

Reference re *Firearms Act* (Can.), [2000] 1 S.C.R. 783

**IN THE MATTER OF Section 27(1) of the *Judicature Act*,
R.S.A. 1980, chapter J-1**

**AND IN THE MATTER OF a Reference by the
Lieutenant Governor in Council to the Court of Appeal
of Alberta for hearing and consideration of the questions
set out in Order in Council 461/96 respecting the *Firearms
Act*, S.C. 1995, chapter 39**

The Attorney General for Alberta

Appellant

v.

The Attorney General of Canada

Respondent

and

**The Attorney General for Ontario, the Attorney General of Nova Scotia,
the Attorney General for New Brunswick, the Attorney General of Manitoba,
the Attorney General for Saskatchewan,
the Government of the Northwest Territories,
the Minister of Justice for the Government of the Yukon Territory,
the Federation of Saskatchewan Indian Nations,
the Coalition of Responsible Firearm Owners and Sportsmen (CORFOS),
the Law-Abiding Unregistered Firearms Association (LUFA),
the Shooting Federation of Canada,
the Association pour la santé publique du Québec inc.,
the Alberta Council of Women's Shelters, CAVEAT,
the Fondation des victimes du 6 décembre contre la violence,
the Canadian Association for Adolescent Health,
the Canadian Pediatric Society, the Coalition for Gun Control,
the Canadian Association of Chiefs of Police,
the Corporation of the City of Toronto,
the City of Montreal and the City of Winnipeg**

Intervenors

Indexed as: Reference re *Firearms Act* (Can.)

Neutral citation: 2000 SCC 31.

File No.: 26933.

2000: February 21, 22; 2000: June 15.

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the court of appeal for alberta

Constitutional law -- Division of powers -- Criminal law power -- Firearms -- Licensing and registration of ordinary firearms -- Whether licensing and registration provisions of Firearms Act intra vires Parliament -- Constitution Act, 1867, s. 91(27) -- Firearms Act, S.C. 1995, c. 39.

In 1995, Parliament amended the *Criminal Code* by enacting the *Firearms Act*. The amendments require the holders of all firearms to obtain licences and register their guns. Alberta referred constitutional questions to the Court of Appeal to determine whether the licensing and registration provisions of the *Firearms Act*, as they relate to ordinary firearms, are *intra vires* Parliament. The majority of the Court of Appeal concluded that the Act is a valid exercise of Parliament's criminal law power. Alberta appealed to this Court.

Held: The appeal should be dismissed. The impugned provisions of the *Firearms Act* are constitutional.

The *Firearms Act* constitutes a valid exercise of Parliament's jurisdiction over criminal law. The Act in "pith and substance" is directed to enhancing public safety by controlling access to firearms. Its purpose is to deter the misuse of firearms, control those given access to guns, and control specific types of weapons. It is aimed at a number of "mischiefs", including the illegal trade in guns, both within Canada and across the border with the United States, and the link between guns and violent crime, suicide, and accidental deaths. The purpose of the *Firearms Act* conforms with the historical public safety focus of all gun control laws. The changes introduced by the Act represent a limited expansion of the pre-existing gun control legislation. The effects of the Act also suggest that its essence is the promotion of public safety. The criteria for acquiring a licence are concerned with safety. Criminal record checks and background investigations are designed to keep guns out of the hands of those incapable of using them safely. Safety courses ensure that gun owners are qualified.

The *Firearms Act* possesses all three criteria required for a criminal law. Gun control has traditionally been considered valid criminal law because guns are dangerous and pose a risk to public safety. The regulation of guns as dangerous products is a valid purpose within the criminal law power. That purpose is connected to prohibitions backed by penalties.

The *Firearms Act* is not essentially regulatory legislation. The Act's complexity does not necessarily detract from its criminal nature. Nor does the law give either the chief firearms officer or the Registrar undue discretion. The offences are clearly defined in the Act. The chief firearms officer and the Registrar are explicitly subject to the supervision of the courts. Further, the law's prohibitions and penalties are not regulatory in nature. They are not confined to ensuring compliance with a scheme, but independently serve the purpose of public safety. Parliament's intention was not to regulate property, but to ensure that only those who

prove themselves qualified to hold a licence are permitted to possess firearms of any sort. Finally, Parliament may use indirect means to further the end of public safety.

The 1995 gun control scheme is distinguishable from existing provincial property regulation schemes. The Act addresses the aspects of gun control which relate to the dangerous nature of firearms and the need to reduce misuse. While ordinary guns are often used for lawful purposes, they are also used for crime and suicide, and cause accidental death and injury. Their control accordingly falls within the criminal law power.

The registration provisions cannot be severed from the rest of the Act. The licensing provisions require everyone who possesses a gun to be licensed; the registration provisions require all guns to be registered. These portions of the *Firearms Act* are both tightly linked to Parliament's goal of promoting safety by reducing the misuse of any and all firearms. Both portions are integral and necessary to the operation of the scheme.

The *Firearms Act* does not trench on provincial powers such that upholding it as criminal law will upset the balance of federalism. The provinces have not established that the effects of the Act on provincial jurisdiction over property and civil rights are more than incidental. First, the mere fact that guns are property does not suffice to show that a gun control law is in pith and substance a provincial matter. Second, the Act does not significantly hinder the ability of the provinces to regulate the property and civil rights aspects of guns. Third, assuming (without deciding) that the provincial legislatures have the jurisdiction to enact a law in relation to the property aspects of firearms, the double aspect doctrine permits Parliament to address the safety aspects of ordinary firearms. Fourth, the *Firearms Act* does not precipitate the federal government's entry into a new field since gun control has been the subject of federal law since Confederation. There is no colourable intrusion into provincial jurisdiction.

The problems associated with the misuse of firearms are firmly grounded in morality. However, even if gun control did not involve morality, it could still fall under the federal criminal law power. Parliament can use the criminal law to prohibit activities which have little relation to public morality.

The apprehensions of northern, rural and aboriginal Canadians that this law does not address their particular needs do not go to the question of Parliament's jurisdiction to enact the law. The cost of the program and the efficacy of the law, or lack thereof, are equally irrelevant to Parliament's ability to enact it under the division of powers analysis. Within its constitutional sphere, Parliament is the judge of whether a measure is likely to achieve its intended purpose.

Cases Cited

Applied: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199; *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213; **referred to:** *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494, 2000 SCC 21; *Whitbread v. Walley*, [1990] 3 S.C.R. 1273; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; *Reference re Anti-Inflation Act*, [1976] 2 S.C.R. 373; *Attorney-General for Alberta v. Attorney-General for Canada*, [1939] A.C. 117; *Texada Mines Ltd. v. Attorney-General of British Columbia*, [1960] S.C.R. 713; *R. v. Schwartz*, [1988] 2 S.C.R. 443; *McGuigan v. The Queen*, [1982] 1 S.C.R. 284; *Attorney General of Canada v. Pattison* (1981), 30 A.R. 83; *Martinoff v. Dawson* (1990), 57 C.C.C. (3d) 482; *R. v. Northcott*, [1980] 5 W.W.R. 38; *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641; *Reference re Validity of Section 5(a) of the*

Dairy Industry Act, [1949] S.C.R. 1; *Standard Sausage Co. v. Lee*, [1933] 4 D.L.R. 501; *R. v. Cosman's Furniture (1972) Ltd.* (1976), 73 D.L.R. (3d) 312; *Scowby v. Glendinning*, [1986] 2 S.C.R. 226; *Westendorp v. The Queen*, [1983] 1 S.C.R. 43; *R. v. Zelensky*, [1978] 2 S.C.R. 940; *R. v. Felawka*, [1993] 4 S.C.R. 199; *R. v. Wetmore*, [1983] 2 S.C.R. 284; *Boggs v. The Queen*, [1981] 1 S.C.R. 49; *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123; *R. v. Furtney*, [1991] 3 S.C.R. 89; *Morgentaler v. The Queen*, [1976] 1 S.C.R. 616; *Lord's Day Alliance of Canada v. Attorney General of British Columbia*, [1959] S.C.R. 497; *Canadian Indemnity Co. v. Attorney-General of British Columbia*, [1977] 2 S.C.R. 504; *Validity of Section 92(4) of the Vehicles Act, 1957 (Sask.)*, [1958] S.C.R. 608; *Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3; *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85; *Attorney-General for British Columbia v. Attorney-General for Canada*, [1937] A.C. 368; *R. v. Chiasson* (1982), 66 C.C.C. (2d) 195, aff'd [1984] 1 S.C.R. 266; *Proprietary Articles Trade Association v. Attorney-General for Canada*, [1931] A.C. 310.

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Firearms Act, S.C. 1995, c. 39, ss. 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 54, 55, 56, 58, 60, 61, 64, 66, 67, 68, 69, 70, 71, 72, 74, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 112, 115.

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APPEAL from a judgment of the Alberta Court of Appeal (1998), 219 A.R. 201, 179 W.A.C. 201, 65 Alta. L.R. (3d) 1, 164 D.L.R. (4th) 513, 19 C.R. (5th) 63, 128 C.C.C.

(3d) 225, [1999] 2 W.W.R. 579, [1998] A.J. No. 1028 (QL), upholding the constitutionality of the licensing and registration provisions of the *Firearms Act*. Appeal dismissed.

Roderick A. McLennan, Q.C., Thomas W. R. Ross and Neal A. McLennan, for the appellant.

