[2020] JMSC Civ 97

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU 2019 CV 02383

BETWEEN	**FENTON DENNY**	**CLAIMANT**
AND	**THE FIREARM LICENCING AUTHORITY**	**DEFENDANT**

IN CHAMBERS

Faith Gordon instructed by Hugh Wildman & Co. for the Applicant.

Courtney Foster instructed by Courtney Foster and Associates for the Respondent.

Application for leave for Judicial Review- Whether the Respondent is a proper party before the court - Whether the court has jurisdiction to hear the Application - Whether there is a discretionary Bar- Whether there is an arguable case.

Heard the 11th of February 2020; the 1st of May, 2020

THOMAS, J

Introduction

[1] The Applicant, Mr. Denny by way of a notice of application for leave to apply for judicial review, seeks the following relief:

> *An order of certiorari quashing the revocation order dated May 16th, 2019, issued by the Respondent to the Applicant purporting to revoke*

the Firearm Licence of the Applicant *as not being a "fit and proper" person to retain a firearm licence.*

[2] The Grounds on which the applicant is seeking these orders are as follows:

i. The Applicant was granted a firearm licence by the Respondent in 2015.

ii. The Respondent is a statutory body established under section 26A (1) of the Firearm Act and is the entity responsible for issuing firearm licences to legitimate firearm holders.

iii. Since the grant of the firearm licence to the Applicant, the Applicant has consistently renewed the firearm licence without a problem.

iv. Prior to the revocation of the Applicant's firearm licence, and even at present the Applicant was never told by the Respondent the reasons why the Applicant is not considered fit and proper" to retain a firearm licence.

v. The Applicant has never had an issue concerning the use of his firearm, and contends that the Respondent is not permitted to arbitrarily state in the notice of revocation that the Applicant is not fit and proper to retain a firearm licence as stated by the Respondent.

vi. The words used in ***Section 36(1)(a)*** of the ***Firearm Act***, make it abundantly clear, that the Respondent must give reason for asserting that the Applicant is not a fit and proper person to be the holder of a firearm licence.

vii. Further, the Applicant contends that before his firearm licence can be revoked on the basis stated by the Respondent, the Applicant must be afforded an opportunity to make worthwhile representation

to the Respondent as to the reason why the firearm licence should not be revoked.

viii. The Applicant contends that because of the nature of the breach by the Respondent in revoking the Applicant's firearm licence, the Applicant need not exercise the right of Review contained in Section 37 of the Firearms Act.

Factual Background

[3] The Applicant Mr. Fenton Denny is a District Constable. He was first issued with a Firearm Licence by the Respondent, the Firearm Licencing Authority, (FLA) in 2015. There have been two subsequent renewals since 2015, the last being on the 3rd of March 2017. On the 3rd of March, 2018 he sought to renew the licence. During the renewal process, he was told by an agent of the Respondent that he had an outstanding case from 1999 and that the Respondent had to hold on to his firearm.

[4] Mr. Denny contends that he returned to the Parish court in St Mary where he had an assault case since 1999. The case was subsequently dismissed. He informed the Respondent that the matter was resolved in his favour.

[5] The Applicant further states that on the 16th of May 2019 he received a letter from the Respondent, informing him that his licence was being revoked on the basis that he was not a "fit and proper person" to be granted a firearm licence.

[6] Consequently, the Applicant seeks leave to apply for Judicial Review of this decision of The FLA. He contends that the Respondent has no basis on which to refuse his application for renewal. He further contends that none of the provisions of section 37 of the Firearms Act is applicable to him and that the Respondent should have provided him with the gist of the investigation and the reason, and that he was to be given an opportunity to be heard before the Respondent could properly determine whether he is a "fit and proper" person.

[7] He says further, it is not in the purview of the Respondent to make broad assertions that he is not a fit and proper person without providing the context for that assertion. This is especially in the context where the he has, for some years, been the holder of a firearm and has had no infractions using the said firearm. He says he is left in the dark as to the basis on which the Respondent could make such an assertion without giving him a chance to be heard. He says that the Respondent has breached the principle of natural justice which is enshrined in the constitution under the Charter of Fundamental Rights & Freedoms. On this basis he says that the Respondent's decision is null and void.

[8] Mr. Letine Allen, witness for the Respondent, asserts that The FLA has the power to revoke a licence if satisfied that the holder is of intemperate habits, unsound mind or is not a fit and proper person. He alleges that the Applicant was given an opportunity to be heard as he gave a statement on the 26th of July 2018. Mr. Allen further asserts that the Applicant was notified of the Respondent's decision on the 16th of May 2019. If he is aggrieved by the decision, The Firearms Act provides that "he may apply to the Review Board for a review of the Respondent's decision within 21 days."

