The case of Her Majesty the Queen vs. James Sorbie is a refreshing analysis of some of the most contentious legal issues faced by Canadian firearm owners. Justice Jon-Jo A. Douglas of the Ontario Court of Justice released his 33 page Reasons for Judgment in this case on February 12, 2019.

The facts of this case were fairly straightforward. James Sorbie (Sorbie) is a dual citizen of Canada and England, served in the British military for 30 years and advanced quickly through the ranks to "Major". He was deployed to every conflict area in the world that the English military was engaged. He became a subject matter expert in the Arabic/Muslim language and culture, in the use of firearms, and in the use of force and rules of engagement.

He carried loaded firearms covertly or overtly throughout his career and provided close, protective services to ranking officers and politicians. He was exposed to many difficult and dangerous environments in most of the dangerous hot spots of the world.

He received medals and awards and Her Majesty Queen Elizabeth conferred on him the Order of the British Empire.

After his retirement from active service, he has (and still is) engaged in assignments overseas providing security services in various high profile units. Sorbie is the type of guy you would want protecting your back.

<u>Major Sorbie's darkside</u> (as alleged by the Crown)

Sorbie has read widely on many subjects and has strong views on many things such as politics. He shared his views on many social media sites. He used sarcasm, "tongue in cheek", challenged those who were anti-gun, and had little patience for those who knew little or nothing about firearms and firearm laws but pretended to be informed none-the-less.

For instance, many on social media don't understand the difference between fully automatic and semi-automatic firearms, how firearms work, clips and magazine capacities. Many advocate that all "fully-semi-automatic assault weapons" and such terminology should be banned. In poking sarcasm at these uninformed, naïve or misinformed gun abolitionists, Sorbie posted this comment,

> "The *Libtard* is strong on *MSM* at the moment. I'm going to buy myself one of those fully semi-automatic assault rifles that can fire 3000 bullets at each trigger press and kill everyone in the room in seconds. I already have some 5000 bullet clips."
>
> [Editorial Note: Libtard = Retarded Liberals; MSM = Mainstream Media]

To anyone with a basic knowledge of firearms, what is described is utter nonsense – no such firearm exists and this is clearly tongue-in-cheek or sarcasm (and this is what Justice Douglas in fact concluded).

However, when an anonymous complaint was made to the local Ontario Provincial Police (O.P.P.), police acted aggressively. The investigating officer obtained a warrant to search and seize Sorbie's firearms and moved quickly to set a hearing before a judge to have all of his firearms and ammunition forfeited (his license to own and possess firearms would also be revoked).

The affidavit used to support the warrant was rife with questionable information such as a characterization of the posting as a threat, a lack of candor in explaining to the J.P. that such a firearm was nonsensical.

Multiple police assisted in a very public display of force in seizing all of Sobie's firearms and ammunition. What did they find? All handguns properly registered, all guns and ammunition properly and securely stored. No illegal clips or magazines. Notwithstanding that Sorbie had no criminal record, no psychiatric issues or history of abuse, the police relied upon the media posting to justify their position that Sorbie should not be entrusted with firearms. They even doubled down. They engaged RCMP experts to find every social media posting Sorbie ever made to embellish their case. The Crown alleged he was racist, sexist, Islamophobic, - all sorts of antisocial labels. The argument went something like this: A person who is a racist is an angry person and angry people should not have guns.

The hearing was conducted over three days.

The Crown relied heavily on cases that expanded the test from "safety consideration" to (additionally) denying firearms to people who "lack the responsibility and discipline that the law requires of gun owners" and that a person's "character and conduct" is important.

All of this of course is a slippery slope. If the right (or privilege) of firearm ownership becomes tied to things said by someone on social media that law enforcement does not agree with, then the guaranteed rights under our Canadian Charter to freedom of thought, belief, expression including the press, may work for some but not for firearm owners. Conform to the "politically correct dogma" or lose your guns.

The Sorbie decision was obviously an important bellwether decision for firearm owners in Canada. Sorbie needed an experienced judge, one familiar with firearms and firearm laws and one who had the courage to throw some sand, if and where appropriate, on the slippery slope of insidious erosion of the rights of a class of Canadians that deigned to own (and keep) firearms.

The judge was (and is) Justice Jon-Jo A. Douglas of the Ontario Court of Justice. In his 33 page reasons for denying the Crown's application and ordering the return of Sobie's firearms to him, Mr. Justice Douglas not only dealt with the specific issues on the Sobie case, but also made some very insightful and much needed commentary on the law as it should apply to firearm owners.

Justice Douglas has a thorough grasp of the functionality of firearms and their characteristics but he also astutely explains that the purpose of the firearm laws that would deny a person the right to own or retain firearms is safety to the person or members of the public. He analyzed the statutory wording framework and commented upon many of the relevant cases in Canada. He ties everything back to the overarching issue of "safety". The test is not "good character". Historic behaviour still can be a factor however if it reasonably and relevantly impacts on safety.

