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PARLIAMENT KNOWS WHAT AN HEIR IS

The Cross-Statutory Record of Federal Enumeration of Heirs, and Its Constitutional Consequences for the Firearms Act

A.D. 2026

The argument advanced in this document is simple. It is drawn entirely from Parliament's own instruments. It requires no inference, no extrapolation, and no constitutional theory beyond what Parliament itself has written into law.

The *Firearms Act*, S.C. 1995, c. 39, purports to require every person who possesses firearms to obtain and maintain a Possession and Acquisition Licence (PAL). The Act operates as though every person within its reach is an administrative person — a statutory creature existing by legislative grace, holding whatever permissions the state chooses to grant.

But there is another category of person in the constitutional order. That category is the **Heir** — the natural-born person who holds the liberties of the constitutional order by inheritance, not by statutory grant. The Heir's liberties pre-exist the statutes that Parliament enacts. They were not created by Parliament. They cannot be extinguished by Parliament without clear and plain language doing so. That language does not exist in the *Firearms Act*.

The question addressed here is whether Parliament knows the difference between these two categories of person. The answer, drawn from Parliament's own statutes, is unambiguous: **Parliament knows exactly what an Heir is. When Parliament intends to capture Heirs within a statute's reach, it names them. When Parliament does not name them, it has not captured them.**

Expressio unius est exclusio alterius.

The expression of one thing is the exclusion of the other.

I. THE GOVERNING PRINCIPLE

The Heir is a pre-existing common law category. The Heir is not a creation of statute. The Heir exists by virtue of birth within the constitutional order — by *ligeantia naturalis* — and holds by inheritance the liberties that the constitutional order protects. The Heir preceded Parliament. The Heir's liberties preceded Parliament. No Act of Parliament created them and no Act of Parliament has extinguished them.

Because the Heir exists outside the statutory order, a statute that does not name the Heir does not reach the Heir. Parliament demonstrated this in its own drafting practice across the full body of federal legislation. In every statute where Parliament intended to bring Heirs within its reach, Parliament named them explicitly — using the *includes* construction, which is an extending term,

not a defining term. *Includes* takes a category that exists independently of the statute and pulls it within the statute's scope for a specific purpose. The Heir is pulled in from outside; the Heir is not generated by the statute. Without the enumeration, the Heir is not captured.

The *Firearms Act* contains no such enumeration. The word "heir" does not appear in it. The Heir class is nowhere named, nowhere acknowledged, nowhere reached. Against the uniform cross-statutory practice of explicit enumeration, this silence is not a drafting oversight — it is the outer boundary of the statute's constitutional reach.

II. PARLIAMENT'S OWN RECORD

The following federal instruments each name "heirs" explicitly. Each is a public record, verifiable by any person, self-authenticating under the *Canada Evidence Act*, R.S.C. 1985, c. C-5. They are instruments created by Parliament — not by the informant, not by any advocate, not by any court. The evidence is Parliament's own words.

1. Constitution Act, 1867 — Fifth Schedule: Oath of Allegiance

> The most constitutionally significant instance. The prescribed oath reads: *"I do swear that I will be faithful and bear true allegiance to His Majesty King Charles the Third, His **Heirs** and Successors, according to law."*
>
> The Heirs appear in the foundational constitutional instrument itself — as the subjects of the allegiance owed by every Crown officer. Every Minister of Justice, every Attorney General, every Commissioner of the RCMP swore this oath before assuming office. The oath binds the swearer to the Crown and to the whole of what the Crown represents: not merely the sovereign line, but the natural persons — the *citoyen de droit* — whose pre-existing liberties the Crown holds in trust. The Heirs are not a footnote to the constitutional order. They are named in its foundational oath. The oath does not expire. There is no un-oath.

2. Oaths of Allegiance Act, R.S.C. 1985, c. O-1

> Parliament enacted a standalone statute to codify the oath of allegiance. The prescribed text names "Her Heirs and Successors" as the subjects of that allegiance. Parliament found it necessary to dedicate an entire Act to this obligation — naming the Heirs in the statute's operative text by Parliament's own hand.

