

Grand Moot 2024

**Federal Invocation of the Notwithstanding
Clause in the Criminal Context**

R v Thomas

Official Problem by Riya Thomas and Vidit Desai

R v Thomas

1. This appeal concerns the invocation of the notwithstanding clause by the federal government of Flavelle in an effort to enact stricter gun control legislation. Specifically, it considers the validity of invocation when it may concern rights that do not fall within the ambit of the notwithstanding clause. Finally, it explores the balance between meeting legislative objectives while upholding the rights of the citizens of Flavelle.
2. The appeal takes place in Falconer, a common law province in the country of Flavelle. The Constitution, judicial system, statutory law, common law, and social and political history of Flavelle and Falconer are identical to those of Canada and Ontario, respectively.
3. Flavelle's highest court is the Supreme Court of Flavelle. All Canadian legislation is binding on the Supreme Court of Flavelle, but the Court is not bound by Canadian jurisprudence. However, decisions of Canadian courts, particularly the Supreme Court of Canada, are considered highly persuasive.
4. The Falconer Court of Justice, the Superior Court of Falconer, the Falconer Court of Appeal, and the Supreme Court of Flavelle all have jurisdiction over the issues raised below.

Facts

5. The following information was gathered throughout the course of David Thomas's trial before the Falconer Court of Justice and appeal to the Superior Court of Falconer. It represents the totality of the relevant evidence.

Gun Violence in Flavelle

6. Gun violence throughout Flavelle has grown rampant. There has been a significant increase in gun-related crimes, including a high incidence of trafficking guns between the provinces of Flavelle.
7. In March 2022, an incident involving an individual opening fire using an unauthorized firearm in an apartment building in Falconer gained the attention of international news outlets and sparked a call for the revision of existing gun control legislation.
8. A Royal Commission, directed by an independent Commissioner, Akash Portnov, was called to investigate gun-crimes in Flavelle.¹

¹ Appendix A

9. In response to the calls for stricter gun control, and the findings of the Royal Commission, the Parliament of Flavelle (“the Parliament”) passed the *Firearms Safety and Accountability Act* (“the Act”, the “*FSAA*”). Among others, the Act added s. 94² to the *Criminal Code of Flavelle*, prohibiting the unauthorized possession of a firearm in a motor vehicle.
10. Some notable features of s. 94 include:
 - In order to be guilty of the offence, an accused must knowingly possess an unauthorized firearm;
 - The offence can be prosecuted as an indictable or summary offence. If it is prosecuted as a summary offence, the accused is liable to a suspension of their driver’s license for 30 days. After the suspension term expires, the accused is prohibited from driving in a province for which they do not hold a provincial driver’s license for a period not less than 3 years; and
 - The section operates notwithstanding certain rights enumerated by Sections 7 and 12 of the *Flavellian Charter of Rights and Freedoms* (“the Charter”).³

David Thomas

11. David Thomas is a truck driver. He owns and operates his business, TruckPro Inc., in Flavelle. He is the sole proprietor of the business; he does many of the deliveries on his own, though the company employs approximately 3-4 other drivers.
12. Mr. Thomas resides in the province of Falconer; more specifically, he lives close to the provincial border between Falconer and the province of Bloor. Mr. Thomas routinely travels across the provincial border to visit friends and family.
13. Mr. Thomas drives routes that take him out of Falconer and into the neighbouring province of Bloor 4-5 times per month, on average.
14. The head office of TruckPro Inc. is situated in Bloor, though it is only 25 minutes away from his residence in Falconer if he takes the Trans-Flavellian Highway.
15. Typically, Mr. Thomas goes into the office only once per month but has recently been visiting the head office each time he drives a route in Bloor, since the business has been undergoing significant financial hardship since November 2021.