[9] Mr. Allen further contends that he Respondent's refusal to renew the Applicant's licence was due to investigations conducted into a 1999 charge laid against the Applicant for Assault Occasioning Actual Bodily Harm. He states that the Respondent conducted investigations into that charge "to ascertain the status of the matter before the Parish Court as a charge of that nature, if found to have been committed, would indicate that the Applicant would have used violence. As such, it was the concern of the Respondent that if the Applicant was convicted of such an offence, that would have been a ground for refusal/revocation of the firearm licence. During the course of the investigation, the Applicant presented a Certificate of Dismissal saying no evidence was offered in the matter".

[10] However, Mr. Allen also stated that a complaint was made to the FLA about the Applicant's repeated use of violence and that the Applicant was exuding certain

intemperate habits. As a result of these complaints, the FLA caused investigations to be done and based on the findings of those investigations the FLA was satisfied that the Applicant was no longer a fit and proper person to hold a firearm and that the firearm licence should be revoked.

[11] He further asserts that the Act does not provide that a reason must be given before it can be determined whether the Applicant is a "fit and proper person" to be the holder of a firearm. He insists that there was no breach of procedure.

The Issues

[12] Three issues were raised in this matter. These are:

i. Whether the court has jurisdiction to hear this matter on the basis that the Respondent is not a proper party to the proceedings.

ii. Whether leave should be refused on the basis of the availability of an alternative remedy;

iii. Whether there is an arguable case in favour of non-adherence to the principle of fairness and Natural Justice.

The Law

[13] The applicable test when leave is sought to apply for judicial review, is whether the applicant has an arguable case for review. The court will refuse leave unless satisfied that there is an arguable ground for judicial review, having a realistic prospect of success, not subject to a discretionary bar or an alternative remedy (see ***Sharma v Brown-Antoine and Ors*****.** [2006] UKPC 57).

Submissions

On behalf of the Applicant

[14] Counsel for the Applicant submits that no reason has been proffered by the Respondent for their decision that the Applicant is not a fit and proper person to be issued with a firearm.

[15] Counsel further submits that the Applicant in his statement, was forthright and open about what happened in 1999. She notes that the Applicant was issued with a firearm licence from 2015 which has since been renewed and, despite the taking the Applicant's firearm in 2018, the revocation letter was only signed by the Respondent on the 16th of May 2019. The actions of the Respondent, she states, were arbitrary. The affidavits seem to indicate that the firearm was detained and later revoked because of the matter that the Applicant had in the Parish Court in 1999. Counsel further submits that the Applicant brought proof that the matter was disposed of and determined in his favour having provided to the Respondent proof of same**.**

[16] As it relates to the review process under the Act, Counsel submits that, the Applicant was not provided with the appropriate measure to take as in order to properly represent himself before the Review Board in an appeal process, he ought to have been given sufficient information.

[17] She is of the view that the gist of the allegation was not at the earliest convenience conveyed to the Applicant for him to respond. The crux of the submission is that the Applicant was not furnished with sufficient reasons for him respond. He responded to what he had been told as such he furnished information, in a statement to justify the reasons for matter mentioned in Parish Court. She submits that the Respondent acted improperly and unfairly and that Mr. Denny did not apply to have the matter reviewed before the Review Board in light of the breach and improper conduct.

[18] She further points out that the Applicant is now without an alternate remedy before the Review Board. Counsel contends that in the interest of fairness and justice, judicial review is now the only the appropriate remedy. (She relies on the cases of **Regina v Huntingdon District Council, Ex Parte Cowan: QBD 1984 1 All ER 58; *R v Chief Constable of the Merseyside Police, ex parte Calveley and others - [1986] 1 All ER 257; Barnsley Metropolitan Borough Council exp Hook* [1976] 3 All ER 452).**

On Behalf of the Respondent

[19] Ms. Foster submits that the court has no jurisdiction to hear the application as the FLA is not a proper party before the court, against whom leave can be granted (she refers to ***Grant 's Welding Machine Shop Ltd v the Firearm Licencing Authority and Anor***. [2020] JMSC Civ. 4). She further submits that there is a discretionary bar to the Application. That is, an alternate remedy by way of appeal was available to the Applicant at the time of the filing of the Application, which was not pursued and that the review process is inappropriate.

