[2024] JMCA App 12

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO COA2022CVAPP00268

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA

BETWEEN	**DWIGHT EDWARDS**	**APPLICANT**
AND	**FIREARM LICENSING AUTHORITY**	**1ST RESPONDENT**
AND	**THE REVIEW BOARD**	**2ND RESPONDENT**
AND	**MINISTER OF NATIONAL SECURITY**	**3RD RESPONDENT**

Lemar Neale and Miss Chris-Ann Campbell instructed by Nea l Lex for the applicant

Miss Courtney Foster and Miss Judave Brown instructed by Courtney Foster and Associates for the 1st respondent

Miss Faith Hall instructed by the Director of State Proceedings for the 2nd and 3rd respondents

1, 4 May 2023 and 22 April 2024

Judicial Review - Application for leave to appeal against order of judge - Test to be met for leave to apply for judicial review - Whether there is an arguable ground of appeal with a realistic prospect of success - Discretionary bar – Delay - Whether judge erred in refusing to allow the amendment of an application for leave - Whether judge erred in refusing application for extension of time to apply for leave - Whether revocation of firearm licence breached any procedural requirements of the Firearms Act or any principles of natural justice - Firearms Act, 1967 sections 36(1)(b), 37(1)(a), 37A - Part 56 of Civil Procedure Rules - Court of Appeal Rules 1.8(7)

F WILLIAMS JA

Background

[1] The applicant, Mr Dwight Edwards ('Mr Edwards'), applied to the 1st respondent, the Firearm Licensing Authority, ('the Authority'), for a firearm user's licence in 2014 and was granted the licence for a Glock 9mm pistol. Subsequently, the Authority received information that, prior to applying for the licence, Mr Edwards had been charged and convicted overseas and, in seeking to verify that information, considered written submissions from him on or about 29 May 2019. On 12 August 2019, the Authority, pursuant to its powers under the Firearms Act, 1967 ('the Act'), as the body responsible for granting and revoking firearm licences, revoked Mr Edwards' licence. On 23 August 2019, Mr Edwards appealed to the 2nd respondent, the Review Board ('the Board'). The Board investigated the matter and submitted its findings and recommendations to the 3rd respondent, the Minister of National Security ('the Minister'), who upheld the Authority's decision. That decision was communicated to Mr Edwards by way of a letter from the Minister dated 22 March 2021, which Mr Edwards said he received on 4 May 2021. Further, Mr Edwards after he received the said letter, caused another attorney-at-Law to write to the Minister on 12 July, 2021 seeking confirmation of the matters contained in the said letter and requesting a review of the matter. This letter was answered by a second letter from the Minister dated 21 October 2023, (which Mr Edwards said he received on 7 November 2022) confirming the decision already communicated to Mr Edwards. Being dissatisfied with the Minister's decision, Mr Edwards filed an application for leave to apply for judicial review of the revocation process in the Supreme Court on 12 November 2021.

Further background

[2] Although it is the process that the respondents used that is the primary focus of this judgment, it is helpful to the presentation of a complete picture of what the Authority and Minister considered, to set out a bit more of the facts.

[3] It is convenient to start with what the applicant stated about his background in his affidavit sworn to on 12 November 2021. This is what he stated at paras. 8, 9 and 12:

> "8. I submitted my application to the 1st Respondent in or around 2014 upon my return to Jamaica from the United States. I went to the United States sometime in 1995 to study. Prior to my departure to the United States, I was a member of the Jamaica Constabulary Force. I worked in Special Branch as an undercover Police Officer between 1988 and 1995.
>
> 9. While residing overseas, I was convicted for being involved in credit card fraud and for being an alien in the United States. I was incarcerated for 5 years in the United States from 2008-2013; half of which was served for the credit card offence and the other half for having re-entered the United States. After I served my sentence, I was deported to Jamaica.
>
> …
>
> 12. …I went and met with a Sergeant Gordon. Mr. Gordon asked me if I was ever arrested or deported. I informed him that I was arrested and deported as well as I informed him of the circumstances surrounding same. He informed me that it was not on the form and should have been stated on it. I informed him that I was not aware that I had to state conviction in relation to offences overseas which did not have anything to do with firearm, ammunition or use of violence…"

[4] It is also useful to consider at this juncture, the affidavit of Mervin McNab (on behalf of the Authority), sworn to on 9 May 2023, in particular paras. 12 and 13, which treat with these matters:

