

Federal Court



Cour fédérale

**Date: 20230110**

**Docket: T-735-20**

**Citation: 2023 FC 30**

**Ottawa, Ontario, January 10, 2023**

**PRESENT: The Associate Chief Justice Gagné**

**BETWEEN:**

**CHRISTINE GENEROUX,  
JOHN PEROCCHIO and  
VINCENT PEROCCHIO**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**ORDER AND REASONS**

[1] The Applicants are self-represented litigants in this Application for judicial review that is scheduled to be heard by the Court for eight days in April 2023, in conjunction with five other similar applications. They seek leave of the Court to file one supplemental affidavit containing three new exhibits, along with a supplementary record that reflects this new evidence.

[2] The Applicants describe two of the new documents as “newly released”, and one as “newly discovered.” They are, respectively:

- i) a document entitled *Firearms Public Awareness Campaign -Phase 2/3: Firearms Owners, Final Report* dated March 31, 2022 and prepared for Public Safety Canada by Environics [Environics report];
- ii) a transcript of the recording of an April 28, 2020 meeting/call between RCMP Commissioner Brenda Lucki and other RCMP staff [RCMP transcript] released on or about Oct 21, 2022, and;
- iii) a 15 second clip of a statement made by Prime Minister Justin Trudeau on Parliament Hill [Parliament Hill clip].

I. Issue

[3] The only issue raised by this motion is whether the Applicants should be granted leave to file a supplementary affidavit.

II. Analysis

[4] Rule 312 of the *Federal Courts Rules* provides that a party may, with leave of the Court, file additional affidavits to those that are filed in the regular course of perfecting an Application for judicial review.

[5] In *Mazhero c Canada (Industrial Relations Board)*, 2002 FCA 295 at para 5, the Federal Court of Appeal held that, considering that judicial reviews are summary proceedings that should be determined without undue delay, the Court should exercise its discretion to permit the filing of additional material once the file is perfected “with great circumspection.”

[6] In *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at para 4 the Federal Court of Appeal stated that in order to succeed, an applicant must first satisfy the Court that:

- 1) The evidence is admissible on the application for judicial review;
- 2) The evidence is relevant to an issue that is properly before the Court.

*(Forest Ethics Advocacy Association v National Energy Board, 2014 FCA 88 at para 4)*

[7] The Court added that even if this threshold is met, an applicant still has to convince the Court to exercise its discretion in favour of granting leave under Rule 312. In exercising that discretion, the reviewing Court must consider, based on the evidence before it, whether the order is in the interests of justice. Doing so triggers the following questions:

- a. was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 308, as the case may be, or could it have been available with the exercise of due diligence?
- b. will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result?
- c. will the evidence cause substantial or serious prejudice to the other party?

*(Forest, at paras 5-6, citing Holy Alpha and Omega Church of Toronto v Canada (Attorney General), 2009 FCA 101 at para 2)*

[8] Applying these factors to the Applicants' new evidence, I am of the view that leave should be denied.

[9] First, there is no evidence that these documents were before the Governor in Council at the time the impugned regulations were promulgated. But for a few exceptions not applicable to this case, judicial review applications proceed on the basis of the record that was before the decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19).

[10] Second, the documents are not relevant to the 2020 Governor in Council's decision to promulgate the regulations and would therefore not be of any assistance to the Court.

[11] The Environics report relates to public opinion and focus group research conducted in 2022, almost 2 years after the decision under review. The objectives of the report are stated as being related to the Government's proposed buy-back program, not subject to this judicial review. The opinions of a subset group of firearms owners opposing the regulations, expressed a year after they were promulgated, are not relevant to the Court's legal assessment of whether the regulations are *ultra vires* of section 117.15 of the *Criminal Code* or whether they breached the *Charter*.

[12] Having read the RCMP transcript, which the Applicants' contend shows obstruction of justice in the Nova Scotia shooting investigation, it is unclear to me how it has any relevance to the judicial review applications before me.

[13] The Parliament Hill clip shows a short comment made by now-Prime Minister Justin Trudeau in 2010, back when he was a member of the opposition. Again, I fail to see any relevance to the issues before the Court.

[14] Third, the interests of justice do not support granting leave. The proposed new evidence is not sufficiently probative to affect the outcome of the underlying judicial review (*Forest* at para 6).

[15] These judicial review applications were launched more than two years ago, all the parties have submitted voluminous records and extensive submissions, the file is perfected since June 2022, and the hearing is scheduled. It is not the time to be supplementing these records unnecessarily.

### III. Conclusion

[16] The Applicant's motion is dismissed, as I have found i) that there is no evidence that the exhibits that the Applicants wish to add to their file were before the decision maker; ii) that this proposed evidence has no relevance to the issues before the Court in the underlying applications for judicial review, and; iii) it would not be in the interests of justice to grant leave.

**ORDER in T-735-20**

**THIS COURT ORDERS that:**

1. The Applicant's motion for leave to file additional evidence is dismissed;
2. Costs on this motion are granted to the Respondent.

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"Jocelyne Gagné"  
Associate Chief Justice

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-735-20

**STYLE OF CAUSE:** CHRISTINE GENEROUX, JOHN PEROCCHIO and  
VINCENT PEROCCHIO v ATTORNEY GENERAL OF  
CANADA

**RULE 312 MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO  
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** GAGNÉ A.C.J.

**DATED:** JANUARY 10, 2023

**WRITTEN SUBMISSIONS BY:**

Christine Generoux

FOR THE APPLICANTS

Zoe Oxaal

Jennifer Lee

Vanessa Wynn-Williams

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT