IN THE SUPREME COURT OF FLAVELLE

(ON APPEAL FROM THE FALCONER COURT OF APPEAL)

BETWEEN:

DAVID THOMAS

Appellant

- and -

FLAVELLE (ATTORNEY GENERAL)

Respondent

FACTUM OF THE RESPONDENT

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. OVERVIEW

1. Gun violence and gun trafficking are plaguing Flavelle. In response, citizens called on their government for stricter gun control laws to protect their constitutional right to life, liberty, and security of the person. After calling a Royal Commission to carefully evaluate the public safety risks posed by gun violence, Parliament enacted a carefully tailored, evidence-informed statute to protect its citizens by restricting the movement of guns. It did so in a *Charter*-compliant way.

2. Mr. Thomas transported an unlicensed firearm across provincial borders and was subsequently arrested pursuant to the new *Criminal Code* provision introduced through the *Firearms Safety and Accountability Act*. Though he will ask this Court to conclude otherwise, Mr. Thomas was engaged in precisely the conduct the impugned provision seeks to prevent, and as such, he was convicted and sentenced accordingly.

3. The Appellant asks this Court to disregard the text of s. 33 of the *Charter* and the decades of jurisprudence that have upheld that an express declaration is the sole form requirement for invocation. Parliament met this form requirement – nothing more was required.

4. Mr. Thomas' liberty rights were not violated – driving is a licenced activity and a privilege. To interpret "permission to drive" as a protected interest is an unnecessary extension of s. 7.

5. Similarly, Mr. Thomas' s. 6 mobility rights were not violated. Mr. Thomas can still travel interprovincially, he is simply prohibited from doing so while in the driver's seat of a motor vehicle. Such an interference does not infringe any alleged absolute mobility right to interprovincial travel, nor does it imperil his livelihood as owner and operator of his business.

6. In the face of a complex crisis requiring careful state intervention, nothing less than the measures taken would fulfill the government's essential duty to protect the lives of its citizens.

STATEMENT OF FACTS

1) Parliament enacted the *FSAA* to sever the link between gun crime and the mobility of guns

7. In March 2022, an individual opened fire in an apartment building. This gun did not originate in Falconer but was trafficked across provincial borders. Existing gun laws were not effective in preventing its movement.

8. Instead, this incident highlighted the danger posed by gun violence to everyday Flavellians on the international stage, sparking public outcry for revisions to Flavelle's existing gun control legislation. In response, a Royal Commission was called to investigate gun crimes in Flavelle.

9. In its report, the Royal Commission identified that the frequency of gun crimes had increased by 17% between 2017 and 2021. During this same period, the frequency of perpetrators using a firearm originating from outside of the province where the crime occurred doubled, and the frequency of roadside detention on the highway leading to the discovery of the unlawful possession of a firearm had also increased by 40%.

10. In the words of Commissioner Akash Portnov, there was a "causal link between the increase in gun trafficking and the incidence of gun crimes", noting that the March 2022 incident was an example of a "tragic gun crime perpetrated by a trafficked firearm."[1] Portnov emphasized that "solutions must be sought" to reduce interprovincial gun trafficking.[2]

11. The report also highlighted that the differing levels of firearm availability between the provinces of Flavelle related to the incidence of trafficking. The report indicated that "[p]rovinces 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.

[1] Official Problem, Appendix A.
[2] *Ibid*.

Amongst the jurisdictions that are seeing the highest levels of inflows of trafficked firearms is Falconer, which has the lowest number of gun retailers in the country."[3]

12. In response to the findings of the Royal Commission and the electorate's calls for stricter gun control, the Parliament of Flavelle (the "Parliament") passed the *Firearms Safety and Accountability Act* (the "*Act*" or the "*FSAA*"). By targeting a common mode of interprovincial transportation where prohibited guns are increasingly being found, the *Act* prohibits the unauthorized possession of a firearm in a vehicle in efforts to reduce gun violence and the frequency of firearms trafficking and other offences in Flavelle.

2) Mr. Thomas engaged in precisely the activity the *FSAA* intended to capture

13. Mr. Thomas is the owner and operator of TruckPro Inc. Some of his responsibilities include making deliveries, shared amongst the 3-4 other drivers he employs, although it is unclear what percentage require him to leave the province. He also occasionally travels to TruckPro's head office in Bloor, which is accessible via the Trans-Flavellian Highway. The lower courts did not deny the existence of other available means of transport between the provinces, including railways and airlines.

14. However, Mr. Thomas was not performing any professional duties when he was caught exceeding the speed limit on July 1, 2022 on the Trans-Flavellian Highway. The officer who stopped Mr. Thomas discovered a hunting rifle in his vehicle for which he could provide no valid licence. Although Mr. Thomas explained that the firearm belonged to his friend, this is not one of the listed exceptions in the *FSAA.* The officer subsequently arrested Mr. Thomas.

15. Whether Mr. Thomas is a "gun trafficker" is not at issue before this Court. The *Act* does not require consideration of the intentions or reasons for unauthorized gun possession. Mr.

[3] Official Problem, Appendix A.

Thomas' recklessness met the required knowledge element under the legislation. The Falconer Court of Justice convicted Mr. Thomas summarily under s. 94(1) of the *Act*.

16. In accordance with s. 94(2)(b) of the *Act*, the court suspended Mr. Thomas' licence for 30 days and prohibited him from driving in or through a province for which he does not hold a valid provincial licence for four years. The licence restriction does not affect Mr. Thomas' ability to travel interprovincially via other modes of transportation, including travelling as a passenger in a motor vehicle.

17. Finally, we take issue with the claims alleged by the Appellant that Mr. Thomas is a "good friend"[4], and that crossing the provincial border is "central"[5] to his family and social life. The factual record does not support these claims.

JUDICIAL HISTORY

18. The Respondent accepts the Appellant's procedural history as substantially correct, subject to one point of emphasis. At the Falconer Court of Justice, the trial judge found that Mr. Thomas recklessly possessed an unauthorized firearm in his motor vehicle, satisfying the requisite knowledge element. Mr. Thomas was convicted accordingly. His conviction is not at issue in this appeal.

PART II – STATEMENT OF ISSUES

19. This appeal raises three issues:

Issue 1: Should Federal invocation of the notwithstanding clause in s. 94(5) of the *Criminal Code* be held to a higher level of scrutiny, requiring more than an express declaration?

[4] Appellant Factum at para 9.
[5] Appellant Factum at para 8.

Issue 2: If the notwithstanding clause was not properly invoked, which is denied, does s. 94(2)(b) of the *Criminal Code* limit the liberty interest protected by s. 7 of the *Charter*?

Issue 3: Does s. 94(2)(b) of the *Criminal Code* violate s. 6 of the *Charter* in a manner that is not justifiable under s. 1?