[20] She also takes the position that there is no statutory duty on the part of the FLA to give detailed reasons for the revocation, noting that there is a difference in the functions of the Authority and the Board. The Authority, she states, does not have to give a right to hearing, the Board does. She further states that, the Authority is not bound by the fact that Mr. Denny was acquitted (she refers to the case of ***Aston Reddie v FLA and Ors.*** HCV1681 0f 2019).

[21] She concludes that there is no material on which the court can find that there is an arguable case.

Discussion

Whether the Court has Jurisdiction to hear this Application

[22] In relation to the case of ***Grant 's Welding Machine Shop Ltd v. the Firearm Licencing Authority and Anor,*** relied on by Counsel for the Respondent**,** (supra) I make the following observations:

(i) The claim was brought in private law by the Claimant against the FLA, and the Attorney General.

(ii) The main issue in that case was whether the FLA was an agent of the Crown and whether the FLA has a legal personality.

[23] On both questions the learned Master found in the negative. However, the distinction between ***Grant 's Welding Machine Shop Ltd v. the Firearm Licencing Authority and Anor.*** and the instant case is that the case at bar falls in the realm of public law while the aforementioned case fell in the area of private law. Therefore, essential to my determination of the issue are principles falling in the realm of public law and more specifically, the review of administrative actions.

[24] In the case of ***R v Panel on Take-Overs and Mergers, ex parte Datafin*** [1987] QB 815, the body, "The Panel on Take-overs and Mergers" (the Panel) was empowered to oversee and regulate a part of the United Kingdom financial market. It promulgated the City Code on Take-Overs and Mergers. Among the companies to which its powers applied, were all listed public companies considered by the Panel to be resident in the United Kingdom. On an application for Judicial Review, the Panel, being the Respondent, submitted that the court had no jurisdiction to hear the matter as it was not performing a public duty and that none of its activities were susceptible to judicial review. It is of marked significance that in the Judgment of the Court of Appeal, the Master of the Rolls made the observation that the Panel was:

> "***an unincorporated association without legal personality*** *(*emphasis mine*) and, so far as can be seen, has only about twelve members. But those members are appointed by and represent the Accepting Houses Committee, the Association of Investment Trust Companies, the Association of British Insurers, the Committee of London and Scottish Bankers, the Confederation of British Industry, the Council of The Stock Exchange, the Institute of Chartered Accountants in England and Wales, the Issuing Houses Association, the National Association of Pension Funds, the Financial Intermediaries Managers and Brokers Regulatory Association, and the Unit Trust Association, the Chairman and Deputy Chairman being appointed by the Bank of England. Furthermore, the Panel is supported by the Foreign Bankers in London, the Foreign Brokers in London and the Consultative Committee of Accountancy Bodies. 3 It has no statutory, prerogative or common law powers and it is not in contractual relationship with the financial market or with those who deal in that market." (*see paragraphs 2 and 3 of the Judgment*).*

[25] The court also made the observation that the Panel was self-regulated (see the judgments of the Master of the Rolls and Lord Nicholls). However, as it relates to the jurisdictional issue, and in arriving at a conclusion that the court had jurisdiction to entertain the application for the judicial review of decisions of the Panel, the Master of the Rolls had this to say*:*

> "*I should be very disappointed if the courts could not recognise the realities of executive power and allowed their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted. Given that it is really unthinkable that, in the absence of legislation such as affects trade unions, the Panel should go on its way cocooned from the attention of the courts in defence of the citizenry*." (see paragraph 32 and 33 of the judgment).

[26] Lord Justice Lloyd had this to say:

> *"But I was unable to see why the mere fact that a body is self-regulating makes it less appropriate, for judicial review. Of course there will be many self-regulating bodies which are wholly inappropriate for judicial review. The committee of an ordinary club affords an obvious example. But the reason why a club is not subject to judicial review is not just because it is self-regulating. The Panel wields enormous power. It has a giant's strength. The fact that it is self-regulating, which means, presumably, that it is not subject to regulation by others, and in particular the Department of Trade and Industry, makes it not less but more appropriate that it should be subject to judicial review by the courts".* (See paragraph 57 of the judgment).

[27] He further stated that:

> *"If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may … be sufficient to bring the body within the reach of judicial review … The essential distinction is between a domestic or private Tribunal on the one hand and a body of persons who are under some public duty on the other." (*See paragraph 65 of the judgment*)*

[28] In the case of the ***Council of Civil Service Unions v. Minister for the Civil Service*** [1985] A.C. 374 at page 408E Lord Diplock stated that:

> "*judicial review…provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the "decision-maker" or else a refusal by him to make a decision*."

