Federal Court  Cour fédérale

Date: 20210527

Dockets: T-569-20
T-577-20
T-581-20
T-677-20
T-735-20
T-905-20

Citation: 2021 FC 496

Ottawa, Ontario, May 27, 2021

PRESENT: The Associate Chief Justice Gagné

Docket: T-569-20

BETWEEN:

CASSANDRA PARKER and K.K.S. TACTICAL SUPPLIES LTD.

Applicants

And

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-577-20

BETWEEN:

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

Applicants

And

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-581-20

BETWEEN:

JOHN PETER HIPWELL

Applicant

And

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-677-20

BETWEEN:

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

Applicants

And

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-735-20

BETWEEN:

**CHRISTINE GENEROUX, JOHN PEROCCHIO and
VINCENT PEROCCHIO**

Applicants

And

ATTORNEY GENERAL OF CANADA

Respondent

Docket T-905-20

BETWEEN:

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

Applicants

And

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] In each one of these six files, the Applicants are seeking documentary disclosure pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106. They either filed their own submissions or else adopted the written submissions of other Applicants.

[2] In order not to overly burden these reasons, the lists of documents sought by the Applicants are attached at Annex A.

[3] Suffice it to say at this stage that the Applicants are requesting a certified copy of the material purportedly in the possession of the Attorney General of Canada, the Governor in Council [GIC], the Royal Canadian Mounted Police [RCMP] and numerous departments of the Government of Canada.

[4] The Respondent objects to the disclosure on the basis that the request is broader than what Rule 317 dictates and, with respect to the documents that would fall under Rule 317, they are protected by Cabinet confidentiality.

II. Facts

[5] On May 1, 2020, the GIC promulgated 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 [*Regulations*] by way of Order in Council PC 2020-0298 [OIC].

[6] The Applicants filed for judicial review of the OIC and sought documentary disclosure of all documents in possession of the Government of Canada related to the *Regulations* and the *Order Declaring an Amnesty Period (2020)*, SOR/2020-97.

[7] On September 11, 2020, the Respondent objected to the scope of the Rule 317 requests. The Respondent stated that the only material relevant to a Rule 317 request was the record that was before the GIC when making the OIC. Attached to counsel's objection letter was a letter from the Assistant Clerk of the Privy Council that enclosed a certified copy of the OIC itself and attached *Regulations*. The Assistant Clerk then goes on to state that:

> The other material before the Governor in Council concerning Order in Council P.C. 2020-298 making the *Regulations* … is a confidence of the Queen's Privy Council for Canada, which cannot be disclosed because of its confidentiality.

[8] On December 4, 2020 – close to three months after its objection letter – the Respondent sent a further letter [December 4 Letter], to which was attached a letter from the General Counsel, Office of the Counsel to the Clerk of the Privy Council of Canada providing a "description of the materials constituting a confidence of the Queen's Privy Council for Canada", It reads as follows:

> 1. Submission to the Governor in Council, April 2020, in English and in French, from the Honourable David Lametti, Minister of Justice, regarding the proposed *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* and the proposed *Order Declaring an Amnesty Period (2020)*, including a letter of March 2020 from the Minister of Justice to the Honourable Jean-Yves Duclos, President of the Treasury Board, the signed Ministerial recommendation, draft regulations and accompanying materials of March and April 2020.
>
> This information, including all its attachments in their entirety, which are integral parts of the document, constitutes a memorandum the purpose of which is to present proposals or recommendations to Council, a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy, and draft legislation. Therefore, the information comes within the meaning of paragraphs 39(2)(a), 39(2)(d), and 39(2)(f) of the *Canada Evidence Act*.
>
> 2. Signed and approved Order in Council of May 2020, concerning *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*.
>
> This information is a record recording the deliberations or decisions of Council. The information comes within the meaning of paragraph 39(2)(c) of the *Canada Evidence Act*.

[9] The Applicants are opposing the Respondent's blanket reliance on Cabinet confidentiality.

III. Issues

[10] Both parties submit several issues, which can be summarized as follows:

A. *Do the Applicants' motions under Rule 317 satisfy the requirements of Rule 317?*

B. *Are the documents sought otherwise protected by Cabinet confidentiality?*

IV. Analysis

A. *Do the Applicants' motions under Rule 317 satisfy the requirements of Rule 317?*

[11] The Applicants submit that Rule 317 is essential to a just deliberation of their claim; they argue that an inadequate evidentiary record may immunize the *Regulations* from review (citing *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 13-14).

