

**FEDERAL COURT**

e-document	<b>BETWEEN:</b>	T-569-20
F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	May 21, 2020	
Marc Medas		
Ottawa, ONT		

**CASSANDRA PARKER**

- and -

**K.K.S. TACTICAL SUPPLIES LTD.**

Applicants

- and -

**ATTORNEY GENERAL OF CANADA**

- and -

**THE ROYAL CANADIAN MOUNTED POLICE**

- and -

**THE REGISTRAR OF FIREARMS**

Respondents

---

**NOTICE OF APPLICATION**

**Pursuant to sections 18 and 18.1 of the *Federal Courts Act***

---

**TO THE RESPONDENTS:**

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 20, 2020

Issued by: \_\_\_\_\_

(Registry Officer)

Federal Court of Canada  
90 Sparks St.,  
Ottawa, Ontario K1A 0H9  
Tel: 613-992-4238  
Fax: 613-947-2141

**TO:** Natalie G. Drouin  
Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Tel: (613)957-4998  
Fax: (613)941-2279  
**Solicitor for the Respondents**

## APPLICATION

On May 1, 2020, the Governor in Council, via Order in Council 2020-298, promulgated *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 (“SOR/2020-96”).

In general, the effect of these Regulations was to prohibit eleven classes of firearms. It prohibited nine types of previously non-restricted or restricted firearms, comprising some 1500 models in total. Further, it also prohibited any firearm with a bore diameter of 20 mm or greater and any firearm that is capable of producing a muzzle energy greater than 10,000 joules.

Well over 100,000 legally owned firearms were prohibited by SOR/2020-96.

The authority of the Governor in Council to make regulations prohibiting firearms is set out at sections 84 (1) and 117.15 (1) of the *Criminal Code*.

Section 84 (1) defines “prohibited firearm as, among other things, “(d) any firearm that is prescribed to be a prohibited firearm”.

The authority to prescribe firearms as prohibited is set out at s. 117.15 (1) of the *Code*:

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

Notably, this authority is subject to an important limitation. Section 117.15 (2) states that:

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

The decision of the Governor in Council that in their opinion the weapons prohibited by SOR/2020-96 are not reasonable for use in Canada for hunting or sporting purposes as referred to in s. 117.15 (2) is justiciable. It is subject to review by this Court. And, if it is found to be unreasonable, arbitrary or irrational, it cannot stand.

The firearms prescribed as prohibited in SOR/2020-96 are reasonable for use in Canada for hunting or sporting purposes. They do not pose a disproportionate risk to public safety. The Governor in Council's opinion to the contrary is not supported by the evidence and is therefore, unreasonable. Accordingly, pursuant to s. 117.15(2) of the *Code*, these Regulations are invalid and should be declared as such by this Court.

In addition, SOR/2020-96 amounts to a confiscation of the lawfully owned property of the Applicant and thousands of other law-abiding firearms owners. It is therefore inconsistent with s. 1 (a) of the *Canadian Bill of Rights*, which protects the right to the "enjoyment of property". Pursuant to s. 2 of the *Bill of Rights*, absent the passage of unambiguous legislation, SOR/2020-96 must be construed in a manner that is consistent with the right to the "enjoyment of property" and any clauses which are inconsistent with that right are of no force and effect.

The Royal Canadian Mounted Police operates the Canadian Firearms Program ("CFP"). One of the RCMP's main activities as part of the CFP is to manage the Firearms Reference Table (the "FRT"), which is a list of all models of firearms known to the Canadian Firearms Program. Each model of firearm listed on the FRT is classed into a category (either non-restricted, restricted or prohibited) purportedly in application of the legislated or prescribed criteria.

The Registrar of Firearms (the Registrar per the *Firearms Act*), is the authority in charge of maintaining the records of the CFP, including the issuance, and revocation of registration certificates. Historically, when the Governor in Council has re-classified firearms by way of Order in Council or statute, the Registrar has revoked existing certificates, and/or issued new ones reflecting the new classification.

**The Applicants make application for:**

1. A declaration that Order in Council 2020-298, which makes 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*, is *ultra vires* and is therefore of no force and effect; and

2. A declaration that Order in Council 2020-298, which makes 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*, violates s. 1 (a) of the *Canadian Bill of Rights* and is therefore of no force and effect, inasmuch as it abrogates, abridges or infringes or authorizes the abrogation, abridgment or infringement of the right to enjoyment of property recognized in s. 1 (a) of the *Bill of Rights*; and
3. Disclosure from the Governor in Council of all information relied on in forming its decision that, in their opinion, the affected firearms are not reasonable for use in Canada for hunting or sporting purposes; and
4. The costs of this application; and
5. Such further and other relief as counsel may request and this Honourable Court may permit.

