Court File No.: T-473-24

FEDERAL COURT

BETWEEN:

HAMMAM FARAH, HIBA FARAH, AYMAN OWEIDA, X.Y., CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS, AND AL-HAQ – LAW IN THE SERVICE OF MAN

Applicants
(Appellants)

And

MINISTER OF FOREIGN AFFAIRS AND ATTORNEY GENERAL OF CANADA

Respondents
(Respondents in Appeal)

And

PRATT & WHITNEY CANADA CORP, TTM TECHNOLOGIES TORONTO INC, GEOSPECTRUM TECHNOLOGIES INC, EXCELITAS CANADA INC, APOLLO MICROWAVES LTD

Respondents
(Respondents in Appeal)

RESPONDING MOTION RECORD

February 20, 2025

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INDEX

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WRITTEN REPRESENTATIONS OF THE RESPONDENTS, MINISTER OF FOREIGN AFFAIRS AND ATTORNEY GENERAL OF CANADA

February 20, 2025

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INDEX

PART I - OVERVIEW AND STATEMENT OF FACTS

A. OVERVIEW

1. The Applicants' Amended Notice of Application (ANOA), as currently constituted, challenges the decision of the Minister of Foreign Affairs (Minister) to issue 45 export permits for military goods and technology destined for Israel to the five co-respondent corporations since October 9, 2023. There is no basis to interfere with the Case Management Judge's discretionary decision not to permit the addition of challenges to two distinct regulatory instruments within this already complex application. The Case Management Judge is charged with day to day management of the proceeding and his discretionary decisions attract a high degree of deference.

2. The Case Management Judge made no error of law nor any palpable and overriding error of fact in exercising his discretion not to expand the current application to permit the addition of two new challenges to regulatory instruments. The Case Management Judge's determination in this case that the Applicants' proposed amendments would unduly complicate an already complex proceeding was readily available on the record before him. The addition of two challenges related to goods exported pursuant to different statutory authorities to a different country involving different respondents would unnecessarily complicate this summary proceeding.

3. The Case Management Judge's decision not to permit a proposed amendment adding a bald assertion that the issuance of the export permits was contrary to section 15 of the *Charter* was also a reasonable exercise of his discretion. While notices of application are summary pleadings, they must set out the basis for the alleged breach. The Case Management Judge specifically noted that his decision in respect of this proposed amendment was without prejudice to the Applicants' right to seek a further amendment in relation to this ground provided they particularized their alleged *Charter* violation. He made no error in exercising his discretion in this manner.

4. The Applicants' motion to appeal should be dismissed.

B. STATEMENT OF FACTS

a. Overview of the Relevant Portions of Canada's Export Regime

5. The *Export and Import Permits Act* (*EIPA*) sets out the authority for the lawful import and export of controlled goods and technology to and from Canada. The purpose of the *EIPA* "is to enable the federal government to regulate and control the export and import of certain goods and technology according to Canada's economic, political and military interests".[1]

6. Subsection 3(1) of the *EIPA* authorizes the Governor-in-Council to establish the *Export Control List* (*ECL*).[2] Goods and technology that are listed in the *ECL* require a permit to be exported from Canada, subject to certain exceptions.[3] Canada publishes *A Guide to Canada's Export Control List* (*Guide*), which is incorporated into the *ECL*, and lists the items enumerated in the *ECL*.[4]

7. Various military goods and technologies are listed in the *ECL*. These items are found under Group 2 – "Munitions List", and Group 9 – "Arms Trade Treaty".[5] Group 2 of the *ECL* is comprised of items and components of items that are specially designed or modified for military purposes that have been added to the *ECL* in compliance with Canada's commitments under the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technology* (*Wassenaar Arrangement*).[6] Group 9 was added to the *ECL* on June 17, 2019 as part of Canada's accession to the *Arms Trade Treaty* (*ATT*) and includes full-system conventional arms (i.e. battle tanks, armored compat vehicles, large-caliber artillery systems, combat aircraft, attack

[1] *Turp v Canada (Foreign Affairs)*, 2018 FCA 133 at para 10.

[2] *Export and Import Permits Act*, RSC 1985, c E-19 [*EIPA*], s 3(1); *Export Control List*, SOR/89-202 [*ECL*].

[3] *EIPA*, s 13; Affidavit of Judy Korecky, sworn August 20, 2024 [Korecky Affidavit] at paras 2-4, **Applicants' Motion Record [AMR], Tab 4, pp 307-308**.

[4] *ECL*, s 1; *A Guide to Canada's Export Control List*, January 2024 [*Guide*]; Korecky Affidavit at para 4, **AMR, Tab 4, p 308**.

[5] Korecky Affidavit at para 3, **AMR, Tab 4, p 308**.

[6] Korecky Affidavit at para 18, **AMR, Tab 4, p 311**.

helicopters, warships, missiles and missile launchers) and small arms and light weapons.[7]

8. The *EIPA* grants the Minister broad discretion with respect to the issuance of permits for goods or technology listed in the *ECL*. In general, there are two ways in which an *ECL* controlled good or technology may be exported from Canada: first, by an individual export permit issued by the Minister pursuant to subection 7(1) of the *EIPA*; or second, pursuant to a general permit issued by the Minister pursuant to subsection 7(1.1) to all residents of Canada to export or transfer controlled goods or technology in accordance with the conditions specified in the permit, i.e. a general export permit.

i. The Issuance of Individual Permits

9. Subsection 7(1) of the *EIPA* sets out the authority for issuing individual export permits.[8] An individual export permit allows exports of goods and technology to a specified consignee in a single country.[9] Applications for individual permits must be submitted to the Export Controls Operations Division of Global Affairs Canada.[10] The *Export Permit Regulations* set out the information that must be included in an application, which includes, but is not limited, to:

a. The name and contact information of the exporter;

b. The name and contact information for the consignee;

c. The country in which the goods or technology are to be used, or the country of final destination;

d. The country of origin, the corresponding Item Number in the *Guide*, and the quantity and unit value of the goods and technology; and

[7] Korecky Affidavit at para 19, **AMR, Tab 4, p 312**.

[8] *EIPA*, s 7(1).

[9] Korecky Affidavit at para 5, **AMR, Tab 4, p 308**.

[10] Korecky Affidavit at para 6, **AMR, Tab 4, p 308**.