3. Citizenship Act, R.S.C. 1985, c. C-29

> The citizenship oath reads: *"I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and I will faithfully observe the laws of Canada."* Every person granted Canadian citizenship has sworn allegiance to the Heirs by statute. Parliament encoded the Heirs into the citizenship oath. The oath-taker pledges allegiance not merely to a living sovereign but to the entire hereditary constitutional order.

4. Escheats Act, R.S.C. 1985, c. E-13

This is the most structurally decisive instrument in the cross-statutory record. The *Escheats Act* provides that the Crown becomes entitled to property only where the person last seised died intestate and "without lawful **heirs**." Parliament defined the Crown's claim to *bona vacantia* as contingent on the complete absence of Heirs. The hierarchy is explicit and statutory:

> **The Heir's title is senior to the Crown's.** Where the Heir exists, the Crown has no claim. The Crown is the residual claimant — the party of last resort when no Heir remains. The Crown is not the original grantor. Parliament said so.

Applied to the *Firearms Act*: the same Parliament that defined the Crown as residual claimant subordinate to the Heir in the *Escheats Act* simultaneously enacted a licensing regime that treats the Heir's liberty as a privilege the Crown may grant or deny. Those two positions are structurally irreconcilable.

5. Federal Real Property and Federal Immovables Act, R.S.C. 1991, c. F-8.4, s. 20

A Crown grant issued to a deceased person is not void — title vests in "the **heirs**, assigns or successors, legatees or legatees by particular title, or other legal representatives of the deceased person according to the laws in force in the province." Parliament explicitly preserved the Heir's title to Crown-granted land as the primary transmission vehicle. Title passes by lineage. The Heir receives the Crown grant by inheritance, not by fresh application, not by re-qualification, not by licence. By birth.

6. Patent Act, R.S.C. 1985, c. P-4, s. 2

"Legal representatives" is defined to *include* "**heirs**, executors, administrators of the estate, liquidators of the succession, guardians, curators, tutors, transferees and all other persons claiming through applicants for patents." The same *includes* construction as the *Income Tax Act* — Parliament reaching into the pre-existing common law category by explicit enumeration. Without the enumeration, the Heir would not be captured. Parliament knew this.

7. Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 83

Where a copyright work has not been published at the time of bankruptcy, it "shall revert and be delivered to the author or their **heirs**." Parliament recognised the Heir's title to property as the natural reversion point — senior to the claims of the bankruptcy estate, senior to creditors, senior to the trustee. The Heir's claim on property precedes the statutory insolvency regime.

8. Financial Administration Act, R.S.C. 1985, c. F-11, s. 119

The Treasury Board shall indemnify a Crown corporation director or officer "and the director's or officer's **heirs** and legal representatives" against costs and judgments. Parliament recognised Heirs as the natural successors to the natural person's rights and

obligations — extending the indemnity to them automatically, without requirement of fresh application or qualification. The Heir inherits the right; the statute does not create it.

9. Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

"Person" is defined to *include* "any body corporate and politic, and the **heirs**, executors, administrators or other legal representatives of such person." Parliament required an explicit extending enumeration to bring the Heir within the taxing statute's reach. The constitutional taxing power in s. 91(3) of the *Constitution Act, 1867* authorises Parliament to raise money by any mode or system of taxation — it names no persons. The naming of persons is left to the implementing statute. Parliament named Heirs in the *Income Tax Act* precisely because, without that enumeration, the Heir — as a pre-statutory category — would not be captured.

III. THE THREE CONCLUSIONS

The cross-statutory record produces three conclusions directly from Parliament's own instruments, without inference or extrapolation:

First. The Heir is a recognised, pre-existing common law category that Parliament captures by explicit enumeration whenever it intends to bring that category within a statute's reach. The *includes* construction is the mechanism: the Heir is pulled in from outside the statute, not generated by it. The enumeration is necessary because the Heir exists independent of the statute.

Second. The *Escheats Act* establishes the constitutional hierarchy with statutory precision: the Heir's title is senior to the Crown's. The Crown is the residual claimant, not the original grantor. Where the Heir exists, the Crown has no claim. Parliament said so. A Parliament that acknowledged this hierarchy in the *Escheats Act* cannot simultaneously claim, in the *Firearms Act*, the authority to licence the Heir's pre-existing liberty.