**The grounds for the application are:**

*Overview*

1. Order in Council 2020-298 is *ultra vires* the Governor in Council in that it prescribes firearms to be prohibited that are “reasonable for use in Canada for hunting or sporting purposes” within the meaning of s. 117.15 (2) of the *Criminal Code*.
2. The decision of the Governor in Council that, in their opinion, the affected firearms are not “reasonable for use in Canada for hunting or sporting purposes” is unreasonable, arbitrary and unsupported by the evidence.
3. The affected firearms are reasonable for use in Canada for hunting or sporting purposes.
4. Order in Council 2020-298 infringes on the right to enjoyment of property recognized in s. 1 (a) of the *Canadian Bill Right of Rights*, where such right has not been expressly abrogated by legislation.

5. Sections 84 (1) and 117.15 of the *Criminal Code of Canada*.
6. Sections 12, 19 82- 83 of the *Firearms Act*.
7. Sections 18(1) and 18.1(1) of the *Federal Courts Act*.
8. Sections 1 (a) and 2 of the *Canadian Bill of Rights*.

### ***The Applicants***

9. The Applicant Cassandra Parker is a married mother of four from Prince George, British Columbia. She is 31 years old.
10. Cassandra is a licensed firearms owner, holding a valid Possession and Acquisition License, endorsed for both non-restricted and restricted firearms. She is an avid hunter, angler and target shooter. She participates in shooting activities and competitions at her local Rod and Gun Club.
11. For years, Ms. Parker has taught her children about sustainable hunting and safe sport shooting. All of her firearms were purchased legally, registered where required and stored according to the law.
12. Ms. Parker personally owns seven firearms that have been prescribed as prohibited by SOR/2020-96. She personally owns the following firearms:
  - a. CZ Scorpion EVO 3 S1 Carbine
  - b. Black Creek Labs BCL 102 (MK7)
  - c. Black Creek Labs Coyote SLR
  - d. Matrix Aerospace M-762

- e. Norinco M14 Short
  - f. Ruger Mini-14 Rancher
  - g. Swiss Arms SG 540
13. These firearms can no longer be sold, transported or used for hunting or sport shooting. They have lost all value.
14. In addition to her private ownership and personal safe and responsible use of firearms, Ms. Parker is also a 50% owner, along with her husband, of a small firearms business, K.K.S. Tactical Supplies Ltd.
15. The Applicant K.K.S. Tactical Supplies Ltd. was incorporated on or about January 9, 2020 under the *Business Corporations Act* (British Columbia). Ms. Parker owns 50% of the shares. Her husband, David Mark Premack, owns the other 50%.
16. As of April 30, 2020, K.K.S. Tactical Supplies Ltd. held roughly \$50,000 in inventory that has now been deemed prohibited – and accordingly, virtually worthless – by SOR/2020-96. Another \$35,000 of affected inventory and related accessories were on order. Many of those items were being held for customers with a 50% deposit that will need to be refunded.
17. On May 1, 2020, the Governor in Council’s decision rendered this inventory worthless.
18. Included in K.K.S. Tactical Supplies Ltd. in-store, consignment and order inventory are the following firearms now prescribed as prohibited by SOR/2020-96:
- a. Black Creek Labs 102 MK7 (x10)
  - b. Black Creek Labs 102 MK7 SRL (x8)
  - c. Norinco M14 (x4)
  - d. Colt AR-15 lower (x3)
  - e. CZ Scorpion Evo (x3)
  - f. DPMS AR-15 Lower (x2)

- g. AR-15 Upper (x1)
- h. Chiappa Firearms M Four-22 (x2)
- i. Smith & Wesson M&P-15 (x5)
- j. Norinco Type-CQ
- k. DPMS Panther
- l. Armalite 50 BMG (x4)
- m. Ruger Mini-14 (x4)
- n. Norinco M4 (x6)
- o. CSA vz. 58 (x4)
- p. Assorted AR-15 uppers (x4)

19. Each and every one of these items was not prohibited when ordered by Ms. Parker's family business.

20. K.K.S. Tactical Supplies Ltd.'s Business Firearms License does not permit it to possess prohibited firearms. Ms. Parker may not sell her inventory to generate income or sustain her small business. Revenue previously gained from the sale of ordered firearms and accessories must be refunded.

21. The Regulatory Impact Analysis Statement ("the Statement"), annexed to SOR/2020-96, simply advises affected businesses to return the impacted firearms to the manufacturer. Of course, these firearms have now lost all value as they cannot be sold or used by licensed firearms owners. It is unknown whether or not Ms. Parker will be able to obtain any compensation for the firearms that have been paid for.