[29] Further, he stated that for a decision to be susceptible to judicial review,

> "*the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers*…" *– page 409B*

[30] Therefore, in accordance with the principle expounded on in the above mentioned authorities**,** in public law, and in particular judicial review, the consideration is not whether an entity has a legal personality, as it is not so much that the individual or the entity is being sued, but that the decision of the decision-maker is being reviewed. Therefore, what needs to be considered in proceedings of this nature is whether the decision of the decision maker is reviewable.

[31] It is my view that all that needs to be established in this regard is that the FLA is a decision-maker (person or group of persons) empowered by public law to make decisions which, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers. That is, that the decision that is being sought to be reviewed was a decision made by a body, individual or entity in the performance of a public function.

[32] In order to make the relevant determination, I will at this juncture examine the relevant instrument establishing and empowering the FLA. In accordance with the Firearms Act, Section 26(1)(a) reads:

> *"There is hereby established for the purposes of this Act, a body known as the Firearm Licensing Authority"*

[33] The Third Schedule of the Act outlines how the Authority should be constituted and the procedure for appointment etc. It reads:

> "1. The Authority shall consist of the following persons-

(a) a person who has retired from the post

(i) Director of Public Prosecutions; or

(ii) Senior Civil Servant;

(b) a retired Judge of the Court of Appeal or the Supreme Court;

(c) a retired Police Officer not below the rank of Senior Superintendent at the time of retirement; and

(d) two other persons who the Minister is satisfied are of high integrity and able to exercise sound judgment in fulfilling their responsibilities under this Act.

2. The members shall be appointed by the Minister by instrument in Tenure of writing and shall, subject to the provisions of this Schedule, hold office for a period of three years.

3. Every member shall be eligible for re-appointment.

4. (1) The Minister shall appoint one of the members to be chairman of Chairman of the Authority.

(2) The chairman shall preside at all meetings of the Authority at which he is present, and in the case of the chairman's absence from any meeting; the members present and forming a quorum shall elect one of the number to preside at that meeting.

[34] In light of the foregoing it is evident that a body (a group of persons) designated as the Firearms Licence Authority (FLA) was set up by Parliament. Therefore, the other consideration, is whether this body was set up to perform a public function.

[35] The primary function of the FLA is outlined in sections 26B.- (1), 29, and 36 of the Act. The relevant sections read:

> "***26B.–*** *(1) Subject to section 38, the functions of Authority shall be*
>
> *(a) to receive and consider applications for firearm licences, certificates or 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) 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 c) of subsection (2) of section 20 shall be granted by the Authority only if 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."

"36.- *(1) Subject to section 37 the Authority may revoke any of licences, certificates 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) the holder thereof has been convicted in Jamaica or in any other country for an offence involving–

(iii) *the use of violence for which a sentence if imprisonment of three of more was imposed.*"

[36] Having examined the provisions of the Firearms Act, it is clear from the statute that the FLA was set up by an Act of Parliament as a decision making body, and that it was endowed with executive powers to make administrative decisions in relation to the issuing and revocation of Firearm Licences to the members of the Public.

The Applicant is seeking to challenge a decision made by the FLA as a body, in the performance of its public function. In this regard, it is the FLA, and not the individual members, that is in fact the decision-maker. Therefore, I find that the decision of the FLA as a body is subject to judicial review. Consequently, I find that the FLA is a proper party before the Court in these proceedings. In essence, I find that this court has the jurisdiction to hear the application as filed.

Whether there is a discretionary bar to the grant of Leave

[37] Counsel for the Responded insists that the Applicant is not entitled to the relief for leave for Judicial Review as there was an alternative remedy available to him.

[38] In the Privy Council case of ***Sharma v Brown-Antoine and others*** (Supra), the court stated that "the ordinary rule now is that the court will refuse a claim for judicial review unless satisfied that there is an arguable ground for judicial review, having a realistic prospect of success, and not subject to a discretionary bar such as delay or an alternative remedy." (See also the case of ***Gorstew Limited and Gordon Stewart O.J. v The Contractor General,*** Claim No. 2012 HCV 04918).