> e. An end-use certificate, end-use statement, or other information to establish that the export of the goods or technology is consistent with the purpose for its control on the *ECL*.[11]

10. Every application for an individual export permit pursuant to subsection 7(1) is reviewed for consistency with the *EIPA*. This includes assessing the application against the considerations set forth in the *EIPA* with respect to security under subsection 7.2.[12] and, with respect to arms, ammunition, implements, or munitions of war, whether the export would contribute to peace and security or could be used to commit or facilitate various acts, including serious violations of international humanitarian law or international human rights law as enumerated in section 7.3.[13]

11. Pursuant to section 7.4 of the *EIPA*, individual export permits for arms, ammunition, implements, or munitions of war shall not be issued if the Minister determines that there is a substantial risk that the export would result in any of the negative consequences listed under subsection 7.3(1) of the *EIPA*.

ii. General Export Permits

12. Section 7(1.1) provides:

> (1.1) Notwithstanding subsection (1), the Minister may, by order, issue generally to all residents of Canada a general permit to export or transfer to any country specified in the permit any goods or technology included in an Export Control List that are specified in the permit, subject to such terms and conditions as are described in the permit.

13. In contrast to individual export permits issued pursuant to subsection 7(1), a general export permit issued pursuant to subsection 7(1.1) allows for specified goods to be exported by all residents of Canada without exporters needing to apply for or obtain an individual export permit.[14] Exporters must self-assess their proposed exports

[11] *Export Permits Regulations*, SOR/97-204, s 3; see also: Korecky Affidavit at para 6, **AMR, Tab 4, pp 308-309**.

[12] *EIPA*, s 7.2.

[13] *EIPA*, s 7.3.

[14] *EIPA*, s 7(1.1)**;** Korecky Affidavit at paras 8-9, **AMR, Tab 4, p 309**.

against the provisions of the general export permit. If the exporters determine that the conditions of the general export permit are met, they need only cite its authority on their export declaration form and carry out any conditions and reporting obligations.[15]

14. The Minister does not render any decisions regarding individual exports under a general export permit. Unlike individual export permits issued under subsection 7(1), there are no mandatory considerations enumerated in the *EIPA* prior to the Minister's exercise of discretion in respect of general export permits. In particular, sections 7.3 and 7.4 of the *EIPA* apply to the issuance of individual permits pursuant to subsection 7(1) but do not apply to the issuance of general permits pursuant to subsection 7(1.1).

iii. Exports of military goods and technology to the US

15. Canada and the US have a long-standing trade relationship, including trade of military goods and technology. As such, export permits are not required for many goods and technology listed in the *ECL* if they are destined to consignees in the US.[16] This is reflected in subsection 2(a) of the *ECL*, which states:

> 2. The following goods and technology, when intended for export to the destinations specified, are subject to export control for the purposes set out in section 3 of the *Export and Import Permits Act:*
>
> (a) goods and technology referred to in Groups 1, 2, 6 and 7 of the schedule, except for goods and technology set out in items 2-1, 2-2.a. and 2-2.b., 2-3, 2-4.a., 6-1, 6-2, 7-2, 7-3, 7-12 and 7-13 of the Guide, that are intended for export to any destination other than the United States; (emphasis added).[17]

16. Other military goods and technology are subject to export control pursuant to subsection 2(b) of the *ECL*, even where they are destined for the US:

> (b) goods and technology referred to in Groups 3, 4 and 9 of the schedule and goods and technology set out in items 2-1, 2-2.a., 2-2.b.,

[15] Korecky Affidavit at para 9, **AMR, Tab 4, p 309**.

[16] Korecky Affidavit at paras 11-12, **AMR, Tab 4, p 310**.

[17] *ECL*, s 2(a).

> 2-3, 2-4.a., 6-1, 6-2, 7-3 and 7-13 of the Guide that are intended for export to any destination; (emphasis added).[18]

17. On September 1, 2019, the Minister issued *General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States* (*GEP No. 47*) pursuant to subsection 7(1.1) of the *EIPA*.[19] The following goods identified under subsection 2(b) of the *ECL* and listed in the *Guide*, can be exported to the US pursuant to *GEP No. 47*:

> Items 2-1: Smooth-bore weapons with a calibre of less than 20 mm, other than arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, and specially designed components therefor;
>
> Items 2-3: Ammunition and fuse setting devices, and specially designed components therefor; and,
>
> Any goods referred to in Group 9 – "Arms Trade Treaty".[20]

18. Prior to exporting goods under *GEP No. 47*, an exporter is required to provide their contact information to the Export Controls Operations Division of Global Affairs Canada.[21] Exporters must also provide a report for each six-month period of the year stating whether they exported a good under *GEP No. 47*, and, if so: the name and address of each consignee, a description of the good, the *Guide* number for the good, and the quantity and value in Canadian dollars of the good.[22]

19. Individual export permits are required to export any remaining goods to the US listed under section 2(b) of the *ECL* and not covered by *GEP No. 47*. With respect to military goods and technologies, these include:

[18] *ECL*, s 2(b); Korecky Affidavit at para 13, **AMR, Tab 4, p 310**.

[19] *General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States*, SOR/2019-230 [*GEP No 47*]; Korecky Affidavit at para 14, **AMR, Tab 4, p 310**.

[20] *GEP No. 47*, s 2; *Guide* at pp 159, 161, 349; Korecky Affidavit at para 14, **AMR, Tab 4, pp 310-311**.

[21] Korecky Affidavit at para 21, **AMR, Tab 4, p 312**.

[22] Korecky Affidavit at para 21, **AMR, Tab 4, p 312**.

> Group 2, Items 2-2.a.: Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, rifles, recoilless rifles and smooth bore weapons;
>
> Group 2, Items 2-2.b.: Projectors, specially designed or modified for military use, as follows: smoke canister projectors; gas canister projectors; and pyrotechnics projectors.
>
> Group 2, Items 2-4.a.: Bombs, torpedoes, grenades, smoke canisters, rockets, mines, missiles, depth charges, demolition-charges, demolition-devices, demolition-kits, "pyrotechnic" devices, cartridges, submunitions therefor and simulators (i.e. equipment simulating the characteristics of any of these items), specially designed for military use.[23]

b. The Application for Judicial Review

20. On March 5, 2024, the Applicants brought an application for judicial review:

> …in respect of export and brokering permits (together "export permits") for arms, ammunition, implements or munitions of war (collectively, "military goods or technology") to Israel as authorized by the Minister of foreign affairs (the "Minister") at any time on or after October 9, 2023.[24]

21. The original Notice of Application alleges that the issuance of permits for military goods or technology bound for Israel at any time on or after October 9, 2023 violates section 7.4 of the *EIPA* and section 7 of the *Charter* due to the substantial risk that military goods or technology will be used by Israel to commit or facilitate serious violations of international humanitarian law, international human rights law, and/or serious acts of violence against women and children, and/or to undermine peace and security.[25] The Applicants seek to quash all permits issued for military goods destined for Israel on or after October 9, 2023, and any permits issued prior to that date that

[23] *ECL*, s 2(b); Korecky Affidavit at para 22, **AMR, Tab 4, p 313**.

