

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**BARBRA SCHLIFER COMMEMORATIVE CLINIC**

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA,  
THE COMMISSIONER OF FIREARMS,  
THE REGISTRAR OF FIREARMS, and  
THE CHIEF FIREARMS OFFICER**

Respondents

---

**FACTUM OF THE APPLICANT**

---

April 10, 2014

**CAVALLUZZO SHILTON McINTYRE  
CORNISH LLP**  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, ON M5T 2S6

**Shaun O'Brien, LSUC #43547F  
Elichai Shaffir, LSUC #55370S  
Nadia Lambek, LSUC #63732C**

Tel: 416-964-1115  
Fax: 416-964-5895

Counsel for the Applicant

**TO: DEPARTMENT OF JUSTICE**

Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, ON M5X 1K6

**Per: Gina M. Scarcella, LSUC #22213V**  
**Christine Mohr, LSUC #37645R**  
**Andrea Bourke, LSUC #45892K**

Tel: (416) 954-8111 / (416) 973-4111  
(416) 952-1459  
Fax: (416) 973-5004 / (416) 952-4518  
File: ORO 2-597453

Counsel for the Respondents, Her Majesty  
the Queen in Right of Canada, as represented  
by the Attorney General of Canada, the Commissioner  
of Firearms and the Registrar of Firearms

**TO: ATTORNEY GENERAL OF ONTARIO**

Ministry of the Attorney General  
Constitutional Law Branch  
McMurtry-Scott Building  
720 Bay Street, 4<sup>th</sup> Floor  
Toronto, ON M7A 2S9

**Zachary Green**

Tel: (416) 326-8517  
Fax: (416) 326-4015

Counsel for the Respondent, the Chief Firearms Officer

## INDEX

### Contents

PART I:	OVERVIEW .....	1
PART II:	THE FACTS .....	4
A.	Brief Overview of the <i>Amendment Act's</i> Significant Changes.....	4
B.	The Clinic.....	5
C.	The Importance of Legal Controls on Non-Restricted Firearms for Women's Safety .....	6
1.	Domestic Violence is a Women's Issue .....	6
2.	Firearms are a Primary Weapon in Domestic Violence.....	9
3.	Access to Firearms is a Key Risk Factor in Domestic Homicide .....	11
4.	Most Firearms Used in Domestic Violence are Legally Owned Non-Restricted Firearms .....	14
D.	Overview of the 1995 <i>Firearms Act</i> and the <i>Amendment Act</i> .....	16
1.	Overview of the 1995 <i>Firearms Act</i> and its Public Safety Purpose .....	16
2.	Overview of the <i>Amendment Act</i> and its Significant Changes that Negatively Impact Public Safety .....	19
E.	First Change: Impact on Women from Elimination of Registration of Non-Restricted Firearms .....	22
1.	Law Enforcement Relied on the Registry in Situations of Domestic Violence .....	22
2.	Registration Drives Accountability.....	26
3.	Examples of Registration's Effectiveness .....	28
4.	Registration of Non-Restricted Firearms Resulted in a Significant Drop in the Rate of Domestic Homicides of Women in Canada .....	30
F.	Second Change: Impact on Women of Removing the Requirement to Contact the Registrar on Transfer of a Non-Restricted Firearm .....	38
1.	The <i>Amendment Act</i> Eliminated a Crucial Mandatory Safety Check Upon Transfer of Non-Restricted Firearms.....	38
G.	Third Change: Impact on Women of Deleting Data and Preventing the Preservation of Data for Non-Restricted Firearms .....	43
H.	International Requirements to Document and Register Firearms.....	44
PART III:	ISSUES AND ARGUMENT .....	46
A.	Section 7.....	46
1.	There is an Infringement to the Security of the Person and the Right to Life .....	47

2.	The Deprivation is Contrary to the Principles of Fundamental Justice ....	57
3.	Conclusion on S. 7 .....	60
B.	Section 15.....	61
1.	Framework for Analysis Under Section 15 of the <i>Charter</i> .....	62
2.	Substantive Inequality: Connection Between Impugned Legislation and Adverse Impact on Women .....	64
3.	Conclusion on S. 15 .....	67
C.	Government Can Be Required to Take Steps .....	67
1.	Where Government Legislates, the Government has a Duty to Ensure the Legislation Complies with the <i>Charter</i> .....	67
2.	Finding a Violation of S. 7 and S. 15 Does Not Impose a Positive Obligation on the Government.....	69
3.	Finding a Violation of S. 7 and S. 15 Does Not Constitutionalize the Non-Restricted Firearm Registry or Transfer Provisions .....	73
D.	Section 1: Violations of the <i>Charter</i> are Not Demonstrably Justified.....	74
1.	The <i>Amendment Act</i> 's Objectives Are Not Pressing and Substantial.....	75
2.	The <i>Amendment Act</i> Does Not Satisfy Proportionality Analysis .....	76
PART IV:	REMEDY.....	77

## **PART I: OVERVIEW**

1. This is an Application to declare the federal government's repeal of the registry for non-restricted firearms, commonly known as the long-gun registry, unconstitutional. In April, 2012, the federal government passed Bill C-19, *An Act to Amend the Criminal Code and the Firearms Act*. This legislation kept intact the registry for prohibited and restricted firearms, but repealed the provisions related to the long-gun registry.

2. The repeal of the long-gun registry disproportionately impacts women. The long-gun registry was enacted, in part, to benefit women. Following the implementation of the long-gun registry and other controls on firearms (set out in legislation passed in 1995), homicides of women in Canada with firearms dropped dramatically. Most women are shot by people they know – acquaintances or intimate partners. Firearms used in domestic violence are primarily legally owned rifles and shotguns. Therefore, controls on these firearms were expected to and did benefit women in particular.

3. The registry specifically benefited women because of how critical it is to remove firearms from escalating situations of domestic violence. The registry told the police what firearms were registered to the perpetrator so that the firearms could be located and removed.

4. The Applicant, the Barbra Schlifer Commemorative Clinic (the "Clinic"), a non-profit clinic which provides legal, counseling and interpretive services, brings this Application on behalf of women who experience domestic violence from firearms. The clients of the Clinic are not in a position to bring forward this Application in their own names, given the serious safety

issues they face. The Respondents have consented to the Clinic acting as a public interest litigant in this matter.

5. The provisions which repeal the registry for non-restricted firearms (and the associated protections on transfers of firearms) violate section 7 of the *Charter*. Protection against firearms, a lethal weapon, falls squarely within the text of section 7, which addresses life and security of the person. The impugned provisions remove a critical part of the public safety regime enacted to protect women and others against firearms. The loss of this piece of the regime results in women not being able to protect themselves from firearms effectively, and thereby exposes women to increased risk to their lives as well as physical and psychological integrity.

6. The deprivation to women's lives, safety and security is not in accordance with the principles of fundamental justice. The amendments to the firearms legislation are arbitrary, in that they undermine the legislation's public safety purpose by exposing women to increased danger. Given the dire impact on women, the amendments are also grossly disproportionate to any legitimate government aim. Indeed, there does not appear to be any pressing reason for the amendments, other than to further the government's political objectives.

7. The legislative provisions eliminating the long-gun registry also violate women's equality rights under section 15 of the *Charter*. The registry was put in place to benefit women and it did. Following the implementation of the registry and other controls on firearms, homicides of women with firearms dropped significantly and dramatically more than firearm homicides of men. While men are disproportionately harmed by handguns (for which a registry remains in place), women are disproportionately harmed by rifles and shotguns. Moreover, the removal of the long-gun registry perpetuates the historical failure to protect women from violence because

of the notion that domestic violence is a private matter, not entitled to public protection. The removal of this important public protection, which has been recognized by the Royal Canadian Mounted Police as a "critical component" of the firearms control regime, exposes women to increased danger, up to and including homicide, particularly in their most intimate relationships.

8. Where government legislates, it has a duty to ensure that the legislation complies with the *Charter*. Here, the government has removed a critical component of an extensive firearms regime, the loss of which disproportionately impacts women. It would be simplistic to call this the imposition of a "positive" obligation. Women require the registry, which is a procedural requirement to document information, in order to effectuate their rights to life and security of the person, and to be treated equally with respect to their safety. Governments are regularly required to put in place mechanisms to uphold other *Charter* rights. The fact that the government is required to take some proactive steps in order to substantively realize women's rights does not undermine the Applicant's claim.

9. The violations of women's rights under sections 7 and 15 of the *Charter* cannot be saved by section 1. The government had no pressing and substantial objective in eliminating the long-gun registry and insisting on the destruction of all the data it held. Moreover, the impact of the registry's loss, as well as the loss of the associated protections on transfers of firearms, on women greatly outweighs any marginal public benefit from its elimination.

## **PART II: THE FACTS**

### **A. Brief Overview of the *Amendment Act*'s Significant Changes**

10. On April 5, 2012, *An Act to Amend the Criminal Code and Firearms Act* ("*Amendment Act*") received Royal Assent.<sup>1</sup> Broadly speaking, the *Amendment Act* repealed the federal legislative regime which required the registration of non-restricted firearms (also known as "long-guns", which most commonly include rifles and shotguns). Under the current legislative regime, only restricted and prohibited firearms require registration.

11. As further detailed below, the *Amendment Act* introduced significant changes to the federal government's regime to control firearms, which was established in the *Firearms Act* in 1995. All of the changes related to the elimination of regulations for non-restricted firearms. Specifically, the *Amendment Act*:

- Eliminated the registration requirement for non-restricted firearms;<sup>2</sup> and,
- Removed the requirement that the transferor of a non-restricted firearm contact the Registrar to confirm that the transferee is eligible to possess the firearm.<sup>3</sup>

It also required the deletion of all existing information collected in the registry for non-restricted firearms, and eliminated any requirement to continue collecting information with respect to the sale of non-restricted firearms.<sup>4</sup>

---

<sup>1</sup> *An Act to Amend the Criminal Code and the Firearms Act*, S.C. 2012, c. 6 ["*Amendment Act*"], Joint Book of Authorities, v. 1, Tab 2. This *Act* amended the *Firearms Act*, S.C. 1995, c. 39, Joint Book of Authorities, v. 1, Tab 3. A copy of the 1995 *Firearms Act* S.C. 1995, c. 39 up to April 4, 2012 ["1995 *Firearms Act*"] is at Joint Book of Authorities, v. 1, Tab 4.

<sup>2</sup> *Amendment Act*, *ibid.* Joint Book of Authorities, Tab 2 at ss. 2-10, 14-24, 26-28.

<sup>3</sup> *Ibid.* at ss. 11-13.

<sup>4</sup> *Ibid.* at s. 29; Affidavit of Wendy Cukier sworn June 4, 2013, Applicant's Record, v. 1, Tab 2, p. 44, para. 88 ["Cukier Affidavit"].



12. Registration links a firearm to its owner by documenting the particulars of each firearm owned by an individual. It allows the police and others to identify which firearms attach to a particular person. It is to be distinguished from licensing, which evaluates whether individuals are entitled to own or possess firearms, not unlike licensing and registration for motor vehicles.

13. Prior to the repeal of the long-gun registry, all individuals licensed to possess and acquire firearms were required to register the details of each rifle and shotgun in a computerized, centralized registry (which could be accessed and searched by police). Registration was not an onerous or time-consuming process and typically occurred by calling a 1-800 number or by accessing the registration website.<sup>5</sup>

14. As detailed below, each of the *Amendment Act's* changes puts women at greater danger of threats, abuse and homicides with firearms and negatively impacts the safety of women.

## **B. The Clinic**

15. The Barbra Schlifer Commemorative Clinic ("Clinic") is a front-line service provider to women experiencing violence. Many of the Clinic's clients have been threatened and intimidated by firearms. Clients of the Clinic have had guns held to their heads, they have been threatened with guns in front of their children, and they have had guns pointed at them during assaults.<sup>6</sup>

---

<sup>5</sup> An application needed to be filled out for new firearm registrations only – i.e. newly imported or acquired firearms other than by transfer from an individual or business. See Exhibit "A" to the Reply Affidavit of Wendy Cukier sworn January 17, 2014, Applicant's Record, v. 5, Tab 9, pp. 1563-1568 ["Cukier Reply Affidavit"].

<sup>6</sup> Affidavit of Amanda Dale sworn May 30, 2013, Applicant's Record, v. 4, Tab 6, pp. 1514, 1519, 1522, 1523, paras. 5, 16, 22, 25 ["Dale Affidavit"].

**C. The Importance of Legal Controls on Non-Restricted Firearms for Women's Safety**

16. Women have a different relationship to firearms than men. Women benefit more from legal controls on rifles and shotguns, which are the most commonly used firearms in Canadian domestic homicides. As detailed below, firearms play a major role in domestic homicides, and domestic violence is a problem which has an extremely disproportionately impact on women. Because women are impacted by firearms used by intimate partners while at home, they benefit significantly from controls on firearms typically used in that context – that is, non-restricted rifles and shotguns. Moreover, these legal controls are effective because women are harmed primarily by legally owned rifles and shotguns.<sup>7</sup>

17. In evaluating women as a vulnerable group with respect to controls on firearms, it is also important to recognize that in North America, as worldwide, men dominate firearms ownership. In the United States, it is estimated that 42% of men compared to only 9% of women own guns. In Canada, 88% of gun owners are male. Globally, women represent a very small proportion of gun owners, but are a disproportionate number of gun violence victims. While men represent the majority of firearms victims, they are also the majority of firearms users. Women, in contrast, represent a higher percentage of firearm victims than firearms users.<sup>8</sup>

**1. Domestic Violence is a Women's Issue**

18. Domestic violence is "an extremely important and widespread social problem" that UNICEF describes as a "global epidemic".<sup>9</sup> It severely disproportionately impacts women.

---

<sup>7</sup> See discussion at paras. 38-44.

<sup>8</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 18, paras. 18-19.

<sup>9</sup> Affidavit of Peter Jaffe sworn June 17, 2013, Applicant's Record, v. 4, Tab 3, p. 1297, paras. 11-12 ["Jaffe Affidavit"].

19. In Canada, domestic violence is pervasive. In 2009, for example, 6% Canadians – more than 2 million people – self-reported physical or sexual spousal violence in the preceding five years. An even greater number – 17% or more than 5.5 million Canadians – self-reported emotional or financial abuse by a current or ex-spouse.<sup>10</sup>

20. While domestic violence affects all segments of society, its disproportionate impact on women is particularly troubling. For example, in Ontario, between 2002 and 2008, there were 157 female domestic violence deaths compared to 16 male domestic violence deaths.<sup>11</sup> Similarly, of the 93 domestic homicide cases reviewed in Ontario between 2003 and 2009, 96% had a female victim compared to 4% where the victim was male.<sup>12</sup> According to the Respondents'<sup>13</sup> expert, Dr. Catherine Kaukinen, depending on age and ethnic background, in the preceding five years up to one-third of all Canadian women experienced intimate partner violence.<sup>14</sup>

21. The Applicant retained Dr. Peter Jaffe to provide assistance to the Court regarding the prevalence of domestic violence and firearm use against women. Dr. Jaffe is a pre-eminent Canadian expert on violence against women. He is the Academic Director of the Centre for Research on Violence Against Women and Children at the University of Western Ontario and has acted as an expert on behalf of the Crown in numerous cases. He also has acted as an expert

---

<sup>10</sup> *Ibid.* at p. 1298, paras. 13-14.

<sup>11</sup> *Ibid.* at p. 1305, para. 44.

<sup>12</sup> *Ibid.* at p. 1305, para. 46.

<sup>13</sup> "Respondents" from hereafter refers to the federal Respondents.

<sup>14</sup> Transcript of the Cross-Examination of Catherine Kaukinen, January 28, 2014, Joint Supplementary Record, v. 8, Tab 21, p. 3813, l. 20 to p. 3814, l. 17 ["Kaukinen Cross"].

in numerous high profile inquests in Ontario relating to domestic violence.<sup>15</sup> He is an Officer of the Order of Canada.<sup>16</sup>

22. According to Dr. Jaffe, women are greatly overrepresented among victims of domestic violence and are more likely to experience more serious forms of domestic violence than males.<sup>17</sup> For example, women are much more likely than men to report experiencing severe assaults, injuries stemming from abuse, a greater number of hospitalizations, and fear for their lives.<sup>18</sup> The Respondents' expert similarly acknowledged that women in Canada are overwhelmingly the victims of sexual assault, and that according to some estimates in Canada and the United States, women are victims of upwards of 90-95% of intimate partner violence that comes to the attention of police.<sup>19</sup>

23. As the numbers in Ontario indicate, women are also more likely than men to be killed by an intimate partner. Research shows that women make up approximately 75% of all victims in homicides committed by a spouse and more than 90% of homicides committed by an ex-partner.<sup>20</sup> Altogether, the number of domestic homicides involving female victims is approximately four to five times the number involving males.<sup>21</sup> Women are also more than nine times more likely to be murdered by a partner than a stranger.<sup>22</sup> From 2000 to 2007, 72% of

---

<sup>15</sup> Transcript of the Cross-Examination of Peter Jaffe February 26, 2014, Joint Supplementary Record, v. 3, Tab 6, p. 1521, l. 21 to p. 1525, l. 21 ["Jaffe Cross"].

<sup>16</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1297, para. 8.

<sup>17</sup> *Ibid.* at p. 1298, para. 15.

<sup>18</sup> *Ibid.* at pp. 1298-1299, paras. 15-19.

<sup>19</sup> Kaukinen Cross, Joint Supplementary Record, v. 8, Tab 21, p. 3811, l. 23 to p. 3812, l. 10.

