



[2023] JMSC Civ. 196

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION**

CLAIM NO. SU2022CV02450

IN THE MATTER of the Firearms Act, 1967

AND

IN THE MATTER of an application by Rohan
Hall for Administrative Orders

BETWEEN	ROHAN HALL	CLAIMANT
AND	MINISTER OF NATIONAL SECURITY	DEFENDANT

**Ms. Georgia Hamilton instructed by Georgia Hamilton & Co., Attorneys-at-Law for
the Claimant**

Mr. Robert Clarke instructed by Director of State Proceedings for the Defendant

Heard: July 10, 2023 and October 12, 2023

**JUDICIAL REVIEW – Denial of application for Firearm User’s Licence – Whether
administrative delay was unreasonable and/or irrational and amounted to
procedural unfairness – Whether Claimant’s right to be heard was breached
contrary to principles of natural justice – Whether certiorari and mandamus should
be granted – Whether the Firearms (Prohibition, Restriction and Regulation) Act,
2022 applies retrospectively – Firearms Act, sections 37 and 37A – Interpretation
Act, section 25(2)(c) and (e) – Part 56, Civil Procedure Rules (CPR).**

SIMONE WOLFE-REECE J.

INTRODUCTION

[1] The Claimant Mr. Rohan Hall is seeking judicial review of the decision of the Defendant, The Minister of National Security ('the Minister') to uphold the decision of the Firearm Licensing Authority ('the FLA') denying the Claimant's application for a Firearm User's Licence. The circumstances that have led to this claim are outlined below.

BACKGROUND

[2] The Claimant is a Building Contractor and Councillor for the Red Hills Division of the Kingston and Saint Andrew Municipal Corporation ('the KSAMC'). In or around 2017, the Claimant applied to the FLA for a Firearm User's Licence. The FLA denied the Claimant's application and notified him of that decision in a letter dated 22 March 2019. The FLA advised the Claimant that the basis of the denial of his application is that he is unfit to be entrusted with a firearm.

[3] On 27 May 2019, the Claimant submitted an application to the Review Board to review the FLA's decision. The Claimant alleges that the Review Board failed to review his application within the ninety (90) days time period stipulated under the now repealed **Firearms Act**. He also contends that the Review Board failed to grant him a hearing or the opportunity to make representations prior to considering his application for review.

[4] It was contended that if the Review Board held a hearing, the Claimant reasonably expected that the FLA would have provided the Review Board with documents used to ground their decision, so that the Claimant would have been in a position to respond to any unfavourable allegations arising from the FLA's denial of his application. The Claimant further contends that since he did not get the opportunity to make meaningful and worthwhile representations before the Review Board, nor was he notified of the documents grounding the FLA's decision, he was denied the

right to be heard, which amounts to a breach of the principles of natural justice and procedural fairness.

[5] The Claimant “appealed” to the Minister who took the decision to uphold the FLA’s decision denying the Claimant’s application. The Defendant notified the Claimant of his decision in a letter dated 11 May 2022. The Claimant believes that the Defendant’s decision was not based on the merits of the Claimant’s application or in law but was based on external facts, which made the decision unmeritorious, arbitrary, irrational and procedurally improper.

[6] The Claimant was granted leave to apply for judicial review by V. Smith J. on 2 September 2022. The Claimant filed the Fixed Date Claim Form for judicial review on 13 October 2022 seeking the following Orders:

1. An order of certiorari to quash the decision of the Defendant contained in a letter dated May 11, 2022 upholding the decision of the Firearm Licensing Authority denying the Claimant’s application for a Firearm User’s Licence
2. An order of mandamus directed to the Defendant to hear and determine the Claimant’s application for review of the decision of the Firearm Licensing Authority in accordance with the law and in keeping with the principles of natural justice
3. Liberty to apply
4. Such further and other relief as may be just
5. Cost

ISSUES

[7] The main issues for determination follow:

- (a) Whether delay in reviewing the Claimant’s application made the Defendant’s decision unreasonable and procedurally unfair

(b) Whether the Defendant breached the Claimant's right to be heard contrary to the principles of natural justice

(c) If the Claimant establishes a basis for the Court to grant an Order for mandamus, whether the Court should grant mandamus under section 115 of the ***Firearms (Prohibition, Restriction and Regulation) Act, 2022*** ('the new Act') or in the alternative under the now repealed ***Firearms Act*** under section 25(2)(c) and (e) of the ***Interpretation Act***.

