

Federal Court



Cour fédérale

**Date: 20130925**

**Docket: T-1388-13**

**Citation: 2013 FC 980**

**Ottawa, Ontario, September 25, 2013**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**SHAWN BEVINS,**

**CANADA'S NATIONAL FIREARMS ASSOCIATION,**

**6497870 CANADA INC.**

**Applicants**

**and**

**REGISTRAR OF FIREARMS ,**

**FIREARMS COMMISSIONER OF CANADA –  
ROYAL CANADIAN MOUNTED POLICE,**

**QUÉBEC'S CHIEF FIREARMS OFFICER –  
ROYAL CANADIAN MOUNTED POLICE,**

**ATTORNEY GENERAL OF CANADA,**

**ATTORNEY GENERAL OF QUÉBEC**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] Notwithstanding that Parliament abolished the long-gun registry last year with respect to non-restricted firearms, and notwithstanding that Parliament called for the destruction of existing registration records, the Registry is still in operation vis-à-vis Québec residents.

[2] The applicants seek an order from this Court requiring the respondents to obey the law. In their motion for an interlocutory injunction, they ask that the Registry records be ordered destroyed and that transfers of non-restricted firearms not be recorded. They put their case on the footing of very high principle. No one, and certainly not the police, is above the law.

[3] The Registry is still in operation vis-à-vis Québec residents as the Québec government takes the position that s. 29 of the *Ending the Long-gun Registry Act*, 2012 SC ch 6, which calls for the destruction of the Registry records, is unconstitutional. Québec asserts it infringes upon provincial jurisdiction.

[4] S. 29(1) and (2) of the Act provide:

(1) The Commissioner of Firearms shall ensure the destruction as soon as feasible of all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms and all copies of those records under the Commissioner's control.

(2) Each chief firearms officer shall ensure the destruction as soon as feasible of all records

(1) Le commissaire aux armes à feu veille à ce que, dès que possible, tous les registres et fichiers relatifs à l'enregistrement des armes à feu autres que les armes à feu prohibées ou les armes à feu à autorisation restreinte qui se trouvent dans le Registre canadien des armes à feu, ainsi que toute copie de ceux-ci qui relève de lui soient détruits.

(2) Chaque contrôleur des armes à feu veille à ce que, dès que possible, tous les registres

under their control related to the registration of firearms that are neither prohibited firearms nor restricted firearms and all copies of those records under their control.

et fichiers relatifs à l'enregistrement des armes à feu autres que les armes à feu prohibées ou les armes à feu à autorisation restreinte qui relèvent de lui, ainsi que toute copie de ceux-ci qui relève de lui soient détruits.

[5] Québec took proceedings in the Québec Superior Court to have s. 29 declared unconstitutional. It succeeded. However, the Québec Court of Appeal granted the Attorney General of Canada's appeal and refused to stay the operation of its decision. The Attorney General of Québec has filed an application for leave from the Supreme Court of Canada to appeal that decision, and to have the effect thereof stayed. That application and motion are pending at the present time.

[6] The Commissioner of the Royal Canadian Mounted Police has written to the applicant, Mr. Bevins, who is the Executive Vice-President of Canada's National Firearms Association, to say that the Government of Canada has agreed to maintain the Québec long-gun registration data until the Supreme Court has decided on the stay motion.

[7] Following a very frank and fulsome discussion with counsel for the applicants, I stated that although I had concerns with respect to the motion for an interlocutory injunction, the better course was to stay the proceedings pending the decision of the Supreme Court on the application for leave and the motion to have the effect of the decision of the Québec Court of Appeal stayed. I said I would set out my reasons in writing should the applicants wish to take this matter further.

[8] First and foremost, the Attorney General of Québec has the right to seek leave from the Supreme Court to appeal the decision of the Québec Court of Appeal. It does not fall upon me to opine on the correctness of the decision from which leave is sought, or to predict what the Supreme Court will decide. It may or may not grant leave. It may or may not grant a stay. If leave is granted, the Attorney General of Québec may or may not succeed on the merits. However, if he succeeds on the merits the decision would be nugatory and moot if in the meantime I ordered the destruction of the very records he seeks to preserve.

