

COURT FILE NUMBER **2001-06832**

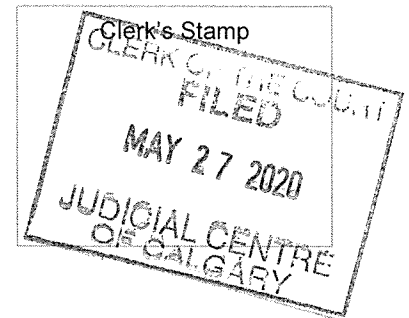
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS JAMES COX AND THE SHOOTING EDGE INC. AND STEVEN ARENA AND ARMS STERLING INTERNATIONAL INC.

RESPONDENT THE ATTORNEY GENERAL OF CANADA on behalf of HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

DOCUMENT **ORIGINATING APPLICATION**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<p>Greg Dunn & Caitlin Taylor Dunn & Associates 2610, 801 - 6 Avenue SW Calgary, Alberta T2P 4A3 T: (403) 233-0443 F: (403) 233-0907 File#: 20-130 Counsel for James Cox and The Shooting Edge Inc.</p>	<p>Brendan M. Miller Walsh LLP 2800, 801 - 6 Avenue SW Calgary, Alberta T2P 4A3 T: (403) 267-8400 F: (403) 264-9400 File#: 90347-1 Counsel for Steven Arena and Sterling Arms International Inc.</p>
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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: **TBD**
 Time: 10:00AM
 Where: Calgary Court Centre
 Before: Justice in Morning Chambers and thereafter a Justice in Special Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

Overview

1. The Applicant, James Cox (hereinafter "Cox"), is a natural person and resident of Calgary, Alberta, Canada. Cox is the holder of a firearm license that allows him to handle, transport, ship, possess, collect, import, export, sell, advertise, purchase, transfer, train in the use of, prohibited firearms, at least prior to May 1, 2020.

2. Further, Cox is the holder of licenses that allow him to handle, transport, ship, possess, collect, import, export, sell, advertise, purchase, transfer, train in the use of, and operate the range and shooting club for non-restricted and restricted firearms.
3. The Applicant, The Shooting Edge Inc. (hereinafter "Shooting Edge"), is a legal person and corporation incorporated in Alberta, Canada which is carrying on the business of storing, handling, transporting, shipping, possessing, collecting, importing, exporting, selling, advertising, purchasing, transferring, repair, maintenance, training in the use of, and operating the range and shooting club for non-restricted and restricted firearms. The Shooting Edge's license also allows for the storage and use of prohibited firearms under special conditions. The sole Director and Shareholder of Shooting Edge is Cox. The Shooting Edge is in possession of a valid and subsisting Business Firearms Licence which permits all of the foregoing.
4. The Applicant, Steven Arena (hereinafter "Arena"), is a natural person and resident of Calgary, Alberta. Arena is the holder of a firearm license allow him to handle, transport, ship, possess, collect, import, export, sell, advertise, purchase, transfer, train in the use of, non-restricted and restricted firearms.
5. The Applicant, Sterling Arms International Inc. (hereinafter "Sterling Arms") is a legal person and a corporation incorporated in Alberta, Canada which is carrying on the business of developing, manufacturing, storing, handling, transporting, shipping, possessing, collecting, importing, exporting, selling, advertising, purchasing, and transferring of unrestricted, restricted and prohibited firearms and devices. Sterling Arms is in possession of a valid and subsisting Business Firearms Licence which permits all of the foregoing. Arena is a shareholder, director and Chief Operations Officer of Sterling Arms.
6. Cox, The Shooting Edge, Sterling Arms and Arena will be collectively referred to as the "Applicants".
7. The Respondent, Her Majesty the Queen in the Right of Canada, is represented herein by the Attorney General of Canada (hereinafter the "Crown").
8. The Royal Canadian Mounted Police (hereinafter the "RCMP") Canadian Firearms Program is responsible for monitoring and regulating the use, possession, transferring, importing and exporting of all firearms in Canada. The RCMP Specialized Firearms Support Unit (hereinafter the "RCMP SFSU") is a department within the Canada Firearms Centre of the RCMP. They are also solely responsible for determining classifications of firearms in Canada pursuant to criteria as set out in s. 84(1) of the *Criminal Code* R.S.C., 1985 c. C-46 (hereinafter the "*Criminal Code*"). Upon the determination of a classification of a particular make and model of firearm the RCMP SFSU issues a document called a Firearms Reference Table Report (hereinafter a "FRT Report"). An FRT Report identifies the classification of a particular make and model of firearm and provides accompanying reasons.
9. Under the *Criminal Code* firearms are classified into 3 broad categories: non-restricted, restricted and prohibited. As a general rule, non-restricted firearms have minimal restrictions attached to their possession, use and transferability. Restricted firearms, although still legal to own have more stringent restrictions on their possession, use and transferability. Prohibited firearms are illegal to possess, use and transfer for most firearm owners.
10. A restricted and non-restricted firearm are defined in s.84 of the *Criminal Code* as follows:

non-restricted firearm means

(a) a firearm that is neither a prohibited firearm nor a restricted firearm, or

(b) a firearm that is prescribed to be a non-restricted firearm; (arme à feu sans restriction)

restricted firearm means

- (a) a handgun that is not a prohibited firearm,
- (b) a firearm that
 - (i) is not a prohibited firearm,
 - (ii) has a barrel less than 470 mm in length, and
 - (iii) is capable of discharging centre-fire ammunition in a semi-automatic manner,
- (c) a firearm that is designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping or otherwise, or
- (d) a firearm of any other kind that is prescribed to be a restricted firearm; (*arme à feu à autorisation restreinte*)

11. A prohibited firearm is defined in s.84 of the *Criminal Code* as follows:

“prohibited firearm” means

- (a) a handgun that
 - (i) has a barrel equal to or less than 105 mm in length, or
 - (ii) is designed or adapted to discharge a 25 or 32 calibre cartridge,
 but does not include any such handgun that is prescribed, where the handgun is for use in international sporting competitions governed by the rules of the International Shooting Union,
- (b) a firearm that is adapted from a rifle or shotgun, whether by sawing, cutting or any other alteration, and that, as so adapted,
 - (i) is less than 660 mm in length, or
 - (ii) is 660 mm or greater in length and has a barrel less than 457 mm in length,
- (c) an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger, or
- (d) any firearm that is prescribed to be a prohibited firearm; (*arme à feu prohibée*)

12. In 2019 Sterling Arms purchased the intellectual property in a semi-automatic rifle called the NEA 102 from North Eastern Arms Inc., a legal person and a corporation incorporated in Ontario, Canada (hereinafter “North Eastern Arms”). The NEA 102 rifle was classified as non-restricted by the RCMP Canadian Firearms Program and was issued a valid FRT Report on June 15, 2017 confirming the same and as such was marketable to the general public as a sporting and hunting rifle.
13. Sterling Arms purchased the intellectual property of the NEA 102 rifle from North Eastern Arms with the intention to rebrand the NEA 102 as the Sterling Arms SAI 102 (hereinafter the “SAI 102”) and to manufacture, produce and sell the SAI 102 as a hunting and sporting rifle.
14. Sterling Arms submitted a request to the RCMP Firearms Program informing them that they were intending to produce the NEA 102 rifle under the brand of Sterling Arms as the SAI 102. Sterling Arms requested to have the SAI 102 classified as non-restricted.
15. On June 10, 2019 Sterling Arms received an FRT Report from the RCMP SFSU classifying the SAI 102 as “Non-Restricted” (hereinafter the “SAI 102 FRT Report”).

16. Sterling Arms on the basis of, and in reliance upon, the SAI 102 FRT Report commenced manufacturing, production and sale of the SAI 102 in September of 2019 and made considerable capital investment in the furtherance of the same.
17. Shooting Edge in the ordinary course of business retails firearms and has been doing so for over twenty (20) years. Shooting Edge retails non-restricted and restricted firearms. Reliance on the RCMP Canadian Firearms Program, the RCMP SFSU and FRT Reports are essential in making business decisions and capital investments. Non-restricted are the most salable firearms. Restricted firearms less so. Prohibited firearms are not salable and as such have nominal value. Shooting Edge had made considerable capital investments in non-restricted and restricted firearms prior to May 1, 2020.
18. In addition, Shooting Edge as part of its business offers the service of an indoor shooting range where members of the public can attend and shoot sporting rifles. Moreover, Shooting Edge offers sporting rifle and precision rifle courses as part of its business.
19. Cox is the owner of restricted, unrestricted and prohibited firearms.
20. Arena is the owner of both restricted and unrestricted firearms.
21. On May 1, 2020 the Governor in Council passed the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles Prohibited or Restricted* SOR/2020-96 (hereinafter the "May 1, 2020 Regulation"). The May 1, 2020 Regulation purports to reclassify over 1500 non-restricted or restricted firearms, as prohibited firearms. The May 1, 2020 Regulation is a regulation as defined in the *Statutory Instruments Act*, R.S.C., 1985, c. S-22.
22. The May 1, 2020 Regulation was purportedly passed under the authority of s.117.15 of the *Criminal Code*, which, at the time of passing, states:

Regulations

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

Restriction

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

Non-restricted firearm

(3) Despite the definitions prohibited firearm and restricted firearm in subsection 84(1), a firearm that is prescribed to be a non-restricted firearm is deemed not to be a prohibited firearm or a restricted firearm.

Restricted firearm

(4) Despite the definition prohibited firearm in subsection 84(1), a firearm that is prescribed to be a restricted firearm is deemed not to be a prohibited firearm.

1995, c. 39, s. 139 2015, c. 27, s. 34

23. With the passing of the May 1, 2020 Regulation thousands of gun owners who were formerly in lawful possession of non-restricted and restricted firearms with the appropriate licenses and certificates will be in unlawful possession of prohibited firearms as of April 30, 2022. From May 1, 2020 to April 30, 2022 the Applicants and those in possession of non-restricted and restricted firearms listed in the May 1, 2020 Regulation are not permitted to use the items listed therein in any manner whatsoever. After April 30, 2022 if the Applicants and others in possession of non-restricted and restricted firearms listed in the May 1, 2020 Regulation maintain their possession, it will constitute an offence under s.91 of the *Criminal Code*. Under s.91 of the *Criminal Code*, anyone who possesses a prohibited weapon without a license under which the person may possess it and a registration certificate for it, is guilty of an offence of a hybrid nature where if the prosecution elects to proceed by indictment the accused faces up to five (5) years imprisonment.
24. Directly after the passing of the May 1, 2020 Regulation transporting any item listed therein in a motor vehicle is an offence of a hybrid nature under s.94 of the *Criminal Code*, where if the prosecution elects to proceeding by indictment the accused faces up to ten (10) years imprisonment.
25. Directly after the passing of the May 1, 2020 Regulation, the manufacturing, selling or transferring of any firearm listed therein, or possessing said firearms for that purpose, as well as importing or exporting said firearms are indictable offences under s.99, s. 100 and s.103 of the *Criminal Code*, whereby an accused faces a maximum of ten (10) years imprisonment, with mandatory minimums of three (3) years for a first offence and five (5) years for a second offence.
26. Prosecutions under s.91, s.94, s.99, s.100 and s.103 of the *Criminal Code* are prosecuted by the Alberta Prosecution Services, not the Crown party herein of which the Alberta Court of Queen's Bench has original jurisdiction to try.
27. If the Applicants continue to conduct their regular business in relations to the firearms listed in the May 1, 2020 Regulation, they will be committing the offences under s.94, s.99 and s.100 of the *Criminal Code* and would be triable in the Court of Queen's Bench.
28. As a result of the 'reclassification' of firearms under the May 1, 2020 Regulation the Sterling Arms SAI 102 is now classified as prohibited and no longer saleable to the general public. The value of the intellectual property acquired from North East Arms for the SAI 102 has been rendered worthless. Capital investment in the development and manufacture of the SAI 102 has also been devalued. All of the foregoing will cause Arena and Sterling Arms irreparable harm should the reclassification remain.
29. As a result of the 'reclassification' of firearms under the May 1, 2020 Regulation the Shooting Edge is in possession of significant inventory of sporting rifles, now prohibited firearms, which are no longer saleable to the general public and as a consequence rendered worthless. In addition, other aspects of the Shooting Edge business such as use of its gun range and various rifle courses have been significantly damaged or eliminated altogether. All of the foregoing will cause Cox and the Shooting edge irreparable harm should the reclassification remain.
30. No notice was provided to the Applicants in respect to the reclassification as to allow them to mitigate their financial losses.