<sup>20</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1300, para. 21.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

female murder victims in Canada were killed by intimate partners (including dating partners).<sup>23</sup> In fact, the strongest risk factors for femicide – domestic homicide involving a female victim – is having previously experienced domestic violence.<sup>24</sup>

24. Also of concern is that the historical protections available for women in the context of domestic violence have been very limited. For many years, domestic violence was considered a private matter to be dealt with privately. Few incidents were reported to police and it was generally assumed that the victim had done something to warrant the attack. Public policies to address domestic violence are comparatively recent. "No drop" charging and prosecution policies, which mandate some police and Crown response to domestic violence calls, were not widely accepted in Canada until 1985.<sup>25</sup> The Respondents' witness acknowledged that historically spousal abuse was considered a "private family matter" and that historically the justice system did not deal with it sufficiently.<sup>26</sup>

## **2. Firearms are a Primary Weapon in Domestic Violence**

25. Firearms, and particularly long-guns in Canada, play a major role in domestic homicides. According to Dr. Jaffe, intimate partners with guns pose a serious risk to women.<sup>27</sup>

---

<sup>23</sup> Answers to Undertaking of Wendy Cukier dated March 31, 2014, undertaking #13, Joint Supplementary Record, v. 2, Tab 3, p. 1052.

<sup>24</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1299-1300, paras. 20-21.

<sup>25</sup> *Ibid.* at pp. 1300-1301, paras. 22-27.

<sup>26</sup> Transcript of the Cross-Examination of Gillian Blackell, January 21, 2014, Joint Supplementary Record, v. 9, Tab 22, p. 4109, l. 3 to p. 4110, l. 7 ["Blackell Cross"].

<sup>27</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1302, para. 33.

26. In Canada, firearms remain one of the top methods for intimate partner homicides.<sup>28</sup> Moreover, in both intact and estranged relationships, legal marriages and common law unions, women are significantly more likely to be killed by firearms than men.<sup>29</sup>

27. In Ontario, firearms are currently the second most common method used in spousal homicides. Between 2002 and 2008, 34% of domestic homicides involved stabbing and 21% involved shooting. Similarly, in 32% of cases, the cause of death of the primary victim (which is the (ex) partner) was stabbing and in 26% it was shooting.<sup>30</sup>

28. Since most domestic violence is ongoing and nonfatal and homicides are the "tip of the iceberg"<sup>31</sup>, it is important to understand how firearms are used in non-lethal ways in abusive relationships.<sup>32</sup> Firearms are used to intimidate, threaten, coerce, and generally terrorize women.<sup>33</sup> Using guns to these ends is far more commonplace but does not manifest in firearms-related injuries, which are more regularly reported. For every woman who is killed or injured with a firearm, many more are threatened. Women and their children also face physical and psychological harm from firearms in the home. It must be emphasized that even when a gun is not fired it can cause serious psychological injury to victim(s).<sup>34</sup>

---

<sup>28</sup> Kaukinen Cross, Joint Supplementary Record, v. 8, Tab 21, p. 3829, l. 15 to p. 3830, l. 2.

<sup>29</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1303, para. 34.

<sup>30</sup> *Ibid.* at pp. 1305-1306, paras. 47-50.

<sup>31</sup> Transcript of the Cross-Examination of Wendy Cukier, March 4, 2014, Joint Supplementary Record, v. 1, Tab 2, p. 564, l. 3 to l. 5 ["Cukier Cross March 4"].

<sup>32</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1303, paras. 35-36.

<sup>33</sup> *Ibid.* at p. 1303, para. 37.

<sup>34</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 23, para. 28; *see also* Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1303, para. 38.

29. Altogether, among abused women, approximately 4% report being threatened with a gun by their partner and 1% report sustaining a gun-related injury. Although these may seem like small numbers, the severity and lethal nature of firearm violence greatly increases the risk of serious injury or death when abusers use guns to exert power and control.<sup>35</sup>

30. The use of firearms in domestic violence has severe consequences whether or not the incident results in death. That said, when domestic violence involves firearms, death is twelve times more likely as compared to incidents that do not involve firearms. In Ontario, domestic homicides that involve the use of a firearm have more victims when compared to domestic homicides that involve other types of weapons or no weapons at all.<sup>36</sup> Children, in particular, are at serious risk in situations of domestic homicide, with firearms being a common method used to kill children in this context.<sup>37</sup>

### **3. Access to Firearms is a Key Risk Factor in Domestic Homicide**

31. The availability of and access to firearms are important risk factors in domestic violence. Households in which domestic violence has occurred are more likely to contain firearms. Access to firearms is strongly linked to domestic homicides, and where there is a prior history of domestic violence, perpetrator access to a gun results in a 500% increase in the risk of femicide.<sup>38</sup>

---

<sup>35</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1303-1304, para. 39.

<sup>36</sup> *Ibid.* at p. 1306, paras. 51-54.

<sup>37</sup> *Ibid.* at pp. 1307-1308, paras. 58-62.

<sup>38</sup> *Ibid.* at pp. 1301-1302, para. 29.

32. In Ontario, in 2002, access to a firearm was one of the top five factors associated with domestic homicide. More recently, Ontario coroners have identified access to firearms as one of the top risk factors for whether a woman will die in domestic violence situations in the Province. Over the period 2003 to 2008, access to a firearm was a factor in 40% of the cases reviewed.<sup>39</sup> Consequently, effective procedures and mechanisms to remove firearms from situations where a risk of violence has been identified are essential to the safety of women.<sup>40</sup>

33. Indeed, there is little disagreement about the importance of removing firearms from situations of domestic violence. The Respondents' witnesses have acknowledged that access to or ownership of firearms is a primary risk factor for homicide in domestic violence<sup>41</sup> and that when police respond to a domestic violence call, removing firearms can be "critical" and can prevent homicide.<sup>42</sup> Similarly, Department of Justice publications state that "whether there's a gun in the house" is an important consideration for women in deciding whether to leave an abusive relationship, and that access to weapons, including firearms, can be a sign of "immediate danger" in an abusive intimate partner relationship.<sup>43</sup> Risk assessment tools used throughout the country in the context of domestic violence commonly include "access to firearms" as an important factor to determine the level of a woman's risk.<sup>44</sup>

---

<sup>39</sup> Access to firearms is not listed as a factor in the most recent Ontario Domestic Violence Death Review Committee reports; however, the decline of firearms as a risk factor occurred while the registry for non-restricted firearms was in place. See Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 407, l. 17 to p. 410, l. 10.

<sup>40</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 22-23, paras. 25-26.

<sup>41</sup> Blackell Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4114, l. 4 to p. 4116, l. 16.

<sup>42</sup> Kaukinen Cross, Joint Supplementary Record, v. 8, Tab 21, p. 3854, l. 10-15.

<sup>43</sup> Blackell Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4146, l. 12 to p. 4148, l. 24; p. 4149, l. 10 to p. 4151, l. 16; Exhibits "C" and "D" to Blackell Cross, Joint Supplementary Record, v. 9, Tabs 22C and 22D.

<sup>44</sup> Blackell, Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4119, l. 16 to p. 4120, l. 18; p. 4151, l. 22 to p. 4157, l. 15; Exhibit "S" to the Affidavit of Gillian Blackell sworn October 28, 2013, Respondents' Record, v. 5, Tab



34. While availability of and access to firearms are important risk factors in domestic violence, the Applicant does not dispute that domestic violence is a complex matter with a range of causes and risk factors, and which requires a multi-faceted response. Firearms are not the only concern. But there is a distinction between factors that can and cannot be controlled. There is a long list of causes of death of women in Canada, but attention should be focussed on what causes can be prevented. We can and should get lethal firearms out of escalating situations.<sup>45</sup>

35. There is also a distinction between addressing broad societal trends or factors, such as the economic status of women, marriage rates, or the employment status of perpetrators, and more targeted interventions in high risk situations.<sup>46</sup>

36. When it comes to immediate risk and imminent danger, firearms are at the nub of the matter. As Dr. Jaffe stated, if police officers attend at a domestic violence occurrence, they “don’t ask if somebody’s employed or unemployed. ... The first thing [they’re] worried about is the presence of weapons.”<sup>47</sup> Moreover, although stabbing has become a greater proportion of domestic homicides as controls over rifles and shotguns have increased (and homicides with rifles and shotguns have plummeted),<sup>48</sup> it is still critical to remove firearms from these situations:

I can tell you that if your sister's life is in danger and the police are responding to her home, they're not going to ask if there's any knives in the home because it's assumed that there's knives everywhere...But they

---

6F, p. 2096, ["Blackell Affidavit"]; Blackell Cross, Exhibits "E" and "F", Joint Supplementary Record, v. 9, Tabs 22E and 22F.

<sup>45</sup> Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 661, l. 18 to p. 663, l. 7.

<sup>46</sup> Kaukinen Cross, Joint Supplementary Record, v. 8, Tab 21, p. 3835, l. 8 to p. 3836, l. 16.

<sup>47</sup> Jaffe Cross, Joint Supplementary Record, v. 3, Tab 6, p. 1405, l. 7 to l. 14.

<sup>48</sup> Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 426, l. 7 to p. 429, l. 24.

will be wanting to know – they will be wanting to check if there's guns in the home.<sup>49</sup>

37. In a similar vein, Amanda Dale, the Executive Director of the Clinic, stated that in the Clinic's work with women experiencing domestic violence, firearms are in a risk category of their own:

The immediacy of the firearm ready [at] hand in an escalating domestic violence situation is the single largest indicator from our perspective of her risk for lethality.

So it's a category of its own....When you go to the hospital and you're spurring blood, they treat you differently than if you have an ache.<sup>50</sup>

#### **4. Most Firearms Used in Domestic Violence are Legally Owned Non-Restricted Firearms**

38. Women benefit from controls on rifles and shotguns because (1) they are the firearms most commonly used in domestic homicides; and (2) the firearms used to kill women are primarily legally owned.

39. Rifles and shotguns are the most common firearms in Canadian households. A 2001 Canada-wide survey of firearm ownership estimated that 52% of guns owned in the country were rifles, 40% were shotguns and 6% were handguns.<sup>51</sup>

40. Rifle and shotguns are also the most commonly used firearms in Canadian domestic homicides (63%), followed by sawed-off rifles and shotguns (21%) and handguns (16%).<sup>52</sup>

---

<sup>49</sup> Jaffe Cross, Joint Supplementary Record, v. 3, Tab 6, p. 1405, l. 7 to 14; p. 1433, l. 22 to p. 1434, l. 5.

<sup>50</sup> Cross-Examination of Amanda Dale February 27, 2014, Joint Supplementary Record, v. 6, Tab 12, p. 2839, l. 7 to l. 20 ["Dale Cross"].

<sup>51</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1302, para. 30.

<sup>52</sup> *Ibid.* at p. 1302, para. 31.

41. In Canada, the majority of firearms used to kill women are not smuggled or illegally owned – they are legally owned rifles and shotguns.<sup>53</sup> In cases reviewed by the Ontario Domestic Violence Death Review Committee ("ODVDR"),<sup>54</sup> most firearms were legally acquired. In homicide cases that involved a firearm, it was found that the perpetrator was most often the owner of the firearm (67% of cases). In 72% of the cases, the firearm was acquired legally.<sup>55</sup> For the years 2006 to 2010, all of the firearms used in domestic homicides in Ontario were acquired legally.<sup>56</sup> Although the Respondents appear to dispute the fact that the majority of firearms used to kill women are legally owned, they have not put forward any evidence to the contrary. Looking at registration of firearms more generally, when the registry for non-restricted firearms was in place, approximately 90% of firearms were registered.<sup>57</sup>

42. Dr. Jaffe, who is not only familiar with the literature in this area, but has worked across Canada with police officers, Crown Attorneys and clients, quite candidly stated that he was "shocked" when he realized that the Respondents were refusing to acknowledge that the majority of firearms used in domestic violence are legally owned.<sup>58</sup>

43. In Canada, there can be no dispute that legal controls are aimed in part at ameliorating domestic violence with firearms. The regulations to the *Firearms Act* require current and former

---

<sup>53</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 23, para. 27; Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 658, l. 8 to p. 659, l. 10.

<sup>54</sup> A committee which reviews domestic deaths and makes recommendations, as described in Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, p. 1304, paras. 41-42.

<sup>55</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1306-1307, paras. 55-57.

<sup>56</sup> Answers to Undertaking of Peter Jaffe dated March 13, 2014, undertaking #3, Joint Supplementary Record, v. 4, Tab 7, p. 1995 to p. 1997.

<sup>57</sup> Transcript of the Cross-Examination of Wendy Cukier, February 21, 2014, Joint Supplementary Record, v. 1, Tab 1, p. 166, l. 10 to p. 167, l. 20 ["Cukier Cross February 21"].

<sup>58</sup> Jaffe Cross, Joint Supplementary Record, v. 3, Tab 6, p. 1515, l. 8 to p. 1516, l. 3.

spouses to be notified before a gun license may be issued. A Chief Firearms Officer is obligated to consider revoking a licence if s/he becomes aware that the licence-holder has become involved in an act of domestic violence or stalking. In the application for a Possession and Acquisition License under the *Firearms Act*, the applicant is required to identify information about current and former conjugal partners and the form requests the signature of current or former spouses or conjugal partners.<sup>59</sup>

44. The evidence that women are killed with legally owned firearms is consistent with approaches to firearms control in other countries. Many countries, including South Africa, Australia and the United States, have introduced provisions that directly address violence against women in their regimes to control firearms. In Australia, stronger firearms laws (which included licensing and registration) were accompanied by greater decreases in femicide than in male homicide (83% compared to 64%).<sup>60</sup>

#### **D. Overview of the 1995 *Firearms Act* and the *Amendment Act***

##### **1. Overview of the 1995 *Firearms Act* and its Public Safety Purpose**

45. The 1995 *Firearms Act* was the first stand-alone, comprehensive, firearms regime in Canada.<sup>61</sup> Following its passage, individuals had until January 1, 2001 to obtain a firearms licence, and until January 1, 2003 to register their existing firearms.<sup>62</sup> The law was directed to

---

<sup>59</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 26, para 33; Exhibit "C" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2C, pp. 185-193; *Firearms Licenses Regulations*, SOR 98-199, s. 4(1), 16(1), Joint Book of Authorities, v. 1, Tab 7.

<sup>60</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 26, para. 34.

<sup>61</sup> 1995 *Firearms Act*, *supra* note 1.

<sup>62</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 55, para. 126.

public safety<sup>63</sup> and, in particular, one of its significant purposes was protecting women. It accomplished its public safety objectives by: (1) licensing every gun owner who wished to possess or acquire a firearm; and (2) requiring the registration of every firearm, including non-restricted firearms. In a challenge to the federal government's jurisdiction to enact the 1995 *Firearms Act*, the Supreme Court of Canada found that the legislation's licensing and registration provisions were not only Constitutional but were also inextricably intertwined.<sup>64</sup>

46. Although the registration of rifles and shotguns was only first introduced in 1995, Canadian legislation has long recognized the importance of documentation and information on firearms. Requirements to document ownership of handguns were in existence as far back as 1892,<sup>65</sup> and a registry for handguns, (though not rifles and shotguns) has been in place since 1934 (and remains in place today).<sup>66</sup>

47. The first controls on non-restricted firearms were put in place in 1977. These controls were limited. They required individuals to obtain a Firearms Acquisition Certificate ("FAC"), a screening system for those wishing to acquire a non-restricted firearm. However, licensing was not required for all ownership of non-restricted firearms. As part of the controls, businesses were required for the first time to document and keep a record of sales of non-restricted firearms. While those documentation requirements were an important first step, there was still no

---

<sup>63</sup> *Reference Re. Firearms Act* (Can.), [2000] 1 S.C.R. 783, para. 24, Joint Book of Authorities, v. 2, Tab 28 ["*Firearms Act Reference*"].

<sup>64</sup> *Ibid.* at para. 47. The Supreme Court examined the main purpose of the 1995 *Firearms Act* and found at para. 24 that public safety was the main purpose of the regime.

<sup>65</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 31-32, para. 46; Exhibit "D" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2D, pp. 195-198.

<sup>66</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 33, para. 49; Exhibit "G" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2G, pp. 211-214.

requirement to register non-restricted firearms (whether in possession or at purchase) in a centralized government registry, as there had been for handguns since 1934.<sup>67</sup>

48. The failings and inadequacies of gun control laws, as well as public recognition of the particular dynamics of firearms in domestic violence, resulted in the enactment of the 1995 *Firearms Act*. Disturbingly, it took several firearm tragedies involving women and children to bring these realizations into focus. The Montreal Massacre in 1989, for example, acted as an impetus for a fresh examination of violence against women and became a key factor leading to the enactment of the 1995 *Firearms Act*. The firearm used to kill 14 women in the Montreal Massacre was a non-restricted firearm.<sup>68</sup> Similarly, three domestic violence inquests in which women and children were killed using legally owned firearms all shed light on the law's deficiencies prior to the 1995 *Firearms Act*. All three inquests recommended the implementation of a central registry for rifles and shotguns.<sup>69</sup>

49. The 1995 *Firearms Act* and its requirement to register all firearms was therefore considered a "key legislative measure" to address intimate partner violence, as acknowledged by one of the Respondents' experts.<sup>70</sup> This notion was similarly expressed in the Parliamentary debates and Committee hearings leading to the passage of the 1995 *Firearms Act* when the

---

<sup>67</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 34-35, paras. 54-56; Exhibit "O" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2O, p. 305.

<sup>68</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 35, para. 57.

<sup>69</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 74-77, paras. 189-190; Exhibit "UU" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2UU, pp. 1019-1106; Exhibit "VV" to Cukier Affidavit, Applicant's Record, v. , Tab 2VV, pp. 1107-1119; Exhibit "WW" to Cukier Affidavit, Applicant's Record, v. , Tab 2WW, pp. 1120-1149.