> "12. During the course of its investigations and prior to the Revocation order being made, the Applicant provided a statement to the 1st Respondent (a copy of this statement is marked and exhibited hereto as "MM1"). This statement was given based on enquiries made of the Applicant during the 1st Respondent's investigation; therefore, the Applicant was aware of the matters under the 1st Respondent's consideration before the Revocation order was made by the 1st Respondent. The statement detailed that:

a) he was travelling in a motor vehicle in Canada, the police searched the vehicle and indicated that a firearm and crack cocaine were found in the vehicle. The occupants of the motor vehicle, including the Applicant, were arrested and charged but subsequently acquitted;

b) on at least three occasions he was arrested and charged in the United States of America for fraudulently using the credit cards of other individuals;

c) he was also arrested and charged in the United States of America for passport fraud;

d) he was convicted of Credit Card Fraud and sentenced to a period of imprisonment and was deported to Jamaica;

e) after his deportation to Jamaica, he entered the United States of America illegally;

f) he was arrested for illegal entry into the United States of America, Credit Card fraud and Identity theft; and

g) he was convicted of Credit Card Fraud, Identity Theft and Illegal Re-entry, sentenced to a period of imprisonment and was deported to Jamaica for a second time.

The 1st Respondent therefore provided the Applicant with an opportunity to be heard on the matters under its investigation.

13. At paragraph 9 of his affidavit in support of his Notice of Application for Court Orders filed in this Honourable court on November 12, 2021, the Applicant indicated that he was incarcerated in the United States of America for five years and after serving this period, he was deported to Jamaica. However, the Applicant failed to detail all of his police record (in the United States of America and Canada)."

[5] Mr Edward's application form was also before the respondents. It is exhibit MM2 to the said affidavit of Mervin McNab, as well as being found at other places in the bundle, such as, exhibit SP2, to the affidavit of Seymour Panton, sworn on behalf of the Review

Board, on 3 June 2022. Two questions and responses in the form would have been of particular significance to the respondents: (i) At Section E on the first page of the form, the question is asked: "Have you ever lived or worked abroad?" To this question, the applicant ticked a box, responding "No". Had he responded "yes", the form required further information, such as the periods of residence, names of organizations worked with and addresses. (ii) On page two, Section I, of the form, the following question is posed: "Have you ever been convicted of a criminal offence locally or abroad?" To this question, the applicant ticked the box, indicating "No". If the answer was "yes", the form required details of the conviction(s).

[6] Finally, at Section K of the form, the applicant signed the following attestation:

> "I attest to the truth of statements made and acknowledge that any statement given if found to be inaccurate or untrue militate against the grant of a Firearm Licence, Certificate or Permit. I declare my willingness to be fingerprinted and consent that such prints may be used to facilitate background security checks. I am aware that this application may be discarded should I fail to complete the interview process within 5 months after this application is submitted."

Application for judicial review

[7] The application for judicial review was heard on paper, and on 23 December 2021, it was refused by Daye J on the ground of delay. Mr Edwards renewed his application for leave. It was heard on 21 July 2022 by Carr J ('the learned judge') who, on 2 December 2022, also refused it. In her written judgment, reported as **Dwight Edwards v Firearm Licensing Authority, the Review Board and Minister of National Security** [2022] JMSC Civ 210, the learned judge made the following orders:

> "1. The application for an extension of time within which to apply for leave for judicial review is refused.
>
> 2. The application for leave to apply for judicial review is refused.
>
> 3. Each party is to bear their own costs."

The grounds of the application

[8] Displeased with these orders, Mr Edwards made an application in this court for leave to appeal against the orders of the learned judge made on 2 December 2022 on the basis that he had an arguable case with a real chance of success. In the notice of application for court orders, filed on 16 December 2022, Mr Edwards outlined five grounds on which he was seeking to have the court set aside the orders of the learned judge. The ones of most substance are those numbered 4 and 5; but they will all be set out verbatim for completeness. They are that:

> "1. Sections 10 and 11(1)(f) of the Judicature (Appellate Jurisdiction) Act empower the court to determine this application.
>
> 2. Rule 1.8(1) and (2) of the Court of Appeal Rules, 2002 (as amended) (the 'CAR') provides that where leave to appeal is required and can be made in either court, the application must first be made to the court below.
>
> 3. The application for leave to appeal was made in the court below on December 2, 2022 and was refused.
>
> 4. Pursuant to Rule 1.8(7) of the CAR, the Applicant's appeal will have a real chance of success based on the following grounds:
>
> > (i) The learned judge erred as a matter of fact and/or law and/or wrongly exercised her discretion when she refused to allow the Applicant to amend his application for leave to apply for judicial review.
> >
> > (ii) The learned judge erred in law and/or wrongly exercised her discretion when she failed to extend the time for the Applicant to apply for leave for judicial review of the respective decisions and recommendations of the Respondents.
> >
> > (iii) The learned judge erred as a matter of fact and/or law and/or wrongly exercised her discretion when she refused to grant the Applicant leave to apply for judicial review in the circumstances where the Applicant has

> arguable grounds for judicial review with a realistic prospect of success.
>
> 5. The granting of permission to appeal will be in keeping with the overriding objectives of the court and the efficient administration of justice."