[12] Pursuant to Rule 317, "[a] party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party".

[13] Of note, this Court recently dismissed the Applicants' motions under Rule 302 of the *Federal Courts Rules* to pursue judicial review of the RCMP's authority to make firearms classifications (*Canadian Coalition for Firearm Rights et al v Canada (Attorney General)*, 2021

FC 447). As a result, the Court will not grant the Applicants' requests for disclosure related to the RCMP's firearms classifications as found in the *Firearms Reference Table*.

[14] In the present case, the relevant tribunal is the Governor in Council [GIC] and the order is the OIC, which promulgated the *Regulations*.

[15] Therefore, the material relevant to the Rule 317 motions is the material described in the December 4 Letter.

B. *Are the documents sought otherwise protected by Cabinet confidentiality?*

[16] The Applicants argue that the Respondent's opposition based on Cabinet confidentiality is ill founded. Considering the Respondent has not provided a section 39 certificate to claim statutory privilege under the *Canada Evidence Act*, RSC 1985, c C-5, the Court needs to revert to the common law of cabinet privilege. That is, the Court needs to examine the material over which privilege is claimed, determine whether privilege applies, and determine whether the public interest in disclosure outweighs its secrecy (citing *Singh v Canada (Attorney General)*, [2000] 3 FC 185 at para 20). In other words, the Respondent cannot unilaterally refuse production.

[17] In addition, the Applicants argue that the documents do not reveal the substance of Cabinet discussions and that, in any event, the definition of confidence under subsection 39(2) of the *Canada Evidence Act* does not include pre-existing source material.

[18] Finally, the Applicants argue that the Respondent's objection is contrary to the spirit of the *Federal Courts Rules*. The Rules impose an obligation upon the Respondent to provide, without delay, the requested material or a valid objection. The Applicants submit that they have been prejudiced by months of delay caused by the Respondent who, among other things, failed to object to documentary disclosure until September 11, 2020 – the procedural deadline to respond to the Applicants' Rule 317 requests.

[19] The Respondent, on the other hand, submits that Cabinet confidentiality is an essential component of good governance and that Cabinet confidentiality encourages candour in Cabinet discussions (citing *British Columbia (Attorney General) v Provincial Court Judges' Association of British Columbia*, 2020 SCC 20 at para 96 and *Babcock v Canada (Attorney General)*, 2002 SCC 57 at para 18 [*Babcock*]).

[20] The Respondent argues that the material before the GIC when making the OIC is protected by Cabinet confidentiality as defined in the *Canada Evidence Act* and that the Respondent's description of the material provided in the December 4 Letter supports his position.

[21] Specifically, the Respondent submits that the material before the GIC falls under paragraphs 39(2)(a), 39(2)(c)-(d) and 39(2)(f) of the *Canada Evidence Act* as being respectively, "a memorandum the purpose of which is to present proposals or recommendations to Council"; "a record recording the deliberations or decisions of Council"; "a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the

making of government decisions or the formulation of government policy"; and "draft legislation".

[22] The Respondent further submits that a section 39 certificate is not necessary to make out the claim of Cabinet confidentiality and that it would unnecessarily delay the proceedings. The Respondent refers to *Tran v Canada (Citizenship and Immigration)*, 2020 FC 215 [*Tran*] where this Court dismissed a motion for the production of documents over which Cabinet confidentiality was claimed. In *Tran*, Cabinet confidentiality was claimed by way of a Rule 318 objection letter just like in this case. Further, the Respondent asserts that this Court has also accepted descriptions of the material alleged to have protection by way of Cabinet confidentiality.

[23] Finally, the Respondent argues that the claim of Cabinet confidentiality will not immunize the *Regulations* from review because the parties and this Court can rely on the *Regulation Impact Analysis Statement* that accompanied the *Regulations*. Moreover, this Court's ultimate decision will not involve weighing the merits of the GIC's decision. Instead, this Court's analysis will be about whether the GIC observed a condition precedent when making the *Regulations*, or whether the *Regulations* are inconsistent with the GIC's authority (*Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64 at paras 24, 27; *Innovative Medicines Canada v Canada (Attorney General)*, 2020 FC 725 at paras 66-72 and 137).