Issue# 1 Whether delay in reviewing the Claimant's application made the Defendant's decision unreasonable and procedurally unfair

[8] Ms. Hamilton submitted that there was a delay of nine hundred and fifty-six (956) days by the Review Board coupled with the Defendant's delay of an additional one hundred and twenty-six (126) days in the review process amounted to inordinate administrative delay and breached the rules of natural justice.

[9] Counsel argued that based on the evidence, the delay by the Review Board was unnecessary as there was no circumstance which warranted such an inordinate delay. Counsel relied on ***Wayne Demercado v Firearm Licensing Authority and others***¹ in which the court considered a list of factors that the court must take into account in respect of claims of administrative delays. The factors stated include consideration of (i) whether the matter was complex; (ii) whether the Review Board was required to go outside documents contained in the FLA's brief; (iii) whether the matter contains public interest concerns and (iv) whether the Claimant contributed to the delay.

LAW & ANALYSIS

[10] The Claimant stated in his affidavit evidence in support of the application for judicial review that the FLA notified him of their decision by letter dated 22 March 2019.

¹ [2023] JMSC Civ 4,

The Claimant submitted his application for review to the Review Board on or about 27 May 2019. After the Review Board failed to conduct the review within the ninety (90) days period, the Claimant's Attorneys-at-law wrote to the Defendant by letter dated 5 January 2022, requesting that the Defendant hear and determine his application for review. The Defendant, by way of letter dated 11 May 2022 responded to the Claimant's Attorneys-at-Law advising that based on investigations of the FLA, it was deemed appropriate to 'revoke' his firearm licence. The Claimant stated that the Defendant must have meant 'deny' and not 'revoke', as the application was for the grant of a Firearm User's Licence as the Claimant has never been granted a licence.

- [11]** The Claimant's evidence is that the reason for the Defendant's decision, which is based on FLA's reason, that the Claimant is "unfit to be entrusted with a firearm", has no basis or merit because the Defendant has previous knowledge that the Claimant possesses characteristics of trustworthiness, honesty and probity, based on the Defendant's affiliation with the Jamaica Labour Party ('the JLP'). The Claimant indicated that during his campaign for candidacy for Councillor for the Red Hills Division, there was a vetting process carried out by the Central Executive of the JLP, which found him to possess the qualities of trustworthiness, honesty and probity. The Claimant's contention is that since the Defendant was (and remains) the General Secretary of the JLP, he would have knowledge of this vetting process and the Executive's findings.
- [12]** Ms. Hamilton indicated that the time the Defendant took to consider and respond to the application for review amounted to delay of one hundred and twenty-six (126) days. Counsel further argued that this delay coupled with delay of nine hundred and fifty-six (956) days by the Review Board amounted to inordinate delay, which was procedurally unfair to the Claimant.
- [13]** The law is clear as it pertains to the recognized grounds for challenging the exercise of the authority of a public decision-maker. The role of the Court in judicial review proceedings is limited to determining whether the Claimant has established,

on a balance of probabilities, that the exercise of a public function was unlawful based on one of the recognized grounds of 'illegality', 'irrationality' or 'procedural impropriety'.

- [14] In ***Council of Civil Service Unions v Minister for the Civil Service***², Lord Diplock stated:

“By “irrationality” I mean what can now be succinctly referred to as “Wednesbury unreasonableness” (Associated Provincial Pictures Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. ...

I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

- [15] Based on the evidence, the Claimant has not established that the Defendant made improper considerations or acted unlawfully in determining the application. The assertion that the Defendant must have known the Claimant had good qualities is not sufficient evidence to find that the Defendant acted unlawfully in making his decision. The apparent view of the Claimant that the Ministers knowledge of him through his political affiliation establishes some basis on which the Minister should have acted is a most unfortunate suggestion.
- [16] The FLA has an investigative and vetting process in accordance with the legislation. It is that standard that must be assessed and met by every applicant, and not the Ministers personal assessment of the any Applicant.

