

COURT OF APPEAL FOR ONTARIO

CITATION: Canada (Attorney General) v. M.C., 2023 ONCA 448

DATE: 20230621

DOCKET: COA-22-CV-0431

Roberts, Trotter and Sossin JJ.A.

BETWEEN

His Majesty the King (Attorney General of Canada)

Appellant

and

M.C., C.H., D.J., B.M. and R.S.

Respondents

John Provart, James Schneider, and James Stuckey, for the appellant

M.C., C.H., D.J., B.M. and R.S., acting in person

Heard: June 16, 2023

On appeal from the order entered on November 3, 2022 by Justice Antonio Skarica of the Superior Court of Justice, with reasons reported at 2022 ONSC 6299, dismissing a *certiorari* application of the order entered on January 6, 2022 by Justice Anthony F. Leitch of the Ontario Court of Justice.

**Trotter J.A.:**

[1] This appeal arises from proceedings that the respondents commenced under the *Firearms Act*, S.C. 1995, c. 39. At the conclusion of the hearing, the Attorney General of Canada's appeal was allowed, with reasons to follow. These are those reasons.

## Background

[2] On May 1, 2020, the Governor in Council, by Order in Council SOR/2020-96, amended the regulations under the *Firearms Act: Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, SOR/98-462 (the “Order in Council”). As a result of these amendments, certain firearms that had previously been classified as restricted or non-restricted were immediately reclassified as “prohibited” for the purposes of the *Firearms Act* and under the *Criminal Code*, R.S.C. 1985, c. C-46. As such, these firearms are incapable of being legally possessed. The respondents are owners of such firearms.

[3] On the same date, by SOR/2020-97 and in accordance with s. 117.14(3) of the *Criminal Code*, an amnesty order was put in place to protect affected firearms owners from criminal liability while in the process of dealing with the firearms as permitted by the Order in Council. The original amnesty period was from May 1, 2020 to April 30, 2022. This was extended until October 30, 2023: see SOR/2022-45. In the meantime, the Federal Government is developing a program whereby it will “buy back” the reclassified and now illegal firearms from those affected. This program is yet to be implemented.

[4] On July 20, 2020, the RCMP sent a letter to firearms owners impacted by the amendments that notified them of the regulatory amendments. The letters were sent in the name of the Registrar of Firearms (the “Registrar”). A redacted copy of the letter sent to one of the respondents is appended to this judgment. The parties’ submissions focused on language in the following passage of the letter:

Certain restricted firearms which were registered to you have been affected by the recent regulatory amendments. These firearms, listed below, are now classified as prohibited and the previous registration certificates are automatically nullified and are therefore no longer valid but should be retained as a historical registration record. [Emphasis added.]

The RCMP/Registrar letters also identified the firearm(s) believed to be possessed and registered to the owners.

### **The Legislative Context**

[5] To provide context for what happened next, it is necessary to refer to some features of the *Firearms Act*, which, in conjunction with the *Criminal Code*, regulates the possession of firearms in Canada.

[6] To lawfully possess certain firearms, a person must have a firearms licence and a registration certificate. A firearms licence shows that the licence holder can possess and use certain kinds of firearms; a registration certificate identifies a firearm and links the firearm to its owner. Under the *Firearms Act*, the Chief

Firearms Officer is responsible for the issuance and administration of licences; the Registrar is responsible for registration certificates.

[7] Section 70 provides the Chief Firearms Officer with the power to revoke firearms licences. Section 71(1)(a) furnishes the Registrar with the discretion to revoke a registration certificate for a restricted or prohibited firearm “for any good and sufficient reason”. When the Registrar revokes a registration certificate, it must give notice of their intention to do so “in the prescribed form”: s. 72(1).

[8] Decisions made by the Chief Firearms Officer and the Registrar are reviewable under s. 74 of the *Firearms Act*, which provides:

74(1) Subject to subsection (2), where

(a) a chief firearms officer or the Registrar refuses to issue or revokes a licence, registration certificate authorization to transport, authorization to export or authorization to import,

...

the applicant for or holder of the licence, registration certificate, authorization or approval may refer the matter to a provincial court judge in the territorial division in which the applicant or holder resides. [Emphasis added.]

This procedure is called a “reference”. It is a hearing at which a judge determines whether a refusal or revocation on the part of the Chief Firearms Officer or the Registrar was “not justified”: s. 75(3). The judge has the power to confirm or reverse the decision that is the subject of the reference: s. 76.