[24] Now turning to the arguments of the parties, I first note that it is undisputed that the documents listed in the December 4 Letter are relevant to the underlying applications for judicial

review; they have the capacity to affect the decision this Court will make on the merits of the underlying applications and they may affect the Court's analysis of whether the GIC satisfied a condition precedent to making the OIC (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 109 [*Tsleil-Waututh Nation*]).

[25] The primary dispute between the parties comes down to the Respondent's claim of Cabinet confidentiality over all material before the GIC with the exception of the OIC and the *Regulations* annexed thereto.

[26] There is a common law approach to Cabinet confidentiality as well as a statutory approach.

[27] At common law, Courts review the information over which Cabinet confidentiality is claimed and weigh the public interest in preserving confidentiality against the public interest in disclosure to determine the material that should be disclosed, if any (*Babcock* at para 19).

[28] Jurisdictions within Canada have modified the common law approach by providing a statutory process (*Babcock* at para 20). Section 39 of the *Canada Evidence Act* creates the statutory framework that is relevant to this dispute:

39 (1) Where a minister of the Crown or the Clerk of the Privy Council objects to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying in writing that the	39 (1) Le tribunal, l'organisme ou la personne qui ont le pouvoir de contraindre à la production de renseignements sont, dans les cas où un ministre ou le greffier du Conseil privé s'opposent à la divulgation

information constitutes a confidence of the Queen's Privy Council for Canada, disclosure of the information shall be refused without examination or hearing of the information by the court, person or body.

d'un renseignement, tenus d'en refuser la divulgation, sans l'examiner ni tenir d'audition à son sujet, si le ministre ou le greffier attestent par écrit que le renseignement constitue un renseignement confidentiel du Conseil privé de la Reine pour le Canada.

Definition

(2) For the purpose of subsection (1), **a confidence of the Queen's Privy Council for Canada** includes, without restricting the generality thereof, information contained in

(a) a memorandum the purpose of which is to present proposals or recommendations to Council;

(b) a discussion paper the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) an agendum of Council or a record recording deliberations or decisions of Council;

(d) a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the

Définition

(2) Pour l'application du paragraphe (1), **un renseignement confidentiel du Conseil privé de la Reine pour le Canada** s'entend notamment d'un renseignement contenu dans :

a) une note destinée à soumettre des propositions ou recommandations au Conseil;

b) un document de travail destiné à présenter des problèmes, des analyses ou des options politiques à l'examen du Conseil;

c) un ordre du jour du Conseil ou un procès-verbal de ses délibérations ou décisions;

d) un document employé en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du

formulation of government policy;	gouvernement ou à la formulation de sa politique;
(e) a record the purpose of which is to brief Ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and	e) un document d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa d);
(f) draft legislation.	f) un avant-projet de loi ou projet de règlement.

[Emphasis in original.]

[29] According to the Supreme Court of Canada in *Babcock*,

> 22 Section 39(1) permits the Clerk to certify information as confidential. It does not restrain voluntary disclosure of confidential information. This is made clear from the French enactment of s. 39(1) which states that s. 39 protection arises only "*dans les cas où*" (in the cases where) the Clerk or minister opposes disclosure of information. Therefore, the Clerk must answer two questions before certifying information: first, is it a Cabinet confidence within the meaning of ss. 39(1) and 39(2); and second, is it information which the government should protect taking into account the competing interests in disclosure and retaining confidentiality? If, and only if, the Clerk or minister answers these two questions positively and certifies the information, do the protections of s. 39(1) come into play. More particularly, the provision that "disclosure of the information shall be refused without examination or hearing of the information by the court, person or body" is only triggered when there is a valid certification.
>
> [Emphasis added.]

[30] When the Clerk of the Privy Council certifies that material is confidential pursuant to section 39 of the *Canada Evidence Act*, this Court will not review the documents to balance the public interest in disclosure versus confidentiality. Instead, *Babcock* teaches that:

> 23 If the Clerk or minister chooses to certify a confidence, it gains the protection of s. 39. Once certified, information gains greater protection than at common law. If s. 39 is engaged, the "court, person or body with jurisdiction" hearing the matter must refuse disclosure; "disclosure of the information shall be refused". Moreover, this must be done "without examination or hearing of the information by the court, person or body". This absolute language goes beyond the common law approach of balancing the public interest in protecting confidentiality and disclosure on judicial review. Once information has been validly certified, the common law no longer applies to that information.
>
> [Emphasis in original.]