Third. The *Firearms Act* names no heirs. Every instrument reviewed above names them when Parliament intends to reach them. The *Firearms Act*'s silence is the outer boundary of its constitutional reach. *Expressio unius est exclusio alterius*: Parliament has not captured what it did not name. The entire cross-statutory record confirms it.

IV. THE CONSTITUTIONAL CONSEQUENCE

The consequence follows directly from the three conclusions.

The *Firearms Act* does not reach the Heir. It reaches administrative persons — statutory creatures who hold their permissions by legislative grant. It does not reach natural persons who hold their

liberties by constitutional inheritance. Parliament knew how to reach the Heir. Parliament did not do so in the *Firearms Act*. Parliament has not captured what it did not name.

The PAL requirement — the licence, the fee, the renewal, the criminal sanction for non-compliance — has no constitutional authority over the Heir. The instruments that impose it are, as against the Heir class, *void ab initio*. They had no constitutional authority to reach the Heir from the moment of their enactment. No period of compliance, no accumulation of renewals, and no passage of time cures the foundational absence of jurisdiction.

Quod ab initio non valet in tractu temporis non convalescit.

That which is void from the beginning does not become valid by the passage of time.

The Constitution does not contain a provision authorising Parliament to extinguish a pre-existing common law liberty, to convert it into a licensed privilege, or to charge the Heir for its exercise. Section 52(1) of the *Constitution Act, 1982* is unambiguous: the Constitution is the supreme law of Canada, and any law inconsistent with it is of no force or effect to the extent of the inconsistency. The *Firearms Act*, as applied to the Heir class, is that law.

V. PARLIAMENT CANNOT REDEFINE "HEIR" TO MEAN SOMETHING IT IS NOT

The argument that Parliament might simply redefine "Heir" by ordinary statute — assigning the word a new, restricted, or administrative meaning that excludes the natural person holding the pre-existing common law liberty — fails on structural grounds that are independent of any particular statutory text. The failure is not a matter of construction or interpretation. It is a matter of constitutional architecture.

"Heir" in the constitutional order is not a statutory term that Parliament coined. It is a term of art with a fixed, received meaning inherited from the common law and from the constitutional tradition at Confederation. Its meaning was settled before Parliament existed as a Canadian institution. The term traces through the common law of England — through *Calvin's Case* (1608), through Blackstone's *Commentaries*, through the English Bill of Rights 1689, through the pre-Confederation common law of Upper Canada — all of which Parliament received at Confederation, not created. Parliament received the term; it did not originate it.

The constitutional significance of this is precise. The preamble to the *Constitution Act, 1867* declares a constitution similar in principle to that of the United Kingdom. The Fifth Schedule of that Act prescribes an oath to the King's "Heirs and Successors according to law." That phrase has a fixed common law meaning: the natural successors by lineage to the constitutional order, in whom the liberties of that order inhere by birth. Parliament cannot alter the meaning of that term by ordinary statute any more than it can alter the meaning of "Crown," "Parliament," or "the Queen" by ordinary Act. These are constitutional terms. Their meaning is upstream of Parliament. Parliament receives them; it does not define them.

Even if Parliament were to attempt a statutory redefinition — say, by enacting an interpretation provision that assigned "heir" a narrow administrative meaning, or that purported to restrict the

category to estate beneficiaries only — that redefinition would operate as an island. It would be operative only within the four corners of the statute containing it. It could not reach back and alter the constitutional meaning of the term as it appears in the Fifth Schedule oath, in the *Escheats Act*, in the *Federal Real Property Act*, in the *Oaths of Allegiance Act*, or in the pre-Confederation common law tradition from which every one of these instruments drew their meaning. Each of those instruments uses the term in its received common law sense. A statutory redefinition in one ordinary Act cannot overwrite the constitutional substrate.

The governing maxim is *generalia specialibus non derogant* — a general provision does not derogate from a special one. The constitutional meaning of "Heir" — received from the common law, entrenched in the constitutional instruments, senior to any ordinary legislation — is the special, entrenched sense. A statutory redefinition in an ordinary Act is the general, legislative sense. Under the canonical rule of construction, the special prevails. The constitutional meaning of the Heir cannot be displaced by ordinary legislative interpretation clauses.