[9] This application came on for hearing on 1 May 2023, and this court, on 4 May 2023, made the following orders:

> "1. The applicant's application for leave to appeal against the order of the Honourable Mrs. Justice Carr made on 2 December 2022, is refused.
>
> 2. Costs to the respondents to be agreed or taxed."

[10] We indicated then that we would have provided our reasons for the making of those orders in writing. This judgment is a fulfilment of that promise.

Issue

[11] We have considered the submissions from all counsel involved, but, for the purpose of the judgment, we will summarize only what is directly relevant to the issues that have been identified.

[12] The main issue for determination in this application is:

Whether the learned judge erred when she refused to grant Mr Edwards' application for leave to apply for judicial review of the Authority's decision to revoke his firearm licence. This issue turns on the sub-issues of:

I. Whether Mr Edwards had arguable grounds for judicial review with a real prospect of succeeding against the respondents in respect of the revocation of his firearm user's licence.

II. Whether the Authority's decision to revoke Mr Edwards' firearm licence breached any procedural requirements of the Act or any principles of natural justice.

III. Whether the learned judge wrongly exercised her discretion when she refused Mr Edwards' application for an extension of time to apply for judicial review and refused to allow him to amend the said application for leave to apply for judicial review.

The court's approach

[13] The usual approach would be to summarize the submissions in relation to the relevant issues/questions that have been identified in the order in which they are outlined. However, in the determination of the overriding issue, the court will consider together the questions of whether Mr Edwards has arguable grounds of appeal with a real prospect of success and whether the Authority's decision to revoke his firearm licence breached any procedural requirements. The rationale for this is that the latter question could have a bearing on Mr Edwards' prospect of success.

Sub-issues: Whether Mr Edwards had arguable grounds for judicial review with a real prospect of succeeding against the respondents in respect of the revocation of his firearm user's licence.

Whether the Authority's decision to revoke Mr Edwards' firearm licence breached any procedural requirements of the Act or any principles of natural justice.

Summary of submissions

For Mr Edwards

[14] The crux of Mr Edwards' case was that he had arguable grounds for judicial review with a realistic prospect of success. Mr Neale, on his behalf, referred to rule 56.3 of the Civil Procedure Rules ('CPR'), which empowers the court to grant applications for leave to apply for judicial review. Counsel also cited **Attorney General of Trinidad and Tobago v Ayers-Caesar** [2019] UKPC 44, to emphasize his submission that the threshold test for the grant of leave is a low one.

[15] In counsel's submission, he emphasized that Mr Edwards made his original application on the ground that the respondents breached principles of natural justice and

procedural fairness when they failed to give "any" or "adequate" reasons for their decision. Counsel cited the case of **Robert Ivey v Firearm Licensing Authority & Others** [2021] JMCA App 26 (`**Robert Ivey**`) and submitted that the Board and the Minister ought to have provided Mr Edwards with the reasons for their decision to enable him to make a worthwhile representation for the revocation to be reversed. Mr Neale also contended that the Board was procedurally unfair because the applicant was not aware of the information provided by the Authority to the Board for the hearing. He also submitted that the Minister acted on the recommendation of the Board and did not provide the applicant with the reason for upholding the Board's decision. He also cited the case of **Fenton Denny v The Firearm Licensing Authority** [2020] JMSC Civ 97 to submit that the modern approach is for the Authority to give reasons for its decision.

[16] Further, counsel contended that Mr Edwards, in his amended application, sought an additional declaration against the Board that it had committed a breach of his constitutional right to a fair hearing within a reasonable time by an independent and impartial tribunal established by law. Mr Neale also submitted that, based on the terms of the Act, the Board acted *ultra vires* when it heard the application and made recommendations to the Minister outside of the statutory period limited for doing so. Counsel also referred to section 37A of the Act and submitted that, by virtue of its mandatory language, Parliament intended that the Board cease to have jurisdiction once its decision was given and that any other interpretation would be an absurdity. It was on these bases that counsel contended that Mr Edwards had established more than arguable grounds for judicial review with a real prospect of success.

For the Authority

[17] In response, on the point of arguable grounds for judicial review with a real prospect of succeeding against the respondents, Miss Foster cited the case of **The Attorney General of Jamaica v John MacKay** [2021] JMCA App 1. This case was cited as a basis for submitting that, in making a determination on this matter, this court can only intervene in cases in which an applicant satisfies it that there was a

misunderstanding by the judge of the law or evidence, or the judge made an inference that particular facts existed where they did not exist, or the judge was demonstrably wrong, or the judge's decision was so aberrant that no judge regardful of their duty would have reached it. Thus, counsel submitted that, in order to obtain leave, Mr Edwards had to show that he had a strong chance of succeeding on the appeal.