20. The answer to each of these questions is "no".

PART III – ARGUMENT

A. THE PARLIAMENT OF FLAVELLE VALIDLY INVOKED THE NOTWITHSTANDING CLAUSE

21. The *Flavellian Charter of Rights and Freedoms* ("*Charter*") guarantees the rights and freedoms of the citizens of Flavelle. However, like other free and democratic societies, this guarantee is not without reasonable limits.[6]

22. Section 33 of the *Charter* demonstrates one such reasonable limit. It allows Parliament or a provincial legislature to *expressly declare* that an Act or provision thereof shall operate "notwithstanding a provision in section 2 or sections 7 to 15 of [the] *Charter*."[7] Often referred to as the "notwithstanding clause", this provision was essential to the bargain that led to the adoption of the constitutionally entrenched rights by providing a mechanism to ensure Parliamentary sovereignty in response to judicial review. In its *City of Toronto* decision, the Supreme Court of Canada expressly preserved an ongoing role for the notwithstanding clause in the Flavellian

[6] *Flavellian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Flavelle Act, 1982* (UK), (1982), c 11, s. 1 [*Charter*].
[7] *Charter*, s. 33.

constitutional democracy.[8] There is no valid reason to depart from the long-held jurisprudence characterizing the notwithstanding clause as being immune to judicial review.[9]

23. The text and purpose of s. 33 in the constitutional structure also establish that the notwithstanding clause is not subject to substantive judicial review. The clause permits a limited right of legislative override and allows Parliament[10] to give "continued effect to *its* understanding of what the Constitution requires by invoking s. 33 and by meeting its stated conditions."[11]

24. The notwithstanding clause also recognizes the role of the electorate as the most important actor in a democracy. Subsection 33(3) requires that any declaration under s. 33(1) shall "cease to have effect five years after it comes into force…". Crucial to preserving the electorate's oversight role, the constitutionally mandated maximum term for legislative bodies in Flavelle is also five years, which ensures that voters are the ultimate check on the use of the notwithstanding clause.[12] The Supreme Court affirmed this position in *City of Toronto*, insisting that "protection from legislation that some might view as unjust or unfair properly lies not in the amorphous underlying principles of our Constitution, *but in its text and the ballot box*".[13]

25. The invocation of the notwithstanding clause involves a suspension of citizens' rights, and the Respondent does not seek to minimize this. However, in the context of rampant gun violence and in response to cries for stricter gun control, the notwithstanding clause empowered Parliament,

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[8] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para 60 [*City of Toronto*], Book of Authorities Tab 1 [TOA].
[9] *Ford v Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712 [*Ford*], TOA Tab 2; see also: *City of Toronto*, TOA Tab 1; *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217, TOA Tab 3.
[10] Section 33 applies equally to the legislatures; for brevity, only Parliament is referenced in the Respondent's submissions.
[11] *City of Toronto* at para 60 [emphasis in original], TOA Tab 1.
[12] *Charter*, s. 4(1).
[13] *City of Toronto* at para 59 [emphasis added], TOA Tab 1, citing *British Columbia v Imperial Tobacco Canada Ltd*, 2005 SCC 49 at para 66, TOA Tab 4.

as elected officials, to enact legislation to protect the lives and safety of citizens, even if, at times, this may temporarily impact some *Charter*-protected rights.

1) Invocation of the notwithstanding clause requires express declaration

26. The *FSAA* complied with the procedural requirements for the proper exercise of the notwithstanding clause: subsection 94(5) contains an express declaration that subsection (2) is valid and operative notwithstanding the rights and freedoms enumerated in sections 7 and 12 of the *Charter*.[14]

27. In the landmark case *Ford v Quebec (Attorney General)* (*Ford*), the Supreme Court of Canada unanimously held that the notwithstanding clause is not subject to substantive judicial review.[15] Section 33 of the *Charter* sets out "requirements of form *only*".[16] The Court held that there is no reason why more than an express declaration of the number of the section, subsection, or paragraph of the *Charter* which contains the provision or provisions to be overridden should be required under s. 33.[17] There is no basis in the law to depart from this longstanding jurisprudence.

28. As the Falconer Court of Appeal emphasized in its decision below, Parliament met the form requirement by expressly stating "and all other rights therein", enumerated in ss. 7 and 12 of the *Charter of Rights and Freedoms*".[18] As the Falconer Court of Appeal held, this language must be read to incorporate "liberty".[19]

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[14] *Ford* at para 33, TOA Tab 2.
[15] *Ibid*, TOA Tab 2.
[16] *Charter*, s. 33; *Ford* at para 33 [emphasis added], TOA Tab 2.
[17] *Ford* at para 33, TOA Tab 2.
[18] Official Problem, Appendix B, s. 94(5).
[19] Official Problem at para 37.

2) Liberty is included in the text of s. 94(5)

29. The Appellant concedes that the *Criminal Code*, like all other statutes, ought to be given a "fair, large and liberal construction", yet draws on academic commentary to suggest that a strict construction ought to apply.[20] There is no basis in the law to support this proposition.

30. Modern principles of statutory interpretation require that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[21]

(a) The text requires the inclusion of "liberty"

31. By reading the entire provision, the text of s. 94(5) is clear: liberty is one of the rights enumerated in s. 7 of the Charter.[22]

32. The Court of Appeal held that there is no ambiguity in the text of the *FSAA*. The text is clear: subsection 94(5) ends by invoking "*and* all *other* rights therein", referencing the previously enumerated ss. 7 and 12. This should not be read, as the Appellant would suggest, to refer to the principles of fundamental justice.[23] These principles are not rights in themselves, rather, they qualify the protected interests and cannot replace liberty in a coherent reading of the text of s. 94(5).[24]

33. The Appellant relies upon the maxim "*expressio unius est exclusio alterius*" to suggest that the provision ought to be read to exclude "liberty".[25] This argument is misplaced where it relies exclusively on the text of the provision without regard to the underlying rationale of the statute.[26]

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[20] Appellant Factum at para 39.
[21] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21, TOA Tab 5.
[22] Official Problem, Appendix B, s. 94(5).
[23] *Ibid* [emphasis added].
[24] Appellant Factum at para 34.
[25] *Ibid*.
[26] *Copthorne Holdings Ltd v Canada*, 2011 SCC 63 at paras 108-111, TOA Tab 6.

The maxim is a merely a statutory interpretation aid and should not be used to displace a purposive interpretation.[27]

34. In addition to the express declaration in the text, the context and purpose of the *FSAA* similarly demonstrate that "liberty" must be included in a logical and purposive reading of s. 94(5).

(b) The purpose requires the inclusion of "liberty"

35. In response to this life-threatening issue, the elected officials of Flavelle did what they were constitutionally empowered to do—they enacted a carefully tailored statute, informed by the Report, to protect citizens by preventing the movement of guns throughout the country. An interpretation that best accords with the intent of Parliament and the purpose of the legislation should be adopted.[28]

36. The Preamble outlines the scheme and object of the *FSAA*: Parliament committed to reducing the twin problems of gun violence and firearms trafficking.[29] By creating a specific offence related to the prohibition of unauthorized firearms in vehicles, Parliament was able to address one of the underlying conduct elements of these related problems by impeding the movement of guns in motor vehicles in Flavelle.

37. Parliament's intention is clear. In response to escalating gun violence, citizens of Flavelle called for stricter gun control laws to counter this dangerous problem.[30] Parliament established a Royal Commission to investigate gun crimes in Flavelle.[31] The Report of the Royal Commission on Interprovincial Gun Trafficking (the "Report") indicated that gun crimes had increased

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[27] *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 65-67 [*ATA*], TOA Tab 7.
[28] *Ibid* at para 67, TOA Tab 7.
[29] Official Problem, Appendix B.
[30] Official Problem at para 9.
[31] Official Problem at para 8.

dramatically in Flavelle, and the number of trafficked guns had doubled.[32] More guns were being found in cars: the frequency of roadside detention on the highway leading to the discovery of the unlawful possession of a firearm had increased by 40%.[33]

38. In his commentary accompanying the Report, Commissioner Portnov discussed a causal link between the increase in gun trafficking and the incidence of gun crimes, and specifically recommended solutions aimed at reducing interprovincial gun trafficking.[34] As evidenced in the March 2022 incident, there is grave danger when unauthorized firearms are moving throughout Flavelle.[35]

B. THE *FSAA* DOES NOT LIMIT THE LIBERTY INTEREST PROTECTED BY S. 7 OF THE *CHARTER*

39. Section 7 of the *Charter* states that "[e]veryone 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."[36] Like all rights guaranteed by the Charter, the meaning of "liberty" must be understood in the light of the interests it was meant to protect.[37]

40. Liberty protects fundamental matters that are inherently personal or central to a person's dignity. At its core, liberty protects an individual from the state's power to imprison or compel attendance.[38] It protects the right to make fundamental personal decisions without state interference.[39] However, liberty does not, and should not, extend to privileges like driving.

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[32] Official Problem at para 6 and Appendix A.
[33] Official Problem, Appendix A.
[34] *Ibid*.
[35] Official Problem at para 7.
[36] *Charter*, s. 7.
[37] *Hak c. Procureure générale du Québec*, 2019 QCCA 2145 at para 40, TOA Tab 8, citing *R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC), [1985] 1 SCR 295 at para 116, TOA Tab 9.
[38] See for example: *R v Ndhlovu*, 2022 SCC 38 [*Ndhlovu*], TOA Tab 10.
[39] See for example: *Carter v Canada (Attorney General)*, 2015 SCC 5, TOA Tab 11.

1) The licence suspension does not limit liberty interests protected by s. 7

41. The jurisprudence makes it clear that a driver's licence suspension is a privilege and not a right.[40] Nearly 40 years ago, the Supreme Court of Canada emphasized that while it is convenient to refer to the ability to circulate on a public highway as a liberty, it is *not* a fundamental liberty like the ordinary right of movement of the individual.[41] Instead, driving is a licensed activity that is subject to regulation and control for the protection of life and property.[42]

42. The British Columbia Court of Appeal was even more emphatic in its conclusion that liberty does not extend to the privilege of driving a motor vehicle on a public highway.[43] Driving a vehicle is not a matter that "goes to the root of a person's dignity and independence."[44]

43. The Respondent recognizes that a prohibition on interprovincial driving may impact a person's lifestyle; however, logistical challenges related to travel do not render such a prohibition contrary to the *Charter* in the absence of a specific breach of a *Charter*-protected right. To extend the protections to driving privileges would be an unnecessary extension of the liberty interests that s. 7 seeks to protect.

(a) The Appellant is not prevented from "moving through space"

44. The Appellant's description of the sanction fundamentally mischaracterizes both the penalty and the impact on an individual.[45] An interprovincial driving ban cannot be reasonably portrayed as an example of the state's "coercive power to keep a person *within* political borders."[46]

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[40] See for example: *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, TOA Tab 12; *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, TOA Tab 13; and *Alberta (Attorney General) v Moloney*, 2015 SCC 51, TOA Tab 14.
[41] *Dedman v The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2 at para 68 [*Dedman*], TOA Tab 15.
[42] *Ibid.*
[43] *Buhlers v British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114 at paras 108-110 [*Buhlers*].
[44] *Ibid* at para 109.
[45] Appellant Factum at para 44.
[46] *Ibid*.

The Appellant may leave his province of residence or the country of Flavelle at any time. There is no time during the duration of his sentence that Mr. Thomas will be kept within "political" borders.

45. The Respondent does not minimize the important role that driving plays in the lives of many Flavellians. However, following the initial 30-day driver's licence suspension (which the Appellant has not challenged in his submissions), the Appellant regained the ability to drive in Falconer.

46. While interprovincial travel likely becomes more difficult in the face of the licence restriction, the inability to drive in other provinces does not confine an individual or prohibit their movement. Interprovincial travel may become more difficult, but this inconvenience must be distinguished from restrictions placed on the free movement of individuals where courts have found that liberty is actually engaged.[47]

(b) Presumption of innocence concerns do not inform the current s. 7 analysis

47. While acknowledging that courts have consistently held that "the *Charter*'s guarantee of liberty does not apply to … suspension of driver's licences", the Appellant attempts to rely on the majority's holding in *Sahaluk* to support the position that s. 94(2)(b) engages Mr. Thomas' liberty interest.[48] *Sahaluk* must be distinguished—pre-trial conditions are fundamentally distinct from post-conviction sentences.

48. *Sahaluk* considered the constitutionality of a mandatory roadside licence suspension of any person charged with an alcohol-related driving offence that would stay in place until the disposition of that criminal charge.[49] The majority of Alberta Court of Appeal, therefore, focused its analysis on the presumption of innocence, even when considering the potential impact on liberty

[47] See for example: *R v Heywood*, 1994 CanLII 34 (SCC), [1994] 3 SCR 761, TOA Tab 17; *Ndhlovu*, TOA Tab 10.
[48] Appellant Factum at para 50; *Sahaluk v Alberta (Transportation Safety Board)*, 2017 ABCA 153 [*Sahaluk*], TOA Tab 18.
[49] *Sahaluk* at para 1, TOA Tab 18.

rights.[50] Accordingly, the majority's finding that the liberty interest was engaged by a licence suspension prior to conviction must be distinguished from s. 94(2)(b), which only imposes a driving restriction as a penalty following conviction.

2) Principles of Fundamental Justice

49. In order to make out a violation of s. 7, the Appellant first bears the burden of establishing that the impugned law deprives him of liberty (or life or security of the person, which are not at issue on this appeal). If it is established that s. 7 is engaged, which is denied, then the Appellant must demonstrate that the deprivation is inconsistent with the principles of fundamental justice. These principles are not rights themselves; rather, they are qualifiers that set the parameters that a law that impacts a person's life, liberty, or security of the person must meet.[51]

50. The first step in this analysis is to determine the purpose of the impugned provision. To determine this, courts may consider statements of purpose in the legislation; the text, context, and scheme of the legislation; and finally, any extrinsic evidence such as the Report of the Royal Commission.[52]

51. When considering the purpose of the impugned provision, the *FSAA* must not be reduced to a "gun trafficking law". The *Act* reflects Parliament's intention to enact *stricter gun control legislation*—existing prohibitions regarding the possession of unauthorized firearms were not adequate to impact the rampant gun violence affecting the country. Parliament therefore made a legislative decision to target the movement of unauthorized guns.

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[50] *Sahaluk* at paras 109-115, TOA Tab 18.
[51] *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 94 [*Bedford*], TOA Tab 19, citing *Re BC Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 SCR 486 at para 62, TOA Tab 20.
[52] *Ndhlovu* at paras 59-64, TOA Tab 10.

52. Parliament responded to its electorate's demands in a reasonable and measured way. First, it empowered the Royal Commission to investigate the threats posed by gun violence, and then enacted a carefully tailored statute informed by the evidence and specific recommendations.[53]

53. In the Report, Commissioner Portnov highlighted the causal link between the increase in gun trafficking and increase in gun crimes, and specifically recommended that Parliament implement solutions to reduce interprovincial gun trafficking.[54]

54. As it was democratically elected and constitutionally empowered to do, Parliament enacted a law to protect its people by prohibiting the movement of guns in vehicles.

(a) The FSAA *is not overbroad*

55. The Appellant concedes that the driving ban is neither arbitrary nor grossly disproportionate; however, suggests that the provision is overbroad.[55]

56. A law is overbroad where it captures some conduct that is unrelated to its objective, making it arbitrary in part.[56] The Appellant suggests that the *FSAA* is overbroad because he is not a "gun trafficker" and yet his conduct was captured by the *Act*. With respect, this narrow interpretation disregards the purpose of the law. The increased movement of guns that underlies gun trafficking and has led to gun violence was the very problem that prompted Parliament to amend the *Criminal Code* and prohibit the movement of unauthorized guns.

57. A narrow interpretation ignores the mechanism by which guns are trafficked in Flavelle, as Farrell JA emphasized in the decision below.[57] It also highlights the very evidentiary difficulty the Supreme Court warned against in *Bedford*.[58] Requiring a specific intention to traffick guns may

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[53] Official Problem at paras 8-9; Official Problem, Appendix A.
[54] Official Problem, Appendix A.
[55] Appellant Factum at para 51.
[56] *Bedford* at paras 101 and 112-113, TOA Tab 19.
[57] Official Problem at para 38.
[58] *Bedford* at para 143, TOA Tab 19.

lead to traffickers escaping liability, and as such, the provision must be read broadly enough to effectively capture all those it targets.

58. To accept the Appellant's narrow interpretation also disregards related provisions in the *Criminal Code* that prohibit unauthorized possession of a firearm. At the time Parliament enacted the *FSAA*, many of the existing gun control provisions simply prohibited unauthorized possession of a gun. These adjacent provisions do not require an intent to harm or commit a particular offence.[59]

59. The Appellant's submission also disregards the text and required *mens rea* element of s. 94(1). To contravene this section, one must "knowingly" possess an unauthorized gun in a motor vehicle to contravene this section.[60] Nothing more is required.

60. Finally, Parliament is not limited to enacting legislation which only captures "gun traffickers". Parliament is constitutionally empowered to enact law as it deems appropriate to limit conduct that is fundamental to an offence.

61. The law is not overbroad. The Appellant's conduct was precisely what the impugned provision intended to prevent. At the time of his arrest, Mr. Thomas was knowingly travelling across interprovincial borders with an unregistered gun. That he was "only" reckless to the fact that there was an unregistered gun in his vehicle is immaterial—the trial judge found as a fact that his recklessness satisfied the requisite knowledge element of the offence.[61]

[59] *Criminal Code*, RSC 1985, c C-46, ss 91-93, TOA Tab 41.
[60] Official Problem, Appendix B, s. 94(1).
[61] Official Problem at para 27.

(a) The FSAA *was carefully tailored to target the movement of guns in Flavelle*

62. In helpful contrast to the facts before this Court, the Supreme Court of Canada concluded that the impugned law was overbroad in *Bedford* because it was captured conduct that had no relation to the purpose of preventing the exploitation of prostitutes.[62]

63. In *Bedford*, the Court considered whether "living on the avails of prostitution" was overbroad insofar as it captured non-exploitative relationships unconnected to the law's purpose. There, the law captured anyone in business with a prostitute, such as accountants or receptionists, and even extended to those who could increase the safety and security of prostitutes, such as drivers or bodyguards.[63]

64. Unlike the impugned provisions in *Bedford*, the *FSAA* does not capture unrelated or potentially beneficial conduct—it only captures the knowing movement of unauthorized guns.

65. The *FSAA* was carefully tailored to address conduct that increases the likelihood of gun violence and gun trafficking by targeting the movement of unauthorized guns in Flavelle. That Mr. Thomas' actions were "careless" is immaterial; the Appellant knowingly contributed to the movement of unauthorized guns in Flavelle and directly contravened the law.[64]

66. While the Appellant disagrees that the *FSAA* should have captured his conduct, there is no foundation to suggest that disagreement can ground a finding that the law is therefore overbroad.

(a) The FSAA *requires discretion*

67. The *FSAA* creates a hybrid offence to allow for prosecutorial discretion and to ensure that sentences are appropriately tailored to the conviction, contrary to the Appellant's incorrect

[62] *Bedford* at para 142, TOA Tab 19.
[63] *Ibid*, TOA Tab 19.
[64] Appellant Factum at para 55.

submission that "those arrested for trafficking are punished in the exact same way as those who merely possess an unlicensed firearm in their vehicle." [65]

68. The hybrid nature of the offence allowed Parliament to carefully tailor the legislation to ensure that the punishment was relevant to the offender's conduct and, in all cases, would remain connected to the ultimate purpose of preventing the movement of unauthorized guns in Flavelle.

C. SECTION 94(2)(B) OF THE FSAA DOES NOT INFRINGE THE APPELLANT'S SECTION 6 RIGHTS

69. The *FSAA* does not infringe Mr. Thomas' s. 6 mobility rights. The penalties imposed under s. 94(2)(b) of the *Act* do not restrict his ability to travel interprovincially, which is not obviously a right protected under s. 6(1) regardless. He is merely restricted from doing so as a driver of a motor vehicle. However, unlike a passport, a driver's licence is not constitutionally protected, and there need not exist means for licence-holders to always exercise its use.[66]

70. Mr. Thomas' *Charter* rights are also not infringed under s. 6(2)(b) by the penalty's impact on certain functions of his job. While he currently fulfills a handful of interprovincial deliveries and occasionally visits his head office located in Bloor[67], both activities are easily delegated or can be completed through reasonable alternative means. The law is not clear that interference with such activities engages livelihood, especially considering that Mr. Thomas is not rendered unable to pursue his livelihood as owner and operator of TruckPro. However, even if this Court finds that the penalty sufficiently engages Mr. Thomas' livelihood, the Appellant has failed to demonstrate that the *Act* discriminates *primarily* on the basis of residence, as required per the Supreme Court's two-part analysis in *CEMA*.

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[65] Official Problem, Appendix B; Appellant Factum at para 54.
[66] *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 98 [*Hutterian Brethren*], TOA Tab 12.
[67] Official Problem at paras 13-15.

1) Section 94(2)(b) of the *FSAA* does not infringe the Appellant's s. 6(1) right

71. To find a violation of s. 6(1), the Court must accept the Appellant's argument that (1) *Taylor v Newfoundland* is correct that a pure interprovincial mobility right is protected under s. 6(1), and (2) *Brar v Canada* broadly supports the principle that constitutional protection attaches to an individual's preferred mode of transport to exercise their s. 6(1) rights. The Appellant's argument must fail because the holding in *Taylor* is a lower court decision incongruent with the purpose of s. 6(1), and *Brar*'s general application is limited because driver's licences are not constitutionally protected like passports.

(a) Section 6(1) does not protect an absolute right to interprovincial travel

72. The Court should not rely on the construction of s. 6(1) devised in *Taylor v Newfoundland and Labrador* because it stretches s. 6(1) beyond its purpose. In *Taylor*, the Supreme Court of Newfoundland and Labrador held that "that the right to "remain in" Canada, as embodied in s. 6(1) of the *Charter*, includes the right of Canadian citizens to travel in Canada for lawful purposes across provincial and territorial boundaries."[68] While the law does not foreclose the existence of an absolute right to interprovincial mobility under s. 6, the court in *Taylor* fails to acknowledge that it is a right ill-suited for protection under s. 6(1) given its purpose.

73. A *Charter* right must be understood "in light of the interests it was meant to protect."[69] Section 6(1) was intended to preclude future legislation providing for the "exile, banishment or deportation of citizens" from the country of Flavelle.[70] In *United States v Cotroni,* La Forest J stated that the "central thrust" of the right "is against exile and banishment, the purpose of which

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[68] *Taylor v Newfoundland and Labrador*, 2020 NLSC 125 (CanLII) at para 301 [emphasis in original] [*Taylor*], TOA Tab 21.
[69] *R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC), [1985] 1 SCR 295 at para 116, TOA Tab 9.
[70] Peter Hogg, *Constitutional Law of Canada*, 5th Edition (Toronto: Thomson Reuters, 2017), at §46:2 [Hogg], TOA Tab 40.

is the exclusion of membership in the national community."[71] Section 94(2)(b) of the *Act* does not place Mr. Thomas at risk of exile, banishment or deportation from Flavelle, and thus, s. 6(1) is not violated. Further, *Taylor* strains the internal logic of s. 6 by empowering permanent residents with the more specific rights under s. 6(2)(b) to move to, take up residence, and pursue the gaining of a livelihood in any province, while also withholding an interprovincial mobility right from them under s. 6(1).[72] Thus, the persuasiveness of *Taylor*, a lower court decision from Newfoundland and Labrador, is limited.

(b) Brar does not constitutionally protect every mode of transport used to effect section 6(1) rights

74. If this Court is persuaded by *Taylor,* it will recognize the existence of a *pure mobility* right to travel interprovincially. Section 94(2)(b) does not violate *this* theoretical right; Mr. Thomas, and other licence-holders penalized under the *FSAA*, are not prohibited from travelling interprovincially using alternative means of transportation. The Appellant therefore requires the Court to recognize *more* in order to find a violation of s. 6(1). Specifically, the Court must hold that *driving a motor vehicle* interprovincially must be given constitutional protection. The Appellant supports this proposition by extrapolating from *Brar* the principle that any mode of transport used to effect a s. 6(1) right is constitutionally protected.[73] However, *Brar* is too limited by its context involving passports and overseas commercial air travel to support a broader principle applying similarly to the driver's licence context.

75. In *Brar*, the appellant's names were included on a no-fly list which made it impossible for them to fly commercially.[74] Prohibiting the appellant from commercial air travel effectively denied

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[71] *United States of America v Cotroni; United States of America v El Zein*, 1989 CanLII 106 (SCC), [1989] 1 SCR 1469 at 1482 [*Cotroni*], TOA Tab 22.
[72] Official Problem, Appendix C.
[73] Appellant Factum at para 64.
[74] *Brar v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1168 at paras 15, 21 [*Brar*], TOA Tab 23.

him the right to exercise his passport should his destination of choice be overseas.[75] The court concluded that because a passport is a constitutionally protected document[76], there must be at least *some* mode of transport available to effect one's chosen use of their passport.[77] The law is clear that there is no similar constitutional right to a driver's licence.[78] Thus, *Brar*'s reasoning does not apply neatly to driver's licences.

76. Moreover, on the particular facts of this case*, Brar* is distinguishable because (1) s. 94(2)(b) does not entirely foreclose travelling in motor vehicles, and (2) there are "reasonable, realistic and practical" alternatives to motor vehicle transportation between neighbouring provinces which did not exist for overseas commercial air travel.[79] Mr. Thomas can still travel interprovincially. In fact, he can do so while in a motor vehicle using the same highways he usually travels, he just cannot occupy the driver's seat. Furthermore, alternatives such as carpools or railways provide Mr. Thomas with reasonable alternate means of transportation to Bloor.

2) Section 94(2)(b) of the *FSAA* does not infringe the Appellant's s. 6(2)(b) right

77. The *Act* does not violate Mr. Thomas' rights under s. 6(2)(b), the right "to pursue the gaining of a livelihood in any province."[80] In order to find a violation of s. 6(2)(b), the Appellant must show, as a threshold consideration, that Mr. Thomas' ability to pursue his livelihood is engaged by the impugned statute. If the threshold is met, the Appellant must then demonstrate, per the Supreme Court's two-part analysis set out in *CEMA,* that (1) there is differential treatment between residents and non-residents; and (2) the legislation discriminates among persons *primarily*

[75] *Brar* at para 100, TOA Tab 23.
[76] *Kamel v Canada (Attorney General)*, 2009 FCA 21 (CanLII), [2009] 4 FCR 449 at para 15 [*Kamel*], TOA Tab 24.
[77] *Brar* at paras 100-101, TOA Tab 23.
[78] *Sahaluk* at para 178.
[79] *Brar* at para 101.
[80] Official Problem, Appendix C.

on the basis of residence. The Appellant has failed to demonstrate that first, Mr. Thomas' livelihood is engaged, and second, that the *Act* discriminates primarily on the basis of residence.

(a) The FSAA does not engage Mr. Thomas' livelihood

78. Mr. Thomas' livelihood is not obviously engaged by s. 94(2)(b) based on the typical application of s. 6(2)(b). Cases litigated under s. 6(2)(b) have historically involved provincially enacted barriers preventing non-residents from accessing a professional field, not federal criminal law applying equally to all regardless of their residential status. Furthermore, these restrictions typically prevented non-residents from practicing *any* function of their job, which is not the case for Mr. Thomas, whose average work day remains largely unaffected by the interprovincial driving restriction.

