

**ONTARIO COURT OF JUSTICE
(Toronto Region)**

**IN THE MATTER OF THE CONSOLIDATED FIREARMS REFERENCE HEARING
TO A JUDGE to review the refusal to issue a license and the refusal to issue a registration
certificate pursuant to section 74 of the *Firearms Act* 1995 c.39 with respect to section 12(6)
category firearms**

BETWEEN

HER MAJESTY THE QUEEN

RESPONDENT

- and -

LARRY WHITMORE ET AL

APPLICANTS

FACTUM OF THE APPLICANTS

TO:

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Respondents

AND TO:

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PREAMBLE AND BACKGROUND

THE NATURE OF THE APPEAL

1. The action is for the issuance of a license for a class of firearm and the issuance of a registration of a firearm or firearms be issued to the applicants herein. The applicants herein did apply to register or did register handguns between February 14, 1995 and December 1, 1998 where such handgun possessed one or more of the following characteristics: 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 an applicant had not previously applied for or registered such a handgun before December 1, 1998, and also that such individual had remained licensed and in continuous possession of such handgun since registration and had applied to re-register such handgun pursuant to the *Firearms Act* S.C. 1995 C.39, as amended by Bill C-10A.

PART I - THE FACTS

2. The applicants herein at all material times were appropriately licensed to acquire restricted firearms and thereafter to possess restricted firearms and 12(6) handguns which are a specific category of prohibited firearms.

3. The applicants herein acquired while licensed with a Firearms Acquisition Certificate (F.A.C.) restricted handguns between the dates of February 14, 1995 and December 1, 1998 and duly registered those restricted handguns.
4. The applicants first applied to register their guns as a restricted between February 14, 1995 and December 1, 1998.

5. The applicants then applied to re-register before December 31, 2002.
6. The applicants believe the original certificate (C-403) is valid and have received no revocation of registration.
7. They were told by government communication to re-register the gun before December 31, 2002. Re-registration is not inconsistent with the registration being it either existing or not existing. All restricted and prohibited firearms were to be re-registered regardless.
8. From the date of acquisition and issuance of the certificate of registration for that handgun the applicants have been continuously registered and received no notice revoking their registration. None have been prohibited from having firearms.
9. On December 1, 1998 the restricted handguns having certain qualities were re-classified from restricted handguns to prohibited handguns by section 12(6) of the *Firearms Act* S.C 1995, C. 39 (This may also be referred to as Bill C-68).
10. The qualities expresses by section 12(6) of the *Firearms Act* is any one or more of the following: a) having a barrel length of 105 mm or less; b) being .25 calibre; or, being c) .32 calibre.
11. Antiques are not included in this class. No license or registration is required to acquire or possess a handgun manufactured prior to 1898 if the calibre is a .32 calibre rimfire, a .25 calibre rimfire or having a barrel length of 105 mm or less (excepting those handguns that is of a calibre set out in paragraphs 6 and 7 of a Regulation prescribing antique firearms, SOR/98-464).
12. The persons owning these 12(6) category handguns before December 1, 1998 had been divided into two categories by the *Firearms Act*.
13. 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.
14. The other category were those individuals who had registered or applied to register a restricted handgun with the characteristics of a 12(6) handgun between February 14, 1995 and December 1, 1998.

15. The applicants are of the latter category and have met the requirements of continuous licensing and registration, applications and amnesties that came into force since December 1, 1998.
16. Section 12(6) as set out in the *Firearms Act* S.C. 1995 Chapter 39 is as follows:
"(6) GRANDFATHERED INDIVIDUALS -- PRE-FEBRUARY 14, 1995 HANDGUNS -- 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.
7. NEXT OF KIN OF GRANDFATHERED INDIVIDUALS -- PRE-FEBRUARY 14, 1995 HANDGUNS --A particular individual is eligible to hold a licence authorizing the particular individual to possess a particular handgun referred to in subsection (6) that was manufactured before 1946 if the particular individual is the spouse or a brother, sister, child or grandchild of an individual who was eligible under this or that subsection to hold a license authorizing the individual to possess the particular handgun."
17. On May 10, 2003 Bill C-10A was passed by Parliament to allow for the full grandfathering of the applicants by moving 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.

(7) A particular individual is eligible to hold a licence authorizing the particular individual to possess a particular handgun referred to in subsection (6.1) that was manufactured before 1946 if the particular individual is the spouse or common-law partner or a brother, sister, child or grandchild of an individual who was eligible under this subsection or subsection (6) to hold a licence authorizing the individual to possess the particular handgun."

18. The applicants meet the criteria to be issued licenses with 12(6) status and to have their 12(6) firearms purchased between February 14, 1995 and December 1, 1998 registered because they had applied in a timely fashion before December 31, 2002

for a registration certificate under the *Firearms Act* and since January 1, 2001, were licensed and have been continuously licensed and registered within the meaning of Bill C-10A.

19. There was also a further exemption made by regulation SOR/98-465 to exempt certain 12(6) category prohibited handguns such that any person having a license (P.A.L.) to acquire restricted firearms could legally purchase and register particular prohibited handguns that were within the 12(6) category because such listed handguns were used in International Shooting Sport Federation competitions. These were barrels under 105 mm or .32 calibre; over 30 handguns were listed.
20. Despite the passage and enactment of Bill C-10A, section 14, which provides for all persons who purchased restricted handguns prior to December 1, 1998 that had 12(6) characteristics of barrel length of 105 mm or less, or .25 calibre or .32 calibre and those persons, being the applicants herein, being continuously licensed, having applied timely for their handguns to be registered in the new system of registrations, the respondents have failed to issue registration certificates or to amend the applicants' firearms license to reflect their status as being grandfathered under section 12(6).
21. The applicants are entitled under C-10A to have their firearms license endorsed so as to include category 12(6) handguns. Such licensing is the first and necessary step in registration and upon being so licensed are entitled to have the new registration(s) for their 12(6) category handgun(s) issued. This is not inconsistent with the original registration still existing.
22. C-10A was intended by Parliament to extend the full grandfathering to the applicants by changing the date for 12(6) grandfathering from February 14, 1995 to December 1, 1998.
23. C-10A was passed by Parliament and is supported by Parliament.
24. The intention of Parliament that the purpose of Bill C-10A was to grandfather those individuals who had legally registered category 12(6) handguns is manifest in the statements of the Bill C-10A, the preamble, the press releases and backgrounders of the Parliament of Canada and the Canada Firearms Centre.

25. Throughout the present website of the Canada Firearms Centre are statements in press releases and backgrounding documents since 2003 to date that assert the grandfathering date has been moved from February 14, 1995 to December 1, 1998 so that those people can be licensed and registered. This is a prolific representation by the respondents of the entitlement to the grandfathered license status and registration of the applicants herein.
26. 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 prior act, was then issued by the Registrar of Firearms who sent a copy to the individual and kept a record of the transfer and details of the registration. No notice of revocation of that registration certificate was ever sent to the applicants. The applicants' position is that original registration is still valid.
27. The applicants have now received either a Possession Only License (P.O.L.) or a Possession and Acquisition License (P.A.L.) for non-restricted and restricted firearms under the *Firearms Act*.
28. The applicants have applied or is entitled to have his or her P.O.L. or P.A.L. endorsed with the 12(6) status for possession (for a P.O.L.) or possession and acquisition (for a P.A.L.)
29. The Registrar of Firearms has maintained a computerized database of licensed firearms owners and their firearms that were registered under the old act and the current *Firearms Act*. The Registrar still maintains that list of registrations and that is supported by the report of the Auditor General of Canada of 2006. That maintenance of such information is both a de facto and de jure registration of the 12(6) firearm of the applicants.
30. The Registrar of Firearms is able to search the database by date, barrel length, calibre, type of firearm to yield a report of such individual firearms and their owners complete with address of the owner.

31. The respondents state in Business Bulletin 52 and Bulletin to Police No. 67 that the amnesty will not be extended. The respondents also state therein that the purpose of the amnesty was "to allow time for some legislative and regulatory changes to go through the necessary parliamentary process." That statement, the applicants herein submit, refers directly to Bill C-10A, section 14.
32. The respondents, in the special Bulletin to Police No. 67 dated November 24, 2005, now take the position that the category 12(6) handguns are grandfathered but the individual applicants are not. The respondents also clearly state therein: "once the amnesty expires, individuals who were protected by the amnesty will be subject to the same penalties as any other individual if they are in possession of a prohibited handgun without the required license privileges and registration certificates".
33. These would be the prosecutions under sections 91, 92, 93, 94 and 95 of the *Criminal Code of Canada*.
34. The applicants were given an amnesty because they were issued a registration certificate or "who had applied for a registration to be issued". That shows the "gap" is recognized as giving protection and no one is prejudiced by government delay. That shows the registration certificate is treated as being valid and not as having expired because there is no distinction between valid and expired, the amnesty treats those certificates issued prior to December 1, 1998 as valid.

PART II - ISSUES

35. Are the applicants entitled to be issued a license and registrations for category 12(6) prohibited handguns?
36. Is section 127 of the *Firearms Act of Canada* unconstitutional?

PART III - SUBMISSIONS

37. Pursuant to Bill C-10A the grandfathering was extended from February 14, 1995 to December 1, 1998.
38. This made each individual eligible to be licensed for 12(6) category handguns and to have his or her handgun in that category registered.

39. The failure to issue a license to the individual falls on the Chief Firearms Officer for individuals in his or her province. *Firearms Act*, s. 56(1)
40. The failure to issue the replacement registration for the individual's 12(6) category handgun falls upon the Registrar of Firearms (*Firearms Act*, s. 60), the Commissioner of Firearms and Her Majesty the Queen through the Minister of Public Safety and Emergency Preparedness Canada.
41. Under the *Firearms Act* an eligible person must have his or her license issued and his or her registration issued.
42. Parliament has spoken clearly on the change in the date of grandfathering. Bill C-10A makes December 1, 1998 the grandfathering date.
43. The failure or neglect in issuing the licenses and registrations puts the individuals at grave risk of criminal prosecution and loss of their rights under the *Canadian Charter of Rights and Freedoms* beginning January 1, 2006.
44. Where an individual has a registration or license application refused or revoked the Registrar shall give notice with reasons by section 72 of the *Firearms Act*. Then the individual would apply for a hearing before a Provincial level judge pursuant to sections 74 through 76. The notice has been given yet it came so late as to have estopped the respondent. The lateness is an abuse of process.
45. The individual applicants have been in undisturbed peaceful and lawful possession of these particular handguns since between February 14, 1995 and December 1, 1998. That is a period of between 13 years to 9 years and 1 month by the time of trial. In that time the applicants have lawfully possessed these firearms without any criminal sanction and without any deprivation of their property.
46. The individuals have been protected by licenses, registrations, amnesties all of which ran out December 31, 2005. There is no evidence to show they pose a danger to themselves or any other person even now.
47. If this application is not successful all of the individuals can face criminal prosecution, arrest, loss of liberty, loss of property and criminal sanctions with all of the prejudice that entails to the individual. The impact of such criminal

prosecution is immediate and enormous to the individuals and they are only protected by section 74 of the *Firearms Act*.

48. Chief Justice Dickenson in R. v. Oaks explained the prejudice of facing a criminal prosecution as follows: "An individual charged with a criminal offense faces grave social and personal consequences, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social, psychological and economic harms."

R. v. Oaks 1986 1 S.C.R. 103

49. Parliament sought to protect them under Bill C-10A but the respondents refuse or neglect to implement the will of Parliament to extend the protection of licensing and registration to the individual applicants.
50. The respondents are the administrators of the licensing and registration system and are doing no act to protect the individuals in this class. They defy the will of Parliament by refusing or neglecting to issue the licenses and registrations to which the applicants herein are entitled.
51. Other persons in this same situation have been licensed and their 12(6) handguns were registered.
52. The *Firearms Act* has granted or deemed licenses and registrations to be in existence since it was proclaimed on December 1, 1998. I refer to the words of the *Criminal Code*, section 98 and the *Firearms Act*, section 120.
53. In the year 2005 the respondents implemented a "load levelling" project to stagger the expiry date of all individuals with a firearms license and without the licensed individuals having applied the respondents unilaterally extended the firearms licenses of many individuals for periods of one to five years.
54. These examples are given to show the court that the firearms licensing and registration system is flexible and has made practical adaptations to preserve the rights of licensed individuals, so that the court can see that granting the relief of licensing the applicants and having a re-registration document issues is not contrary to the public interest.
55. The court must also be aware that the applicants herein are not the only persons in Canada who own 12(6) category handguns. At the present time there are

approximately 75,850 individuals who were grandfathered to own and acquire more 12(6) firearms because those individuals had registered, or applied to register, such handguns prior to February 14, 1995.

56. It is submitted that the position as stated in the recent special bulletins (No. 67 for police and No. 52 for businesses) states an absurd and legally embarrassing position that the category 12(6) prohibited handguns of the applicants' class are grandfathered but the individual applicants are not grandfathered.
57. It is submitted that in this situation where Bill C-10A section 14 has moved the grandfathering date to December 1, 1998 and the public information of intent and purpose of the Parliament of Canada to make the change in the grandfathering of category 12(6) firearms being promulgated by the Parliament of Canada and the Canada Firearms Centre it is unreasonable that a person's liberty, freedom from unreasonable search and seizure and imprisonment being some of the rights of the individual as enunciated in the *Canadian Charter of Rights and Freedoms*, sections 7, 8, 10 and 11, would be infringed upon because of the failure or neglect of the respondents to license the individuals and register their handguns as set out by Bill C-10A, section 14. Such harm to the individual is irreparable. The court is urged to interpret Bill C-10A so as to minimize how an individual's *Charter* rights are infringed.
58. Pursuant to section 24(1) of the *Charter* a person may apply to a court for a remedy where his or her rights are being infringed.
59. It is submitted that it is appropriate for the court to recognize those inalienable individual *Charter* rights by granting licensing to the applicants and registering their 12(6) category handguns.
60. The prejudice that will be experienced by the individual applicants is that of criminal prosecution under sections 91, 92, 93, 94 or 95 of the *Criminal Code of Canada* is an irreparable harm.
61. The only cause for such exposure to criminal prosecution is the failure of the respondents to issue licenses for the individual applicants to possess their category 12(6) handguns, and to issue registration certificates for each individual's category 12(6) handguns as required by Bill C-10A, section 14.

62. It is stated that to so refuse or neglect to issue the license and registration as authorized by Bill C-10A section 14, is such an egregious abuse of process and abuse of the duties imposed on the applicants herein under the *Firearms Act* that the court should step in to assist the applicants who are at dire risk of criminal prosecution and the attendant loss of their liberty, possessions, reputation and jobs which Bill C-10A as enacted by the Parliament of Canada, seeks to protect.
63. It is submitted that the statements of support by members of the 37th Parliament are persuasive in aiding the court in determining the will of Parliament and the entitlement to licensing, registration and necessary privileges set out in Bill C-10A.
64. The public is not prejudiced by the relief requested in this application because the Parliament of Canada passed Bill C-10A section 14 to protect the interests of all Canadians. The relief merely maintains the status quo that has existed for between 9 years or as much as 13 years.
65. The regulations in respect of these category 12(6) handguns provide that such handguns be possessed only at the registered address of the individual owner, which can be his or her home or place of business. When at such a place the handgun must be safely stored by being firstly unloaded, then either locked so as to immobilize its use and being so locked be in a locked container that is not easily broken into; or, be locked in a vault or a safe.

