

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**A Reference under section 74(1) of the *Firearms Act***

**PATRICK ROBERT EHNES**

**Applicant**

**- and -**

**HER MAJESTY THE QUEEN**

**Respondent**

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE A. J. BROWN**

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Heard at: Yellowknife, Northwest Territories  
January 24, 2007

Reasons: February 2, 2007

Counsel for the Crown: J. Walsh

Counsel for the Defendant: Self represented

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A Reference under section 74(1) of the *Firearms Act*

Between:

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**Ruling**

[1] The Registrar is directed to issue a registration certificate to Mr. Ehnes for his .32 calibre semi-automatic Savage handgun, Model 1907, Serial Number 201657 (Firearm Identification Number 4697728).

**Introduction**

**Facts**

[2] In 1996, Mr. Ehnes, a long-time owner of numerous long guns and handguns, bought a Savage handgun that was destined, with the passage of the *Firearms Act*, to be no longer a restricted but rather a prohibited firearm.

[3] Most private ownership of prohibited firearms was to end with the coming into effect of the *Firearms Act*; an exception was in place for licensed holders of registered firearms as of February 14, 1995, the so-called “grandfather” date.

[4] Mr. Ehnes’ Savage handgun was not covered by the February 14, 1995, grandfather date.

[5] The *Firearms Act* did not become law until December 1, 1998. Additional Parliamentary orders created an amnesty period that ended eventually December 31, 2005; the purpose of the amnesty period was to allow owners of now prohibited firearms to comply with the new legislation, in most cases by disposing of their weapons.

[6] During the amnesty period, a bill to amend the **Firearms Act** by changing the grandfather date from February 14, 1995, to December 1, 1998, was tabled in Parliament. Mr. Ehnes' Savage handgun would be covered by the new grandfather date. However, although the amending legislation was introduced in Parliament in March 2001, it did not receive Royal Assent until May 2003 and did not come into force until April 10, 2005.

[7] Meanwhile, an important deadline of December 31, 2002, had come and gone: this was the deadline by which all firearms registered under the former system were to be re-registered under the new system.

[8] Mr. Ehnes had applied in July 2002 to re-register all of his firearms; in time, he received new registration certificates for all but the Savage handgun.

[9] In December 2005, Mr. Ehnes was refused registration of the Savage handgun because he had not had continuous registration of the firearm (after the December 31, 2002, deadline that ended the validity of previous registration certificates).

### **Issue**

[10] The issue to be decided is whether the Registrar was justified in refusing to register Mr. Ehnes' Savage handgun because of Mr. Ehnes' lapse in continuous registration of the firearm, when the reason for that lapse was the delay in the passage of amending legislation.

### **Positions of the Parties**

[11] Mr. Ehnes' position is that he did everything in his power to ensure continuous registration of his Savage handgun. Furthermore, he was given to understand, by the Canadian Firearms Registry, that his application to re-register the firearm was proceeding without difficulty.

[12] The position of the Crown is that:

the clear legislative intent of Parliament is a complete ban of prohibited firearms like Mr. Ehnes' Savage handgun and there is no will to address the situation of Mr. Ehnes and some 1400 similarly situated gun owners;

it is not the function of this reviewing Territorial Court to substitute a contrary opinion for that of the Registrar; rather, it is this Court's role to evaluate the correctness of the decision;

as the Registrar was simply applying the law, his decision was correct and ought to be confirmed; and

only additional legislative amendment can give Mr. Ehnes the relief he seeks.

### **Authorities and Evidence Considered**

[13] I have considered:

the authorities contained in the filed Crown Memorandum of Law (*R v. Pagnotta* [2001] B.C.J. No. 2260 (B.C.S.C.); *British Columbia (Chief Firearms Officer) v. Fahlman*, 2004 B.C.C.A. 343; *Alberta (Chief Firearms Officer) v. Holland* [2004] A.J. No. 51 (A.B.Q.B.); *Firearms Act*, ss. 56 and 60; *Criminal Code*, ss. 91 and 92; *Firearms Act*, S.C. 1995, C. 39, s. 12(6) as enacted; SOR/98-467 “Order Declaring an Amnesty Period” and SOR/2003-414 “Order Amending the Order Declaring an Amnesty Period”; Bill C-15 “An Act to Amend the Criminal Code and to Amend Other Acts,” ss. 12(6), 12(6.1); Bill C-10A “An Act to Amend the Criminal Code (Firearms) and the Firearms Act,” ss. 12(6), 12(6.1); SI/2005-27 “Order Fixing April 10, 2005, as the Date of the Coming into Force of Certain Sections of the Act,” *Firearms Act*, as amended, ss. 12(6), 12(6.1); *Firearms Act*, s. 127(2)(b); *A.O. Farms Inc. v. Canada* [2000] F.C.J. No. 1771 (T.D.); *Authorson v. Canada*, [2003] 2 S.C.R. 40; *Wells v. Newfoundland*, [1999] 3 S.C.R. 199; *Turner v. Canada*, [1992] 3 F.C. 458 (C.A.); *Canada (Auditor General) v. Canada (Minister of Energy)*, [1989] 2 S.C.R. 49; *Kwong Estate v. Canada*, [1979] 2 S.C.R. 1010; *Mahoney v. Canada* [1986] F.C.J. No. 438 (T.D.); *Territorial Act R.S.N.W.T. 1988, c. T-2*, s. 15(1); *R. v. Mills* (1986), 26 C.C.C. (3d) 481 (S.C.C.); *R. v. Duncan* [1991] B.C.J. No. 3023 (S.C.); *R. v. Drader* 2001 MBQB 321; *R. v. Brian Gushaty*, unreported decision, Drumheller Court Registry No. 040161549H101001, February 27, 2004 (A.P.C.); *In the Matter of the Firearms Act and Howard Muncy*, unreported decision, Calgary Court Registry No. 050549377H1, July 26 and September 20, 2005 (A.P.C.); *R. v. Simmermon* [1996] A.J. No. 76 (C.A.); *Pogson v. Alberta (Chief Firearms Officer)* [2005] A.J. No. 281 (Q.B.); *R. v. Wiles* [2005] S.C.J. No. 53; and Jones & de Villars, *Principles of Administrative Law*, 4<sup>th</sup> ed. (Toronto: Thomson Carswell, 2004), pp. 85 - 87.);

the affidavit of Terrance Gregory Myers (Exhibit 3 in the Reference Hearing);

the evidence and submissions of Mr. Ehnes and the Crown heard during the Reference Hearing, including the videoconference with Mr. Myers; and

the additional authorities of *R. v. Jorgensen* [1995] S.C.J. No. 92 and *Gailis c. Le Directeur de l'Enregistrement des armes à feu* 2006 QCCQ 8316.

**Timeline and Additional Facts**

[14] The timeline of this case is set out in this chart:

DATE	EVENT
February 14, 1995	First reading in Parliament of <b><i>Firearms Act</i></b> , by virtue of which certain restricted firearms will become prohibited firearms; a grandfather clause applies to owners, as of February 14, 1995, of such weapons
July 4, 1996	Mr. Ehnes applies to register a handgun that is due to become a prohibited firearm (a Savage .32 calibre semi-automatic Model 1907); he receives notice that if the legislation passes in its present format, his handgun will be a prohibited firearm and he may not be allowed to possess it.
December 1, 1998	<b><i>Firearms Act</i></b> becomes law.
March 14, 2001	Bill C-10A receives first reading in Parliament; it changes the grandfather date from February 14, 1995, to December 1, 1998
July 30, 2002	In response to a notice that his firearms must be re-registered by December 31, 2002, Mr. Ehnes files an on-line application to re-register the Savage Model 1907 and five other guns; he receives an on-line confirmation of receipt of the application.
August 9, 2002	The Canadian Firearms Registry acknowledges receipt of Mr. Ehnes' application to re-register and informs him that his application is being processed. The Firearm Information Acknowledgement says, in part, "You do not need to take any action or contact us at this time. We will call you if we need more information on these firearms."

December 31, 2002	Deadline by which all firearms covered by old registration certificates needed to be re-registered under the new regime
May 13, 2003	Bill C-10A, changing the grandfather date to December 1, 1998, receives Royal Assent.
April 10, 2005	Bill C-10A comes into force.
October 26, 2005	First reading of a private member's bill to deem Mr. Ehnes and others continuously registered.
November 29, 2005	Private member's bill dies on order paper with dissolution of Parliament.
December 18, 2005	Mr. Ehnes is refused registration of his Savage Model 1907 handgun under the new regime, because he was not provided a registration certificate by December 31, 2002, in response to his July application (that registration was not issued because the grandfather date at the time, February 14, 1995, precluded Mr. Ehnes from having the gun).
December 30, 2005	Mr. Ehnes files his Notice of Reference.
December 31, 2005	End of Amnesty Period for disposal of newly prohibited firearms.