² 1985 AC 374 at 410

- [17] The matter of administrative delay is contemplated by the now repealed **Firearms Act**. Section 37A(2) of the now repealed **Firearms Act** prescribes a statutory time limit of ninety (90) days within which the Review Board shall hear and determine applications for review. It is only in light of a failure of the Review Board to comply with the ninety (90) days period under section 37A(2) that the Defendant may apply his discretion under section 37A(4) and intervene to hear and determine the application for review. As to the prescribed manner of the application to the Minister, *regulation 3* of the **Firearms (Appeals to the Minister) Regulations** states that appeals under section 37 should be addressed to the Minister and filed within twenty-one (21) days from the date of the decision the Claimant is appealing.
- [18] Based on a purposive reading of the legislation, an application for review to the Review Board constitutes an appeal to the Minister as well. However, Minister may exercise his discretionary power to intervene and determine the appeal if the Review Board fails to act in accordance with section 37(A)(2).
- [19] The law is clear that the occurrence of administrative delay itself does not automatically amount to unreasonableness or irrationality or procedural unfairness contrary to the principles of natural justice. The Claimant must establish that the circumstances and nature of the delay was such that it amounted to the level of irrationality or procedural unfairness. This is a matter based on the particular facts, as every delay is different and must be assessed in the context of the particular case and legislative framework. The principles of natural justice require there must be a fair and equitable balance of the interests of the Claimant on the one hand, and the public exercise of the discretion on the other hand. This is the view of the Courts in the authorities of **Wayne Demercado, Blencoe v British Columbia (Human Rights Commission)** and **Baker v Canada (Minister of Citizenship and Immigration)**, which considered the circumstances of delay in administrative systems and procedures.
- [20] The factors this Court considers important are: (i) the length of the delay compared to the time requirements under the legislation; (ii) cause of the delay, for example

the need to request additional documents from the Claimant; (iii) impact of the delay, such as whether the delay caused any prejudice to the Claimant; and (iv) whether the Claimant contributed to the delay.

- [21]** In assessing the issue of delay the Defendant has not provided any affidavit evidence explaining the lengthy period between 27 May 2019, when the Claimant submitted his application to the Review Board for review, and 11 May 2022 when the Defendant notified him of his decision. It is accepted that this delay of approximately three (3) years is excessive and disproportionate compared to the statutory requirement of ninety (90) days within which to consider the application for review.
- [22]** However, the Claimant has failed to establish if and how the delay caused him to suffer prejudice, unfairness or any negative consequence in the determination of his application for review. There is no evidence that any of the Claimant's rights, interests or obligations, either within or outside the review process were negatively impacted by the delay. The fact that the Claimant has been operating his business without the benefit of the use of a firearm does not provide any evidence of prejudice. Furthermore the grant of Firearm Users licence is discretionary based on a determination by the FLA, and not based on any legal right.
- [23]** The Court therefore finds that the occurrence of delay itself, without any evidence of prejudice to the rights or interests of the Claimant did not amount to irrationality or procedural unfairness or a breach of the principles of natural justice by the Defendant. The Court finds that on a balance of probabilities, the Claimant failed to establish that the Defendant acted unlawfully or irrationally or that the administrative delay amounted to the entire process being procedurally unfair to him.
- [24]** The Claimant has therefore failed to establish a basis for the Court to grant the Order of certiorari quashing the decision of the Defendant to uphold the decision of the FLA to deny the Claimant's application for a Firearm User's Licence.

Issue # 2 Whether the Defendant breached the Claimant's right to be heard contrary to the principles of natural justice.