² Appendix B

³ Appendix C

Charge of David Thomas

16. On June 27, 2022, Mr. Thomas's friend, Ms. Erica Sellinger, a resident of the province of Bloor, borrowed his personal pickup truck for her annual hunting trip.
17. Ms. Sellinger is an avid hunter with a hunting license for the province of Bloor. She also holds a possession and acquisition license ("PAL license") for her two hunting rifles. This license was issued on June 6, 2017.
18. Ms. Sellinger called Mr. Thomas on June 30, 2022, to inform him that his truck was ready to pick up. Mr. Thomas informed her that he would come by the following day to pick it up.
19. Mr. Thomas dropped by Ms. Sellinger's house on July 1, 2022, to pick up his truck. Before he could leave, Ms. Sellinger invited him inside to chat. They talked at great length about Ms. Sellinger's hunting trip, including how she recently purchased a new hunting rifle. Ms. Sellinger remembered that she had left her hunting rifle in Mr. Thomas's truck and asked him to remind her to remove it before he left.
20. Following their conversation, Mr. Thomas and Ms. Sellinger walked to Mr. Thomas's truck to say goodbye. When they got to his truck, Mr. Thomas noticed a large piece of tarp in the flatbed portion of his pickup truck, however, he did not pay much mind to it.
21. In a rush to get home, Mr. Thomas exceeded the speed limit on the Trans-Flavellian Highway by 25 km/hr. Officer Wu was patrolling the area and caught Mr. Thomas speeding; she signalled for Mr. Thomas to pull over. Mr. Thomas complied with Officer Wu's orders.
22. Upon approaching the car, Officer Wu noticed a large piece of tarp pushed off to one side of the flatbed. Peeking out from under the tarp was a hunting rifle.
23. Officer Wu asked Mr. Thomas to produce his hunting license and his PAL license. Mr. Thomas was unable to do so and informed Officer Wu that the firearm belonged to his friend, Ms. Sellinger, and that she had borrowed his truck earlier that week.
24. Officer Wu asked Mr. Thomas to step out of the car and arrested him. Officer Wu charged Mr. Thomas with unauthorized possession of a firearm in a motor vehicle, pursuant to Section 94(1) of the *Criminal Code of Flavelle*.

25. Section 94(1) reads:

94 (1) Subject to subsections (3) and (4), every person commits an offence who is an occupant of a motor vehicle and knowingly possesses a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device, other than a replica firearm, or any prohibited ammunition, unless

(a) in the case of a prohibited firearm, a restricted firearm or a non-restricted firearm,

(i) the person or any other occupant of the motor vehicle is the holder of

(A) a licence under which the person or other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it,

(ii) the person had reasonable grounds to believe that any other occupant of the motor vehicle was the holder of

(A) a licence under which that other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it.

Procedural History

Decision of the Falconer Court of Justice

26. The Crown prosecuted the offence as a summary conviction, pursuant to s. 94(2)(b)⁴ of the *Criminal Code*.
27. The trial judge found that Mr. Thomas did violate s. 94(1) of the *Criminal Code* when he recklessly possessed unauthorized firearms in his motor vehicle. The trial judge found that Mr. Thomas's recklessness satisfied the requisite knowledge element. Mr. Thomas was convicted and sentenced accordingly.
28. Pursuant to s. 94(2)(b), the trial judge ordered a Falconer driver's license suspension for a period of 30 days, and further prohibited Mr. Thomas from driving in provinces in which he does not have a valid driver's license for a period of 4 years.
29. Mr. Thomas appealed the decision to the Superior Court and challenged the constitutionality of ss. 94(2)(b) and 94(5) of the *Criminal Code*. First, he argued that

⁴ Appendix B

Parliament failed to properly invoke the notwithstanding clause through s. 94(5). Second, he argued that if s. 33 was not properly invoked, then s. 94(2)(b) violates his right to liberty enumerated in s. 7 of the *Charter*, and that this violation is not a reasonable limit saved by s. 1. Finally, he argued that even if the notwithstanding clause was properly invoked, s. 94(2)(b) is of no force and effect because it violates his mobility rights in s. 6 of the *Charter*, and this violation could not be saved by s. 1.