[18] On the point of whether there was a breach of any procedural requirements of the Act or principles of natural justice, Miss Foster cited the case of **Kevin Bertram v Firearm Licensing Authority** [2022] JMCA App 22. She contended that, in that case, this court found that there was no breach of natural justice or breach of the legislation by the manner in which the decision to revoke the firearm licence was made. Counsel also submitted that that case has circumstances similar to the instant appeal, in particular, because, like the applicant in that case, Mr Edwards failed to disclose pertinent information to the Authority that any firearm licensing body would naturally need to consider in determining whether to renew a firearm user's licence. She also emphasized that Mr Edwards was not denied natural justice as he was given an opportunity to be heard before his licence was revoked.

For the Board and the Minister

[19] In response, on the point of arguable grounds for judicial review with a real prospect of succeeding against the respondents, Miss Hall, on behalf of the Board and Minister, cited the Privy Council case of **Sharma v Brown-Antoine and others** [2007] 1 WLR 780 ('**Sharma v Brown-Antoine**'). That case, she submitted, outlines the test to be applied when determining applications for leave to apply for judicial review. Upon the authority of that case, she submitted that the court must refuse leave where (as in this case) it is evident that an applicant's case has no realistic prospect of success or where the complaints against a decision are inconsequential or tenuous at best. She also referred to rule 1.8(7) of the Court of Appeal Rules ('the CAR') to reinforce her submission that the application for permission to appeal should only be granted if there was a real chance of success. Miss Hall also cited **Swain v Hillman** [2001] 1 ALL ER 91 to illustrate

that the phrase "real chance of success" in the rules has the same meaning as "real prospect of succeeding". Counsel contended that, in order to determine whether Mr Edwards' appeal had a realistic prospect of success, the court would have to consider, to some extent, the merits of the appeal. In other words, Mr Edwards would have to show that the learned judge applied a wrong principle of law or took the wrong approach in arriving at her conclusion.

[20] Miss Hall also argued that the contents of the renewed application before the learned judge made it clear that Mr Edwards did not meet the threshold test for the granting of leave due to his failure to satisfy the court that he had an arguable ground for judicial review with a real prospect of success.

[21] In relation to the Board, on the same point of arguable grounds for judicial review with a real prospect of succeeding against the respondents, counsel submitted that the Board is not a decision maker under the Act. She argued that the law establishes that only decisions made by a decision maker are subject to the supervisory jurisdiction of the Supreme Court of Judicature of Jamaica. Counsel submitted that, by the terms of the Act, the Board only reports to the Minister, who is the decision maker, hence, the letter from the Board to the Minister does not constitute a decision. She contended that the Board is an investigatory body tasked with conducting investigations for the Minister. It was on this basis that counsel submitted that the Board's recommendation was not amenable to judicial review, and so Mr Edwards had neither arguable grounds nor a realistic chance of success against the Board.

[22] In relation to the Minister, Miss Hall referred to section 37A of the Act, which, she argued, provides the Minister with a discretionary power governed by a conditional duty. She submitted that the Minister's power gave him two options, which were either: (i) to consider the report and recommendation of the Board and make a determination on the matter, then give the Authority his directions; or, as he chose, (ii) to hear the matter, make a determination and give the Authority his directions. Counsel contended that the Minister's discretion under section 37A of the Act allows him to decide how he wants to

proceed. Therefore, he cannot be faulted for having considered the relevant material that came from the Board's investigations as well as the submissions made on behalf of Mr Edwards and thereafter giving his decision, rather than himself hearing the matter *de novo*. Counsel submitted that the Minister fulfilled his duties by exercising his power in a manner consistent with the Act, thus, the Minister did not act *ultra vires* the Act, and his decision was not illegal.

[23] Miss Hall further submitted that the learned judge applied the correct principles of law to the issues before her and rightly exercised her discretion in refusing the application for leave to apply for judicial review. Therefore, she submitted, there was no merit to the proposed appeal, hence, this court should not grant leave to appeal, the application having no real chance of success.

[24] On the point of whether there was a breach of any procedural requirements of the Act or principles of natural justice, Miss Hall argued that the Board is not required by the Act to communicate with persons who appeal the Authority's decision to revoke a firearm user's licence. Therefore, the duty to give reasons does not arise with respect to the Board.

[25] In response on behalf of the Minister, counsel submitted that, on the facts of this case, neither the proceedings nor the recommendation of the Board is amenable to judicial review. In support of this submission, she emphasized that, based on all the information furnished to the Minister and the process that was adopted, it was clear that Mr Edwards was afforded a fair hearing, without any personal bias against him having arisen. Further, it was within the Minister's discretion to agree with the findings of the Authority and the Board's recommendation after considering Mr Edwards' appeal. Also, in response to Mr Edwards' complaint that he was not given a reason for the revocation, counsel submitted that a reason was, in fact, given, as the Minister stated that Mr Edwards' licence was revoked because he was no longer considered fit and proper to hold a firearm licence.