Grounds and Arguments

- (a) **The May 1, 2020 Regulation is enacted for a purpose outside of that contemplated by s. 117.15 of the *Criminal Code* and as such is *ultra vires***
31. The power with respect to prescribing regulations under s. 117.15(1) of the *Criminal Code* by the Governor in Council is regulatory in nature the purpose of which allows the government to legislate in a timely and expedient manner classifications for new firearms as they arrive on the scene in accordance with the

legislative criteria as set out in s. 84(1) of the *Criminal Code*. The purpose of s. 117.15 (1) is not intended to permit the Governor in Council by decree and immune from Parliamentary oversight, to fulfil election promises on gun control. Wide sweeping reclassifications of large numbers of firearms contrary to, and irrespective of, otherwise accurate classifications conducted in accordance with the legislative criteria provided in 84(1) of the *Criminal Code* and the *Firearms Act*, SC 1995, c 39 (hereinafter the "*Firearms Act*") lies outside the legislative purpose of s. 117.15(1) of the *Criminal Code*. As such, the May 1, 2020 Regulation is *ultra vires* s.117.15(1) of the *Criminal Code* and violates s.91 of the *Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3 (hereinafter the "*Constitution Act*, 1867") by infringing on the jurisdiction of Parliament stated therein.

32. The Applicants state that the constitutional principles of the rule of law, constitutionalism and democracy which in certain circumstances all have full legal independent force to limit government action, create government obligations, and are binding on the government and the Courts, support this line of argument and all other lines of argument and grounds plead herein.

(b) The May 1, 2020 Regulation is *ultra vires* s.117.15 (2) of the *Criminal Code* as the over 1500 firearms listed therein are reasonable for use in Canada for hunting or sporting purposes

33. Further, and in the alternative, the Applicants state, and the fact is, that the May 1, 2020 Regulation was enacted in violation of its enabling statute, being s.117.15(2) of the *Criminal Code*, and is therefore *ultra vires* and violates s.91 of the *Constitution Act*, 1867 by infringing on the jurisdiction of Parliament stated therein. Specifically it is required under s.117.15(2) of the *Criminal Code* that the Governor in Council in passing the May 1, 2020 Regulation conclude that the items listed in the May 1, 2020 Regulation are not reasonably used for hunting or sport. The Applicants state, and the fact is, the Governor in Council could not and did not conclude all or any of the over 1500 items listed in the May 1, 2020 Regulation were not reasonably used for hunting or sport.

(c) The May 1, 2020 Regulation is *ultra vires* s.117.15 of the *Criminal Code* as s.117.15 does not authorize the re-classification of firearms defined as either restricted or non-restricted firearms in s.84 of the *Criminal Code* to become prohibited firearms

34. The legislative history of s.117.15 of the *Criminal Code* makes it clear that s.117.15 cannot be used to override the definition of non-restricted and restricted firearm in s.84 of the *Criminal Code*. Specifically, s.117(3) allows the Governor in Council to over-ride the definition of prohibited firearm and restricted firearm in s.84 of the *Criminal Code* and deem a firearm non-restricted. Further, s.117(4) allowed the Governor in Council to override the definition of prohibited firearm in s. 84 and deem a firearm restricted.

35. The Applicant states, and the fact is, nothing in s.117.15 expressly permits the Governor in Council to override the definition of non-restricted or restrict firearm in s.84 of the *Criminal Code* and then impose a classification of prohibited. If such power was intended, s.117.15 would contain like provisions explicitly stating the same as do the legislative definition overrides in s.117.15(3) and s.117.15(4). As such, the May 1, 2020 Regulation is *ultra vires* s.117.15 in so far as it classifies firearms as prohibited that come under the definitions of non-restricted or restricted in s.84 of the *Criminal Code* and violates s.91 of the *Constitution Act*, 1867 by infringing on the jurisdiction of Parliament stated therein.

(d) The May 1, 2020 Regulation is of no force and effect in so far as it interferes with *statutes in pari materia*, being the *Firearms Act*

36. The Applicants state, and the fact is, that the power of the Governor in Council to make regulations set out s.117.15 of the *Criminal Code* must be read in conjunction with the statute on the same subject (*statutes in pari materia*) being s.117, s.118 and s. 119 of the *Firearms Act*. At s.117, s.118 and s.119 of the *Firearms Act* it states:

Regulations

Regulations

117 The Governor in Council may make regulations

(a) regulating the issuance of licences, registration certificates and authorizations, including regulations respecting the purposes for which they may be issued under any provision of this Act and prescribing the circumstances in which persons are or are not eligible to hold licences;

(a.1) deeming permits to export goods, or classes of permits to export goods, that are issued under the Export and Import Permits Act to be authorizations to export for the purposes of this Act;

(b) regulating the revocation of licences, registration certificates and authorizations;

(c) prescribing the circumstances in which an individual does or does not need firearms

(i) to protect the life of that individual or of other individuals, or

(ii) for use in connection with his or her lawful profession or occupation;