### **The Proceedings Below**

[9] Upon receipt of the RCMP/Registrar letter, the respondents each commenced a proceeding under s. 74 of the *Firearms Act*. Their references were grouped together and were being heard at the same time. Each respondent asserted that the letters they received from the RCMP/Registrar amounted to a notice of revocation of their registration certificates under s. 71(1)(a) of the *Firearms Act*.

[10] The Attorney General of Canada applied to the reference judge to quash these proceedings for lack of jurisdiction. It asserted that the letters sent to the respondents did not revoke their registration certificates; the letters were merely informational and had no force of law.

[11] The reference judge did not rule on the jurisdictional issue at that time. Instead, he ordered disclosure of “[a]ll information concerning the development and use of an algorithm used to identify the firearms set out in the letters ... for each of the [respondents].” This order was made in response to a concern raised by the respondents that mistakes might have been made in identifying any specific firearm affected by the Order in Council, even though none of the respondents contended their firearms had been wrongly identified. After making the disclosure

order, the reference judge said he would rule on the jurisdictional issue after disclosure was made.

[12] The Attorney General brought a *certiorari* application in the Superior Court of Justice to set aside the disclosure order. The application judge narrowed the disclosure order somewhat, but otherwise dismissed the application. He addressed the jurisdictional issue in his reasons, finding that the reference judge had jurisdiction under s. 74 of the *Firearms Act*. The application judge found that the language used in the letters – “the previous registration certificates are automatically nullified and are therefore no longer valid” – was akin to a decision to “revoke” the registration certificates within the meaning of s. 71(1)(a) of the *Firearms Act*, thereby triggering jurisdiction under s. 74(1)(a).

[13] In reaching this conclusion, the application judge relied heavily on *Canada (Attorney General) v. Stark*, 2020 ABPC 230. As discussed below, although this decision was affirmed on *certiorari* review in *Canada (Attorney General) v. Smykot*, 2022 ABQB 61, it was ultimately overturned by the Court of Appeal of Alberta in *Canada (Attorney General) v. Smykot*, 2023 ABCA 131 (“*Smykot ABCA*”).

## **The Appeal**

[14] The Attorney General appeals the dismissal of its *certiorari* application. In its written materials, the Attorney General submitted that the application judge should

not have decided the jurisdictional issue. It claims that the issue was not properly before the application judge, and that the Attorney General was not given notice that the issue would be decided, nor the opportunity to properly make submissions.

[15] From my review of the transcript of the proceedings, the application judge attempted to engage counsel for the Attorney General on this issue on a number of occasions, but he was met with some resistance. Counsel preferred to focus on the disclosure issue. Even though I respectfully disagree with his conclusion on the matter, the application judge was right to focus on the jurisdictional issue as a precondition to assessing the validity of the disclosure order. Indeed, it would have been preferable had the reference judge first resolved the jurisdictional issue before making the disclosure order.

[16] In any event, by the time the appeal was heard, the position of the Attorney General had shifted. Relying on *Smykot ABCA*, it sought a determination of the jurisdictional issue in this court.

[17] In my view, it is appropriate to resolve the jurisdictional issue on this appeal. It was a live issue before the application judge. All parties had the opportunity to make submissions on this threshold issue before this court. There would be little point in returning these cases to the reference judge for a decision on jurisdiction, only to have them eventually return to this court through another round of litigation.

Moreover, it makes little sense to determine the validity of the disclosure order without resolving the issue of whether the reference judge had jurisdiction in the first place. As I explain below, he did not.

### **Analysis**

[18] Like the application judge, the respondent gun owners place great reliance on the decision of the reference judge in *Stark*. But as already noted, that decision was overturned in *Smykot ABCA*, a judgment that I find to be highly persuasive.

[19] The respondents submit that jurisdiction under s. 74 of the *Firearms Act* was triggered because, as indicated by the letter, the Registrar had made individualized decisions with respect to their specific firearms. This was the conclusion reached in *Stark*, at para. 54. The reference judge in that case further held that, while SOR/2020-96 reclassified the firearms in question, it was the Registrar who caused the registration certificates to cease to exist by sending the letters to the impacted gun owners. He was fortified in his conclusion by virtue of the fact that the RCMP/Registrar letters said that the relevant registration certificates were “automatically nullified and are therefore no longer valid”, even though neither SOR/2020-96 nor the *Firearms Act* use this language: at para. 51.

[20] The respondents submit that this reasoning is correct and ask this court to apply it to their circumstances.