[24] Ex Q to Affidavit of Henry Off affirmed August 5, 2024 [Off Affidavit], Draft Proposed Amended Notice of Application at opening paragraph, **AMR, Tab 3, p 247**.

[25] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at paras 1(b), 1(d), 32, 33, **AMR, Tab 3, pp 248, 257**.

continue in effect after October 9, 2023.[26]

c. The Motion to Amend the Notice of Application

22. The Applicants sought leave to amend their application in three key respects:

> 1. Amendments on consent of the Attorney General of Canada (Canada) to add the impacted exporters as Respondents and to clarify that the Applicants only sought relief in relation to military goods and technology that were intended for use in Israel, not military goods and technology that would be exported to another country;[27]
>
> 2. Amendments to paragraphs 1(h), 1(k), 22-28, 35 and 36 of the Notice of Application to seek to strike down subsection 2(a) of the *ECL* and *GEP No. 47* on the basis that this regulation and general export permit result in the indirect export of military goods and technologies to Israel through the US; [28] (Indirect Arms Exports Amendments) and,
>
> 3. Amendments to paragraphs 1(d) and 33 of the Notice of Application to seek a declaration that the issuance of all such permits is contrary to section 15 of the *Charter* on the basis of "sex, age, race, national or ethnic origin, and physical or mental disability" (*Charter* Amendments).[29]

23. The Case Management Judge granted the consent amendments and minor clerical amendments but denied the contested amendments, namely the Indirect Arms Exports Amendments and the *Charter* Amendments.[30] The Applicants subsequently

[26] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at para 1(h), **AMR, Tab 3, p 249**.

[27] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application, Style of Cause and paras 1(a), 1(h), **AMR, Tab 3, pp 247-249**. In addition to the consent amendments, Canada did not oppose the Applicants' amendment to para 1(n) to plead section 24(1) of the *Charter* and clerical amendments to paras 1(c), 1(i) and 3(h) (**AMR, Tab 3, pp 248-250, 260**).

[28] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at paras 1(h), 1(k), 22-28, 35, 36, 3(g), **AMR, Tab 3, pp 249, 256, 258, 260**.

[29] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at paras 1(d), 1(n), 33, **AMR, Tab 3, pp 248, 250, 257-258**.

[30] Decision of the Case Management Judge dated December 20, 2024 [CMJ Decision], **AMR, Tab 6, pp 400-427**.

served their ANOA, incorporating the permitted amendments.

i. The decision to deny the Indirect Arms Exports Amendments

24. In respect of the contested amendments to challenge military goods and technology exported to the US pursuant to *GEP No. 47* or subsection 2(a) of the *ECL*, the Case Management Judge first rejected the Applicants' assertion that the addition of these challenges merely clarifies their original application. He noted:

> a. The original Notice of Application is limited to permits and to those issued on or after October 9, 2023;
>
> b. Subsection 2(a) of the *ECL* is not a permit;
>
> c. While *GEP No. 47* is a permit, it was not issued on or after October 9, 2023;
>
> d. There is no reference in the original Notice of Application to either subsection 2(a) of the *ECL* or *GEP No. 47* or the provisions which authorized them, namely sections 3 and 7(1.1) of the *EIPA*; and
>
> e. In contrast, the original Notice of Application does reference sections 7.3 and 7.4 of the *EIPA*, which apply to the issuance of the challenged permits.[31]

25. Having concluded that the proposed amendments were not mere clarifications, the Case Management Judge went on to find it was not in the interests of justice to permit the proposed amendments.[32] Delay was the most significant reason for denying the proposed amendments, as the Case Management Judge found permitting the proposed amendments would adversely affect the expeditious resolution of an already complex matter.[33] He found the proposed amendments would "significantly expand the scope of the application in many ways, including the number of issues, potential respondents and volume of materials…".[34]

[31] CMJ Decision at paras 38-39, **AMR, Tab 6, pp 420-421**.

[32] CMJ Decision at para 40, **AMR, Tab 6, p 421-422**.

[33] CMJ Decision at para 40, **AMR, Tab 6, p 421-422**.

[34] CMJ Decision at para 40, **AMR, Tab 6, p 421-422**.

26. While the Case Management Judge considered the significant delay sufficient to deny the proposed amendments, he also found that the proposed amendments did not go to the true substance of the dispute, which was a challenge to the issuance of individual permits:

> The proposed Indirect Arms Exports Amendments do not seek to challenge individual permits, but rather, concern a different, much broader dispute involving different statutory provisions. Adding these additional issues into this particular proceeding will not facilitate the Court's consideration of the issues relating to the issuance of individual permits to the Five Individual Permit Holders.[35]

ii. The decision to deny the proposed *Charter* Amendments

27. The Case Management Judge refused leave to add the bald allegation of a section 15 breach on the following bases:

> a. A claimant must plead sufficient facts in their pleading to satisfy the criteria for a breach (in this case the two step test set out by the Supreme Court of Canada);[36]
>
> b. The only details the Applicants pointed to in support of their alleged assertion of a section 15 breach relate to the conduct of Israel;[37]
>
> c. The Applicants did not "connect[] the dots" as to how Israel's conduct amounts to a violation of section 15 rights;[38] and
>
> d. The proposed amendment fails to meet the threshold issue of disclosing a reasonsable prospect of success.[39]

28. He indicated that his determination regarding the section 15 amendment did not preclude the Applicants from bringing a future motion to amend their pleading to allege

[35] CMJ Decision at para 41, **AMR, Tab 6, p 422**.

[36] CMJ Decision at paras 26, 27, **AMR, Tab 6, p 416**.

[37] CMJ Decision at para 30, **AMR, Tab 6, p 417**.

[38] CMJ Decision at para 30, **AMR, Tab 6, p 417**.