[39] In the case of ***Monica Haughton v Personnel Committee of the Board of Management of Liberty Hill Primary School and others*** **[2015]** JMSC Civ. 207, the Applicant sought leave to apply for judicial review of the decision of the Board to commence hearing allegations of professional misconduct against her. Section 37 of the ***Education Act*** provided a statutory procedure by which the Applicant could appeal the decision of the Board. However, the Applicant did not pursue it. In this regard the Respondent argued that Judicial Review was not available to the Applicant. Campbell J noted that "the time delimited by Regulation 58, for the hearing of complaints has not been exhausted"

[40] At paragraph 42, he stated that:

> *"The statute has provided the form of procedure to be followed. This is not a common law matter but purely a creature of statute, and therefore, the remedy provided by the statute must be followed."*

[41] Consequently, he decided that:

> *"the decision questioned falls within the ambit of Section 37 of the Education Act and is therefore a statutory alternative to judicial review. As such the application for leave to Judicial Review fails"*

[42] I will now examine the **Firearms Act** with a view to determine whether an alternative remedy was available to the Applicant. ***Section 37*** of the Act provides that:

> *"(1) Subject to this section and section 37A, any aggrieved party may within the prescribed time and in the prescribed manner apply to the Review Board for the review of a decision of the 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"*

[43] In light of the abovementioned provision, it is evident that an alternative remedy for review of the FLA's decision by the Review Board was made available to the

Applicant. The issue which now falls to be determined is whether this is effectively an absolute bar to the grant of leave for judicial review.

[44] In the case of ***Regina v Inland Revenue Commissioners, ex p Preston*** [1985] AC 835, the House of Lords considered the availability of judicial review alongside a statutory right of appeal. Lord Scarman, at page 852D said:

> "*Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision".*

[45] The court also stated that it saw:

> "*no reason why the Appellant should not be entitled to judicial review of a decision taken by the commissioners if that decision is unfair to the appellant because the conduct of the commissioners is equivalent to a breach of contract or a breach of representation. Such a decision falls within the ambit of an abuse of power for which in the present case judicial review is the sole remedy and an appropriate remedy*. (See the Judgment of Lord Templeman at page 866H)

[46] In the case of **Regina v Huntingdon District Council, Ex Parte Cowan (supra),** the plaintiff sought judicial review of a refusal of a local authority to grant a liquor licence and a music and dancing licence. Review was sought despite a right of appeal to the Magistrates Court. In that case it was argued on behalf of the authority that though the authority had a duty to act fairly, the duty did not extend to disclosing the objections or giving an opportunity to reply.

[47] In relation to alternative remedy available, it was also argued that there was a right of appeal in the Magistrate Court which was exercised therefore relief in terms of judicial review should not be granted. Glidewel J said:

> *"In relation to alternative remedy available, it was also argued that there was a right of appeal in the Magistrate Court which was exercised …… As I have said, the relief sought is discretionary. Where there is an alternative remedy available but judicial review is sought, then in my judgment the court should always ask itself whether the remedy that is sought in the court, or the alternative remedy which is available to the applicant by way of appeal, is the most effective and convenient, in other words, which of them will prove to be the most effective and convenient in all the circumstances, not merely for the applicant, but in the public interests. In exercising the discretion as to whether or not to grant relief, that is a major factor to be taken into account.' and 'What I am being asked to deal with is a matter which affects the conduct by Local Authorities throughout the country of their functions under the legislation."* (see page 63 of the judgment).

[48] Sir John Donaldson MR assessed the following statement of Purchas LJ in **R v Epping and Harlow General Comrs, ex p Goldstraw [1983] 3 All ER 257** at page 262:

> *'…it is a cardinal principle that, save in the most exceptional circumstances, [the judicial review] jurisdiction will not be exercised where other remedies were available and have not been used.'*

[49] The learned MR was of the view that the above statement, like other judicial pronouncements on the interrelationship between remedies by way of judicial review on the one hand and appeal procedures on the other, is not to be regarded or construed as absolute. It does not support the proposition that judicial review is not available where there is an alternative remedy by way of appeal. It asserts simply that the court, in the exercise of its discretion, will very rarely make this remedy available in these circumstances.

[50] In light of the cases reviewed, it is clear that the availability of an alternative remedy is not an absolute bar to the grant of judicial review, but a discretionary one. That is, despite the availability of the alternative remedy, the court will grant judicial review but only in exceptional circumstances such as where there is evidence of abuse of power, or where it is more effective and convenient than the alternative remedy, or where it is of public interest.