Decision of the Superior Court of Justice for Falconer

30. On appeal from the Court of Justice, Gardner J found that Parliament did not properly invoke the notwithstanding clause with respect to liberty rights. She also found that the Act violated both ss. 6 and 7 of the *Charter* and those violations could not be saved under s. 1.
31. On the s. 33 issue, Gardner J accepted Mr. Thomas's submission that Parliament did not meet the form requirements of s. 33 by failing to include liberty rights in s. 94(5). She wrote in part:

With great respect to the Parliament of Flavelle, I cannot accept its contention that its current drafting of s. 94(5) constitutes an "express declaration"⁵ of the intention to override Mr. Thomas's liberty rights. In fact, I am convinced of quite the opposite.

The Respondents place great reliance on *Ford* in their submission that they have "expressly declared" Parliament's intention to override all ss. 7 and 12 *Charter* rights. This reliance is largely misplaced. While *Ford* sets a rather low bar for Parliament to meet, requiring only that Parliament refer to "the number of the section, subsection or paragraph of the Charter which contains the provision or provisions to be overridden",⁶ it also requires that where Parliament intends to override only part of a provision contained in a section, it must make sufficient reference to that part.⁷

Parliament has met this burden with respect to the right to life, security of person, and the right not to be subject to cruel and unusual punishment. Its claimed reference to the right to liberty, however, leaves much to be desired and does not constitute sufficient reference. If the statutory interpretation principle of *expressio unius est exclusio alterius* is applied, it becomes clear that Parliament intended to override the right to life and security of person, to the exclusion of the right to liberty.

Parliament contends that the phrasing at the end of the provision, namely, "and all the rights and freedoms contained therein" functions to capture any rights that are not explicitly listed. Where Parliament was sophisticated and deliberate enough to make explicit reference to each of the rights set out in ss. 7 and 12, it seems unlikely to me that the exclusion of the s. 7 right to liberty in the override provision was anything but a conscious legislative decision.

⁵ *Ford*, para 33

⁶ *Ibid.*

⁷ *Ibid.*

32. Gardner J also accepted Mr. Thomas's submission that there was a violation of his s. 7 right to liberty that was not in accordance with the principles of fundamental justice. Finding that Mr. Thomas's liberty rights were engaged, Gardner J went on to discuss whether the principles of fundamental justice were violated. She wrote in part:

The first principle of fundamental justice that is violated is arbitrariness. The stated purpose of the law is to reduce the incidence of gun-related offences, particularly trafficking. I fail to see how suspending Mr. Thomas's driver's license and preventing him from driving through other provinces is a means of fulfilling that purpose.

By the same token, s. 94(2)(b) is overbroad because it captures conduct that bears no relation to its purpose. Specifically, s. 94(2)(b)(ii), which significantly restricts interprovincial travel for those who have been convicted of a possession offence bears no relation to the legislative purpose to prevent trafficking and other firearms offences. If Mr. Thomas was instead convicted of trafficking firearms, such a penalty may be more appropriate; however, these are not the facts of the case at bar.

33. The Respondent conceded that if Mr. Thomas's liberty rights were not in accordance with the principles of fundamental justice, then they could not be saved by s. 1 of the Charter. Gardner J wrote:

Section 7 violations are rarely, if ever, saved under s 1, and I imagine that it is for this exact reason that Parliament has conceded that if a s 7 violation is to be found, then it cannot be saved by s 1. Nonetheless, I briefly undertake this analysis for the benefit of both parties.

Parliament has failed to establish a rational connection between the impugned provision and the limit on liberty rights of Flavellians. The specific impact on Mr. Thomas's liberty rights gives rise to a conclusion that the law violates the principle of arbitrariness; however, the rational connection test in a Section 1 analysis requires Parliament to demonstrate the same with respect to society as a whole. In other words, Parliament must answer the question: "What connection does limiting a person's liberty rights by suspending their drivers' license and restricting their interprovincial travel have to reducing the frequency of firearm possession offences in Flavelle?". Parliament has failed to provide a satisfactory answer to this question.

It becomes unnecessary, therefore, to consider whether the impugned provision satisfies the minimal impairment and proportionality portion of the test. However, I would like to address Parliament's submission on weighing the salutary and deleterious effects of this legislation. There is no doubt that the Act intends to serve a noble purpose; gun violence in Flavelle has increased drastically over the last 5 years and the frequency of firearms offences is alarming. However, the means with which Parliament sets out to achieve this noble legislative objective is disturbing and represents a blatant and wilful disregard for the rights and freedoms enshrined in the *Charter*, without undertaking the proper procedure to do so.