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The following is the judgment delivered by

THE COURT --

I. Introduction

1 In 1995, Parliament amended the *Criminal Code*, R.S.C., 1985, c. C-46, by enacting the *Firearms Act*, S.C. 1995, c. 39, commonly referred to as the gun control law, to require the holders of all firearms to obtain licences and register their guns. In 1996, the Province of Alberta challenged Parliament’s power to pass the gun control law by a reference to the Alberta Court of Appeal. The Court of Appeal by a 3:2 majority upheld Parliament’s power to pass the law. The Province of Alberta now appeals that decision to this Court.

2 The issue before this Court is not whether gun control is good or bad, whether the law is fair or unfair to gun owners, or whether it will be effective or ineffective in reducing the harm caused by the misuse of firearms. The only issue is whether or not Parliament has the constitutional authority to enact the law.

3 The answer to this question lies in the Canadian Constitution. The Constitution assigns some matters to Parliament and others to the provincial legislatures: *Constitution Act, 1867*. The federal government asserts that the gun control law falls under its criminal law power, s. 91(27), and under its general power to legislate for the “Peace, Order and good Government” of Canada. Alberta, on the other hand, says the law falls under its power over property and civil rights, s. 92(13). All agree that to resolve this dispute, the Court must first determine what the gun control law is really about – its “pith and substance” – and then ask which head or heads of power it most naturally falls within.

4 We conclude that the gun control law comes within Parliament’s jurisdiction over criminal law. The law in “pith and substance” is directed to enhancing public safety by

controlling access to firearms through prohibitions and penalties. This brings it under the federal criminal law power. While the law has regulatory aspects, they are secondary to its primary criminal law purpose. The intrusion of the law into the provincial jurisdiction over property and civil rights is not so excessive as to upset the balance of federalism.

II. Reference Questions

5 The formal questions put to the Alberta Court of Appeal by the Alberta government in 1996 are attached in Appendix A. Simply put, the issue before us is whether or not the licensing and registration provisions in the *Firearms Act*, as they relate to ordinary firearms, were validly enacted by Parliament. The impugned provisions of the Act are attached in Appendix B.

III. Legislation

6 For many years, the *Criminal Code* has restricted access to firearms, mainly automatic weapons and handguns, by classifying some as prohibited and some as restricted. The *Firearms Act* amendments extended this regulation to all firearms, including rifles and shotguns. As a result, s. 84 of the *Criminal Code* now controls three classes of firearms: (1) prohibited firearms (generally automatic weapons); (2) restricted firearms (generally handguns); and (3) all other firearms (generally rifles and shotguns). The third class of guns is variously referred to as “ordinary firearms”, “long guns”, and “unrestricted firearms”. We will refer to this class as “ordinary firearms”.

7 The reference questions focus on the validity of the licensing and registration provisions for ordinary firearms introduced by the *Firearms Act*. The licensing sections of the Act provide that a person must be licensed in order to possess a firearm. Eligibility for a

licence reflects safety interests. An applicant with a criminal record involving drug offences or violence, or a history of mental illness, may be denied a licence. An applicant who seeks to acquire a firearm must pass a safety course which requires a basic understanding of firearm safety and the legal responsibilities of firearm ownership. The chief firearms officer, who issues licences, may conduct a background check on the applicant in order to determine eligibility, and may attach conditions to a licence. Once issued, a licence is valid for five years, but it may be revoked for contravention of its conditions or for certain criminal convictions. A licence refusal or revocation may be appealed to a court.

8 The registration provisions of the Act are more limited. A firearm cannot be registered unless the applicant is licensed to possess that type of firearm. Registration is generally done by reference to the serial number on the firearm. A registration certificate is valid as long as its holder owns the weapon. If ownership of a registered weapon is transferred, the new owner must register the weapon. In order to give gun owners time to register their weapons, people who owned ordinary firearms as of January 1, 1998 are deemed to hold registration certificates that are valid until January 1, 2003. Possession of an unregistered firearm of any type is an offence. All licences and registration certificates, along with imported, exported, lost and stolen guns, are recorded in the Canadian Firearms Registry, which is operated by a federal appointee.

IV. Reasons of the Alberta Court of Appeal

9 The Alberta Court of Appeal upheld the 1995 gun control law by a 3:2 majority: (1998), 65 Alta. L.R. (3d) 1. The court wrote four judgments.

A. *Majority*

10 Fraser C.J.A., in a comprehensive judgment, began by noting that guns may be regulated by both the federal and provincial governments for different purposes, and that the effectiveness of the law is irrelevant to its constitutional characterization. She found that Parliament's purpose in enacting the law was to enhance public safety. While guns preserve lives and serve as useful tools, they also wound and kill. The latter aspect of guns – their inherent dangerousness – is the focus of the impugned provisions of the Act. Parliament's aim was to reduce the misuse of guns in crime, including domestic violence, as well as to reduce suicides and accidents caused by the misuse of firearms. The licensing provisions, which require applicants to pass a safety course and undergo a criminal record check and background investigation, support this purpose. The registration system, by seeking to reduce smuggling, theft and illegal sales, also addresses misuse. The licensing and registration provisions are inextricably intertwined. While the provisions entail the regulation of property rights, this regulation is the means of the law, not its end. On this basis, Fraser C.J.A. concluded that the Act is in pith and substance designed to protect public safety from the misuse of firearms.

11 Fraser C.J.A. went on to the second step in the analysis: considering whether or not that pith and substance could be allocated to one of Parliament's heads of power under the *Constitution Act, 1867*. She held that the legislation falls under the criminal law power, s. 91(27), under either its "prevention" aspect or its "prohibition, penalty, and purpose" aspect. The law does not represent a "colourable" or improper intrusion into provincial jurisdiction.

12 Berger and Hetherington J.J.A. wrote separate opinions agreeing with the Chief Justice. Hetherington J.A. held that any firearm, used improperly, is dangerous to human life and health. As a result, Parliament's purpose, in seeking to prevent crime and promote public safety by discouraging possession, is a valid criminal law purpose. The potential inefficacy of the law, highlighted by Alberta and the other provincial governments, is irrelevant unless it shows that Parliament had a different purpose – a colourable motive. Colourability has not been

shown because the law genuinely attempts to improve firearms storage, reduce trafficking, and aid in tracking guns generally. While the law may affect property and civil rights, that does not prevent Parliament from enacting it. Hetherington J.A. concluded that the *Firearms Act* contains prohibitions accompanied by penal sanctions, enacted for criminal public purposes, and therefore it is a valid law under the test propounded by La Forest J. of this Court in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, and *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213.

13 Berger J.A. likewise noted that all guns are capable of causing death if misused. He held that Parliament's purpose in enacting the legislation was to ensure that firearms are only possessed by those qualified to use them. The licensing provisions identify those who are qualified. The registration system ensures that only qualified people can acquire firearms. As a prohibition backed by a penalty, for a public purpose, the law is a valid exercise of Parliament's criminal law power. The regulatory aspects of the law are merely the means to an end.

B. *Minority*

14 Conrad J.A. dissented, Irving J.A. concurring. Conrad J.A. broadly defined the purpose of the law as regulating all aspects of the possession and use of firearms. While firearms and safety are subjects of both federal and provincial concern, the criminal law power represents a "carve-out" from provincial jurisdiction. The regulation of ownership rather than use and the complexity of the regulations demonstrate that this legislation cannot be classified as valid criminal law. The *Criminal Code* generally prohibits acts, rather than regulating ownership. Possession itself is not dangerous; it is only misuse that is dangerous, and the law goes far beyond prohibiting misuse. This led Conrad J.A. to conclude that the *Firearms Act* represents a colourable intrusion into the provincial jurisdiction over property and civil rights, and is invalid as an exercise of Parliament's jurisdiction over criminal law or its peace, order and good government power.

While she would have struck down the legislation entirely, she held that if the licensing scheme were deemed valid, the registration scheme could be severed from the licensing scheme.

V. Analysis

15 The issue before us is whether the licensing and registration provisions of the *Firearms Act* constitute a valid federal enactment pursuant to Parliament’s jurisdiction over criminal law or its peace, order and good government power. In order to answer this question, we must engage in the division of powers analysis used so often by this Court, and most recently summarized in *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494, 2000 SCC 21; see also *Whitbread v. Walley*, [1990] 3 S.C.R. 1273, *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, and *R. v. Morgentaler*, [1993] 3 S.C.R. 463. There are two stages to this analysis. The first step is to determine the “pith and substance” or essential character of the law. The second step is to classify that essential character by reference to the heads of power under the *Constitution Act, 1867* in order to determine whether the law comes within the jurisdiction of the enacting government. If it does, then the law is valid.

A. *Characterization: What Is the Pith and Substance of the Law?*

16 The first task is to determine the “pith and substance” of the legislation. To use the wording of ss. 91 and 92, what is the “matter” of the law? What is its true meaning or essential character, its core? To determine the pith and substance, two aspects of the law must be examined: the purpose of the enacting body, and the legal effect of the law.

17 A law’s purpose is often stated in the legislation, but it may also be ascertained by reference to extrinsic material such as Hansard and government publications: see *Morgentaler*, *supra*, at pp. 483-84. While such extrinsic material was at one time inadmissible to facilitate the

determination of Parliament's purpose, it is now well accepted that the legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight: see *Global Securities, supra*, at para. 25; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 35; and *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 14. Purpose may also be ascertained by considering the "mischief" of the legislation -- the problem which Parliament sought to remedy: see *Morgentaler, supra*, at pp. 483-84.