Analysis

Judicial Review

[26] In **Sharma v Brown-Antoine**, Lord Bingham and Lord Walker outlined the applicable governing principles in considering whether to grant an application for leave to apply for judicial review at para. 14(4) as follows:

> "14 (4) The ordinary rule now is that the court will refuse leave to claim 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: R v Legal Aid Board, ex parte Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application." (Emphasis added)

[27] **Sharma v Brown-Antoine** makes it clear that the court will only grant leave to apply for judicial review if there are arguable grounds with a realistic prospect of success and there is no discretionary bar such as delay. We will first explore whether Mr Edwards demonstrated that he had an arguable ground for judicial review with a realistic prospect of success.

Realistic prospect of success

[28] The case of **Robert Ivey** is a helpful case from this court that explains when it is appropriate for the court to grant an application for leave to apply for judicial review. In that case, Brooks P (referring to dicta of Carey JA, in another case) stated, at para. [23], as follows:

> "Carey JA, in **Raymond Clough v Superintendent Greyson and Another**, also spoke to the pre-condition of a demonstration of an inadequacy in the statutory procedure, before the court would intervene. He said, in part, at page 297B:

> '…If the Court is to intervene [by way of judicial review], 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….'"

[29] The case of **Robert Ivey** makes it clear that, in order to have succeeded in his application for leave to apply for judicial review, Mr Edwards would have had to provide the learned judge with evidence that the procedure outlined in the Act and adopted by the respondents was insufficient to allow justice to be served.

[30] In order to determine whether there was any merit to the complaint that the respondents breached any procedural requirements of the Act, we must first look at the relevant sections of the Act. It is convenient to start with section 37(1)(a). That section provides that:

> "An 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."

[31] In addition, section 37(A) outlines the process that ought to be followed when an application for a review is made. It states:

> "(1) For the purpose of review under section 37, there is hereby established a Review Board consisting of persons appointed by the Minister in accordance with the Fourth Schedule.
>
> (2) The Review Board appointed under subsection (1) shall within ninety days of receiving an application for review-
>
> > (a) hear, receive and examine the evidence in the matter under review; and
> >
> > (b) submit to the Minister, for his determination, a written report of its findings and recommendations.
>
> (3) The Minister upon receipt and consideration of the reports of the Review Board shall give the Authority such directions as the Minister may think fit.

> (4) Where the review Board fails to comply with subsection (2), the Minister may hear and determine the matter under review."

[32] Section 37(1)(a) of the Act gives Mr Edwards the right to apply to the Board for a review of the Authority's decision, while section 37A outlines the procedure that the Board and the Minister ought to have followed.

[33] Against this background, the following question arises: Is there, in the circumstances of this case, enough for Mr Edwards to successfully contend that the Authority, the Board and/or the Minister erred in the approach that they took, and that the learned judge, in turn, erred in the approach that she took in the court below? Or, put another way: has Mr Edwards satisfied the threshold test set out in the case **of Sharma v Brown-Antoine**? A review of some of the seminal authorities is necessary for a thorough examination of these questions. In the case of **Council of Civil Service Unions and Others v Minister for the Civil Service** [1985] AC 374 ('**CCSU v Minister**'), Lord Diplock, at page 410, outlined the three now-trite categories or grounds on the basis of which administrative action will be amenable to judicial review, when he said:

> "Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third "procedural impropriety."

[34] Lord Diplock went on to explain all the categories and, in particular, explained "irrationality" and "procedural impropriety" thus:

> "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."
>
> …
>
> "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."

[35] From a perusal of the statutory provisions, it is apparent that the Act outlines a detailed procedure to be followed to ensure that persons aggrieved by the Authority's decision have an adequate means of seeking a remedy. Also apparent is the fact that the respondents complied with the procedures laid down in the Act.

[36] There can be no doubt, for example, that the Authority provided the applicant with an opportunity to be heard on the matters under its investigation before the revocation order was issued. Neither can there be any doubt that the Board carried out its mandate under section 37A, submitting its report and recommendations to the Minister for his consideration. Even if, as Mr Neale contended, the Board fulfilled its remit outside of the 90 days stipulated by the Minister, that would not be the end of the matter, as there are considerations other than the time limit. For instance, Mr Edwards could have appealed directly to the Minister, if the Board exceeded the 90-day limit..