34. Finally, on the s. 6(2) issue, Gardner J found a violation of Mr. Thomas's mobility rights. She wrote:

Flavellian jurisprudence on s. 6(2) of the *Charter* is limited; however, even absent robust case law, it is clear that s. 94(2)(b) imposes a restriction on Mr. Thomas's mobility rights.

The Respondent submits that Mr. Thomas's mobility rights are not engaged because the law does not prohibit interprovincial travel, nor does it prohibit him from gaining a livelihood. Specifically, the Respondent submits that Mr. Thomas is free to travel between provinces via other means such as railways and airlines. They further submit that Mr. Thomas is not prohibited from operating his trucking company, even outside the province of Falconer, since he can hire another driver to travel the inter-provincial routes.

I do not find it appropriate or necessary to scrutinize the employment that Mr. Thomas undertakes. To tell him to "find another job" or "hire another driver" oversteps this Court's jurisdiction and does not have any place in the determination of whether or not a violation has occurred. I am satisfied, based on the totality of the evidence before me, that s. 94(2)(b) infringes on Mr. Thomas's mobility rights under the *Charter*.

35. Gardner J further found that s. 94(2)(b) could not be saved by s. 1 of the *Charter* because there was no rational connection, and it did not amount to a minimal impairment of mobility rights. On the issue of minimal impairment, she wrote:

I am also dissatisfied by the Respondent's submission that s. 94(2)(b) only impairs mobility rights minimally. First, the temporal requirement prevents someone in the same occupational circumstances as Mr. Thomas from working and gaining a livelihood for an excessive period of time. The fact that Mr. Thomas is not prohibited from seeking out other means of travel or other employment offers little comfort, especially in light of Flavelle's volatile job market.

Furthermore, the Appellant adduced compelling empirical evidence from the Falconer Trucking Association detailing the impact of a driver's license suspension on truck drivers. The evidence shows that truck drivers who had their license suspended for over 2 years were 25% less likely to find another trucking job for at least 18 months.

...

Given that I have found that s. 94(2)(b) does not minimally impair Mr. Thomas's s. 6 rights, it is unnecessary for me to consider the final part of the s. 1 analysis.

Decision of the Falconer Court of Appeal

36. Finding no contestation of the factual summaries discussed at the court of first instance, this opinion by Farrell JA, writing for the majority, began directly by considering the legal issues at hand.

37. On the s. 33 issue, Farrell JA found that s. 94(5) met the form requirements set out in *Ford*, and therefore discharged its obligations under s. 33 of the *Charter*. Farrell JA wrote:

The disagreement between the lower courts has been one related to the requirements of the *Ford*⁸ decision, specifically, the extent to which a declaration must be ‘express’ when invoking the notwithstanding clause. This court is of the opinion that Gardner J erred in her analysis of *Ford*⁹ when determining that the form requirements of s. 33 of the Charter have not been met.

Gardner J relies strongly on *Ford*’s guidance that in the event that Parliament wishes only to override a certain part of a provision, they must make express reference to that provision. She therefore reads the exclusion of the word ‘liberty’ from s. 94(5) of the *Act* as a conscious decision to leave liberty outside of the ambit of the protection of the notwithstanding clause.

This reading of the law however is untenable. *Ford*¹⁰ outlines that “a s. 33 declaration is sufficiently express if it refers to the number of the section, subsection or paragraph of the *Charter* which contains the provision or provisions to be overridden”. Had s. 94(5) merely stated that “Subsection (2) is valid and operative notwithstanding the rights pertaining to life and the security of person, and the right not to be subject to cruel and unusual punishment” without further elaboration, Gardner J’s analysis that the exclusion of liberty was intentional would hold greater credence as only the specific parts of ‘life’ and ‘security of the person’ in s. 7 of the Charter have been indicated as being overridden.

