



[2023] JMSC Civ.72

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV02383

BETWEEN	FENTON DENNY	CLAIMANT
AND	FIREARM LICENSING AUTHORITY	DEFENDANT

IN OPEN COURT

Mr Hugh Wildman & Ms Jodi-Ann Small instructed by Hugh Wildman & Co. for the Claimant.

Ms Courtney Foster instructed by Courtney N. Foster and Associates for the Defendant.

Heard: February 2, 2023 and April 24, 2023

JUDICIAL REVIEW – Revocation of Firearm User’s Licence – Whether revocation in breach of principles of natural justice and fairness – Whether Authority has a duty to act fairly – Whether Authority required to state considerations giving rise to decision to revoke – Whether authority required by statute or common law to provide detailed reasons for revocation – Firearms Act

WINT-BLAIR, J

[1] The claimant by way of fixed date claim form¹ seeks the following orders:

¹ Filed May 6, 2020

- (1) *“An Order of Certiorari quashing the Revocation Order dated the 16th day of May 2019, issued by the Defendant to the Claimant purporting to revoke the Claimant’s Firearm Licence on the basis that the Claimant is not a “fit and proper” person to retain a firearm licence.*
- (2) *Costs of the claim to the Claimant.*
- (3) *Such further and or other relief that this Honourable Court may deem appropriate.”*

Background

- [2] The claimant, Mr. Fenton Denny, a District Constable in the Jamaica Constabulary Force (“the JCF”), was first granted a firearm user’s licence (“the licence”) by the Firearm Licensing Authority (“the Authority”), in 2015. The Authority renewed this licence on three occasions.

On March 3, 2018, the claimant submitted an application to renew the licence and was informed by an officer at the Authority that he had an outstanding criminal case from the year 1999 and as such his firearm would be seized. Following an investigation conducted by the defendant, on May 6, 2019, the decision was made to revoke the licence, on the basis that the claimant was not “fit and proper”. This decision was communicated to the claimant on May 16, 2019. The claimant now seeks judicial review of that decision.

The Evidence

The Affidavit of Fenton Denny

- [3] The claimant in an affidavit² in support of the fixed date claim form, deposed that he has been a District Constable for over eleven years and is stationed at the Area 2 Headquarters. As a part of his duties, transports police officers to Montego Bay,

² Filed on May 6, 2020

St. James twice per week. In addition, he is also tasked with taking[delivering?] documents to the offices of the Commissioner of Police at Old Hope Road, to the Police Traffic Division on Elletson Road and to the Police Training Academy in Twickenham Park, St. Catherine. He has been doing these duties for over nine years.

- [4] Mr. Denny further depones that a firearm is a critical tool used to carry out his police duties and as the holder of a licence, he has never had any issue concerning the use of his firearm. He first applied to the Authority for a licence in 2015, which was granted. That licence has been renewed three times since then.
- [5] On March 3, 2018, the claimant's evidence is that he visited the Authority to renew the licence. There he was told by an agent that he had an outstanding court case from 1999 and as such the Authority would hold on to his firearm. He stated that he returned to the Parish Court in St. Mary, where there was an assault charge pending against him since 1999. It was subsequently dismissed. A certificate of dismissal dated April 1, 2019, and marked FD1 was exhibited to his affidavit.
- [6] He further deponed that he received a call from the Authority on May 13, 2019, informing him that there was a letter in the compliance department addressed to him. He visited the offices of the Authority on May 16, 2019, and collected this letter. The letter³ was a revocation order dated May 6, 2019, signed by the Chairman, of the Board of the Authority. It advised that the licence was revoked and stated he was not considered fit and proper to retain a firearm user's licence.
- [7] Mr. Denny stated that he is left in the dark as to the basis on which the defendant could make the bald assertion that he was not fit and proper to hold a licence without giving him the chance to be heard. The letter does not give the reasons the defendant considered him not fit and proper.

³ Marked FD2

- [8] Mr Denny asserted that the Authority is required to provide him with the gist of any allegations and or reasons for him to respond, before it can determine that he is not fit and proper for him to be granted a renewal of a firearms licence. This is especially so, in the context where he had been the holder of a firearm licence for 3 years before its revocation.

The Affidavit of Letine Allen

- [9] In response and on behalf of the Authority, Ms. Letine Allen, Director of Compliance and Enforcement, stated in her affidavit⁴ that the claimant first applied for a licence on November 1, 2011, which was granted.⁵ The licence was again granted on February 6, 2013, and successfully renewed up to 2018.
- [10] Ms Allen deponed that on March 1, 2018, when the claimant visited her office to renew the licence, the Authority was alerted by the Criminal Investigation Branch of the Jamaica Constabulary Force, that the claimant had been arrested and charged for the offence of assault occasioning actual bodily harm in 1999 and that there was a current matter in the St. Mary Parish Court Criminal Division. She deponed that it was customary when an alert is received, that the Authority does all such things considered necessary or expedient for the purposes of conducting an investigation and any other functions under the Firearms Act. As a result, the claimant's firearm was seized, and an investigation conducted.
- [11] Ms Allen deponed further that the claimant provided a statement to the Authority on July 26, 2018⁶ and that on August 27, 2018, a report had been made to its investigator. This report indicated that the claimant had repeatedly used physical

⁴ Filed on December 17, 2020

⁵ Marked LA1

⁶ Marked LA2

violence and exuded certain intemperate habits. An investigation was conducted in respect of this report to ascertain its credibility.