79. Section 6(2)(b) does not protect a freestanding right to employment. The Supreme Court was clear in *CEMA* that s. 6 does not "categorically guarantee" the right to move goods, services, or capital into a province "without regulation operating to interfere with that movement."[81] Instead, the right aims to ensure citizens have the right to seek work in provinces different from their origin, and prevent the imposition of barriers to employment which artificially discriminate on the basis of residence.[82] As argued by Peter Hogg, "it would be odd to find such a right [to work] in a Charter that generally eschews the protection of economic rights, and especially odd to find such a right buried in a section headed "Mobility Rights"."[83]

80. Given that goal, courts have developed the content of this right in the context of cases often involving professional regulation or licencing[84], where provincial barriers disadvantaged non-

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[81] *Canadian Egg Marketing Agency v Richardson*, 1997 CanLII 17020 (SCC), [1998] 3 SCR 157 at para 66 [*CEMA*], TOA Tab 25.
[82] Hogg, §46:4, TOA Tab 40.
[83] *Ibid*, TOA Tab 40.
[84] For a licensing example, see *Basile v Attorney-General of Nova Scotia,* 1984 CanLII 3045 (NSSC) [*Basile*], TOA Tab 26.

resident workers against their resident counterparts if they both sought to work in the same province. This was the case in *Black v Law Society of Alberta*, where the Supreme Court held that Law Society of Alberta rules preventing non-resident lawyers from forming partnerships with resident lawyers "seriously restricted" their ability to gain a livelihood in Alberta.[85] The professional regulation context was further considered in the following notable s. 6(2)(b) judgments: *Law Society of Upper Canada v Skapinker* and *Malartic Hygrade Gold Mines Ltd v Quebec.*[86]

81. This case exists in a fundamentally different context — the government has enacted a criminal law provision applying *equally* to all citizens *regardless* of their profession or their residential status.[87] A residentially-neutral federal penal law is not the sort of residence-discriminating provincial barriers which were usually found to engage s. 6(2)(b), suggesting that the *FSAA* does not engage s. 6(2)(b).

82. Furthermore, interprovincial travel is not essential to Mr. Thomas' job, and since his pursuit of his livelihood as owner and operator of TruckPro is not rendered "practically ineffective" or "essentially illusory"[88], the Court should not find that livelihood is engaged. Although Mr. Thomas currently travels to Bloor to complete a handful of interprovincial deliveries and occasionally visit his head office[89], both activities can easily be delegated or completed through alternate means. While it is true that *Skapinker* established that a "transprovincial border commuter" would be protected under s. 6(2)(b)[90], calling Mr. Thomas a "commuter" greatly overstates the role driving interprovincially plays in his day-to-day job as owner and operator of

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[85] *Black v Law Society of Alberta*, 1989 CanLII 132 (SCC), [1989] 1 SCR 591 at 619 [*Black*], TOA Tab 27.
[86] *Law Society of Upper Canada v Skapinker*, 1984 CanLII 3 (SCC), [1984] 1 SCR 357 [*Skapinker*], TOA Tab 28; *Malartic Hygrade Gold Mines Ltd v Quebec*, 1982 CanLII 2870 (QCCS) [*Malartic*], TOA Tab 29.
[87] Official Problem, Appendix B.
[88] *CEMA* at para 76, TOA Tab 25.
[89] Official Problem at paras 13-15.
[90] *Skapinker* at para 29, TOA Tab 28.

TruckPro. Mr. Thomas drives routes into Bloor 4-5 times per month on average, and typically visits the TruckPro head office once a month.[91] The bulk of his time each month is spent in Falconer.

83. Typically, s. 6(2)(b) has been engaged when an individual is effectively unable to practice *most*, if not *all*, functions of their job.[92] Rarely has the jurisprudence considered scenarios like Mr. Thomas', where the bulk of his day-to-day employment remains unaffected by mobility restrictions. The Appellant argues that *Brar* is helpful in this regard, but livelihood was still more obviously engaged in that case. In *Brar*, the appellant lived in Vancouver but "routinely" traveled to Calgary, Edmonton, and Toronto for work.[93] Being placed on a no-fly list forced the appellant to drive extremely long distances to continue completing these professional duties.[94] Mr. Thomas' head office in Bloor is only 25 minutes away from his home in Falconer via the highway.[95] Other modes of transport which make use of this highway would still allow Mr. Thomas to personally visit his head office. Should other modes of transport prove ineffective in allowing Mr. Thomas to continue fulfilling interprovincial deliveries, he may delegate these responsibilities to one of his 3-4 other drivers, a possibility which did not appear available in *Brar*. Thus, there is a scenario where Mr. Thomas, even after facing the interprovincial driving restriction, can still fulfill all the same professional duties as he did prior to his conviction while still maintaining the same job. Courts have not held that such a scenario engages livelihood under s. 6(2)(b).

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[91] Official Problem at paras 13, 15.
[92] See *CEMA*, TOA Tab 25; *Black*, TOA Tab 27; *Malartic*, TOA Tab 29; *Basile*, TOA Tab 26.
[93] *Brar* at para 103, TOA Tab 23.
[94] *Ibid*, TOA Tab 23.
[95] Official Problem at para 14.

(b) Section 94(2)(b) does not discriminate among persons primarily on the basis of residence

84. Even if the Court agrees that the threshold for s. 6(2)(b) is met, the Appellant has not demonstrated that the Act discriminates *primarily* on the basis of residence in either purpose or effect as required under the *CEMA* analysis. "Primarily" in this case requires the court to determine the dominant basis for discrimination.[96] The law is clear that because any differential treatment Mr. Thomas experiences under the *Act* is incidental to a wider legislative objective applying to all provinces, s. 94(2)(b) does not discriminate *primarily* on the basis of residence.

85. The Respondent concedes that the *Act* creates differential treatment under the first step of the *CEMA* test. However, the Falconer Court of Appeal correctly held that the *Act* does not *primarily* discriminate on the basis of residence in purpose or effect.[97]

86. Regarding purpose, *CEMA* is clear that any differential treatment made between residents and non-residents is acceptable if it is an incidental effect to another, valid, legislative objective.[98] The *FSAA* has as its object the "noble purpose" of curbing gun violence.[99]

87. Further, *MacKinnon v Canada* supports the proposition that federal law applying to all provinces is "suggestive" of a non-discriminatory purpose and effect, which can be confirmed by "an evaluation of the wider purposes of the scheme."[100] The law applies equally to all provinces[101], and the Appellant has not put forward any evidence to suggest that the *Act* is motivated by any other purpose other than reducing gun violence and gun trafficking in Flavelle. For example, in

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[96] *CEMA* at para 89, TOA Tab 25.
[97] Official Problem at para 39.
[98] *CEMA* at para 82, TOA Tab 25.
[99] Official Problem at para 33.
[100] *CEMA* at para 82, TOA Tab 25; see also *MacKinnon v. Canada (Fisheries and Oceans)*, 1986 CanLII 6837 (FC), [1987] 1 FC 490 [*MacKinnon*], TOA Tab 30.
[101] Official Problem, Appendix B.