[37] We accepted the submission that the Board is not a decision-making body. Its role is investigatory. Hence, it made no decision in this case which would be amenable to judicial review. We would not wish to speculate as to whether dilatoriness in submitting its findings to the Minister might, in some cases, warrant an application against the Board for mandamus to compel it to perform its duty. That was not done in this case, and we

make no definitive pronouncement on that possibility. In fact, the drafters of the Act might be regarded as having foreseen possible dilatoriness on the part of the Board and to have addressed that by providing that, in such a case, a person aggrieved by a decision of the Authority might approach the Minister directly (see section 37A (4) of the Act).

[38] Similarly, from our review of all that transpired, the Minister did what was required of him by section 37A and Mr Edwards has not demonstrated otherwise.

[39] In relation to the arguments concerning the point that no reasons at all or no adequate reasons were provided to Mr Edwards, we note that the Authority was not required to provide him with any reasons; however, it still did. In **Robert Ivey**, Brooks P, writing on behalf of the court, after a comprehensive review of several authorities, opined, at para. [41] as follows:

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

[40] Although not obliged to give reasons, the Authority did so by informing Mr Edwards that he was no longer considered "a fit and proper person" to continue to be entrusted with a firearm user's licence. Those reasons were not given in a vacuum. In circumstances in which the Authority conducted a hearing focused on Mr Edwards' criminal history and non-disclosure of important relevant information (although it was not required to conduct such a hearing), the reason for the revocation could not genuinely have been unknown to him, despite his complaint of the inadequacy of the reason. From a careful review of the matter in its entirety, it is apparent that the respondents were aware of, were entitled to (and did) consider all the evidence in the case in revoking and confirming the revocation of Mr Edward's firearm licence.

[41] It may also be instructive, at this juncture, to consider how the learned judge treated with the application for leave to apply for judicial review. In her written judgment, the learned judge at paras. [27] to [32] said:

> "[27] It is not for this court to go into the merits of the matter. The requirement is to see whether the applicant has arguable grounds for judicial review with a realistic prospect of success. The grounds as set out by Mr. Neale are mired in the principles of natural justice.
>
> [28] In this case, the applicant, had his matter heard before the Review Board as per the statute. The evidence contained in the Affidavit of Seymour Panton indicates that he was given the opportunity to make written submissions to the Board and those submissions were exhibited. Counsel argued that because the applicant was not aware of the reason that he was found to be unfit to hold a licence, that this deprived him of an opportunity to make fulsome submissions to the Board.
>
> [29] The Court of Appeal in the case of Robert Ivey v. Firearm Licensing Authority set out the present statutory framework under the Firearms Act. The President, Brooks, JA in delivering the judgment also confirmed that the Authority is not obliged to give reasons for its decision to the licence holder. Nevertheless, in this case, a reason was given. The applicant was told that he was no longer a fit and proper person to hold a firearm licence.
>
> [30] I do not accept that the applicant was at a disadvantage as a result of the failure to set out exactly why he was considered no longer fit and proper. The evidence contained in paragraphs 15 – 19 of his Affidavit suggests that he was aware of the various complaints made to the Authority and he responded to them in his submissions to the Board. He was also aware that he had failed to include in his application his prior convictions. The Authority having given a reason cannot be faulted in this instance.
>
> [31] I agree with Ms. White that the Review Board was not the decision maker in this case. The decision having been made by the Authority. The role of the Review Board is specifically set out in the Firearms Act and makes it clear that they are to provide the Minister with their findings. The

> decision of the Minister is final and cannot be appealed. The sole recourse open to the applicant was by way of judicial review of the decision of the Authority and the Minister.
>
> [32] Given the information which was before the Authority I find that there was ample basis upon which they could find that the applicant was not fit and proper. I do not find that the applicant has demonstrated that they acted unreasonably or irrationally."

[42] Having reviewed the matter in its entirety, this court formed the view that, in the circumstances of this case, the procedure outlined in the Act and the procedure followed by the respondents were more than sufficient to ensure that justice was served. Also, having considered the learned judge's written judgment in the court below, there was no rational basis for this court to have concluded that she fell into error in any material respect; or that there was any sound basis on which to grant leave for Mr Edwards to seek to overturn the respondents' decision.

[43] It is important to emphasize that an application for judicial review should not (and cannot successfully) be brought simply because an applicant is dissatisfied with the decision of an authority. There has to be more. Applications for judicial review should only be brought when an applicant is able to satisfactorily demonstrate that there was something wrong with the decision-making process, for example, the proper procedure laid down in an Act or subsidiary legislation was not followed in the making of the decision; or on one of the other bases set out in the case of **CCSU v Minister**. In this case, it is clear that Mr Edwards, although dissatisfied that his firearm licence was revoked, did not provide the learned judge with any or any sufficient evidence that the respondents acted *ultra vires*, improperly or otherwise irregularly, in arriving at the decision to revoke his licence.