- [12]** During the course of the investigation, the claimant submitted, a certificate of acquittal from the St. Mary Parish Court, criminal division which indicated that no evidence was offered against him, and the charges had been dismissed on July 19, 2018. On completion of the investigation, the Authority determined that Mr. Denny, was no longer considered a fit and proper person to be entrusted with a firearm and the licence was revoked on May 6, 2019. A notice to this effect was served on the claimant on May 16, 2019.
- [13]** Ms Allen stated that from her experience, investigations of the nature conducted by the Authority in the instant case, would be undertaken to ascertain the outcome of the applicant's court case, the circumstances which led to the charge, whether or not any conditions under Section 36 of the Firearm Act applied to the claimant and finally the reason for the applicant's request to continue to be armed. She further stated that it was not uncommon for the Authority, to receive confidential and sensitive information about applicants for licences and that the defendant may elect not to disclose certain details of any report it receives to an applicant in order to protect the safety and welfare of the source of that information.
- [14]** Ms Allen said that in the instant case, the claimant did not exercise his right of appeal before the Review Board, which is empowered under the Firearms Act to hear, receive and examine evidence in review of the matter and who must submit to the Minister, a written report of its findings and recommendation, for his determination.
- [15]** She stated that on June 10, 2019, the claimant filed an application for leave for judicial review in the Supreme Court, challenging the decision of the Authority to revoke the licence. On May 1, 2020, the claimant was granted leave to apply for judicial review. On May 6, 2020, the defendant was served at its registered offices, with the fixed date claim form and the affidavit of Fenton Denny in relation to these

proceedings. She stated that the Authority observed the rules of natural justice and acted lawfully when it arrived at the decision to revoke Mr. Denny's firearm user's licence.

Submissions on behalf of the claimant

- [16] Counsel for the claimant told the court that he would not rely on the affidavit of Ms Indira Patmore which was filed on behalf of the claimant.
- [17] He submitted that the revocation of the claimant's firearm user's licence by the Authority, breached the principles of fairness, in that, the defendant was required to inform the claimant of that which operated on its mind, at the time the decision was taken to revoke the claimant's licence.
- [18] It was submitted that though the claimant had a criminal case which had been determined in his favour, the fact of the court matter was the only factor that operated on the mind of the defendant as evidenced by the affidavit of Ms. Letine Allen. Accordingly, the defendant had a duty to inform the claimant of the concerns which would have operated on its mind to conclude that he was not fit and proper and this duty, was separate and apart from the duty to give reasons.
- [19] Counsel relied on the case of **Naraysingh v The Commissioner of Police**,⁷ which in applying the principles in **R v Secretary of State for the Home Secretary, ex parte Doody**⁸, enunciated the principle at paragraph 16⁹, that fairness dictates that the claimant must be given the gist of the allegations so that he may respond. That duty is one of fairness, and in the instant case, this duty was not observed by the defendant.

⁷ [2003] UKPC 20 delivered April 20th 2004

⁸ [2004] 1 AC 531, 560 Per Lord Millet

⁹ [2003] UKPC 20, Per Lord Brown

- [20] Counsel submitted that from paragraph 15 of Ms. Allen's affidavit, the report made to the Authority's investigator, was never brought to the attention of the claimant in order for him to respond. Further, the claimant submitted that the certificate of acquittal from the court, and also gave a statement to the authority, regarding the charges pending in the St. Mary Parish Court when it was brought to his attention.
- [21] Counsel cited the case of **Aston Reddie v The Firearm Licensing Authority et al**¹⁰ and submitted that the learned judge, embraced the principles set out in **Naraynsingh**. The court is tasked with considering whether the defendant acted fairly and whether the defendant gave the claimant an opportunity to respond.
- [22] It was submitted that the decision to revoke is irrational as there is an absence of the duty to act fairly. There was no appeal to the Review Board and this fact, is not in issue. It is submitted, that this court is tasked now with placing itself in the position of the appellate tribunal to determine whether in the circumstances, the defendant treated the claimant fairly in the revocation of his licence.
- [23] Further, at the leave stage, in **Fenton Denny v Firearm Licensing Authority**,¹¹ Thomas J reviewed the authorities and concluded that the conduct of the defendant was abhorrent despite the absence of an appeal to the Review Board. Counsel further relies on the case of **Société des Chasseurs de L'île Maurice and others v The State of Mauritius and another**.¹²
- [24] From the authorities outlined, it is submitted that the licence cannot be arbitrarily revoked. There must be some standard. Accordingly, the actions of the defendant are therefore null and void, as well as is procedurally improper and irrational. In

¹⁰ HCV 1681 of 2010

¹¹ [2020] JMSC Civ 97

¹² [2016] UKPC 13

keeping with the approach of Thomas J, at the leave stage,¹³ the defendant did not act fairly as it failed to provide the claimant with the gist of the information which it relied on to revoke the licence.