18 Determining the legal effects of a law involves considering how the law will operate and how it will affect Canadians. The Attorney General of Alberta states that the law will not actually achieve its purpose. Where the legislative scheme is relevant to a criminal law purpose, he says, it will be ineffective (e.g., criminals will not register their guns); where it is effective it will not advance the fight against crime (e.g., burdening rural farmers with pointless red tape). These are concerns that were properly directed to and considered by Parliament. Within its constitutional sphere, Parliament is the judge of whether a measure is likely to achieve its intended purposes; efficaciousness is not relevant to the Court's division of powers analysis: *Morgentaler, supra*, at pp. 487-88, and *Reference re Anti-Inflation Act*, [1976] 2 S.C.R. 373. Rather, the inquiry is directed to how the law sets out to achieve its purpose in order to better understand its "total meaning": W. R. Lederman, *Continuing Canadian Constitutional Dilemmas* (1981), at pp. 239-40. In some cases, the effects of the law may suggest a purpose other than that which is stated in the law: see *Morgentaler, supra*, at pp. 482-83; *Attorney-General for Alberta v. Attorney-General for Canada*, [1939] A.C. 117 (P.C.) (*Alberta Bank Taxation Reference*); and *Texada Mines Ltd. v. Attorney-General of British Columbia*, [1960] S.C.R. 713; see generally P. W. Hogg, *Constitutional Law of Canada* (loose-leaf ed.), at pp. 15-14 to 15-16.

In other words, a law may say that it intends to do one thing and actually do something else. Where the effects of the law diverge substantially from the stated aim, it is sometimes said to be "colourable".

19 Against this background, we turn to the purpose of the *Firearms Act*. Section 4 states that the purpose of the Act is “to provide . . . for the issuance of licences, registration certificates and authorizations under which persons may possess firearms” and “to authorize . . . the manufacture of” and “transfer of” ordinary firearms. This is the language of property regulation. However, this regulatory language is directly tied to a purpose cast in the language of the criminal law. The licensing, registration and authorization provisions delineate the means by which people can own and transfer ordinary firearms “in circumstances that would otherwise constitute [a criminal] offence”. Those who challenge the legislation point to the first part of the section and its regulatory focus. Those who seek to uphold the law point to the second part of the section and its criminal focus.

20 The statements of the Honourable Allan Rock, Minister of Justice at the time, in his second-reading speech in the House of Commons, reveal that the federal government’s purpose in proposing the law was to promote public safety. He stated: “The government suggests that the object of the regulation of firearms should be the preservation of the safe, civilized and peaceful nature of Canada” (*House of Commons Debates*, vol. 133, No. 154, 1st Sess., 35th Parl., February 16, 1995, at p. 9706 (emphasis added)). Mr. Rock went on to describe the contents of the bill in more detail (at p. 9707):

First, tough measures to deal with the criminal misuse of firearms; second, specific penalties to punish those who would smuggle illegal firearms; and third, measures overall to provide a context in which the legitimate use of firearms can be carried on in a manner consistent with public safety. [Emphasis added.]

(See also the judgment of Fraser C.J.A., at paras. 169-72.)

Later, the Minister referred to the problems of suicide, accidental shootings, and the use of guns in domestic violence, and detailed some of the shooting tragedies that had spurred public calls

for gun control. Russell MacLellan, the Parliamentary Secretary of Justice at the time, underscored the government's concerns, noting that the Act pursues "three fundamental policies: the deterrence of the misuse of firearms, general controls on persons given access to firearms, and controls placed on specific types of firearms" ("Canada's firearms proposals" (1995), 37 *Can. J. Crim.* 163, at p. 163).

21 Another way to determine the purpose of legislation is to look at the problems it is intended to address – the so-called "mischief" approach. The *Firearms Act* is aimed at a number of evils or "mischiefs". One is the illegal trade in guns, both within Canada and across the border with the United States: see *The Government's Action Plan on Firearms Control*, tabled in the House of Commons in 1994. Another is the link between guns and violent crime, suicide, and accidental deaths. In a paper commissioned by the Department of Justice in 1994, *The Impact of the Availability of Firearms on Violent Crime, Suicide, and Accidental Death: A Review of the Literature with Special Reference to the Canadian Situation*, Thomas Gabor found that all three causes of death may increase in jurisdictions where there are the fewest restrictions on guns. Whether or not one accepts Gabor's conclusions, his study indicates the problem which Parliament sought to address by enacting the legislation: the problem of the misuse of firearms and the threat it poses to public safety.

22 Finally, there is a strong argument that the purpose of this legislation conforms with the historical public safety focus of all gun control laws. This reference challenges the licensing and registration provisions of the Act only as they relate to ordinary firearms. Alberta does not question the licensing and registration of restricted and prohibited weapons. It freely admits that the restrictions on those categories of weapons are constitutional. Indeed, Alberta would have difficulty alleging otherwise, as numerous courts have upheld the validity of different aspects of the federal gun control legislation that existed prior to the enactment of this Act: see *R. v.*

Schwartz, [1988] 2 S.C.R. 443; *McGuigan v. The Queen*, [1982] 1 S.C.R. 284; and *Attorney General of Canada v. Pattison* (1981), 30 A.R. 83 (C.A.).

23 More specifically, before the introduction of the *Firearms Act*, the registration of all restricted weapons was upheld by the British Columbia Court of Appeal in *Martinoff v. Dawson* (1990), 57 C.C.C. (3d) 482. Furthermore, the *Criminal Code* required anyone seeking to obtain any kind of firearm to apply for a firearms acquisition certificate. This requirement was upheld in *R. v. Northcott*, [1980] 5 W.W.R. 38 (B.C. Prov. Ct.). These cases upheld the previous gun control legislation on the basis that Parliament's purpose was to promote public safety. The *Firearms Act* extends that legislation in two respects: (1) it requires all guns to be registered, not just restricted and prohibited firearms; and (2) eventually all gun owners will be required to be licensed, not just those who wish to acquire a firearm. These changes represent a continuation of Parliament's focus on safety concerns, and constitute a limited expansion of the pre-existing legislation. Given the general acceptance of the gun control legislation that has existed for the past hundred years, the constitutional validity of which has always been predicated on Parliament's concern for public safety, it is difficult to now impute a different purpose to Parliament. This supports the view that the law in pith and substance is about public safety.

24 The effects of the scheme – how it impacts on the legal rights of Canadians – also support the conclusion that the 1995 gun control law is in pith and substance a public safety measure. The criteria for acquiring a licence are concerned with safety rather than the regulation of property. Criminal record checks and background investigations are designed to keep guns out of the hands of those incapable of using them safely. Safety courses ensure that gun owners are qualified. What the law does not require also shows that the operation of the scheme is limited to ensuring safety. For instance, the Act does not regulate the legitimate commercial market for guns. It makes no attempt to set labour standards or the price of weapons. There

is no attempt to protect or regulate industries or businesses associated with guns (see *Pattison*, *supra*, at para. 22). Unlike provincial property registries, the registry established under the Act is not concerned with prior interests, and unlike some provincial motor vehicle schemes, the Act does not address insurance. In short, the effects of the law suggest that its essence is the promotion of public safety through the reduction of the misuse of firearms, and negate the proposition that Parliament was in fact attempting to achieve a different goal such as the total regulation of firearms production, trade, and ownership. We therefore conclude that, viewed from its purpose and effects, the *Firearms Act* is in “pith and substance” directed to public safety.

B. *Classification: Does Parliament Have Jurisdiction to Enact the Law?*

25 Having assessed the pith and substance or matter of the law, the second step is to determine whether that matter comes within the jurisdiction of the enacting legislature. We must examine the heads of power under ss. 91 and 92 of the *Constitution Act, 1867* and determine what the matter is “in relation to”. In this case, the question is whether the law falls under federal jurisdiction over criminal law or its peace, order and good government power; or under provincial jurisdiction over property and civil rights. The presumption of constitutionality means that Alberta, as the party challenging the legislation, is required to show that the Act does not fall within the jurisdiction of Parliament: see *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662.

26 The determination of which head of power a particular law falls under is not an exact science. In a federal system, each level of government can expect to have its jurisdiction affected by the other to a certain degree. As Dickson C.J. stated in *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641, at p. 669, “overlap of legislation is to be expected and accommodated in a federal state”. Laws mainly in relation to the jurisdiction of

one level of government may overflow into, or have “incidental effects” upon, the jurisdiction of the other level of government. It is a matter of balance and of federalism: no one level of government is isolated from the other, nor can it usurp the functions of the other.

27 As a general rule, legislation may be classified as criminal law if it possesses three prerequisites: a valid criminal law purpose backed by a prohibition and a penalty: *RJR-MacDonald, supra*; *Hydro-Québec, supra*; and *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] S.C.R. 1 (the “*Margarine Reference*”). The Attorney General of Canada argues that the 1995 gun control law meets these three requirements, and points to commentary on this legislation which supports its position: D. Gibson, “The *Firearms Reference* in the Alberta Court of Appeal” (1999), 37 *Alta. L. Rev.* 1071; D. M. Beatty, “Gun Control and Judicial Anarchy” (1999), 10 *Constitutional Forum* 45; A. C. Hutchinson and D. Schneiderman, “Smoking Guns: The Federal Government Confronts The Tobacco and Gun Lobbies” (1995), 7 *Constitutional Forum* 16; and Peter W. Hogg’s testimony before the Standing Senate Committee on Legal and Constitutional Affairs, October 26, 1995.