Black, although the regulations were neutral in its terms, there was *evidence* that the Law Society intended to disadvantage non-resident lawyers.[102]

88. Regarding effect, *CEMA* states that discriminatory effects must become so significant over time as to have displaced their original purpose.[103] In *CEMA*, egg producers from the Northwest Territories advanced the argument that they were discriminated in effect, but the Court disagreed because the producers could not demonstrate a practical disadvantage "relative to producers resident in the destination province or provinces who also do not have a quota."[104] The Falconer Court of Appeal correctly applied this framework to conclude that Mr. Thomas was not discriminated against primarily on the basis of residence in effect.[105] The proper comparison here per *CEMA* is between Mr. Thomas, a non-resident business owner who lacks a Bloor driver's licence, and a resident business owner who *also* lacks a Bloor driver's licence. If both drivers were convicted, neither would be able to drive in Bloor. Thus, because the Appellant cannot demonstrate that any differential treatment Mr. Thomas experiences under the *Act* is primarily on the basis of his residential status in purpose nor effect, the Appellant has not demonstrated that there is a violation of s. 6(2)(b).

D. IF THERE IS AN INFRINGEMENT OF SECTION 6, IT IS JUSTIFIED UNDER SECTION 1

89. *Charter* rights are not absolutes but instead are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[106] Under s.

[102] *Black* at 625-626, TOA Tab 27.
[103] *CEMA* at para 97, TOA Tab 25.
[104] *Ibid* at para 100, TOA Tab 25.
[105] Official Problem at para 39.
[106] Official Problem, Appendix C.

1, the burden rests with the government to prove that the *FSAA* is a "reasonable limit" on a balance of probabilities.[107]

90. Unlike other *Charter* provisions such as s. 7, Canadian courts have demonstrated repeated willingness to find justified limits on s. 6.[108] Courts have even found justified limits to restrictions on passports, for example in *Kamel*, which attract constitutional protection driver's licences do not.[109]

1) Parliament should be afforded deference

91. The Court should employ a deferential approach to the s. 1 analysis. The government strives for, but ultimately cannot always achieve perfection when responding to a "complex social issue"[110] or an "abstract and intangible problem outside the ken of the courts."[111] This is precisely what the government faces with the current gun trafficking and violence crisis in Flavelle.

92. The *FSAA* is the product of precisely the sort of "sensitive, imprecise and complex assessments, evaluations and choices" courts have recognized fall within the expertise of Parliament in other s. 6 jurisprudence.[112] To tackle the twin problems of gun violence and gun trafficking, the government considers the interests of public safety, law enforcement, and intergovernmental cooperation. The trafficking of firearms across provincial borders has seen guns end up in residential buildings in provinces far from where they originate.[113] The "differing levels of availability" of firearms across provinces has resulted in uneven inflows of trafficked firearms

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[107] Hogg at §38:4, TOA Tab 40; *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 42, TOA Tab 31.
[108] See *Taylor*, TOA Tab 21; *Cotroni*, TOA Tab 22; *Singh Brar v Canada*, 2024 FCA 114 [*Brar FCA*], TOA Tab 32.
[109] *Kamel* at para 68.
[110] *Canada (Attorney General) v JTI-MacDonald Corp*., 2007 SCC 30 (CanLII), [2007] 2 SCR 610 at para 43, TOA Tab 33.
[111] *Brar FCA* at para 17, TOA Tab 32.
[112] *Ibid* at para 18, TOA Tab 32.
[113] Official Problem, Appendix A.

to certain provinces over others.[114] Gun crimes and the use of trafficked firearms in crimes have sharply increased over a four-year period.[115] In the face of these extremely high stakes to public safety across a variety of fronts, there are no clear and obvious solutions.

93. Contrary to what the Appellant argues[116], courts do not always restrain their deference to Parliament when criminal law is invoked.[117] In fact, courts have employed deferential s. 1 analyses even when criminal law is invoked in the context of driving offences, such as in *R v Whyte*.[118]

94. Gun violence and gun trafficking are fast-moving issues which do not manifest equally across all provinces of Flavelle, and Parliament is better positioned than the courts to choose how to respond to this issue. The Court has recognized that "[t]he bar of constitutionality must not be set so high that responsible, creative solutions to difficult problems would be threatened."[119] Thus, deference to Parliament is warranted.

2) <u>The FSAA has a Pressing and Substantial Objective</u>

95. The Appellant has conceded that the *Act* has a pressing and substantial objective.

3) <u>Section 94(2)(b) is rationally connected to the FSAA's objectives</u>

96. In order to demonstrate rational connection, the government must "show that it is reasonable to suppose that the limit may further the goal, not that it will do so."[120] The government will discharge its burden "as long as certain applications are rationally connected to the legislative object."[121]

97. The *Act* has the dual objective to reduce gun crime and the frequency of gun trafficking.[122]

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[114] *Ibid*.
[115] *Ibid*.
[116] Appellant Factum at para 85.
[117] See *R v Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697, TOA Tab 34.
[118] *R v Whyte*, 1988 CanLII 47 (SCC), [1988] 2 SCR 3 at para 49, TOA Tab 35.
[119] *Hutterian Brethren* at para 37, TOA Tab 12.
[120] *Ibid* at para 48, TOA Tab 12.
[121] *R v Appulonappa*, 2015 SCC 59 at para 80, TOA Tab 36.
[122] Official Problem, Appendix B.

98. Evidence from the Royal Commission's report suggests that there is a link between increased gun crime and the interprovincial movement of guns, specifically through motor vehicles. The report shows that the frequency of perpetrators using a firearm originating from outside the province where the crime occurs has doubled.[123] At the same time, the frequency of gun crimes has sharply increased, and the frequency of roadside detention on highways leading to the discovery of an unlawful possession of a firearm has increased by 40 per cent.[124] Thus, people travelling in motor vehicles carrying unauthorized or prohibited firearms are at high risk of perpetuating gun violence or gun trafficking. It is rational for the government to target them.

99. The Appellant contends that, like in *R v Oakes*, the law does not actually target traffickers, but instead, mere possessors, where no evidence supports the inference that possession leads to trafficking.[125]

100. However, the Appellant's analogy fails because the inference from possession to trafficking is stronger in this context compared to *Oakes*. First, the law does not target mere possession, but unauthorized possession *while occupying a motor vehicle*. It is rational to connect Mr. Thomas, for example, who was found to be in possession of a gun while driving across provincial borders, to a higher risk of gun trafficking because of the mobility element to his conduct given the concurrent increase between trafficking and unlawful possession of firearms discovered in roadside detentions on provincial highways.[126] Second, the quantity of guns in one's possession does not produce the same intuitive conclusions about their intended use as for the quantity of drugs. In *Oakes*, the Court found a weak link between drug possession and drug trafficking because the possession of a "small or negligible" quantity of narcotics suggests their

[123] Official Problem, Appendix A.
[124] *Ibid*.
[125] Appellant Factum at para 83.
[126] Official Problem at para 21.

intent for personal use.[127] The same intuition cannot be said for firearms. A singular gun may be extremely valuable and highly attractive to traffickers for its particular destructiveness, for example, whereas a hunter may possess ten hunting rifles but intend them all for personal use.