However, the inclusion of “and all other rights and freedoms therein, enumerated in ss. 7 and 12 of the *Charter of Rights and Freedoms*” when plainly read cannot lead to the conclusion ‘liberty’ ought to be excluded. This phrasing seeks to incorporate, by residual means, all remaining contents of ss. 7 and 12 which would include ‘liberty’. Per *Ford*, mere mention of s. 7 and s.12 are sufficient to meet the ‘express’ requirement of a declaration.

38. Farrell JA found no violation of Mr. Thomas’s s. 7 rights. Farrell JA opined on the issue of whether or not the impact was in accordance with the principles of fundamental justice; he found that it was. He wrote:

I do not agree with Gardner J’s view that the impugned provision violates the principle of arbitrariness or overbreadth. Mr. Thomas’s claim that the principle of arbitrariness is violated represents a narrow-minded view of the purpose of the legislation. He appears to be oblivious or ignorant to the ways in which trafficking of firearms takes place in Flavelle, including the rather frequent case of inter-provincial trafficking. I am satisfied that there is a rational connection between the Act’s legislative objective and the limitation placed on Mr. Thomas’s liberty rights.

⁸ *Ford*, supra note 2

⁹ *Ibid.*

¹⁰ *Ibid* at para 33.

The principle of overbreadth is also not violated. Mr. Thomas contended, and Gardner J accepted, that the effect of the impugned provision is to punish – rather harshly – individuals that are convicted of firearms possession offences, and that this punishment captures conduct that is not connected to the legislative objective. They specifically took issue with s. 94(2)(b)(ii) which restricts interprovincial travel by car for 3 years following the termination of the license suspension period. I do not find that this provision is overly broad because it seeks to punish and prevent interprovincial firearms trafficking, which is the purpose of the Act.

39. With regard to the s. 6 issue, Farrell JA found no violation of Mr. Thomas’s s.6 mobility rights, such that it would render s. 94(2)(b)(i) of no force and effect. He wrote:

Mr. Thomas contends that due to s. 6 being outside the ambit of s. 33, an unjustifiable violation of s. 6 should render s. 94(2)(b)(i) of no force and effect. He further argues that by suspending his license and preventing him from driving through provinces for which he does not hold a valid provincial license, he is being barred from pursuing the gaining of a livelihood in any province.

Per the guidance from *Law Society of Upper Canada v Skapinker*,¹¹ the rights enumerated in s. 6(2)(a) and s. 6(2)(b) are to be read disjunctively as two separate rights. When considering whether or not there has been a violation of s. 6(2)(a), it is clear from the facts that Mr. Thomas has not been deprived of right to “move to and take up residence in any province”. He retains his ability to travel to other provinces and take up residence through various forms of travel such as train or air. To find that this license suspension engages s. 6(2)(a) would be akin to expanding the right to include the right to a driver’s license. This court recognizes there are numerous valid purposes for which provinces may choose to suspend or refuse to grant a driver’s license.

When considering s. 6(2)(b), the Supreme Court of Canada has opined in *Canadian Egg Marketing Agency v Richardson* (“CEMA”) that s. 6(2)(b) and s. 6(3)(a) must be read together such that s. 6(2)(b) is still subject to laws of general application which do not “discriminate among persons *primarily* on the basis of province” [*emphasis added*].¹²

The Court in *CEMA* asks two questions when determining if the right to earning a livelihood in another province has been engaged. The first being, is there differential treatment between residents and non-residents? And the second being does this distinction discriminate primarily on the basis of province or territory of the rights-holder in purpose or effect?¹³

This court finds that the prohibition from driving in or through a province for which Mr. Thomas does not hold a valid provincial license would impact his ability to work as a truck driver. However, this court disagrees the *Act* discriminates between residents and non-residents. The Appellant contends that the residency requirements for

¹¹ *Law Society of Upper Canada v Skapinker*, 1984 CanLII 3 (SCC), [1984] 1 SCR 357

¹² *Canadian Egg Marketing Agency v Richardson*, [1998] 3 SCR 157 at para 49 [*CEMA*]

¹³ *Ibid* at para 50

obtaining a driver's license¹⁴ is the basis for discrimination between residents and non-residents. This, I cannot accept. Section 94(2)(b)(ii) does not in any way discriminate between residents and non-residents; the sentence applies uniformly. The purpose of the *Act* is primarily to restrict the trafficking of firearms interprovincially.