28 Before determining whether the three criminal law criteria are met by this legislation, some general observations on the criminal law power may be apposite. Criminal law, as this Court has stated in numerous cases, constitutes a broad area of federal jurisdiction: *RJR-MacDonald, supra*; *Hydro-Québec, supra*; and *Margarine Reference, supra*. The criminal law stands on its own as federal jurisdiction. Although it often overlaps with provincial jurisdiction over property and civil rights, it is not “carved out” from provincial jurisdiction, contrary to the view of Conrad J.A. It also includes the law of criminal procedure, which regulates many aspects of criminal law enforcement, such as arrest, search and seizure of evidence, the regulation of electronic surveillance and the forfeiture of stolen property.

29 Not only is the criminal law a “stand-alone” jurisdiction, it also finds its expression in a broad range of legislation. The *Criminal Code* is the quintessential federal enactment under its criminal jurisdiction, but it is not the only one. The *Food and Drugs Act*, the *Hazardous Products Act*, the *Lord’s Day Act*, and the *Tobacco Products Control Act* have all been held to be valid exercises of the criminal law power: see *Standard Sausage Co. v. Lee*, [1933] 4 D.L.R. 501 (B.C.C.A.); *R. v. Cosman’s Furniture (1972) Ltd.* (1976), 73 D.L.R. (3d) 312 (Man. C.A.); *Big M Drug Mart, supra* (legislation struck down on other grounds); and *RJR-MacDonald, supra* (legislation struck down on other grounds), respectively. Thus the fact that some of the provisions of the *Firearms Act* are not contained within the *Criminal Code* has no significance for the purposes of constitutional classification.

30 Although the criminal law power is broad, it is not unlimited. Some of the parties before us expressed the fear that the criminal law power might be illegitimately used to invade the provincial domain and usurp provincial power. A properly restrained understanding of the criminal law power guards against this possibility.

31 Within this context, we return to the three criteria that a law must satisfy in order to be classified as criminal. The first step is to consider whether the law has a valid criminal law purpose. Rand J. listed some examples of valid purposes in the *Margarine Reference* at p. 50: “Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by [criminal] law”. Earlier, we concluded that the gun control law in pith and substance is directed at public safety. This brings it clearly within the criminal law purposes of protecting public peace, order, security and health.

32 In determining whether the purpose of a law constitutes a valid criminal law purpose, courts look at whether laws of this type have traditionally been held to be criminal law: see *Morgentaler, supra*, at p. 491, and *RJR-MacDonald, supra*, at para. 204; see also *Scowby*

v. Glendinning, [1986] 2 S.C.R. 226, *Westendorp v. The Queen*, [1983] 1 S.C.R. 43, and *R. v. Zelensky*, [1978] 2 S.C.R. 940. Courts have repeatedly held that gun control comes within the criminal law sphere. As Fraser C.J.A. demonstrated in her judgment, gun control has been a matter of criminal law since before the enactment of the *Criminal Code* in 1892, and has continued since that date (see also E. M. Davies, “The 1995 Firearms Act: Canada’s Public Relations Response to the Myth of Violence” (2000), 6 *Appeal* 44, and M. L. Friedland, *A Century of Criminal Justice* (1984), at pp. 125 ff.).

33 Gun control has traditionally been considered valid criminal law because guns are dangerous and pose a risk to public safety. Section 2 of the *Criminal Code* (as amended by s. 138(2) of the *Firearms Act*) defines a “firearm” as “a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person” (emphasis added). This demonstrates that Parliament views firearms as dangerous and regulates their possession and use on that ground. The law is limited to restrictions which are directed at safety purposes. As such, the regulation of guns as dangerous products is a valid purpose within the criminal law power: see *R. v. Felawka*, [1993] 4 S.C.R. 199; *RJR-MacDonald*, *supra*; *R. v. Wetmore*, [1983] 2 S.C.R. 284; and *Cosman’s Furniture*, *supra*.

34 The finding of a valid criminal law purpose does not end the inquiry, however. In order to be classified as a valid criminal law, that purpose must be connected to a prohibition backed by a penalty. The 1995 gun control law satisfies these requirements. Section 112 of the *Firearms Act* prohibits the possession of a firearm without a registration certificate. Section 91 of the *Criminal Code* (as amended by s. 139 of the *Firearms Act*) prohibits the possession of a firearm without a licence and a registration certificate. These prohibitions are backed by penalties: see s. 115 of the *Firearms Act* and s. 91 of the *Code*.

35 It thus appears that the 1995 gun control law possesses all three criteria required for a criminal law. However, Alberta and the provinces raised a number of objections to this classification which must be considered.

(1) Regulation or Criminal Prohibition?

36 The first objection is that the *Firearms Act* is essentially regulatory rather than criminal legislation because of the complexity of the law and the discretion it grants to the chief firearms officer. These aspects of the law, the provinces argue, are the hallmarks of regulatory legislation, not the criminal law: see Hogg, *supra*, at pp. 18-25 and 18-26.

37 Despite its initial appeal, this argument fails to advance Alberta's case. The fact that the Act is complex does not necessarily detract from its criminal nature. Other legislation, such as the *Food and Drugs Act*, R.S.C., 1985, c. F-27, and the *Canadian Environmental Protection Act*, R.S.C., 1985, c. 16 (4th Supp.), are legitimate exercises of the criminal law power, yet highly complex. Nor does the Act give the chief firearms officer or Registrar undue discretion. The offences are not defined by an administrative body, avoiding the difficulty identified in the dissenting judgment in *Hydro-Québec, supra*. They are clearly stated in the Act and the *Criminal Code*: no one shall possess a firearm without a proper licence and registration. While the Act provides for discretion to refuse to issue an authorization to carry or transport under s. 68 or a registration certificate under s. 69, that discretion is restricted by the Act. A licence shall be refused if the applicant is not eligible to hold one: s. 68. Eligibility to hold a licence is delineated in the rest of the Act: a person is ineligible to hold a licence if the person has been convicted of certain offences (s. 5(2)) or is subject to a prohibition order (s. 6); s. 7 requires the applicant to complete a safety course. Discretion regarding registration is also bounded by the Act. A refusal by the chief firearms officer or the Registrar must be for "good and sufficient reason": ss. 68 and 69; the refusal must be in writing with reasons given (s. 72).

These provisions demonstrate that the Act does not give the chief firearms officer or the Registrar undue discretion. Furthermore, the chief firearms officer and the Registrar are explicitly subject to the supervision of the courts. Refusal or revocation of a licence or a registration certificate may be referred to a provincial court judge: s. 74. The courts will interpret the words “good and sufficient reason” in ss. 68 and 69 in line with the public safety purpose of the Act, ensuring that the exercise of discretion by the chief firearms officer and the Registrar is always wed to that purpose.

38 Furthermore, the law’s prohibitions and penalties are not regulatory in nature. They are not confined to ensuring compliance with the scheme, as was the case in *Boggs v. The Queen*, [1981] 1 S.C.R. 49, but stand on their own, independently serving the purpose of public safety. Nor are the prohibitions and penalties directed to the object of revenue generation. Parliament’s intention was not to regulate property, but to ensure that only those who prove themselves qualified to hold a licence are permitted to possess firearms of any sort.

39 Alberta and the supporting interveners argued that the only way Parliament could address gun control would be to prohibit ordinary firearms outright. With respect, this suggestion is not supported by either logic or jurisprudence. First, the jurisprudence establishes that Parliament may use indirect means to achieve its ends. A direct and total prohibition is not required: see *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123, and *RJR-MacDonald, supra*. Second, exemptions from a law do not preclude it from being prohibitive and therefore criminal in nature: see *R. v. Furtney*, [1991] 3 S.C.R. 89, *Morgentaler v. The Queen*, [1976] 1 S.C.R. 616, and *Lord's Day Alliance of Canada v. Attorney General of British Columbia*, [1959] S.C.R. 497. Third, as noted above, the prohibition in this case is not merely designed to enforce a fee payment or regulatory scheme separate from the essential safety focus of the law: by way of contrast, see *Boggs, supra*.

Finally, if prohibition is not required to make handgun control constitutional, which no one suggests, why should it be required for ordinary firearms?

40 In a related argument, some provincial interveners contended that if the purpose of the legislation is to reduce misuse, then the legislation should deal with misuse directly. On this view, Parliament could prohibit the careless or intentional misuse of guns, as it has in ss. 85-87 of the *Criminal Code*, but could not prohibit people from owning guns if they present risks to public safety or regulate how people store their guns. Again, the answer is that Parliament may use indirect means to further the end of public safety. The risks associated with ordinary firearms are not confined to the intentional or reckless conduct that might be deterred by a prohibition on misuse. The Attorney General of Canada argued, for example, that the suicide rate is increased by the availability of guns. A person contemplating suicide may be more likely to actually commit suicide if a gun is available, it was argued; therefore Parliament has a right to prevent people at risk, for example due to mental illness, from owning a gun. A prohibition on misuse is unlikely to deter a potential suicide; a prohibition on gun ownership may do so. Other examples where a prohibition on misuse falls short are not hard to envisage. A prohibition on misuse is unlikely to prevent the death of a child who plays with a gun; a prohibition on irresponsible ownership or careless storage may do so. Again, reducing availability may have a greater impact on whether a robber uses a gun than a law forbidding him to use it. Whether the 1995 gun law actually achieves these ends is not at issue before us; what is at issue is whether Parliament, in targeting these dangers, strayed outside its criminal law power. In our view, it did not.