[39] CMJ Decision at paras 19, 24, 30, **AMR, Tab 6, pp 413-415, 417**.

a section 15 breach, which would be assessed on its merits.[40]

PART II - POINT IN ISSUE

29. Did the Case Management Judge make any reviewable error in denying the contested amendments to the ANOA?

PART III – LAW AND SUBMISSIONS

A. STANDARD OF REVIEW

30. The parties agree that the applicable standard of review on an appeal pursuant to Rule 51 of the *Federal Courts Rules* is correctness on extricable questions of law and palpable and overriding error on questions of fact or mixed fact and law.[41] Decisions of Associate Judges appealed under Rule 51 attract a high degree of appellate deference. Associate Judges in a case management role are very familiar with the particular circumstances and issues of the matter under management, such that intervention by a motions judge on a Rule 51 appeal should not come lightly.[42]

B. THE CASE MANAGEMENT JUDGE MADE NO REVIEWABLE ERROR

31. The Case Management Judge made no error of law nor any palpable and overriding error of fact in exercising his discretion not to expand the current application to include a challenge to two regulatory instruments, *GEP No. 47* and subsection 2(a) of the *ECL*. Nor did he make any reviewable error in refusing to permit an amendment to allege a section 15 *Charter* challenge in the absence of sufficient – or any – particulars regarding Canada's alleged *Charter* breach, without prejudice to the Applicants' ability to remedy this deficiency.

[40] CMJ Decision at para 31, **AMR, Tab 6, p 418**.

[41] *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79 citing *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36.

[42] *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 at para 14; *Janssen* at para 10; *Alam v Matsqui Institution*, 2023 FC 134 at para 34 [*Alam*].

a. The Case Management Judge Did Not Err in Law

32. The Case Management Judge articulated the settled law in relation to pleadings amendment motions pursuant to Rule 75[43] and interpreted the law correctly.

i. The Case Management Judge correctly articulated the law in relation to pleadings amendments

33. The Case Management Judge correctly noted that the court must consider whether it is in the interests of justice to permit or deny the motion. He set out the non-exhaustive list of factors that the Federal Court of Appeal (FCA) has directed the Court to consider, noting that no single factor dominates:

> a. The timeliness of the motion;
>
> b. The extent to which the proposed amendments would delay the expeditious resolution of the matter;
>
> c. The extent to which a position taken originally by one party has led another party to follow a course of action in the litigation that would be difficult to alter; and,
>
> d. Whether the amendments will facilitate the Court's consideration of the true substance of the dispute.[44]

34. The Applicants' assertion that the Case Management Judge failed to consider the "controlling principle" that "an amendment should be allowed at any stage of the action for the purpose of determining the real questions in the controversy" is the result of an improper parsing of the FCA's decision. The FCA stated:

> The controlling principle is that an amendment should be allowed at any stage of an action if it assists in determining the real questions in controversy between the parties, provided it would not result in an

[43] CMJ Decision at paras 16-19, **AMR, Tab 6, pp 412-413** citing *Janssen Inc v Abbvie Corporation*, 2014 FCA 242 at para 3 [*Janssen*]; *Enercorp Sand Solutions Inc v Specialized Desanders Inc*, 2018 FCA 215 at paras 20-22 [*Enercorp*]; *Tait v Canada*, 2024 FC 217 at para 50 [*Tait*]; *Teva Canada Limited v Gilead Sciences Inc*, 2016 FCA 176 at paras 29-31 [*Teva*]; *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2020 FC 348 at para 67 [*GCT*].

[44] CMJ Decision at para 17, **AMR, Tab 6, p 413** citing *Janssen* at para 3, *Tait* at para 50.

> injustice not compensable in costs and that it would serve the interests of justice. (emphasis added)[45]

35. The interests of justice forms part of the controlling principle. The Case Management Judge did not err in considering whether the proposed amendments would serve the interests of justice – on the contrary, he was required to do so.

36. The Case Management Judge also correctly identified the absence of a reasonable prospect of success as a threshold issue.[46]

ii. The Case Management Judge correctly applied the law to the Indirect Arms Exports Amendments

37. The Case Management Judge made no error in law when he considered the discretionary criteria outlined by the FCA. There is no dispute that delay is a factor the Case Management Judge was permitted to consider in exercising his discretion to permit or deny the proposed amendments.[47] His conclusion that expanding the current application to include challenges to a general export permit and a provision of the *ECL*, both of which are authorized pursuant to different provisions of the *EIPA* and engage different considerations than the 45 individual export permits at issue in this application, would unnecessarily delay an already complex proceeding, discloses no legal error.

38. The Applicants rely on several cases to suggest that increased complexity and delay alone are insufficient grounds to deny pleadings amendments. However, each of the cases they cite in support of this proposition arose in the context of amendments to a pleading in an *action*.[48] While actions are intended to address any and all legal issues

[45] *Canada v Pomeroy Acquireco Ltd*, 2021 FCA 187 at para 4.

[46] CMJ Decision at para 19, **AMR, Tab 6, p 413;** *Teva* at paras 29-31; *Enercorp* at para 22; *GCT* at para 67.

[47] *Janssen* at para 3, *Tait* at para 50.

[48] *Janssen* at para 2 (Janssen sought to amend its Statement of Defence); *Andersen Consulting v Canada* (CA), [1998] 1 FC 605 (FCA) (Canada sought to amend its Statement of Defence); *Apotex Inc v Pfizer Canada Inc*, 2017 FC 951 at para 1 (Apotex sought to amend its Defence to Counterclaim); *Proslide Technology Inc v Whitewater*

between the parties, (which issues are fully explored during discoveries and ultimately determined following a trial), judicial reviews are summary proceedings aimed at determining the legality of individual administrative decisions. This is underscored by Rule 302 which limits applications for judicial review to a single decision unless the Court directs otherwise.

39. *Janssen* did not preclude the Case Management Judge from considering one factor to be determinative in a given case. The FCA's direction is more nuanced:

> No single factor predominates nor is its presence or absence necessarily determinative. All must be assigned their proper weight in the context of the particular case. Ultimately, it boils down to a consideration of simple fairness, common sense and the interest that the courts have that justice be done. (emphasis in original)[49]

40. While one factor may not *necessarily* be determinative, each case must be assessed against the interests of justice applying common sense. In this context, the Case Management Judge's finding that the proposed Indirect Arms Exports Amendments would "significantly expand the scope of the application in many ways, including the number of issues, potential respondents and volume of materials, and would delay it" was not erroneous. It was consistent with the interests of justice.

41. Similarly, the Case Management Judge made no legal error in determining that the Indirect Arms Exports Amendments would not assist the Court in addressing the substance of the existing application, namely a challenge to the issuance of permits pursuant to subsection 7(1) of the *EIPA* for military goods and technology bound for Israel.