(d) regulating the use of firearms in target practice or target shooting competitions;

(e) regulating

(i) the establishment and operation of shooting clubs and shooting ranges,

(ii) the activities that may be carried on at shooting clubs and shooting ranges,

(iii) the possession and use of firearms at shooting clubs and shooting ranges, and

(iv) the keeping and destruction of records in relation to shooting clubs and shooting ranges and members of those clubs and ranges;

(f) regulating the establishment and maintenance of gun collections and the acquisition and disposal or disposition of firearms that form part or are to form part of a gun collection;

(g) regulating the operation of gun shows, the activities that may be carried on at gun shows and the possession and use of firearms at gun shows;

(h) regulating the storage, handling, transportation, shipping, display, advertising and mail-order sale of firearms and restricted weapons and defining the expression "mail-order sale" for the purposes of this Act;

(i) regulating the storage, handling, transportation, shipping, possession for a prescribed purpose, transfer, exportation or importation of

(i) prohibited firearms, prohibited weapons, restricted weapons, prohibited devices and prohibited ammunition, or

(ii) components or parts of prohibited firearms, prohibited weapons, restricted weapons, prohibited devices and prohibited ammunition;

(j) regulating the possession and use of restricted weapons;

(j.1) respecting the possession and transportation of firearms during the extension period referred to in subsection 64(1.1);

(k) for authorizing

(i) the possession at any place, or

(ii) the manufacture or transfer, whether or not for consideration, or offer to manufacture or transfer, whether or not for consideration,

of firearms, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition and components and parts designed exclusively for use in the manufacture of or assembly into firearms;

(k.1) respecting the importation or exportation of firearms, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition and components and parts designed exclusively for use in the manufacture of or assembly into firearms;

(k.2) respecting the marking of firearms manufactured in Canada or imported into Canada and the removal, alteration, obliteration and defacing of those markings;

(k.3) respecting the confirmation of declarations and authorizations to transport for the purposes of paragraph 35(1)(d), the confirmation of declarations for the purposes of paragraph 35.1(2)(d) and the confirmation of authorizations to import for the purposes of paragraph 40(2)(e);

(l) regulating the storage, handling, transportation, shipping, acquisition, possession, transfer, exportation, importation, use and disposal or disposition of firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and explosive substances

(i) by the following persons in the course of their duties or for the purposes of their employment, namely,

(A) peace officers,

(B) persons training to become police officers or peace officers under the control and supervision of a police force or a police academy or similar institution designated by the federal Minister or the lieutenant governor in council of a province,

(C) persons or members of a class of persons employed in the federal public administration or by the government of a province or municipality who are prescribed by the regulations made by the Governor in Council under Part III of the Criminal Code to be public officers, and

(D) chief firearms officers and firearms officers, and

(ii) by individuals on behalf of, and under the authority of, a police force or a department of the Government of Canada or of a province;

(m) regulating the keeping, transmission and destruction of records in relation to firearms, prohibited weapons, restricted weapons, prohibited devices and prohibited ammunition;

(n) regulating the keeping and destruction of records by businesses in relation to ammunition;

(o) creating offences consisting of contraventions of the regulations made under paragraph (d), (e), (f), (g), (i), (j), (k.1), (k.2), (l), (m) or (n);

(p) prescribing the fees that are to be paid to Her Majesty in right of Canada for licences, registration certificates, authorizations, approvals of transfers and importations of firearms and confirmations by customs officers of documents under this Act;

(q) waiving or reducing the fees payable under paragraph (p) in such circumstances as may be specified in the regulations;

(r) prescribing the charges that are to be paid to Her Majesty in right of Canada in respect of costs incurred by Her Majesty in right of Canada in storing goods that are detained by customs officers or in disposing of goods;

(s) respecting the operation of the Canadian Firearms Registry;

(t) regulating the sending or issuance of notices and documents in electronic or other form, including

(i) the notices and documents that may be sent or issued in electronic or other form,

(ii) the persons or classes of persons by whom they may be sent or issued,

(iii) their signature in electronic or other form or their execution, adoption or authorization in a manner that pursuant to the regulations is to have the same effect for the purposes of this Act as their signature, and

(iv) the time and date when they are deemed to be received;

(u) respecting the manner in which any provision of this Act or the regulations applies to any of the aboriginal peoples of Canada, and adapting any such provision for the purposes of that application;