[51] In the instant application it is not denied that at the time of the filing of this application the alternative remedy was still available. This right to appeal to the Review Board is exercisable within 21 days after being notified of the authority's decision. However, that time has now expired. Admittedly, the Applicant has not in his affidavit clearly articulated why that remedy was not pursued. Nonetheless it is clear that the intention of the legislator was to subject the exercise of the discretion of the authority to review on the application of the party aggrieved.

[52] However, the immediate channel provided by Parliament is the Review Board. Had this application been heard prior to the expiration of the time provided for the appeal it could safely be argued that there is an alternative remedy. On that basis the court would be justified in exercising its discretion to refuse to hear this application.

[53] However, as it stands now, the right to appeal to the Review Board is statute barred. Therefore, it cannot now truly be said that there is an alternative remedy available to the Applicant. (This is in contrast to the circumstances that existed in the case of ***Monica Haughton v Personnel Committee of the Board of Management of Liberty Hill Primary School and others)***

[54] Additionally, in the case of in the case of **Regina v Guilford Borough Council** 2006 - 16 - EWHC 815, the court stated that:

> *"The test of whether an Applicant should be required to pursue an alternative remedy in preference to judicial review is the 'adequacy,' 'effectiveness' and 'suitability' of that alternative remedy. It was said*

> *that the test can be boiled down to whether 'the real issue to be determined can sensibly be determined' by the alternative procedure and in* ***R v Newham*** *LBC ex parte R 1995ELR 156 at paragraph 163 that it is whether the alternative statutory remedy will resolve the question at issue fully and directly". (see paragraph 90 of the judgment)*

[55] In light of the fact that, by the time of the hearing of this application, the alternative remedy is no longer available, due to a lapse of time, it is my view, and I so hold, that at this time there is no other adequate, effective, suitable alternative available to the Applicant. I therefore find that at this stage there is no discretionary bar to the grant of leave for this Application for Judicial Review.

Whether the Applicant has an Arguable Case

[56] Counsel for the Applicant has submitted that the FLA has acted unfairly in that it had not provided the Applicant with sufficient information for him to represent himself before the review board in an appeal process. However, Counsel for the Respondents has taken the position that there is no statutory duty on the part of the FLA to give detailed reasons for the revocation.

[57] In the case of ***Wiseman and Anor. v Boreman & Ors.*** [1969] 3 All ER 275, the court, at page 280, quoted Tucker LJ in ***Russell v Duke of Norfolk*** ([1949] 1 All ER 109 at p 118) who stated that:

> "*Whatever standard is adopted one essential is that the person concerned should have a reasonable opportunity of presenting his case.*"

[58] In the case of ***Regina v Huntingdon District Council, Ex Parte Cowan*** (supra) Glidewel J. at page 64 stated that:

> *"The exercising of a licencing function in my judgment by any authority is one to which the rules of natural justice (including the*

requirement of giving notice of the substance, at least of the objection and giving some opportunity for the Applicant to respond to those objections) would normally apply."

[59] It is evident, on an examination of the Firearms Act that the Act has made provision for and has laid out the procedure for the Applicant to be heard. It is also recognized that this is not at the stage of revocation but at the level of the appeal to the Review Board (see the case of ***Aston Reddie*** (supra)). I also take note of the fact that despite the Applicant's failure to exercise the right to be heard before the Review Board, he did seize the opportunity to write to the Authority (The FLA) outlining the circumstances of the charge from 1999 and the fact that he attended the Parish Court to have the matter resolved and that it was resolved in his favour.

[60] The law is also clear that the dismissal of the charge does not prevent the FLA from finding intemperate behaviour on the part of the Applicant. It is also clear that the fact that the licence was previously renewed does not give to rise to an automatic right of a subsequent renewal (see ***Aston Reddie*** supra). Therefore, the question at this juncture is, does this put the issue to rest.

[61] In addition to alleging that he was not given an opportunity to be heard, the Applicant also alleges that the Respondent acted unfairly in that he is "left in the dark" as he was not provided with the gist of the reason on which it was determined by the FLA that he is not "fit and proper" person.

[62] He also placed this in the context where he has, for some years, been the holder of a firearm and never had any infraction using the said firearm. The courts have stated one of the principles of fairness is legitimate expectation. This was discussed in the case of **Council of Civil Service Union v The Minister of Civil Service** [1984] 3 ALL ER 935. At page 949 Lord Diplock, highlighted one of the circumstances in which it will be held that a matter is susceptible to judicial review. This is:

> *"by depriving him of some benefit or advantage which, he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment…"*

[63] There is sufficient on the evidence for me to find that there is an arguable case in relation to fairness. In the circumstances of the case it is arguable that the Applicant having been granted his licence in 2015, and it having been renewed on two subsequent occasions, where the licence is being revoked under the principle of fairness there should have been communicated to him some rational ground for revoking the licence.