42. The Minister issued *GEP No. 47* pursuant to subsection 7(1.1) of the *EIPA* for

West Industries Ltd, 2024 FC 175 at para 1 (White Water sought to amend its Statement of Defence and Counterclaim); *Adeia Guides Inc v BCE Inc*, 2024 FC 1842 at para 1 (Defendents sought to amend their Statement of Defence and Counterclaim); *Re/Max LLC v Save Max Real Estate Inc*, 2022 FC 1268 at para 2 (Re/Max sought to amend its Statement of Claim).

[49] *Janssen* at para 3 citing *Merck & Co Inc v Apotex Inc*, 2003 FCA 488 at para 30 (emphasis added in *Janssen*).

the purposes of implementing the *ATT*. The process for exporting goods pursuant to *GEP No. 47* is distinct from the issuance of an individual export permit. Under this regulation, the Minister has provided a general authority to export the enumerated goods to the US. Similarly, the *ECL* was promulgated pursuant to the powers granted to the Governor-in-Council under section 3 of the *EIPA*. A challenge to these two regulatory instruments will not assist the Court in addressing the legality of the 45 individual export permits at issue in the current proceeding. The fact that the Applicants' proposed challenges to these two regulatory instruments arise in the context of their overarching concerns relating to the conduct of Israel does not render the Case Management Judge's assessment of the essential nature of the ANOA incorrect.

43. Canada has not opposed the Applicants' challenge to 45 decisions in a single application, as those decisions were issued pursuant to the same statutory authority for goods exported to the same country in the same time period. A further expansion of this complex proceeding is not in the interests of justice.

44. The Applicants' assertion that the Case Management Judge erred in law in applying a test that involves a non-exhaustive list of factors to be weighed and assessed on a case by case basis is, in essence, an attempt to apply a correctness review to a fact-specific, discretionary, determination. The Case Management Judge's finding that it was not in the interests of justice to permit the proposed Indirect Arms Exports Amendment should not be interfered with absent a palpable and overriding error. For the reasons outlined at paragraphs 51 to 54 below, he made no such error.

iii. <u>The Case Management Judge correctly applied the law to the proposed *Charter* Amendments</u>

45. The Applicants' proposed *Charter* amendments were simply a bald statement of the *Charter* right. The Case Management Judge made no error in refusing them.

46. There is no dispute that an amendment that does not disclose a cause of action

will not be permitted.[50] In an application for judicial review, the applicant must set out a precise statement of the relief sought and a complete and concise statement of the grounds to be argued.[51] A complete statement of the grounds intended to be argued requires all the legal bases and material facts that will support the granting of the relief sought to be pled; a concise statement of the grounds should not be bald, but must include the material facts necessary to show that the court can and should grant the relief.[52]

47. Contrary to the submission of the Applicants, *Miguna v Ontario* does not stand for the proposition that bald allegations are sufficient in an application. First, *Miguna* involved an action in the Ontario Superior Court, not an application for judicial review in this Court. Next, in *Miguna*, the Court of Appeal for Ontario found that the factual allegations in the Statement of Claim, if true, would support the "bald allegation" of racial profiling at issue in that case. In the current application, the Case Management Judge considered whether the allegations in the ANOA could support a section 15 *Charter* breach. He found they could not, noting that there were no allegations of discriminatory conduct against Canada.[53] He made no legal errors in reaching this conclusion.

48. His conclusion is reinforced by paragraph 62 of the Applicants' written representations in support of this motion, which sets out the basis for their alleged section 15 *Charter* breach. None of the allegations listed in that paragraph involve any conduct by Canada.[54] While the Applicants suggest that further information may emerge that arguably could establish a sufficient causal connection between Israel's conduct and Canada's section 15 obligations, this is insufficient in an application for

[50] *Teva* at paras 29-31; *Enercorp* at para 22; *GCT* at para 67.

[51] *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at para 38; Rule 301(d), 301(e).

[52] *JP Morgan* at paras 38-42.

[53] CMJ Decision at para 30, **AMR, Tab 3, p 417**.

[54] Applicants' Written Representations, para 62, **AMR, Tab 2, p 34**.

judicial review, which must be grounded on facts, not on fishing expeditions.[55]

b. The Case Management Judge Made No Palpable and Overriding Errors

49. The Applicants have shown no palpable and overriding error in the Case Management Judge's exercise of discretion. His findings are supported by the record.

i. The Case Management Judge did not err in denying the Indirect Arms Exports Amendments

50. The Applicants have shown no palpable and overriding error in the Case Management Judge's determination that it is not in the interests of justice to permit the proposed Indirect Arms Exports Amendments.[56] The two additional challenges involve general authorizations in respect of certain enumerated classes of goods exported at anytime to the US. In contrast, the current proceeding challenges the issuance of 45 individual permits to specific exporters authorized to export specific goods during a specific time period to Israel.

51. In particular, the Case Management Judge made no palpable and overriding error in rejecting the Applicants' assertion that the proposed Indirect Arms Exports Amendments "merely add clarity and definition to the proceeding"[57] He noted the original Notice of Application did not include any reference to either the *ECL* or *GEP No. 47*.[58] Nor did the original Notice of Application reference the provisions of the *EIPA* that pertain to the *ECL* or *GEP No. 47*, sections 3 and 7(1.1) respectively.[59] Rather, the ANOA seeks judicial review of individual permits issued pursuant to subsection 7(1) of the *EIPA*, and alleges that the issuance of those permits violates of section 7.4 of the *EIPA*, section 7 of the *Charter*, and various international treaty obligations. The proposed Indirect Arms Exports Amendments depart fundamentally

[55] *JP Morgan* at paras 42-44.

[56] CMJ Reasons at para 40, **AMR, Tab 6, pp 421-422**.

[57] Applicants' Written Representations at para 37, **AMR, Tab 2, p 27**; CMJ Decision at paras 38-39, **AMR, Tab 6, pp 420-421**.

[58] CMJ Decision at para 39, **AMR, Tab 6, p 421**.

[59] CMJ Decision at para 39, **AMR, Tab 6, p 421**.

from this challenge.