(2) Property and Civil Rights or Criminal Law?

41 Alberta's second major objection to classifying the 1995 gun control scheme as criminal law is that it is indistinguishable from existing provincial property regulation schemes such as automobile and land title registries.

42 This argument overlooks the different purposes behind the federal restrictions on firearms and the provincial regulation of other forms of property. Guns are restricted because they are dangerous. While cars are also dangerous, provincial legislatures regulate the possession and use of automobiles not as dangerous products but rather as items of property and as an exercise of civil rights, pursuant to the provinces' s. 92(13) jurisdiction: *Canadian Indemnity Co. v. Attorney-General of British Columbia*, [1977] 2 S.C.R. 504; *Validity of Section 92(4) of the Vehicles Act, 1957 (Sask.)*, [1958] S.C.R. 608; *Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396.

43 The argument that the federal gun control scheme is no different from the provincial regulation of motor vehicles ignores the fact that there are significant distinctions between the roles of guns and cars in Canadian society. Both firearms and automobiles can be used for socially approved purposes. Likewise, both may cause death and injury. Yet their primary uses are fundamentally different. Cars are used mainly as means of transportation. Danger to the public is ordinarily unintended and incidental to that use. Guns, by contrast, pose a pressing safety risk in many if not all of their functions. Firearms are often used as weapons in violent crime, including domestic violence; cars generally are not. Thus Parliament views guns as particularly dangerous and has sought to combat that danger by extending its licensing and registration scheme to all classes of firearms. Parliament did not enact the *Firearms Act* to regulate guns as items of property. The Act does not address insurance or permissible locations of use. Rather, the Act addresses those aspects of gun control which relate to the dangerous nature of firearms and the need to reduce misuse.

44 In a variation on the theme of property and civil rights, the opponents of the 1995 gun control law argue that ordinary guns, like rifles and shotguns, are common property, not dangerous property. Ordinary firearms are different, they argue, from the automatic weapons

and handguns that Parliament has regulated in the past. Ordinary guns are used mainly for lawful purposes in hunting, trapping and ranching. Automatic weapons and handguns, by contrast, have few uses outside crime or war. The fact that Parliament has the right under the criminal law power to control automatic weapons and handguns does not, they argue, mean that Parliament has the right to regulate ordinary guns.

45 The difficulty with this argument is that while ordinary guns are often used for lawful purposes, they are also used for crime and suicide, and cause accidental death and injury. Guns cannot be divided neatly into two categories – those that are dangerous and those that are not dangerous. All guns are capable of being used in crime. All guns are capable of killing and maiming. It follows that all guns pose a threat to public safety. As such, their control falls within the criminal law power.

46 In a further variation on this argument, the provinces of Ontario and Saskatchewan submitted that even if the licensing provisions of the law were valid criminal legislation, the registration provisions are mainly provincial property legislation and should be severed and struck out. The argument is that the registration portions of the Act simply amount to regulation, with little connection to the public safety purpose advanced by the federal government to justify the Act as a whole. Conrad J.A. agreed with this argument, finding that although the Act “cleverly intertwines” the licensing and registration provisions through “clever packaging”, the registration provisions could be severed from the gun control law. As proof, she pointed to the fact that the pre-existing firearms acquisition certificate scheme, governing prohibited and restricted arms, applied to ordinary firearms without being connected to a registration system.

47 We are not persuaded that the registration provisions can be severed from the rest of the Act, nor that they fail to serve Parliament’s purpose in promoting public safety. The licensing provisions require everyone who possesses a gun to be licensed. The registration

provisions require all guns to be registered. The combination of the two parts of the scheme is intended to ensure that when a firearm is transferred from one person to another, the recipient is licensed. Absent a registration system, this would be impossible to ascertain. If a gun is found in the possession of an unlicensed person, the registration system permits the government to determine where the gun originated. With a registration scheme in place, licensed owners can be held responsible for the transfer of their weapons. The registration system is also part of the general scheme of the law in reducing misuse. If someone is found guilty of a crime involving violence, or is prohibited from possessing a weapon, the registration scheme is expected to assist the police in determining whether the offender actually owns any guns and in confiscating them. The registration scheme is also intended to reduce smuggling and the illegal trade in guns. These interconnections demonstrate that the registration and licensing portions of the *Firearms Act* are both tightly linked to Parliament's goal in promoting safety by reducing the misuse of any and all firearms. Both portions are integral and necessary to the operation of the scheme. The government is not prevented from improving the system because the pre-existing firearms acquisition certificate system was not connected to a registration system. Moreover, prior to this Act, the federal government had a registration system for handguns. It now seeks to extend it to all guns. Contrary to the suggestions of Conrad J.A., no improper purpose in including registration in the scheme has been demonstrated.

(3) Undue Intrusion into Provincial Powers?

48

In a related argument, Alberta and the provincial interveners submit that this law inappropriately trenches on provincial powers and that upholding it as criminal law will upset the balance of federalism. In support of its submission, Alberta cites the work of D. M. Beatty, who suggests applying considerations of rationality and proportionality from the *Canadian Charter of Rights and Freedoms* s. 1 cases to questions of legislative competence: *Constitutional Law in Theory and Practice* (1995). It seems far from clear to us that it would be helpful to apply

the technique of weighing benefits and detriments used in s. 1 jurisprudence to the quite different exercise of defining the scope of the powers set out in ss. 91 and 92 of the *Constitution Act, 1867*. This said, however, it is beyond debate that an appropriate balance must be maintained between the federal and provincial heads of power. A federal state depends for its very existence on a just and workable balance between the central and provincial levels of government, as this Court affirmed in *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; see also *General Motors of Canada Ltd. v. City National Leasing*, *supra*. The courts, critically aware of the need to maintain this balance, have not hesitated to strike down legislation that does not conform with the requirements of the criminal law: see *Boggs*, *supra*, and the *Margarine Reference*, *supra*. The question is not whether such a balance is necessary, but whether the 1995 gun control law upsets that balance.

49 The argument that the 1995 gun control law upsets the balance of Confederation may be seen as an argument that, viewed in terms of its effects, the law does not in pith and substance relate to public safety under the federal criminal law power but rather to the provincial power over property and civil rights. Put simply, the issue is whether the law is mainly in relation to criminal law. If it is, incidental effects in the provincial sphere are constitutionally irrelevant: see, e.g., *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3, and *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85. On the other hand, if the effects of the law, considered with its purpose, go so far as to establish that it is mainly a law in relation to property and civil rights, then the law is *ultra vires* the federal government. In summary, the question is whether the “provincial” effects are incidental, in which case they are constitutionally irrelevant, or whether they are so substantial that they show that the law is mainly, or “in pith and substance”, the regulation of property and civil rights.

50 In our view, Alberta and the provinces have not established that the effects of the law on provincial matters are more than incidental. First, the mere fact that guns are property does

not suffice to show that a gun control law is in pith and substance a provincial matter. Exercises of the criminal law power often affect property and civil rights to some degree: *Attorney-General for British Columbia v. Attorney-General for Canada*, [1937] A.C. 368 (P.C.). Such effects are almost unavoidable, as many aspects of the criminal law deal with property and its ownership. The fact that such effects are common does not lessen the need to examine them. It does suggest, however, that we cannot draw sharp lines between criminal law and property and civil rights. Food, drugs and obscene materials are all items of property and are all legitimate subjects of criminal laws. In order to determine the proper classification of this law, then, we must go beyond the simplistic proposition that guns are property and thus any federal regulation of firearms is *prima facie* unconstitutional.

51 Second, the Act does not significantly hinder the ability of the provinces to regulate the property and civil rights aspects of guns. Most provinces already have regulations dealing with hunting, discharge within municipal boundaries, and other aspects of firearm use, and these are legitimate subjects of provincial regulation: see *R. v. Chiasson* (1982), 66 C.C.C. (2d) 195 (N.B.C.A.), *aff'd* [1984] 1 S.C.R. 266. The Act does not affect these laws.

52 Third, the most important jurisdictional effect of this law is its elimination of the ability of the provinces to not have any regulations on the ownership of ordinary firearms. The provinces argue that it is in their power to choose whether or not to have such a law. By taking over the field, the federal government has deprived the provinces of that choice. Assuming (without deciding) that the provincial legislatures would have the jurisdiction to enact a law in relation to the property aspects of ordinary firearms, this does not prevent Parliament from addressing the safety aspects of ordinary firearms. The double aspect doctrine permits both levels of government to legislate in one jurisdictional field for two different purposes: *Egan, supra*.

53 Fourth, as discussed above, this law does not precipitate the federal government's entry into a new field. Gun control has been the subject of federal law since Confederation. This law does not allow the federal government to significantly expand its jurisdictional powers to the detriment of the provinces. There is no colourable intrusion into provincial jurisdiction, either in the sense that Parliament has an improper motive or that it is taking over provincial powers under the guise of the criminal law. While we are sensitive to the concern of the provincial governments that the federal jurisdiction over criminal law not be permitted such an unlimited scope that it erodes the constitutional balance of powers, we do not believe that this legislation poses such a threat.

(4) Is Moral Content Required?

54 Yet another argument is that the ownership of guns is not criminal law because it is not immoral to own an ordinary firearm. There are two difficulties with this argument. The first is that while the ownership of ordinary firearms is not in itself regarded by most Canadians as immoral, the problems associated with the misuse of firearms are firmly grounded in morality. Firearms may be misused to take human life and to assist in other immoral acts, like theft and terrorism. Preventing such misuse can be seen as an attempt to curb immoral acts. Viewed thus, gun control is directed at a moral evil.

