest claim to justify the seizure— the fact remains since they have to resort to trickery to insinuate its reasonable-- it must not be. There is a lack of case law surrounding section 8, in the context of massive governmental seizure of firearms; we think that is because this type of seizure is unprecedented. The existing case law maintains the police must have clear legal reason

[54] Nov 05, 2020 cross exam transcripts of Mr. Smith page 221 (para 23)- page 228 (para 13)
[55] *Firearms Act* (Can.), [2000] 1 S.C.R. 783

and authority to search you and seize property and we know this can be applied that the Government must have clear reason and authority to seize our property. No reason equals no authority.

Section 15: Equality Rights

80. Canada's guide to the Charter of Rights and freedoms states "Section 15 of the Charter makes it clear that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity and consideration…Governments must not discriminate on any of these grounds in its laws or programs. The courts have held that section 15 also protects equality on the basis of other characteristics that are not specifically set out in it. For example, this section has been held to prohibit discrimination on the grounds of sexual orientation, marital status or citizenship. The Supreme Court of Canada has stated that the purpose of section 15 is to protect those groups who suffer social, political and legal disadvantage in society. Discrimination occurs when a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to others."

81. We have tried to educate ourselves on the development of the application of section 15(1) in Canada, with respects to the definition and context of discrimination and the identification of grounds analogous to the enumerated grounds. Also with respect to the tests developed in the jurisprudence[56] Andrews v. Law Society of British Columbia, Law v. Canada and R v. Kapp. This is a complex study for those with no legal experience, but we found the comments in Corbiere v. Canada particularly enlightening[57]. We found Corbiere v Canada, while reading Nell Toussaint v AGC.

82. Every individual in Canada is to be treated with the same respect, even firearms owners. Individuals who enjoy downhill skiing, drinking alcohol, swimming in a backyard swimming pool, motorcycle or other hobbies which may pose an inherent danger to themselves and others are not being deprived of their hobbies and sports because of "public safety". They are trusted to operate as safely as possible in a legal and conscientious manner, and are never blamed or punished for the actions or accidents of others. We firmly believe that firearms owners and individuals who own firearms businesses are suffering social, financial and legal disadvantages from this OIC. Never has Canada seen such a safety oriented and law-abiding group who contributes to Canada's wealth and community well-being, treated in such a manner as to assume were at risk to become criminals, and preemptively have our property seized. Are we not innocent until proven guilty? We believe our pleadings just might pass The Supreme Court of Canada's 2 pronged test to establish a section 15

[56] Andrews *v.* Law Society of British Columbia, [1989] 1 S.C.R. 14, Law v. Canada (M.E.I.), [1999] 1 S.C.R. 497 and R v. Kapp, 2008 SCC 41

[57] Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203

violation, as stated in Toussaint v. AGC[58]: 1. Does the law create a distinction based on an enumerated or analogous ground? 2. Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

83. Sure, firearm owners cannot be identified by our skin color or some other visible characteristic or ground enumerated under section 15 (1); we are identified by our PAL's, RPALS and by our possession of our firearms. Belonging to "Gun Culture" and participating in that community and pastimes is referenced as a type of personal characteristic like a religious belief, ritual or practice. Changing our thoughts, beliefs and cultural practices come at an unacceptable cost to our personal identity. For the Applicants and our deponents, owning these firearms lawfully and enjoying using them is sincerely integral to our happiness, emotional wellbeing, cultural identity and heritage. Firearm owners are not granted equal benefit or protection- no other groups, cultures or sports in Canada have to endure the slander and seizures of their property, like what we are being subjected to. We allege that no one benefits from this OIC, but we suffer greatly.

84. Those who argue that the law does not create a distinction—that the prohibition and seizure applies to everyone, are wrong, the seizure and prohibition only applies to and harms certain firearm owners. The distinction we are alleging is that because of social stigma and bias, tactical firearms owners are subjected to this abusive and disproportionate legislative scheme, people who do not own firearms are un-affected by such legislation and it only hurts firearm owners. On the other hand, people who own other, much more dangerous property (property proven to cause more death and pose a greater risk to public safety than lawful firearms ownership) such as backyard swimming pools are not regulated in this way, their property is not being seized for "public safety". The public outcries would be too great, a public relations nightmare. This OIC only stops licensees from having these firearms, not criminals. 41 drowning deaths annually from pools don't matter?