52. The Case Management Judge also made no palpable and overriding error in further concluding that, by virtue of increasing the number of decisions at issue, the Indirect Arms Exports Amendments would unduly expand the number of potential respondents. The ANOA involves individual permits issued to five individual permit holders. While the Applicants argue that absent a specific legislative provision a person will "not be considered a necessary party", the *Federal Courts Rules* hold that "an applicant shall name as a respondent every person directly affected by the order sought in the application".[60] Should *GEP No. 47* be added to this application, then any person whose export under this instrument will be disallowed would be directly affected by the order sought and become an additional proper respondent.

53. As the Case Management Judge explained, simply by virtue of the fact that the *GEP No. 47* permits "any resident of Canada" to export certain goods to the US, the proposed amendmnents would affect additional potential respondents.[61] The Case Managment Judge acknowledged that there is no evidence on the specific number of potential respondents that these amendments would add – not because there would be none, but because the mechanism is available to 'any resident of Canada', and the current proceeding contemplates an entirely different type of permit decision.

ii. A bald allegation of a section 15 *Charter* breach is insufficient

54. The Case Management Judge made no palbable and overriding error in denying the *Charter* Amendments.[62] These proposed amendments are set out in paragraphs 1(d) and 33 of the Draft Proposed Amended Notice of Application included in the Applicants' moton record.[63] and amount to the same bald assertion of a section 15

[60] Rule 303.

[61] CMJ Decision at para 40, **AMR, Tab 6, pp 421-422**.

[62] CMJ Decision at paras 24-25, **AMR, Tab 6 pp 415-416**.

[63] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application, **AMR, Tab 3, pp 248, 258-259**

breach on all of the enumerated grounds.

55. While the statement of grounds in a notice of application for judicial review are meant to be concise, "they should not be bald".[64] They cannot merely list categories of evidence an applicant hopes to find. But rather, before a party can state a ground, they must have "some evidence to support it".[65]

56. As the Case Management Judge correctly noted, these same requirements apply to pleadings in *Charter* cases.[66] Parties are required to plead sufficient material facts to satisfy the criteria applicable to the *Charter* breach alleged.[67] This requirement is not merely a technical one – rather, it is "essential to the proper presentation of *Charter* issues".[68] Allegations of *Charter* breaches must be clearly articulated and supported with material facts.[69] While *Mancuso, Brink* and *Ferreira* involve pleadings in an action, the requirement to plead material facts is equally – and arguably more – applicable in an application, where the Notice of Application entirely defines the scope of the proceeding.

57. The proposed Section 15 Amendments do not comply with these threshold pleading requirements. Rather, as *JP Morgan* warns against, they are 'bald'. The proposed amendment to paragraph 1(d) merely includes a reference to section 15, in addition to section 7, and lists every ground of discrimination set out in section 15, except for religion.[70] The proposed amendment to paragraph 33 merely sets out the text of section 15.[71] This is the full extent of the statement of grounds in support of the

[64] *JP Morgan* at para 42.

[65] *JP Morgan* at para 44.

[66] CMJ Decision at para 27, **AMR, Tab 6 p 416**.

[67] *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 21.

[68] *Brink v Canada*, 2024 FCA 43 at para 59.

[69] *Ferreira v Canada (Revenue Agency)*, 2023 FC 369 at para 63.

[70] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at para 1(d), **AMR, Tab 3, p 248**.

[71] Ex Q to Off Affidavit, Draft Proposed Amended Notice of Application at para 33, **AMR, Tab 3, pp 257-258**.

proposed additional *Charter* claim against the permits issued by the Minister. There is nothing further plead beyond this bare recitation of the protection afforded under section 15.

58. Against this backdrop, the Case Management Judge's finding that the Applicants failed to connect their dots "as to how the conduct of Israel amounts to a violation of section 15 *Charter* rights, if at all"[72] discloses no palpable and overriding error. Nor does his decision to deny the proposed *Charter* Amendments for failing to disclose a cause of action.

59. As the Case Management Judge noted in his reasons, the order does not preclude a further motion by the Applicants for leave to amend the notice of application to assert a section 15 *Charter* violation.[73]

C. ADDITIONAL GROUNDS TO DENY THE INDIRECT ARMS EXPORTS AMENDMENTS

60. The Case Management Judge denied the Indirect Arms Exports Amendments on the basis that they were not in the interests of justice. In doing so, he found it unnecessary to consider Rule 302 or whether the proposed Indirect Arms Exports Amendments had a reasonable prospect of success.[74] Canada states the Indirect Arms Exports Amendments should also fail on these grounds.

a. The Indirect Arms Exports Amendments Are Contrary to Rule 302

61. Rule 302 provides that only a single order may be challenged in an application for judicial review, unless the Court orders otherwise. This Rule recognizes the summary nature of judicial review. It is clear from the Case Management Judge's reasons that he would not have exercised his discretion to permit the additional challenges to *GEP No. 47* and subsection 2(a) of the *ECL* to proceed in the same

[72] CMJ Decision at para 30, **AMR, Tab 6 p 417**.

[73] CMJ Decision at para 31, **AMR, Tab 6 p 418**.

[74] CMJ Decision at para 42, **AMR, Tab 6, p 423**.

application challenging 45 individual export permits.

62. The Applicants correctly point out that Rule 302 does not preclude challenges to a 'continuing course of conduct.' However, the proposed Indirect Arms Exports Permit Amendments do not fit within this exception. The factors to consider in determining whether there is a continuing course of conduct include: whether the decisions are closely connected; whether there are similarities or differences in the fact situations, including, the type of relief sought, the legal issues raised, the basis of the decision and decision-making bodies; whether it is difficult to pinpoint a single decision; and, based on the similarities and differences, whether separate reviews would be a waste of time and effort.[75]

63. In this case, the original application challenges 45 decisions issued pursuant to the same statutory authority. The application seeks to quash each of those permits. The Indirect Arms Exports Amendments would add to this challenge two challenges to statutory instruments promulgated pursuant to two different provisions of the *EIPA.* These statutory instruments do not form part of any continuing course of conduct with the 45 initial decisions.

64. Comparing the parameters of *GEP No. 47* and subsection 2(a) of the *ECL,* on the one hand, with the permits at issue in the ANOA, on the other hand, demonstrates the distinct factual and legal issues raised by the proposed Indirect Arms Exports Amendments. The 45 challenged permits involve exports from Canada to Israel for specified goods up to a specified maximum quantity and value by a specified exporter during a specified time period. *GEP No. 47* and subsection 2(a) of the *ECL* involve exports to the US for broad classes of goods, exported in unlimited quantities and values by anyone in Canada.