[31] The Respondent, by his own admission, has not provided a section 39 certificate. The Respondent submits that a section 39 certificate is not always necessary. The Respondent relies on Rule 318 of the *Federal Courts Rules* for his objection. Further, the Respondent has cited *Tran* as well as unreported decisions of this Court to show examples where this Court denied disclosure without a section 39 certificate. Specifically, the Respondent asserts that this Court accepts descriptions of the material, akin to the description in a section 39 certificate, signed by counsel of the Privy Council Office. The Respondent provided such a document in the form of the December 4 Letter.

[32] In my view, however, the cases cited by the Respondent contained additional considerations that contributed to the Court's conclusions – considerations that are not present in this matter before me – or alternatively provide no analysis that can assist this Court. For example:

A. In *Tran*, the material filed before the Court included the Minister's Report to the GIC and thus the reasons for the decision were provided to the Court for consideration (at para 42). As a result, there was nothing preventing the Court from conducting the judicial review. As an aside, Justice Pentney did admonish the respondent's conduct for failing to provide a better description of the material as it was unlike the situation where a section 39 certificate was filed (at para 46).

B. In *Cupe v Canada* (22 Nov 2016), T-1175-15 at 6 (FC), Prothonotary Tabib made a point to note that the materials sought were, in any event, not relevant to the underlying application for judicial review (at para 6). In my view, this means that the request for disclosure did not satisfy even the basis requirements of Rule 317, Cabinet confidentiality aside.

C. As for *Taseko Mines Limited v Canada (Environment)*, 2017 FC 1100 at para 120, I see no analysis that could assist the Court in coming to any conclusion.

D. Contrary to the Respondent's assertion at paragraph 13 of his sur-reply, *Vennat v Canada (Attorney General)*, 2004 FC 1073 is not an example where this Court refused disclosure on the basis of Cabinet confidentiality without a section 39 certificate. Justice Hugessen began his decision stating, "I have before me two motions by the Clerk of the Privy Council based on section 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5" (at para 1).

E. In *Hinton v Her Majesty the Queen* (28 November 2011), IMM-5015-06 at paras 4 and 6 (FC), Prothonotary Lafrenière (as he then was) ordered the respondent to provide particulars of the documents over which privilege was claimed. In my view, this does not assist with determining how the privilege dispute was concluded except for demonstrating that the respondent failed to comply with even the basic requirements of asserting privilege – describing the documents over which privilege was claimed.

F. In *Shoan v Canada (Attorney General)* (21 Oct 2016), T-1053-16 (FC), Prothonotary Tabib concluded that, on the basis of the respondent's description of the materials over which Cabinet confidentiality was claimed, some of the documents sought by the applicant did not even exist, thereby failing to satisfy the requirements of Rule 317 (at para 3). Moreover, the applicant stated that he did not seek deliberations that would fall under section 39(2) of the *Canada Evidence Act* (at 3). In my view, that means there was no real Cabinet confidentiality dispute.

> G. *9255-2504 Québec Inc et al c Sa majesté la reine et al* (19 September 2018), T-495-17 at para 9 (FC), also only contains an order to produce a description of the materials over which confidentiality was claimed, but does not demonstrate any resolution of the confidentiality dispute.

[33] And, although in *Tran*, Justice Pentney stated that the Respondent could have attempted to resolve the Cabinet confidentiality dispute through less formal means than section 39 certificates (at para 36), in my view it is plain from the Applicants' submissions that the Applicants are not amenable to a less formal resolution in this matter.

[34] For example, in *Tran* Justice Pentney also referred to *Babcock* and stated:

> [39] In *Babcock*, it is emphasized that the decision to claim a Cabinet confidence rests with the Clerk of the Privy Council or a Minister of the Crown rather than with the judiciary. This is subject to the requirement that the certification of a document as a Cabinet confidence must be done properly within the terms of the statute, but if this is done the Court must assess the matter without being able to examine the actual documents that are certified as Cabinet confidences (at para 40).
>
> [Emphasis added.]

[35] *Babcock* also states that, "the provision that 'disclosure of the information shall be refused without examination or hearing of the information by the court, person or body' is only triggered when there is a valid certification" (at para 22).