85. We believe that firearms ownership (of a wide variety of firearms) and the freedom to buy firearms without fear they will be seized, for (the Applicants and others)—is a personal characteristic, usually ingrained since childhood and should count as constructively immutable. If the Respondents wish to imply that firearms ownership, and participation in Gun Culture is simply a choice or a belief [or feeling/desire] which can be easily changed, then they must look to the court's ruling of prohibiting discrimination on the grounds of sexual orientation, marital status and citizenship. Membership in and belonging to Canadian Gun Culture represents a sincere personal characteristic; it's not immutable but is changeable only at an unacceptable cost. This personal characteristic, our deeply held beliefs in the importance of and interest in (reasonable, lawful and safe) firearms ownership, the Government could or should have no business or interest in having us change this, since we do not harm anyone with our participation in it. Our continued lawful possession of

[58] Nell Toussaint v AGC, F.C.#: T-1301-09

these firearms (leisure/sport item) is less of a public safety risk than backyard swimming pools (leisure/sport item). The OIC, by eliminating large swaths of our cultural artifacts (our guns), decimating our ability to sufficiently participate in sport shooting and hunting, decimating [making not financially viable] our cultural institutions (firearms and ammo shops, shooting ranges and gun shows) is trying to force us to change that constructively immutable characteristic, under the threat of prison. Obviously, the ownership means so much to us because we jump through so many "hoops" to keep it.

86. By OIC, we mean the entire Regulation. Special attention should be paid to the stereotypical, un-warranted and prejudiced accusations (by public officials and in the RIAS and OIC) which have hurt our reputation and have stereotypically grouped us, accusations that we are now un-reasonable for owning and using the property for hunting and sport shooting. Unfounded accusations of contributing 50% of "crime guns" in this country, of being in possession of a thing designed for only--mass murder. Pay special attention to the change clause essentially destroying Canadian Gun Culture's future by discouraging the lawful use, sale and possession of ANY firearms. In this statement, alone the GiC has revealed that they are prohibiting firearms on the grounds of popularity (change clause and "present in large volumes") not on the grounds of what is reasonable for hunting and sport shooting. This violates the spirit and the letter of Criminal code sections 84 and 117.15 (2).

87. In the case[59] of Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 SCR 256, Mr. Multani was a Sihk student who believed that his religion required him to wear a kirpan at all times. The school board tried to stop him from wearing it, because bringing "dangerous objects to school" violated their code of conduct. We are applying the interesting findings of the courts in the Multani case to our case, the courts found since Mr. Multani sincerely believed that his faith required him to wear the kirpan, or be "emasculated" and humiliated causing him to miss school, his right to freedom of religion had been violated. The courts observed that the school board failed to justify that the FULL ban was a reasonable limit on his freedoms, since there had never been a violent incident involving a kirpan at school and since there was no evidence that the kirpan itself, was a symbol of violence. Stabbings have occurred at schools, but not with a kirpan, Mr. Multani didn't use or possess it for that purpose, so violating his rights was not rationally connected to a school safety objective.

88. The Government has failed to justify that a FULL ban on our firearms is a reasonable limit on our property, legal and equality rights. We sincerely believe that we need to continue possessing these firearms and that we want to continue in sport shooting and hunting, we cannot do that without the proper equipment. There has never been a mass shooting incident involving a SANE firearm licensee. AR 15's, large bore firearms,

[59] Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 SCR 256

firearms surpassing 10,000 J of energy have never ever been used to commit mass (or even one) murder in this country, 99.999% of the firearms have never been used in such a manner and NONE of them are possessed for that purpose. There is already a mechanism to remove firearms from someone suspected of risky or violent behavior. Licensees are less of a risk to commit homicide than average citizens and there is no evidence that our firearms are symbols of violence, mass murder and crime. We're vetted with references, background checks and the RCMP and Public Safety have deemed us not a public safety risk[60]. Why should our "kirpans" be seized? Why should our beliefs be violated and we be humiliated?

89. To address part 2 of the s.15 test, the distinction which has been made- between how (the OIC) treats and targets firearm owners and non-firearm owners- definitely creates a disadvantage to firearm owners and businesses which perpetuates prejudice and stereotypical myths. As Prof. Gary Mausers 2012 special presentation to the Senate Committee shows[61], other Canadians are proven to be almost 3 times as likely to commit murder as a PAL licensee, yet other Canadians are not subjected to the accusations, suspicion, civil and property rights violations that firearm owners have been with this OIC. Why are (only) we disadvantaged with an ambiguous and un-fair law, putting us at risk of criminal jeopardy and seizing our property without compensation? Why suddenly, are public officials announcing that we have links to mass murder and crime—when it's not true, the Government of Canada and law enforcement officials have maintained that our possession of these firearms is not a risk to anyone for decades. The OIC, creates a further arbitrary distinction between how owners of some semi-automatic firearms are treated and how another set (newly prohibited) are treated. Section 15(2) doesn't apply here and also doesn't override 15 (1).