<sup>70</sup> Blackell Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4097, l. 22 to p. 4099, l. 5.

Minister of Justice at that time stated that the bill was intended, in part, to reduce domestic violence. When introducing the bill, for example, the Minister of Justice stated:<sup>71</sup>

The point is broader still. Registration will assist us to deal with the scourge of domestic violence. Statistics demonstrate that every six days a woman is shot to death in Canada, almost always in her home, almost always by someone she knows, almost always with a legally owned rifle or shotgun. This is not a street criminal with a smuggled handgun at the corner store. This is an acquaintance, a spouse or a friend in the home.

What does this have to do with registration? Domestic violence by its very nature is episodic and incremental. Typically, somewhere along the line the court has made an order barring the aggressor from possessing firearms. When the police try to enforce that order, just as in the case of stalking, they do not know whether they have been successful or not. They do not know what firearms are there.

The Minister of Justice subsequently re-iterated the connection between the registration provisions and domestic violence during the Parliamentary debates. When the bill was read for the third time and passed, he once again highlighted the importance of registration of non-restricted firearms for women.<sup>72</sup>

## **2. Overview of the *Amendment Act* and its Significant Changes that Negatively Impact Public Safety**

50. On April 5, 2012, Parliament passed the *Amendment Act*, which introduced three inter-related changes to the 1995 *Firearms Act* and the regulation of non-restricted firearms. The first change was to eliminate the registration of non-restricted firearms. The second change, flowing from the elimination of registration requirements, was to remove the requirement that the transferor of a non-restricted firearm contact the Registrar to confirm that the transferee is eligible to possess the firearm. The third change was the requirement to delete all existing

---

<sup>71</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 39, para. 69; Exhibit "Q" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2Q, pp. 364-365.

<sup>72</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 39-40, paras. 71-72; Exhibit "R" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2R, pp. 381-463; Exhibit "S" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2S, pp. 464-526.

information collected in the registry for non-restricted firearms and to eliminate the requirement to continue collecting information with respect to the sale of non-restricted firearms.<sup>73</sup>

51. As noted above, public safety was identified as the main purpose of the 1995 *Firearms Act*, which was considered a "key legislative measure" to address intimate partner violence. This continues to be the purpose of the *Firearms Act* and the Respondents have not articulated any compelling purpose for the changes made through the *Amendment Act*. Statements made in the House of Commons by the then Minister of Public Safety suggest that the *Amendment Act's* purpose was political in nature. In particular, the *Amendment Act's* purpose appears to relate only to fulfilling an election promise and lessening the burden on owners of non-restricted firearms, even though registration imposed almost no burden (other than, for example, calling a 1-800 number). The other publicly identified purpose included concerns about privacy (even though private information regarding firearms owners is held primarily in the licensing system, still in place, and not the registry).<sup>74</sup> Finally, the government has been very explicit in saying that it intended to delete all information in the registry to prevent provincial or future governments from being able to create a new long-gun registry.<sup>75</sup>

52. Also noteworthy is that the *Amendment Act* was not subjected to a gender-based analysis prior to its passage. This is a process whereby policy-makers take gender into account when implementing legislation. Such a process is supposed to occur prior to the drafting of legislation.

---

<sup>73</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 44, para. 88.

<sup>74</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 72, para. 181; Bill C-19: *House of Commons Debates*, 41st Parliament, vol. 146, Issue 37, October 26, 2011, Joint Book of Authorities, vol. 2, Tab 21.

<sup>75</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 72, paras. 181-183; Exhibit "SS" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2SS, p. 988; Exhibit "TT" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2TT, p. 1016.



When asked whether the *Amendment Act* had been through such an analysis, the then Minister for the Status of Women replied: "I take your point".<sup>76</sup>

53. The *Amendment Act* did not alter the licensing provisions that were previously in place under the 1995 *Firearms Act*. Importantly, the *Amendment Act* also did not alter or eliminate the registration requirements for restricted and prohibited firearms, which are the firearms used more often to harm men.<sup>77</sup> These firearms continue to be registered and the registration data relating to these firearms was left undisturbed by the *Amendment Act*.

54. Furthermore, the complete machinery for registering non-restricted firearms remains in place today. Registration data relating to non-restricted firearms in Quebec was never deleted and non-restricted firearms continue to be registered in that Province.<sup>78</sup> The Canadian Firearms Information System ("CFIS") – the official repository for licence and registration information – continues to support and store non-restricted firearms data and the integrity of the information system for non-restricted firearms has been maintained.

55. As detailed below, all of the three significant changes in the *Amendment Act* increase the risk that women will suffer serious physical and psychological harm up to and including death.

---

<sup>76</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 42, para 80; Exhibit "W" to Cukier Affidavit, *Applicant's Record*, v. 2, Tab 2W, p. 550; Blackell Cross, v. 9, Tab 22, p. 4096, l. 2 to p. 4097, l. 7.

<sup>77</sup> Cukier Cross February 21, *Joint Supplementary Record*, v. 1, Tab 1, p. 210, l. 8 to p. 212, l. 24.

<sup>78</sup> Transcript of the Cross-Examination of Robert MacKinnon, February 28, 2014, *Joint Supplementary Record*, v. 7, Tab 15, p. 3057, l. 17 to p. 3058, l. 6; p. 3065, l. 5 to l. 15 ["MacKinnon Cross"].

**E. First Change: Impact on Women from Elimination of Registration of Non-Restricted Firearms**

**1. Law Enforcement Relied on the Registry in Situations of Domestic Violence**

56. The RCMP and leaders in the law enforcement community have unequivocally emphasized the importance of the registry for the safety of women.

57. For example, in the RCMP's 2010 report that provided a government evaluation of the Canadian Firearms Program ("2010 RCMP Report") it was found that the registry was a "critical component" of the firearms program and that "[t]he registry is a 'law enforcement tool' for seizing firearms during domestic disputes and it allows police to know about other firearms that may not be registered."<sup>79</sup>

58. Similarly, the three major national police associations, which represent the vast majority of the police community in Canada, publically expressed their support for the registry for non-restricted firearms. In fact, in May 2010, these three national police associations released a joint statement to the public wherein they stated that they were "unified" in their support of the Canadian Firearms Program, which included licensing and registration of all firearms. With respect to registration, the statement read:<sup>80</sup>

All firearms are potentially lethal and existing firearm laws are a necessary part of an integrated strategy to address violence. Canada is internationally renowned for its effective control of firearms. The firearms registry is an important component of our strategy to prevent misuse of firearms. We support the licensing of firearms owners *as well* as the registration of all firearms. The registry provides police with critical information about who owns firearms *and* the firearms they own,

---

<sup>79</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 61-62, paras. 144, 147; Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, pp. 822, 824.

<sup>80</sup> Affidavit of David Griffin sworn June 10, 2013, Applicant's Record, v. 4, Tab 5, p. 1434, para. 38 ["Griffin Affidavit"]; Exhibit "M" to Griffin Affidavit, Applicant's Record, v. 4, Tab 5M, p. 1505 (emphasis in original).

thereby preventing dangerous people and criminals from possessing firearms.

59. Police officers regularly relied on the registry in the enforcement of prohibition orders or otherwise seizing firearms from an abusive spouse. Prohibition orders are often required in domestic violence cases to ensure that police remove firearms from an offender. In order to remove all firearms, it is critical to have as much information as possible, including objective information, about the number and types of firearms owned. This is because it is not unusual in domestic violence situations to not easily find all firearms registered to an individual. Alleged perpetrators sometimes refuse to disclose information about what firearms they own for fear that they will be confiscated. As well, a thorough search of the residence is not enough as it is common for firearms to be kept in more than one location (e.g. at a cottage, in a shed, at the home of a friend or other family member etc.). Without knowing that firearms are registered to an individual, police have no objective and independent way of confirming the possession of firearms, which puts female victims at greater risk of harm.<sup>81</sup>

60. In a government document marked "secret" but obtained through a request under the *Access to Information Act*, it is acknowledged that the repeal of the registry for non-restricted firearms would negatively impact the powers of police to seize firearms from domestic disputes. This document states:<sup>82</sup>

The registry is intended to promote safe and responsible use of firearms and to encourage accountability for their use and storage. It also provides a number of specific benefits to police, some of which will be

---

<sup>81</sup> Affidavit of Mark Chalk sworn June 11, 2013, Applicant's Record, v. 4, Tab 4, pp. 1357-1358, paras. 36-38 ["Chalk Affidavit"]; Griffin Affidavit, Applicant's Record, v. 4, Tab 5, pp. 1428-1429, para. 23; Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 62, para. 147; Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, p. 824.

<sup>82</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 60, para. 142; Exhibit "II" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2II, p. 767.

lost upon repeal of the registry. For example, the registry provides real-time information to law enforcement when seizing firearms from those who should not be in possession of them. Law enforcement relies on the registry to seize firearms during domestic disputes and to confiscate firearms in the enforcement of licence revocations (most of which are a result of court-ordered firearms prohibition orders). Abolishing the non-restricted firearms registry limits the information available to law enforcement. As a result, in certain cases, police would be unable to confirm, and accordingly may not seize, all long-guns in the possession of a violent individual when enforcing a licence revocation order for a domestic dispute or other criminal incident. (emphasis added)

61. The Chief Firearms Officer for Ontario (“CFO”), Christopher Wyatt, the most senior officer in Ontario enforcing the licensing scheme of the *Firearms Act*, similarly stated in his evidence that, in his view, the elimination of the registry has a "significant impact" on seizing firearms from domestic violence perpetrators and puts the victims of domestic violence at increased risk.<sup>83</sup> Specifically, CFO Wyatt stated that now “police cannot determine with any accuracy the number and types of firearms that the suspect may possess and, therefore, they may not be able to seize those firearms.”<sup>84</sup>

62. Police officers also regularly relied on the registry when responding to domestic violence calls. When responding to domestic violence calls, the police checked the registry to obtain up-to-date firearms information, including information relating to non-restricted firearms. It is crucial to know, both for the victim’s safety and the police officer’s safety, whether guns were

---

<sup>83</sup> Transcript of the Cross-Examination of Christopher Wyatt, February 18, 2014, Joint Supplementary Record, v. 9, Tab 23, p. 4407, l. 10 to p. 4409, l. 3 ["Wyatt Cross"]. See also Affidavit of Christopher Wyatt sworn July 13, 2012, Responding Record of the Chief Firearms Officer, paras. 29-30 ["Wyatt Affidavit"], wherein CFO Wyatt stated that the passage of the *Amendment Act* negatively impacts the CFO's ability to discharge its statutory duties. Pursuant to s. 89 of the *Firearms Act* courts must inform the CFO without delay whenever a prohibition order is made, varied or revoked. CFO firearms officers make inquiries into licensees who are subject to prohibition orders to ensure that all registered firearms have been seized by the police or transferred to other individuals. CFO firearms officers can no longer fulfill their public safety mandate by reviewing records of registration for non-restricted firearms to reconcile them against records of firearms already seized by the police in order to ensure that prohibited persons are disposed of all their firearms.

<sup>84</sup> Wyatt Cross, Joint Supplementary Record, v. 9, Tab 23, p. 4408, l. 24 to p. 4409, l. 3.

likely to be present when approaching domestic violence situations to assess the level of risk. Not only are non-restricted firearms the primary firearm used to kill women in situations of domestic violence, they are also the primary firearm used to kill police officers in the line of duty. For this reason, it was Ontario Provincial Police policy for police officers to check the registry prior to arriving at a domestic violence call. Knowing that an alleged perpetrator of abuse owned firearms meant that the victim was at greater risk and ensured that appropriate steps were taken to protect everyone's safety.<sup>85</sup>

63. The Applicant accepts that even without the registry police may attempt to seize firearms from domestic violence situations. However, the alternative to police knowing whether firearms are present, or what firearms to seize, is for police to undertake an investigation into what rifles or shotguns the perpetrator may possess, including asking for information from the woman and the man involved in the domestic dispute, as well as family members, neighbours and co-workers. This is time consuming, expensive and ineffective.<sup>86</sup> As a practical matter, resources are not unlimited and when dealing with an urgent matter of imminent risk, such as a domestic violence situation. Time is of the essence in a domestic violence situation and the registry allowed for a quick and effective response to ensure women's safety.

64. Moreover, asking the offender or others what firearms the offender had in order to seize them, as was the situation before the registry came into existence, is problematic. Having to rely

---

<sup>85</sup> Chalk Affidavit, Applicant's Record, v. 4, Tab 4, pp. 1356-1357, paras. 33-34; Griffin Affidavit, Applicant's Record, v. 4, Tab 5, pp. 1429, 1431, paras. 24, 31; Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, pp. 823-824.

<sup>86</sup> Wyatt Cross, Joint Supplementary Record, v. 9, Tab 23, p. 4405, l. 17 to p. 4406, l. 19.

on often hostile or intimidated third party information for such purposes is "an irresponsible breach of public safety when a cost effective, reliable alternative exists...".<sup>87</sup>

65. Statistics readily confirm police officer's reliance on the registry. In 2010, the average number of daily inquiries to the Canadian Firearms Registry Online ("CFRO") – the database that houses information on the firearms registry that police officers can access – was 14,729. This number increased in 2011 to 17,782.<sup>88</sup>

66. The existence of a small proportion of unregistered firearms, including non-restricted ones, did not detract from the usefulness and beneficial information that the registry provided to the law enforcement community, nor has it motivated the elimination of the registry for restricted and prohibited firearms. Police officers and CFO firearms officers have always been aware that not every firearm is registered and have taken additional steps to ensure that no unregistered firearms remain in the possession of a prohibited individual. No tool is perfect but it is estimated that the vast majority, approximately 90% of non-restricted firearms, were registered prior to the *Amendment Act*.<sup>89</sup>

## **2. Registration Drives Accountability**

67. One of the key functions of registration, and why it is such an integral component together with licensing of the Canadian Firearms Program, is that it creates accountability by attaching a firearm to a particular, identifiable owner. In the 2010 RCMP Report, it was

---

<sup>87</sup> Griffin Affidavit, Applicant's Record, v. 4, Tab 5, p. 1433, para 35; Exhibit "K" to Griffin Affidavit, Applicant's Record, v. 4, Tab 5K, pp. 1488-1489.

<sup>88</sup> Exhibit "A" to Chalk Affidavit, Applicant's Record, v. 4, Tab 4A, p. 1371.

<sup>89</sup> Cukier Cross February 21, Joint Supplementary Record, v. 1, Tab 1, p. 166, l. 17 to p. 167, l. 9.

explicitly recognized that “without registration there is a failure of accountability on behalf of the owner, and it is registration that drives accountability”.<sup>90</sup> The Alberta Court of Appeal similarly highlighted the link between registration and accountability in its assessment of the constitutional validity of the 1995 *Firearms Act*.<sup>91</sup>

68. This sense of accountability is what contributed to preventing unlawful transfers i.e. because a firearm can be traced back to an original owner and firearms owners conducted themselves with this in mind. Without the accountability of a name attached to a particular firearm, owners can transfer firearms without regard to legal requirements because the transfer is unlikely to be traced back to them. For women in situations of domestic violence, this means that men who should not possess firearms, either because they are unlicensed or for other public safety reasons, are more easily able to acquire firearms, putting the safety of women at greater risk.<sup>92</sup>

69. A sense of accountability also encouraged owners to abide by safe storage laws, and compelled owners to report firearm thefts where storage may have been a contributing factor. Safe storage of firearms accomplishes a number of objectives, including reducing the unauthorized use of firearms and reducing the use of firearms in the "heat of the moment".

---

<sup>90</sup> Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, p. 822.

<sup>91</sup> *Reference re: Firearms Act (Can)*, [1998] A.J. No. 1028 (C.A.), at paras. 188, 189, 197, 213, Joint Book of Authorities, v. 2, Tab 28.

<sup>92</sup> Chalk Affidavit, Applicant's Record, v. 4, Tab 4, pp. 1354-1355, paras. 26-29; Griffin Affidavit, Applicant's Record, v. 4, Tab 5, p. 1429, paras. 25, 26.

Reducing the "heat of the moment" use of firearms assists with domestic violence since domestic violence often occurs when emotions are high.<sup>93</sup>

70. According to the 2010 RCMP Report, prior to the registry, in the 1990s when only FACs were required, the police encountered difficulties identifying ownership of recovered non-restricted firearms used in crimes.<sup>94</sup> With registration, according to the RCMP, there is an implicit expectation that people have a duty of care for their firearms and there is a link back to that person should they decide to lend a gun out, fail to store it safety, or mishandle it.<sup>95</sup> This duty of care, and link, have now been lost.

### **3. Examples of Registration's Effectiveness**

71. Jane Doe, who filed an affidavit in support of the application and who has been named anonymously to protect her identity, benefited enormously from the 1995 *Firearms Act*.<sup>96</sup> Ms. Doe called 911 when her husband, who was ill, threatened to kill himself with a gun in his office. Ms. Doe was not aware that Mr. Doe kept any guns in his office or multiple guns in their home. When the police arrived, they located five certificates of registration for firearms. However, they only located and removed four firearms.<sup>97</sup>

---

<sup>93</sup> Chalk Affidavit, Applicant's Record, v. 4, Tab 4, pp. 1355-1356, paras. 30-32; Griffin Affidavit, Applicant's Record, v. 4, Tab 5, p. 1429, paras. 25-27.

<sup>94</sup> Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, pp. 823-824

<sup>95</sup> *Ibid.*

<sup>96</sup> Affidavit of Jane Doe sworn April 26, 2013, Applicant's Record, v. 4, Tab 7, pp. 1535-1542 ["Doe Affidavit"].