[64] In the ***Aston Reddie*** case (supra) a firearm licence was issued to the Applicant. Mr. Reddie in 2004. In 2008, it was alleged that he pulled his firearm and threatened to harm his wife. At the time of arrest, the licenced firearm and booklet were seized and a report made by the police to the FLA. As a result of that report, the FLA revoked his firearm licence. Charges were brought but were subsequently dismissed for want of prosecution. Mr. Reddie appealed to the Review Board of the FLA on the grounds that the decision was unfair as he was not given an opportunity to be heard. However, the board upheld the decision of the FLA.

[65] The Court considered ***Raymond Clough v Superintendent Grayson & AG 1989 26 JLR 292***, in which Mr. Clough's licence was revoked by the Superintendent in St. Andrew who was then the appropriate authority under the Act. He was provided with no reasons for the revocation even though he requested them, nor was he given an opportunity to be heard. He appealed to the then Minister but received no word as to the outcome of the appeal. He then brought proceedings for an order to quash the decision of the Superintendent. The matter went before the Full Court and it was found that function exercised by the appropriate authority under the Firearm Act was purely administrative and it did not require the Superintendent to hear the applicant or give any reason for the revocation of the licences. The

Superintendent was only required to give the reasons to the Minister if an appeal was received. As such, it was found that the Superintendent did not act unlawfully. On appeal, the Court of Appeal reaffirmed the decision of the Full Court that there was no duty on the Superintendent to conduct a hearing at that stage, or to provide reasons.

[66] In the Aston Reddie case, the Court said:

> *"it is now well settled on strong authority that the administrative actions of a decision-making body or person is just as susceptible to judicial review as judicial or quasi-judicial actions. The fundamental principle, is that there is a duty to act fairly whether the decision maker be exercising merely administrative functions or judicial/quasi-judicial functions. Failure to do so will render such decision amenable to judicial review."*

[67] McDonald-Bishop J stated at paragraph 40 that:

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

[68] At paragraph 43 she continues:

> "*the Authority acted within the express terms of the statutory authority bestowed upon it. It cannot be said to have failed to observe*

procedural rules that are expressly laid down in the Act governing its functions in revoking a licence."

[69] On the issue of fairness, she stated at paragraph 63 that:

> *"one more rule of procedural fairness is that the actions must be accompanied by reasons. It has been said by the courts as a general procedure of English common law that rules of natural justice are prerequisites to the procedure that all decision-making authorities ought to observe."*

[70] In ***Barl Naraysingh v Commissioner of Police 2003 PC 42 delivered April 20th 2004*** the Appellant's firearm was confiscated after several charges were laid against him including being in possession of an unlicensed firearm and ammunition. The charges were denied and were subsequently dismissed for want of prosecution. Nevertheless, the Police Commissioner (being the appropriate authority under the Act) revoked the licence. However, before doing so, he allowed the Appellant to put his account in writing, which he did through his solicitor. The Appellant challenged the decision saying that it was reached unfairly and without sufficient investigation into the charges alleged**.**

[71] In arriving at its decision the Privy Council considered the case of ***R v Secretary of State for the Home Secretary, ex parte Doody [1994] 1 AC 531, 560*** in which Lord Mustill, in dealing with the issue of fairness, stated:

> *"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 in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive 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 is 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 usually cannot make worthwhile 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."*

I find that this is of particular importance to the case at bar.

[72] In ***Naraysingh***, the Board acknowledged that there was no right of appeal in the Trinidadian legislation. The Board took into consideration the circumstances peculiar to the Appellant such as his age, good antecedent history, the nature of the charges against him and the adequacy of the investigations carried out. Their Lordships then concluded that the Commissioner acted unfairly, albeit the fact that they were carrying out an administrative act.

[73] Justice McDonald-Bishop in ***Reddie*** stated at paragraph 71 that from the ***Naraysingh*** decision it is abundantly clear that a purely administrative act can be struck down on the grounds of unfairness. She stated that it is important to determine whether the administrative power was exercised fairly within the large context from which the power was derived. i.e., as regard both the language of the act and the shape of the legal and administrative system within which the decision was taken. She however made the point that a right of appeal is provided in our Act. In that regard she stated that ***Naraysingh*** cannot be applied stock and barrel to the Jamaican case. She also made the observation that the court in ***Naraysingh*** took into consideration the good antecedents, the seriousness of the allegation made against him and the fact that there had been no hearing on the merits of the allegation.