[44] This conclusion is, in our view, sufficient to dispose of the application. However, it may still be worthwhile to give brief consideration to the other basis of the application.

Delay

[45] The court will now consider the discretionary bar of delay and its effect on Mr Edwards' application for leave to apply for judicial review. Rule 56.6(1) and (2) of the CPR outlines the period for making an application for judicial review. It provides that:

> "(1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose.
>
> (2) However the court may extend the time if good reason for doing so is shown."

[46] The abovementioned rule makes it clear that applications for leave to apply for judicial review are time-sensitive and must be made promptly, with three months as the outer limit. Thus, it would be to an applicant's advantage to file it within three months. Based on the wording of the rule, it is entirely possible that a court could properly find that an application, although made within three months of a decision, was not promptly made, based on all the circumstances surrounding the application. Therefore, it is best for the person aggrieved by a decision to make an application as soon as is possible.

[47] In **Raymond v The Principal Ruel Reid and Anor** [2015] JMCA Civ 59, this court, at para. [32], opined that: "…time begins to run from when the grounds for the application first arose". Also, in the case of **O'Reilly v Mackman** [1983] 2 AC 237 at 282, Lord Diplock said:

> "…as soon as the application for leave had been made it provided a very speedy means, available in urgent cases within a matter of days rather than months, for determining whether a disputed decision was valid in law or not."

[48] The abovementioned authorities clearly emphasize the importance of making a prompt application for leave to apply for judicial review; and, if the application is granted, the need for a prompt application for judicial review itself. It was meant to be a speedy remedy, and the time limits imposed by the CPR support that view. In the instant appeal, Mr Edwards' firearm licence was finally revoked on 4 May 2021, yet he did not file the

notice of application for court orders in which he sought leave to apply for judicial review until 12 November 2021 – that is, some six months after. That passage of time considerably exceeded the time period allotted in the CPR. The delay since the exhaustion of the appeal process in this case was obvious. As a result, Mr Neale could not help but concede in his submissions in this court, as he did in the court below, that Mr Edwards did, in fact, delay in making the application for leave to apply for judicial review.

[49] Since there is no denying that Mr Edwards delayed in filing his application, the next logical step, based on rule 56.6(2), is to determine whether Mr Edwards established that he had good reason for his delay of some six months (between the Minister's decision on 4 May 2021 and the filing of the application for leave to apply for judicial review on 12 November 2021) and whether the learned judge erred in refusing his application.

[50] On the point of delay, the learned judge found that Mr Edwards merely explained the actions he took after receiving the revocation order, but he failed to explain the reason for his delay of six months between receiving the Minister's second letter and filing an application in the Supreme Court. Furthermore, the learned judge found that stating that he was awaiting the response from the Minister to his second enquiry, as a means of exhausting all other remedies available to him before filing the application, was not a good reason for the delay. Based on the facts before her, the learned judge was entitled to so find. At one point, counsel asserted that there was good reason for Mr Edwards' delay. However, in oral submissions, he later conceded that the procedure adopted by his client was erroneous, in that, once the Authority communicated the Minister's decision to Mr Edwards, there was no need for further clarification from the Minister, which, in this case, Mr Edwards sought, contributing to the delay. On the facts of this case, we found these concessions by Mr Neale to have been appropriate.

[51] Also important to this discussion is rule 56.6(5) of the CPR. That rule outlines the considerations the learned judge was required to bear in mind when determining whether to grant or refuse leave. Rule 56.6(5) provides that:

> "When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –
>
> (a) cause substantial hardship to or substantially prejudice the rights of any person; or
>
> (b) be detrimental to good administration"

[52] A careful review of the judgment from the court below makes it clear that the learned judge considered rule 56.6 (5) in arriving at her decision. At para. [20] the learned judge said:

> "The CPR outlines at Rule 56 (6) (2) that the court may extend the time to make an application for judicial review if good reason for doing so is shown. The court is therefore required to determine whether there is a good reason to extend time. The authorities suggest that in making such a decision consideration must be given to these issues (a) whether or not there is a good reason for the delay, (b) whether the applicant has an arguable case and, (c) as per CPR rule 56.6 (5):
>
> > a) whether the granting of leave would be likely to cause substantial hardship to or substantially prejudice the rights of any person; or
> >
> > b) be detrimental to good administration."

[53] Her conclusion, after that review, is found at paras. [23] and [37], where she stated as follows:

> "[23] Counsel has focused on the applicant's decision to pursue all other remedies open to him as the reason for the delay in filing the application. That however will only explain what occurred between the date the applicant was advised of the Authority's decision and the date of the conclusion of the proceedings before the Review Board. It does not explain the delay thereafter. In fact, there is no explanation proffered by the applicant which accounts for the seven months between the decision of the Minister and the date of the filing of the application before this court. I do not find that the need to verify the Minister's decision by way of a letter is sufficient.