[25] The procedure, it is submitted is not one which requires the court to look at the review process, rather, this court is to put itself in place of an appeal court. It is submitted that the cases cited by the defendant, do not apply to this case. The facts of this case, differ from the case of **Steadman Broderick v Firearm Licensing Authority**,¹⁴ based on the authorities previously cited and therefore, **Broderick** is inapplicable. It is submitted that the case of **Robert Ivey v Firearm Licensing Authority**¹⁵ is similarly inapplicable.

[26] In the instant case, leave having been granted, it is submitted then the court has found that there is merit in the claimant's case. In this regard, the court is in the same position, as the Review Board of the Authority, to determine the lawfulness of the revocation. As a corollary, it is submitted that the claimant has satisfied the court that his licence was unlawfully revoked, such a revocation is a nullity and thus, should be quashed and the claimant's firearm returned.

Submissions on behalf of the Defendant

[27] Counsel for the defendant submitted that the claimant was made aware at all material times, that it was investigating the charge of assault occasioning actual bodily harm. There was no error of fact when the Authority considered this criminal charge, since the claimant confirmed its existence and subsequently gave a detailed statement when he was given the opportunity to be heard.

¹³ Fenton Denny v Firearm Licensing Authority [2020] JMCA Civ 97

¹⁴ [2022] JMCA Civ 9

¹⁵ [2021] JMCA App 26

- [28]** Despite his submission of a certificate of acquittal from the St. Mary Parish Court, the Authority was required to make its own determination of the claimant's fitness for the possession of a firearm. Similarly, the disciplinary arm of the JCF, of which the claimant is a member, adopts an identical approach, in determining whether a member of the JCF is to be disciplined. Despite an acquittal, the JCF in a disciplinary proceeding may rule that the member breached JCF policies by way of its disciplinary board.
- [29]** In the instant case, the Authority's duty is to provide licences to persons deemed fit. In addition to its investigations, a report was made to the Authority alleging that the claimant used physical violence and exuded intemperate habits. It was only upon the conclusion of the investigation, that the ruling was made that the claimant was no longer considered a fit and proper person to be entrusted with a firearm. The chronology of events, demonstrates that the claimant was afforded due process.
- [30]** Similarly, the claimant's contention that there was no disclosure of the basis on which the Authority determined that he was unfit is factually incorrect as the claimant was aware of the circumstances under consideration by the Authority. There is also no statutory or common law requirement for the Authority to provide the claimant with a gist of the allegations and/or the reasons, for the claimant to respond to before the defendant made its decision.
- [31]** It is submitted that, it was not the intention of Parliament for a hearing to be conducted at the decision-making stage. It is the Review Board that is empowered to hear, receive and examine the evidence in the matter under review and similarly the Minister of National Security may also hear and determine the matter after a hearing.

- [32] Counsel relied on the cases of **Steadman Broderick**¹⁶ and **Robert Ivey**¹⁷, in support of the contention that there is sufficient jurisprudence from the Court of Appeal regarding whether there is a requirement on the part of the Authority to conduct a hearing before making its decision and providing aggrieved persons with reasons for its revocations.
- [33] In the **Robert Ivey** case, it is submitted that at paragraph 41, that the Court of Appeal clearly outlines by analysis, the powers of the Authority particularly the power to grant and revoke firearm user licences and that it is not obliged to give reasons for its decision to the licence holder.
- [34] The defendant did not act ultra vires when the decision was made to revoke the licence of the claimant. Pursuant to Section 26B of the Firearms Act, the defendant has the power to revoke a firearm licence and in making that decision, it may exercise its discretion. The renewal of a firearm user's licence is not automatic and there is no right to be armed with a firearm. Consequently, at the time when the revocation order was made, there was no breach of the claimant's rights.
- [35] The claimant further alleges that the revocation is a nullity. However, it is he who has acted unreasonably by bringing this claim before the court without exercising the alternative remedies which are available in law. The claimant has alleged that he could not challenge the revocation by any other alternative remedy. It is submitted that at paragraph 23 of the **Robert Ivey** case, clearly outlines that:

“...it must be shown that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation....”

¹⁶ [2022] JMCA Civ 9

¹⁷ [2021] JMCA App 26

[36] The claimant has failed to demonstrate that the statutory procedure, that is, the Review Board and the Minister of National Security were inadequate and that his only recourse was a court of law. It is trite that where the aggrieved person wishes to challenge the decision-making body, the court will not be concerned with the decision itself but the manner in which the decision was made. It is submitted that though the claimant is dissatisfied with the defendant's decision to revoke his licence, the circumstances support the defendant's case, that the Authority did act fairly towards him and the legislation clearly identified the obligations placed on the Authority in executing its function to revoke the licence.

[37] It is further submitted that the court is also not empowered to issue firearm users licences. Therefore, the orders sought by the claimant, that the firearm be returned are orders which are incapable of being granted since there was no decision for the licence to be issued in this particular case.