Table 2 Mauser. Homicide rate **Homicide rate**

	POL/PAL/FAC	Canada	Ratio
2003-2012	0.63	1.80	2.9
2003-2015	0.65	1.74	2.7

Showing 1 to 3 of 3 entries

The Fundamental Principles of Justice

90. We focus on the vague and un-defined terminology in the OIC & RIAS of "military assault style", "un-named variant or modified version", "capable of", "of modern design", "tactical or military design", "present in large volumes" and how to legally measure "bore diameter and muzzle energy". One grave consequence of the

[60] Exhibit P, Y1, Y2 in the affidavit of Christine Generoux
[61] Dr. Mausers special presentation to Senate Committee Bill C-19.

vague and un-defined legal terminology is the impermissible subsequent RCMP SFSS (re-classifications) to deem random firearms as now prohibited, with no notice or accountability. This is a direct result of the vague, un-defined terms and we believe this puts the section 7 rights of Canadians at unacceptable risk. Since the public safety objective is harmed- not helped by seizing our firearms and because the prohibition arbitrarily applies to random and visual characteristics –yet permits firearms of equal capabilities the OIC is arbitrary. Since it harms so many so severely, and provides no measurable benefit it's effects are grossly disproportionate.

91. The Respondents can deny that the un-defined terms offend our Charter rights, but we know that it is abnormal for lawmakers to leave terms that will authorize the detention of someone un-defined. Every law in Canada has a glossary of terms clearly defined. In the *Criminal Code* of Canada under Part 2[62], it defines over 85 terms, even simple well-known terms such as "cattle", "night", "bank note, "bodily harm" and so forth. This is common in law, to avoid the law being void for vagueness and avoid ambiguity in what is an offense. Even we, the self-represented applicants know that.

Section 26 - Other rights or freedoms that exist in Canada

92. Canada's guide to the Charter explains "Canadians have rights and freedoms under laws other than the Charter. The purpose of section 26 is to ensure that these rights or freedoms are not extinguished because they are not expressly spelled out in the Charter. ..Parliament and the legislatures are free to create rights beyond those that are in the Charter. By establishing basic or minimum rights, the Charter does not restrict the creation or enjoyment of other rights."

93. We have 2 arguments concerning section 26 of The Constitution Act. We feel that the laymen's analysis of s. 26 is incomplete. The language the writers chose "shall not be construed as denying any other rights and freedoms that exist in Canada" is key. We are inexperienced but this section explicitly says the other rights already exist, not that they need to be "created" by another law. In fact, laws in Canada rarely create or make rights more robust, they consistently limit or take them away. Anything that is not illegal is legal as of right until it is made illegal and taken away. We think just because the right to possess our firearms (whether registered, licensed or not) is not specifically enumerated in the Charter, does not mean that it doesn't exist. As we cited in the affidavit of Christine Generoux, firearms use and ownership has been and still is an integral way of life in this country. It has been our culture, our heritage, our pastime, our protection, our means of putting food on the table since the creation of this country and even before. As far as we understood, everyone has the right to do anything as long as it does no demonstrable harm.

[62] Criminal Code R.S.C., 1985, c. C-46) Part 2

94. Now, since the courts have frowned upon the idea of firearms ownership as a "right", we may also wish to apply s. 26 in a way, which the Government acknowledged, and which the courts have held could apply. Historically, the Government has created legislation granting firearms use and possession in this country which govern the way in which we can use firearms for hunting and sport shooting. These laws, up until the impugned OIC, have permitted and deemed reasonable the use of the (newly prohibited) firearms for hunting and sport. These laws, and the development of the FAC, POL, PAL/RPAL licensing and background check system, constitute a doctrine of legitimate expectations and continued use. It was because of these laws and this permission/ mutual agreement that we did so purchase and rely on these firearms; there is no reason to remove these "rights", granted to us by various Firearms and Hunting laws. The RCMP and Ministers have consistently proven our possession and use of these firearms is safe for the public by allowing it.

Section 27 - Multicultural heritage

95. Canada's guide to the Charter of Rights and freedoms tell us "Section 27 recognizes that Canada is home to many cultural groups and seeks to maintain and promote multiculturalism"

96. The actual text of section 27 states that the rights enumerated in the Charter shall be interpreted in a multicultural manner. This could mean that culture is an enumerated ground upon which discrimination is prohibited under s.15 (1). We insist that Canadian gun culture has a right to exist unimpeded, we have regional differences, but we commonly share hunting and sport shooting, firearms possession, interests, cultural gatherings, societal beliefs, rituals and objects. Our lives and liberty should not be jeopardized because we belong to gun culture and want to remain in possession of our firearms. We shall not be targeted with arbitrary, vague or disproportionate laws because firearms ownership and use is our culture. These types of vague, arbitrary and disproportionate laws are never permitted when it comes to the regulation of other groups' property. This OIC is certainly not seeking to promote, enhance or maintain Canadian gun culture—it seems they seek to destroy us.

Conclusion

We hope we have communicated the harms done to us sufficiently, why the previous status quo should be restored and why it will harm no one to restore our previous privileges and rights. With 2.2 million firearm owners in Canada who are harmed from this OIC, and the effects the OIC have on industry, community, our culture and the general public, and the fact that the Respondents have not produced much evidence why we should not be granted an injunction it will be an interesting Injunction hearing indeed.