There is a further, deeper reason why this attempt would fail. The Heir's constitutional identity does not derive from the word "heir." It derives from the fact of birth within the constitutional order — from *ligeantia naturalis*. That fact is not word-dependent. Parliament cannot extinguish the constitutional status of the natural-born person by the device of redefining the label. The status precedes the label. Even if Parliament were to replace the word "heir" entirely with a new term, the underlying category would remain: the natural person born within the constitutional order, holding its liberties by inheritance, owing allegiance to the Crown, and owed in return the Crown's protection of those liberties. Removing the label does not dissolve the category. *Nemo dat quod non habet*: Parliament cannot give itself, by the device of redefinition, authority over a constitutional category it did not create and does not own.

VI. CROWN COPYRIGHT CANNOT ALTER THE MEANING OF "HEIR" WITHIN THE CONSTITUTIONAL TRADITION

A related argument might be advanced: that the Crown, as author or publisher of the instruments in which "Heir" appears, holds copyright over those instruments under s. 12 of the *Copyright Act*, R.S.C. 1985, c. C-42, and that this copyright confers some proprietary authority over the meaning or use of the term within those instruments. The argument collapses under examination on three independent grounds, each fatal standing alone.

First — Copyright Governs Reproduction, Not Meaning

The *Copyright Act* vests copyright in the Crown for works prepared or published under Crown direction. That copyright is a property right in the expression of the work — its particular arrangement of words, its formatting, its typographic choices, its literary structure. It governs who may reproduce the instrument and in what form. It does not govern what the instrument means. The meaning of a legal instrument is a matter of constitutional and statutory interpretation, not intellectual property. Courts interpret legal instruments. They do not ask the Crown's permission to construe its enactments, nor do they defer to the Crown's preferred interpretation as a matter of copyright ownership. The Crown cannot use s. 12 of the *Copyright Act* to lock in a favourable

interpretation of its own instruments any more than a private party can use copyright to prevent courts from construing their contracts. Copyright is not an interpretive monopoly. The separation of these two domains — the property right in expression and the public right of interpretation — is foundational to the rule of law.

Second — The Tradition Is Not Crown-Authored

The common law meaning of "heir" predates any instrument over which the Canadian Crown could claim authorship. The term flows from the Proto-Indo-European root meaning "that which one leaves behind," through Latin *heres*, through Old French *heir*, into the common law of England. It was carried in *Magna Carta* (1215), through *Calvin's Case* (1608), through the English Bill of Rights (1689), through Blackstone's *Commentaries on the Laws of England* (1765–1769), and into the pre-Confederation common law of Upper Canada and British North America. Copyright attaches to original works of authorship. It does not attach to inherited tradition, received doctrine, or the accumulated common law. The Crown did not write *Magna Carta*. The Crown did not write *Calvin's Case*. The Crown did not write the English Bill of Rights. Those are the foundational sources of the Heir's constitutional meaning. They are not Crown copyright works. The tradition from which "heir" draws its constitutional force belongs to no one and to everyone — it is the common inheritance of the constitutional order, held in trust for all.

Third — Constitutional Terms Cannot Be Monopolised

Even if the Crown held copyright over every Canadian instrument that uses the word "heir," copyright would not prevent any court, any subject, or any person within the constitutional order from using the word in its established constitutional sense. Copyright does not create a monopoly on meaning. It creates a monopoly on reproduction of the particular expression in which that meaning is clothed. The distinction is absolute and foundational. A person who reads the *Escheats Act* and understands that the Crown's claim arises only in the absence of heirs does not thereby infringe Crown copyright. They are reading and understanding — acts that copyright law does not govern, has never governed, and cannot govern without destroying the public accessibility of law upon which the entire constitutional order depends. *Ignorantia juris non excusat* — ignorance of the law is no excuse — presupposes that the law is accessible for reading, understanding, and acting upon. The Crown cannot simultaneously invoke that maxim against the Heir and claim a copyright-based monopoly over the law's meaning. The two positions are irreconcilable.