<sup>97</sup> Doe Affidavit, Applicant's Record, v. 4, Tab 7, pp. 1538-1539, paras. 12-18; Transcript of the Cross-Examination of Jane Doe, February 27, 2014, Joint Supplementary Record, v. 6, Tab 14, p. 2985, l. 18 to p. 2989, l. 6 ["Doe Cross"].



72. When Ms. Doe's husband subsequently attempted to harm Ms. Doe with his cane, Ms. Doe called 911 due to concerns about her safety, including her concern about the missing firearm. She ultimately left her home under police protection.<sup>98</sup>

73. Since moving out of her home, Ms. Doe has returned only to collect and pack belongings under police protection. After leaving her husband, she also has taken careful measures to protect her safety by not having a listed phone number and keeping the location of her residence confidential. Had registration not been required, Ms. Doe would not have known about the missing firearm. And had she not known about the missing firearm, Ms. Doe would not have taken the same precautions for her safety.<sup>99</sup>

74. Another example that demonstrates the 1995 *Firearm Act*'s effectiveness is seen in the 2009 year-end report of the Respondent, the Commissioner of Firearms.<sup>100</sup> In this report, the Commissioner provides the following example of "crucial safety information" that the registry provided:

Police received a call from a concerned family at their residence, seeking assistance in taking away a family member's firearms as he was depressed and despondent. Officers located a number of guns and queried Canadian Firearms Registry Online before leaving with them. They discovered there were an additional 21 firearms registered to the individual that no other family members were aware of. The officers remained on site until they obtained a search warrant, proceeded with the search and found the additional 21 firearms hidden in various parts of the house, along with 45,000 rounds of ammunition.<sup>101</sup>

---

<sup>98</sup> Doe Affidavit, Applicant's Record, v. 4, Tab 7, pp. 1540-1541, paras. 22-26.

<sup>99</sup> Doe Affidavit, Applicant's Record, v. 4, Tab 7, p. 1541, paras. 26-27.

<sup>100</sup> Exhibit "3" to Cross-Examination of Clifford O'Brien, February 13, 2014, Joint Supplementary Record, v. 8, Tab 20C.

<sup>101</sup> *Ibid.*, p. 3783.

75. These examples highlight the registry's effectiveness and the importance of registration for the safety of women and families to take preventative action. The outcomes in both examples may very well have been tragic and fatal had the *Amendment Act* been in place when they occurred.

#### **4. Registration of Non-Restricted Firearms Resulted in a Significant Drop in the Rate of Domestic Homicides of Women in Canada**

76. The 1995 *Firearms Act*, which included universal licensing and the registration of all firearms resulted in a greater decrease in homicides of women in Canada compared to homicides of men.

##### **(i) Dr. Cukier's Evidence**

77. The Applicant retained Dr. Wendy Cukier to provide her opinion with respect to the impact of the registration of non-restricted firearms in Canada on homicides of women. Dr. Cukier is a renowned expert in both firearms and gender issues. She has written extensively on issues related to firearms, firearms controls, and firearms and gender, including in top tier, peer-reviewed journals. She has written reports for government related to firearms and is part of several large research projects funded by Canada's research councils. She has written a book related to firearms and has won or been nominated for awards for her work related to firearms. She also teaches research methods and has been awarded many peer-reviewed grants to support her research. Dr. Cukier received the Canadian Public Health Association's Education Award as well as an honorary doctorate in Medicine from Laval University in recognition of her research

on the prevention of firearms injury and death. Dr. Cukier is one of the most prominent and knowledgeable experts on firearms control in Canada.<sup>102</sup>

78. According to Dr. Cukier, her review of the literature and the data suggests that the enforcement of the 1995 *Firearms Act* was associated with a significant decline in homicides committed with a firearm and, more specifically, homicides involving non-restricted rifles and shotguns. The average number and rate of homicides with firearms during the ten year period prior to the implementation of the 1995 *Firearms Act* (1988 to 1998) was higher than the average number and rate of firearm homicides after the 1995 *Firearms Act* was implemented (1999-2009). The decrease was from, on average, 202 homicides per year (.70 per 100,000) to 180 homicides per year (.56 per 100,000), a drop of approximately 20%.<sup>103</sup>

79. In addition, according to Dr. Cukier, the data suggests that the 1995 *Firearms Act* was associated with a significant decline in the homicides of women by firearms and that this decline was greater than the decline in homicides by firearms of men. In other words, women benefited from the legislation proportionally more than men.<sup>104</sup>

80. Dr. Cukier's primary reasons for reaching her conclusions regarding the impact of the legislation on homicides of women are as follows:

---

<sup>102</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 14-16, paras. 3-5, 7-9; Exhibit "A" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2A, p. 86-128.

<sup>103</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 56, para. 129; Exhibit "GG" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2GG, p. 761.

<sup>104</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 56-57, para. 130; Exhibit "HH" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2HH, p. 763.

- (a) Homicides with rifles and shotguns have fallen more than homicides using other means, as regulations on these firearms have been strengthened. The drops in homicides with firearms can be attributed to a decline in homicides with rifles and shotguns. The licensing of non-restricted firearm owners and registration of non-restricted firearms was aimed at reducing the misuse of these firearms. Most handguns used in crime are smuggled in from the United States. Handguns are restricted firearms in Canada and were already strictly controlled prior to the 1995 *Firearms Act*.
- (b) Patterns of homicides with firearms compared to homicides without firearms for women are significantly different than the patterns of homicides with firearms compared to homicides without firearms for men. In the case of women, there is a significant decline in the number and rate of homicides with firearms compared to homicides without firearms when comparing the periods before and after the legislation was implemented. There was a 22% difference between the changes in homicide of women with and without firearms. In contrast, for the same periods, there were limited differences (less than 1%) between the homicides of men with and without firearms.<sup>105</sup>
- (c) These differences between men and women make sense because male firearm homicides are more heavily impacted by handguns. Consequently controls on legal firearms in Canada, particularly rifles and shotguns, were not expected to have an impact on this subset of homicides. The trend in homicides involving handguns is influenced by gang-related crime. Homicides involving non-

---

<sup>105</sup> *Ibid.*; Answers to Undertaking of Wendy Cukier dated March 31, 2014, Undertaking #16, Joint Supplementary Record, v. 2, Tab 3, p. 1053.

restricted firearms are more sensitive to gun control measures, demographic measures, unemployment rates, etc.<sup>106</sup>

81. According to Dr. Cukier, the data further suggests that registration in particular has had an impact on the decline of homicides with firearms of women, keeping in mind that licensing and registration are inextricably intertwined. That is, though licensing was implemented before registration, the rates of decline continued once registration was implemented. If registration had no impact, the assumption should be that the impact of licensing would drop off. Only a subsequent intervention, like registration in this case, sustains the decline.<sup>107</sup>

82. Dr. Cukier also reviewed Canadian studies relied upon by the Respondents' experts but found them to be flawed. These are referred to as the McPhedran and Mauser study<sup>108</sup> and the Langmann study.<sup>109</sup> The significant problems with one or both of these studies include:

- (a) The failure to disaggregate the data by type of firearm. This means that the authors failed to compare the rates of homicide with rifles and shotguns before and after the implementation of the 1995 *Firearms Act*. This is necessary because the legislation put controls on these firearms and not on handguns, so a

---

<sup>106</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, pp. 56-57, para. 131.

<sup>107</sup> Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 655, l. 11 to p. 657, l. 24; Transcript of the Cross-Examination of Phillip Stenning, January 16, 2014, Joint Supplementary Record, v. 7, Tab 18, p. 3511, l. 1 to p. 3513, l. 22 ["Stenning Cross"].

<sup>108</sup> McPhedran & Mauser, 2013, "Lethal Firearm-Related Violence Against Canadian Women: Did Tightening Gun Laws Have an Impact on Women's Health and Safety?", *Violence and Victims*, 28(5):875-83, Exhibit "I" to the Affidavit of Philip Stenning sworn November 13, 2013, Respondents' Record, v. 2, Tab 2I, pp. 523-531 ["Stenning Affidavit"].

<sup>109</sup> Langmann, Caillin. 2012. "Canadian Firearms Legislation and Effects on Homicide 1974 to 2008." *Journal of Interpersonal Violence* 27 (12): 2303-2321, Exhibit "H" to the Affidavit of Gary Kleck sworn October 4, 2013, Respondents' Record, v. 1, Tab 2H, pp. 283-302 ["Kleck Affidavit"].

measurement which includes handguns can skew the results. (McPhedran and Mauser).<sup>110</sup>

- (b) The failure to compare the rates of homicide of males and females with firearms before and after the implementation of the 1995 *Firearms Act*. This is necessary in order to see whether the legislation had a greater impact on women than men, particularly considering the difficulty of controlling for all outside factors. (McPhedran and Mauser, Langmann).<sup>111</sup>
- (c) The failure to compare female homicides with firearms to female homicides without firearms. This is a concerning omission because it means there is no ability to separate the impact of the legislation on female homicides from what may be a pre-existing trend. For example, if there is a difference in these trends, it suggests that the legislation may have had an impact in the decline of female spousal homicides with firearms. Also, McPhedran and Mauser agree that firearm homicides fell after the implementation of the legislation. The point of disagreement is whether or not an intervention results in continuous decline. If they argue that it did not fall faster after the legislation than before, this is not a perspective that is supported by public health or criminology literature regarding the impact of multiple interventions. (Langmann, McPhedran and Mauser).<sup>112</sup>

---

<sup>110</sup> Cukier Reply Affidavit, Applicant's Record, v. 5, Tab 9, pp. 1558-1559, para. 20.

<sup>111</sup> *Ibid.* at paras. 20, 23.

<sup>112</sup> Cukier Reply Affidavit, Applicant's Record, v. 5, Tab 9, p. 1560, para. 24; Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 654, l. 13 to p. 657, l. 24.

**(ii) Dr. Stenning's Evidence**

83. The analysis conducted by Dr. Philip Stenning, retained by the Respondents, does not materially contradict Dr. Cukier's opinion. Dr. Stenning agreed that a comparison of firearm homicides of men to firearm homicides of women prior to and after the 1995 *Firearms Act* and following it demonstrates a consistent pattern of decline for women, whereas for men the firearm homicides either stayed the same or increased depending on the precise time period and break point chosen to reflect the implementation of the legislation. In other words, in terms of rates of change for firearms homicides, women experienced a greater benefit from the legislation than men.<sup>113</sup>

84. In the Applicant's submission, the Court should view with great caution Dr. Stenning's evidence regarding the cancellation of the firearms registry in New Zealand. The registry for firearms in New Zealand was not comparable to the registry for non-restricted firearms abolished in Canada in 2012. New Zealand's registry was in place from 1920 to 1984 and was not computerized or centralized. In addition, the registry was both incomplete and inaccurate.<sup>114</sup>

85. Importantly, though, in the mid-1990s, a former justice of the New Zealand High Court who sat on New Zealand's Court of Appeal, J.M. Thorpe, conducted a year-long independent review of firearms control in New Zealand. His resulting comprehensive report (attached to the affidavit of Dr. Stenning) states that by 1997, the New Zealand police were in favour of a

---

<sup>113</sup> Stenning Cross, Joint Supplementary Record, v. 7, Tab 18, p. 3525, l. 19 to p. 3526, l. 1; p. 3530, l. 18 to l. 22; Stenning Affidavit, Respondents' Record, v. 2, Tab 2, pp. 412, 414, Chart 5, para. 27(2)(a).

<sup>114</sup> Stenning Cross, Joint Supplementary Record v. 7, Tab 18, p. 3534, l. 6 to p. 3536, l. 20.

centralized registry for all firearms. In addition, one of the recommendations of the report was to require the registration of all firearms.<sup>115</sup>

**(iii) Dr. Kleck's Evidence**

86. In the Applicant's submission, the Court should also exercise caution before relying on the evidence of the Respondents' expert, Dr. Kleck, with respect to studies on the registration of firearms in the United States. The United States has never had a *central* registry for non-restricted or any other firearms.<sup>116</sup> There is great variation between states in firearms laws, which makes it very difficult to measure the impact of firearms controls, including registration laws, given that firearms can travel across unregulated borders.<sup>117</sup> In addition, the studies relied on by Dr. Kleck are based entirely on data from 1989 or earlier, dating to the 1960s, when registries were not computerized.<sup>118</sup> Dr. Kleck's studies also do not disaggregate the data by either firearm or gender, which, in the Applicant's submission, is critical in order to determine whether registration is effective in the particular context of violence against women.<sup>119</sup>

87. Moreover, research in the United States which addresses the issue of open borders supports the efficacy of licensing and registration. In cities where there was no gun licensing or registration requirement, 84% of the guns recovered in crime were from local markets, while in cities in states that had both licensing and registration requirements, very few of the guns

---

<sup>115</sup> Exhibit "J" to Stenning Affidavit, Respondents' Record, v. 2, Tab 2J, p. 720.

<sup>116</sup> Transcript of the Cross-Examination of Gary Kleck, February 24, 2014, Joint Supplementary Record, v. 7, Tab 17, p. 3316, l. 1 to l. 15 ["Kleck Cross"].

<sup>117</sup> Kleck Cross, Joint Supplementary Record, v. 7, Tab 17, p. 3323, l. 1 to p. 3324, l. 17.

<sup>118</sup> *Ibid.* at p. 3320, l. 2 to l. 7; p. 3329, l. 19 to l. 22; p. 3330, l. 22 to l. 25; p. 3342, l. 16 to l. 18.

<sup>119</sup> Exhibits "D", "E", "F", "G" to Kleck Affidavit, Respondents' Record, v. 1, Tab 2D, 2E, 2F, 2G.



originated from local markets. This suggests that licensing and registration made it more difficult to acquire guns for illegal purposes locally (but that, with open borders, it was possible to obtain guns for illegal purposes from out of state). The study also showed that combining licensing and registration was more effective in reducing the misuse of guns that had been legally owned in state than one or the other.<sup>120</sup>

#### **(iv) Evaluating the Research and Evidence on Firearms Controls**

88. When evaluating the research and evidence on firearms, it is important, in the Applicant's submission, to be mindful of the nature of appropriate research in this area. Contrary to the suggestion in the Respondents' evidence that the only rigorous research comes from surveys conducted by criminologists, multiple approaches to complex social issues are required. No one technique or data source can provide definitive answers.<sup>121</sup> It is highly appropriate and indeed necessary to examine the experience of the RCMP and police officers, the context of individual cases, and to "drill down deeper" into the issues. Large-scale studies can be misleading – for example, a study could conclude legislation is flawed without realizing that the flaw is not in the legislation itself but in its implementation. Moreover, there is an important role for the firsthand experience of women, like Jane Doe, in understanding domestic violence.<sup>122</sup> The Applicant directly denies the suggestion that large scale studies by criminologists represent the only meaningful research into firearms control and domestic violence.

---

<sup>120</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 50, para 110; Webster, D.W., Vernick, J.S., Hepburn, L.M. "Relationship between licensing registration and other gun sales laws and the source state of crime guns." *Injury Prevention* 7 (2001): 184-189, Exhibit "32" to Cukier Cross, Joint Supplementary Record, v. 2, Tab 2X, p. 923.

<sup>121</sup> Cukier Cross March 4, 2014, Joint Supplementary Record, v. 1, Tab 2, p. 650, l. 7 to 651, l. 25.

<sup>122</sup> Jaffe Cross, Joint Supplementary Record, v. 3, Tab 6, p. 1526, l. 1 to p. 1531, l. 11.

**F. Second Change: Impact on Women of Removing the Requirement to Contact the Registrar on Transfer of a Non-Restricted Firearm**

**1. The *Amendment Act* Eliminated a Crucial Mandatory Safety Check Upon Transfer of Non-Restricted Firearms**

89. The 1995 *Firearms Act*'s requirement to contact the Registrar prior to transferring a non-restricted firearm furthered public safety by instituting a mandatory crucial safety check that prevented individuals from acquiring and possessing non-restricted firearms in circumstances where it was not in the public interest. The *Amendment Act*'s removal of this mandatory safety check increases the risk of serious harm up to and including death for women who are in situations of domestic violence.

90. Under the 1995 *Firearms Act*, the transfer of a non-restricted firearm required the Registrar to confirm that the firearm was registered and that the transferee had a valid licence to possess and acquire that firearm.<sup>123</sup> The Registrar was responsible for issuing registration certificates and the safety check at the time of transfer related to acquiring a particular firearm (unlike licensing). The registry connected the individual's licence status with the particular firearm. If the firearm was not registered, or if the individual was not eligible to acquire the firearm, the registration certificate could not be issued and the transfer could not lawfully occur.

91. The required check at the point of transfer had an important public safety function in that it ensured a safety check before the transferee could obtain the firearm. For the most part, the decision to register a non-restricted firearm was generated automatically by the registry's

---

<sup>123</sup> 1995 *Firearms Act*, *supra* note 1, s. 23(1); Chalk Affidavit, Applicant's Record, v. 4, Tab 4, p. 1353, para. 23

computer system.<sup>124</sup> Importantly, however, not all transfers were automatically approved. For example, automatic transfers could not occur when there were flags which raised safety concerns on either the transferor or transferee (such as a FIP, as described in the next paragraph) or on the firearm (such as a Canadian Police Information Centre ("CPIC") flag for a stolen firearm). Where flags arose, the CFO conducted a further review before a registration certificate could be issued.<sup>125</sup>

92. Flags on the transferor or transferee most typically occurred when either was the subject of a Firearms Interest Police ("FIP") report. The FIP report provided notification of incidents of violent acts which had been reported to the police. These incidents were then matched with individuals holding firearms licences, and matches were forwarded electronically to the CFOs to conduct public safety investigations in accordance with the eligibility criteria set out in the 1995 *Firearms Act*. While the CFO conducted this investigation, which could take a long time to complete, an individual's licence was placed "under review". Placing a licence "under review" temporarily prevented an individual from acquiring new firearms until this status was lifted. In other words: when a transferor contacted the Registrar and a FIP came up, that transferee could not get the gun.<sup>126</sup>

93. The *Amendment Act* removed the mandatory safety check that ensured that firearms were only transferred to properly licensed individuals who were not the subject of public safety

---

<sup>124</sup> Affidavit of Robert MacKinnon sworn October 28, 2013, Respondents' Record, v. 1, Tab 1, p. 12, para. 34 ["MacKinnon Affidavit"].