This court accepts that conviction under this *Act* would prevent Mr. Thomas, a resident of the province of Falconer, from driving into the neighbouring province of Bloor. However, this punitive sanction would also prevent a convicted resident of Bloor who did not have a Bloor driver's license from driving in their own province.

What becomes clear is that the purpose of the *Act* is not to discriminate based on current or prospective provincial residence, but instead based on whether or not and individual poses a greater risk of travelling interprovincially for the sake of trafficking.

40. Jain JA delivered a separate opinion, dissenting on the s. 33 and s. 7 issues and re-affirming the decision of the Superior Court of Justice:

The majority opinion considers the precedent in *Ford* to be binding under the rule of *stare decisis*. This is a view I cannot share.

I am persuaded by the guidance from *Canada (Attorney General) v Bedford*,¹⁵ that in circumstances in which new legal issues emerge, we are permitted to revisit the matter and the corresponding standard. This becomes especially true "if new legal issues are raised as a consequence of significant developments in the law".¹⁶

In the history of the notwithstanding clause, it has consistently been viewed as a tool for the provinces, in order to protect their interests. The historical context of the Charter and its deliberation features the inclusion of s. 33 as a bargain to protect provincial rights. By custom, the notwithstanding clause has been invoked sparingly, and in every utilization, it has been a provincial legislature which has invoked it.

Federal invocation therefore would be a significant departure from constitutional custom and would in my opinion bring forward a novel issue which allows for the revisitation of the standard articulated in *Ford*.

I share similar fears with Professor of Constitutional Law Errol Mendes when he states that "essentially, it would be the straw that'll break the camel's back and lead to eventually the denigration of the charter as a whole".¹⁷ In the least, federal invocation of the notwithstanding clause must be granted higher scrutiny and substantially lower deference than that of provincial statutes.

I would accordingly affirm the reasoning of Gardner J that the form requirements for s. 33 are not met. Parliament's specification of 'life' and 'security of the person' but exclusion of 'liberty' from the scope of their declaration should be read less deferentially to leave issues that engage 'liberty' outside the scope of s. 33's protection.

¹⁴ Appendix D

¹⁵ *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII) at para 42.

¹⁶ *Ibid.*

¹⁷ Darren Major, Tom Parry, "Poilievre hints to police he would use notwithstanding clause to change laws" (29 April 2024), online: <<https://www.cbc.ca/news/politics/poilievre-notwithstanding-clause-1.7188964>>

This leaves open the question of whether or not a violation of liberty has occurred. This requires first determining whether or not there is a *prima facie* deprivation of liberty and then whether or not this deprivation violates the principles of fundamental justice. At face, this *Act* infringes Mr. Thomas's right to drive through other provinces and does restrict the liberty that citizens would generally expect. Being satisfied with the Superior Court's analysis on this topic, I would affirm their reasoning on finding that a s. 7 violation has occurred on these facts.

I agree with the majority that s. 6 of the Charter is not engaged on the facts as they are currently presented.

Issues on Appeal

41. On appeal to the Supreme Court of Flavelle, Mr. Thomas claims the following:
 - a. Section 94(5) does not constitute a proper invocation of the notwithstanding clause
 - b. If s. 94(5) of the *Act* was not properly invoked, then s. 94(2)(b) of the *Act* violates the liberty rights set out in s. 7; and
 - c. Even if s. 94(5) of the *Act* was properly invoked, s. 94(2)(b) violates his mobility rights guaranteed by s. 6 of the *Charter* and this violation is not saved by s. 1.

APPENDIX A: The Report of the Royal Commission on Inter-Provincial Gun Trafficking

Summary of Key Findings:

Between the examined period 2017 and 2021:

- The frequency of gun-crimes increased by 17%.
- The frequency of perpetrators using a firearm that originated from outside of the province where the crime occurs has doubled.
- The frequency of roadside detention on the highway leading to the discovery of the unlawful possession of a firearm has increased by 40%.