65. This is precisely the type of situation Rule 302 aims to guard against. The Case Management Judge's finding that the proposed Indirect Arms Exports Amendments

[75] *David Suzuki Foundation v Canada (Health*), 2018 FC 380 at para 173.

are not in the interest of justice is buttressed by Rule 302.

b. The Indirect Arms Exports Amendments Have No Reasonable Prospect of Success

66. The Applicants have not set out the legal grounds to support striking *GEP No. 47* and subsection 2(a) of the *ECL*. The ANOA alleges that the issuance of export permits for military goods ultimately bound for Israel is contrary to sections 7.3 and 7.4 of the *EIPA*. Neither provision applies to *GEP No. 47* or subsection 2(a) of the *ECL*. The ANOA also broadly alleges a section 7 *Charter* breach. However, there are no allegations that set out how *GEP No. 47* or subsection 2(a) of the *ECL* infringe that right.

67. The sole basis for these proposed amendments appears to be the Applicants' speculation that goods exported from Canada to the US are ultimately exported to Israel. However, there is no admissible evidence on the record to support this claim. The Case Management Judge struck the newspaper articles attached to the Applicants' affidavit,[76] and the Applicants did not appeal this decision.[77]

68. In any event, *GEP No. 47* and subsection 2(a) of the *ECL*, both of which were implemented pursuant to international trade commitments, do not provide a mechanism by which the Minister may assess where goods may end up after they have been lawfully exported to the US. The Minister, acting under the *EIPA*, no longers exercises any legal authority over that good. Any challenge to the US's export of goods is properly made in the US.

69. The Applicants' attempt to broaden this application to include decisions ultimately made by foreign countries to export goods to Israel transforms this application into a broad-based public policy inquiry into the export of military goods and technology from Canada, as opposed to an evaluation of the legality of the issuance of specific export permits for specific military goods and technology from Canada to

[76] CMJ Decision at para 14, **AMR, Tab 6, pp 411-412**.

[77] Applicants' Notice of Motion, **AMR, Tab 1, pp 7-12**.

Israel.

PART IV - ORDER SOUGHT

70. For all of the foregoing reasons, Canada asked that the motion be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Toronto, in the Province of Ontario, this 20th day of February, 2025.

Andrea Bourke / Margaret Cormack

PART V - LIST OF AUTHORITIES

1. *Turp v Canada (Foreign Affairs)*, 2018 FCA 133
2. *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215
3. *Housen v Nikolaisen*, 2002 SCC 33
4. *Janssen Inc v Abbvie Corporation*, 2014 FCA 242
5. *Enercorp Sand Solutions Inc v Specialized Desanders Inc*, 2018 FCA 215
6. *Tait v Canada*, 2024 FC 217
7. *Teva Canada Limited v Gilead Sciences Inc*, 2016 FCA 176
8. *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2020 FC 348
9. *Canada v Pomeroy Acquireco Ltd*, 2021 FCA 187
10. *Andersen Consulting v Canada* (CA), [1998] 1 FC 605 (FCA)
11. *Apotex Inc v Pfizer Canada Inc*, 2017 FC 951
12. *Proslide Technology Inc v Whitewater West Industries Ltd*, 2024 FC 175
13. *Adeia Guides Inc v BCE Inc*, 2024 FC 1842
14. *Re/Max LLC v Save Max Real Estate Inc*, 2022 FC 1268
15. *Merck & Co Inc v Apotex Inc*, 2003 FCA 488
16. *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250
17. *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181
18. *Alam v Matsqui Institution*, 2023 FC 134
19. *David Suzuki Foundation v Canada (Health)*, 2018 FC 380
20. *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227
21. *Brink v Canada*, 2024 FCA 43
22. *Ferreira v Canada (Revenue Agency)*, 2023 FC 369

Secondary Sources

23. *A Guide to Canada's Export Control List*, January 2024 at pp 159, 161, 349

APPENDIX A – STATUTES AND REGULATIONS RELIED ON

1. Export and Import Permits Act, *RSC 1985, c E-19*, s 3(1), s 7(1), s 7(1.1), s 7.2, s 7.3, s 13
2. *Export Control List*, SOR/89-202, s 1, s 2(a), s 2(b)
3. *Export Permits Regulations*, SOR/97-204, s 3
4. *General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States*, SOR/2019-230, s 2

Export and Import Permits Act
s 3(1) **Export control list of goods and technology** **3 (1)** The Governor in Council may establish a list of goods and technology, to be called an Export Control List, including therein any article the export or transfer of which the Governor in Council deems it necessary to control for any of the following purposes: **(a)** to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada; **(b)** to ensure that any action taken to promote the further processing in Canada of a natural resource that is produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource; **(c)** to limit or keep under surveillance the export of any raw or processed material that is produced in Canada in circumstances of surplus supply and depressed prices and that is not a produce of agriculture; **(c.1)** [Repealed, 1999, c. 31, s. 88] **(d)** to implement an intergovernmental arrangement or commitment; **(e)** to ensure that there is an adequate supply and distribution of the article in Canada for defence or other needs;

(f) to ensure the orderly export marketing of any goods that are subject to a limitation imposed by any country or customs territory on the quantity of the goods that, on importation into that country or customs territory in any given period, is eligible for the benefit provided for goods imported within that limitation; or

(g) to facilitate the collection of information in respect of the exportation of goods that were, are, or are likely to be, the subject of trade investigations or trade disputes.

Conditions

(2) The description of goods set out in the Export Control List may contain conditions that are based on approvals, classifications or determinations made by specified persons or specified government entities, including foreign government entities.

s 7(1)

Export permits

7 (1) Subject to subsection (2), the Minister may issue to any resident of Canada applying therefor a permit to export or transfer goods or technology included in an Export Control List or to export or transfer goods or technology to a country included in an Area Control List, in such quantity and of such quality, by such persons, to such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.

s 7(1.1)

7(1.1) Notwithstanding subsection (1), the Minister may, by order, issue generally to all residents of Canada a general permit to export or transfer to any country specified in the permit any goods or technology included in an Export Control List that are specified in the permit, subject to such terms and conditions as are described in the permit.

s 7.2

Security considerations — export and brokering

7.2 In deciding whether to issue a permit under subsection 7(1) or 7.1(1), the Minister may, in addition to any other matter that the Minister may consider, take into consideration whether the goods or technology specified in the application for the permit may be used for a purpose prejudicial to the safety or interests of the State by being used to do anything referred to in paragraphs 3(1)(a) to (n) of the *Foreign Interference and Security of Information Act*.

s 7.3

Mandatory considerations — export and brokering

7.3 (1) In deciding whether to issue a permit under subsection 7(1) or 7.1(1) in respect of arms, ammunition, implements or munitions of war, the Minister shall take into consideration whether the goods or technology specified in the application for the permit

(a) would contribute to peace and security or undermine it; and

(b) could be used to commit or facilitate

(i) a serious violation of international humanitarian law,

(ii) a serious violation of international human rights law,

(iii) an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,

(iv) an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or

(v) serious acts of gender-based violence or serious acts of violence against women and children.