<sup>125</sup> *Ibid.* at p. 10, para. 29; Chalk Affidavit, Applicant's Record, v. 4, Tab 4, p. 1354, para. 25.

<sup>126</sup> Chalk Affidavit, Applicant's Record, v. 4, Tab 4, pp. 1351, 1354, paras. 16, 25; Wyatt Cross, Joint Supplementary Record, v. 9, Tab 23, p. 4396, l. 16 to p. 4397, l. 23.

concerns. This change increases the likelihood that dangerous individuals will be successful in purchasing new firearms, which increases the risk of harm to women facing domestic violence.

94. Under the current *Firearms Act*, section 23.1(1) permits the transferor to contact the Registrar to determine whether the transferee holds a valid licence.<sup>127</sup> While the Registrar is permitted to provide this information, the transferor is not required to obtain it, and the Registrar is not permitted to keep any record of the request.<sup>128</sup>

95. Therefore, there is no longer a requirement to contact any central Canadian firearms official to determine whether the transferee of a non-restricted firearm holds a valid licence. If the transferor contacts the Registrar and finds out that the transferee does not hold a valid licence, there will be no ability to trace the call (and the associated attempt by the unlicensed transferee to obtain a new firearm) because the Registrar will have kept a record of the event.

96. In addition, if the person seeking to obtain a firearm does not possess a valid licence, the Canadian Firearms Program, upon being contacted to check the validity of the licence, will take no action. The Assistant Commissioner of the Canadian Firearms Program confirmed that there would be no follow-up if, for example, an individual with a revoked licence was seeking to obtain a firearm.<sup>129</sup> The concern with this system, of course, is that there is no documentation or ability to follow-up on a potentially dangerous individual whose licence has been revoked, and who nonetheless is seeking to obtain a new firearm.

---

<sup>127</sup> *Amendment Act*, *supra* note 1, s. 23.1(1).

<sup>128</sup> *Ibid.* at s. 23.1(2).

<sup>129</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 65, para. 157; Exhibit "LL" to Cukier Affidavit, *Applicant's Record*, v. 3, Tab 2LL, p. 928-929.

97. The Respondents have relied on sections 23(a) and 23(b) of the current legislation to suggest that a transferor will not transfer a firearm before contacting the Registrar to ensure that the transferee has a valid licence.<sup>130</sup> Sections 23(a) and (b) permit a person to transfer a non-restricted firearm where the transferee is licensed and the person has no reason to believe the transferee is not authorized to have the firearm.<sup>131</sup> However, the evidence does not support the Respondents' contention. According to statistics kept by the Canadian Firearms Program, in 2010, there were 633,813 non-restricted firearms that were transferred, and this number increased in 2011 to 696,129.<sup>132</sup> In Ontario alone, there were approximately 177,000 transfers of non-restricted firearms in 2011.<sup>133</sup> Before each of these transfers was authorized, the Registrar confirmed that the transferee was licenced and that there were no FIP or CPIC flags. In contrast, in 2013, the Registrar received only 21 calls related to transfers of non-restricted firearms, excluding Quebec where non-restricted firearms continue to be registered. Nine of these calls related to transfers of non-restricted firearms in Ontario.<sup>134</sup>

98. This huge discrepancy between the number of times that the Registrar was contacted before and after the passage of the *Amendment Act* makes it clear that the Registrar is hardly ever contacted when non-restricted firearms are transferred, as suggested by the Respondents. This means that non-restricted firearms transfers are regularly occurring without the transferor

---

<sup>130</sup> MacKinnon Affidavit, Respondents' Record, v. 1, Tab 1, p. 12, para. 35.

<sup>131</sup> *Amendment Act*, *supra* note 1 ss. 23(a), 23(b).

<sup>132</sup> Answers to Undertaking of Robert MacKinnon dated March 20, 2014, Questions taken under Advisement #2 (figures are for transfers completed by internet and phone), Joint Supplementary Record, v. 7, Tab 16A, p. 3305 to p. 3306.

<sup>133</sup> Wyatt Affidavit, Responding Record of the Chief Firearms Officer, para. 23.

<sup>134</sup> Answers to Undertaking of Robert MacKinnon dated March 20, 2014, Table 2, Joint Supplementary Record, v. 7, Tab 16B, p. 3307 to p. 3308.

ensuring that the person acquiring the firearm holds a valid licence and is not the subject of any public safety concerns that would prohibit that individual from acquiring the firearm.

99. The CFO for Ontario similarly noted that since the passage of the *Amendment Act*, his office has not received any information originating with the registry about concerns with a licensee involving a long-gun transaction, such as a FIP or CPIC flag.<sup>135</sup> Prior to the passage of the *Amendment Act*, the Ontario CFO received several contacts each week with respect to eligibility concerns arising from long-gun transfers, which would prompt public safety investigations before a registration certificates could be issued.<sup>136</sup> This means that in Ontario alone, since the passage of the *Amendment Act*, almost no transfers of non-restricted firearms are being scrutinized or prevented for public safety reasons as they once were.

100. The Ontario CFO has made the point that the effect of repealing mandatory licence checks for the transfer of non-restricted firearms is to move from a system of prior approval of transfers to a system of *ex post facto* enforcement by way of prosecution.<sup>137</sup> This raises the concern of firearms in the wrong hands, a very real concern which has materialized since the passage of the *Amendment Act*.

101. In May 2012, after the passage of the *Amendment Act*, the owners and an employee of a licensed Ontario business were charged with firearms trafficking and other offences for selling non-restricted firearms and ammunition to undercover police officers. The undercover police officers advised the owners and employee that they were unlicensed. Prior to the *Amendment*

---

<sup>135</sup> Wyatt Cross, Joint Supplementary Record, v. 9, Tab 23, p. 4400, l. 16 to p. 4402, l. 16.

<sup>136</sup> *Ibid.*

<sup>137</sup> Wyatt Affidavit, Responding Record of the Chief Firearms Officer, para. 26.

*Act*, the transfer of the firearms in this case would not have been approved by the Registrar, since the purchaser was unlicensed (i.e. the system of prior approval). Moreover, had the business decided to sell the firearms without approval, under the old system they would have had to account to the CFO business inspector for what happened to the firearms, as those firearms would have been registered to the business. The Ontario CFO has stated that since his designation in 2006, this May 2012 incident is the first time that firearms trafficking charges have been laid with respect to the actions of an Ontario firearms business licensee.<sup>138</sup>

**G. Third Change: Impact on Women of Deleting Data and Preventing the Preservation of Data for Non-Restricted Firearms**

102. The data collected in the registry for non-restricted firearms was important for women who experience domestic violence for all of the reasons detailed above. Now it has been destroyed.<sup>139</sup>

103. In view of the deletion of the data, rifles and shotguns are now completely untraceable in Canada (except for Quebec) and cannot be linked to their owners if they are used in crime. In addition, unlike previous bills designed to eliminate the registry for non-restricted firearms such as Bill C-21 (2006) and Bill C-24 (2007), the *Amendment Act* did not reintroduce requirements for businesses to maintain records of their transactions involving non-restricted firearms (these were first introduced in 1977, but removed from the 1995 *Firearms Act* as they were no longer required when the registry was implemented). Therefore, unlike the United States, where all federally licensed gun dealers and manufacturers must retain detailed records of their

---

<sup>138</sup> *Ibid.* at para. 28.

<sup>139</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 69, paras. 172-173.

transactions on all firearms, firearms businesses in Canada are now no longer required to keep any records on non-restricted firearms.<sup>140</sup>

104. In addition to the above, in July 2012, the federal government passed a regulation to further ensure that no business records would be kept relating to non-restricted firearms. The regulation forbade provinces from requiring gun dealers to maintain records of sales as a condition of a business licence. These records, accessed through a warrant, were used by police and other authorities to ensure that gun dealers were accountable for their sales and inventory, and were following the law.<sup>141</sup>

105. The limited ability following the *Amendment Act* to trace firearms either through the registration of non-restricted firearms or through records kept by businesses means that firearms are much more easily diverted to owners who do not hold valid licences. It also means that it is next to impossible to identify the sellers of guns used in domestic violence and other crimes or to hold those who sell weapons to dangerous individuals to account. These non-restricted firearms, which are more freely circulating since the passage of the *Amendment Act*, put women at greater risk of danger.

#### **H. International Requirements to Document and Register Firearms**

106. Most industrialized countries require the registration of all firearms, including rifles and shotguns. In 2008, the European Union amended its Firearms Directive to require that all EU

---

<sup>140</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 70, paras. 176-177.

<sup>141</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, pp. 70-71, para. 178; Exhibit "QQ" to Cukier Affidavit, *Applicant's Record*, v. 3, Tab 2QQ, p. 977-981.



countries have a central computerized registry by December 31, 2014.<sup>142</sup> Other international instruments in Africa also require registration of all civilian-owned firearms.<sup>143</sup> The following high income countries currently require the registration of all firearms: Brazil, Australia, Japan, Germany, Singapore, the Netherlands, England/Wales, Scotland, Ireland, Northern Ireland, Spain, Belgium, Sweden, Israel and Finland.<sup>144</sup>

107. Canada has signed two international instruments which include record-keeping requirements for firearms. In a government document marked "secret", but obtained under an Access to Information request, it is acknowledged that Canada met the record-keeping requirements through the registration of all firearms and that, without the registry, Canada would require an alternative record-keeping scheme to be in compliance with its international obligations.<sup>145</sup>

108. Studies of national laws show that global norms are emerging with respect to gun control and that most states:

- (a) Regulate the sale of firearms to civilians;
- (b) Require firearms to be marked;
- (c) License firearm owners; and

---

<sup>142</sup> European Parliament and Council Directive 91/447/EEC of June 18, 1991 and Directive 2008/51/EC of May 21, 2008, "Exhibit 35" of Cukier Cross March 4, Joint Supplementary Record, v. 2, Tab 2AA, p. 1031 to p. 1045.

<sup>143</sup> Sarah Parker, "Small Arms Survey 2011—Chapter 9: Balancing Act: Regulation of Civilian Firearm Possession," "Exhibit 34" of Cukier Cross March 4, Joint Supplementary Record, v. 2, Tab Z, p. 938 to 1030.

<sup>144</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 77, para. 192.

<sup>145</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 84, para. 209; Exhibit "II" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2II, pp. 765-768.

(d) Register firearms.<sup>146</sup>

109. In spite of its international obligations, Canada not only has eliminated the registry for non-restricted firearms and failed to implement an alternative record-keeping system, but it has also gone a step further and eliminated requirements that firearms businesses maintain records of sales. Canada therefore is not in a position to ratify its international agreements and is not in compliance with its international obligations.

### **PART III: ISSUES AND ARGUMENT**

#### **A. Section 7**

110. The *Amendment Act* has resulted in the deprivation of the right to life and security of the person of women across Canada, in violation of s. 7 of the *Charter* and contrary to the principles of fundamental justice.

111. Section 7 of the *Charter* expressly protects the rights to life and security of the person:<sup>147</sup>

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

112. As further detailed below, the Applicant is able to satisfy the two-step analysis under s. 7 to determine whether legislation or other state action infringes a protected *Charter* right. That is:<sup>148</sup>

---

<sup>146</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 79, para. 196.

<sup>147</sup> *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, at s. 7, *Joint Book of Authorities*, v. 1, Tab 1 [*"Charter"*].

<sup>148</sup> *R. v. Beare*; *R. v. Higgins*, [1988] 2 S.C.R. 387, at p. 401, *Joint Book of Authorities*, v. 3, Tab 29; *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519, at para. 70, *Joint Book of Authorities*, v. 3, Tab 30.

(1) There is a deprivation of the right to "life, liberty and security of the person"; and

(2) The deprivation is contrary to the principles of fundamental justice

113. The Applicant's position is that the *Firearms Act* and the *Amendment Act*, which seek to protect life and security of the person through the regulation of highly lethal weapons, fall squarely within the purpose and language of s. 7.<sup>149</sup> The Applicant submits that (a) the elimination of the registry of non-restricted firearms, (b) the removal of the requirement that the transferor of non-restricted firearms contract the Registrar to confirm that the transferee was eligible to possess the firearm, and (c) the requirement for the deletion of all existing information collected in the registry for non-restricted firearms, individually and collectively, operate so as to deprive women of their life or security of the person, and this deprivation is not in accordance with the principles of fundamental justice.<sup>150</sup>

### **1. There is an Infringement to the Security of the Person and the Right to Life**

114. On the first branch of the s. 7 analysis, the Applicant submits that the portions of the *Amendment Act* which eliminate the registry and transfer provisions for non-restricted firearms, and require the deletion of all existing information collected in the registry for non-restricted

<sup>149</sup> Section 7 protection extends beyond criminal and penal matters, to other matters related the justice system and the administration of justice. *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, Joint Book of Authorities, v. 3, Tab 31. The Supreme Court has also held that s. 7 protection is not limited to the administration of justice context, and has applied s. 7 outside the administrative justice context. See e.g. *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791, at paras. 43, 116-118, 195-198, Joint Book of Authorities, v. 3, Tab 32 ["*Chaoulli*"]; *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134, at paras. 93-94, 126, Joint Book of Authorities, v. 3, Tab 33 ["*PHS*"]; *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429 at paras. 78-80, Joint Book of Authorities, v. 3, Tab 34 ["*Gosselin*"] (McLachlin J. for the majority left open the possibility that s. 7 may apply outside the context of the administration of justice).

<sup>150</sup> *R. v. Malmo-Levine; R. v. Caine*, [2003] 3 S.C.R. 571, at para. 83, Joint Book of Authorities, v. 4, Tab 35 ["*Malmo-Levine*"].

firearms, individually and collectively, operate so as to deprive women of their right to life and security of the person as guaranteed under s. 7 of the *Charter*.

**a. Section 7 Protects the Right to Psychological and Physical Integrity**

115. The s. 7 right to life and security of the person protects both the physical and psychological integrity of the individual.<sup>151</sup> Long-guns and other non-restricted firearms are used by domestic partners both to threaten and in acts of direct violence against their victims, leading to physical and psychological trauma, and in many cases death. As a result, regulation of these firearms engages s. 7 rights.

116. Physical integrity and the protection thereof is essential to an individual's security of the person.<sup>152</sup> The Supreme Court of Canada has taken an expansive approach in understanding what constitutes deprivations of physical integrity under s. 7. For example, in two recent cases described in more detail below, the Supreme Court found that laws or government action that prevented parties from taking one in a number of steps to reduce a serious risk to physical integrity, infringed section 7.<sup>153</sup>

117. In *Canada v. PHS Community Services Society*, the Supreme Court reviewed legislation which prevented the operation of a supervised drug consumption facility to address injection drug use and high rates of HIV/AIDS and Hepatitis C in Vancouver's downtown eastside. A

---

<sup>151</sup> *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at p. 173 (per Wilson J.), Joint Book of Authorities, v. 4, Tab 36 ["*Morgentaler*"]; *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123, at pp. 1173-1174, Joint Book of Authorities, v. 4, Tab 37; *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at pp. 587-88, Joint Book of Authorities, v. 4, Tab 38 ["*Rodriguez*"].

<sup>152</sup> See generally *Fleming v. Reid (Litigation Guardian)* (1991), 4 O.R. (3d) 74 (Ont. C. A.), Joint Book of Authorities, v. 4, Tab 39.

<sup>153</sup> See generally *Canada (Attorney General) v. Bedford*, 2013 SCC 72, Joint Book of Authorities, v. 4, Tab 40 ["*Bedford*"]; *PHS*, *supra* note 149.

facility, Insite, had been granted a provisional exemption to the legislation in 2003, however, in 2008, the Minister of Health denied Insite's application for a renewal of the exemption. The Supreme Court determined that the statutory provisions, and the Minister's decision to remove lifesaving services, engaged s. 7 rights.<sup>154</sup> The Court held:<sup>155</sup>

Where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out: Morgentaler (1988), at p. 59, per Dickson C.J., and pp. 105-6, per Beetz J.; Rodriguez v. British Columbia (Attorney General), 1993 CanLII 75 (SCC), [1993] 3 S.C.R. 519, at p. 589, per Sopinka J.; Chaoulli, at para. 43, per Deschamps J., and, at paras. 118-19, per McLachlin C.J. and Major J.; R. v. Parker 2000 CanLII 5762 (ON CA), (2000), 188 D.L.R. (4th) 385 (Ont. C.A.). Where the law creates a risk not just to the health but also to the lives of the claimants, the deprivation is even clearer.

118. More recently, the Supreme Court in *Canada (Attorney General) v. Bedford* found that where a statute makes engaging in lawful activity (prostitution) more dangerous, s. 7 interests are engaged, and a deprivation of life and security of the person cannot be made out. The Supreme Court found that by denying prostitutes access to security-enhancing safeguards, like hiring drivers, receptionists and bodyguards, "the law prevented them from taking steps to reduce the risks they face and negatively impacted their security of the person."<sup>156</sup>

119. With respect to psychological integrity, the Supreme Court has held that serious psychological effects may also engage s. 7 protection. In *Rodriguez v. British Columbia (Attorney General)*, Sopinka J., writing for the majority, held that security of the person

<sup>154</sup> *PHS*, *supra* note 149, at para. 92 ("The application of s. 4(1) to the clients of Insite also directly engages their s. 7 interests. In order to make use of the lifesaving and health-protecting services offered at Insite, clients must be allowed to be in possession of drugs on the premises. To prohibit possession by drug users *anywhere* engages their liberty interests; to prohibit possession at Insite engages their rights to life and to security of the person.").