- [25] Ms. Hamilton submitted that the facts established that the Minister failed to grant the Claimant a hearing before he upheld the decision of the FLA. The provisions of section 37, requires the body carrying out the review of the decision to hear, receive and examine evidence. At the Review Board stage, not only was there delay but the Review Board neglected to grant the Claimant a hearing and denied him the opportunity to be heard before making a decision.
- [26] At the third stage, before the Defendant, the Claimant was again denied the right to a hearing when the Minister took the decision to uphold the recommendation of the Review Board without granting the Claimant a hearing and notifying the Claimant that the appeal will be considered and requesting any documents from the Claimant in response to any allegations against him. The Claimant was only notified after the Minister's decision, by way of letter dated 11 May 2022 advising of the decision to uphold the decision denying the Claimant a firearm user's licence.
- [27] Ms. Hamilton submitted that the right to a fair hearing before the Defendant entails the duty to hear, receive and examine the evidence from both sides, whether orally or on paper. In light of the evidence, these requirements of procedural fairness were not complied with, and considering the time that had passed made this breach of fairness in the procedure even more egregious. The Defendant therefore failed to act judicially, fairly and rationally.
- [28] Mr. Clarke submitted that whether there is a breach of the right to a fair hearing is determined by how the procedure was carried out against the context of the

legislation. This is how the Court will determine if the objective of fairness was achieved. Counsel relied on ***Robert Ivey v Firearm Licensing Authority***³.

[29] Counsel submitted that pursuant to the ***Firearms (Appeals to the Minister) Regulations***, in particular *regulations 3, 4 and 5* the Defendant has a discretion whether or not to grant the Claimant a hearing upon appeal. The objective of fairness was achieved when the Defendant considered the Claimant's letter dated January 5, 2022, which outlined his position in response to the denial of the FLA to grant him a license. The Defendant, in receiving knowledge of the Claimant's letter had all the necessary details of the case to help him hear, receive and determine the evidence in considering the appeal. Thus, the objective of fairness in the process was met and there was no breach of natural justice.

LAW & ANALYSIS

[30] The Claimant stated in his affidavit that upon submitting his application for review, neither the Review Board nor the Defendant invited him to a hearing or gave him the opportunity to make representations in support of his case under review. The Claimant further indicated that since no hearing was held before the Review Board or the Minister before arriving at a decision, the process was procedurally unfair to him, as he should have been given the opportunity to provide comments or information.

[31] The statutory duties expressed in section 37(A)(2)(a) of the now repealed ***Firearms Act*** clearly state that the Review Board must "hear, receive and examine the evidence in the matter under review". Section 37A(4) also clearly state that the Minister may "hear and determine the matter under review". In addition to these

³ [[2021] JMCA App 26, paras. 21 and 22.

statutory provisions, the rules of natural justice require that the Defendant grant the Claimant a fair hearing before arriving at a decision.

- [32] It is settled law that in the exercise of public, administrative decision-making, the right to a fair hearing is guaranteed to those persons who will be affected by the decision-maker. The right to a fair hearing is based on the general duty of the decision-maker to act fairly to ensure there is procedural propriety throughout the entire process. The nature of the right to a fair hearing was considered in **Ridge v Baldwin**. Lord Morris at para 113 stated:

“... it is well-established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: see Kanda v Government of Malaya. My Lords, here is something that is basic to our system: the importance of upholding it far transcends the significance of any particular case ...”

- [33] Mr. Clarke argued that based on *regulation 5* of the **Firearms (Appeals to the Minister) Regulations**, it is within the Minister’s discretion to decide whether or not to grant the Claimant a hearing upon appeal based on whether the Minister needed more from the Claimant.

- [34] On assessment of the provisions of the repealed Firearms legislation the Court notes that a hearing before the Minister makes a decision is mandatory in keeping with the principles of natural justice. A hearing before the Review Board is also mandatory. However, the form of the hearing in this legislative context may be done on paper, and if the reviewing authority determines by way of oral hearing as well. The fact that there is no hearing in person but done on paper only does not mean the Claimant has been deprived of the right to a fair hearing.

Specific time and date of hearing

- [35] The duty of the Defendant to hear and determine the matter under review in a ‘fair’ manner requires receiving all relevant evidence from both sides and assessing that information equitably. In addition to this requirement, Ms. Hamilton submitted that

the Defendant's duty of fairness includes a duty to set a specific date and time when the appeal was to be considered, whether orally or on paper and notify the Claimant of same.