(v) repealing

(i) section 4 of the Cartridge Magazine Control Regulations, made by Order in Council P.C. 1992-1660 of July 16, 1992 and registered as SOR/92-460, and the heading before it,

(ii) the Designated Areas Firearms Order, C.R.C., chapter 430,

(iii) section 4 of the Firearms Acquisition Certificate Regulations, made by Order in Council P.C. 1992-1663 of July 16, 1992 and registered as SOR/92-461, and the heading before it,

(iv) section 7 of the Genuine Gun Collector Regulations, made by Order in Council P.C. 1992-1661 of July 16, 1992 and registered as SOR/92-435, and the heading before it,

(v) sections 8 and 13 of the Prohibited Weapons Control Regulations, made by Order in Council P.C. 1991-1925 of October 3, 1991 and registered as SOR/91-572, and the headings before them,

(vi) the Restricted Weapon Registration Certificate for Classes of Persons other than Individuals Regulations, made by Order in Council P.C. 1993-766 of April 20, 1993 and registered as SOR/93-200, and

(vii) sections 7, 15 and 17 of the Restricted Weapons and Firearms Control Regulations, made by Order in Council P.C. 1978-2572 of August 16, 1978 and registered as SOR/78-670, and the headings before them; and

(w) prescribing anything that by any provision of this Act is to be prescribed by regulation.

1995, c. 39, s. 117 2003, c. 8, s. 54, c. 22, s. 224(E) 2015, c. 27, s. 162019, c. 9, s. 13

Laying of proposed regulations

118 (1) Subject to subsection (2), the federal Minister shall have each proposed regulation laid before each House of Parliament.

Idem

(2) Where a proposed regulation is laid pursuant to subsection (1), it shall be laid before each House of Parliament on the same day.

Report by committee

(3) Each proposed regulation that is laid before a House of Parliament shall, on the day it is laid, be referred by that House to an appropriate committee of that House, as determined by the rules of that House, and the committee may conduct inquiries or public hearings with respect to the proposed regulation and report its findings to that House.

Making of regulations

(4) A proposed regulation that has been laid pursuant to subsection (1) may be made

(a) on the expiration of thirty sitting days after it was laid; or

(b) where, with respect to each House of Parliament,

(i) the committee reports to the House, or

(ii) the committee decides not to conduct inquiries or public hearings.

Definition of “sitting day”

(5) For the purpose of this section, sitting day means a day on which either House of Parliament sits.

Exception

119 (1) No proposed regulation that has been laid pursuant to section 118 need again be laid under that section, whether or not it has been altered.

Exception — minor changes

(2) A regulation made under section 117 may be made without being laid before either House of Parliament if the federal Minister is of the opinion that the changes made by the regulation to an existing regulation are so immaterial or insubstantial that section 118 should not be applicable in the circumstances.

Exception — urgency

(3) A regulation made under paragraph 117(i), (l), (m), (n), (o), (q), (s) or (t) may be made without being laid before either House of Parliament if the federal Minister is of the opinion that the making of the regulation is so urgent that section 118 should not be applicable in the circumstances.

Notice of opinion

(4) Where the federal Minister forms the opinion described in subsection (2) or (3), he or she shall have a statement of the reasons why he or she formed that opinion laid before each House of Parliament.

Exception — prescribed dates

(5) A regulation may be made under paragraph 117(w) prescribing a date for the purposes of the application of any provision of this Act without being laid before either House of Parliament.

Part III of the Criminal Code

(6) For greater certainty, a regulation may be made under Part III of the Criminal Code without being laid before either House of Parliament.

37. Though a regulation could be passed without being laid before either House of Parliament, as per s.119(6) of the *Firearms Act*, the Applicants state and the fact is, the May 1, 2020 Regulation could not have the effect of doing any of the things outlined in s.117(a) through s.117(w) of the *Firearms Act*. The Applicants state, and the fact is, the May 1, 2020 Regulation is *ultra vires* s.117(1) of the *Criminal Code* in so far as it interferes with the legislative items in s.117(a) through s.117(w) of the *Firearms Act* and therefore violates s.91 of the *Constitution Act*, 1867 by infringing on the jurisdiction of Parliament stated therein in failing to be laid before Parliament in accordance with s.118 of the *Firearms Act*.

