

# CONSOLIDATED REFERENCE HEARING UNDER S. 74 OF THE FIREARMS ACT

## AGREED MEMORANDUM OF FACT

### THE NATURE OF THE S. 74 APPLICATION

1. The Application is for an order pursuant to section 76 of the *Firearms Act* that a licence for a class of firearm be issued and a registration of a firearm or firearms be issued to the Applicants.
2. The handguns in issue in this Application have a barrel length equal to or less than 105 mm and/or are designed or adapted to discharge a 25 or 32 calibre cartridge. For ease of reference, in this Agreed Memorandum of Fact they will be referred to as “12(6) handguns”, despite the fact that in the current *Firearms Act* they are defined in subsection 12(6.1).
3. The Applicants are individuals who acquired and applied to register or did register restricted weapons between February 14, 1995 and December 1, 1998 where such weapons possessed one or more of the following characteristics: a handgun (a) having a barrel length of 105 mm or less; (b) being designed or adapted to discharge 25 calibre ammunition, or (c) being designed or adapted to discharge 32 calibre ammunition, where such individuals had not previously applied for or registered such a handgun before February 14, 1995.
4. The Applicants have each applied for both the issuance of a Possession and Acquisition Licence with privileges to possess and acquire 12(6) handguns and also for re-registration of the 12(6) handgun(s) they had previously acquired between February 14, 1995 and December 1, 1998. In each application for re-registration and licensing endorsement for 12(6) handguns, the Applicants have been refused the re-registration by the Registrar of Firearms and the 12(6)

licence privilege by the Chief Firearms Officer for Ontario.

5. The Applicants have had continuous possession of their handgun(s) since the date of purchase and are now in lawful possession by reason of subsections 72(5) and (6) of the *Firearms Act*, which allows these individuals to continue to possess these firearms pending the final disposition of this reference hearing.
6. An example of a refusal notice issued by the Registrar of Firearms is attached as **Exhibit "A"**. An example of a refusal notice issued by the Chief Firearms Officer of Ontario is attached as **Exhibit "B"**.

### **THE FACTS**

7. At the time of their acquisition of the firearms in issue here, each of the Applicants was the holder of a Firearms Acquisition Certificate (F.A.C.). This enabled each Applicant to acquire these firearms. These handguns were classified as restricted weapons at the time of acquisition.
8. Under the authority of an F.A.C., the Applicants acquired these restricted weapons between the dates of February 14, 1995 and December 1, 1998 and duly registered those restricted weapons that had the particular specifications: 25 calibre, 32 calibre, or barrel length of 105 mm or less.
9. Each firearm in question has been registered and the details of the firearm being make, model, calibre, barrel length, type of action and serial number has been verified by a local firearms officer who physically inspected and received the firearm before delivering the firearm to the licensed individual when the registration and authority to take the firearm to the individual's residence was submitted by that local firearms officer. The registration certificate, being a form C-306 under the *Criminal Code*, was then issued by the Commissioner of the

RCMP who sent a copy to the individual and kept a record of the transfer and details of the registration. These records are now in the possession of the Registrar of Firearms. An example of the Historical Certificate Details which are in the possession of the Registrar of Firearms is attached as **Exhibit "C"**. No notice of revocation of that registration certificate was ever sent to the Applicants.

10. From the date of acquisition and issuance of the certificate of registration for that handgun the Applicants have received no notice revoking their registration.
11. They have all become licencees under the *Firearms Act* to possess and acquire non-restricted and restricted firearms. Some of the applicants may have other prohibited category privileges.
12. On December 1, 1998 the restricted weapons of the Applicants having certain qualities were re-classified from restricted weapons to prohibited handguns pursuant to paragraph (a) of the definition "prohibited firearms" in subsection 84(1) of the Criminal Code.
13. The qualities expressed by paragraph (a) of the definition "prohibited firearms" in subsection 84(1) of the Criminal Code is any one or more of the following: a) having a barrel length of 105 mm or less, b) being designed or adapted to discharge a 25 calibre cartridge, or c) being designed or adapted to discharge a 32 calibre cartridge.
14. The persons owning these 12(6) handguns before December 1, 1998 had been divided into two categories by the *Firearms Act*.
15. Those who had registered or had applied to register prior to February 14, 1995 were given full grandfathered status that would exist as long as that individual remained licensed and at least one firearm of the 12(6) category remained

registered to him or her. There are about 75,000 individuals in this category. No Applicant herein is within that class.