[36] There is no statutory requirement to notify the Claimant of a date and time of the hearing. And even so, the principles of natural justice do not regard the process as procedurally unfair because the Claimant received no notice of the date and time of the hearing. The specific requirement to give notice of a date and time of a hearing is a right contemplated in judicial or legal proceedings, where the person who must be notified of the hearing, will have their civil rights and obligations determined by a Court of law. The Defendant is not considered a judicial body nor is he performing any judicial function in determining an appeal. The Defendant is more appropriately considered to be exercising statutory functions in a quasi-judicial manner⁴. This means that the Defendant is under no mandatory duty to the Claimant to notify him of the date and time when he will hear and determine the appeal.

[37] In ***Re (On the application of Thompson) v Law Society***⁵, the Court of Appeal considered the issue of whether the failure of the committee and adjudication panel of the Law Society to grant the applicants an oral hearing amounted to a breach of the applicants' right to a fair hearing contrary to natural justice. Clarke LJ in delivering the judgment of the Court stated at para 49:

"In Smith's case the court emphasized in that context the principles applied by the House of Lords in Doody v Secretary of State for the Home Dept [1993] 2 All ER 92 at 106, [1994] 1 AC 531 at 560 – 561 per Lord Mustill, which was concerned with the case where an Act of Parliament has conferred an administrative power. It seems to me that similar principles apply here. In particular, for present purposes I should I think refer to an

⁴ See *J A E (Glasgow) Ltd v Glasgow District Licencing Board* 1994 SC 290, (in which it was undisputed that the Board was an administrative body with quasi-judicial functions).

⁵ [2004] 2 All ER 113

important principle in Lord Mustill's speech which was followed in Smith's case. He expressed it thus:

'... the respondents acknowledge that it is not enough for them to persuade the court that some procedure other than the one adopted by the decision-maker would be better or more fair. Rather, they must show that the procedure is actually unfair. The court must constantly bear in mind that it is to the decision maker, not the court that Parliament had entrusted not only the making of the decision but also the choice as to how the decision is made.'"

- [38] Based on his general duty to act fairly within his administrative and quasi-judicial functions, the Defendant is required to apply his discretion and consider, whether based on the particular circumstances, that additional step of notifying the Claimant was necessary in order to receive additional information or arguments from the Claimant. If the Defendant did not require this additional information, there was no need to notify the Claimant of a specific date and time when the Defendant would have considered the appeal, whether orally or on paper. There is no indication that in considering the entire process as a whole, the Defendant, by not taking the additional step to notify the Claimant of the date and time of the hearing, rendered the process unfair.
- [39] The Claimant failed to establish, on a balance of probabilities that the Defendant did not grant him a hearing at all, whether orally or on paper. The Claimant also failed to establish that by not being notified of a date and time of the hearing so as to be given the opportunity to make representations, the entire review process was unfair. There was therefore no breach of the right to a fair hearing contrary to the principles of natural justice.
- [40] Since there was no breach of the Claimant's right to a fair hearing, the Claimant has failed to establish a basis for the Court to grant the Order of mandamus directing the Defendant to hold a hearing in keeping with the principles of natural justice.

Issue 3 If the Claimant establishes a basis for the Court to grant an Order for mandamus, whether the Court should grant mandamus under section 115 of the Firearms (Prohibition, Restriction and Regulation) Act, 2022 ('the new Act') or in

the alternative under the now repealed Firearms Act under section 25(2)(c) and (e) of the Interpretation Act

- [41] Ms. Hamilton submitted that with the introduction of the **new Act**, the powers of review previously vested in the Defendant under the repealed Act no longer exist, as section 86 of the **new Act** establishes a Review Panel for the purpose of reviewing decisions of the FLA. Section 86 of the **new Act** does not apply retrospectively and the new Act does not contain any transitional provision to address outstanding matters previously referred to the Defendant under the repealed Act. Therefore, the **new Act** does not provide the basis for issuing mandamus against the Defendant in this matter. Counsel relied on the Court of Appeal decision in **Janet Foster v Director of Public Prosecutions**⁶.
- [42] In absence of any transitional provision in the new Act, section 25(2)(c) and (e) of the **Interpretation Act** operates as a freezing device for the now repealed **Firearms Act** to continue to govern this matter. There is no contrary intention expressed by Parliament in the new Act. Therefore, the basis for the court issuing mandamus against the Defendant is under the now repealed **Firearms Act**.
- [43] Mr. Clarke submitted that the enactment that applies to the instant case is the **new Act**, specifically, sections 86 and 87. Based on section 114 (should read section 115) of **the new Act**, which is a savings provision, the **Firearms Regulations, 1967** continue to regulate appeals to the Minister. Both the **new Act** and now repealed **Firearms Act** empower an aggrieved applicant to appeal to the Defendant in the event that the Review Panel fails to render a decision; thus preserving the powers and duties of the Defendant, so far as their consistency with the legal framework. Thus, mandamus can still be granted, if the Claimant is successful.