[15] In reaching my decision, I have reviewed carefully this event chronology and have considered these additional facts:

in the words of Mr. Terrance Myers, Refusal and Revocation Analyst with the Canadian Firearms Registry, the Canadian Firearms Registry "sat on" registration applications from Mr. Ehnes and others, in the hope that Bill C-10A would pass before the re-registration deadline of December 31, 2002;

by the time Mr. Ehnes' application to re-register was refused, the legislation changing the grandfather date to December 1, 1998, had been in force for eight months, having received Royal Assent almost two years before the in-force date;

both the original grandfather clause and the amended grandfather clause contemplated not only holders of registration certificates for their firearms as of the grandfather date but also gun owners who had applied for registration certificates by that date and received them later; and

section 69 of the **Firearms Act**, in contrast to section 68, gives the Registrar discretion to refuse to issue a registration certificate “for any good and sufficient reason, including . . . where the applicant is not eligible to hold a registration certificate.”

### **Law and Analysis**

[16] While it is clear that Parliament’s intent was the virtual elimination of private ownership of prohibited firearms, it is just as clear that it was to be accomplished in part by natural attrition of a small, excepted group of gun owners, those people who were touched by the grandfather clause.

[17] The initial grandfather date of February 14, 1995, was later changed to December 1, 1998. Crown counsel argued that Mr. Ehnes ought to have been on notice when he purchased his Savage handgun after February 14, 1995, that it was Parliament’s intent that he be prohibited from keeping the weapon in the future.

[18] Mr. Ehnes did receive notice of the impending change to the legislation but, when the **Firearms Act** eventually became law, there had been many changes to the legislation, a natural function of the Parliamentary process.

[19] Because there are often changes as legislation works its way from first reading to eventual law, it is unwise to place great weight on such factors as interim committee debates and motions, a Minister’s letter or legislation that dies on the order paper as a result of the dissolution of Parliament, as true indicators of Parliamentary intent.

[20] The better indicators of Parliamentary intent are the two acts - the **Firearms Act** itself and then **An Act to Amend the Criminal Code (firearms) and the Firearms Act**, which changed the grandfather date to December 1, 1998.

[21] The strongest indication that the new grandfather date was intended to apply to Mr. Ehnes came from Mr. Myers’ evidence that the Canadian Firearms Registry delayed processing registration applications such as that of Mr. Ehnes, waiting for the amending legislation to become law.

[22] Mr. Myers spoke in particular of the time period leading up to the December 31, 2002, deadline for re-registration. Close to three years more passed after that deadline before Mr. Ehnes’ registration application was refused; in that time, he received no further communication from the Canadian Firearms Registry.

[23] It is not my function to substitute my opinion for that of the Registrar; my role is to assess the correctness of the Registrar's decision, in the word of the statute, whether the decision was "justified." (*Pagnotta; Fahlman; Holland*)

[24] The decisions in *Gushaty* and *Muncy* are distinguishable from Mr. Ehnes' case in that the Chief Firearms Officer or Registrar was acting under a provision that did not allow for the exercise of discretion.

[25] The decision in *Gailis* is the one decision that deals with a gun owner in the same position as Mr. Ehnes; Judge Verdon confirmed the refusal decision of the Registrar in that case. From Judge Verdon's memorandum of judgment, it does not appear to me that Mr. Myers' evidence was before the Court. That is, the information that the Canadian Firearms Registry delayed processing applications for registration, awaiting the passage into law of the revised grandfather date.

[26] Knowing this position of the Canadian Firearms Registry, the effect of the eventual refusal of Mr. Myers' registration application is akin to him being told: "your continuous registration lapsed because we, the Registry, delayed."

[27] Were I to find, in this situation, that the Registrar's discretionary decision was justified and Mr. Ehnes' only remedy was a further legislative amendment, it would bring to mind the famous words of the Mr. Bumble character in Charles Dickens' *Oliver Twist*: "If the law supposes that, the law is a[n] ass."

### **Conclusion**

[28] As the Registrar knew of the changing grandfather date and deliberately delayed processing registration applications to take into account the changed date, I conclude that the refusal of Mr. Ehnes' registration was not justified and direct that his Savage handgun be registered.

Dated at Yellowknife in the Northwest Territories  
this 2<sup>nd</sup> day of February, 2007.

A Deputy Judge of the Territorial  
Court of the Northwest Territories



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