Regulation SOR/98-209

66. The applicants have Authorizations to Transport (A.T.T.) their restricted and prohibited handguns to a licensed range for target practice such can only be transported if unloaded, rendered inoperable by a locking device and placed in a locked opaque container and then so transported in the most direct manner to the shooting range and back with only the individual to whom they are registered.
67. It is submitted that these regulations which have been obeyed by the applicants in the class for between 9 to 13 years is sufficient to protect the interests of the public in respect of the safety of the applicants herein.

INTERPRETATION OF BILL C-10A

68. In determining the effect of Bill C-10A, the court has to interpret Bill C-10A. The respondents take the position that Bill C-10A was "enacted too late" and that therefore a "gap" beginning January 1, 2003 and running to May 10, 2003 exists during which time the applicants' 12(6) category firearms were not registered and they were not licensed and therefore they were not "continuously licensed or registered" within the meaning of 12(6).
69. This argument fails on several points. The first point is that the respondent, the Registrar of Firearms, maintained the detailed list of the 12(6) firearms for the applicants. This list was highly detailed and had full particulars of the firearm. This list was seen to be maintained by the Auditor General of Canada in her 2006 report. As well the records of the Canada Firearms Centre on each of the applicants show that firearm in detail.
70. The applicants have not received a revocation of their original registration. Although section 127 of the *Firearms Act* states that the registration may expire by operation of law that is contrary to the normal application of property law and expropriation law and is contrary to the *Universal Declaration of Human Rights of the United Nations* to which Canada is a party. As well, the Registrar of Firearms has a form to revoke registrations when a license expires yet that was not done for the applicants.
71. It is submitted that the 12(6) firearms of the applicants were registered when acquired and that those registrations have continued to be in effect, do exist and that because there has been no notice of revocation of the original registrations that there is no gap and the new certificates and endorsements to the Possession Only License or Possession and Acquisition firearms license is to be given.
72. This is premised on evidence that no revocation was sent, that section 127 of the *Firearms Act* is unconstitutional or an abuse of process and that the Registrar of Firearms still maintains a detailed list of each 12(6) firearm regardless of when it was purchased.

INTERPRETATION OF BILL C-10A CAN BE RETROACTIVE

73. The *Firearms Act*, c. 39, 1995 is in and of itself retroactive legislation when any part of section 12 is considered. Each subsection deals with prior licensing and registration status of an individual on a prior date to determine a present license eligibility. The date of February 14, 1995 as in section 12(6) was in fact a date prior to the first reading of the *Firearms Act*. The first reading was February 18, 1995.
74. The prior dates are referenced to protect the interests in property of those firearms owners who legally acquired the specified firearms, as well their right or privilege to maintain such a license and registration for that firearm and to acquire other firearms in that class are protected by the original 12(6).
75. This is done always with a view to public safety in section 5 of the *Firearms Act* and is mindful of the safe storage regulations for firearms. Those provisions ensure public safety.
76. Bill C-68 which is the *Firearms Act* was also applied retroactively to create this conundrum the applicants are found in.
77. Bill C-68 was first introduced into Parliament February 14, 1995 yet did not receive Royal Assent until December 3, 1995. Then it was not proclaimed law until December 1, 1998.
78. The law relied on by the respondents to not issue the licenses and new registration certificates (Bill C-10A) is also capable of that same retroactive interpretation. When that is done there is no impediment to the respondents issuing the licenses and registrations
79. That being so, it is reasonable that section 14 of C-10A is likewise retrospective or retroactive so as to protect the right of property and the right not to be jailed, property seized or prosecuted for the safe possession and use of a handgun where such possession and use has been protected by the *Firearms Act* through deeming provisions and amnesties for as much as 10 years 10 months to today's date.
80. The persons who are affected by section 14 in Bill C-10A are mainly having their rights restated by legislation that enables the issuance of a license and registration under the *Firearms Act* for firearms legally acquired while licensed and already under section 109 of the prior *Criminal Code of Canada*.

81. The purpose is to protect that part of the public specifically and thus it is correct to so interpret the legislation with this limited retrospective and retroactive view. To do otherwise is a gross compromise of the will of Parliament as expressed by the words of section 14 of Bill C-10A. Letters of Members of Parliament have been submitted.
82. There is no harm to the general public because the individuals who are entitled to the license and registration by section 14 of Bill C-10A meet the section 5 criteria of the *Firearms Act* and are bound by law to adhere to the safe storage use and transportation regulations to maintain their license and registration. In fact they have been granted Authorities to Transport (A.T.T.) these prohibited handguns to licensed firing ranges and those A.T.T.'s remain valid today.
83. It is a fact that over 75,000 other individuals are fully grandfathered and have such prohibited handguns and continue to meet the safety requirements of the *Firearms Act* and therefore there is not public risk. Those individuals with 200,000 category 12(6) prohibited handguns.
- Testimony of Hon. Paul H. Macklin on June 28, 2005, Standing Committee on Justice*

STATUTORY INTERPRETATION, ANOTHER PERSPECTIVE:

84. The leading case is Rizzo & Rizzo Shoes (Re) wherein at paragraph 21 Justice Iacobucci (S.C.J.) states:
- "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."
- Rizzo & Rizzo Shoes 1998 1 S.C.R. 27
85. Further, every act shall be deemed to be remedial.
86. The overall scheme of the *Firearms Act* is to ensure public safety by licensing eligible persons and categorizing firearms and regulating the storage, use and transportation of such firearms.
87. Most importantly, there are grandfathering provisions, all of which are retrospective and have specific requirements as to continuity of license and

registration and characteristics of firearms. 12(6) has always been retrospective February 14, 1995.

88. Of further importance is the staging provisions as set out in the *Firearms Act*, section 126, 127 and the *Criminal Code of Canada*, section 98, and various amnesties. This gradual implementation allowed for an orderly transition.
89. In respect of the applicants herein, their rights and entitlements were protected by the transition provisions that are not diminished today where such right was protected by the amnesty until December 31, 2005. That protection by amnesty is a policy of the applicants as seen in the letters of November 25, 2005 and Special Bulletins of November 29, 2005.
90. Such amnesty has the effect of preserving the rights of the individual applicants. The passage of section 14 of Bill C-10A is a furtherance of that protection.
91. In application of the *Interpretation Act*, I turn to section 10 and direct the Court to focus on the words: "it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning."

Interpretation Act, R.S., c. I-23, sections 10, 12 and 13

92. The context of that true spirit intent and meaning is to provide the protection of grandfathering to the applicants herein and others by granting licenses and registrations to all members of the class.
93. That context is demonstrated in the transition provisions of the *Firearms Act*, the *Criminal Code of Canada* and the amnesty.
94. It is submitted that the true spirit was not to lead the applicants and others on for 9 to 13 years since February 1995 and then surprise them with an ineffectual remedial legislature provision in section 14 of Bill C-10A on one months' notice given at the end of November 2005. That delay denied access to the typical remedies in the *Firearms Act* until the refusals were issued in December 2005 and brings the matter to this Court.
95. In this context it is clear that section 14 was to be fully remedial and to provide that those individuals who registered or applied to register 12(6) category handguns before December 1, 1998 are all to be treated the same. Some persons

in the class have already been given full grandfathering and registration of their category 12(6) handguns and been authorized to acquire category 12(6) handguns since the passage of Bill C-10A.

96. For further clarification, those who registered or so applied between February 14, 1995 and December 1, 1998 were given the same entitlement as those 75,000 to 90,000 who had registered or so applied prior to February 14, 1995 for their 200,000 category 12(6) prohibited handguns that they now are fully grandfathered to hold.
97. That date change is clear on the face of the legislation.
98. The *Interpretation Act* speaks further at section 12 which deems every enactment remedial.