16. The other category was comprised of those individuals who had acquired and registered or applied to register a restricted weapon with the characteristics of a 12(6) handgun between February 14, 1995 and December 1, 1998. The Applicants fall into this category. There are approximately 1400 such individuals; approximately 300 have applied to the courts for a reference hearing pursuant to section 74 of the *Firearms Act*.
17. The Applicants have met the requirements of amnesties that came into force since December 1, 1998.
18. Subsection 12(6) as set out in the *Firearms Act*, S.C. 1995, Chapter 39 as originally enacted was as follows:

***GRANDFATHERED INDIVIDUALS -- PRE-FEBRUARY 14, 1995 HANDGUNS***

***(6) A particular individual is eligible to hold a license authorizing the particular individual to possess handguns that have a barrel equal to or less than 105 mm in length or that are designed or adapted to discharge a 25 or 32 calibre cartridge and for which on February 14, 1995 a registration certificate under the former Act had been issued to or applied for by that or another individual if the particular individual***

***(a) on February 14, 1995***

- (i) held a registration certificate under the former Act for one or more of those handguns, or***
- (ii) had applied for a registration certificate that was subsequently issued under the former Act for one or more of those handguns;***

***(b) on the commencement day held a registration certificate under the former Act for one or more of those handguns; and***

***(c) beginning on the commencement day was continuously the holder of a registration certificate for one or more of those handguns.***

19. On May 10, 2003, Bill C-10A received Royal Assent by Parliament, and moved the date for grandfathering from February 14, 1995 to December 1, 1998. This

amendment reads as follows:

14. Subsections 12(6) and (7) of the Act are replaced by the following:  
(6) A particular individual is eligible to hold a licence authorizing that particular individual to possess a handgun referred to in subsection (6.1) if

(a) on December 1, 1998 the particular individual

(i) held a registration certificate under the former Act for that kind of handgun, or

(ii) had applied for a registration certificate that was subsequently issued for that kind of handgun; and

(b) beginning on December 1, 1998 the particular individual was continuously the holder of a registration certificate for that kind of handgun.

(6.1) Subsection (6) applies in respect of a handgun

(a) that has a barrel equal to or less than 105 mm in length or that is designed or adapted to discharge a 25 or 32 calibre cartridge; and

(b) in respect of which

(i) on December 1, 1998 a registration certificate had been issued to an individual under the former Act,

(ii) on December 1, 1998 a registration certificate had been applied for by an individual under the former Act, if the certificate was subsequently issued to the individual, or

(iii) a record was sent before December 1, 1998 to the Commissioner of the Royal Canadian Mounted Police and received by that officer before, on or after that date.

20. Each individual has now received a Possession and Acquisition License (P.A.L.) for non-restricted and restricted firearms under the *Firearms Act*.
21. Each individual has applied to have his or her P.A.L. endorsed with the 12(6) privilege.
22. The Applicants all possess class 12(6) handguns, they purchased them when they were the holders of an F.A.C. and the guns were registered under the *Criminal Code*, then the law changed. Pursuant to subsections 72(4), (5) and (6) of the *Firearms Act*, the Applicants are exempt from criminal prosecution for possession of their prohibited handguns while this Reference hearing is pending and until a reasonable period of time after the Reference is finally disposed of.

23. In order to lawfully possess a non-restricted, restricted or prohibited firearm, an individual must hold a licence to possess that kind of firearm, and must hold a registration certificate for each firearm possessed. The Chief Firearms Officer for a province is responsible for issuing firearms licences, whereas the federal Registrar of Firearms is responsible for issuing registration certificates. The licence relates to the individual, and the registration certificate relates to the firearm(s).