[74] At paragraph 74 of the judgment in ***Reddie***, McDonald-Bishop J. expressed the view that convictions or acquittals in court are not conditions precedent for the Authority to act under the Firearms Act, as they have an independent right to assess the situation and come to a determination. At paragraph 75 she found that it cannot be said that the Authority did not have a *prima facie* case on which it could have *bona fide* acted

[75] However, in the instant case, it is my view that up to this point it is arguable that , the Court is unable to say that there is anything pointing to a prima facie case on which the Respondent acted. The Respondent has referred to “complaints about the Applicant’s repeated use of violence and the Applicant exuding certain intemperate habits. It further referenced that it caused investigations to be done

and based on the findings its decision was made. However, it is my view that it is arguable that this, without any further detail, is insufficient to point to a prima facie case.

[76] Further, my appreciation of the authorities is that up until 1989 there was the view that once the decision was administrative, the decision maker was not required to give reasons for its decision (see ***Raymond Clough v Superintendent Grayson & AG, supra)***. However, since that time the courts have gradually moved away from that position on the principle of fairness (see ***R v Secretary of State for the Home Secretary, ex parte Doody, supra); Barl Naraysingh v Commissioner of Police, supra)***.

[77] In fact, even where there is an express provision in a statute that a decision-maker is not required to give reasons, the court has nevertheless held that reasons should be given. In the case of **R v. Secretary of State for the Home Department, Exp. Fayed and Another** [1997] 1 All E.R. 228, the court was called upon to review a decision of the Home Secretary under the ***British Nationality Act 1981***. Section 44(2) of the Act provided that the Home Secretary is not "*required to assign any reason for the grant or refusal of any application"* under the Act. However, the court held that even where a provision of an Act expressly states that there is no requirement to give reasons, in order to be fair, where the decision involved the exercise of discretion, there is a requirement for the decision-maker to furnish sufficient information as to the subject matter of concern to enable the aggrieved party to make representations. This is also clearly with a view to prevent aberrant and irrational decisions***.***

[78] This modern position was recognized by McDonald-Bishop J. in ***Reddie.*** Therefore, despite the fact that there is an avenue for appeal within the scheme of The Act, and whereas the Applicant may not have been entitled to a hearing prior to proceeding before the Review Board, at which stage he would be entitled to the full details of the complaint, it is arguable that this does not preclude the FLA, on the principle of fairness, from providing the Applicant with the gist of the complaint

and investigation on which their decision was based. It is arguable that providing these reasons would have facilitated the appeal process. In fact, my understanding of Lord Mustill's reasoning in relation to making worthwhile representation, is that the information should be provided to him to allow him to exercise the option whether or not to appeal the decision.

[79] I am not ignoring the Judge's reason in the ***Aston Reddie*** case that there is no provision within the Act for the Applicant to be given full details of the reason. However, despite it not being specifically stated in the Act, the cases have indicated that all statutory powers are granted with the implicit assumption that decisions will be made fairly, and that persons that are affected will be permitted to hear the reason to decide whether they have the need to make representations at all.

[80] In the instant case I make the observation, against the background of Mr. Allen's evidence on which it appears that it was not simply the 1999 charge that resulted in the Applicant's firearm licence being revoked, but the subsequent complaint that the Applicant was exhibiting violent behaviour and that there is no indication that the Applicant was ever informed of this gist of this complaint.

[81] It is therefore my view that there is an arguable case that in the exercising its administrative function under the Act, the FLA did not act fairly in failing to provide the Applicant with a gist of the complaint, that is, the information on which they relied in making the decision to revoke his firearm licence. This is despite the fact that it may not have been necessary to provide him with all the details of the reasons prior to an application to the Review Board. Consequently, I find that the Applicant has satisfied the requirement for the grant of leave to apply for Judicial Review.

ORDERS

I. Leave is granted to the Applicant to apply for Judicial Review by way of an order of certiorari quashing the revocation order dated May 16, 2019, issued by the

Respondent to the Applicant purporting to revoke the Firearm Licence of the Applicant as not being a “fit and proper” person to retain a firearm licence;

II. The Claim is to be filed within 14 days of the date hereof;

III. The cost of this Application is to be cost in the proceedings for Judicial Review.