The final and comprehensive answer flows from the *Entick v. Carrington* (1765) principle: the Crown can only do what the law expressly authorises. The *Copyright Act* does not authorise the Crown to use copyright as an instrument of constitutional interpretation, or as a means of extending its administrative authority over a category of persons the constitutional order places beyond its reach. Copyright is a property statute. It governs economic rights in expressive works. It is not a constitutional instrument, and it cannot be deployed as one. The attempt to use Crown copyright to expand the Crown's authority over the Heir would be precisely the kind of action the constitutional order prohibits: the use of an administrative instrument to do indirectly what cannot be done directly.

VII. HEIRS WHO DO NOT KNOW THEY ARE HEIRS: LAWFUL EXCUSE, OR CROWN OBLIGATION?

The most far-reaching question raised by the constitutional architecture set out in this document concerns persons who are Heirs — who hold the pre-existing common law liberty by birth within the constitutional order, by *ligeantia naturalis* — but who have never been informed of that status. They obtained PALs. They paid licence fees. They complied with every requirement of the impugned regime. They did so not because they consented to submit their pre-existing liberty to administrative conditioning, but because the entire apparatus of the state — law enforcement, licensing authorities, legal advisors, public communications — operated on the uniform premise that no such liberty existed, that the licence was constitutionally required, and that the alternative was criminal prosecution. They were never told there was a choice. No carve-out was offered. No acknowledgment was made. The liberty was never disclosed. Every Heir who holds a PAL today holds it under the same induced false premise: that the alternative is being made a criminal for exercising what was always theirs.

The question that arises is two-sided and both sides point against the Crown. The first is whether the Heir's ignorance of their own status provides a lawful excuse for compliance — in the sense that the compliance was not freely given and cannot be treated as voluntary submission to the regime. The second, and more powerful, is whether the Crown bore an obligation to ascertain who it was dealing with before administering a regime that extracted fees and threatened criminal prosecution from persons whose constitutional status it could not, on the law as stated in its own instruments, assume away.

On the Lawful Excuse Question

Section 19 of the *Criminal Code* provides that ignorance of the law is no excuse — *ignorantia juris non excusat*. That maxim is directed at the subject. But the question here is materially different from ignorance of the law. The Heir's constitutional status — the pre-existing common law liberty, the fact of *ligeantia naturalis* — was not concealed through the Heir's own inattention or failure to inquire. It was actively and systematically suppressed by the administrative order through which the Crown administered the very regime now in question. The Crown constructed and maintained an apparatus premised on the non-existence of the Heir's liberty. It did not merely fail to advertise that liberty. It built an entire system of legal compulsion that treated the liberty as non-existent, and through that system induced every person within the Heir class to comply as though the liberty had never existed. The question is not whether the Heir knew the law — it is whether the Heir was in a position to know the truth about their own constitutional status in circumstances where every arm of the state was administering a fiction to the contrary. That is not ignorance of law in the sense s. 19 contemplates. That is induced error of status, produced and maintained by the party that had the most complete knowledge of the constitutional record and the greatest obligation to act on it.

The compliance of Heirs who did not know they were Heirs was not free consent to the licensing regime. It was performance obtained under a false premise — specifically, the premise that the licence was constitutionally required. That is a defect in the foundation of the consent, not merely a matter of legal ignorance. A contract obtained by misrepresentation of a foundational fact does not bind the party who was misled. The constitutional equivalent applies with at least equal force: compliance induced by the sustained, systematic misrepresentation that no liberty existed is not

waiver of the liberty. *Non videntur qui errant consentire* — those who are in error do not appear to consent. The Heir who complied while labouring under the Crown-administered fiction that no liberty existed did not waive the liberty by complying. There was no informed consent to waive. Waiver requires knowledge of the right being surrendered. The Crown ensured that knowledge was never available to the Heir class, and it did so not by accident but by constructing and maintaining a licensing regime that proceeded as though the Heir's liberty was a nullity.

On the Crown's Obligation to Ascertain Who It Is Dealing With

This is the more powerful ground, and it reverses the burden entirely. The Crown is not a private actor. The Crown is the institution that the constitutional order vests with the responsibility of protecting the pre-existing liberties of the Heirs. That protection is the reciprocal obligation owed in exchange for the allegiance that the Heirs, upon birth, owe to the Crown. The constitutional relationship is not unilateral. It is a bilateral obligation of the most fundamental kind: allegiance in exchange for protection. The common law doctrine established in *Calvin's Case* (1608) makes this reciprocity explicit: the subject owes the sovereign natural allegiance; the sovereign owes the subject natural protection. Without the Crown's protection of the Heir's liberties, the allegiance of the Heir has no lawful foundation — for allegiance cannot be owed to an institution that actively extinguishes what it was constituted to protect.