### **A SHORT LEGISLATIVE HISTORY**

24. The *Firearms Act* received first reading in the House of Commons on February 14, 1995. The Act included amendments to the *Criminal Code* which would reclassify 12(6) handguns from “restricted weapons” to “prohibited firearms”. Individuals, including all of the Applicants in the Consolidated Reference Hearing, who first acquired 12(6) handguns after the legislation was tabled, were given specific notice upon applying for registration certificates that legislation was pending before Parliament which, if passed, would reclassify those handguns. The individuals were advised that if the legislation passed they would not qualify to possess such handguns and that they would not be compensated for their investment in such handguns. Examples of the notice that was given are attached as **Exhibit “D”**.
25. Since December 1, 1998, the regulation of firearms in the possession of individuals in Canada has been governed by the *Firearms Act* (the “Act”). Prior to then, firearms regulation had been exclusively provided for under Part III of the *Criminal Code* (referred to herein as “the former *Criminal Code* regime”).
26. When the Act came into force on December 1, 1998, subsection 12(6) (“the grandfathering provision”) provided that individuals who had possessed registration certificates for short-barrelled 25 or 32 calibre handguns under the

former *Criminal Code* regime became eligible for licence privileges and continued to be eligible for registration certificates for those handguns under the new Act only if:

1. On February 14, 1995 (the day of first reading of the Act) the individual held, or had applied for and was subsequently issued, a registration certificate under the former *Criminal Code* regime for such a handgun;
  2. The individual held a registration certificate for such a handgun on December 1, 1998; and
  3. Beginning on December 1, 1998, the individual was continuously the holder of a registration certificate for such a handgun.
27. Thus, individuals who legally possessed 12(6) handguns on or before February 14, 1995 and who met the other conditions noted in paragraph 28 above were “grandfathered” under the new Act. They were eligible to lawfully retain their 12(6) handguns and could, for the most part, acquire more and dispose of some as long as at least one remained registered to him or her.
28. Since all of the Applicants first acquired their 12(6) handguns after February 14, 1995, they necessarily applied for and their registration certificates were necessarily issued after February 14, 1995. These registrations were issued for these handguns as being restricted weapons. An example of how the original application to register was made by an Applicant is attached as **Exhibit “E”**.
29. Legislative efforts were made to extend grandfathering privileges to individuals like the Applicants, who had acquired their 12(6) handguns after February 14, 1995 but before the new Act reclassifying them as prohibited came into force on December 1, 1998.
30. First, an amnesty period was granted by the Governor-in-Council to allow individuals like the Applicants to be free from criminal prosecution for possession

of 12(6) handguns, as long as they were dealing with the handguns in accordance with the amnesty. The amnesty period began December 1, 1998 and it was continued by a series of successive orders until it finally expired on December 31, 2005. A copy of the “Order Declaring an Amnesty Period” is attached as **Exhibit “F”**.

31. During the amnesty period and beginning in March 2001, amendments to the grandfathering provision of the *Firearms Act* were proposed in the House of Commons. Bill C-15, An Act to amend the *Criminal Code* and to amend other Acts (the *Criminal Law Amendment Act, 2001*), was introduced in the House of Commons and given first reading on 14 March 2001. The House of Commons passed a motion on 26 September 2001 directing the Standing Committee on Justice and Human Rights to split Bill C-15 into two separate bills. The Standing Committee reported back to the House on 3 October 2001, indicating that it had divided Bill C-15 into two bills: Bill C-15A, An Act to amend the *Criminal Code* and to amend other Acts; and Bill C-15B, An Act to amend the *Criminal Code* (cruelty to animals and firearms) and the *Firearms Act*.
  
32. Bill C-15B reintroduced measures contained in Bill C-17 - “An Act to amend the *Criminal Code* (cruelty to animals, disarming a peace officer and other amendments) and the *Firearms Act* (technical amendments)” - which was introduced in the previous Parliament but which died on the Order Paper at dissolution. Bill C-15B also proposed further amendments to the *Firearms Act*. The highlights of the bill were:
  1. amending the provisions dealing with cruelty to animals, for example by providing a definition of “animal”, creating a new part to the *Criminal Code* for these offences, and increasing the maximum penalties that were available; and
  2. making a series of amendments to the *Firearms Act* and the firearms related provisions of the *Criminal Code*.