Interpretation Act, Ibid

99. The object of section 14 of Bill C-10A is to grandfather the individuals who registered or applied to register category 12(6) handguns prior to December 1, 1998.
100. The "fair, large and liberal construction" that "best ensures the attainment of its objects" is without question to have licenses and registration issued to the applicants herein in this action.
101. As to section 14's effect on section 12 of the *Firearms Act*, section 12(6.1) states that 12(6) applies to set criteria which define the class of applicants and such eliminates the differentiation among those individuals who registered or applied to register prior to February 14, 1995 and December 1, 1998.
102. It is open to the Court to consider that the applicants are today in lawful possession of the category 12(6) handgun and the registration certificate. No notice of revocation of the certificate under the prior act (*Criminal Code of Canada* prior to 1998) was sent. The amnesty protects the individual and the passage of section 14 of Bill C-10A during the amnesty must be interpreted so as to give full effect to the amended date that gives entitlement to license and registration to each individual applicants herein. Since the amnesty ended, the protection is found in section 74 of the *Firearms Act*.

103. Section 14 of Bill C-10A has an express statement as to a retrospective date, December 1, 1998. That express reference makes section 14 remedial on its face. Such a direct and plain expression of a prior date is clear and unequivocal.
104. It does not denigrate or compromise the grandfathered rights of those who registered or so applied prior to February 14, 1995. It does extend licensing and registration that has been protected by transitional provisions and amnesties, to the applicants herein.
105. The Court can examine the philosophy underlying the *Firearms Act* and Bill C-10A.
- Loewen, Ondaatje, McCutcheon & Co. Ltd. et al v. Frederick H. Sparling et al*
1992 S.C.C.D. 3646-01
106. It is submitted that the philosophy is to grant licenses and registrations to safe persons who must store, use, and transport firearms safely and who include person who have done so historically regarding certain classes of firearms which are defined in section 12(1) to 12(7) of the *Firearms Act*.
107. It is within that philosophy that there is no reasonable impediment that can be submitted without embarrassment or contradiction for the issuance of licenses and registrations to the applicants herein.
108. To differentiate between individuals who registered prior to February 14, 1995 and those who did so between that date and December 1, 1998 is absurd and incompatible with section 14 of Bill C-10A's amendment of section 12(6) of the *Firearms Act*. A broad and generous interpretation should be interpreted.

Rizzo & Rizzo Shoes *Ibid*

RETROACTIVITY IS OK IF REMEDIAL AND SECONDARY

109. A statute can have retroactive effect when that is the intent. The purpose of the law is to be determined and then the law, statute, is to be interpreted so as to give it full effect. So for the only interpretation is by government employees. The only logical interpretation is to give this act C-10A retroactivity to December 31, 2002.
110. Bill C-10A was enacted to correct a matter of property ownership which had occurred in the past and required rectification. The purpose was to provide that

person who owned certain property be registered and that they be able to deal in a certain defined type of property.

111. The recognition of this property license and registration did not derogate any other person's property license or registration. The sole effect was to recognize and legalize the ownership of a sub-class of firearm and the license of the individual. In so doing there was no other person's property taken and no other person's license lessened.
112. The law was to attach a new positive legal consequence to events that had occurred between February 1995 and December 1998. Most of those consequences had been protected and kept legal during a series of amnesties.
113. The retroactivity changes only one law, being a date of February 14, 1995 and moves that date to December 1, 1998. That change recognizes that persons who have legally acquired, stored and used category 12(6) handguns are able to be licensed as members of the "12(6) class" and are able to have their 12(6) firearm re-registered.
114. This is arguably a "secondary retroactivity" because it is meant to allow a person to be of a class of licensee and to provide a re-registration for existing property which will go into the future. The retroactivity is secondary to that prospective intent of the law and is a necessary component of the effectiveness of the new law being C-10A.

THE INTENTION OF PARLIAMENT:

115. It is apparent that the government wished to have these firearms grandfathered. To that end it issued amnesties from year to year extending the deadline to possess without criminality.
116. Then, in the fall of 2002 it gave a notice to the owners, applicants, that they had a deadline of December 31, 2002 to apply to re-register the firearm. This was after Bill C-10A received first reading. Then the applicants did apply to re-register before the December 31, 2002 deadline and the Canada Firearms Centre sat on the application. Thereafter, Bill C-10A was passed in early 2003 and still there was no communication to the applicants for over two years that their former registrations were revoked and that their applications to re-register were rejected.

During that time the amnesty was again extended by the Lieutenant Governor in Counsel. (The Cabinet of Parliament)

117. The first hint of a problem was not an actual refusal to register but a curiously worded letter by Kenneth McCarthy (Exhibit I of Terry Myer's Affidavit) dated November 17, 2005 that was not a "refusal to register" within the meaning of section 72 of the *Firearms Act*. It is submitted that letter was not worded as a refusal to register and did not comply with section 72 of the *Firearms Act* so that the recipient would not access his or her rights to appeal a refusal to register. The actual refusal to register was only given later on December 18, 2005 (Exhibit Q of the Affidavit of T. Meyers) after the decision of Justice Hughes in the Federal Court of Canada sitting in Toronto, Ontario in which the then Registrar of Firearms undertook to the Federal Court to provide a "Notice of Refusal to Issue a Registration Certificate" in correct form.

Decision of Justice Hughes, Federal Court December 2005

118. It is submitted that the intent of Parliament was and is to grandfather these persons with these firearms yet the Registrar of Firearms and the Chief Firearms Officer have a different interpretation to prevent their registration and licensing, respectively.
119. This is in contravention to the will of Parliament which passed remedial legislation and extended amnesties so that the owners of these firearms could continue to use them and possess them legally.
120. The court must differentiate between the acts of the administrative branch of government and the actions and intent of Parliament. The administrative branch has thus far misinterpreted the intent of Parliament.

THE FALLACY OF THE 12(6) FIREARMS BEING UN-REGISTERED:

121. It is submitted that "registered" in its ordinary meaning is: "to record formally and exactly; to enroll: to enter and precisely in a list or the like" [Black's Law Dictionary and Canadian Law Dictionary, J. Yogic Q.C. 1983]; "a record or list of names, events, items" [Websters New World Dictionary 1977]
122. The category 12(6) handguns were precisely identified and verified as to make, model, serial number, type, action, calibre, number of shots, barrel length,

registrant and former owner, given an unique registration number, cross-referenced to date of registration, dates of birth of named registrant, prior certificate number and date of registration.

123. That list is still maintained by the Registrar of Firearms pursuant to his duty under section 83(1) of the *Firearms Act*. No Notice of Revocation has been sent or issued.
124. The Registrar of Firearms has maintained such a list of registered firearms with all such details. These details of registration certificate number, make, model, serial number are clearly repeated on page 2 of the November 25, 2005 letter by the Registrar to the applicants.
125. It is significant that the number, clearly identified as the Registration Certificate Number on page 2 of such letter, shows the same number as the Restricted Weapon Certificate.
126. That it does not say: "expired or revoked certificate number" is an admission that said category 12(6) firearm is presently registered.
127. There is no doubt that the Registrar of Firearms maintains a detailed list of all registered category 12(6) handguns purchased between February 14, 1995 and December 1, 1998.
128. It is an affront to logic that the respondents, and the Registrar of Firearms in particular, can state that any category 12(6) handgun registered, or applied for, between February 14, 1995 and December 1, 1998 is not registered.
129. The Registrar of Firearms has all of the relevant information on each particular firearm and maintains the list and thus is able to communicate with every individual on the list.
130. Section 127 does not exempt the C.F.S. or Registrar from the requirement of giving notice. The Registrar has been giving notice now when license expires and getting notice. Presently if the license expires and eligibility ceases the Registrar gives notice of revocation of certificates (which is "automatic") to individuals and that was not done here. The "historical certificate" does give a date of issue November 13, 1996 but does not give the date of expiry. That registration is therefore current.