<sup>155</sup> *Ibid.* at para. 93 [emphasis added]. The Supreme Court ultimately found that as a result of the exemption provisions in the *CDSA*, there was no violation of fundamental justice, and the act itself was not in violation of s. 7. However, the Court found the decision of the Minister not to grant the exemption was in violation of s. 7.

<sup>156</sup> *Bedford*, *supra* note 153, at paras. 66-67. The Court also drew an analogy to "a law preventing a cyclist from wearing a helmet. That the cyclist chooses to ride her bike does not diminish the casual role of the law in making that activity riskier. The challenged laws relating to prostitution are no different." *Ibid.* at para. 87.

encompasses "a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress".<sup>157</sup> A fear of death for oneself and one's children, imposed as a result in part by state action, would meet this standard.

**b. The *Amendment Act* Infringes the Psychological and Physical Integrity of the Individual, Resulting in a Deprivation of Life and Security of the Person**

120. The *Amendment Act* engages s. 7 because it infringes the physical and psychological integrity of women by eliminating life-saving protections in the *Firearms Act* that (a) effectively and quantifiably reduced incidents of domestic homicide and injury of women from non-restricted firearms and (b) were relied upon by women experiencing domestic violence as a safety measure in protecting themselves. Like in *PHS* and *Bedford*, where the applicants were unable to protect themselves as a result of state action, here women are unable to protect themselves from lethal weapons as a result of the *Amendment Act*.

121. A review of the purpose and success of the registry explains why its removal results in a deprivation of women's life and security of the person.

122. The 1995 *Firearms Act*, including the registry for non-restricted firearms, was designed in response to the Montreal Massacre and was intended to address violence against women.<sup>158</sup>

---

<sup>157</sup> *Rodriguez*, *supra* note 151, at pp. 587-588; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, at para. 60, Joint Book of Authorities, v. 3, Tab 31 ["G.(J.)"]; *Chaoulli*, *supra* note 149, at para. 116.

<sup>158</sup> See above at para. 48.

The Minister of Justice (at the time) was well aware that women are primarily shot by someone they know and "almost always with a legally owned rifle or shotgun".<sup>159</sup>

123. The statistics from the years when the non-restricted firearm registry and transfer provisions were active bear out the Minister's points. First, with respect to the danger to women, legally owned non-restricted firearms were the most common firearms used in domestic homicides across the country.<sup>160</sup> Of the 111 cases of domestic homicide reviewed by the ODVDRRC between 2003 and 2011, 36 incidents involved a firearm and 26 of the firearms (72%) were legally acquired.<sup>161</sup> From 2006 to 2010, all the firearms used in domestic homicides in Ontario were legally acquired.<sup>162</sup> Second, it is estimated that approximately 90% of non-restricted firearms in Canada were registered when the registry was in place and hence were legally owned.<sup>163</sup>

124. The experts on safety measures in situations of domestic violence, as well as the police officers, and the Director of the Clinic, who gave evidence universally agreed that removing a firearm from the home and ensuring the perpetrator no longer had access to his firearms, was an essential and urgent step to ensuring the safety of women who have experienced or been threatened with domestic violence. In the context of escalating domestic violence, access to

---

<sup>159</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 39, para. 49; Exhibit "Q" to Cukier Affidavit, Applicant's Record, v. 1, Tab 2Q, pp. 364-365.

<sup>160</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 23, para. 27; Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 658, l. 8 to p. 659, l. 10.

<sup>161</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1306-1307, paras. 55-57.

<sup>162</sup> Answers to Undertaking of Peter Jaffe dated March 13, 2014, undertaking #3, Joint Supplementary Record, v. 4, Tab 7, p. 1995 to p. 1997.

<sup>163</sup> Cukier Cross February 21, Joint Supplementary Record, v. 1, Tab 1, p. 166, l. 10 to p. 167, l. 20.

firearms results in a 500% increase in the risk of death.<sup>164</sup> As Amanda Dale has said about the clients of the Clinic: "She's not going to be shot dead, that's a good first step. Now we can work with her because she's still alive".<sup>165</sup>

125. Because most firearms used in domestic homicides were legally owned non-restricted firearms, and because removing these firearms was fundamental to preventing the death of women, the registry was a vital tool for policing.<sup>166</sup> The registry allowed police to remove firearms and save lives. Specifically, the registry ensured that police could quickly and effectively access information on whether an individual had a non-restricted firearm, and ensure its removal from the home. The CFO of Ontario has said that the elimination of the registry puts the victims of domestic violence at increased risk.<sup>167</sup> The government's own documents have raised serious concerns about the police's ability, without the registry, to confirm and seize all long-guns from a domestic dispute.<sup>168</sup>

126. In the case of Jane Doe, the fact that her husband had five guns registered to his name, but the police were only able to locate four, was a key factor in Ms. Doe taking the safety precautions she took. Ms. Doe was unaware that her husband kept multiple firearms in their home. Had registration not been required, Ms. Doe, and the police, would not have known about the missing firearm.<sup>169</sup>

---

<sup>164</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1301-1302, para. 29.

<sup>165</sup> Dale Cross, Joint Supplementary Record, v. 6, Tab 12, p. 2835, l. 6 to l. 8.

<sup>166</sup> See above at paras 56-66.

<sup>167</sup> Wyatt Cross, Joint Supplementary Record, v. 9, Tab 23, p. 4407, l. 10 to p. 4409, l. 3.

<sup>168</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 60, para. 142; Exhibit "II" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2II, p. 767.

<sup>169</sup> Doe Affidavit, Applicant's Record, v. 4, Tab 7, pp. 1538-1539, paras. 12-18; Doe Cross, Joint Supplementary Record, v. 6, Tab 14, p. 2985, l. 18 to p. 2989, l. 6.



127. The rationale for why the registry worked is supported by the firearms homicide statistics. After the 1995 *Firearms Act* was introduced, and the registry and transfer provisions for non-restricted firearms were put in place, the rate of homicides by firearms for women reduced by more than 20% compared to the rate of firearm homicides of men.<sup>170</sup> The RCMP's own program evaluation report on the firearms program noted that spousal homicides using long-guns (primarily of women) had "declined significantly."<sup>171</sup> This reduction marks a significant improvement in the physical safety of women and clearly establishes a "sufficient causal connection" between a reduction in domestic homicides from non-restricted firearms and the introduction of the 1995 *Firearms Act*.<sup>172</sup>

128. The transfer provisions in the 1995 *Firearms Act* were also critical to the safety of women. They allowed a system of prior-authorization before a firearm could be transferred into the hands of a dangerous person. That is, the Registrar was required to confirm for every transfer that the firearm was registered, and that the transferee had a valid licence to possess and acquire that firearm. The Registrar also ensured upon every transfer that there was no FIP flag on either the transferor or transferee or CPIC flag for a stolen firearm on the firearm. Either a FIP flag or CPIC flag prevented the transfer from lawfully occurring without further review by the CFO.<sup>173</sup>

---

<sup>170</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 56, para. 129; Exhibit "GG" to Cukier Affidavit, Applicant's Record, v. 2, Tab 2GG, p. 761.

<sup>171</sup> Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, pp. 799-800.

<sup>172</sup> *Bedford*, *supra* note 153, at para. 75. See also *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, Joint Book of Authorities, v. 5, Tab 41; *United States v. Burns*, [2001] S.C.R. 283, Joint Book of Authorities, v. 5, Tab 42; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, Joint Book of Authorities, v. 5, Tab 43.

<sup>173</sup> See above at paras. 89-92.

129. This system of prior-authorization has been eliminated and replaced by a system of *ex post facto* enforcement by way of prosecution.<sup>174</sup> While the *Amendment Act* permits (but does not require) a transferor to contact the Registrar prior to a transfer to ensure that the transferee holds a valid licence, statistics clearly demonstrate that this mechanism is hardly ever, if at all, utilized when non-restricted firearms are transferred. Approximately 700,000 non-restricted firearms were transferred in 2011; approximately 177,000 of them occurring in Ontario. In contrast, in 2013, the Registrar received only 21 calls related to transfers of non-restricted firearms (excluding Quebec where non-restricted firearms continue to be registered); nine of them relating to transfers of non-restricted firearms in Ontario. This huge discrepancy means that non-restricted firearms transfers are regularly occurring without the transferor ensuring that the person acquiring the firearm holds a valid licence and is not the subject of any public safety concerns that would prohibit that individual from acquiring the firearm.<sup>175</sup>

130. The licensing provisions, introduced with the 1995 *Firearms Act* are also important to the safety of women, but are not an equivalent or a substitute for the registry and transfer provisions. For one, the registry and licensing were inextricably intertwined elements of the same public safety scheme.<sup>176</sup> As the 2010 RCMP's Report acknowledges, registration is needed to create accountability and enforce licensing.<sup>177</sup> Moreover, registration has a particular role in the context of domestic violence because of its utility in removing firearms from an escalating situation. Dr. Cukier emphasized that the continued decline of the firearms homicides of women following the implementation of registration (as distinct from licensing, although the two cannot

---

<sup>174</sup> Wyatt Affidavit, Responding Record of the Chief Firearms Officer, para. 26.

<sup>175</sup> See above at paras. 94-97.

<sup>176</sup> *Firearms Act Reference*, *supra* note 63, at paras. 10, 47.

<sup>177</sup> Exhibit "KK" to Cukier Affidavit, Applicant's Record, v. 3, Tab 2KK, pp. 822-824.

be neatly disconnected and nor can the timing of their implementation) indicates that registration itself impacted the declining firearms homicides of women.<sup>178</sup>

131. While it is always difficult to fully isolate causal connections in the context of complex social science issues, the consistent data is that women have benefited more than men from firearms controls, including the 1995 *Firearms Act*. In any case, s. 7 does not require that the government action in question be the only, or even the dominant cause of the prejudice suffered by the claimant, instead, it is "satisfied by a reasonable inference, drawn on a balance of probabilities."<sup>179</sup> Nor does it require, that but for the government's involvement, there would be no deprivation of s. 7 rights.<sup>180</sup>

132. The registry may not be the only tool available to protect women from domestic homicide, but it is an extremely important and proven successful tool to address immediate risk of death. In *PHS*, as well as in *Bedford*, the prohibited safe measures were not the only possible safety measures to reduce risk, but access to a supervised injection site and the ability to hire body guards, respectively, were recognized in both cases as improving the safety and health of drug users and sex workers, and therefore engaged s. 7 rights.

133. The introduction of the non-restricted firearms registry and transfer provisions resulted in significant improvements to the physical and psychological integrity of women. In *PHS*, the Court found the mere fact that "[t]he risk of morbidity and mortality" was "ameliorated" was sufficient to engage s. 7 where the supervised injection site was eliminated. Here, the

---

<sup>178</sup> Cukier Cross March 4, Joint Supplementary Record, v. 1, Tab 2, p. 655, l. 11 to p. 657, l. 24.

<sup>179</sup> *Bedford*, *supra* note 153, at para. 76.

<sup>180</sup> *Ibid.* at para. 77.

registration and transfer provisions directly improved the safety of women such that their elimination engages s. 7.

134. Further, it is well established that domestic homicide is the tip of the iceberg of how women experience the intersection of domestic violence and firearms.<sup>181</sup> In other words, the impact of the registry and transfer provisions on the psychological integrity of women as well as the physical integrity of women is much greater than captured in the homicide statistics relied on by the Applicant.

135. As the *Amendment Act* removes lifesaving protections from firearms, it infringes the physical and psychological integrity of women. Importantly, it also puts at risk an already vulnerable population. Women's vulnerability and historical disadvantage is addressed in further detail below with respect to s. 15 of the *Charter*. However, it should also form part of the s. 7 analysis.<sup>182</sup> In passing and enforcing the *Amendment Act*, the government has directly deprived women of life and security of the person in violation of s. 7.

---

<sup>181</sup> Cukier Cross March 4, *Joint Supplementary Record*, v. 1, Tab 2, p. 564, l. 3 to l. 5.

<sup>182</sup> *J.(G.)*, *supra* note 157, at paras. 112, 115 (concurring reasons of L'Heureux-Dubé, Gonthier and McLachlin JJ.) ("... principles of equality, guaranteed by both s. 15 and s. 28, are a significant influence on interpreting the scope of protection offered by s. 7. ... Thus, in considering the s. 7 rights at issue, and the principles of fundamental justice that apply in this situation, it is important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15. The rights in s. 7 must be interpreted through the lens of ss. 15 and 28, to recognize the importance of ensuring that our interpretation of the Constitution responds to the realities and needs of all members of society."). *See also Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309, at paras. 375, 377, *Joint Book of Authorities*, v. 5, Tab 44 ["*Inglis*"] (holding the s. 7 analysis "must be informed by the principles and purposes of the equality guarantee to ensure the law responds in an appropriate way to the needs and circumstances of these disadvantaged individuals.").

## 2. The Deprivation is Contrary to the Principles of Fundamental Justice

136. The Applicant submits that the deprivation of s. 7 rights in this case is not in accordance with the principles of fundamental justice, *inter alia*, for the following reasons: (i) it is arbitrary and (ii) it is grossly disproportionate. Both of these have been recognized as principles of fundamental justice.<sup>183</sup>

### (i) Arbitrariness

137. The elimination of the registry and transfer provisions for non-restricted firearms through the *Amendment Act* are arbitrary amendments to the *Firearms Act* as there is no connection between the effect and the object of the law.<sup>184</sup>

138. As stated by Chief Justice McLachlin in *Bedford*:<sup>185</sup>

Arbitrariness asks whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on life, liberty, or security of the person (Stewart, at p. 136). A law that imposes limits on these interests in a way that bears *no connection* to its objective arbitrarily impinges on those interests.

139. The purpose of the *Firearms Act* is to protect public safety.<sup>186</sup> The Supreme Court has held that the licensing and registration schemes are inextricably linked and that both are "integral

---

<sup>183</sup> *PHS*, *supra* note 149, at paras. 129-133.

<sup>184</sup> *Bedford*, *supra* note 153, at para. 98. *See also PHS*, *supra* note 149, at paras. 129-130.

<sup>185</sup> *Bedford*, *supra* note 153, at para. 111.

<sup>186</sup> *Reference re Firearms Act*, *supra* note at 63.

and necessary" to the fulfilment of the *Firearms Act's* public safety purposes.<sup>187</sup> Indeed the evidence is clear that the registration and transfer provisions for non-restricted firearms, introduced through the 1995 *Firearms Act*, served this purpose by reducing the rates of domestic homicide of women.<sup>188</sup> The removal of these lifesaving public safety measures is absolutely unrelated to the general public safety objective of the *Firearms Act*. Their elimination is therefore arbitrary as it bears no connection, and in fact contradicts, the statute's public safety objective and is at odds with the principles of fundamental justice.

140. Furthermore, the impugned amendments to the 1995 *Firearms Act* are arbitrary because there is no public safety purpose for their introduction, which is completely at odds with and contrary to the overall scheme of the statute. The *Amendment Act's* objectives appear to relate to political aims, such as fulfilling an election promise and preventing future governments from being able to establish registries.<sup>189</sup> These purposes have no relation to protecting public safety. There is also no evidence of any studies reviewed or public consultations held by the government prior to the enactment of the *Amendment Act*, which established that the registry and transfer provisions were not serving a public safety purpose, or that the *Amendment Act* itself served an alternative public safety purpose.

141. In addition, preventing future governments from creating a new long-gun registry is an improper purpose at law. As a basic principle of law, the Supreme Court has held that parliament cannot bind its successors, as to do so would leave future parliaments unable to

---

<sup>187</sup> *Ibid.* at paras. 10, 47. See also *Québec (Procureur Général) v. Canada (Procureur Général)*, 2012 QCCS 1614, at para. 84, *Joint Book of Authorities*, v. 5, Tab 45 ["*Québec v. Canada*"].

<sup>188</sup> See above at paras. 76-81.

<sup>189</sup> See above at para. 51.

discharge their imperative duty to legislate as it may determine necessary or desirable.<sup>190</sup> The amendments to the *Firearms Act* are arbitrary changes to a public safety regime that only undermine public safety, particularly for women, without providing any public safety benefit.

**(ii) Gross Disproportionality**

142. The elimination of the protections relating to non-restricted firearms by the *Amendment Act* violates the principles of fundamental justice as the changes are grossly disproportionate to any legitimate government aim. Gross disproportionality describes state actions or legislative responses to a problem that are so extreme as to be disproportionate to any legitimate government interest.<sup>191</sup>

143. For example, in *PHS*, the Supreme Court found that the Minister's refusal to exempt the safe injection site from drug possession laws had the effect of denying health services and increasing the risk of death and disease of injection drug users, which was grossly disproportionate to the objectives of the drug possession laws, namely public health and safety.

---

<sup>190</sup> *Reference re Bowater's Pulp & Paper Mills Ltd.*, [1950] S.C.R. 608 at p. 657, Joint Book of Authorities, v. 5, Tab 46 ["*Reference re Bowater*"]. In *Reference Re Bowater*, the Court stated:

The foregoing finds support in the principle that one parliament cannot bind its successors.

That parliaments have more than once intended and endeavoured to pass Acts which should tie the hands of their successors is certain, but the endeavour has always ended in failure. Dicey, *Law of the Constitution*, 9th ed., p. 65.

If it were not for this principle a parliament finding itself bound by the legislation of its predecessors would be unable to discharge that imperative duty which rests upon every parliament to legislate as in its wisdom it may determine to be necessary or desirable.