101. Additionally, the Appellant's argument about mandatory minimums is easily dispensed with by noting *R v Nur*'s holding that mandatory minimums must rationally connect to the goals of denunciation, deterrence, and retribution applied only to mandatory minimum sentences of imprisonment found to violate s. 12 of the *Charter*.[128]

4) Section 94(2)(b) falls within a range of reasonable alternatives

102. A deferential approach to s. 1 considers whether a law falls within a "range of reasonable alternatives" at the minimal impairment stage.[129] Specifically, the Court must ask "whether there is an alternative, less drastic means of achieving the objective in a real and substantial manner."[130]

103. The impugned provision to which this penalty belongs bears the hallmarks of a "carefully tailored" law which provides a "measured and appropriate response to the harms it addresses".[131] The *FSAA* only captures individuals who are found in possession of specified classes of prohibited or unauthorized firearms. It makes exceptions for several situations where the gun owner has valid licence or registration for the firearm, where occupants of motor vehicles reasonably believe another occupant has valid licence or registration for the firearm in the tow, and where occupants leave or attempt to leave the motor vehicle upon becoming aware of the presence of the firearm.[132] This demonstrates Parliament's careful consideration in deciding who the law targets and why.

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[127] *Oakes* at para 78, TOA Tab 31.
[128] *R v Nur*, 2015 SCC 15 (CanLII), [2015] 1 SCR 773 at para 112, TOA Tab 37.
[129] *Hutterian Brethren* at para 37, TOA Tab 12.
[130] *Ibid* at para 55, TOA Tab 12.
[131] *R v Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 SCR 45 at para 95, TOA Tab 38.
[132] Official Problem, Appendix B.

104. Furthermore, the alternatives proposed by the Appellant are each flawed and do not present less drastic means of achieving Parliament's objective in a real and substantial manner. First, restricting interprovincial driving to only those convicted of gun trafficking considerably narrows the ambit of individuals, and thereby potential guns, this legislation can target. A reduced gun supply reduces the number of guns available to be used in gun crimes. In order to reduce the supply of guns on the market, a critical mass must be targeted, which cannot be achieved by significantly reducing the amount of people who can be captured under this law. The Appellant contends "there is no reason" to prevent individuals like Mr. Thomas from crossing the border.[133] However, the government cannot reduce gun crime without also reducing the risk people like Mr. Thomas pose by taking away their privilege to drive interprovincially for a limited period of time.

105. Secondly, a minimum three-year interprovincial driving restriction was arrived at after Parliament carefully considered responses to a problem which evolved rapidly across Flavelle within the past four years. As the Court stated in *Edwards Books*, "the courts are not called upon to substitute judicial opinions for legislative ones as to the place at which to draw a precise line."[134]

5) <u>The salutary effects of s. 94(2)(b) outweigh its deleterious effects</u>

106. The *Act's* important social goal outweighs any marginal impact on Mr. Thomas, who is merely inconvenienced by the interprovincial driving ban.

107. As acknowledged by Gardner J at the Superior Court of Justice for Falconer, protecting public safety, as the *FSAA* aims to do, is a "noble legislative objective".[135] *Hutterian Brethren* held that a law which has an "important social goal" should not "lightly be sacrificed."[136] This is only

[133] Appellant Factum at para 87.
[134] *R v Edwards Books and Art Ltd*, [1986] 2 SCR 713 at para 147, TOA Tab 39.
[135] Official Problem at para 33.
[136] *Hutterian Brethren* at para 101. TOA Tab 12.

heightened in the public safety context where government inaction places the lives of Flavellians at risk of gun violence. In a situation where gun crimes have increased by 17 per cent over the course of four years, legislation aiming to address the roots of the violence is extraordinarily valuable to society.[137]

108. In contrast, Mr. Thomas and others facing penalties under s.94(2)(b) are merely inconvenienced by the *Act*. They are still permitted to travel interprovincially and may still make use of motor vehicle transportation as long as they are not the driver. If available, they can travel as a passenger in a friend's car, in a taxicab, in a bus, or by rail. In the case of Mr. Thomas, his ability to perform his role as owner and operator of TruckPro remains largely unaffected. To the extent Mr. Thomas or others convicted incur additional costs in using alternatives to continue travelling interprovincially for work or for pleasure, those costs do not deprive them of their ability to be mobile citizens of Flavelle, suggesting that the deleterious effects "fall at the less serious end of the scale."[138]

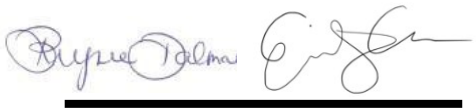
109. Protecting public safety amidst a wave of gun violence is not outweighed by the inconvenience sustained through the pursuit of alternative modes of interprovincial transportation, in service of an individual's job or otherwise. Thus, the *Firearms Safety and Accountability Act* is justified under s. 1 of the *Charter*.

[137] Official Problem, Appendix A.
[138] *Hutterian Brethren* at para 102, TOA Tab 12.

PART IV – ORDER SOUGHT

110. The Government of Flavelle respectfully requests that this Court dismiss this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on this 17th day of September, 2024.



Brynne Dalmao and Emily Chu
Counsel for the Respondent

PART V – TABLE OF AUTHORITIES

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2	*Ford v Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712	22, 26, 27
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13	*Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46	41
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26	*Basile v Attorney-General of Nova Scotia*, 1984 CanLII 3045 (NSSC)	80, 83
27	*Black v Law Society of Alberta*, 1989 CanLII 132 (SCC), [1989] 1 SCR 591	80, 83, 87
28	*Law Society of Upper Canada v Skapinker*, 1984 CanLII 3 (SCC), [1984] 1 SCR 357	80, 82
29	*Malartic Hygrade Gold Mines Ltd v Quebec*, 1982 CanLII 2870 (QCCS).	80, 83
30	*MacKinnon v. Canada (Fisheries and Oceans)*, 1986 CanLII 6837 (FC), [1987] 1 FC 490.	86
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35	*R v Whyte*, 1988 CanLII 47 (SCC), [1988] 2 SCR 3	93
36	*R v Appulonappa*, 2015 SCC 59	96
37	*R v Nur*, 2015 SCC 15 (CanLII), [2015] 1 SCR 773	101
38	*R v Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 SCR 45	103
39	*R v Edwards Books and Art Ltd*, [1986] 2 SCR 713	105

SECONDARY SOURCES (in order of appearance)

Tab	Scholarly Work	Citation
40	Peter Hogg, *Constitutional Law of Canada*, 5th Edition (Toronto: Thomson Reuters, 2017)	73, 79, 89

CANADIAN LEGISLATION

Tab	Statute	Citation
41	*Criminal Code*, RSC 1985, c C-46	58

FLAVELLIAN LEGISLATION

Firearm 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.

Flavellian Charter of Rights and Freedoms

Reasonable limits

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.
…

Maximum duration of legislative bodies

4 (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.
…

Mobility rights

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

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

…

Life, liberty and security of the 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.

…

Cruel and unusual treatment or punishment

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

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.

(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.

Falconer's *Highway Traffic Act*

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