THE AUTOMATIC REVOCATION OF THE FIRST REGISTRATION OF THE SUBJECT FIREARMS UNDER SECTION 127 OF THE *FIREARMS ACT* IS ESSENTIALLY FORFEITURE AND UNCONSTITUTIONAL BECAUSE IT IS CONTRARY TO THE FOLLOWING (THE FIREARMS CONTINUE TO BE REGISTERED):

131. Contrary to section 117.05 of the *Criminal Code of Canada* because there is no hearing as to the "safety issues of the owner".
- i) When an item has been seized under section 117.02 an application for an order for the disposition of the firearm must be made by a peace officer under s. 117.05 within 30 days after seizure, with or without a warrant, to fix a date for a hearing to be held with regards to the forfeiture.
 - ii) A notice of the date of the hearing must be served to the person affected as the Justice may specify.
 - iii) Under section 117.05(3), all relevant evidence must be placed before a Judge, including "the value of the thing in respect of which the application was made".
 - iv) The required section 117.05(4) hearing as it requires the Justice to decide whether it is in the interest of safety of the person from whom the firearm was seized to possess it.
 - v) The standard is as stated in section 117 that requires that the officer have reasonable probable grounds that the possession of the firearm by the individual places that individual(s) at a risk of harm. The role of the Court is to determine firstly if there was reasonable probable grounds for such a determination at the time of the seizure to ascertain whether the seizure was lawful.
 - vi) Even if the seizure was justified, the Court must assess the actual risk of possession to the individual or others at the time of the hearing.
 - vii) The latter allows the Court to consider the individual's behaviour since the time of the seizure.
 - viii) A forfeiture under section 117.05 is not to the Crown, but may be an order for a sale with a set time and only in default will there be a forfeiture.

Criminal Code of Canada, section 117

132. Contrary to the principles of Natural Justice, there has been no notice and no opportunity to object and in fact no seizure. By way of analogy, proceeds of crime are treated as follows:
- I) In Part X 11.2, section 462.42 allows for relief from forfeiture by a formal procedure.
 - ii) The procedure outlined in section 462.42 involves an application by a person claiming interest for relief from forfeiture within 30 days after apply to a judge for order declaring interest not subject to forfeiture, which is close to the requirements of Natural Justice.

133. Registration is a record maintained by the Registrar of firearms. The firearms are in a list with full detail and that list is still maintained by the Registrar to this date.

Report of the Auditor General of Canada, May 2006

134. There has been an amnesty announced on May 17, 2006 for all persons who had a Possession Only Licence (P.O.L.) or a Possession and Acquisition License (P.A.L.) under the *Firearms Act* to be able to possess their non-restricted firearms without registration until May 17, 2007. The applicants herein seek full protection thereunder. This is a continuation of the tradition of amnesties that existed for 12(6) category firearms set out elsewhere.

SOR/2006-95 May 17, 2006

135. It is submitted that the correct method of revocation is as follows:
- I) The revocation procedure starts with a decision that the individual is no longer eligible to own that firearm pursuant to section 70.
 - ii) Under section 72 of the *Firearms Act*, in the event of a revocation the Chief Firearms Officer or Registrar must give notice of their decision to revoke.
 - iii) Once notice has been given, one is provided with the ability to hold the firearm pursuant to section 72(4), (5) and (6) until a full hearing under section 74 is completed in respect of the revocation..

- iv) It is submitted that section 127 of the *Firearms Act* ignores the above issues to be taken into consideration when forfeiture of firearms is of issue.

136. Unreasonable to lose property without compensation:

- i) In the case of R. v. Sheldrake, it was decided that even though the firearm in question was categorized as a "prohibited weapon" under section 84 of the *Criminal Code of Canada* and ordered to be forfeit to the Crown, it was still subject to the Attorney General paying compensation to the applicants for the amounts paid by them for the guns forfeited.

R. v. Sheldrake (1991) 13 W.C.B. (2d) 250

137. Contrary to the principles of dealing with "forfeiture" or expropriation as set out in the *Expropriation Act*:

- i) Under the *Expropriation Act*, the term "expropriated" is defined as "to be taken by the Crown".
- ii) It is submitted that the terms "forfeiture" and "expropriation" are equivalent expressions.
- iii) The *Expropriation Act* sets out a mandatory procedure for dealing with registered real property and it is also submitted that registered personal property should be subject to the same procedure.
- iv) Section 5(1) of the *Expropriation Act* states that if land is required by the Crown for a public work or other public purpose there may be a request from the Minister to the Attorney General of Canada to register a notice of intention to expropriate the interest.
- v) Upon notice being given as required under section 5(1), sections 5(1), 8, and 9 apply.
- vi) Section 5(2) requires the Attorney General of Canada to furnish the Minister with a report setting out the names and latest known addresses of persons appearing to have any rights, estate or interest in the land, so that they can begin actual notice and be able to respond to it.
- vii) Under section 7, the nature of interests to be expropriated that may be set out in a notice of expropriation.

- ix) Pursuant to section 8 once the notice under section 5(1) has been registered the Minister is required to cause a copy of the notice to be sent to each of the persons whose names appear on the report given to the Attorney General of Canada, as soon as practicable after the registration of the notice.
- x) Sections 8(3) and 9 state every notice is required to be accompanied by a statement that allows the person affected by the proposed expropriation to object; according to section 9, the person who objects to the intended expropriation may serve the Minister an objection in writing within 30 days of the notice indicating their grounds for the objection and the nature of their interest in the intended expropriation.
- xi) Once the Minister has been served with the objection under section 9 of the *Expropriation Act*, an order of a public hearing shall be ordered by the Minister with respect to the objection and a hearing officer shall be appointed.
- xii) Once the hearing has been completed and a notice of confirmation of intention has been registered by the Attorney General pursuant to section 14, the Crown shall apply compensation to anyone who (immediately before registration of the notice of confirmation) was the owner of the right, estate or interest in the land. (section 25)
- xiii) The compensation value of an expropriated property is market value which is determined by reference to the rules in section 26.
- xiv) A person who is entitled to compensation in respect to an expropriated property may (at any time) if no offer has been accepted by him or if an offer has been accepted, within one year commence proceedings in the Court by statement of claim for the recovery of the amount of compensation to which he is then entitled. (section 31)
- xv) It is submitted that section 117 of the *Criminal Code of Canada* which lays out the procedure for seizure and forfeiture, is comparable to the rules on expropriation of land and other interests to the Crown that require that a notice be given to appropriate persons affected; that a hearing be held in

response to an objection by interested person; and if a notice of confirmation of intention has been issued, that procedures for appropriate compensation be followed.

- xvi) The rules of Natural Justice are closely codified by the *Expropriation Act* and are also adhered to by section 117 of the *Criminal Code of Canada*.

Expropriation Act R.S.O. 1990 c. E.26

138. No distinguishing as to how the item(s) was seized or even if it was seized is recognized by section 127 of the *Firearms Act*.
- i) If items were seized under section 117 of the *Criminal Code of Canada*, then all of section 117 is to be adhered to, including the requirement of an application for disposition by the peace officer under section 117.05
 - ii) If the complete requirements of section 117 are not complied with, then section 117.06 states that the justice may order that the revocation be reversed and that the authorization, license or registration certificate be restored.
 - iii) Section 117.06 states that any "thing or document seized" with respect to section 117.04(1) or (2) (application for warrant to search and seize) shall be returned to the person from whom it was seized if there was no application made under subsection 117.05 within the 30 days after the execution of the warrant or of the seizure without a warrant.
 - iv) Furthermore, any thing or document seized shall be returned if an application made under subsection 117.05(1) within the 30 day period, and the justice does not make a finding of forfeiture and prohibition to possess a firearm.