55 The second difficulty with the argument is that the criminal law is not confined to prohibiting immoral acts: see *Proprietary Articles Trade Association v. Attorney-General for Canada*, [1931] A.C. 310 (P.C.). While most criminal conduct is also regarded as immoral, Parliament can use the criminal law to prohibit activities which have little relation to public morality. For instance, the criminal law has been used to prohibit certain restrictions on market competition: see *Attorney-General for British Columbia v. Attorney-General for Canada*, *supra*.

Therefore, even if gun control did not involve morality, it could still fall under the federal criminal law power.

(5) Other Concerns

56 We recognize the concerns of northern, rural and aboriginal Canadians who fear that this law does not address their particular needs. They argue that it discriminates against them and violates treaty rights, and express concerns about their ability to access the scheme, which may be administered from a great distance. These apprehensions are genuine, but they do not go to the question before us – Parliament’s jurisdiction to enact this law. Whether a law could have been designed better or whether the federal government should have engaged in more consultation before enacting the law has no bearing on the division of powers analysis applied by this Court. If the law violates a treaty or a provision of the *Charter*, those affected can bring their claims to Parliament or the courts in a separate case. The reference questions, and hence this judgment, are restricted to the issue of the division of powers.

57 We also appreciate the concern of those who oppose this Act on the basis that it may not be effective or it may be too expensive. Criminals will not register their guns, Alberta argued. The only real effect of the law, it is suggested, is to burden law-abiding farmers and hunters with red tape. These concerns were properly directed to and considered by Parliament; they cannot affect the Court’s decision. The efficacy of a law, or lack thereof, is not relevant to Parliament’s ability to enact it under the division of powers analysis. Furthermore, the federal government points out that it is not only career criminals who are capable of misusing guns. Domestic violence often involves people who have no prior criminal record. Crimes are committed by first-time offenders. Finally, accidents and suicides occur in the homes of law-abiding people, and guns are stolen from their homes. By requiring everyone to register their guns, Parliament seeks to reduce misuse by everyone and curtail the ability of criminals to acquire

firearms. Where criminals have acquired guns and used them in the commission of offences, the registration system seeks to make those guns more traceable. The cost of the program, another criticism of the law, is equally irrelevant to our constitutional analysis.

VI. Conclusion

58 We conclude that the impugned sections of the *Firearms Act* contain prohibitions and penalties in support of a valid criminal law purpose. The legislation is in relation to criminal law pursuant to s. 91(27) of the *Constitution Act, 1867* and hence *intra vires* Parliament. It is not regulatory legislation and it does not take the federal government so far into provincial territory that the balance of federalism is threatened or the jurisdictional powers of the provinces are unduly impaired.

59 Having determined that the legislation constitutes a valid exercise of Parliament's jurisdiction over criminal law, it is unnecessary to consider whether the legislation can also be justified as an exercise of its peace, order and good government power.

60 We would dismiss the appeal. The licensing and registration provisions in the *Firearms Act* do not constitute an infringement of the jurisdiction of the Legislature of Alberta with respect to the regulation of property and civil rights pursuant to s. 92(13) of the *Constitution Act, 1867*. The Act is a valid exercise of Parliament's jurisdiction over criminal law pursuant to s. 91(27).

61 The answers to the reference questions are as follows:

Question 2:

(1) No.

(2) No.

Question 3:

(1) No.

(2) No.

Appendix A – The Reference Questions

The Reference was initiated by Her Majesty the Queen in Right of Alberta on September 26, 1996 by Order in Council 461/96. The Lieutenant Governor in Council referred four specific questions to the Court (under headings 2 and 3):

1. For purposes of these questions,

(a) “*Firearms Act*” means the *Firearms Act*, chapter 39 of the Statutes of Canada, 1995;

(b) “ordinary firearm” means “firearm”, as defined in section 2 of the *Criminal Code* (Canada), as amended by section 138 of the *Firearms Act*, except that it does not include a “prohibited firearm” or a “restricted firearm” as those terms are defined in section 84 of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*;

(c) “licensing provisions” means those portions of the *Firearms Act* relating to the mandatory regime of licensing for those persons who own or possess or wish to own or possess an ordinary firearm, including, without limitation, sections 5 to 10, 54, 55, 56, 58, 61, 64, 67, 68 and 70, and the related enforcement provisions of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*;

(d) “Registration provisions” means those portions of the *Firearms Act* relating to the mandatory regime of registration for an ordinary firearm, including, without limitation, sections 13 to 16, 54, 60, 61, 66, 69, 71, 82 to 94, 112 and 115, and the related enforcement provisions of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*.

2. (1) Do the licensing provisions, insofar as they relate to an ordinary firearm, constitute an infringement of the jurisdiction of the Legislature of Alberta with respect to the regulation of property and civil rights pursuant to subsection 92(13) of the *Constitution Act, 1867*?

(2) If the answer to the question posed in subsection (1) is “yes”, are the licensing provisions ultra vires the Parliament of Canada insofar as they regulate the possession or ownership of an ordinary firearm?

3. (1) Do the registration provisions, as they relate to an ordinary firearm, constitute an infringement of the jurisdiction of the Legislature of Alberta with respect to the regulation of property and civil rights pursuant to subsection 92(13) of the *Constitution Act, 1867*?

(2) If the answer to the question posed in subsection (1) is “yes”, are the registration provisions ultra vires the Parliament of Canada insofar as they require registration of an ordinary firearm?

Appendix B – The Legislation

This is the version of the *Firearms Act* as assented to, and as referred to the Alberta Court of appeal by Order in Council 461/96. It does not take into account any amendments to the Act.

5. (1) A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.

(2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,

(a) has been convicted or discharged under section 736 of the *Criminal Code* of

(i) an offence in the commission of which violence against another person was used, threatened or attempted,

(ii) an offence under this Act or Part III of the *Criminal Code*,

(iii) an offence under section 264 of the *Criminal Code* (criminal harassment), or

(iv) an offence relating to the contravention of subsection 39(1) or (2) or 48(1) or (2) of the *Food and Drugs Act* or subsection 4(1) or (2) or 5(1) of the *Narcotic Control Act*;

(b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or

(c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

(3) Notwithstanding subsection (2), in determining whether a non-resident who is eighteen years old or older and by or on behalf of whom an application is made for a sixty-day licence authorizing the non-resident to possess firearms that are neither prohibited firearms nor restricted firearms is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge may but need not have regard to the criteria described in subsection (2).

6. (1) A person is eligible to hold a licence only if the person is not prohibited by a prohibition order from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device or prohibited ammunition.

(2) Subsection (1) is subject to any order made under section 113 of the *Criminal Code* (lifting of prohibition order for sustenance or employment).

7. (1) An individual is eligible to hold a licence only if the individual

(a) successfully completes the Canadian Firearms Safety Course, as given by an instructor who is designated by a chief firearms officer, and passes the tests, as administered by an instructor who is designated by a chief firearms officer, that form part of that Course;

(b) except in the case of an individual who is less than eighteen years old, passes the tests, as administered by an instructor who is designated by a chief firearms officer, that form part of that Course;

(c) successfully completed, before January 1, 1995, a course that the attorney general of the province in which the course was given had, during the period beginning on January 1, 1993 and ending on December 31, 1994, approved for the purposes of section 106 of the former Act; or

(d) passed, before January 1, 1995, a test that the attorney general of the province in which the test was administered had, during the period beginning on January 1, 1993 and ending on December 31, 1994, approved for the purposes of section 106 of the former Act.

(2) An individual is eligible to hold a licence authorizing the individual to possess restricted firearms only if the individual

(a) successfully completes a restricted firearms safety course that is approved by the federal Minister, as given by an instructor who is designated by a chief firearms officer, and passes any tests, as administered by an instructor who is designated by a chief firearms officer, that form part of that course; or

(b) passes a restricted firearms safety test, as administered by an instructor who is designated by a chief firearms officer, that is approved by the federal Minister.

(3) An individual against whom a prohibition order was made

(a) is eligible to hold a licence only if the individual has, after the expiration of the prohibition order,

(i) successfully completed the Canadian Firearms Safety Course, as given by an instructor who is designated by a chief firearms officer, and

(ii) passed the tests, as administered by an instructor who is designated by a chief firearms officer, that form part of that Course; and

(b) is eligible to hold a licence authorizing the individual to possess restricted firearms only if the individual has, after the expiration of the prohibition order,

(i) successfully completed a restricted firearms safety course that is approved by the federal Minister, as given by an instructor who is designated by a chief firearms officer, and

(ii) passed any tests, as administered by an instructor who is designated by a chief firearms officer, that form part of that course.

(4) Subsections (1) and (2) do not apply to an individual who

(a) in the prescribed circumstances, has been certified by a chief firearms officer as meeting the prescribed criteria relating to the safe handling and use of firearms and the laws relating to firearms;

(b) is less than eighteen years old and requires a firearm to hunt or trap in order to sustain himself or herself or his or her family;

(c) on the commencement day, possessed one or more firearms and does not require a licence to acquire other firearms;

(d) requires a licence merely to acquire cross-bows; or

(e) is a non-resident who is eighteen years old or older and by or on behalf of whom an application is made for a sixty-day licence authorizing the non-resident to possess firearms that are neither prohibited firearms nor restricted firearms.