[36] In my view, this means that the Respondent cannot legitimately rely on the statutory process for Cabinet confidentiality that precludes this Court from reviewing the documents over which Cabinet confidentiality is claimed.

[37] The Respondent's suggestion that a section 39 certificate would have unduly delayed these proceedings is difficult to grasp in the present context. The Respondent has already delayed these proceedings by (1) failing to respond to the Rule 317 request in accordance with the timeline prescribed by Rule 318(1) of the *Federal Courts Rules*; (2) not responding to the Rule 317 request until the last day of the procedural deadline established by this Court's Order dated August 27, 2020 and by which response the Respondent objected to the production of any documentation before the GIC except for the OIC and the annexed *Regulations*; (3) failing to provide any particulars of the documents over which confidentiality was claimed until the December 4 Letter; and (4) failing to adhere to the statutory framework established by the *Canada Evidence Act*.

[38] In my view, as a result of the choice made by the Respondent not to produce a section 39 certificate, the common law now applies and this Court has to review the materials before the GIC and balance the interests at stake.

V. Conclusion

[39] Considering that the Respondent has chosen not to rely on the statutory framework and issue a valid certification, the Court will conduct its own analysis to determine whether the materials described in the December 4 Letter properly come within the definition of Cabinet confidentiality, and if so, whether the public interest in disclosure outweighs its secrecy.

[40] Therefore, the Applicants' motions are granted in part and the Respondent has to file the materials described in the December 4 Letter, under seal, for the Court to review.

ORDER in T-569-20, T-577-20, T-581-20, T-677-20, T-735-20 and T-905-20

THIS COURT ORDERS that:

1. The Applicants' motions are granted in part;
2. The Respondent will file under seal, within thirty days of these reasons, the documents described in the letter from the General Counsel, Office of the Counsel to the Clerk of the Privy Council of Canada, dated December 4, 2020;
3. Costs on these motions are granted to the Applicants.

"Jocelyne Gagné"
Associate Chief Justice

ANNEX "A"

The Applicants in file T-577-20 seek the following documents. The Applicants in files T-905-20, T-569-20, and T-677-20 adopt their submissions:

Certified copies of all records, research, analysis, policy papers, briefing reports, studies, proposals, presentations, reports, memos, opinions, advice, letters, emails and any other communications that were prepared, commissioned, considered or received by the Respondent in relation to:

(a) The public engagement referenced on page 59 of the Order in Council on the issue of banning handguns and assault-style firearms that took place between October 2018 and February 2019, including but in no way limited to:

(i) All records which evidence the potential for a run on the market, as referenced on pages 59 and 63 of the Order in Council.

(ii) The results and all discussion, research, analysis, policy papers, briefing reports, studies or reports generated in part or in whole from the roundtables held in Vancouver, Montreal, Toronto, and Moncton, and any other Canadian municipalities, as referenced on page 59 of the Order in Council.

(iii) The results and all discussion, research, analysis, policy papers, briefing reports, studies or reports generated in part or in whole from the online questionnaire referenced on page 59 of the Order in Council.

(iv) All 36 written submissions, as referenced on page 59 of the Order in Council.

(v) All consultations in bilateral meetings with 92 stakeholders, as referenced on page 59 of the Order in Council.

(vi) All participants in the public engagement, as referenced on page 59 of the Order in Council, who expressed their views that a ban on assault-style firearms is either (a) needed, or (b) not needed, in order to protect public safety.

(vii) All engagements and consultations with Indigenous groups, as referenced on page 59 of the Order in Council.

(viii) All records which evidence the possibility that firearms may be diverted to illegal markets, as referenced on page 60 of the Order in Council.

(b) The regulatory analysis referenced on page 60 of the Order in Council, including but in no way limited to the information and evidence which informed:

(i) The costs associated with implementing the prospective buy-back program and grandfathering regime, as referenced on page 60 of the Order in Council.

(ii) The considered impacts on approximately 2.2 million individual firearms license holders in Canada that are affected by the Order in Council, Regulation, and *Amnesty Order*, as referenced on page 60 of the Order in Council.

(iii) The considered impacts and costs of the Order in Council, Regulation, and *Amnesty Order*, as referenced on page 62 of the Order in Council, on:

(1) The hunting industry in Canada;

(2) The sport shooting industry in Canada; and

(3) Other private businesses in Canada including businesses that manufactured or sold the firearms restricted by the Regulation.