It is emphasised that no firearm has been seized from any of the applicants herein.

139. No revocation of registration certificate was issued for those guns registered prior to December 31, 1998.
- i) Sections 71(1) and 71(2) of the *Firearms Act* prescribe that there are three ways in which registration certificates can be revoked which are discretionary, mandatory and automatic.

- a) Discretionary: under section 71(1) the Registrar may revoke a registration certificate for any good and sufficient reason.
- b) Mandatory: the Registrar shall revoke a registration certificate once informed by a Chief Firearms Officer that certificate holder is not using the restricted firearm or 12(6) handgun for the reasons originally stipulated.
- c) Automatic: occurs pursuant to section 71(2) upon a change or alteration in the prohibited firearm.

140. Contrary to section 8 of the *Canadian Charter of Rights and Freedoms* which states that everyone has the right to be secure against unreasonable search and seizure, it is unreasonable and unconscionable that a search and seizure which is to follow the rules prescribed in section 117 of the *Criminal Code of Canada* leads to forfeiture without notice or a hearing as described in the latter paragraph.

141. If a firearm is taken under section 117.02 of the *Criminal Code of Canada*, yet no return made:

- i) where a firearm is seized and section 8 of the *Canadian Charter of Rights and Freedoms* is breached, it can be admitted as evidence under section 24(2), yet the seizure warrant was not lawful, and therefore should not have sections 115 and 116 apply.
- ii) section 24(2) does not overcome the lawfulness of the seizure expect to say it becomes evidence.
- iii) section 24(2) does not say the gun is subject to a section 115 or 116 forfeiture order.
- iv) Furthermore, if under section 117.06 a said firearm is returned because there was no section 117.05 timely application made, then the seizure was not "lawful throughout".

Canadian Charter of Rights and Freedoms, sections 8 and 24

Criminal Code of Canada, section 117

142. Therefore, taking into account the latter paragraphs and the implications they pose, it is submitted that section 127 of the *Firearms Act* is invalid and of no effect.

143. Section 127 of the *Firearms Act* eliminates the ownership of private property being registered firearms without notice to the individual owner.

Criminal Code of Canada, section 115 and 116

144. The *Canadian Charter of Rights and Freedoms* states that freedom from unreasonable seizure is a right.

Canadian Charter of Rights and Freedoms, section 8

145. It is submitted that the loss of property without notice, seizure or adherence to review procedures is unreasonable.

146. The process of confiscation of property under common law, Canadian law, and international law (*United Nations Universal Declaration of Human Rights*), requires as a fundamental beginning that notice of the confiscation be made to the owner and that thereafter the opportunity for a hearing with evidence and argument be conducted prior to a decision for or against confiscation.

United Nations Universal Declaration of Human Rights

147. The *United Nations Universal Declaration of Human Rights* in Article 17(2) states: "No one shall be arbitrarily deprived of his property."

United Nations Universal Declaration of Human Rights, IBID

148. The proposition under the effect of section 127 of the *Firearms Act* that a person can lose legally owned property without specific notice or a hearing to consider the loss of property is abhorrent to the principles of natural justice.

149. Natural justice requires that notice of the intention to confiscate, expropriate or forfeit be given to the owner or possessor who then has opportunity to review the reason for the intended confiscation, to submit evidence and conduct an unbiased hearing with respect to the proposed confiscation.

150. Yet all of the procedures of Natural Justice are lacking in section 127 of the *Firearms Act*.

151. Considering that in the present fact situation the applicants herein are licensed for firearms and his firearms have not been seized, there is no reason in fact or law to have his legally owned property forfeit to the state.

152. The point is that the 12(6) firearms were not seized and the section 117 provisions have not been adhered to.

Criminal Code of Canada, section 117.06

153. Without reference to whether the ownership of firearms is a right or a privilege and based on the acceptance of the point that the applicants herein are persons licensed, hence being given the privilege, to purchase and possess non-restricted, restricted firearms and prohibited firearms the following is submitted.
154. The individual applicants can presently acquire and possess the firearms that they have applied for registration of. They can go out today and purchase each firearm. Some have guns of the one characteristics pursuant to section 12(7). All are eligible to purchase 12(7) category and antiques with the 12(6) characteristics of .25 cal., .32 cal. or less than 105 mm. barrels.
155. It is absurd in the extreme that such property as he has is being denied registration given their present ability to purchase those firearms today in all classes including prohibited.
156. It is submitted that it is cruel and unusual in the extreme to deprive a person or his or her property without due process of law; such a forfeiture is contrary to section 12 of the *Canadian Charter of Rights and Freedoms*.
157. It is submitted that when the registration of a firearm ends under section 127 of the *Firearms Act*, that notice of such "revocation" of license by the Registrar of Firearm still has to be given to the registered owner under section 72. In fact, that is now the policy of the Registrar of Firearms. Such notices have been sent to over 60,000 firearms owners since January 1, 2006. It is submitted that such is an act of revocation under the *Firearms Act* such that sections 71 and 72 apply and as well, the principles of fundamental justice.

Firearms Act, S.C. 1995 c. 39, as amended, sections 127, 71 & 72

158. Additionally, the Canada Firearms Centre has begun sending notices of revocation to other individuals where their licenses expired since late fall 2005 yet that was not done in respect of the applicants herein in 2003, 2004 or early 2005. That confusing policy indicates that the Canada Firearms Centre did not treat the applicants herein as they are now treating persons whose licenses have expired. That uneven treatment indicates that the Canada Firearms Centre had the intent to follow Bill C-10A. There is also a document of the Canada Firearms Centre that

indicates that it took no action on the applicants herein until late spring 2005 as it waited to decide how to deal with him and others. During that time the applicants herein were treated as having full rights of licensing and registration for his 12(6) handguns.

OWNERSHIP AND REGISTRATION:

159. These are two different but interlinked concepts. The applicants have always been owners in possession. The evidence is their registration certificates, C-306. Yet the government treats them as an owner in possession even when their “registration expired automatically” December 31, 2002.
160. The ability to own and possess was protected by amnesties, they were written to be the Canada Firearms Centre as an owner in possession several times after registration expired and today they are before the court as legal owners in possession.
161. C-10A was meant to keep such an owner in possession free from criminality and to allow the government to issue a registration to a legal owner in possession to keep him or her free from criminality by recognizing his privilege to keep a particular firearm.
162. That is the intent of C-10A and the amnesties and s. 72 where the applicants still have protection.
163. The respondent’s position is that once their registrations were “automatically revoked” (without notice and contrary to the advice they were given to re-register, even the 2002 letter did not give notice of the pending automatic expiry and consequences), they were not entitled to “grandfathering” by a new registration certificate, yet they were still owners and per the November 27, 2005 letter they had options and per the December 18, 2005 refusal they had options, because they were owners in possession.
164. That means C-10A’s “error” or “gap” of 5 months did not deprive them of ownership or possession.