(5) Subsection (3) does not apply to an individual in respect of whom an order is made under section 113 of the *Criminal Code* (lifting of prohibition order for sustenance or employment) and who is exempted by a chief firearms officer from the application of that subsection.

8. (1) An individual who is less than eighteen years old and who is otherwise eligible to hold a licence is not eligible to hold a licence except as provided in this section.

(2) An individual who is less than eighteen years old and who hunts or traps as a way of life is eligible to hold a licence if the individual needs to hunt or trap in order to sustain himself or herself or his or her family.

(3) An individual who is twelve years old or older but less than eighteen years old is eligible to hold a licence authorizing the individual to possess, in accordance with the conditions attached to the licence, a firearm for the purpose of target practice, hunting or instruction in the use of firearms or for the purpose of taking part in an organized competition.

(4) An individual who is less than eighteen years old is not eligible to hold a licence authorizing the individual to possess prohibited firearms or restricted firearms or to acquire firearms or cross-bows.

(5) An individual who is less than eighteen years old is eligible to hold a licence only if a parent or person who has custody of the individual has consented, in writing or in any other manner that is satisfactory to the chief firearms officer, to the issuance of the licence.

9. (1) A business is eligible to hold a licence authorizing a particular activity only if every person who stands in a prescribed relationship to the business is eligible under sections 5 and 6 to hold a licence authorizing that activity or the acquisition of restricted firearms.

(2) A business other than a carrier is eligible to hold a licence only if

(a) a chief firearms officer determines that no individual who stands in a prescribed relationship to the business need be eligible to hold a licence under section 7; or

(b) the individuals who stand in a prescribed relationship to the business and who are determined by a chief firearms officer to be the appropriate individuals to satisfy the requirements of section 7 are eligible to hold a licence under that section.

(3) A business other than a carrier is eligible to hold a licence only if every employee of the business who, in the course of duties of employment, handles or would handle firearms, prohibited weapons, restricted weapons, prohibited devices or prohibited ammunition is the holder of a licence authorizing the holder to acquire restricted firearms.

(4) In subsection (3), "firearm" does not include a partially manufactured barrelled weapon that, in its unfinished state, is not a barrelled weapon

(a) from which any shot, bullet or other projectile can be discharged; and

(b) that is capable of causing serious bodily injury or death to a person.

(5) Subsection (1) does not apply in respect of a person who stands in a prescribed relationship to a business where a chief firearms officer determines that, in all the circumstances, the business should not be ineligible to hold a licence merely because of that person's ineligibility.

(6) Subsection (3) does not apply in respect of an employee of a museum

(a) who, in the course of duties of employment, handles or would handle only firearms that are designed or intended to exactly resemble, or to resemble with near precision, antique firearms, and who has been trained to handle or use such a firearm; or

(b) who is designated, by name, by a provincial minister.

10. Sections 5, 6 and 9 apply in respect of a carrier whose business includes the transportation of firearms, prohibited weapons, restricted weapons, prohibited devices or prohibited ammunition from one province to any other province, or beyond the limits of a province, as if each reference in those sections to a chief firearms officer were a reference to the Registrar.

13. A person is not eligible to hold a registration certificate for a firearm unless the person holds a licence authorizing the person to possess that kind of firearm.

14. A registration certificate may be issued only for a firearm

(a) that bears a serial number sufficient to distinguish it from other firearms; or

(b) that is described in the prescribed manner.

15. A registration certificate may not be issued for a firearm that is owned by Her Majesty in right of Canada or a province or by a police force.

16. (1) A registration certificate for a firearm may be issued to only one person.

(2) Subsection (1) does not apply in the case of a firearm for which a registration certificate referred to in section 127 was issued to more than one person.

54. (1) A licence, registration certificate or authorization may be issued only on application made in the prescribed form containing the prescribed information and accompanied by payment of the prescribed fees.

(2) An application for a licence, registration certificate or authorization must be made to

(a) a chief firearms officer, in the case of a licence, an authorization to carry or an authorization to transport; or

(b) the Registrar, in the case of a registration certificate, an authorization to export or an authorization to import.

(3) An individual who, on the commencement day, possesses one or more restricted firearms or one or more handguns referred to in subsection 12(6) (pre-February 14, 1995 handguns) must specify, in any application for a licence authorizing the individual to possess restricted firearms or handguns that are so referred to,

(a) except in the case of a firearm described in paragraph (b), for which purpose described in section 28 the individual wishes to continue to possess restricted firearms or handguns that are so referred to; and

(b) for which of those firearms was a registration certificate under the former Act issued because they were relics, were of value as a curiosity or rarity or were valued as a memento, remembrance or souvenir.

55. (1) A chief firearms officer or the Registrar may require an applicant for a licence or authorization to submit such information, in addition to that included in the application, as may reasonably be regarded as relevant for the purpose of determining whether the applicant is eligible to hold the licence or authorization.

(2) Without restricting the scope of the inquiries that may be made with respect to an application for a licence, a chief firearms officer may conduct an investigation of the applicant, which may consist of interviews with neighbours, community workers, social workers, individuals who work or live with the applicant, spouse, former spouse, dependants or whomever in the opinion of the chief firearms officer may provide information pertaining to whether the applicant is eligible under section 5 to hold a licence.

56. (1) A chief firearms officer is responsible for issuing licences.

(2) Only one licence may be issued to any one individual.

(3) A business other than a carrier requires a separate licence for each place where the business is carried on.

58. (1) A chief firearms officer who issues a licence, an authorization to carry or an authorization to transport may attach any reasonable condition to it that the chief firearms officer considers desirable in the particular circumstances and in the interests of the safety of the holder or any other person.

(2) Before attaching a condition to a licence that is to be issued to an individual who is less than eighteen years old and who is not eligible to hold a licence under subsection 8(2) (minors hunting as a way of life), a chief firearms officer must consult with a parent or person who has custody of the individual.

(3) Before issuing a licence to an individual who is less than eighteen years old and who is not eligible to hold a licence under subsection 8(2) (minors hunting as a way of

life), a chief firearms officer shall have a parent or person who has custody of the individual sign the licence, including any conditions attached to it.

60. The Registrar is responsible for issuing registration certificates for firearms and assigning firearms identification numbers to them and for issuing authorizations to export and authorizations to import.

61. (1) A licence or registration certificate must be in the prescribed form and include the prescribed information and any conditions attached to it.

(2) An authorization to carry, authorization to transport, authorization to export or authorization to import may be in the prescribed form and include the prescribed information, including any conditions attached to it.

(3) An authorization to carry or authorization to transport may take the form of a condition attached to a licence.

(4) A licence that is issued to a business must specify each particular activity that the licence authorizes in relation to prohibited firearms, restricted firearms, firearms that are neither prohibited firearms nor restricted firearms, cross-bows, prohibited weapons, restricted weapons, prohibited devices, ammunition or prohibited ammunition.

64. (1) A licence that is issued to an individual who is eighteen years old or older expires on the earlier of

(a) five years after the birthday of the holder next following the day on which it is issued, and

(b) the expiration of the period for which it is expressed to be issued.

(2) A licence that is issued to an individual who is less than eighteen years old expires on the earlier of

(a) the day on which the holder attains the age of eighteen years, and

(b) the expiration of the period for which it is expressed to be issued.

(3) A licence that is issued to a business other than a museum expires on the earlier of

(a) one year after the day on which it is issued, and

(b) the expiration of the period for which it is expressed to be issued.

(4) A licence that is issued to a museum expires on the earlier of

(a) three years after the day on which it is issued, and

(b) the expiration of the period for which it is expressed to be issued.

66. A registration certificate for a firearm expires where

(a) the holder of the registration certificate ceases to be the owner of the firearm; or

(b) the firearm ceases to be a firearm.

67. (1) A chief firearms officer may renew a licence, authorization to carry or authorization to transport in the same manner and in the same circumstances in which a licence, authorization to carry or authorization to transport may be issued.

(2) On renewing a licence authorizing an individual to possess restricted firearms or handguns referred to in subsection 12(6) (pre-February 14, 1995 handguns), a chief firearms officer shall decide whether any of those firearms or handguns that the individual possesses are being used for

(a) the purpose described in section 28 for which the individual acquired the restricted firearms or handguns; or

(b) in the case of any of those firearms or handguns that were possessed by the individual on the commencement day, the purpose described in that section that was specified by the individual in the licence application.

(3) A chief firearms officer who decides that any restricted firearms or any handguns referred to in subsection 12(6) (pre-February 14, 1995 handguns) that are possessed by an individual are not being used for that purpose shall

(a) give notice of that decision in the prescribed form to the individual; and

(b) inform the Registrar of that decision.

(4) Subsections (2) and (3) do not apply to a firearm

(a) that is a relic, is of value as a curiosity or rarity or is valued as a memento, remembrance or souvenir;

(b) that was specified in the licence application as being a firearm for which a registration certificate under the former Act was issued because the firearm was a relic, was of value as a curiosity or rarity or was valued as a memento, remembrance or souvenir;

(c) for which a registration certificate under the former Act was issued because the firearm was a relic, was of value as a curiosity or rarity or was valued as a memento, remembrance or souvenir; and

(d) in respect of which an individual, on the commencement day, held a registration certificate under the former Act.

(5) A notice given under paragraph (3)(a) must include the reasons for the decision and be accompanied by a copy of sections 74 to 81.