⁶ [2022] JMCA Civ 8

LAW & ANALYSIS

[44] The Court is guided by its functions in judicial review proceedings, which is to find whether there was illegality, irrationality or procedural impropriety by the decision-maker. Based on the conclusion that the Defendant did not act unlawfully, irrationally or unfairly towards the Claimant, an Order of mandamus would not be appropriate in these circumstances, as to do so would be interfering with the exercise of the discretion of the Defendant, which is not the scope of judicial review proceedings.

[45] As stated by Brooks JA (as he then was) in *Latoya Harriott v The University of Technology*⁷, it is whether the decision lies within the decision-maker. At para. 21 of the judgment the Court cited the case *Medical Council of Guyana v Dr. Muhammad Mustapha Hafiz*⁸ where the Court stated:

“A clear and settled principle of law is that the person being compelled to the performance of an act by an order of mandamus must have a clear duty imposed on him as opposed to a mere discretion.”

[46] Though the Court finds there is no basis to grant an Order of mandamus against the Defendant, the Court will still determine this issue in its entirety.

[47] Ms. Hamilton submitted that the **new Act** does not contain any transitional provision that addresses outstanding matters that were previously brought before the Defendant under the now repealed **Firearms Act**. In absence of such a provision, section 25(2)(c) and (e) of the **Interpretation Act** is applicable. Section 25(2)(c) and (e) contemplate instances where matters commenced under the now repealed **Firearms Act** were not disposed of before the **new Act** took effect. Section 25(2)(c) and (e) of the **Interpretation Act** preserve the Claimant’s right to enforce the remedy of mandamus to which he is entitled against the Defendant in

⁷ [2022] JMCA Civ 2

⁸ (2010) 77 WIR 277 at page 283

accordance with the now repealed **Firearms Act**. Any other interpretation would lead to an absurdity which I conclude could not have been the intention of Parliament.

- [48] Mr. Clarke embarked on a different manner of interpretation. He submitted that section 115 of the **new Act** speaks directly to the issue of old matters of review by the Defendant. Section 115 preserves the **Firearms Regulations, 1967**, which together with the **new Act** continue to regulate appeals to the Minister. The powers of review by the Minister are therefore preserved. Thus, mandamus can still be granted against the Defendant but based on the powers of the Minister under the new regime.
- [49] In the context of repealed legislation, the starting point in construing legislation is that the Court is guided by the rule against retroactive operation of statutes. This rule is subject to the expressed contrary intention of Parliament stated within the new enactment itself or by necessary implication. On the issue of transitional provisions, Ms. Hamilton cited the useful authority of **Janet Foster**, in which the Court of Appeal determined the issue on appeal of whether the Supreme Court Judge was correct to rule that section 25(2) of the Interpretation Act operated as a savings clause to preserve certain rights, obligations and liabilities of the State under the Drug Offences (Forfeiture of Proceeds) Act ('the DOFPA'), repealed 30 May 2007 by the Proceeds of Crime Act ('the POCA'), permitting the Director of Public Prosecutions in 2015 to apply for registration of UK foreign orders made under the DOFPA in respect of criminal conduct occurring in 2004.
- [50] In delivering the judgment of the Court, Dunbar-Green JA noted that the Supreme Court Judge correctly applied section 25(2) of the Interpretation Act on the basis that the main purpose of the legislative framework, which comprised the DOFPA and the POCA' and when construed together, was to grant legal assistance to the State in investigating and prosecuting criminal offences under the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. There

was no contrary intention of Parliament in the POCA to oust the rule against retroactive application of statutes.