Additional mandatory considerations

(2) In deciding whether to issue a permit under subsection 7(1) or 7.1(1), the Minister shall also take into consideration the considerations specified in regulations made under paragraphs 12(a.2) or (a.3).

s 13

Export or attempt to export

13 No person shall export or transfer, or attempt to export or transfer, any goods or technology included in an Export Control List or any goods or technology to any country included in an Area Control List except under the authority of and in accordance with an export permit issued under this Act.

Export Control List, SOR/89-202
s 1
INTERPRETATION **1** The following definitions apply in this List. ***Guide*** means *A Guide to Canada's Export Control List*, published by the Department of Foreign Affairs, Trade and Development, as amended from time to time. (*Guide*) ***Wassenaar Arrangement*** means the *List of Dual-Use Goods and Technologies and Munitions List* that was adopted at the Plenary Meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies in Vienna, Austria, held on July 11 and 12, 1996, as amended from time to time. (*Accord de Wassenaar*)
s 2(a)
2 The following goods and technology, when intended for export to the destinations specified, are subject to export control for the purposes set out in section 3 of the *Export and Import Permits Act*: • **(a)** goods and technology referred to in Groups 1, 2, 6, and 7 of the schedule, except for goods and technology set out in items 2-1, 2-2.a. and 2-2.b., 2-3, 2-4.a., 6-1, 6-2, 7-2, 7-3, 7-12 and 7-13 of the Guide, that are intended for export to any destination other than the United States;
s 2(b)
• **(b)** goods and technology referred to in Groups 3, 4 and 9 of the schedule and goods and technology set out in items 2-1, 2-2.a., 2-2.b., 2-3, 2-4.a., 6-1, 6-2, 7-3 and 7-13 of the Guide that are intended for export to any destination;

Export Permits Regulations, SOR/97-204, s 3
D. Application for a Permit: Strategic and Military Goods and Technology **3 (1)** This section does not apply to the exportation of goods referred to in subsection 4(1). **(2)** An applicant for a permit must submit to the Minister a duly completed and signed application form, provided by the Minister, containing the following information: **(a)** the date on which the application form is completed; **(b)** the applicant's name, address, telephone number, email address and any facsimile number and any identifier number assigned by the Minister

and, if the applicant is a corporation, the name and telephone number of a contact person familiar with the application;

(c) if the applicant is applying for a permit on behalf of, or for the use of another person or corporation who will export or transfer the goods or technology, the name, address, telephone number, email address and any facsimile number of the other person or corporation and any identifier number assigned by the Minister and the name and telephone number of a contact person familiar with the application;

(d) the name, address, telephone number, email address and any facsimile number of each consignee and the name and telephone number of a contact person associated with the consignee who is familiar with the application;

(e) the country in which the goods or technology are to be used or the country of final destination;

(f) for each type of separately identifiable goods or technology,

(i) their country of origin and, if any portion of them is of United States origin and is included in item 5400 of Group 5 of the schedule to the List, their proportion to the total cost of the goods or technology, expressed as a percentage,

(ii) if they are included in the schedule to the List, their corresponding item number in the Guide,

(iii) a description of the goods and technology including, as applicable, their purpose and technical specifications, with sufficient detail to disclose their true identity and in terms that avoid the use of trade names, technical names or general terms that do not adequately describe them,

(iv) the quantity, unit value and total market value of the goods or technology,

(v) the factory where the goods or technology were made or the first shipping point in Canada, and

(vi) the approximate mass, net weight or volume of the goods or technology;

(g) an indication of the means by which the permit should be sent to the applicant or the exporter; and

(h) information to establish that the export or transfer of the goods or technology is consistent with the purpose for which the export or transfer of the goods or technology is controlled, consisting of one or more of the following:

(i) an International Import Certificate,

(ii) an End-use Certificate,

(iii) an End-use Statement,

(iv) a copy of the contract of sale between the applicant or the exporter and the person from whom the applicant or the exporter purchased the goods or technology,

(v) a copy of the contract of sale between the applicant or the exporter and the person to whom the applicant sold the goods or technology for export or transfer,

(vi) a copy of the commercial invoice that relates to the export or transfer,

(vii) a copy of a letter of credit or other financial documentation which identifies the Canadian and foreign financial institutions involved in the export or transfer,

(viii) the name and address of the person from whom the applicant or exporter acquired the goods or technology,

(ix) the intended end-use of the goods or technology by their consignee,

(x) the intended end-use location of the goods or technology, if different from the location of the consignee,

(xi) an import permit issued by the government of the country for which the goods or technology are destined, or

(xii) an in-transit authorization.

(3) In addition to the application form, the applicant must submit to the Minister

(a) a declaration that, to the best of their knowledge, the goods or technology will enter into the economy of the country under paragraph (2)(e) that is identified in the application form, and will not be transhipped or diverted from that country;

(b) in the case of goods or technology referred to in Group 2, Group 6 or item 5504 of Group 5 of the schedule to the List:

(i) if they are DPA controlled goods

(A) proof of registration or exemption from registration under the Defence Production Act and the Controlled Goods Regulations; or

(B) proof that the applicant or the exporter is a person that Part 2 of the Defence Production Act does not apply to, under section 36 of that Act; and

(ii) if they are not DPA controlled goods, a declaration attesting that the applicant has reviewed the Defence Production Act and determined that they are not exporting or transferring DPA controlled goods; and

(c) a United States export authorization in respect of the following goods

(i) any DPA controlled goods that are of United States origin,

(ii) any goods incorporating DPA controlled goods of United States origin, or

(iii) any goods manufactured in Canada using any DPA controlled goods of United States origin.

General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States, SOR/2019-230, s 2

Authorization

2 *Subject to sections 3 to 6, any resident of Canada may export any of the following goods from Canada to the United States:*

(a) *any good referred to in item 2-1 of the Guide;*

(b) *any good referred to in item 2-3 of the Guide;*

(c) *any good referred to in Group 9 of the schedule to the Export Control List.*