68. A chief firearms officer shall refuse to issue a licence if the applicant is not eligible to hold one and may refuse to issue an authorization to carry or authorization to transport for any good and sufficient reason.

69. The Registrar may refuse to issue a registration certificate, authorization to export or authorization to import for any good and sufficient reason including, in the case of an application for a registration certificate, where the applicant is not eligible to hold a registration certificate.

70. (1) A chief firearms officer who issues a licence, authorization to carry or authorization to transport may revoke it for any good and sufficient reason including, without limiting the generality of the foregoing,

(a) where the holder of the licence or authorization

(i) is no longer or never was eligible to hold the licence or authorization,

(ii) contravenes any condition attached to the licence or authorization, or

(iii) has been convicted or discharged under section 736 of the *Criminal Code* of an offence referred to in paragraph 5(2)(a); or

(b) where, in the case of a business, a person who stands in a prescribed relationship to the business has been convicted or discharged under section 736 of the *Criminal Code* of any such offence.

(2) The Registrar may revoke an authorization to export or authorization to import for any good and sufficient reason.

71. (1) The Registrar

(a) may revoke a registration certificate for any good and sufficient reason; and

(b) shall revoke a registration certificate for a firearm held by an individual where the Registrar is informed by a chief firearms officer under section 67 that the firearm is not being used for

(i) the purpose for which the individual acquired it, or

(ii) in the case of a firearm possessed by the individual on the commencement day, the purpose specified by the individual in the licence application.

(2) A registration certificate for a prohibited firearm referred to in subsection 12(3) (pre-August 1, 1992 converted automatic firearms) is automatically revoked on the change of any alteration in the prohibited firearm that was described in the application for the registration certificate.

82. The Commissioner of the Royal Canadian Mounted Police shall, after consulting with the federal Minister and the Solicitor General of Canada, appoint an individual as the Registrar of Firearms.

83. (1) The Registrar shall establish and maintain a registry, to be known as the Canadian Firearms Registry, in which shall be kept a record of

(a) every licence, registration certificate and authorization that is issued or revoked by the Registrar;

(b) every application for a licence, registration certificate or authorization that is refused by the Registrar;

(c) every transfer of a firearm of which the Registrar is informed under section 26 or 27;

(d) every exportation from or importation into Canada of a firearm of which the Registrar is informed under section 42 or 50;

(e) every loss, finding, theft or destruction of a firearm of which the Registrar is informed under section 88; and

(f) such other matters as may be prescribed.

(2) The Registrar is responsible for the day-to-day operation of the Canadian Firearms Registry.

84. The Registrar may destroy records kept in the Canadian Firearms Registry at such times and in such circumstances as may be prescribed.

85. (1) The Registrar shall establish and maintain a record of

(a) firearms acquired or possessed by the following persons and used by them in the course of their duties or for the purposes of their employment, namely,

(i) peace officers,

(ii) persons training to become police officers or peace officers under the control and supervision of

(A) a police force, or

(B) a police academy or similar institution designated by the federal Minister or the lieutenant governor in council of a province,

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

(iv) chief firearms officers and firearms officers; and

(b) firearms acquired or possessed by individuals on behalf of, and under the authority of, a police force or a department of the Government of Canada or of a province.

(2) A person referred to in subsection (1) who acquires or transfers a firearm shall have the Registrar informed of the acquisition or transfer.

(3) The Registrar may destroy any record referred to in subsection (1) at such times and in such circumstances as may be prescribed.

86. The records kept in the registry maintained pursuant to section 114 of the former Act that relate to registration certificates shall be transferred to the Registrar.

87. (1) A chief firearms officer shall keep a record of

(a) every licence and authorization that is issued or revoked by the chief firearms officer;

(b) every application for a licence or authorization that is refused by the chief firearms officer;

(c) every prohibition order of which the chief firearms officer is informed under section 89; and

(d) such other matters as may be prescribed.

(2) A chief firearms officer may destroy any record referred to in subsection (1) at such times and in such circumstances as may be prescribed.

88. A chief firearms officer to whom the loss, finding, theft or destruction of a firearm is reported shall have the Registrar informed without delay of the loss, finding, theft or destruction.

89. Every court, judge or justice that makes, varies or revokes a prohibition order shall have a chief firearms officer informed without delay of the prohibition order or its variation or revocation.

90. The Registrar has a right of access to records kept by a chief firearms officer under section 87 and a chief firearms officer has a right of access to records kept by the Registrar under section 83 or 85 and to records kept by other chief firearms officers under section 87.

91. (1) Subject to the regulations, notices and documents that are sent to or issued by the Registrar pursuant to this or any other Act of Parliament may be sent or issued in electronic or other form in any manner specified by the Registrar.

(2) For the purposes of this Act and Part III of the *Criminal Code*, a notice or document that is sent or issued in accordance with subsection (1) is deemed to have been received at the time and date provided by the regulations.

92. (1) Records required by section 83 or 85 to be kept by the Registrar may

(a) be in bound or loose-leaf form or in photographic film form; or

(b) be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written or printed form within a reasonable time.

(2) Subject to the regulations, a document or information received by the Registrar under this Act in electronic or other form may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing stored documents or information in intelligible written or printed form within a reasonable time.

(3) Where the Registrar maintains a record of a document otherwise than in written or printed form, an extract from that record that is certified by the Registrar has the same probative value as the document would have had if it had been proved in the ordinary way.

93. (1) The Registrar shall, as soon as possible after the end of each calendar year and at such other times as the Solicitor General of Canada may, in writing, request, submit to the Solicitor General a report, in such form and including such information as the Solicitor General may direct, with regard to the administration of this Act.

(2) The Solicitor General of Canada shall have each report laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Solicitor General receives it.

94. A chief firearms officer shall submit the prescribed information with regard to the administration of this Act at the prescribed time and in the prescribed form for the purpose of enabling the Registrar to compile the reports referred to in section 93.

112. (1) Subject to subsections (2) and (3), every person commits an offence who, not having previously committed an offence under this subsection or subsection 91(1) or 92(1) of the *Criminal Code*, possesses a firearm that is neither a prohibited firearm nor a restricted firearm without being the holder of a registration certificate for the firearm.

(2) Subsection (1) does not apply to

(a) a person who possesses a firearm while the person is under the direct and immediate supervision of a person who may lawfully possess it, for the purpose of using it in a manner in which the supervising person may lawfully use it;

(b) a person who comes into possession of a firearm by operation of law and who, within a reasonable period after acquiring possession of it, lawfully disposes of it or obtains a registration certificate for it; or

(c) a person who possesses a firearm and who is not the holder of a registration certificate for the firearm if the person

(i) has borrowed the firearm,

(ii) is the holder of a licence under which the person may possess it, and

(iii) is in possession of the firearm to hunt or trap in order to sustain himself or herself or his or her family.

(3) Every person who, at any particular time between the commencement day and the later of January 1, 1998 and such other date as is prescribed, possesses a firearm that, as of that particular time, is neither a prohibited firearm nor a restricted firearm is deemed for the purposes of subsection (1) to be, until January 1, 2003 or such other earlier date as is prescribed, the holder of a registration certificate for the firearm.

(4) Where, in any proceedings for an offence under this section, any question arises as to whether a person is the holder of a registration certificate, the onus is on the defendant to prove that the person is the holder of the registration certificate.

115. Every person who commits an offence under section 112, 113 or 114 is guilty of an offence punishable on summary conviction.

Appeal dismissed.

Solicitors for the appellant: McLennan Ross, Edmonton.

Solicitor for the respondent: The Deputy Attorney General of Canada, Ottawa.

Solicitor for the intervener the Attorney General for Ontario: The Ministry of the Attorney General, Toronto.

Solicitor for the intervener the Attorney General of Nova Scotia: The Department of Justice, Halifax.

Solicitor for the intervener the Attorney General for New Brunswick: The Office of the Attorney General, Fredericton.

Solicitors for the intervener the Attorney General of Manitoba: Ladner Downs, Vancouver.

Solicitor for the intervener the Attorney General for Saskatchewan: The Deputy Attorney General, Regina.

Solicitor for the intervener the Government of the Northwest Territories: The Department of Justice, Yellowknife.

Solicitor for the intervener the Minister of Justice for the Government of the Yukon Territory: The Department of Justice, Whitehorse.

Solicitor for the intervener the Federation of Saskatchewan Indian Nations: The Federation of Saskatchewan Indian Nations, Saskatoon.

Solicitors for the intervener the Coalition of Responsible Firearm Owners and Sportsmen: Dallas K. Miller Law Office, Medicine Hat.

Solicitors for the intervener the Law-Abiding Unregistered Firearms Association: Neufeld Law Office, Red Deer.

Solicitors for the intervener the Shooting Federation of Canada: Shaw McLennan & Ironside, Collingwood, Ontario.

Solicitors for the intervener the Association pour la santé publique du Québec inc.: Brochet Dussault Larochelle, Sainte-Foy.

Solicitors for the intervener the Alberta Council of Women's Shelters: Pringle & Associates, Edmonton.

Solicitors for the interveners CAVEAT, the Fondation des victimes du 6 décembre contre la violence, the Canadian Association for Adolescent Health and the Canadian Pediatric Society: Fasken Campbell Godfrey, Toronto.

Solicitors for the interveners the Coalition for Gun Control, the Canadian Association of Chiefs of Police, the Corporation of the City of Toronto, the City of Montreal and the City of Winnipeg: Ruby & Edwardh, Toronto.