From this bilateral constitutional relationship, two positive obligations flow that are directly engaged by the impugned regime.

> **The duty of identification.** Before the Crown administers any scheme that extracts compliance, fees, or submission from persons, it is obligated to know the constitutional character of the relationship in which it stands to those persons. This is not an onerous obligation. The Crown's own instruments — the oath, the *Escheats Act*, the *Citizenship Act* — already contain the distinction between Heirs and others. The Crown knows the difference between *ligeantia naturalis* and *ligeantia acquisita*. The birth records, the citizenship records, the naturalization records, the registration of persons — all of these are within the jurisdiction and possession of the Crown. The Crown could, on proper inquiry, identify every natural-born Heir within the class of PAL holders. Its failure to do so before administering a regime that extracted fees and threatened prosecution from that class is not administrative oversight. It is the failure of an obligation that the constitutional relationship itself imposed. The Crown cannot say that it did not know who the Heirs were, when the records that would identify them are in the Crown's own custody and were never consulted for the purpose of determining constitutional jurisdiction over the persons being administered. The failure to inquire, in these circumstances, is wilful blindness.
>
> **The duty not to induce performance contrary to the Heir's constitutional interests.** A Crown that owes the Heir protection of pre-existing liberties is under a positive obligation not to induce the Heir to perform acts that are contrary to those liberties. Paying a licence fee for something that requires no licence is contrary to the Heir's constitutional interests. Submitting to administrative approval for the exercise of a pre-existing liberty is contrary to the Heir's constitutional interests. Renewing that submission indefinitely, under threat of criminal prosecution, is contrary to the Heir's constitutional interests. Surrendering lawfully held property under a compensation program founded on instruments that are void as against the Heir class is contrary to the Heir's constitutional interests. In every instance,

> the Crown not only failed to protect those interests — it actively constructed the mechanism by which the Heir was induced to act against them. That is not merely a failure of protection. It is a positive breach of the bilateral constitutional obligation. The Crown cannot hold the benefit of allegiance on one side and deny the obligation of protection on the other.

The Crown cannot say to the Heir: "you should have known you were an Heir and asserted your liberty." The Crown constructed and maintained an administrative apparatus premised on the non-existence of that liberty. It never carved out the Heir class in any licensing instrument. It never offered an exemption or a reservation. It never acknowledged the pre-existing right in any public communication administered through the Canadian Firearms Program. It extracted universal compliance. Having induced that compliance through a sustained, systematic operation of the full coercive apparatus of the state, the Crown bears the entire burden of that inducement. The Heir's ignorance of their status is not an independent fact — it is the direct product of the Crown's failure to identify who it was dealing with and to administer accordingly. The Crown cannot now invoke the Heir's ignorance as a shield against the consequences of its own breach.

VIII. THE SINGLE PROPOSITION

The questions addressed in Sections V, VI, and VII are, at their foundation, one question: can the Crown use the administrative apparatus of the state — whether through statutory redefinition, copyright claim, or the simple failure to inform — to insulate itself from the constitutional consequences of administering a regime that has no constitutional authority over the persons it reaches?

The answer, in each case, is no.

The constitutional order does not permit the Crown to do indirectly what it cannot do directly. It cannot extinguish the Heir's liberty by statute. It cannot monopolise the meaning of "Heir" by copyright. And it cannot obtain the benefits of the Heir's constitutional status — the allegiance, the fee payments, the compliance, the surrender of property — while simultaneously failing to discharge the obligations that constitutional status imposes on the Crown in return.

> **The Crown cannot hold the benefit and disclaim the burden.**

That is the whole of the constitutional order in a single proposition. Parliament knows what an Heir is. Parliament names the Heir when it intends to reach the Heir. Parliament has not named the Heir in the *Firearms Act*. The *Firearms Act* does not reach the Heir. The entire cross-statutory record of Parliament's own instruments confirms it, and no act of redefinition, no claim of copyright, and no failure to inform can alter that conclusion.