[51] In my research, I found another relevant authority, ***R v Folkstone and Hythe Juvenile Court, ex parte R (A Juvenile)***⁹ which speaks to the matter of transitional provisions in the context of the Magistrates' Courts Act, 1980. The clear distinction in this case from the instant case is that this new Act of 1980 contained expressed transitional provision found in Sch 8, para 2, which reads¹⁰:

“(1) Where proceedings were commenced before the appointed day, the old enactments relating to the proceedings continue to apply and nothing in this Act affects those enactments.”

[52] The Court in ***R v Folkstone*** noted that for all intents and purposes, the repealed Magistrates' Courts Act, 1952 and the new Act of 1980 had the same effect of committing the applicant, upon conviction, to the Crown Court for sentencing. Thus, the error of pursuing the committal pursuant to the jurisdiction of the new Act of 1980 instead of the old repealed 1952 Act did not invalidate the committal.

[53] I am inclined to adopt both approaches of the Courts in ***Janet Foster*** and ***R v Folkestone*** to these circumstances.

[54] Section 115 of the ***Firearms (Prohibition, Restriction and Regulations) Act, 2022*** provides:

“Notwithstanding the repeal of the repealed Act –

(a) the regulations made under the repealed Act, in force immediately before the repeal of that Act, shall in so far as they are not inconsistent with this Act remain in force and effect as if made under this Act and may be amended and revoked accordingly; and

(b) a reference in any enactment to specific provisions of the repealed Act shall be construed as reference to the equivalent provisions of this Act.”

⁹ [1981] 1 WLR 1501; [1981] 3 All ER 840; [1982] 74 CrAppR 58

¹⁰ At page 843, per Lord Lane CJ

- [55] Parliament's intention under the now repealed **Firearms Act** was to grant an applicant a mode of redress directly to the Review Board, but also indirectly to the Minister, whose discretionary power to intervene was conditional on the Review Board failing to consider the application review within the ninety (90) days time period under the section 37(A)(2). Under the **new Act**, the Minister no longer has the discretionary power to intervene to hear and determine applications for review.
- [56] Applications for a Firearm User's Licence are now made to the FLA through the Board of Directors of the Authority. Based on section 22 of the **new Act**, the Board of Directors of the Authority has the power to consider and determine applications for Firearm User's Licences. Any applicant aggrieved by a decision of the Board may submit an appeal to the Review Panel in accordance with sections 86 and 87 of the **new Act**. It is clear that the Minister no longer has the power to hear and determine appeals under the **new Act**.
- [57] I am of the view that based on expressed terms of section 115 of the **new Act**, that section is a savings or transitional provision but only to the extent that the **Firearm Regulations** is consistent with the **new Act**. Any reference to the Minister in the **Firearms (Appeals to the Minister) Regulations** is inconsistent and not in keeping with the **new Act**.
- [58] If Parliament intended to remove the rights and obligations of parties to legal proceedings in claims commenced under the now repealed **Firearms Act**, it would have expressly stated this intention in the **new Act**. In the absence of this expressed intention, I agree with Ms. Hamilton that section 25(2)(c) and (e) of the **Interpretation Act** preserve the rights, liabilities and remedies of the parties in legal proceedings commenced under the now repealed **Firearms Act**, but not yet disposed of when the **new Act** came into effect.
- [59] The remedy of mandamus can therefore only be granted against the Defendant under the jurisdiction of the now repealed **Firearms Act**, special circumstances

where the claim was commenced under the now repealed **Firearms Act** before the **new Act** came into effect on 1 November 2022.

[60] However, based on the finding that the Claimant has failed to establish that the Defendant breached his right to a fair hearing, it is not appropriate for the Court to grant an Order of mandamus against the Defendant.

[61] Therefore, the following Orders are made:

DISPOSITION

1. The application for an order of certiorari to quash the decision of the Defendant contained in a letter dated May 11, 2022 upholding the decision of the Firearm Licensing Authority denying the Claimant's application for a Firearm User's Licence is refused;
2. The application for an order of mandamus directed to the Defendant to hear and determine the Claimant's application for review of the decision of the Firearm Licensing Authority in accordance with the law and in keeping with the principles of natural justice is refused;
3. No order as to costs.

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Hon. S. Wolfe-Reece, J
Puisne Judge