JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 24/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN RAYMOND CLOUGH PLAINTIFF/APPELLANT

AND SUPERINTENDENT GREYSON & ATTORNEY GENERAL DEFENDANTS/RESPONDENTS

Enos Grant & Miss Jacqueline Wall for appellant

Wendell Wilkins & Miss Susan Reid for respondents

1st & 2nd June & 14th July, 1989

CAREY J.A.:

The appellant is an attorney-at-law and a gun-fancier. He holds two firearm licences in respect of some five handguns, viz.,

Smith and Wesson .38 Revolver #R73854
Smith and Wesson .38 Revolver #P313196
Smith and Wesson 9mm Pistol #A725773010
Smith and Wesson .22 Pistol #A796596
Browning 9mm Pistol #245PM51465.

On 3rd April, 1987 he was advised by the Superintendent of Police, St. Andrew, Central (the first respondent) that his firearm User's Licences had been revoked with immediate effect.

This order was made pursuant to Section 36(1A) of the Firearm's Act. On 8th April, the appellant requested the second respondent to inform him of the reasons for his action but was never favoured with any reply. Acting in accordance with Section 37(1)(c) of the Firearm's Act, the appellant on the 13th April, lodged an appeal with the Minister of National Security. The appellant received from the Minister on 4th May, a letter acknowledging the receipt of the appeal and also advising that the "appropriate authority" viz., the first respondent had been asked to furnish a report on the matter. As late as July the appellant had not been advised of any decision regarding the result of his appeal. That situation remained unchanged up to October 1987 when the applicant clearly frustrated by the conspicuous lack of urgency displayed by the authorities, applied to a judge in the Supreme Court for, and obtained leave for extension of time to apply for an order of certiorari to quash the decision of the first respondent made on 3rd April, 1987. The grounds on which the appellant relied were stated thus:

> "(1) The aforesaid Superintendent of Police contrary to rules and principles of natural justice made a determination to revoke the Applicant's firearms licences without having given the Applicant a chance to be heard and has failed and/or neglected and/or refused and continues to refuse neglect or fail to give any reasons for the said revocations.
>
> (2) That there are no grounds for which the Superintendent of Police could have exercised his authority to revoke the Applicant's firearms licences and the decision to do so is therefore in breach of the principles of natural justice.

"Alternatively

"(3) The Superintendent of Police has failed and/or wrongfully refused to forward to the Minister a statement in writing setting out the reasons for the decision from which the Applicant is appealing within 14 days of receipt of the Applicant's 'Notice of Appeal' pursuant to Section 4 of the Firearms (Appeals to the Minister) Regulations 1967."

The matter was dismissed by the Full Court [Ellis, Wolfe & Panton, JJ.] on 15th February, 1968 and this appeal comes before us from that determination. There is one other factor to be noted to complete this historical introduction and it is this: Just four days before the hearing began in the Full Court, the second respondent submitted to the Court his reasons for the revocation of the appellant's licences by way of an affidavit.

In this Court, Mr. Grant put at the forefront of his arguments, Lord Diplock's three heads upon which administrative action is subject to control by judicial review, namely, "illegality", "irrationality" and "procedural impropriety". In Council of Civil Service Unions v. Minister for the Civil Service [1985] 1 A.C. 375 at pages 410-411, the learned Law Lord expressed himself thus -

> " 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 by now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 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. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.
>
> 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."

Before outlining the arguments, I think it would be helpful to examine the legislative regime for revocation of licences under the Firearms Act. Section 36 (1) and (2) of the Firearms Act is the authority for revocation and as section 37 is referred to therein, subsection (1), (1A) and (2) being the relevant provisions of the latter section, are all set out hereunder:

> "36.—(1) Subject to section 37, the appropriate authority may revoke any licence, certificate or permit if—
>
> (a) he 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) the holder thereof fails to comply with a notice under section 35.

"(2) Where the appropriate authority revokes any licence, certificate or permit under section 18 or 46, he shall give notice in writing to the holder thereof—

(a) specifying that he has revoked such licence, certificate or permit;

(b) requiring such person to deliver up such licence, certificate or permit to him on or before the day (not being less than three days after delivery of such notice) specified in such notice."

"37.—(1) Subject to this section, any aggrieved party may within the prescribed time and in the prescribed manner appeal to the Minister against any decision of an appropriate authority—

(a) refusing to grant any application for a licence, certificate or permit; or

(b) amending or refusing to amend any licence, certificate or permit; or

(c) revoking or refusing to revoke any licence, certificate or permit; or

(d) refusing to grant any exemption pursuant to subsection (3) of section 35A or any certificate pursuant to subsection (4) of section 35A.

(1A) Where any aggrieved party appeals to the Minister pursuant to paragraph (d) of subsection (1), the firearm or ammunition in relation to which the appeal is made may be retained by the holder of a licence, certificate or permit in respect thereof until such time as that appeal has been determined.

(2) Upon the determination of any appeal under this section the minister shall give to the appropriate authority against whose decision such appeal is taken such directions as the Minister may think fit."

The term "appropriate authority" is defined in Section 38 of the Act and for the purposes of revocation of a Firearm User's Licence is - the chief officer of police for the police division in which the applicant resides. In this case, Superintendent Greyson, the second respondent, was the "appropriate authority". The "appropriate authority" must be

satisfied that the licence holder is of intemperate habits or of unsound mind or is otherwise unfitted to be entrusted with a firearm mentioned in his licence. There is no requirement for the Superintendent or Chief Officer to intimate to the holder his intention to revoke or to call on him to show cause or to hear him. The right to revoke is subject to the right of the aggrieved party to appeal to the Minister. The Firearms (Appeals to the Minister) Regulations 1967 by paragraph 4 requires the "appropriate authority" within 14 days of the receipt of the notice of appeal to forward to the Minister, a statement in writing setting out the reasons for the decision. By paragraph 3(2) the aggrieved party is required to state his grounds of appeal. These grounds may be supported by him in person or by his attorney. The Minister is not obliged, however, to allow any appearance before him.

This then is the regime set up by statute, and it involves two tiers, and to be precise two individuals. Wherever executive action is involved, the law requires the official to act fairly. But it is a misconception that at the first tier, there is necessarily and inevitably any requirement for a hearing so that the citizen might disabuse the first tier official of any wrong impression. Lord Denning in R. v. Gaming Board for Great Britain, Ex parte Benaim and Anor. [1970] 2 All E.R. 528 at p. 533 pointed out that there are no inflexible rules as to the applicability of the rules of natural justice. He said this:

> "I think that the board are bound to observe the rules of natural justice. The question is: what are the rules?
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> It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. 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 to or the refusal of or 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.

The revocation of a licence to hold a firearm cannot, in my view, be equated to the revocation of a jockey's licence where a man's livelihood is at stake. The loss of the use of a firearm is not a loss of security since guns are false security. Robberies and burglaries are often committed for the purpose of acquiring firearms from householders licensed to have such weapons. No matter that we were told that some of the appellant's guns were secure in the vault of the Jamaica Rifle Association.

I have already indicated that it is now accepted that where executive action is concerned, there is a duty to act fairly. Mr. Grant's arguments as to legitimate expectation, being disappointed adds nothing. There is little doubt that the holder of a firearm licence has a legitimate expectation that it will not be arbitrarily withdrawn but I am not attracted by that principle as a basis for saying that the "appropriate authority" must act fairly. If the Court is to intervene, 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. See Virgo Enterprises Ltd. & Ors. v. Newport Holdings Ltd. & Anor. (Unreported) dated May 15, 1989.

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. He is given no right to be seen but he must be heard. He can submit the grounds of his appeal. These regulations provide that the "appropriate authority" must supply the reasons for its 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": A chief officer of police might well be acting contrary to law if he were to supply the reason for his decision to any person other than the Minister. It is at the hearing before the Minister that attacks on the basis of illegality, irrationality and procedural impropriety can properly be pursued.

As I pointed out in Virgo Enterprises Ltd. & Ors. v. Newport Holdings Ltd. & Ors. M.A. Nos. 1, 2 & 3/89 (supra), at p. 7:

> "There seemed to be an underlying fallacy in the arguments advanced before us that there was unfairness because the application was made without affording the tenant an opportunity to be heard, granted that his contractual obligations as a tenant might be jeopardised. It may fairly be asserted that there is nothing inherently unjust in reaching a decision which has adverse consequences to one party in his absence. Typical examples are ex parte

> "applications to a Court or an application to a Justice of the Peace for a warrant to arrest some person."

The Statute by allowing a hearing by the Minister, after revocation by another official, provided a procedure whereby the principles of natural justice, for example, reasons for the decision and a hearing, could be satisfied. I am quite unable therefore, to appreciate where the procedure in its setting operates unfairly to the holder of a Firearm User's Licence to the point where we are called upon to supply the legislative omission. See the observations of Lord Wilberforce in Wiseman v. Borneman [1969] 3 All E.R. 275 at p. 285, cited with approval in the Virgo case (supra). This is enough, in my view, to dispose of the appeal, but having regard to the importance of the matter generally and the pertinacity of Mr. Enos Grant for the appellant, it is now necessary to consider his arguments under Lord Diplock's three heads.

Before doing so, however, I think I should comment on a statement appearing in the judgment of the Full Court. It was in the following terms:

> "However careful examination of Section 36 of the Firearms Act makes it plain that the function exercised by the appropriate authority is purely administrative."

If it is being suggested that because the function exercised by the appropriate authority is administrative and thus the Court could not judicially review it, such a view is wholly misconceived. The modern attitude is that judicial review, that is, an application for an order of certiorari, mandamus or prohibition, is no longer limited to bodies exercising some judicial or quasi-judicial function but extends to administrative proceedings. See for example, Ridge v. Baldwin [1963] 2 All E.R. 66. If, however, that statement is to be understood to mean that the statutory procedure of the Act did

not give to the appropriate authority, the duty to hear the appellant but to the Minister then, it is unimpeachable. Since the judgment went on to mention Regulation 4, I think the latter view is to be preferred. As formulated, however, the statement is likely to give an incorrect view of the reason for the decision of the Full Court.

I can, therefore, return to Mr. Grant's arguments. Under the first head, he complained that the Superintendent of Police misconstrued the provisions of the Firearms Act, Section 36 and also Regulation 4 of the Firearms (Appeals to the Minister) Regulations 1967. Specifically he was urging that the Superintendent's power to revoke was exercisable if the holder of the licence was of intemperate habits or of unsound mind or fell within a similar genus of "otherwise unfitted". We were asked to apply the "ejusdem generis" rule because the word "otherwise" had received such a construction in Eton Rural District Council v. Thames Conservators [1950] 1 Ch. 340. The Court in that case was called upon to construe the word "otherwise" in Section 9 of the Land Drainage Act 1930 - "it shall be the duty of every catchment board to take steps for the commutation of all obligations imposed on persons by reason of tenure, custom, prescription or otherwise to do any work (whether by way of repairing of banks, maintaining of watercourses or otherwise) in connection with the main river ....." [emphasis supplied]. The cases are, in my view, plainly distinguishable. In the present case, we are called upon to construe a phrase "otherwise unfitted" in the Firearms Act. In my view, "otherwise" has the ordinary dictionary meaning of "in other respects". The list of disabilities form no particular class; a drunkard and a mad man have altogether dissimilar characteristics. The intention of the statute is an

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important aid to construction. The plain intention of the statute is stringently to control the possession of firearms. The fact that a specialized Court has been created to adjudicate in gun related offences is more than ample proof of that intention. As undoubtedly it is the police who are charged with enforcing the law, it would be absurd to suggest that a licence holder could commit gun related offences or any other serious criminal offence for that matter and be immune from having a licence previously issued to him, revoked by the "appropriate authority".

The conclusion is, in my judgment, irresistible, that "otherwise unfitted" includes a person who is involved in criminal activity. Such a person, Mr. Grant contended, fell entirely outside the class or genus which the section prescribed. I am quite unable to accede to that proposition.

In this regard it was also said that the "appropriate authority" had no good reason for revoking the order. The reasons for revocation were disclosed to the Full Court in an affidavit filed by the Superintendent of Police. There are two material paragraphs, viz., paragraphs 3 and 5 which I set out hereunder:

> "3. That acting on reports received from certain credible intelligence sources regarding the applicants illegal involvement in the narcotics trade and the illegal export of currency out of the island, I became and am satisfied that the applicant is a person unfitted to be a holder of a firearms users licence.
>
> 5. That I am not in a position to disclose the sources nor the details of the reports as I am of the considered opinion that such revelation will compromise the integrity and efficacy of police investigations into matters of this nature, break the honoured principle of strict confidentiality of information received from police informants and collaborative intelligence sources, local and international ....."

The allegations against the appellant consists of reports received from police sources, and in respect of these, privilege was being claimed. No authority is needed for the proposition that the police are not obliged to divulge their sources and indeed Mr. Grant was not so naive as to suggest the contrary but he objected to the appropriate authority claiming a privilege on the basis of national security. That right, he said, was reserved for the Minister. He prays in aid Section 35A(1):

> "35A-(1) Where the Minister is satisfied that it is necessary in the interest of national security so to do, he may by notification in accordance with subsection (2), require the delivery to the appropriate authority, of such firearms and ammunition as may be specified in the notification, subject to such terms and conditions as may be specified in that notification."

That section is not concerned with any claim of privilege by anyone or any ground for divulging a source to a Court.

The basis of the rule against divulging sources is public policy. The officer was saying no more than that it would be injurious to the public interest to disclose his sources. National Security is surely synonymous with the public interest. The rule was emphatically reaffirmed in Attorney General v. Briant [1846] 15 M & W 169 and Marks v. Beyfus [1890] 25 Q.B.D. 494.

Finally, under this head of illegality, Mr. Grant argued that the reasons belatedly supplied, amounted to an after-thought and therefore to be dismissed as unreliable. This argument is based on the fallacy that the mere fact of supplying the reasons outside the 14 days time limit prescribed by the Firearms (Appeal to the Minister) Regulations, must lead to the inevitable conclusion that they are without foundation. Their lateness in my opinion, is as consistent

with inadvertence as inefficiency. At all events, the appellant was at liberty to apply for an order of mandamus to compel the Minister to hear his appeal and the Court would direct the "appropriate authority" to supply the reasons required by the Regulations. At that appeal, the appellant would be entitled to be heard in response to the allegations against him.

With respect to "irrationality", which means that the decision was so outrageous that no reasonable tribunal could come ot it, Mr. Grant was content to place before us some amorphous grounds in support of that head. I give an example - "as the Superintendent had no reason for revoking the licence, no appropriate authority properly directing itself on the relevant law and acting reasonably, would have revoked the licence or taken into account irrelevant factors." What has been said under the head of illegality is, in my view, sufficient to show that there is no vestige of merit in these grounds. Under the head of procedural impropriety, learned counsel mentioned the fact that the Superintendent failed to give either a hearing or reasons to the appellant. Nothing further need be said in this regard as it was earlier considered.

Before parting with this case, I desire to observe that when a Superintendent of Police is exercising his power of revocation of a Firearm User's Licence, he is not required to act judicially; he is required to act fairly but that does not involve either hearing the holder or giving him reasons. For all practical purposes, it means having a prima facie case, or acting bona fide. He is obliged to give his reasons only to the Minister if the holder is aggrieved by the decision. But the Minister is bound to hear him or his legal representative and the Minister is bound to provide him with the

reasons for the decision to enable the holder, as an aggrieved party, to rebut any allegations made against him. The Minister, it seems to me, must act fairly, but I have no need to consider Ministerial action any further for the appellant choose not to prosecute his appeal to finality.

I would accordingly dismiss the appeal and affirm the judgment of the Full Court. The respondents would be entitled to the costs of the appeal.

DOUBER, J.A.:

Mr. Raymond Anthony Clough an Attorney-at-Law has a serious complaint against Superintendent Greyson as his firearms licences were revoked by that Superintendent who is the "appropriate authority" for the parish of St. Andrew. He has a right to appeal to the Hon. Minister of National Security and he has instituted steps to have that appeal heard and determined. On 15th July, 1987 that Minister informed Mr. Frank Phipps, Q.C., who then represented Mr. Clough, that the matter was being investigated and that as soon as there was a decision on it he would be advised.

It was then open to Mr. Clough, the appellant, to await the decision of the Minister or to institute proceedings by way of mandamus to compel the Minister to hear and determine the appeal in accordance with Section 37 of the Firearms Act (The Act). Instead, the appellant went before Malcolm, J., in Chambers on 20th October, 1987 and secured an extension of time to apply for an order of certiorari to bring up and quash the decision of Superintendent Greyson, which revoked his licences on 3rd April, 1987.

Perhaps at this stage it should be pointed out that Part IV of the Act deals with the grant and issue of licences. The relevant part of Section 29, reads:

> "29.—(1) Subject to this section and to sections 38 and 37, the grant of any licence, certificate or permit shall be in the discretion of the appropriate authority."

Then when we come to the proviso of that section which reads -

> "Provided that such a permit, certificate or licence shall not be granted to a person whom the appropriate 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:"
>
> [emphasis supplied]

It is clear that at the stage when the licences were granted that the Superintendent who granted them had reason to believe that the appellant was a person fit to be entrusted with firearms, but circumstances may change and the Superintendent is also entrusted with powers to revoke a licence. See Section 36 of the Act below.

In the proceedings before the Full Court (Wolfe, Ellis, Panton, JJ.), that Court made an Order dismissing the motion brought by the appellant. So the revocation order stands, the firearms have been surrendered to the Superintendent as requested pursuant to Section 36.(2)(b)(3) of the Act which imposes a criminal sanction of a fine not exceeding two hundred dollars or twelve months imprisonment for failure to comply with the notice to deliver up the firearms. Also the appeal before the Hon. Minister remains to be determined.

It was against this background that Mr. Clough appealed to this Court to have the order of the Supreme Court set aside, on the grounds that the Superintendent had no jurisdiction to revoke his licences without a hearing and that the requirement of natural justice also obliged him to give reasons to the appellant for his decision. These grounds have been characterised by Lord Diplock as "procedural improprieties". See C.C.S.U. v. Minister of the Civil Service [1985] A.C. 374 at 411.

Was Superintendent Greyson required to hear the appellant before he revoked his firearms licences?

The decision of Superintendent Greyson to revoke the Firearm User's Licence in respect of four Smith & Wesson revolvers and one Browning Pistol was embodied in a letter to the appellant of 3rd April, 1987. The Act which is a criminal

statute prohibits the possession or use of firearms without a licence. Moreover, Parliament considers illegal possession of firearms so serious an offence that there is a special jurisdiction - the Gun Court - which is empowered to hear and determine "firearm offences" for which the maximum sentence is life imprisonment.

Section 36 (1) of the Act which was relied on by the Superintendent to revoke the licences, is important; it reads:

> "36.—(1) Subject to section 37, the appropriate authority may revoke any licence, certificate or permit if —
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> (a) he 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
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> (b) the holder thereof fails to comply with a notice under section 35."

The important issue of construction is whether a licence may be revoked, on the basis that the "appropriate authority" was satisfied that the appellant was of intemperate habits, or of unsound mind, or is otherwise unfitted to be entrusted with firearms, without according a hearing. The plain words of the statute do not support the contention that a hearing is required for section 36 (2) reads:

> "36.—(2) Where the appropriate authority revokes any licence, certificate or permit under section 18 or 46, he shall give notice in writing to the holder thereof—
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> (a) specifying that he has revoked such licence, certificate or permit;
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> (b) requiring such person to deliver up such licence, certificate or permit to him on or before the day (not being less than three days after delivery of such notice) specified in such notice."

The interpretation which accords with those words indicates that once the licence is revoked the "appropriate authority"

must so specify the revocation and require the appellant to deliver up the licence.

Moreover, the failure to comply with the requirement stipulated, Section 36(2) (b), brings the criminal sanction into play; see Section 36(3). That there should be a right to a hearing where a person was accorded a privilege and it is being revoked is recognised by the Courts and they will invariably interpret a statute to conform to the rules of natural justice. Parliament or more realistically, parliamentary counsel, is also aware of the fundamental nature of the right to a hearing before the revocation of a licence or a privilege and they have provided for this in the Act. Section 36 is made "Subject to section 37" so that any revocation order by the Superintendent is qualified by provisions in Section 37. This is an admirable legislative scheme, for promptitude is required in the revocation of firearms licences in the first instance by the Superintendent and the more deliberate process pertinent to an appeal to the Minister another member of the executive where the right to a hearing is provided for in Section 37.

Before examining Section 37, it is appropriate to refer to Section 38(5) which defines the "appropriate authority". That section reads:

> "38.—(5) The appropriate authority for the grant, amendment or revocation of any Firearm User's Licence or Firearm Disposal Permit or Firearm User's (Employee's) Certificate shall be the chief officer of police for the parish or police division in which the applicant for such licence, permit or certificate resides or carries on business."

As the respondent is the chief officer of police for the parish of St. Andrew in which the appellant resides, his authority to issue and revoke licences was never questioned. What was in issue was whether he had a jurisdiction to revoke without a

hearing.

It is now appropriate to turn to Section 37 of the Act to examine the powers of the Minister on appeal. Since this is where a hearing is obligatory, Section 37(1), so far as material, reads:

> "37. —(1) Subject to this section, any aggrieved party may within the prescribed time and in the prescribed manner appeal to the Minister against any decision of an appropriate authority—
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> .....
>
> (c) revoking or refusing to revoke any licence, certificate or permit; or ...."

Apart from providing for a right of appeal, Section 37 also stipulates the powers of the Minister on an appeal. Here is how 37 (1) (2) defines it:

> "37.—(2) Upon the determination of any appeal under this section the Minister shall give to the appropriate authority against whose decision such appeal is taken such directions as the Minister may think fit."

One of the puzzling aspects of this case is that although notice and grounds of appeal were served on the Superintendent and the Minister on 13th April, 1987, appealing from the decision of the "appropriate authority" and the Minister in a letter of July 15, 1987, indicated that the matter was being investigated, no attempt was made by the appellant either by correspondence or by way of mandamus to have the appeal determined according to law.

It is puzzling because the then Minister, The Honourable Errol Anderson, in his response to Mr. Phipps, stated the correct constitutional position which was that "the matter is one which could have been discussed with my Permanent Secretary." Those who advise the Hon. Minister no doubt had in mind the exposition of Lord Green in Carltona, Ltd. v. Commissioners of Works and Ors. [1943] 2 All E.R. 560 at 563 where he said:

> "In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them."

Instead of seeking a determination on the merits, these proceedings were instituted against the "appropriate authority" on October 20, 1987.

We ought, therefore, to refer to the Firearms (Appeals to the Minister) Regulations 1967 to see the scope and limits of appeals, since an appeal to the Minister is pending. Paragraph 5 gives a discretion to the Minister to permit the applicant to appear before him in person or if he so permits, to be represented by counsel. It reads:

> "5.—(1) The Minister may, in his discretion, permit any applicant to appear before him to put forward arguments in support of his appeal.

> "(2) Any applicant permitted to appear before the Minister as aforesaid, may do so in person or may be represented by counsel or solicitor if he so desires."

The wording of the paragraph gives the Minister a discretion as to the circumstances when the applicant may appear and be represented. Aston Kane v. Minister of Home Affairs & Justice [1975] 23 W.I.R. 416 suggests that when personal accusations are made against an applicant, the Minister's discretion must be exercised in favour of permitting the applicant to appear before him or permitting him to be represented by counsel. This observation is correct in instances where a domestic tribunal is determining whether drugs were administered to a dog. See Pett v. Greyhound Racing Assn. Ltd. [1968] 2 All E.R. 545, but it does not necessarily apply to an appeal to the Minister where the subject-matter is control of firearms and there are rules of procedure made pursuant to an Act of Parliament. It should be noted that Kane's case was an interlocutory appeal and all that was necessary for the decision was to determine whether the Chief Justice's decision to refuse the applicant's extension of time within which to apply for an order of certiorari to quash the Minister's determination was correct. The Minister's decision was arrived at without a hearing, see page 417 B. What is beyond doubt is that the Minister must consider the representations of the applicant which could be in writing and Paragraph 6 stipulates how his decision ought to be made and to whom it must be communicated. That paragraph reads:

> "6. So soon as may be practicable after the filing of all documents or the conclusion of the hearing of the appeal, as the case may be, the Minister shall communicate his decision in writing to the applicant and to the appropriate authority and give to the appropriate authority such directions as may be necessary."

The oft quoted words of Tucker, L.J., in Russell v. Duke of Norfolk [1949] 1 All E.R. 109 at 118 are appropriate here. They read:

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

The subject-matter is the control of firearms for which illegal possession is a very serious offence; the legal possession is a privilege granted or revoked by the "appropriate authority" so we ought not to expect the same rights to a hearing to be accorded to an applicant in these circumstances as where "the right to work" or "property rights" or "dismissal from office" are concerned. The Regulations were made pursuant to Section 48 of the Act and the wide powers given to the executive can be appreciated if the section is quoted:

> "48. The Minister may make regulations for the better carrying out of this Act, and in particular, but without prejudice to the generality of the foregoing, for prescribing anything required or permitted by this Act to be prescribed."

Such regulations are commonplace in modern administration and they have been approved by the highest authority. In adverting to the Gaming Board in the United Kingdom in Rogers v. Home Secretary [1973] A.C. 388 at 404, Lord Morris said:

> "But suppose the communication tells against an applicant and is likely to influence the Gaming Board—what course should then be followed? Some statement or suggestion which is adverse to an applicant may be based upon inaccurate information: it may be one which could readily be refuted. In other circumstances the board might receive some unsolicited information which reflected upon the reputation or the character of the applicant or

> "which without being seriously derogatory reflected upon his abilities and competence. In other circumstances there might be a communication adverse to the applicant which was inspired by wrong or indirect motives. That these are possibilities to be reckoned with serves to emphasise that Parliament has assigned responsibilities to the members of the Gaming Board which for their discharge demand the highest standards of integrity. We were informed that the board have in fact evolved procedures calculated to ensure that an applicant is fairly treated: if the board is minded to refuse an application then an applicant is given an opportunity of making representations (before a final decision is reached): in giving such opportunity the board, so far as they are able, consistently with the due and efficient discharge of their statutory duty and with the public interest, give an applicant the best indication reasonably possible of the matters that are troubling them. Though the board consider that there might be cases where not only the source but also the content of some information could not, in the public interest, be disclosed, we were informed that so far the board had not had a case in which their decision was in fact based upon matter with which an applicant could not be given opportunity to deal."

I have no doubt that those civil servants who advise the Hon. Minister in Jamaica have the same high integrity as their counterparts in the United Kingdom civil service or on statutory boards. Moreover, the 1967 Regulations (supra) and such other rules are designed so that an applicant is fairly treated. Also they recognise that there are instances as gaming clubs (U.K.) and firearms control (Jamaica) where it may not be either in the interest of the public or the aggrieved party to accord a right of audience before the Minister and be represented by counsel where personal accusations are made as suggested by Edun J.A., in Kane (supra)

To my mind, the right to a hearing which includes considering written representations [see The King v. Tribunal of Appeal (1920) 3 K.B. 334 at 345] is provided at the second tier which is called on appeal. This is a feature of modern legislation, for example, see the recent decision of this Court

in Virgo Enterprises Ltd. et al v. Newport Holdings Limited M.A. Nos. 1, 2, & 3/89 (Unreported) dated 15th May, 1989 which deals with the Rent Restriction Act. There is, therefore, no omission by the legislature. It was not necessary for the "appropriate authority" to accord the appellant a hearing as any such hearing as is appropriate, is available before the Minister. The contention by Mr. Grant that there was a procedural impropriety by the Superintendent for failing to accord the appellant a hearing, therefore, fails. It failed because the "appropriate authority" being an administrative officer can be satisfied by making investigations or by receipt of reports before he revokes. He must of course act fairly before he decides but the requirement for a hearing is at the second stage before the Minister.

Was Superintendent Greyson required to give the appellant reasons for his revocation of the firearms licence?

The other aspect of procedural impropriety argued with force on behalf of the appellant was that the Superintendent failed to give any reason to the appellant for revoking his licence. It is, therefore, necessary to examine the provisions in the 1967 Regulations pertaining to reasons. Paragraph 4 reads:

> "4. Within fourteen days of the receipt of a notice of appeal, the appropriate authority shall forward to the Minister a statement in writing setting out the reasons for the decision from which the applicant is appealing together with a copy of every other document relating thereto."

This regulation makes it clear that the reasons are to be forwarded to the Minister who will consider the appeal. As

for the Act, it requires the appellant to be notified of the revocation, not the reasons for it. See Section 36 of the Act.

There is a complaint on April 28 that fourteen days had expired since the appeal was filed on 13th April. Moreover, the correspondence from the Ministry of 4th May, 1987 reveals that up to that time the "appropriate authority" had not submitted his reasons to the Minister. Then there was the letter from the Hon. Minister of July 15 and it is pertinent to quote from it. It reads in part:

> "It is observed that Mr. Clough was informed vide letter dated 4th May 1987 that his appeal was receiving attention in accordance with the Firearms (Appeals to the Minister) Regulations 1967.
>
> The necessary investigation is being carried out into the revocation of Mr. Clough's Firearm User's Licences and as soon as all the relevant information is received, a decision will be taken of which you will be advised.
>
> Sincerely
>
> Errol Anderson
> Minister of National Security."

As the appellant filed his notice and grounds of appeal together with affidavits relied on in these proceedings to the Minister (see page 14 of the record) a determination by the Minister will be in order after the decision of this Court.

What was the basis of the Superintendent's decision to revoke the firearms licence? His response is contained in his affidavit of 19th November, 1987. Paragraphs 3, 4 and 5 are relevant and they read as follows:

> "3. That acting on reports received from certain credible intelligence sources regarding the applicants illegal involvement in the narcotics trade and the illegal export of currency out of the island, I became and am satisfied that the applicant is a person unfitted to be a holder of a firearms users licence.

"4. That accordingly and in pursuant to the Firearms Act I revoked the firearm users licence of the applicant and thereupon served him with the appropriate notice of revocation as is required by section 36 of the said Act.

5. That I am not in a position to disclose the sources nor the details of the reports as I am of the considered opinion that such revelation will compromise the integrity and efficacy of police investigations into matters of this nature, break the honoured principle of strict confidentiality of information received from police informants and collaborative intelligence sources, local and international and will otherwise be inimical to the interests of national security and the public good."

The narcotics trade and the illegal export of currency are criminal acts and it is not to be expected that the police would either reveal or be specific as to the sources of their intelligence. The assumption must be that if there was evidence to go by, before a Court, charges would have been preferred. This is the type of report which Regulation 4 (supra) envisages, and it is for the Minister to consider it on appeal to determine whether they were sufficient for the "appropriate authority" to revoke the licence. There is no obligation to give this information to the appellant either by statute or common law and if there was such an obligation it would make nonsense of the police functions in the control of criminal activities.

The matter regarding the protection the law gives to confidential information received by the police and the obligations of the "appropriate authority" or the Minister in this case was pronounced on in R. v. Gaming Board ex parte Benaim & anor. [1970] 2 All E.R. 528. The Court of Appeal (Lord Denning, Lord Wilberforce, and Phillimore, L.J.) used words which are appropriate to Superintendent Greyson who has the power to revoke and the Minister who hears the

appeal. Here is how Lord Denning M.R., puts it at page 534:

> " Seeing the evils that have led to this legislation, the board can, and should, investigate the credentials of those who make application to them. They can, and should, receive information from the police in this country or abroad, who know something of them. They can, and should, receive the information from any other reliable source. Much of it will be confidential. But that does not mean that the applicants are not to be given a chance of answering it. They must be given the chance, subject to this qualification: I do not think that they need tell the applicants the source of their information, if that would put their informant in peril or otherwise be contrary to the public interest. Even in a criminal trial, a witness cannot be asked who is his informer. The reason was well given by Eyre CJ in R v Hardy (1794) 24 State Tr 199 at 808:
>
> > '...there is a rule which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channel by means of which that detection is made, should not be unnecessarily disclosed ...'
>
> And Buller J added (1794) 24 State Tr at 818:
>
> > '...if you call for the name of the informer in such cases, no man will make a discovery, and public justice will be defeated.'
>
> That rule was emphatically re-affirmed in A-G v Briant (1846) 15 M & W 168 and Marks v Beyfus (1890) 25 QBD 494. That reasoning applied with equal force to the enquiries made by the board. That board was set up by Parliament to cope with disreputable gaming clubs and to bring them under control. By bitter experience it was learned that these clubs had a close connection with organised crime, often violent crime, with protection rackets and with strong-arm methods. If the board were bound to disclose their sources of information no one would 'tell' on those clubs, for fear of reprisals. Likewise with the details of the information. If the board were bound to disclose every detail, that might itself give the informer away and put him in peril. But, without disclosing every detail, I should have thought that the board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair. And the board must at all costs be fair. If they are not, these courts will not hesitate to interfere."

The subject of firearms control is a much more serious matter in Jamaica than the control of gaming clubs in the United Kingdom, and the Act gives ample powers to the "appropriate authority" to grant and revoke a licence subject to an appeal on the merits to the Minister.

There are no provisions in the Act or Regulations nor does the common law compel the Superintendent to give reasons to the appellant for revoking his licence. In these proceedings he has given his reasons and he had the jurisdiction to revoke on the basis of the intelligence he had received as such information was capable of satisfying the "appropriate authority" that the appellant is unfitted to be entrusted with the firearms in question.

CONCLUSION

The accusations of involvement in narcotics, and export of currency are serious charges to make against Mr. Clough who is an Officer of the Supreme Court, but the Act has given the Superintendent of Police enormous powers in order to control firearm offences in the public interest of the maintenance of order. He must act fairly and he does so if he follows the provisions in the statute and acts in good faith. This case is concerned with the manner in which his decision was made and it is important to recognise that the only provision for an appeal, that is, whether the revocation was correct, is to the Minister. The merits of the Minister's decision is not a justiciable issue and the Act and our constitutional principles recognise that the gathering and assessment of intelligence which in many instances involve relations with foreign powers is best left

to the executive, and the executive may decide on their assessment to revoke a firearm's licence. The forum for challenging the merits of the Minister's decision is Parliament. On the other hand, the manner in which the Minister arrives at his decision on an appeal under the Act may be the subject-matter of judicial review on the well-known grounds of "illegality", "irrationality", or "procedural impropriety".

I have considered Mr. Wilkins' point that even if the appellant had succeeded here, certiorari being a dictionary remedy, the order ought not to go as the appellant slept on his rights and did not invoke the jurisdiction of the Supreme Court until 20th October, 1987, although the order of the Superintendent was made on 3rd April, 1987. If it had been necessary, it would have been appropriate to decide this and I would have decided in his favour. There is also the unfinished business of the appeal before the Minister and it seems unsatisfactory to leave the matter dangling in the air since the ball is now in the Minister's court. He has the affidavit of the appellant, the notice of appeal and he or his civil servants ought by now to have completed their investigations.

However, as the appellant has failed on both grounds argued, this appeal is dismissed; the order of the Supreme Court affirmed and costs are to the respondent to be agreed or taxed.

MORGAN, J.A.:

The Firearm's Act does not require the "appropriate authority" - in this case Superintendent Greyson - to hear or give reasons to the applicant on the revocation of his firearms licences. Instead, the "appropriate authority" does so to the Minister on his request, to assist in the determination of any appeal by the applicant. It is then that he will furnish, to the Minister only, the required reasons. It is purely a matter for the Minister to determine on that hearing, the validity or otherwise of the action of the "appropriate authority."

I have read the draft judgments of my learned brothers and they have set out the reasoning therefor with which I agree.

The applicant, however, has not sought to prosecute the appeal, for which the Act provides, to its conclusion.

I also agree that the appeal should be dismissed with costs.