



# CHALLENGING RECLASSIFICATION OF FIREARMS UNDER S. 74 OF THE FIREARMS ACT

For immediate release – July 23, 2020

## CONTEXT

1. On May 1, 2020, the Government of Canada enacted an Order in Council SOR/2020-96 (the “OIC”) purporting to reclassify eleven categories of firearms as prohibited. However, all of the categories are open ended. The lists are not exhaustive. A link to the OIC is provided below:

<http://canadagazette.gc.ca/rp-pr/p2/2020/2020-05-01-x3/html/sor-dors96-eng.html>

2. Further to the enactment of the OIC, the RCMP has reclassified thousands of additional models of firearms in the Firearms Reference Table (FRT), under the guise that they fall within one of the eleven categories mentioned in the OIC, although they are not specifically listed in the OIC.

3. Commencing mid-July 2020, the RCMP has been sending out notifications to firearm owners, whose firearms were previously classified as restricted firearms and who are affected by the change of classification. These notices are unusual: they purport to be notifications of the change of classification and of the resulting cancellation of the registration certificate. These notices do not use the word “revocation” but rather refer to a “cancellation” or “annulment”. Further, these notices do not contain the mandatory notification to the affected party of the right to file a reference under s. 74 of the Firearms Act, to challenge the decision. This appears to have been done deliberately by the RCMP in order to avoid the filing of a flurry of references by the affected owners. Irrespective of the language used by the RCMP in the notice, the NFA is of the opinion that these notices have the same effect as notices revoking a registration certificate and as such, they can arguably be challenged through a reference under s. 74 of the Firearms Act.

## CONSIDERATIONS

1. Keep in mind that an NFA supported challenge (*Parker et al. v. Canada / T-569-20*) of the OIC has already been filed in the Federal Court of Canada, and the NFA has also filed a Motion for Leave to Intervene in such court challenge. Should that challenge be fully successful, it will arguably address and reverse all of the re-classifications made pursuant to the OIC.

2. However, and although the NFA is confident that the Parker et al. court challenge will succeed, lack of success cannot be summarily ruled out. In that perspective, we believe that there are circumstances in which it may be advantageous for owners whose firearms have been re-classified from restricted to prohibited status to file a reference under s. 74 of the Firearms Act.

## WHICH RE-CLASSIFICATIONS WARRANT A S. 74 REFERENCE

1. You have the right to file a reference under s. 74 of the Firearms Act in respect of any decision of the Registrar of Firearms (RCMP) purporting to reclassify a firearm from restricted to prohibited status, as it amounts to revocation of an existing registration certificate. However, we see little value in filing such References in instances where the re-classified firearm is one which is expressly listed in the OIC (See link above, to determine whether your firearm is listed). First, in order to succeed on such a reference, the potential applicant would need to demonstrate that the OIC is invalid. Since those questions are already addressed in the *Parker et al. v. Canada* court challenge before the Federal Court, there is a strong likelihood that a provincial court would stay a reference raising the validity of the OIC, to await the outcome of the *Parker et al. v. Canada* case. Indeed, the outcome of the pending NFA supported Federal Court challenge (*Parker et al. v. Canada*) will be determinative of the validity of the OIC. We do not see value in filing individual references in those instances, since the underlying questions are already before a court of law.

2. If your firearm is not expressly listed in the OIC, but is nevertheless being re-classified from restricted to prohibited by the RCMP, there may be value to filing a Reference under s. 74 of the Firearms Act, challenging that decision. In most instances, the reference will be based upon the fact that your firearm does not constitute a “variant or modified version” of one of the nine (9) main semi-automatic firearm designs deemed to now be prohibited.

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## **HOW TO FILE A REFERENCE UNDER S. 74 OF THE FIREARMS ACT**

- 1.** First, and most importantly, a s. 74 Reference must be filed within thirty (30) days of the date you received the notification of re-classification from the RCMP. If you are somehow precluded from filing within 30 days, for a valid reason (e.g. illness), you may apply to the Provincial Court for an extension of the time to file. The process for seeking an extension is the same as the process of filing a reference.
- 2.** You may file through an attorney or by yourself.
- 3.** The competent court is the provincial court of criminal jurisdiction of your province (e.g. the Ontario Court of Justice in Ontario, the Court of Quebec (Criminal Division) in Quebec, etc. You must file the Reference in the court district where you reside.
- 4.** Some provinces use a prescribed form. Others do not. Call the court registrar / clerk to find out the local requirements.
- 5.** In most provinces and territories, you may show up at the Registrar's office, at the local Court House, and fill out a form. You will need to:
  - A)* Designate the Registrar of Firearms (RCMP) as the Respondent;
  - B)* Stipulate that you are challenging a decision of the Registrar revoking one or several registration certificates;
  - C)* Append a copy of the Notice (or notices, if there are more than one)
  - D)* Mention that the grounds for challenge is that your firearm(s) are not captured by the Order in Council SOR/2020-96;
  - E)* Indicate a return date, which will be a pro-forma date;
  - F)* Ask the Registrar whether the Court will notify the Registrar of Firearms of the Reference, or whether you need to do it. If so, it is your responsibility to do so.
- 6.** The Reference will eventually be set down for an actual hearing. We highly recommend that you retain competent counsel to represent you. You may also be able to ask the Court to join your Reference with other similar References for a joint hearing. This may be advantageous if the other References raise a similar issue (e.g. same category of firearms in the OIC) and another party to a Reference is represented by counsel.
- 7.** Remember that incompetent advocacy may do more harm than good, since your case may set a precedent that will influence decisions in other cases.