Commentary from Commissioner Akash Portnov:

- “There is no doubt that this Commission has found a marked increase in the incidence of gun-trafficking taking place in Flavelle. There is a causal link between the increase in gun-trafficking and the incidence of gun-crimes and solutions must be sought to reduce inter-provincial gun-trafficking. The very incident that has led to this very inquiry is one of many examples of a tragic gun-crime perpetrated by a trafficked firearm”. (Page 2 of the Commission Report)
- “Provinces have differing levels of availability for firearms. Some provinces make it substantially easier for gun retailers to get licensed to operate their businesses. Provinces which have a higher incidence of gun retail stores are seeing increases in trafficking of firearms from their province to provincial jurisdictions where the presence of gun retailers is much rarer. Amongst the jurisdictions which are seeing the highest levels of inflows of trafficked firearms is Falconer which has the lowest number of gun retailers in the country.” (Page 63 of the Commission Report)

APPENDIX B: Firearms Safety and Accountability Act

Preamble

Whereas the Parliament of Flavelle is committed to reducing gun violence and the frequency of firearms trafficking and other offences in Flavelle.

Unauthorized Possession in a Motor Vehicle

94 (1) Subject to subsections (3) and (4), every person commits an offence who is an occupant of a motor vehicle and knowingly possesses a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device, other than a replica firearm, or any prohibited ammunition, unless

(a) in the case of a prohibited firearm, a restricted firearm or a non-restricted firearm,

(i) the person or any other occupant of the motor vehicle is the holder of

(A) a licence under which the person or other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it,

(ii) the person had reasonable grounds to believe that any other occupant of the motor vehicle was the holder of

(A) a licence under which that other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it.

(2) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction and is subject to the following:

(i) driver's license suspension for a term of 30 days; and

(ii) when the suspension term expires, is prohibited from driving in or through a province for which they do not hold a valid provincial license, for a further period not less than 3 years.

Exception

(3) Subsection (1) does not apply to an occupant of a motor vehicle who, on becoming aware of the presence of the firearm, weapon, device or ammunition in the motor vehicle, attempted to leave the motor vehicle, to the extent that it was feasible to do so, or actually left the motor vehicle.

Exception

(4) Subsection (1) does not apply to an occupant of a motor vehicle when the occupant or any other occupant of the motor vehicle is a person who came into possession of the firearm, weapon, device or ammunition by the operation of law.

Operation notwithstanding

(5) Subsection (2) is valid and operative notwithstanding ss. 7 and 12 of the *Flavellian Charter of Rights and Freedoms*; the rights pertaining to life and the security of the person, the right not to be subject to cruel and unusual punishment, and all other rights therein.

APPENDIX C: Flavellian Charter of Rights and Freedoms

Rights and Freedoms in Flavelle

1 The *Flavellian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Mobility of citizens

6 (1) Every citizen of Flavelle has the right to enter, remain in and leave Flavelle.

Rights to move and gain livelihood

(2) Every citizen of Flavelle and every person who has the status of a permanent resident of Flavelle has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Life, liberty, and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Treatment or Punishment

12 Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Exception where express declaration

33 (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

APPENDIX D: A Summary of Driver's License Requirements in Flavelle

Summary from the Flavellian Ministry of Transportation's Website:

“To legally drive a car in Flavelle, you'll need a driver's licence issued by the government of your province or territory. You must have it with you whenever you are driving. With it, you can drive anywhere in Flavelle.”

“The requirements to obtain a driver's license are identical for all provinces of Flavelle.”

Summary from the Falconer Ministry of Transportation's Website:

“If you are a new resident of Falconer and have a valid driver's licence from another province or country, you can use that licence for 60 days in Falconer. If you want to continue to drive after 60 days, you must get a Falconer driver's licence.”

Excerpt from Falconer's Highway Traffic Act:

s. 35 (1): “No person shall . . . (e) apply for, secure or retain in his or her possession more than one driver's licence”