IF HANDGUN IS GRANDFATHERED THEN SO MUST THE INDIVIDUAL BE GRANDFATHERED:

165. In a November 25, 2005 letter Mr. Ken McCarthy, former Registrar of Firearms, in paragraph (b) states that an applicant can sell or give his or her category 12(6) handgun to an already grandfathered individual. This is safely stated to be one of the 75,0000 to 90,0000 individuals who were granted full category 12(6) status for 200,000 such prohibited firearms because they had registered at least one category 12(6) handgun before February 14, 1995.
166. That position is an admission by the respondent, the Registrar of Firearms, that the category 12(6) handgun first registered to the applicants after February 14, 1995 yet before December 1, 1998 is in and of itself grandfathered.
167. The respondents at the same time take the position that such handgun cannot be registered by the applicants because of the gap of the gun losing its deemed registration at midnight December 31, 2002. That is the root of the position of the respondents for the ineligibility of the applicants.
168. It is submitted that if the main root of the respondents's argument is that the firearm become un-registered on January 1, 2003 and then Bill C-10A does not revive or remedy the loss of registration in May 2003 then no one can subsequently have that prohibited firearm registered, yet the Registrar clearly, publicly states that such "un-registered prohibited handgun" can be registered by another person.
169. That can only be interpreted as all category 12(6) handguns registered or applied therefore between February 14, 1995 and December 1, 1998 are grandfathered objects.
170. It is submitted to the Court that when the respondent, the Registrar of Firearms, admits that such category 12(6) handguns, being in the possession of each member of the class is grandfathered that so must the individual be grandfathered.
171. That, I submit, is evidence that the grandfathering of the 12(6) handgun registered prior to December 1, 1998 is to be extended as well to the individual who was such registrant.
172. It is embarrassing and fatal to the position of the respondents to argue that the firearm is grandfathered yet the individual is not. That inconsistency casts a

spotlight on the weakness of the case the respondent's interpretation of Bill C-10A.

173. It is submitted that since the December 1, 1998 category 12(6) handgun is at law grandfathered and can be registered, the individual who so registered it prior to December 1, 1998 is entitled to be so licensed. Clearly there is no threat to public safety in the existence of the gun or its registration to another "grandfathered" person who is no different in respect to public safety, the only difference being that such "grandfathered" individual purchased a 12(6) handgun before February 14, 1995.
174. It is submitted that any characterization of the 12(6) firearms as being only for an illegal or dangerous purpose ignores the legitimate use of these firearms in P.P.C., I.P.S.C., cowboy shooting sports and other internationally recognized firearms sporting events that are conducted in Canada at licensed shooting ranges under sanction of Canadian and international shooting sports bodies.
175. The failure to provide the license to the individual and the registration certificate to that individual is the breach that is one complaint. The other complaint is the failure to license and register the individual is a breach of the individual's rights under the *Canadian Charter of Rights and Freedoms*, section 7 through 11 and section 24(1) because it exposes a person who legally purchased and continued to legally possess his or her property to criminal sanctions pursuant to Part III of the *Criminal Code*.

VESTED RIGHTS AND PRIVILEGES OF REGISTRATION AND LICENSING:

176. Sections 72(4), (5) and (6) allow the applicants to maintain possession of their category 12(6) handguns, then that is an admission that the status quo is to be maintained. More will be specifically addressed on this point later in these submissions.
177. It is submitted that if the position of the respondents is that sections 72(4), (5) and (6) allow every person keeping his category 12(6) handgun, such is consent to the applicants who request relief to maintain the status quo.
178. Legislation that existed prior to enactment is not removed by subsequent legislations.

Karras v. Richter 1995 S.J. No. 388

179. The prior act (*Criminal Code of Canada*, section 109, refer to a 1997 *Criminal Code*, conferred on the registrant the full right of ownership. For that purpose and during the currency of the former Act, a registration certificate for C-306 was issued to the applicants herein.

Criminal Code of Canada (1997), section 109

180. That ownership, which by necessity after December 1, 1998, required a license and a registration was conferred in the deeming provisions of the *Firearms Act*, sections 126, 127 and 128, and the *Criminal Code of Canada*, section 98.
181. That ownership was also preserved by the amnesty SOR/98-467 and subsequent extensions of that amnesty.
182. The respondent's interpretation of section 14, Bill C-10A focuses on the phrase "continuously registered" and then relies on section 127(2)(b) of the *Firearms Act* to place the applicants in the position that because their registration certificates expired December 31, 2002 and Bill C-10A was not enacted until May 2003 then that 5 month gap negates the eligibility of the applicants under 12(6) as amended by section 14 of Bill C-10A.
183. The question is: Is that reasonable as an interpretation of section 14 of Bill C-10A given the time elapsed, the safety provisions, the reliance of the respondent, the intent of Parliament and the acts and statements of the respondents that the gap between December 31, 2002 and May 2003 negates the eligibility of the applicants herein.
184. The respondents would have the court look at the "gap" and then conclude the applicants are ineligible.
185. It is submitted that section 14 of Bill C-10A is declaratory and recognizes and fully legalizes an existing factual possession. Such interpretations have been used to preserve possessory rights.

Quebec (Attorney General) v. Healey 1987 1 S.C.R. 158

186. Yet the applicants accrued certain rights due to the peaceable and safe possession of a legally acquired firearm. Such rights become vested by time and compliance with the *Firearms Act*. Such rights were further protected by the amnesty that

extends to December 31, 2005; whether it is a right or a privilege this same argument is emphasized as correct.

187. Rights and privileges are preserved by sections 72(4), (5) and (6) where an action has begun under section 74.
188. The respondents have de facto recognized that right to own, possess, use and transport category 12(6) handguns of the applicants by recognizing that the amnesty gives protection to December 31, 2005 and after that the protection is under section 72 of the *Firearms Act*.
189. That de facto recognition of the protection of the amnesty and the *Firearms Act* belies the position of the respondents that the December 31, 2002 date for expiry of the deemed registration is of consequence.
190. If the respondents acted and announced and adhered to their position that the expiry of the registrations were on December 31, 2002, then the passage of section 14 of Bill C-10A would not support the amnesty because those persons who held their 12(6) category handguns would not have the protection of the amnesty where they applied for registration thereof.
191. That is because even at May 2003 the respondents position of ineligibility of the applicants would lead to the respondents not recognizing the amnesty running to December 31, 2005.
192. The only logical reason the respondents relied on the amnesty protecting the applicants is due to the eligibility of the applicants extending beyond the expiry of the deemed registrations on December 31, 2002. An amnesty to protect people (the applicants) who are a danger to the safety of Canadian society is an absurd suggestion.
193. That is, in review of the amnesty, section 3 thereof does not protect the holder of a 12(6) handgun purchased between February 14, 1995 and December 1, 1998 only by reason of application for re-registration under the *Firearms Act*. Instead the holder has to be doing one or more of items (a) through (f). I suggest that those applying were not doing any of (a) through (f), but were awaiting licensing and registration under section 14 of Bill C-10A amendments.

194. When the respondents made announcements as in Special Bulletin for Clubs and Ranges No. 10, Special Bulletins for Police No. 67 and Special Bulletins for Businesses No. 52, they state their position that the amnesty protects the applicants. Nowhere in any of those three bulletins, each dated November 29, 2005, is there a statement that the individual applicants, or others, are ineligible under the amendment to the 12(6) category by section 14 of Bill C-10A.
195. That effectively estops the applicants herein from advancing that position vis-a-vis the applicants.
196. The respondents also recognized the individual right to possess of the applicants by sending a notice dated November 25, 2005 signed by the Registrar of Firearms. Again the ineligibility was not made out.
197. Having failed to expressly inform the applicants of their ineligibility yet stating that section 14 of Bill C-10A moved the date from February 14, 1995 to December 1, 1998, the respondents have failed to communicate any ineligibility to the applicants. It shows the respondents interpreted eligibility of the applicants that supports the issuance of the 12(6) license endorsement and the re-registration certificate.
198. Had ineligibility been the true position of the respondents it would be expected that the communication of that position to the applicants would be clear, express and unambiguous and been at the earliest possible date when the respondents took that position.
199. Yet the communication is ambiguous at best.
200. Moreover, the communication to the clubs, ranges and individuals varies greatly from the Special Bulletin No. 67 to the Police. The Police Bulletin is clear when it states: "once the amnesty expires individuals who were protected by the amnesty will be subject to the same penalties as any other individual if they are in possession of a prohibited handgun without the required license privileges and registration certificate". That is a clear statement to the police of the police ability on January 1, 2006 to arrest, seize and prosecute the members of the class. (Note it does not inform the police of the protection afforded the applicants pursuant to section 74 of the *Firearms Act*.)