See also *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, Joint Book of Authorities, v. 5, Tab 47 ["*Reference re Secession*"].

<sup>191</sup> *PHS*, *supra* note 149, at para. 133; *Malmo-Levine*, *supra* note 150, at para. 169.

144. Here, the protections relating to non-restricted firearms saved lives. Their benefits have been widely recognized by previous governments as well as the RCMP. The risk of harm to women described in detail above is outweighed by any purpose for eliminating these protections.

145. Finally, and most importantly, "gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportional effect on one person is sufficient to violate the norm."<sup>192</sup> As a result, any argument by the Respondents as to the limited number of victims has no bearing on the principles of fundamental justice. One domestic homicide committed with a non-restricted firearm that the registry and transfer provisions could have prevented is a grossly disproportionate outcome to any purpose of the *Amendment Act*.

146. In short, the harms caused by the *Amendments Act* are grossly disproportionate to their purpose. Parliament has the power to alter regulations on firearms, but not at the cost of the health, safety and lives of women, particular those who are most vulnerable in our society to domestic violence and domestic homicide.

### **3. Conclusion on S. 7**

147. The *Amendment Act* imposes a deprivation on the right to life by restricting women's and police access to vital information and by eliminating legislation which effectively reduced incidents of domestic violence and homicide by firearm. The legislative amendments deprive the clients of the Applicant, and other similarly situated women, of security of the person by causing significant damage to their physical, mental and emotional health. The government action

---

<sup>192</sup> *Bedford, supra* note 153, at para. 122.



through the *Amendment Act* that has caused these deprivations of life and security of the person is arbitrary and disproportionate to any purpose of the legislation. It therefore is not in accordance with the principles of fundamental justice.

**B. Section 15**

148. The Applicant submits that the *Amendment Act* creates distinctions and imposes disadvantages based on gender contrary to s. 15(1) of the *Charter*, which reads:<sup>193</sup>

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

149. The 1995 *Firearms Act* was intended to and did benefit women in particular because of the nature of violence against women using firearms – that is, that it tends to arise in the context of domestic violence, using legally-owned non-restricted firearms.<sup>194</sup> The 1995 *Firearms Act* was not directed at the firearms which are disproportionately used to murder men. The legislation was not intended to and did not lessen the number of deaths of men as much as it did women. As a result, women are disproportionately and negatively impacted by the removal of the registry for non-restricted firearms, the removal of the transfer provisions, and the deletion of the registry data for non-restricted firearms.

---

<sup>193</sup> *Charter*, *supra* note 147, at s. 15.

<sup>194</sup> See above at paras. 38-44.

## 1. Framework for Analysis Under Section 15 of the *Charter*

150. Section 15 imposes a duty on government to ensure that the formulation of law and policy takes into account potentially differential impacts on different groups in society and to ensure that government actions do not exacerbate pre-existing disadvantage.<sup>195</sup>

151. Section 15 protects incidents of direct discrimination, as well as indirect discrimination, where "although the law purports to treat everyone the same, it has a disproportionately negative impact on a group or individual that can be identified by factors relating to enumerated or analogous grounds."<sup>196</sup> Indeed, it is not unusual for facially neutral legislation to be designed to ameliorate the situation of women and for women, therefore, to suffer when the relevant provisions are removed.<sup>197</sup>

152. Most recently, the Supreme Court has emphasized that "at the end of the day" the test for addressing whether a s. 15 violation has occurred only involves one question: "Does the challenged law violate the norm of substantive equality in s. 15(1) of the *Charter*?"<sup>198</sup>

---

<sup>195</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 64, Joint Book of Authorities, v. 7, Tab 71 ["*Eldridge*"], citing *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at p. 549, Joint Book of Authorities, v. 4, Tab 38.

<sup>196</sup> *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396, at para. 64, Joint Book of Authorities, v. 7, Tab 72 ["*Withler*"]. See also *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at pp. 174-175, Joint Book of Authorities, v. 7, Tab 73 ["*Andrews*"] (defining discrimination).

<sup>197</sup> Addressing historical disadvantage of women through on-its face neutral legislation has been a tactic of the Canadian legislature to address system gender inequality and this historical disadvantage of women. Justice Abella, in *Quebec v. A*, notes that a "concern about the disproportionate number of women who experienced poverty when they separated" from their partners, was at play in the development of the law around separation and divorce in Canada. *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61, at para. 300, Joint Book of Authorities, v. 8, Tab 74 ["*Quebec v. A*"]. The historical economic disadvantage of women in marital relationships, was also addressed by the Supreme Court in *Moge v. Moge*, where L'Heureux-Dubé noted that while support obligations are framed in gender-neutral terms, the reality is that "in many if not most marriages, the wife still remains the economically disadvantaged partner." *Moge v. Moge*, [1992] 3 S.C.R. 813, at pp. 849-50, Joint Book of Authorities, v. 8, Tab 75.

<sup>198</sup> *Withler*, *supra* note 196, at para. 2; *Quebec v. A*, *supra* note 197, at para. 325 (per Abella J.).

153. To determine if government action or inaction violates the norm of substantive equality, "the matter must be considered in the full context of the case, including the law's real impact on the claimants and members of the group to which they belong."<sup>199</sup> In conducting the analysis "[t]he focus of the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group."<sup>200</sup> What is ultimately required, "is not formal comparison with a selected mirror comparator group, but an approach that looks at the full context, including the situation of the claimant group and whether the impact of the impugned law is to perpetuate disadvantage or negative stereotypes about that group."<sup>201</sup>

154. Finally, throughout the analysis the Supreme Court has emphasized that s. 15 must be interpreted in "a purposive and contextual manner in order to permit the realization of the provision's strong remedial purpose, and to avoid the pitfalls of a formalistic or mechanical approach".<sup>202</sup> The remedial purposes of s. 15 are (a) "to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in society";<sup>203</sup> (b) "the amelioration of the conditions of disadvantaged persons";<sup>204</sup> and (c) "the promotion of a society in which all are secure in the knowledge that they are recognized as human beings equally deserving of concern, respect and consideration."<sup>205</sup>

---

<sup>199</sup> *Withler*, *supra* note 196, at para. 2; *see also Andrews*, *supra* note 196; *Gosselin*, *supra* note 149.

<sup>200</sup> *Withler*, *supra* note 196, at para. 39.

<sup>201</sup> *Ibid.* at para. 40.

<sup>202</sup> *Lovelace v. Ontario*, [2000] 1 S.C.R. 950, at para. 54, Joint Book of Authorities, v. 8, Tab 76 ["*Lovelace*"].

<sup>203</sup> *Eldridge*, *supra* note 195, at para. 64 (internal citations omitted).

<sup>204</sup> *Lovelace*, *supra* note 202, at para. 60.

<sup>205</sup> *Andrews*, *supra* note 196, at p. 171 (per McIntyre J.).

## **2. Substantive Inequality: Connection Between Impugned Legislation and Adverse Impact on Women**

155. The Applicant submits that the *Amendment Act*, "in its apparent effect, creates a distinction on the basis of an enumerated or analogous ground"<sup>206</sup> and that this distinction perpetuates disadvantage and exacerbates the disadvantage of women.<sup>207</sup>

156. The *Amendment Act* removed the registry and transfer provisions for non-restricted firearms, which were central components of legislation crafted in response to the Montreal massacre and high rates of domestic violence in Canada.<sup>208</sup> According to the Minister of Justice, when the 1995 *Firearms Act* was passed, the registry was intended to "deal with the scourge of domestic violence" in Canada.<sup>209</sup> He noted specifically that "every six days a woman is shot to death in Canada, almost always in her home, almost always by someone she knows, almost always with a legally owned rifle or shotgun."<sup>210</sup>

157. As intended, the 1995 *Firearms Act* did benefit women, for three key reasons among others. First, rifles and shotguns are the firearms primarily used in domestic homicides in Canada.<sup>211</sup> Second, women are the disproportionate victims of domestic violence and are nine times more likely to be murdered by a partner than a stranger.<sup>212</sup> Third, the firearms used to kill

---

<sup>206</sup> *Withler*, *supra* note 196, at para. 68.

<sup>207</sup> *Ibid.* at para. 35.

<sup>208</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 35, para. 57.

<sup>209</sup> Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2, p. 39, para. 69; Exhibit "Q" to Cukier Affidavit, *Applicant's Record*, v. 1, Tab 2Q, pp. 364-365.

<sup>210</sup> *Ibid.*

<sup>211</sup> Jaffe Affidavit, *Applicant's Record*, v. 4, Tab 3, p. 1302, para. 31.

<sup>212</sup> *Ibid.* at p. 1300, para. 21.

women in Canada are primarily legally owned.<sup>213</sup> Because of this context – that legally-owned rifles and shotguns are the firearms most often used against women in incidents of domestic homicide – it follows that legal controls on these firearms can benefit women. The Respondents' witness has also said that the 1995 *Firearms Act* was a key legislative measure to address intimate partner violence<sup>214</sup> and the law enforcement community has insisted repeatedly that the registry for non-restricted firearms kept women safer.<sup>215</sup>

158. Although the Supreme Court of Canada has said that s. 15 does not require a formalistic comparison with a selected comparator group, in this case it is evident that women benefited more from the 1995 *Firearms Act* than did men with respect to protection from homicides. Specifically, the rates of homicides of women with non-restricted firearms have decreased more than the rates of homicides of men with firearms.<sup>216</sup> Moreover, the consistent response of those working with the registry – including the law enforcement community and the RCMP – has been the importance of the registry in the context of domestic violence.

159. The elimination of the registry and transfer provisions, which were intended to benefit women, arises in the historical context of domestic violence. That is, historically, domestic violence was considered a private matter for women to deal with privately; it received minimal public protection.<sup>217</sup> The federal government now is perpetuating that historical problem by eliminating a protection from lethal weapons, which was specifically designed to protect women

---

<sup>213</sup> See above at paras. 38-44.

<sup>214</sup> Blackell Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4097, l. 22 to p. 4099, l. 5.

<sup>215</sup> See above at paras. 56-70.

<sup>216</sup> See above at paras. 76-81.

<sup>217</sup> Jaffe Affidavit, Applicant's Record, v. 4, Tab 3, pp. 1300-1301, paras. 22-27; Blackell Cross, Joint Supplementary Record, v. 9, Tab 22, p. 4109, l. 3 to p. 4110, l. 7.

in the context of domestic violence.<sup>218</sup> At the same time, it has left in place the registration for handguns, which are firearms disproportionately used against men. Rather than seeking to ameliorate a disadvantage of women, the removal of the registry and transfer provisions harms women and particularly those already isolated, marginalized and vulnerable.

160. There is no dispute that men also benefited from the registry for non-restricted firearms. In total quantity, men are victimized by firearms more than women. However, the firearms used against men are primarily handguns.<sup>219</sup> This is not to say that men are not harmed by rifles and shotguns, but that proportionally, the 1995 *Firearms Act* had less benefit in protecting men from homicide. The 1995 *Firearms Act* was designed to and did make a greater difference in protecting women from firearms homicide than men.

161. In examining the “full context” of the elimination of the registry for non-restricted firearms and its impact on women, it is critical to understand why women are so vulnerable to firearms. It is not only the intense vulnerability created by victimization in their most intimate relationships and often in their own homes, but also the fact that women are almost always victims, but not owners of firearms. In other words, while men own and use guns against each other and themselves (including in the context of suicide), women are almost always only victims of firearms.<sup>220</sup>

162. It follows from this that, while it is important to be aware that the registry for non-restricted firearms benefited men by reducing rates of suicide, this does not undermine the

---

<sup>218</sup> See above at para. 49.

<sup>219</sup> Cukier Cross February 21, Joint Supplementary Record, v. 1, Tab 1, p. 210, l. 3 to p. 213, l. 11.

<sup>220</sup> Cukier Affidavit, Applicant's Record, v. 1, Tab 2, p. 18, paras. 18-19.

disparate impact of the registry's elimination on women. Taking into account the full social, historical and political context as is required in a s. 15 analysis, the registry for non-restricted firearms, and associated protections, were intended to and did address the unique context of violence against women. The fact that they also benefited another vulnerable group – for example, men with mental illness – does not erase the discrimination against women and is not of concern to the s. 15 analysis with respect to discrimination claimed against women.

### **3. Conclusion on S. 15**

163. While the purpose of s. 15 includes rectifying and preventing discrimination against vulnerable groups, in the Applicant's submission, the elimination of the registry and associated protections does the opposite. It removes protections from a group who historically have suffered a failure in public protection, while leaving in place those protections (that is, the registry) for the firearms which impact men more than women. It does not treat women as human beings equally deserving of concern, respect and consideration when it removes protections from the primary lethal weapons used against them in the most vulnerable aspects of their lives.

## **C. Government Can Be Required to Take Steps**

### **1. Where Government Legislates, the Government has a Duty to Ensure the Legislation Complies with the *Charter***

164. The government has substantive obligations to protect public safety and to do so in a non-discriminatory fashion which flow from s. 7 and s. 15 of the *Charter*. As noted above, the

*Firearms Act*, whose purpose is to regulate access to and the distribution of firearms, is a public safety statute.<sup>221</sup>

165. The non-restricted firearm registry and the transfer provisions were fundamental public safety components to the *Firearms Act*. Their removal leaves the *Firearms Act* gutted and unable to fulfill its public safety mandate, in particular for women who are victims of domestic violence to a greater degree than men.

166. The courts have repeatedly held that where the government legislates in an area, the government has a duty to ensure the legislation complies with the *Charter*.<sup>222</sup> This duty includes ensuring the government has enacted, or amended, legislation such that it is not under inclusive – i.e. that it does not inadequately safeguard the *Charter* rights, or does not fail to adequately comply with *Charter* rights.<sup>223</sup> Exclusion from a particular legislative regime, or the failure to provide adequate safeguards, can amount to interference with a *Charter* right or freedom because by failing to provide the necessary protections, "the government is creating the conditions that substantially interfere with the exercise of a constitutional right."<sup>224</sup> The duty to ensure

---

<sup>221</sup> *Reference re Firearms Act*, *supra* note 63.

<sup>222</sup> *Chaoulli*, *supra* note 149, at para. 104 ("The Charter does not confer a freestanding constitutional right to health care. However, where the government puts in place a scheme to provide health care, that scheme must comply with the Charter. We are of the view that the prohibition on medical insurance in s. 15 of the Health Insurance Act R.S.Q., c. A-29 and s. 11 of the Hospital Insurance Act, R.S.Q., c. A-28 (see Appendix), violates s. 7 of the Charter because it impinges on the right to life, liberty and security of the person in an arbitrary fashion that fails to conform to the principles of fundamental justice.") [emphasis added].

<sup>223</sup> *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, at paras. 20, 27-29, *Joint Book of Authorities*, v. 7, Tab 67 ["*Dunmore*"]; *Service Employees International Union, Local 204 v. Ontario (Attorney General)* (1997), 35 O.R. (3d) 508, at pp. 17-18 (QL) (Gen. Div.), *Joint Book of Authorities*, v. 8, Tab 77 ["*SIEU*"]; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at para. 61, *Joint Book of Authorities*, v. 6, Tab 52 ["*Vriend*"]; *PHS*, *supra* note 149, at paras. 119-125; *Eldridge*, *supra* note 195, at paras. 73-80; *Jane Doe v. Toronto (Metropolitan) Commissioners of Police* (1998), 39 O.R. (3d) 487, at paras. 161-68 (Gen. Div.), *Joint Book of Authorities*, v. 8, Tab 78.

<sup>224</sup> *Dunmore*, *supra* note 222, at para. 22. These comments were made in relation to s. 2(d) but the Applicant submits that they are no less applicable to other sections of the *Charter* such as s. 7.



legislation complies with the *Charter* also requires that a particular legislative regime does not have a discriminatory impact. As courts have recognized, governments should not be the cause of further inequality for already disadvantaged groups.<sup>225</sup>

167. This is not a situation "where no legislation has been enacted in the first place."<sup>226</sup> Rather, the situation is analogous to the *Dunmore* and *SEIU* cases where there is more than a "minimum of state action," in the form of legislation establishing the gun control regime and then eliminating protections relating to unrestricted firearms.<sup>227</sup> Indeed, here, while the registration of non-restricted firearms has enormous consequences for women, it is only one small component of a complex firearms control regime.

168. Accordingly, in the context of a public safety statute like the 1995 *Firearms Act* enacted, *inter alia*, to respond to incidents of domestic violence, it is a violation of s. 7 and s. 15 to eliminate one of the components that is "integral and necessary" to this regime.<sup>228</sup>

## **2. Finding a Violation of S. 7 and S. 15 Does Not Impose a Positive Obligation on the Government**

169. In the Applicant's submission, any suggestion that finding violations of s. 7 and s. 15, as a result of the elimination of public safety measures previously in place, creates "positive" government obligations is simplistic and unhelpful.

---

<sup>225</sup> *Eldridge*, *supra* note 195, at para. 73; *SEIU*, *supra* note 223, at pp. 17-18 (QL).

<sup>226</sup> *Dunmore*, *supra* note 222, at paras. 28-29; *SEIU*, *supra* note 223, at pp. 17-18 (QL).

<sup>227</sup> *Dunmore*, *supra* note 222, at paras. 28-29; *SEIU*, *supra* note 223, at pp. 17-18 (QL).

<sup>228</sup> *Reference re Firearms Act*, *supra* note 63, at para. 47; *Québec v. Canada*, *supra* 197, at para. 84.