(e) The power at s.117.15(1) of the *Criminal Code* is unconstitutional

38. The Applicants state, and the fact is, that s.117.15(1) of the *Criminal Code* violates s.91 of *Constitution Act*, 1867 and is an unconstitutional sub-delegation of Parliament's jurisdiction as it provides no criteria, no sufficient precision, and no mode of administration as to what the Governor in Council must consider in making a regulation thereunder. As such, both s.117(1) of the *Criminal Code* and the May 1, 2020 Regulation are of no force or effect as per s.52(1) of the *Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 (hereinafter the "*Constitution Act*, 1982")

(f) Doctrine of Legitimate Expectation

39. The process and criteria for the classification of firearms in Canada has been in place since the *Firearms Act* was passed in 1995. Since 2008 the RCMP Canadian Firearms Program has held the responsibility to accurately classify firearms in accordance with the legislative criteria enumerated in s. 84(1) of the *Criminal Code*. The FRT Reports have consistently been relied upon by firearm owners, businesses and collectors as an authoritative statement of classification. The Applicants have relied on this long standing process and documentation in making business decisions and significant investments, as such they had a legitimate expectation in its consistent application subject only to legislative alterations. The May 1, 2020 Regulation violates the principle of legitimate expectation.

(g) The provision at s.96 of the May 1, 2020 Regulation violates the Constitutional Doctrine of Void for Vagueness

40. The constitutional doctrine of void for vagueness applies to all enactments, irrespective of whether they are civil, criminal, administrative, or of another nature. The citizens of Alberta are entitled to have the Governor in Council abide by constitutional standards of precision whenever the Governor in Council enacts regulations, including regulations enacted under s.117.15(1) of the *Criminal Code*.
41. A vague provision does not provide an adequate basis for legal debate, that is for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria. It does not sufficiently delineate any area of risk, and thus can provide neither fair notice to the citizen nor a limitation of enforcement discretion. Such a

provision is not intelligible, and therefore it fails to give sufficient indications that could fuel a legal debate. It offers no grasp to the judiciary.

42. The Applicants state, and the fact is, the provision in s.96 of the May 1, 2020 Regulation is void for vagueness as the phrase "*firearm capable of discharging a projectile with a muzzle energy greater than 10,000 joules*" does not provide an adequate basis for legal debate, does not sufficiently delineate any area of risk, does not provide fair notice to citizens, does not limit enforcement discretion and is not intelligible.
43. Furthermore the Applicants state that the words "*variant*" and "*modified version*" in the May 1, 2020 Regulation are open to discretionary interpretation which again does not provide an adequate basis for legal debate, does not sufficiently delineate any area of risk, does not provide fair notice to citizens, does not limit enforcement discretion and is not intelligible, and therefore all provisions regarding "*variant*" and "*modified version*" are void for vagueness.

(h) Enjoyment of property under s.18 of the *Canadian Bill of Rights*

44. Section 1(a) of the *Canadian Bill of Rights* S.C. 1960, c. 44 (hereinafter the "*Canadian Bill of Rights*") reads as follows:

Recognition and declaration of rights and freedoms

1 It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

45. The Applicants state that the May 1, 2020 Regulation infringes on s. 1(a) of the *Canadian Bill of Rights* by prohibiting the use of validly acquired property without due process of law. As such the May 1, 2020 Regulation is of no force and effect as per s.2 of the *Canadian Bill of Rights*.

(i) The grounds to issue an interim-injunction preventing the May 1, 2020 Regulation from having force or effect in Alberta until these proceedings are conclude

46. The Applicants state and the fact is the aforementioned grounds for the declarations sought are serious issues to be tried.
47. The Applicants state and the fact is they will suffer irreparable harm in the event that an interim-injunction is not granted preventing the May 1, 2020 Regulation from operating in Alberta until the herein proceedings are concluded.
48. The Applicants state and the fact is that the balance of convenience clearly favour the granting of the sought interim-injunction.

(j) Jurisdiction of the Alberta Court of Queen's Bench of Alberta

49. The Alberta Court of Queen's Bench as a Provincial Superior Court created under s.96 of the *Constitution Act*, 1867, and the Provincial Courts of Alberta created under s.92(14) of the *Constitution Act*, 1867 of which the Alberta Court of Queen's Bench has supervisory jurisdiction over, collectively have the sole jurisdiction to hear matters regarding the violation of the May 1, 2020 Regulation in Alberta via proceedings under the *Criminal Code*.
50. Parliament has entrusted, for practical purposes, the entire area of law regarding the May 1, 2020 Regulation to the Alberta Court of Queen's Bench and the Provincial Court of Alberta. The fundamental

Parliamentary choices about where important criminal matters are to be heard, being the Alberta Court of Queen's Bench and the Provincial Court of Alberta, must be respected.