22. In total, SOR/2020-96 will likely cost Ms. Parker and her family business well over \$100,000.

23. K.K.S. Tactical Supplies Ltd., like many other similarly situated small businesses, has no other option but to absorb this catastrophic loss herself.

24. Since May 1, 2020, the Royal Canadian Mounted Police has continued to change the status of firearms in the FRT, not listed in SOR/2020-96, and reclassifying them as prohibited.

25. As of May 20, 2020, the following firearms held or on order by K.K.S. Ltd. have been reclassified as prohibited via changes to the FRT:

- a. Typhoon F-12 (x30)
- b. XT3 Ranger Tactical (x2)

26. The RCMP continues to reclassify firearms as prohibited via the FRT on a near-daily basis.

***The anticipated evidence, generally***

27. The Applicants anticipate that the evidence will demonstrate that the decision of the Governor in Council that, in their opinion the affected firearms are not “reasonable for use in Canada for hunting or sporting purposes” is itself unreasonable.

28. Specifically, the evidence will establish the following:

- (a) The affected firearms are regularly used in Canada for hunting or sporting purposes; and
- (b) The affected firearms are reasonable for use in Canada for hunting or sporting purposes; and
- (c) The affected firearms do not pose a significant or disproportionate risk to public safety; and
- (d) The prohibition of these firearms is not likely to result in a material public safety benefit.

29. The Applicants will rely on evidence from public health and firearms policy researchers. They also rely on evidence from sport shooting and hunting experts, firearms engineers, and other individuals with subject matter expertise.

30. This evidence will stand in contrast to the assertions set out in the Statement and in public pronouncements made by senior members of the government, including the Prime Minister. The facts relied on in support of this Application for judicial review will be premised on data, policy analysis and research.

31. In fact, the evidence will demonstrate that virtually every statement set out in both the Regulatory Impact Analysis Statement and the various public pronouncements made surrounding SOR/2020-96 is either false, out-of-context or otherwise misleading.

*Safe and legitimate use of the affected firearms*

32. The affected firearms are regularly used in Canada for hunting and sporting purposes.

33. Indeed, the Statement itself recognizes the legitimate use of the affected firearms for hunting. It states that “some Indigenous and sustenance hunters could be using previously non-restricted firearms for their hunting and may be unable to replace these firearms immediately”.

34. With respect to sport shooting, the Court will hear evidence from the Dominion of Canada Rifle Association (“the DCRA”) and other sport shooting organizations.

35. The DCRA was established in 1900 by Act of Parliament (*An Act to Incorporate the Dominion of Canada Rifle Association*, 63-64 Victoria Chap 99). One of the statutory objects of the Association is “to promote and encourage rifle shooting throughout Canada.”

36. The DCRA, in furtherance of its statutory objects, has held “service condition” matches for over 100 years, where civilians, military and law enforcement can compete alongside each other using, similar, but different equipment. These competitions culminate in the National Service Conditions Championship held at Connaught Range and Primary Training Center in Ottawa.

37. The Court will further hear evidence from subject matter experts about the use of the affected firearms in various hunting disciplines, including big game and backcountry hunting.

***“Assault-style firearms” – a meaningless phrase***

38. The government relies on the phrase “assault-style firearms” to justify the opinion of the Governor in Council that the affected firearms are not reasonable for use in Canada for sporting or hunting purposes. This phrase appears twenty times in the Regulatory Impact Analysis Statement.

39. The phrase “assault rifle” *is* a term that has a specific technical meaning. It is defined as a selective-fire rifle (that is, a rifle that is capable of firing in fully automatic mode – with multiple rounds fired with a single press of the trigger) that uses an intermediate cartridge and a detachable magazine. The affected firearms in SOR/2020-96 are not capable of full-automatic fire. None of them is an “assault rifle”, within the commonly accepted definition of the phrase.

40. On the other hand, the phrase “assault-style firearms” has no accepted definition, either at law or as a matter of technical specifications. Notably, it is not defined in the Regulations or attached Statement. No characteristics of “assault-style firearms” are set out by the Government.

41. At some points in the Statement, the phrase appears to be used interchangeably with “tactical” and “military-style” firearms. These terms, as the evidence will establish, are similarly meaningless.

42. Indeed, the definition is, in and of itself, a circular one. In the government's view, "assault-style firearms" are not reasonable for use in Canada for hunting or sporting purposes because they are "assault-style firearms".
43. This is tautological and cannot be the basis for a reasonable and rational opinion by the Governor in Council.
44. In terms of technical characteristics, the affected firearms are fundamentally no different than hundreds of other models that remain non-restricted in Canada and have been used for decades for safe and responsible hunting and sport shooting.