33. Bill C-10, An Act to amend the *Criminal Code* (cruelty to animals and firearms) and the *Firearms Act*, was introduced and deemed to have passed all stages in the House of Commons on 9 October 2002. This bill originated with Bill C-15, An Act to amend the *Criminal Code* and to amend other Acts (the *Criminal Law Amendment Act*, 2001), which was introduced in the House of Commons and given first reading on 14 March 2001.
34. Bill C-10 reintroduced measures originally contained in Bill C-15B's predecessor, Bill C-17 - "An Act to amend the *Criminal Code* (cruelty to animals, disarming a peace officer and other amendments) and the *Firearms Act* (technical amendments)" - which was introduced in the previous Parliament but which died on the Order Paper at dissolution. Bill C-10 (as did Bill C-15B) also proposed further amendments to the *Firearms Act*. The highlights of the bill were:
1. amending the provisions dealing with cruelty to animals, for example providing a definition of "animal", creating a new part to the *Criminal Code* for these offences, and increasing the maximum penalties that were available; and
  2. making a series of amendments to the *Firearms Act* and the firearms-related provisions in the *Criminal Code*.
35. The Senate Standing Committee on Legal and Constitutional Affairs considered Bill C-10 in November 2002 and decided it was to be divided into Bill C-10A and Bill C-10B. Bill C-10A took forward the *Firearms Act* revisions and Bill C-10B dealt with animal cruelty.
36. Bill C-10A amended the grandfathering provision by effectively moving the grandfathering date from February 14, 1995 to December 1, 1998. The amendment ("the new grandfathering provision") is currently in force and provides that an individual is entitled to licence privileges to possess a prohibited

handgun only if:

1. The individual held, or had applied for and subsequently received, a registration certificate under the former *Criminal Code* regime for such a handgun on December 1, 1998; and
2. The individual was continuously the holder of a registration certificate for such a handgun from December 1, 1998 onward.

*Firearms Act, as amended, s. 12(6), s. 12(6.1)*

37. While Bill C-10A was still being considered by Parliament, all registration certificates which had been issued under the former *Criminal Code* regime were deemed by the *Firearms Act* to expire on December 31, 2002.

*Firearms Act, s. 127(2) (b)*

38. Prior to the deemed expiry of registration certificates on December 31, 2002, the Registrar of Firearms invited individuals like the Applicants to re-apply to register their prohibited handguns before December 31, 2002 in the event that Bill-C10A, which was then before Parliament, was passed and would extend grandfathering privileges to them. Attached as **Exhibit "G"** is an example of the letter inviting re-registration.

39. The Applicants' applications for new registration certificates were refused by the Registrar of Firearms before December 31, 2005, when the amnesty expired. The Registrar did not issue refusals prior to that time as the Registrar was aware of the potential for legislative amendment that might have made the refusals unnecessary. These refusals, once issued, gave rise to the Applicants' right to a reference hearing under s. 74 of the Act. The Applicants have also applied to the Chief Firearms Officer of Ontario for the addition to their licences of the privilege to possess and acquire prohibited handguns. Those applications were received by the Chief Firearms Officer in February of 2007. Those applications have been considered by the Chief Firearms Officer; the Chief Firearms Officer has

determined that none of the Applicants is grandfathered under the Act and therefore none is eligible to hold such a licence; refusals have been issued by the Chief Firearms Officer; and those refusals are also now before the court on this Consolidated Reference Hearing, pursuant to s. 74 of the Act.

40. Some members of Parliament made efforts to introduce legislative amendments that would have allowed individuals like the Applicants to obtain licence privileges and registration certificates for their prohibited handguns. The Applicants' situation was raised and discussed at meetings of the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. At meetings on June 28, 2005 and November 15, 2005, the House Standing Committee voted against pursuing legislative amendments to address the Applicants' situation.
  
41. A Private Member's Bill was also introduced in an effort to remedy the situation of non-grandfathered individuals such as the Applicants. Bill C-433, "*An Act to Amend the Firearms Act (registration of handguns)*" received first reading in the House of Commons on October 26, 2005. It would have allowed individuals like the Applicants to obtain licence privileges and renewed registration certificates for prohibited handguns under the Act. That proposed legislation died when Parliament was dissolved on November 29, 2005, and has not been reintroduced.

### **List of Exhibits**

**Exhibit A:** example of a refusal notice issued by the Registrar of Firearms

**Exhibit B:** example of a refusal notice issued by the Chief Firearms Officer of Ontario

**Exhibit C:** example of a “Historical Certificate Details” print-out

**Exhibit D:** examples of the “Notice to Prospective Handgun Purchasers”

**Exhibit E:** example of an original application to register

**Exhibit F:** “Order Declaring an Amnesty Period”, SOR 98/467

**Exhibit G:** example of the “Notice – Important Message Regarding the Re-Registration of Handguns”