(iv) The ‘one-for-one’ rule, as referenced on page 62 of the Order in Council.

(v) The Government of Canada’s decision not to give advance notice under the World Trade Organization’s Technical Barriers to Trade Agreement, as referenced on page 62 of the Order in Council.

(vi) The fact that Indigenous persons are victims of homicides involving firearms at a much higher rate than the Canadian population and that this figure appears to be increasing, as referenced on page 63 of the Order in Council.

(c) The rationale for the Regulation, as referenced on page 63 of the Order in Council, including but in no way limited to:

(i) The Government of Canada’s objective to ban assault-style firearms as referenced on page 63 of the Order in Council.

(ii) The Government of Canada’s objective to reduce the risk of diversion to illegal markets for criminal use, and evidence of how the Regulation would achieve that objective, as referenced on page 63 of the Order in Council.

(iii) The conclusion that the prohibited firearms are tactical and/or military-style firearms and are not reasonable for hunting or sport shooting, as referenced on page 64 of the Order in Council.

(d) Implementation, compliance and enforcement, and service standards, as referenced on page 65 of the Order in Council, including but in no way limited to:

(i) The proposed or anticipated amount of compensation to be offered per firearm listed in the Regulation, and who may qualify for this compensation, as referenced on page 65 of the Order in Council.

(ii) Interactions with affected owners regarding the Regulation and compliance with the Regulation, including any script or directions provided to public officials, firearms officers, the Registrar or Chief Firearms Officer (as appointed under the *Firearms Act*, SC 1995, c 39), the RCMP, or other law enforcement agencies for communications with affected owners, as referenced on page 65 of the Order in Council.

(iii) The basis for the addition of makes and models of firearms to the list of prohibited firearms in the near future, including any correspondence or directions provided to firearms officers, the Registrar or Chief Firearms Officer (as appointed under the *Firearms Act*, SC 1995, c 39 (the *Firearms Act*)), the RCMP or other law enforcement agencies, as referenced on page 65 of the Order in Council.

(iv) Decisions made since May 1, 2020 by the RCMP, including the Specialized Firearm Support Services, and the reasons for those decisions, in relation to the Regulation; specifically, the decisions regarding the re-designation of approximately 600 firearms where the RCMP have unilaterally changed the classification or determination of the firearm on the basis of "variants", "modified versions", bore sizes or energy at discharge of firearms not listed in the Regulation, and all FRT entries and reports in connection with same.

The Applicants in file T-677-20 additionally seek the following documents:

All records, whether in digital, analog or paper format, including but in no way limited to research, analysis, policy papers, briefing reports, studies, proposals, presentations, reports, audio and/or video recordings, memoranda, transcripts and/or minutes of meetings, opinions, advice, letters, emails, voicemails, text messages and any other documents and communications that were prepared, commissioned, considered or received by the Respondents and/or the Government of Canada and relied upon for the following purposes:

(i) Forming the opinion that the firearms of the designs commonly known as the SG-550 rifle and SG-551 carbine, "and any variants or modified versions of them, including the SAN Swiss Arms", are not reasonable for use in Canada for hunting and/or sporting purposes.

(ii) Forming the opinion that the firearms of the designs commonly known as the M16, AR-10 and AR-15 rifles and the M4 carbine, "and any variant or modified version of them", are not reasonable for use in Canada for hunting and/or sporting purposes.

(iii) Forming the opinion that the firearm of the design commonly known as the Ruger Mini-14, "and any variant or modified version of it", are not reasonable for use in Canada for hunting and/or sporting purposes.

(iv) Forming the opinion that the firearms of the design commonly known as the US Rifle, M14, "and any variant or modified version of it", are not reasonable for use in Canada for hunting and/or sporting purposes.

(v) Forming the opinion that the firearm of the design commonly known as the VZ-58 rifle, “and any variant or modified version of it”, are not reasonable for use in Canada for hunting and/or sporting purposes.

(vi) Forming the opinion that the firearm of the design commonly known as the Robinson Armament XCR rifle, “and any variant or modified version of it”, are not reasonable for use in Canada for hunting and/or sporting purposes.

(vii) Forming the opinion that the firearms of the design commonly known as the CZ Scorpion EVO 3 carbine and CZ Scorpion EVO 3 pistol, “and any variant or modified version of them”, are not reasonable for use in Canada for hunting and/or sporting purposes.