***The affected firearms were not built with the intent to be used by the military***

45. Contrary to the assertions in the Statement, the affected firearms were not built with the intent to be used by the military. While these firearms may derive certain characteristics from military firearm design, this is true with respect to virtually every firearm design over the past 200 years.
46. Civilian firearms manufacturers have long derived design and other technical characteristics from military firearms. In fact, for decades, the most popular hunting rifle in Canada was the Lee-Enfield Rifle – designed and used by British and Canadian military forces from 1895 to 2018.
47. However, these firearms are not military firearms. They are not built to military specifications. They are not capable of full-automatic fire. And, they do not pose a disproportionate risk to public safety.
48. In his announcement regarding the affected firearms, Prime Minister Justin Trudeau stated that, "These weapons were designed for one purpose and one purpose only: to kill the largest number of people in the shortest amount of time." This statement is demonstrably false. Indeed, some of the semi-automatic rifles prescribed as prohibited in SOR/2020-96 are issued as "patrol carbines" to police forces in Canada; surely Canadian

police forces are not equipping officers with firearms that are designed to “to kill the largest number of people in the shortest amount of time.”

49. Rather, these firearms, like all modern firearm designs, are built to be reliable and capable of firing rounds accurately and safely.

***Magazine capacity – full-capacity magazines are already prohibited in Canada***

50. In the Statement, reference is made to the fact that these firearms are capable “of holding a quickly reloadable large-capacity magazine.” The Statement claims that these firearms have “large magazine capacity.”

51. Many modern firearms, including thousands of models not listed in SOR/2020-96, use a detachable magazine. It is part of modern firearm design, dating back to at least 1908.

52. These firearms *have no inherent ammunition capacity themselves*. They simply have a magazine well which is capable of accepting a magazine.

53. Most importantly, however, the Governor in Council’s reliance on the detachable magazine design is belied by the fact that, in Canada, magazines for centrefire rifles are limited by law to 5 rounds. A centrefire rifle magazine that is capable of holding more than 5 rounds is already a prohibited device in Canada. This has been the case for decades. Civilians cannot legally possess these magazines.

***Firearms crime in Canada will not be affected by these Regulations***

54. The public safety justification for these Regulations is not supported by the evidence.
55. The rate of homicide by firearm in Canada has been steadily declining since the mid 1970’s. The rate of homicide by firearm – specifically by rifle or shotgun – has been dropping even faster. In 1975, there were 180 homicides by rifle or shotgun. In 2018,

**there were 56.** This, notwithstanding, the government's claim that the proliferation of the affected firearms in the hands of licensed, law-abiding firearms owners has made Canadians less safe.

56. As a weapon in general, firearms are far from the most used weapon in homicides in Canada. In 2018, out of 651 homicides, only 249 were by shooting. 402 were by other methods.

57. There is no indication in the statistical data that the affected firearms are disproportionately used in criminal offences in Canada. In fact, the opposite is true.

58. The majority of "true crime" firearms offences involve the use of firearms that are (a) smuggled into the country illegally and (b) in the hands of individuals who were never authorized to possess them in the first place. SOR/2020-96 will do nothing to address this.

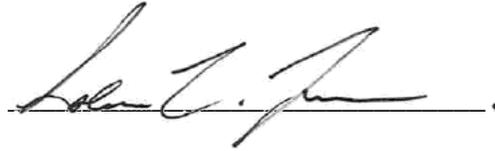
59. In fact, there is no recorded instance of a violent criminal offence involving a firearm capable of producing a muzzle velocity of over 10,000 joules.

**The application will be supported by the following material:**

- (a) The Affidavit of Cassandra Parker, or some such other material or affidavit;
- (b) The Affidavit of Dr. Caillin Langmann, or some such other material or affidavit;
- (c) The Affidavit of Dr. Gary Mauser, or some such other material or affidavit;
- (d) The Affidavit of Brigadier-General (retired) Matthew Overton, or some such other material or affidavit;
- (e) The Affidavit of Ryan Harriman, or some such other material or affidavit;
- (f) The Affidavit of Chris Youngson, or some such other material or affidavit;
- (g) The Affidavit of Ryan Leef, or some such other material or affidavit;
- (h) The Affidavit of Phil O'Dell, or some such other material or affidavit;
- (i) The Affidavit of Warren Downing, or some such other material or affidavit;

- (j) Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: May 20, 2020 at Ottawa, ON

A handwritten signature in black ink, appearing to read 'Solomon Friedman', is written over a horizontal line.

Solomon Friedman  
**EDELSON FRIEDMAN BLACK LLP**  
200 Elgin St., Suite 600,  
Ottawa, ON K2P 1L5

Phone: 613-237-2290  
Fax: 613-237-0071  
Email: [solomon@edelsonlaw.ca](mailto:solomon@edelsonlaw.ca)  
**Solicitor for the Applicants**