[9] The applicants anticipated that concern and proffered an Amended Notice of Motion which would leave the records in place for the time being, but which would deny police access thereto. However, new transfers of non-restricted firearms would not be recorded. The Attorney General of Canada objected to the amendment on the basis that he would have to seek instructions as to the implications thereof. On the basis that if Québec ultimately succeeded, I pointed out that there would be a gaping hole in the records.

[10] S. 50(1)(b) of the *Federal Courts Act* provides that this Court may, in its discretion, stay proceedings in the interest of justice.

[11] As an application for leave and a motion for stay are currently before the Supreme Court of Canada, it would, in my opinion, be entirely inappropriate to order the destruction of the documents which are at the very heart of those proceedings. The destruction of the records at this moment would effectively deprive the Government of Québec of its day in Court. I am not prepared to so order. I would in effect be interfering with the business of the Supreme Court of Canada.

[12] As the motion for an interlocutory injunction is simply stayed, and may be revived, I consider it appropriate to express my concerns with respect thereto.

### **THE INTERLOCUTORY INJUNCTION**

[13] I am concerned that the granting of an interlocutory injunction would almost leave nothing left to be decided on the application for a permanent injunction. The matter would be decided on a preliminary basis without giving the parties the opportunity to provide full records, as contemplated by rule 300 and following of the *Federal Courts Rules*, and would require the Court to render a decision without full benefit of complete submissions from counsel.

[14] There is also the question of standing. Although Mr. Bevins has standing to seek the destruction of his own records, there is no evidence that he speaks for other Québec gun owners, said to be some 500,000.

[15] Canada's Firearms Association would have to establish public interest standing.

[16] The tripartite test for an interlocutory injunction, as set out by the Supreme Court of Canada in such cases as *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, is well-known. The applicant must raise a serious issue, be irreparably harmed if the injunction is not granted, and must benefit from the balance of convenience.

[17] There certainly appears to be a serious issue: the refusal of the authorities to give effect to an Act of Parliament.

[18] As to irreparable harm, Mr. Bevins cites privacy issues. However, he himself in this motion has identified his guns for all the world to see. There might have to be a class proceeding.

[19] The numbered company, a well-known Québec gun dealer carrying on business as “L’Archerot Plus, le centre d’armes à feu de l’Outaouais” may well lose business as Québec residents may choose to buy their non-restricted firearms in other provinces where the transaction will not be recorded. However, a case would have to be made out that an action in damages would not be a sufficient remedy.

[20] Any harm may well be short-term.

[21] Finally, it would have to be established that the balance of convenience favours the applicants. A strong argument lies that the balance of convenience favours Québec.

[22] This decision is rendered simultaneously in both official languages as required by s. 20 of the *Official Languages Act*.

**ORDER**

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that:**

1. The motion for an interlocutory injunction and all proceedings herein are stayed pending the decisions of the Supreme Court of Canada in *Procureur général du Québec v Procureur général du Canada* (Qué), file 35448 on the Attorney General of Québec's application for leave to appeal and to stay the decision of the Québec Court of Appeal in docket number 500-09-023030-125 (2013 QCCA 1138).
2. Costs in the cause.

“Sean Harrington”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1388-13

**STYLE OF CAUSE:** SHAWN BEVINS ET AL v  
REGISTRAR OF FIREARMS (DIRECTEUR DE  
L'ENREGISTREMENT) ET AL

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 19, 2013

**REASONS FOR ORDER  
AND ORDER:**

HARRINGTON J.

**DATED:** SEPTEMBER 25, 2013

**APPEARANCES:**

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FOR THE APPLICANTS

Eric Dufour  
Suzanne Gauthier

FOR THE RESPONDENTS  
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Dominique Guimond  
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FOR THE RESPONDENTS  
REGISTRAR OF FIREARMS  
FIREARMS COMMISSIONER OF CANADA  
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**SOLICITORS OF RECORD:**

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FOR THE APPLICANTS

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