(viii) Forming the opinion that the firearm of the design commonly known as the Beretta CX4 Storm carbine, “and any variant or modified version of it”, are not reasonable for use in Canada for hunting and/or sporting purposes.

(ix) Forming the opinion that the firearms of the designs commonly known as the SIG Sauer SIG MCX carbine, SIG Sauer SIG MCX pistol, SIG Sauer SIG MPX carbine and SIG Sauer SIG MPX pistol, “and any variant or modified version of them”, are not reasonable for use in Canada for hunting and/or sporting purposes.

(x) Forming the opinion that firearms with a bore diameter of 20 mm or greater are not reasonable for use in Canada for hunting and/or sporting purposes.

(xi) Forming the opinion that firearms capable of discharging a projectile with a muzzle energy greater than 10,000 are not reasonable for use in Canada for hunting and/or sporting purposes.

(xii) Determining which makes and models of firearms should be made prohibited pursuant to the Regulation and the Order in Council.

(xiii) Determining which makes and models of firearms should not be made prohibited pursuant to the Regulation and the Order in Council.

The Applicant in file T-581-20 seeks the following documents:

The applicant requires certified copies of all documents relevant to the initiation of the concept, proposals study, public consultations, reports, press releases, opinions, advice, communications in all media, that were prepared, conducted, commissioned, considered or received by the Respondents in respect of the

i. Order In Council 2020-298

ii. Regulation SOR/2020-96

iii. Order In Council 2020-299

iv. Regulation SOR/2020-97

v. Reports made pursuant to the *Statutory Instruments Act* with respect to a, b, c, d above

vi. Domestic violence in Native and non Native Communities

vii. All submissions, documents, transcripts of meetings, as referred to in the Regulatory Impact Analysis Statement that accompanies SOR/2020-98 in the Canada Gazette

viii. Political analysis of the timing for the creation of the OIC's and the Regulations, during the COVID-19 pandemic.

The Applicants in file T-735-20 seek: "Certified copies of the documents or materials used to write the RIAS (which do not constitute Cabinet Confidences)." And, "[d]isclosure … from the Respondents (and Government of Canada agents or branches) of the studies, information and documents they used to arrive at the conclusion that the newly prohibited firearms do present a statistically significant danger to the public, must be banned for the purpose of public safety or are no longer reasonable for hunting and sport shooting purposes."

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-569-20
STYLE OF CAUSE:	CASSANDRA PARKER and K.K.S. TACTICAL SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-577-20
STYLE OF CAUSE:	CANADIAN COALITION FOR FIREARM RIGHTS, RODNEY GILTACA, LAURENCE KNOWLES, RYAN STEACY, MACCABEE DEFENSE INC., and WOLVERINE SUPPLIES LTD. v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-581-20
STYLE OF CAUSE:	JOHN PETER HIPWELL v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-677-20
STYLE OF CAUSE:	MICHAEL JOHN DOHERTY, NILS ROBERT EK, RICHARD WILLIAM ROBERT DELVE, CHRISTIAN RYDICH BRUHN, PHILIP ALEXANDER MCBRIDE, LINDSAY DAVID JAMIESON, DAVID CAMERON MAYHEW, MARK ROY NICHOL and PETER CRAIG MINUK v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-735-20
STYLE OF CAUSE:	CHRISTINE GENEROUX, JOHN PEROCCHIO and VINCENT PEROCCHIO v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-905-20
STYLE OF CAUSE:	JENNIFER EICHENBERG, DAVID BOT, LEONARD WALKER, BURLINGTON RIFLE AND REVOLVER CLUB, MONTREAL FIREARMS RECREATION

CENTRE, INC., O'DELL ENGINEERING LTD. v
ATTORNEY GENERAL OF CANADA

RULE 317 MOTIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: GAGNÉ A.C.J.

DATED: MAY 26, 2021

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Laura Warner Michael A. Loberg	FOR THE APPLICANTS IN T-577-20
Bruce Hughson Kerry Boyd Jordan Milne Jennifer Lee	FOR THE RESPONDENT IN T-577-20
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James Gorham Andrew Law Samantha Pilon	FOR THE RESPONDENT IN T-581-20
Arkadi Bouchelev	FOR THE APPLICANTS IN T-677-20
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