The Law

[38] The powers of the Authority in respect of the grant and renewal of firearm users licences are outlined in Section 26B and 29 of the Firearms Act which provides as follows:

"26B.-(1) Subject to section 38, the functions of the Authority shall be-

(a) to receive and consider applications for firearm licences, certificates and permits;

(b) to grant or renew firearm licences, certificates or permits;

(c) to revoke any firearm licence; certificate or permit granted under this Act;

(d) to amend the terms of a firearm licence, certificate or permit;

(e) to receive and investigate any complaint regarding a breach of a firearm licence, certificate or permit.

(2) The Authority shall have the power to -

a) summon witnesses;

- b) *call for and examine documents; and*
- c) *do all such other things as it considers necessary or expedient for the purpose of carrying out its functions under this Act.*

(29). -(1) Subject to this section and to sections 28 and 37, the grant of any licence, certificate or permit shall be in the discretion of the Authority.

(2) ...

(3) ...

(4) A Firearm Import Permit, a Firearm User's Licence, a Firearm User's (Special) Permit, a Firearm User's (Employee's) Certificate or a certificate issued under paragraph (j) of subsection (2) of section 20 shall be granted by the Authority only if he is satisfied that the applicant has a good reason for importing, purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace:

Provided that such a permit, certificate or licence shall not be granted to a person whom the Authority has reason to believe to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm or ammunition..."

[39] Section 36 of the Firearms Act specifically outlines the circumstances in which the FLA may revoke firearm users licences:

"36.- (1) Subject to section 37 the Authority may revoke any licence, certificate or permit if-

(a) the Authority is satisfied that the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfitted to be entrusted with such a firearm or ammunition as may be mentioned in the licence, certificate or permit; or

(b) ...

(c) ...

(d) ...

[40] Cases? cited by both sides have been considered in their entirety. I will only deal with those which assisted the court to arrive at its decision on this claim.

[41] It is conceded by the claimant's counsel that there was an alternate remedy of which the claimant did not avail himself. He argues that the Supreme Court can review the matter as the defendant has arbitrarily abused its statutory authority.

[42] Issues

1. Whether the Authority acted unfairly in that it:
 - a. Failed to provide a gist of the allegations to the claimant.
 - b. Failed to disclose what operated on its mind and its reasons.
 - c. Failed to give the claimant a hearing.
2. Whether the decision of the Authority should be quashed for irrationality
3. Whether there was a breach of natural justice

Discussion

Did the Authority fail to provide a gist of the allegations to the Claimant

[43] The evidence of the claimant is that on May 16, 2019, he picked up a letter from the offices of the defendant. This letter marked FD2 was a revocation order it referred to section 36 of the Firearms Act, 1967 and stated "*Your licence is hereby revoked because you are no longer considered fit and proper to retain a firearm licence.*"

[44] The order directed a surrender of his firearm, licence booklet/ID card and all ammunition in his possession within five days of the notice. It advised further that

he was entitled to apply to the Review Board under section 37 and 37A of the Firearm Act, 1967 within twenty-one days of receipt of the notice.

[45] The claimant in his affidavit said the letter did not indicate on what basis the defendant considers him not to be fit and proper, this means the actions of the defendant are arbitrary, particularly given his history of previous possession of a licence. Mr Wildman argues that the decision of the Authority is arbitrary, as it provides neither gist nor reasons for the revocation.

[46] The word “gist” was not defined by either side, it is legally defined by the authors of Black’s Law Dictionary as follows:

“gist 1. The ground or essence (of a legal action), <the gist of the crime>. 2. The main point <she skimmed the brief to get to the gist of it>.”

[47] In my view, the gist of the revocation was that the Authority had decided that the claimant was no longer fit and proper, and this was stated in the revocation letter provided to the claimant. It is because this gist was disclosed to the claimant that he was able to file this claim. It is the essence of this legal action and is the basis upon which he seeks a remedy. Why the authority had made this finding is a separate question.

Whether the Authority should provide what operated on its mind and the reasons for its decision

[48] Should the Authority have provided what Mr Wildman submits “as what operated on its mind” as well as its reasons in order for the claimant to have an opportunity to respond as separate considerations. Mr Wildman relied on the cases of **Barl Naraynsingh v The Commissioner of Police**¹⁸ to bolster this submission.

¹⁸ ¹⁸ Privy Council Appeal no. 42 of 2003; April 20, 2004

- [49] In **Naraynsingh**, the claimant, a 79-year-old businessman of good character, was alleged to have been in possession of an unlicensed firearm, said to have been found in his house while a party of seventeen levied execution of a civil debt from the Petty Civil Court. The appellant and his wife were outside the house during the levy. A member of the party approached them and produced a .22 revolver and ammunition alleging that he had found these in the house. The appellant immediately denied that the firearm or ammunition were his or that they could have been found on his premises. Both the appellant and his wife were charged and ten days later, the police required the appellant to hand over his licensed firearm and ammunition to them.
- [50] The charges were dismissed in the Magistrates court because no one appeared to prosecute them. The complainant officer had retired and no witness attended court of the seventeen-member levy party. Following the dismissal, the appellant wrote to the Commissioner seeking the return of his licensed firearm and ammunition. He repeated his request six months after receiving no reply. A further six months elapsed before the Commissioner responded extending an opportunity for the appellant to address him in writing in relation to the criminal charges. The Commissioner had received a report from a senior superintendent which was not disclosed. The appellant's solicitor responded to the Commissioner, the Commissioner revoked the licence nonetheless.
- [51] The question for the Board in those factual circumstances was whether the Commissioner acted fairly. It is within this framework that the oft cited and well known passage from Lord Mustill's speech[or judgment?] in R (**on the application of Doody**) v **Secretary of State for the Home Secretary**¹⁹ was considered:

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from any of the often cited authorities

¹⁹ [1994] 1 AC 531. 560, [1993] 3 All ER 92

in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them I derived that: (1) Where an act of parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type... (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected cannot make worthwhile the mere representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer.”

[52] The Board pronounced that the Commissioner was required to act fairly in the exercise of the administrative power conferred on him by the statute. It was noted that there was no right of appeal to the Court from any adverse decision in that statute. The procedure was held to be unfair.

[53] In the case at bar, the claimant did not write to or otherwise communicate with the Authority requesting either the gist he says he did not receive, nor the reasons for its decision. Neither did he lodge a notice of appeal with the Authority. He bypassed the statutory procedure citing arbitrariness and unfairness on the part of the Authority in arriving at its decision. The next thing he did was to file an application for leave to appeal in this court. This court would have been assisted

by the provision of counsel's enquiries into the matter, for then the instant claimant would have been able to successfully argue that what operated on the mind of the Authority was unknown to him. A claimant, before applying for judicial review, should address a distinct and specific demand or request to the defendant that he perform the duty imposed upon him. There is no such evidence.

[54] In this case, the uncontroverted facts are that the licence was revoked on May 6, 2019, with notice to the claimant on May 16, 2019. Contained in this notice was an indication of his right to appeal the decision of the Authority before the Review Board and the timeline within which to do so. On June 10, 2019, the claimant filed an application for leave for judicial review in this Court. The instant claimant had the benefit of affidavits from the Authority in response to his application for leave. Further an opportunity to put this issue before the court at the leave stage. This court, now engaged in the hearing of the application for judicial review is being asked to determine the issue of what operated on the mind of the Authority. The claimant has had the benefit of material from the Authority without having gone to the Review Board. He cannot now successfully argue that in light of the position he has taken that he was not provided with the Authority's considerations as he has been provided with those, gist and the reasons for the decision to revoke by way of affidavit.

[55] In light of the case of **Doody**, the standards of fairness are flexible and are to be applied in an assessment of the case before the court in the context of the decision made against the backdrop of the statute and the decided cases in this area. In the circumstances of this case, the course of action employed by the claimant ensured that he was afforded the opportunity to present his case, in full possession of the Authority's responses, all the while the application was under the scrutiny of the court.

[56] It is my view that in the circumstances of this case, **Barl Naraynsigh** does not assist the claimant to successfully argue that he is entitled to that which operated on the mind of the Authority as a separate item of disclosure from the disclosure

of reasons for the revocation. In addition, the claimant received disclosure, there was no unfairness in the process given the path he chose to take.

The duty to provide reasons

[57] The law is as set out by the Court of Appeal in the case of **Kevin Bertram v the Firearm Licensing Authority**²⁰. **Kevin Bertram** concerned an application for judicial review of the decision by the Authority to refuse an application for a Firearm User's Licence. Laing, JA(Ag.) writing for the court, made it clear that the cases of **Raymond Clough v Superintendent Greyson and Another**²¹ and **Robert Ivey**²² set out the applicable principles regarding the requirement for reasons at the stage of the Authority making its decision. The learned judge of appeal said that the statutory framework does not require the Authority to provide detailed reasons to an applicant whose application for a licence is refused. He noted that the amendment to the Act introducing the Review Board did not change "*the spirit of the pre-existing, two-tiered statutory regime, which remains intact.*"

[58] **Kevin Bertram**, had received the gist, which was that he did not satisfy the Authority of the need to be armed. The learned judge of appeal said that the assertion of a right to detailed reasons was found to be without merit. He found that there was no illegality in the refusal of the application by the Authority, as the application had been duly considered and a reason for the refusal given. There was also no irrationality and no basis for judicial review arising from the first stage of the application process.

²⁰ [2022] JMCA App 22

²¹ (1989) 26 JLR 292

²² Cited above

- [59] The learned judge of appeal in *Kevin Bertram* said that in looking at whether the statutory position would constitute procedural impropriety, he had to examine the principle of fairness. The court held that where there were special circumstances fairness will necessitate that detailed reasons be given.
- [60] This may be the case where, for example, a person's firearm user's licence has been revoked. Support for this position may be found in the case of **Danhai Williams v The Attorney General and others**²³, where Gordon JA said:

"The law gives the aggrieved party the right to appeal against the decision revoking his licence. It also gives him a right to a hearing for the first time and it would seem in these circumstances that there should be conformity with the rules of natural justice, he must be told what he has to meet. If the right to appeal is real and not illusory then the grounds of appeal should relate to a specific basis of complaint for revocation of the licence. Section 36(1)(a) contains bases of complaint viz: (i) intemperate habits (ii) unsound mind (iii) otherwise unfitted . . . This latter complaint is wide enough to include involvement in criminal activity (which is itself extremely wide). The right to appeal involves the right to the legitimate expectation that the rules of natural justice will apply. These rules subscribe to a right to fairness. How can one submit meaningful grounds of appeal if he is unaware of the basis for the revocation? In my view the appellant should have been informed of the basis of complaint."

- [61] In **Kevin Bertram** the Authority said that the claimant had not established a need to be armed and the Court of Appeal found that that reason, *"although terse or economical, provides a sufficient "gist" of the decision and was sufficient to permit the applicant to pursue his application for a review."* (Emphasis mine.)

²³ (1990) 27 JLR 512, at page 520

[62] The issue of whether there is an obligation of disclosure in the interest of fairness will depend on the particular facts. In the instant case, the applicant's application disclosed that he was a district constable, he performed police duties every day. He was serving in the Jamaica Constabulary Force despite the criminal charges. He was given the gist, the considerations, the reasons in the affidavit from the Authority. It is not being challenged that the relevant investigations were conducted in accordance with the FLA's standard procedures, the investigators findings were disclosed in the affidavit from the Authority.

[63] There is no distinction in principle between **Kevin Bertram** and the instant case, the law does not require the Authority to provide detailed reasons for its decision to revoke a licence. There is of course a distinction between the failure to give reasons and the failure to give adequate reasons. The submission of the claimant in the case at bar is really based on a failure of the Authority to give adequate reasons. However, that submission is without merit as it is not in accord with the law as stated.

Whether the Authority should have afforded the claimant a hearing

[64] The case of **Aston Reddie v Firearm Licensing Authority**²⁴ is similarly instructive. In that case, the claimant was charged with criminal offences concerned with allegations of assaulting his wife. His licensed firearm and firearm booklet were seized by the investigating officer and submitted to the Authority. Subsequently the charges were dismissed for want of prosecution and a no order made.

[65] The Authority issued a written notice to the claimant revoking his Firearm User's Licence for his "intemperate behaviour." The claimant through his attorney-at-law objected to the revocation and filed a notice of appeal with the Chairman of the Review Board. The grounds were that he had not been afforded an opportunity to

be heard and that the decision of the Authority was unfair and unreasonable, being made without him being heard and without any evidential basis for so doing.

- [66] Mr Reddie heard nothing further until he received a letter from the Permanent Secretary of the Ministry of National Security which stated that the Minister acting on the advice of the Review Board had dismissed his application for review and upheld the revocation of the licence by the Authority. He applied for judicial review.
- [67] His evidence in court was undisputed; he disagreed that he was of intemperate disposition; denied assaulting his wife or anyone else with the firearm and that investigating officer was blatantly wrong in his statement to the Authority. Mr Reddie asserted that he had given a statement to the Authority when his home was visited by an officer of the Authority as did his wife. He had handed over his firearm and ammunition upon request. He had never used his firearm in an unlawful manner. His application for renewal was always granted, he had never threatened to use his firearm contrary to the terms and conditions of the licence and had no criminal convictions whatsoever.
- [68] He appealed to the Review Board stating his grounds, it heard no evidence from either himself or anyone on his behalf. This was the same when his case was reviewed by the Minister.
- [69] The defendant's case was based on evidence from Chairman of the Authority and the Minister. In sum, the Superintendent of Police in charge of the parish of Hanover investigated the criminal charges brought against the claimant. He handed over copies of documents from part of the police file. The Authority conducted its own investigation. The licence was revoked after consideration of the material. A notice of revocation was given to the claimant. The Authority was satisfied that the claimant was of intemperate habits based on the information from the police file and its own investigation

- [70] The Minister received the recommendation of the Review Board, reviewed the information which had been provided to the Authority by the police, as well as the investigation conducted by the Authority and its decision to revoke the licence. He upheld the decision.
- [71] The claimant complained that the decision was made without there having been granted to him an opportunity to be heard. The court decided the following issues:
- [72] (i) Whether the decision taken by the Authority, the Review Board, and the Minister to revoke the Firearm User's Licence in the circumstances was ultra vires. (ii) Whether the proceedings were conducted in breach of the principles of natural justice. (iii) Whether the decision to revoke the claimant's licence was unreasonable in all the circumstances.
- [73] . McDonald-Bishop, J (as she then was) decided in relation to the Authority that:
- "The Authority need not receive evidence of a conviction to determine whether a Firearm User's Licence should be revoked. Neither does the Authority only revoke a licence issued to a restricted person."*
- [74]
- [75] The learned judge also decided that there was no unfairness to the claimant in that she was satisfied that the claimant had failed to make out a case that the Authority did not use its statutory powers in a bona fide manner and reasonably in the context of the statutory authority[powers?] conferred upon it. She found that there was no breach of natural justice on the part of the Authority in its actions.
- [76] In the case of **Aston Reddie**, at paragraphs [38] and [39] the learned trial judge, said that having looked at the whole scheme of the Firearms Act and specifically the provisions regarding the revocation of a licence against the authorities of **Raymond Clough** and **Barl Naraynsingh**, concluded that there was no express

duty or obligation on the Authority to conduct a hearing or to act in a quasi-judicial manner.

*“It would appear that if the Authority forms the view that it would be necessary and expedient for a hearing to be conducted then it could do so by virtue of section 26B(2)(c). In my opinion, it is by no means obliged to do so on the express terms of the statute. So, I conclude that section 26B(2), while enlarging the power of the Authority under the Act, still has not expressly cast upon it the burden to conduct a hearing **before** it revokes a Firearm User’s Licence.”(Emphasis mine.)*

When all the terms of the statutory regime for the revocation of the firearm licence are broadly considered, it remains quite clear, as it was in Clough’s case, that the Act itself provides for a procedure to be followed upon the revocation of a licence and part of that procedural regime is for the hearing and reception of evidence. This however, is not at the stage of the decision of the Authority but at the stage of a review where there is an application for that to be done. It is at the review stage that the right to a hearing would operate. Parliament by expressly providing for a hearing at that level, and without expressly doing so at the level of the Authority, is taken to have intended not to have cast a legal duty or obligation on the Authority to conduct a hearing before the revocation of a licence.”

[77] The submissions of Mr Wildman have been based on an opportunity to respond, **after** the order for revocation had been made. In my view, counsel is not contending that the claimant should have had a hearing **before** the decision for revocation was made. As there was no application to the Review Board in this case, there was no possible reversal of the decision of the Authority which stands. The only decision before this court is that of the Authority.

[78] In the case of **Robert Ivey** which affirmed **Raymond Clough**, the learned President of the Court of Appeal said that in Raymond Clough, the action of

revoking the firearm licence did not require hearing from the licence holder beforehand and that the decision maker was not obliged to give reasons to the licence holder for revocation. He cited the judgment of Carey, JA at page 296F-I:

“[26] But it is a misconception that at the first tier, there is necessarily and inevitably any requirement for a hearing so that a citizen might disabuse the first-tier official of any wrong impression. Lord Denning in R v Gaming Board for Great Britain, Ex partes Benaim and Anor. [1970] 2 All E.R. 528 at 533 pointed out that there are no inflexible rules as to the applicability of the rules of natural justice...Everything depends on the subject matter...”

*The subject matter in this case is the licence to hold or possess a firearm. **There is no constitutional or legal right to own a firearm or to be allowed to hold a firearm. The entitlement or [sic] to or the refusal of the revocation of a grant of a licence is in the hands of the police. The Firearms Act is concerned with the control of, the use, and misuse of firearms in this country. The incidence of violence involving guns is such that the greatest care has to be taken to ensure that such weapons do not fall into the wrong hands. The welfare and security of the entire country is at stake. The national security must be a matter of the greatest concern. Criminal activity is unarguably a matter which affects national security.**” (Emphasis in the judgment of Brooks, P reproduced.)*

*[41] In applying the reasoning in Raymond Clough v Superintendent Greyson and Another to the present statutory framework, the similarity to that which applied in the previous dispensation of the Act, dictates a finding that although the Authority is obliged to act fairly and in accordance with an ostensibly legitimate basis, it is not obliged to grant a hearing to a licence holder before revoking a licence. The Authority is also not obliged to give reasons for its decision to the licence holder. **If, however, the licence holder requires a review, the Review Board must:***

- a. Secure the Authority's reasons for its decision;*
- b. Grant the licence holder a hearing, which need not be orally conducted and*
- c. Provide its recommendations to the Minister."*

[79] Based on the authorities of **Raymond Clough**, **Kevin Bertram**, **Robert Ivey** and **Aston Reddie**, the hearing is not engaged at the first-tier stage of the Authority, it is when the statutory appellate process is triggered that a hearing is to be held. This ground fails on the law.

Should the decision be quashed for irrationality

[80] Mr Wildman argued that the claimant was not given disclosure of the report from the investigation. Ms Foster countered that the Authority relied on the investigation it had conducted, and it need not make disclosure of any information received in the course of an investigation in order to protect its source. I have already found that the result of the investigation was reported in the affidavit of Ms Letine Allen and therefore disclosed.

[81] The decision to revoke a licence is made by the Authority. Section 26A, 26B and paragraph 1 of the Third Schedule to the Firearms Act concern the establishment, functions and constitution of the Authority.

[82] In **Robert Ivey**, the learned President at paragraph 51 could not have made it any clearer:

"What was Mr Ivey therefore to have done after his licences had been revoked? The Act spells out the procedure carefully for him, yet he chose to ignore its provisions and apply, instead, for judicial review of the Authority's decision."

[83] Having been granted leave, this court finds that the statutory process is sufficient to address the grievance felt by the claimant in this case. The submission that the

decision was arbitrary is unsupported by the law governing the exercise of the discretion of the Authority. The gist of the decision of the Authority was given to the claimant. Detailed reasons need not be provided by the Authority as has been shown by the cases. It is the application for review which triggers the provision of reasons. The reason for this was indicated in **Aston Reddie** where in a quote from **Raymond Clough** where Carey, JA said at page 297.

“By section 36 of the Act, the appropriate authority is entitled to revoke the licence but that power is subject to a right of appeal to the Minister. It is at this point that the right to be heard operates, for by the Firearms (Appeals to the Minister) Regulations, the aggrieved party is able to present his side of the story...These regulations provide that the “appropriate authority” must supply the reasons for his decision to the Minister. There is no requirement that the reasons should be supplied to the aggrieved party by the “appropriate authority.” In my view this is of significance for it shows that the statute does not intend that any hearing should take place before the appropriate authority.”

Judicial Review

- [84] The grounds of judicial review are set out here: The process of judicial review is the basis on which courts exercise supervisory jurisdiction in relation to inferior bodies or tribunals exercising judicial or quasi-judicial functions or making administrative decisions affecting the public. It is trite that judicial review is concerned only with the decision-making process of a tribunal and not with the decision itself. Lord Hailsham of St. Marylebone L.C. expressed in **Chief Constable of the North Wales Police v Evans** [1982] 1 WLR 1155 at page 1161a that the purpose is to ensure that the individual receives fair treatment and not to ensure that the authority which is authorised by law to decide for itself reaches a conclusion which is correct in the eyes of the court.
- [85] Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Services** [1985] AC 374 at page 410 F-H, discussed the principle of judicial review in relation

to decision making powers and spoke to three heads -- illegality, irrationality and procedural impropriety:

“By illegality as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By irrationality I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’ (Associated Provincial Picture 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 has 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. The balancing and weighing of relevant considerations is primarily a matter for the public authority, not the courts (per Lord Green MR in Wednesbury, at page 231; and per Lord Hailsham in Chief Constable of the North Wales Police at page 1160 H). However, if there has been an improper exercise of power, it will be viewed as unreasonable, irrational or an abuse.”

In **Chief Constable of The North Wales Police v Evans** at page 1160 paragraphs F-G, Lord Hailsham of St. Marylebone L.C opined as follows:

“But it is important to remember in every case that the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.”

In addition, our Court of Appeal has now added the grounds of unconstitutionality and proportionality as heads of judicial review. (See **Latoya Harriott v University of Technology**.) These additional grounds were not argued in this claim.

[86] The approach of the court in determining this claim is in the exercise of its supervisory jurisdiction. The role of the court is to review the decision-making process and not to decide whether the decision is correct or not. It is not for this court to substitute its own views on the merits of the decision made nor to make its own decision.

[87] In my judgment, the Authority acted within its statutory remit. It cannot be said that the Authority failed to observe the rules of natural justice or to follow the statutory procedure laid down in the Firearms Act. There is no illegality, procedural impropriety irrationality or actions which could be considered ultra vires in relation to the statute which confers jurisdiction on the Authority.

Whether there was a breach of natural justice

[88] In essence, the claimant argues that he was not afforded due process. It is settled law that the Authority has a duty to act fairly within the legislative framework which confers the power. In the case of **Barl Naraynsingh** the Privy Council, examined Trinidadian legislation which is different than ours as there is no statutory appeal process. The Board took into account the particular circumstances of the licence holder, his age, his good character, the nature of the charges preferred against him, the factual circumstances, the investigation by the police and concluded that

the Commissioner had acted unfairly. The decision was quashed for unfairness in the decision-making process, the Board having considered the exercise of the power within the context of the statute which conferred the power.

[89] I have considered all that has been adduced in evidence by Mr Denny and Ms Allen as well as the submissions of both Mr Wildman and Ms Foster. Mr Denny raised his occupation, his duties, his acquittal by the criminal court and his need to be armed. The Authority raised the statement given by Mr Denny, its investigation and its own independent assessment by its Board.

[90] What is required is that a prima facie case to be placed before the Board. If the Authority is satisfied that a prima facie case exists, then it may revoke the licence. The Authority is required to act in a manner construed as bona fide.²⁵ For the discretion of the Authority to be interfered with, the claimant would have had to have raised material before this court to show that in performing its statutory duty the Authority was not acting bona fide and reasonably or evidence of exceptional circumstances. This has not been shown.

[91] In conclusion, the principles of natural justice are satisfied by the statutory scheme which provides for a review of the decision of the Authority, and this claimant has not raised any issues of fact or law which would cause this court to either interfere with the discretion of the Authority or attempt to clothe itself in the robes of a court of appeal. If this jurisdiction was to be exercised, the claimant would have had to have provided authorities and precedent to support this power and none have been provided.

Orders

1. The order of certiorari to quash the revocation order dated the 16th day of May 2019 issued by the Defendant to the claimant purporting to revoke the

²⁵ See Raymond Clough at page 299 and Aston Reddie at para [75]

claimant's firearm licence on the basis that the claimant is not a fit and proper person to retain a firearm user's licence is refused.

2. Costs of the claim to the defendant to be agreed or taxed.