170. First, courts have moved away from applying a positive versus negative analysis to state action as doing so creates a false dichotomy. The Supreme Court of Canada, for example, held that the distinction between legislative action and inaction is a "very problematic" distinction to draw, and provides "no legal basis" for determining when the *Charter* applies.<sup>229</sup> As stated by L'Heureux-Dubé J. in *Haig v. Canada*:<sup>230</sup>

The distinctions between "freedoms" and "rights", and between positive and negative entitlements, are not always clearly made, nor are they always helpful. One must not depart from the context of the purposive approach articulated by this Court in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295. Under this approach, a situation might arise in which, in order to make a fundamental freedom meaningful, a posture of restraint would not be enough, and positive governmental action might be required. This might, for example, take the form of legislative intervention aimed at preventing certain conditions which muzzle expression, or ensuring public access to certain kinds of information

171. Second, the Supreme Court has recognized that rights or freedoms characterized as "negative" often require proactive steps and place positive obligations on government. For example, a purposive protection of freedom of association, as understood by the Supreme Court in *Fraser v. Ontario*, "may require the state to act positively to protect the ability of individuals to engage in fundamentally important collective activities, just as a purposive interpretation of freedom of expression may require the state to disclose documents to permit meaningful discussion."<sup>231</sup> The Court does not make freedom of association a positive right, but recognizes that in protecting what are often viewed as "negative rights", the government may be required to take proactive steps.

---

<sup>229</sup> *Vriend*, *supra* note 223, at paras. 53, 56; *see also Dunmore*, *supra* note 222, at para. 20.

<sup>230</sup> *Haig v. Canada*, [1993] 2 S.C.R. 995, at p. 1039, *Joint Book of Authorities*, v. 8, Tab 79.

<sup>231</sup> *Ontario (Attorney General) v. Fraser* [2011] 2 S.C.R. 3, at para. 70, *Joint Book of Authorities*, v. 7, Tab 66.

172. The fact that s. 7 requires proactive steps by government and protects some positive rights was also recognized by the Supreme Court in *Fraser*.<sup>232</sup> In that case, Chief Justice McLachlin and LeBel J., held that s. 7, like ss. 8-12, guarantees "a mixture of negative and positive rights."<sup>233</sup> These "positive rights" and proactive steps ensure that rights which are often categorized as negative are upheld and enjoyed by rights-holders.

173. The Applicant submits that two of the proactive steps required to ensure the right to life and security of the persons are the registration of non-restricted firearms and the requirement of a safety mechanism, such as the transfer provisions, when firearms change hands. These proactive steps are more in line with ensuring prisons of a certain standard, or creating a voting registry to ensure the freedom to vote in elections is maintained, than finding that s. 7 protects a right to housing. They are necessary procedural requirements to ensuring a public safety statute achieves its objective and to provide the infrastructure necessary to ensure the enjoyment of life, liberty and security of the person.

174. In addition, the fact that the government must spend money does not signify that the Court is imposing a positive obligation on the state. As stated recently by the Supreme Court of British Columbia, "the fact that the state might be required to expend some resources does not transform the claim into one alleging a positive obligation."<sup>234</sup> In any event, the cost to the government in reinstating the registry for non-restricted firearms is minimal, as CFIS continues

---

<sup>232</sup> *Ibid.* at para. 72.

<sup>233</sup> *Ibid.* See also *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, at para. 107, Joint Book of Authorities, v. 8, Tab 80, referring to "the s. 12 guarantee of freedom from cruel and unusual treatment" (emphasis added).

<sup>234</sup> *Inglis*, *supra* note 182, at paras. 392-393.

to support and store non-restricted firearms data and the integrity of the information system for non-restricted firearms has been maintained.<sup>235</sup>

175. However, even if the Court were to categorize the Applicant's arguments as imposing a positive obligation on the state, the Applicant submits that the Court still has grounds to find a s. 7 violation, and to find the *Amendment Act* unconstitutional.

176. The Supreme Court has repeatedly recognized the need to "safeguard a degree of flexibility in the interpretation and evolution of s. 7 of the *Charter*."<sup>236</sup> Citing the oft-referred to "living tree" approach to constitutional interpretation, McLachlin J. on behalf of the majority in *Gosselin* found that "[i]t would be a mistake to regard s. 7 as frozen, or its contents as having been exhaustively defined in previous cases."<sup>237</sup> Accordingly, McLachlin J. specifically left open the possibility that "one day s. 7 may be interpreted to include positive obligations."<sup>238</sup>

177. Arbour J.'s dissent in *Gosselin*, which is not rejected in principle but in application by the majority, further details the positive obligations contained in s. 7:<sup>239</sup>

... I conclude that the s. 7 rights to "life, liberty and security of the person" include a positive dimension. ...

... This Court has never ruled, nor does the language of the *Charter* itself require, that we must reject any positive claim against the state — as in

---

<sup>235</sup> See above at para. 54; MacKinnon Cross, *Joint Supplementary Record*, v. 7, Tab 15, p. 3057, l. 17 to p. 3058. l. 6; p. 3065, l. 5 to l. 15.

<sup>236</sup> *Gosselin*, *supra* note 149, at para. 82.

<sup>237</sup> *Ibid.*

<sup>238</sup> *Ibid.* See also *ibid.*, at paras. 319-29, per Arbour J. in dissent. Relying upon cases like *Dunmore* and *Vriend*, Arbour J. finds that s. 7 may impose positive obligations, especially in situations where a legislature has taken some form of positive action. In Arbour J.'s view, once a legislature decides to exercise a legislative choice in an under inclusive manner that significantly affects a person's s. 7 rights, s. 7 is engaged whether the legislative conduct is described as action or inaction, or the legislative obligation is described as positive or negative.

<sup>239</sup> *Ibid.* at paras. 308-309 (emphasis in original).

this case — for the most basic positive protection of life and security. This Court has consistently chosen instead to leave open the possibility of finding certain positive rights to the basic means of subsistence within s. 7. In my view, far from resisting this conclusion, the language and structure of the *Charter* — and of s. 7 in particular — actually compel it. ...

178. Furthermore, any concern for what might be characterized as a “positive” obligation under s.7 is misplaced. The general concern and outcome courts have sought to prevent by denying that s. 7 imposes a positive obligation, is creating re-distributional requirements grounded in the protection of economic rights, such as access to social services or the right to housing. These economic rights that have been a concern to the courts are far removed from the public safety measures at issue in the current matter.

### **3. Finding a Violation of S. 7 and S. 15 Does Not Constitutionalize the Non-Restricted Firearm Registry or Transfer Provisions**

179. Finally, the Applicant does not seek to "constitutionalize" the 1995 *Firearms Act* or seek to require the government to criminalize certain conduct. Rather what the Applicant seeks is the effective protection of the s. 7 and s. 15 rights of women, and public safety legislation that ensures this.

180. Regulating access to firearms through registration is a basic, fundamental requirement of an effective firearms control regime. The Applicant does not take a position on how registration should be enforced or on specifics as to how firearms legislation should be designed. At a minimum, however, whatever firearms control regime is in place, a critical component is the registration of all firearms.

181. Registration has become an international norm, contained in international instruments which Canada has signed. Most industrialized countries register all firearms and all members of the European Union are required to have a central computerized registry by the end of this year.<sup>240</sup> International instruments, although not directly part of the domestic law of Canada, inform the meaning and scope of rights under the *Charter*, including s. 7 and s. 15 rights, and the principles of fundamental justice.<sup>241</sup> Further, the *Charter* should in general be presumed to provide protection at least as great as a level of protection found in the international human rights documents that Canada has ratified.<sup>242</sup>

182. The Applicant submits that the protections contained in the 1995 *Firearms Act* provided an essential element in the effective protection for the s. 7 rights of women. It submits that the impoverished version of the *Firearms Act* in place after the *Amendment Act* does not. As a result, the *Amendment Act*, and the protections it removed, has resulted in a disproportionate deprivation of the life, and security of the person of women in contradiction to s. 7 and s. 15 of the *Charter*.

#### **D. Section 1: Violations of the *Charter* are Not Demonstrably Justified**

183. The violations to the rights of women in this case are not saved by s. 1 of the *Charter*. To establish that a violation of a substantive *Charter* right is “demonstrably justified in a free and democratic society”, the Respondents must establish that (1) the objective of the impugned

---

<sup>240</sup> See above at paras. 106-109.

<sup>241</sup> *Victoria (City) v. Adams*, 2009 BCCA 563, at para. 35, Joint Book of Authorities, v. 8, Tab 81. See also *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 70, Joint Book of Authorities, v. 8, Tab 82.

<sup>242</sup> *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, at paras. 22-23, Joint Book of Authorities, v. 8, Tab 83.

government action or statute is “of sufficient importance to warrant overriding a constitutionally protected right or freedom”; and (2) the impairment of the right is proportional to the importance of the objective.<sup>243</sup>

184. The Applicant submits that the Respondents have not seriously adduced evidence to suggest that the law, if found to infringe s. 7 or s. 15, can be justified under s. 1. Moreover, the Applicant further submits that the infringement cannot be saved by s. 1 of the *Charter* as the objectives of the *Amendment Act* are not pressing and substantial and its impugned provisions do not satisfy a proportionality analysis.

#### **1. The *Amendment Act*'s Objectives Are Not Pressing and Substantial**

185. The Respondents have put forward little, if any, evidence to support the *Amendment Act*'s objectives. What is clear, however, is that there is no public safety purpose underpinning the *Amendment Act*, which is completely at odds with and contrary to the overall scheme of the *Firearms Act*. Based on the government's public statements at the time the bill was introduced and debated, the *Amendment Act*'s purpose appears to relate primarily to political aims: fulfilling an election promise and preventing future governments from being able to create a new long-gun registry.<sup>244</sup>

186. Political objectives cannot be relied on to override fundamental *Charter* rights.<sup>245</sup> Moreover, preventing future governments from creating a new long-gun registry is an improper

---

<sup>243</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103, at pp.138-140, Joint Book of Authorities, v. 9, Tab 95; *Thomson Newspaper Co. v. Canada*, [1998] 1 S.C.R. 877, at paras. 123-126, Joint Book of Authorities, v. 9, Tab 96.

<sup>244</sup> See above at para. 51.

<sup>245</sup> See e.g., *Meredith v. Canada (Attorney General)*, [2011] F.C.J. No. 948, at para. 120 (F.C.T.D.), Joint Book of Authorities, v. 9, Tab 97.

purpose at law.<sup>246</sup> None of these objectives withstand principled scrutiny and none of them are pressing and substantial.

187. Moreover, in order for an objective to be pressing and substantial it must be responsive to a problem that actually exists. The Applicant submits that the government's publicly stated objectives regarding lessening the burden on owners of non-restricted firearms and concerns about privacy addressed phantom problems, and so cannot possibly meet the pressing and substantial standard. Registration imposed almost no burden other than calling a 1-800 number or accessing a webpage<sup>247</sup> and private information regarding firearms owners is held primarily in the licensing system, still in place, and not in the registry.<sup>248</sup>

## **2. The *Amendment Act* Does Not Satisfy Proportionality Analysis**

188. Legislation which fails the "objective" test cannot be justified under s. 1. The Applicant submits in the alternative that even if a sufficiently pressing and substantial objective for the *Amendment Act* can be identified, the *Amendment Act* fails the proportionality test required under s. 1: the means implemented through the *Amendment Act* are not proportional to any valid objective.

189. To satisfy the rational connection test, the impugned legislation must not only promote its objectives, it must also be "carefully tailored" to meet those objectives."<sup>249</sup> It must not be

---

<sup>246</sup> *Reference re Bowater*, *supra* note 190, at p. 657; *Reference re Secession*, *supra* note 190.

<sup>247</sup> See above at para. 13.

<sup>248</sup> See above at para. 51.

<sup>249</sup> *Dunmore*, *supra* note 222, at para. 54.



arbitrary, unfair or based on irrational considerations.<sup>250</sup> The government must show that the restriction on rights serves the intended purpose.

190. The Applicant submits that there has been no demonstration that the government's objectives could not be met without violating women's ss. 7 and 15 *Charter* rights. Moreover, there is no evidence of any studies reviewed or public consultations held by the government prior to the enactment of the *Amendment Act*, which established that the registry and transfer provisions were not serving a public safety purpose, or that the *Amendment Act* itself served an alternative public safety purpose. The Applicant relies on its submissions between paragraphs 137 and 146 above, which establishes that the *Amendment Act*'s impugned provisions are arbitrary, unfair and based on irrational considerations.

191. For similar reasons, the Applicant submits that the *Amendment Act*'s deleterious effects vastly outweigh any salutary effects it may have. The *Amendment Act* has deep and significant deleterious effects on the safety of women. The impugned provisions remove a critical part of the public safety regime enacted to protect women and others against firearms. The loss of this piece of the regime means that women are not able to protect themselves from firearms effectively, which thereby exposes women to an increased risk to their lives and physical and psychological integrity. At the same time the salutary effects are negligible. The *Amendment Act* is not proportional to its objective and so it is not saved by s. 1 of the *Charter*.

#### **PART IV: REMEDY**

192. As remedy for violations to s. 7 and s. 15 of the *Charter*, the Applicant requests:

---

<sup>250</sup> *Adler v. Ontario*, [1996] 3 S.C.R. 609, at para. 218 (per McLachlin CJC dissenting in part), Joint Book of Authorities, v. 10, Tab 98.

- (a) A declaration that provisions of *An Act to Amend the Criminal Code and Firearms Act*, S.C. 2012, C. 6 and, in particular, sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 violate the rights to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice under s. 7 of the *Canadian Charter of Rights and Freedoms* ("Charter") and that this violation is not saved by s. 1 of the *Charter*;
- (b) A declaration that provisions of *An Act to amend the Criminal Code and Firearms Act*, S.C. 2012, c.6 and, in particular, sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 violate the equality rights in s. 15 of the *Charter* and that this violation is not saved by s. 1 of the *Charter*;
- (c) A declaration that sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 of *An Act to Amend the Criminal Code and Firearms Act*, S.C. 2012, c.6 are of no force and effect;
- (d) Their costs of this Application; and
- (e) Such further and other relief as counsel may advise and this Honourable Court permits.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10<sup>th</sup> DAY OF April, 2014.**



---

**Shaun O'Brien, LSUC #43547F**  
**Elichai Shaffir, LSUC #55370S**  
**Nadia Lambek, LSUC #63732C**

**SCHEDULE A  
LIST OF AUTHORITIES**

**Case Law**

1. *Adler v. Ontario*, [1996] 3 S.C.R. 609
2. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143
3. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
4. *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307
5. *Canada (Attorney General) v. Bedford*, 2013 SCC 72
6. *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134
7. *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791
8. *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350
9. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47
10. *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016
11. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624
12. *Fleming v. Reid (Litigation Guardian)* (1991), 4 O.R. (3d) 74 (Ont. C. A.)
13. *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429
14. *Haig v. Canada*, [1993] 2 S.C.R. 995
15. *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309
16. *Jane Doe v. Toronto (Metropolitan) Commissioners of Police* (1998), 39 O.R. (3d) 487
17. *Lovelace v. Ontario*, [2000] 1 S.C.R. 950
18. *Meredith v. Canada (Attorney General)*, [2011] F.C.J. No. 948 (F.C.T.D.)
19. *Moge v. Moge*, [1992] 3 S.C.R. 813
20. *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46
21. *Ontario (Attorney General) v. Fraser* [2011] 2 S.C.R. 3
22. *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61

23. *Québec (Procureur Général) v. Canada (Procureur Général)*, 2012 QCCS 1614
24. *R. v. Beare; R. v. Higgins*, [1988] 2 S.C.R. 387
25. *R. v. Marmo-Levine; R. v. Caine*, [2003] 3 S.C.R. 571
26. *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at p. 173
27. *R. v. Oakes*, [1986] 1 S.C.R. 103
28. *Reference re Bowater's Pulp & Paper Mills Ltd.*, [1950] S.C.R. 608
29. *Reference re: Firearms Act (Can.)*, [1998] A.J. No. 1028 (C.A.)
30. *Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783
31. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217
32. *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123
33. *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519
34. *Service Employees International Union, Local 204 v. Ontario (Attorney General)* (1997), 35 O.R. (3d) 508
35. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3
36. *Thomson Newspaper Co. v. Canada*, [1998] 1 S.C.R. 877
37. *United States v. Burns*, [2001] S.C.R. 283
38. *Victoria (City) v. Adams*, 2009 BCCA 563
39. *Vriend v. Alberta*, [1998] 1 S.C.R. 493
40. *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519
41. *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396

### **Secondary Sources**

42. European Parliament and Council, “Council directive of 18 June 1991 on control of the acquisition and possession of weapons”, May 21, 2008 found at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1991L0477:20080728:EN:PDF>.
43. Langmann, Caillin. 2012. “Canadian Firearms Legislation and Effects on Homicide 1974 to 2008.” *Journal of Interpersonal Violence* 27 (12): 2303-2321

44. McPhedran & Mauser, 2013, “Lethal Firearm-Related Violence Against Canadian Women: Did Tightening Gun Laws Have an Impact on Women’s Health and Safety?”, *Violence and Victims*, 28(5):875-83
45. Sarah Parker, “Regulation of Civilian Firearm Possession Small Arms Survey 2011” in Small Arms Survey 2011: States of Security (Geneva: Cambridge University Press, 2011), pp 260-297 at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-09-EN.pdf>
46. Webster, D.W., Vernick, J.S., Hepburn, L.M. “Relationship between licensing registration and other gun sales laws and the source state of crime guns.” *Injury Prevention* 7 (2001): 184-189

### **Hansard**

47. Commons Debates, October 26, 2011

**SCHEDULE B**  
**TEXT OF RELEVANT STATUTORY PROVISIONS**

1. *An Act to Amend the Criminal Code and the Firearms Act*, S.C. 2012, c. 6
2. *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11
3. *Firearms Act*, S.C. 1995, c. 39
4. *Firearms Licences Regulations*, SOR 98-199