Justice Douglas

1. Criticized the police handling of the investigation (or lack thereof), the manner of obtaining the warrant, the apparent failure to assess the positive aspects of what they found on exercising the warrant, and the unnecessary urgency of seeking an application for forfeiture of the firearms without consideration of all the circumstances;

2. Reigned in some of the judicial trends that expanded the test to be applied for permitting a person to own a firearm (or license) or to have that (right) removed. He opined that it would likely be a very serious constitutional error and contrary to the binding authority of Hurrel (an Ontario Court of Appeal decision) to propose or apply any interpretation of the notion of desirability (of the person to own/possess firearms) that was not tethered to the language of s. 117 (Criminal Code) and (for which he refers as well to wording in s. 5 of the Firearms Act). [Note: these sections require a Court to consider enumerated factors where owning a firearm may be a "safety" concern.] Justice Douglas went on to conclude, "Indeed, the test impliedly approved by Justice Moldaver was "*an indentifiable threat* of *serious* or *significant* harm *likely* to be caused *by firearms* and other dangerous objects to the *safety* of *specificied individuals…*".
3. By virtue of the U.S. Second Amendment, firearm ownership is a constitutional right for Americans. Canada has no such entrenchment for firearms or other property ownership and as such the norm is to characterize firearm ownership as a "privilege" as the Crown stated in her submissions in the Sorbie case. Justice Douglas noted that even in the U.S.A. the Second Amendment is not an absolute right – there are various restrictions on private firearm ownership (automatic weapons, etc.). Although some areas are highly regulated in Canada (such as the firearm licensing regime, testing, etc.) he found the distinction between a privilege and a right of little practical help. His scholarly review of "rights vs privileges" on this distinction, included authorities such as the (English) Bill of Rights of 1689, Blackstone's 1765 commentaries on the Laws of England, the Magna Carta, commentaries by Jurists including Supreme Court of Canada, our own Canadian Charter of Rights and Freedoms, John Locke, J.S. Mills (commentary on his "Theory of Harm" in On Liberty (1869), Edmund Burke, and more.

   [Editorial Comment: Before one acknowledges unequivocally that firearm ownership in Canada is only a "privilege" bestowed by the State on those of its servitude that the State considers "acceptable" according to its opinion, perhaps you should read Justice Douglas' decision in detail and, more importantly, read the many authorities and commentaries he refers to. While not binding on any other court, Justice Douglas' comments are important to engender debate and enlightenment on important and sometimes contentious issues.]
4. On social media comments, Justice Douglas concluded in relation to Sorbie's many postings, Sorbie was inclined to engage in vigorous and, sometimes, unpleasant debate with people who, themselves, are willingly engaged in that same debate. That is the right of all. On one or two occasions, Sorbie made bad jokes, he asserts he is an atheist "which calls into question the truism of soldiers in fox holes" and that on three occasions, his comments were not directly fair comment (although in part may have been indirectly so). He concludes that to some degree Sorbie's comments hint at offensive "racism" or "culturalism". All of the remaining comments which the Crown alleged disentitled Sorbie to own firearms (such as sexism, proclivity to advocating violence, Islamaphobia, etc.) Justice Douglas found were "fair comment".
   How does one explain the extent or the nature of Sorbie's "open source" conduct on social media? Justice Douglas concluded, "We, or I, cannot." He went on to comment that "Social media is the new vehicle for unguarded comments about just about anything. Some, most, appear to get carried away, just as they used to in private conversations at home or at a friends or in the pub-places where the state did not intrude into or conduct surveillance on whether or not everything they said was appropriate."

He also commented that "Perhaps the best suggestion I have seen is from Adam Koszary, commenting on his year of working for the very famous Bodleian Museum" and goes on to quote Koszary's observations of "stupid comment" that came from even academics having fun with their collections, indulgence in "in-jokes with their followers and, in general, be more human. Which means being stupid." Justice Douglas opined that "Maybe that's all that can be said: the Respondent (Sorbie), like others on social media, often says stupid things."

5. Justice Douglas took issue with the Crown's position that (Sorbie's) proclivity for uncensored self-indulgent musings about "right to bear arms" that advance the argument for the indiscriminate use and/or misuse of firearms renders (Sorbie) ineligible to continue to enjoy the privilege of firearm possession".

   Justice Douglas queried why a Canadian citizen could not argue for a change in our legal environment so as to have a more expansive right to bear arms. "The restrictions we now or will have on firearms possession are the result of political decisions made by the legislatures and the courts; surely a citizen has a right to comment on those political decisions."

6. On the Crown's contention that Sorbie was advocating for the use of firearms for self-defence, Justice Douglas observed that Sorbie on cross-examination stated that "his access to firearms while in his home would be so restricted by his compliance with the storage rules of the Firearms Act that they would be unavailable." But Justice Douglas went on to comment that as a matter of law, there are circumstances where a homeowner may be perfectly entitled to use a firearm to stop or prevent an offence that would be likely to cause immediate and serious injury to the person or property of anyone. However, he also opined that shooting a person who was stealing a car might very well and fairly lead to an excessive force problem for the shooter.

   [Comment: If police can be summoned and can respond promptly that is probably the best pro-active approach to protection of a person or another person for whom that person is responsible (e.g. children). The troubling issues for a firearm owner are – how do you know there is an exigent threat of such a degree that self-defence with a firearm may be warranted? If time permits, is it permissible to remove a firearm from secure storage (particularly so with handguns) and have it available "just in case"? Can a firearm even be shown to an actual or potential intruder to mitigate against the potential threat? Does the edict "Better to be safe than sorry" apply if firearms are the choice of self-protection? Law enforcement and prosecutors except in the clearest of cases will charge the firearm owner who must justify his or her actions in the face of jail time, losing all firearms and licencing entitlement thereto.

   Nobody is advocating for a "shoot first, ask questions later". But in Canada, a firearms owner had better explore all reasonable alternative options for self-defence before a firearm is brandished for self-defence.]

The Regina vs. Sorbie decision of Mr. Justice Douglas covers a lot of important issues on firearm-related matters. It is well researched and informative. Well worth the read.

The full text will be available on several websites in the near future.