> The Review Board is the final point of redress before making an application to the court. Having exhausted that remedy, it was incumbent on the applicant to move quickly to make his application for judicial review."
>
> "[37] While there is no hardship to the respondents, it can be said that a failure to rely on a decision making body is detrimental to good administration. The Authority, based on the information presented, revoked the licence of the applicant. The persons who made complaints in relation to him are expecting that the decision is final. They are relying on that decision and disturbing it would affect them, as well as, the public's perception of the soundness of the decision maker. An order by a court to reopen the matter will negatively affect the ability of the Authority to properly govern and make decisions."

[54] There is one respect in which, at para. [23] of the judgment, the learned judge made an error. That is in her statement that the Review Board is the "final point of redress before making an application to the court." The final point of redress is in fact the Minister. This is confirmed by a reading of the Act itself, section 37A(3) of which states as follows:

> "37A(3) The Minister upon receipt and consideration of the reports of the Review Board shall give the Authority such directions as the Minister may think fit."

A close reading of **Robert Ivey** (in particular at para. [35] e), also confirms this.

[55] That error aside, paras. [23] and [37] of the judgment show the reasoned approach taken by the learned judge in arriving at her conclusion. In light of the clear reasoning reflected in these paragraphs, it is apparent that the learned judge gave due consideration to such matters as were relevant and that the applicant's point on this aspect of the matter has not been made out.

[56] We may also consider whether the applicant was correct in his contention or explanation of seeking to justify his delay by his desire to exhaust alternative remedies before making his application.

[57] The short answer to this is that, he was. That this is so can be seen in para. [57] of **Robert Ivey**, in which several authorities were considered and Brooks P opined as follows:

> "[57] In some of the decided cases cited by learned counsel, there are some very strong statements, which support the principle that, except in exceptional circumstances, where there is an alternative remedy available to the person aggrieved, the court will not normally grant that person leave to apply for judicial review. This principle is especially applicable if the alternative is provided by statute. Among the reasons given for supporting the principle are:
>
> > (a) unless a strict approach is used, the grant of leave to apply for judicial review, would risk undermining the will of the legislature as to its preferred approach (see **R (on the application of Christopher Wilford) v Financial Services Authority** [2013] EWCA Civ 677 (**'R v FSA'**) at paragraph 23);
> >
> > (b) unlike judicial review, the statutory remedy does not require leave and so may be swifter than the procedure involved in applying for judicial review (see **R v Birmingham City Council, ex parte Ferrero Ltd** [1993] 1 All ER 530 (**'Ferrero'**) at page 537); and
> >
> > (c) judicial review simply returns the parties to their original positions and does not decide the real issue (see **R v FSA** at paragraph 36)." (Emphasis added)

[58] In **Robert Ivey**, it was also found that no special circumstances existed to take that application out of the general rule. Neither do any such special circumstances exist in this application.

[59] **Mr Edwards'** efforts at explaining his delay and his reason for the delay were considered by the learned judge (see, for example, paras. [18] to [23] of the judgment) and rejected. The learned judge's main finding, having considered the submissions, are to be found at para. [23] of the judgment, set out above at para. [53] of this judgment.

[60] A consideration of the learned judge's reasoning on this issue disclosed to us no significant error on her part that would have warranted this court's intervention. Based on the foregoing discussion, Mr Edwards has failed to convince us that he had an arguable ground with a realistic prospect of succeeding.

Whether the learned judge wrongly exercised her discretion when she refused Mr Edwards' application for extension of time to apply for judicial review and refused to allow him to amend said application for leave to apply for judicial review.

[61] Due to this court's treatment of the questions on arguable grounds for judicial review with a real prospect of success and whether the Authority's decision breached any procedural requirements of the Act or any principles of natural justice, it is not necessary to address this question on the learned judge's refusal to allow the application for extension of time and the amendment. It is also important to note that, even if this court found that the learned judge erred when she refused Mr Edwards' application for an extension of time and refused to allow his application for amendment, the outcome would have been the same. This is because the application turned primarily (if not solely) on whether Mr Edwards had arguable grounds with a realistic prospect of succeeding in his claim for judicial review of the respondents' decision to revoke his firearm user's licence.

Conclusion

[62] Having resolved the questions in the manner demonstrated previously, it is clear that Mr Edwards neither had "an arguable ground for judicial review" nor any ground with "a realistic prospect of success". Therefore, we entertained no doubt in finding that the learned judge properly exercised her discretion when she refused to grant Mr Edwards' application for leave to apply for judicial review, the application for the amendment and the application for extension of time. It was for the foregoing reasons that we made the orders that are reflected at para. [9] of this judgment.