51. The Alberta Court of Queen's Bench is the only Court that can declare the May 1, 2020 Regulation of no force and effect in the Province of Alberta for the purpose of preventing charges under the *Criminal Code* with respect to its violation being levied by peace officers in Alberta and then prosecuted by the Alberta Crown Prosecutions Services.
52. The Alberta Court of Queen's Bench is the only Court that can grant an interim-injunction preventing the May 1, 2020 Regulation from having force and effect in Alberta pending the outcome of the herein proceedings.
53. The Alberta Court of Queen's Bench has inherent jurisdiction to decide if regulations or statutes are constitutional. The Applicants should not have to force a charge under s. s.94, s.99, s.100 or s.103 of the *Criminal Code* in order for this Court to exercise its inherent jurisdiction.
54. The Court of Queen's Bench is the most efficient forum and forum of convenience to deal with the unconstitutionality of the May 1, 2020 Regulation as well as it being *ultra vires* its enabling statute vis-à-vis the Applicants and all Albertans.

Remedy sought:

55. A declaration that the May 1, 2020 Regulation is *ultra vires* s.117.15(1) of the *Criminal Code*, thereby violating the jurisdiction of Parliament under s.91 of the *Constitution Act*, 1867 and is of no force or effect.
56. A declaration that the May 1, 2020 Regulation is of no force or effect in so far as it is inconsistent with s.91 of the *Constitution Act*, 1867 and the constitutional principles of the rule of law, constitutionalism and democracy.
57. A declaration that the May 1, 2020 Regulation is *ultra vires* s.117(2) of the *Criminal Code* as the Governor in Council could not and did not conclude all or any of the over 1500 items listed in the May 1, 2020 Regulation were not reasonably used for hunting or sport.
58. A declaration that any firearm contained in the May 1, 2020 Regulation in which the Governor in Council could not and did not conclude were not reasonably used for hunting or sport be reverted back to their original classification status before the passing of the May 1, 2020 Regulation.
59. At declaration that the May 1, 2020 Regulation is of no force or effect in relation to any firearm named therein that were already classified through the Canadian Firearms Program under the *Firearms Act* as either non-restricted or restricted.
60. A declaration that the May 1, 2020 Regulation is *ultra vires* s.117(1) of the *Criminal Code* in so far as it interferes with the items in s.117(a) through s.117(w) of the *Firearms Act*.
61. A declaration that s.117(1) of the *Criminal Code* is of no force or effect in so far as it is inconsistent with s.91 of the *Constitution Act*, 1867, and the constitutional principles of the rule of law, constitutionalism and democracy.
62. A declaration that the classification of the Sterling Arms SAI 102 as set out in the FRT Report as NON-Restricted is of full force and effect and that s. 87 (z.821) of the May 1, 2020 Regulation classifying the Sterling Arms SA 102 as prohibited is *ultra vires* s.117.15 of the Criminal Code and therefore violates the sole jurisdiction of Parliament to legislate under s.91 of the *Constitution Act*, 1867.
63. A declaration that s.96 of the May 1, 2020 Regulation is void for vagueness.

64. A declaration that the May 1, 2020 Regulation is of no force and effect as per s.2 of the *Canadian Bill of Rights* due to it infringing upon s.1(a) of the *Canadian Bill of Rights*.
65. An interim-injunction preventing the May 1, 2020 Regulation from having any force or effect in the Province of Alberta until the entirety of the herein proceedings are complete.
66. Costs.
67. Any other relief the Court deems fit.

Affidavit or other evidence to be used in support of this application:

68. Affidavit of the Applicant, James Cox, to be filed.
69. Affidavit of the Applicant, Steven Arena, to be filed.
70. Transcripts from any examinations arising in this proceed, to be filed.
71. Brief of the Applicants, inclusive of a "Brandeis Brief", to be filed.
72. Any other materials filed and the Court so permits.

Applicable Acts and regulations:

73. *Constitution Act*, 1867.
74. *Constitution Act*, 1982.
75. *Canadian Bill of Rights*.
76. *Criminal Code*.
77. *Fire Arms Act*.
78. *Statutory Instruments Act*.
79. *Judicature Act*, R.S.A. 2000 Ch. J-2.
80. *Alberta Rules of Court*, Alta. Reg. 124/2010.
81. May 1, 2020 Regulation.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).