201. By comparison the wording in Special Bulletin No. 52 is silent as to criminal penalty.
202. The respondents were being less than candid in their communication to the applicants and are estopped from taking a position before the Court that is inconsistent with their stand on the amnesty.
203. The protection in the amnesty is recognition of the entitlement of the applicants to continue to own, possess, use and transport category 12(6) handguns until December 31, 2005. That is likewise a recognition that, notwithstanding the expiry of the deemed registration on December 31, 2002 by section 126(2) of the *Firearms Act*, the applicants herein have a vested right or privilege to own, possess, use and transport handguns.
204. Moreover, Authorizations to Transport (A.T.T.) were issued after December 31, 2004 allowing the applicants to transport prohibited handguns registered to their residence. If the respondents had relied on the expiry of the deemed registration being ineffective after December 31, 2002 then such A.T.T.'s could not have issued, yet such A.T.T. is an "endorsement" on the underlying Possession Only License or Possession and Acquisition License of the individual and by issuing A.T.T.'s to transport prohibited category 12(6) handguns of those who registered between February 14, 1995 and December 1, 1998, there is a recognition of a vested right to the license after December 31, 2002 which estops the respondents from stating the gap between December 31, 2002 and May 2003 proclamation of Bill C-10A is of any consequence.
205. Had the respondents been of the belief an applicant was ineligible to be grandfathered after the passage of section 14 of Bill C-10A then they would have stated he was ineligible due to the gap caused by the expiry of the deemed registration and refused to grant such an Authority to Transport.
206. Some were even given A.T.T.'s to move the 12(6) handguns to a new residence by specific reference to its registration number on the original C-306 registration certificate.

207. Obviously the respondents believed that the applicants were eligible under section 14 of Bill C-10A to be grandfathered and believed therefore that the gap was of no consequence whatsoever.
208. That being the position of the respondents by actions in March 2004, it is too late to now say they are of a different position.
209. If the respondents state they "made a mistake" or other statement of error to explain such an act or other acts inconsistent with their position on the "gap" then the respondents should be viewed as disingenuous as to their present position that the "gap" created ineligibility.
210. Nor should the respondents say they made a mistake. They are the administrators of the Act and have the statutory duty of acting in a manner that is within the Act. Their actions define the application of the Act. The respondents cannot one day say "we shall give license and registration recognition and eligibility after December 31, 2002" on one day and then on following days say "we've made a mistake, oops" so as to deprive the applicants of what had become a vested right or privilege.
211. It is submitted that where a person acquires a firearm prior to the date of proclamation of the act and has applied prior to proclamation that the applicants herein are entitled to have the license and registration issued.
212. In the case of a person who acquired a machine gun in 1977 and applied prior to the *Firearms Act* of 1978 becoming into force the court held that the delay by the administration (being the Registrar of Firearms) in issuance of the registration so that the act came into force before the Registrar issued the registration did not deprive the applicant of his ability to have the firearm registered. The court directed the Registrar to issue the registration to the applicant.

Haines v. R.C.M.P. 1979 47 CCC 2d 548

213. It is submitted that where a person is able to acquire and possess other prohibited firearms, or has prior to February 14, 1995 been the registered owner of 12(6) category firearms, that such person, including the applicants herein, are able to be both licensed for category 12(6) firearms and their present 12(6) firearm acquired prior to December 1, 1998 be registered.

NATURE OF THE HEARING - A SECTION 74 HEARING:

214. The onus is upon the applicant.

Firearms Act s. 75(3)

215. The court can hear all relevant evidence.

Firearms Act s. 75(2)

R. v. Zeolokowski Supreme Court of Canada, May 18, 1989

Seifried v. Her Majesty the Queen Judgement February 16, 2000, Oshawa

216. The standard is whether or not the Registrar's or the Chief Firearms Officer's finding was justified with the court being able to take into account evidence that the Registrar did not consider at the time of the decision. The hearing is de novo in nature.

BALL - Reference - Firearms Act Decision on Procedure Ontario Court of Justice, Owen Sound, Madame Justice Julia Moreau, October 2000

R. v. TSAPOITIS [1999] O.J. No. 1913

WRIGHT (Re.), [2000] A.J. No. 524 (Alta. Prov. Ct.)

CLARK v. SASKATCHEWAN (Chief Firearms Officer), [1999] S.J. No. 882

R. v. KIESWETTER before The Honourable Mr. Justice C.R. Westman August 29, 2001 at Kitchener, Ontario

R. v. MESSINA before The Honourable Mr. Justice J.F. Kenkel on January 25, 2002 at Newmarket, Ontario

PART IV - ORDER REQUESTED

1. That a licence to acquire and possess section 12(6) firearms be issued to the applicants herein.
2. That a registration of all firearms of the applicants herein that are within section 12(6.1) be issued.
3. That section 127 of the *Firearms Act of Canada* of no effect.

PART V - AUTHORITIES TO BE REFERRED TO

1. *Firearms Act*, S.C. c. 39. s. 12(6), 69 to 76, 120, 5, 71, 72, 74 and 127
2. Bill C-10-A (title, preamble, section 14)

3. Amnesty SOR/98-467
4. Regulation on Safe Storage of Firearms SOR/98-209
5. Regulation SOR/98-464 (antiques)
7. *Criminal Code of Canada*, sections 91 to 95, 98, 515, 115, 116, 117, 462.42, 810 and 732
8. *Canadian Charter of Rights and Freedoms*, sections 7, 8, 10, 11 and 24
9. R. v. OAKES 1986 1 S.C.R. 103
10. Rizzo & Rizzo Shoes 1998 1 S.C.R. 27
11. Interpretation Act, R.S., c. I-23, sections 10, 12 and 13
12. Loewen, Ondaatje, McCutcheon & Co. Ltd. et al v. Frederick H. Sparling et al 1992
S.C.C.D. 3646-01
13. Decision of Justice Hughes, Federal Court - December 2005
14. Report of the Auditor General of Canada, May 2006
15. SOR/2006-95 May 17, 2006
16. R. v. SHELDRAKE (1991) 13 W.C.B. (2d) 250
17. Expropriation Act R.S.O. 1990 c. E.26
18. United Nations Universal Declaration of Human Rights
19. KARRAS v. RICHTER 1995 S.J. No. 388
20. Quebec (Attorney General) v. HEALEY 1987 1 S.C.R. 158
21. HAINES v. R.C.M.P. 1979 47 CCC 2d 548
22. R. v. ZEOLOKOWSKI Supreme Court of Canada, May 18, 1989
23. SEIFRIED v. Her Majesty the Queen Judgement February 16, 2000, Oshawa
24. BALL - Reference - Firearms Act Decision on Procedure Ontario Court of Justice,
Owen Sound, Madame Justice Julia Moreau, October 2000
25. R. v. TSAPOITIS [1999] O.J. No. 1913
26. WRIGHT (Re.), [2000] A.J. No. 524 (Alta. Prov. Ct.)
27. CLARK v. SASKATCHEWAN (Chief Firearms Officer), [1999] S.J. No. 882
28. R. v. KIESWETTER before The Honourable Mr. Justice C.R. Westman August 29, 2001
at Kitchener, Ontario
29. R. v. MESSINA before The Honourable Mr. Justice J.F. Kenkel on January 25, 2002 at
Newmarket, Ontario

Dated: December 7, 2007.

All of which is respectfully submitted.

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