[21] The Court of Appeal of Alberta disagreed with this approach. Writing for that court, Martin J.A. pointed out that, with the exception of the decision of the application judge in this case, “the decisions under review are also at odds with every other Canadian case that has addressed this issue since the Regulations were proclaimed”: at para. 21. After reviewing some of these decisions, Martin J.A. concluded at paras. 30 and 37:

I too am unable to agree that the July Letter amounted to a decision of the Registrar to revoke the registration certificates under the *Firearms Act*. Instead, I find, as others have noted, that the July Letter was purely informational in nature and simply advised the affected gun owners of the recent legislation that nullified their registration certificates, the amnesty period, and the available options. I agree with those decisions that conclude the nullification of the registration certificates was achieved by SOR/2020-96 and not by the Registrar.

...

Finally, there is no evidence, nor is it suggested by the respondents, that the Registrar initiated the reclassification of the affected firearms, participated in that decision, or was even consulted.

[22] I agree with this line of reasoning. The respondents’ registration certificates became invalid by operation of law; it was not as a result of any function performed by the Registrar. As Latimer J. said in *J.C. v. Canada (Attorney General)*, 2021 ONCJ 118, at para. 5: “What occurred in 2020 with the Firearms Regulations was not an individualized decision, it was a statutory change that impacted an entire

class of individuals – owners of certain types of firearms. Such a decision is not caught by Section 74 of the *Firearms Act*.” Consequently, in these circumstances, there is nothing to confirm, cancel, review, or consider under s. 74 of the *Firearms Act*: see *In The Matter of an Application for a Reference Hearing, Made Pursuant to Section 74(1) of the Firearms Act, R.S.C. 1985*, 2020 CanLII 79410 (NL PC), at paras. 42-44; *R. v. Wyville*, 2020 ONCJ 555. In other words, there is no jurisdiction.

[23] The RCMP/Registrar letter was purely informational in nature. It informed all impacted gun owners of these important regulatory changes and explained that, as a result thereof, their registration certificates were “automatically nullified.” The letter also provided helpful information as to next steps. This was critical because of the potential for criminal liability under ss. 91 and 92 of the *Criminal Code* faced by those who might still be in possession of the subject firearms beyond the amnesty period: *Canada (Attorney General) v. Fritz*, 2021 ONCJ 20, at paras. 18-19.

[24] A change in the law nullified the respondents’ registration certificates. The Registrar was merely the messenger. The reference judge had no jurisdiction to conduct a hearing under s. 74 of the *Firearms Act*, nor to make any other orders, including the disclosure order.

## Conclusion

[25] As noted above, the appeal by the Attorney General was allowed, the decision of the application judge set aside, and the proceedings before the reference judge quashed, including the issuance of the disclosure order.

[26] There will be no order as to costs.

Released: June 21, 2023 “L.B.R.”

“Gary Trotter J.A.”  
“I agree. L.B. Roberts J.A.”  
“I agree. Sossin J.A.”

APPENDIX



Royal Canadian Mounted Police / Gendarmerie royale du Canada

Royal Canadian Mounted Police
73 Leikin Drive, Mallstop 199
Ottawa ON K1A 0R2

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Redacted area containing a name and other information

Table with 2 rows: Date (July 20, 2020) and Licence Number (redacted)

Firearm Registration Certificate Impacted by the Amended Classification Regulations

On May 1, 2020, the Government of Canada amended the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted (commonly referred to as the Classification Regulations).

An Amnesty Order, expiring April 30, 2022, was also issued by the Government of Canada. This Order protects owners from criminal liability for unlawful possession of a newly prohibited firearm if those owners were in lawful possession of one or more of the newly prohibited firearms or prohibited devices on the day the amendments to the Classification Regulations came into force.

Certain restricted firearms which were registered to you have been affected by the recent regulatory amendments. These firearms, listed below, are now classified as prohibited and the previous registration certificates are automatically nullified and are therefore no longer valid but should be retained as a historical registration record.

Table with 5 columns: Registration Certificate Number (no longer valid), Make, Type, Serial Number, Firearms Identification Number. All cells contain redacted information.

The Government has publicly announced that it intends to implement a buy-back program for the newly prohibited firearms. More information on the buy-back program will be available at a later date.

Owners of newly prohibited firearms are:

- To keep them securely stored in accordance with their previous classification.
They cannot be sold or imported.
They may only be transported under limited circumstances.
They cannot be legally used for hunting unless allowed through the Amnesty Order.
They cannot be used for sport shooting, either at a range or elsewhere.

What are your options now?

- Wait for further instructions to participate in the buy-back program.
Have your firearm deactivated by an approved firearms business and advise the Registrar of Firearms once completed.
Legally export your firearm in which case you can engage businesses with the proper firearms licence privilege. Once exported you are requested to advise the Registrar of Firearms.

Registrar of Firearms