[2021] JMSC Civ.154

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO.SU 2021 CV 00471

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

IN CHAMBERS (VIA ZOOM)

Mr John Clarke Attorney-at-law for the Applicant

Ms Courtney Foster instructed by Courtney N Foster and Associates Attorneys-at-law for the 1st Respondent

Ms Shaniel Hunter instructed by the Director of State Proceedings Attorney-at-law for the 3rd Respondent

Heard: JULY 8, 2021 AND JULY 30, 2021

Civil Procedure: Application for leave for Judicial Review – Sections 13(2) and 16(2) of the Constitution of Jamaica – Sections 29 and 37A of the Firearm Licensing Act – CPR 56.3 – 56.6 and 56.15.

T. MOTT TULLOCH-REID, J (AG)

BACKGROUND

[1] This application for leave for judicial review concerns an application made by Mr Kevin Bertram in 2018 for a firearm licence. Mr Bertram's application was not successful. He embarked on the process of review as set out by the Firearms Act and appealed the decision of the Firearm Licensing Authority ("FLA") to the Review Board who refused his appeal and then to the Minister of Security who upheld the decision of the Review Board. The entire review process took in excess of 2 years which resulted in Mr Bertram coming late to this court for his application for leave for judicial review to be heard.

Application to extend time to apply for leave to apply for judicial review

[2] CPR 56.6 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) The Court* may extend the time if good reason for doing so is shown.*"*

The Applicant seeks an order from the Court extending the time within which he is to make the application to apply for leave for judicial review. The FLA's decision is contained in a letter addressed to the Applicant dated March 11, 2019, which appears to have been received by him on March 21, 2019. Exhibit PB 5 is a copy of the said letter with Mr Bertram's signature written thereon. Mr Bertram has not in any of his affidavits denied that the signature is his.

[3] Having received that letter from the FLA, Mr Bertram, pursuant to CPR 56.6(1) was required to apply for leave to apply for judicial review within three months of March 19, 2019. He did not. Instead, he pursued the review process made available to him under sections 37(1)(a) and 37A of the Firearms Act. The Review Board's decision was forwarded to the Minister of National Security, the Honourable Dr Horace Chang, CD MP in a letter dated December 3, 2020 and Minister's decision

was forwarded to the Chief Executive Officer of the FLA, Mr Shane Dalling JP in a letter dated December 20, 2020. Mr Dalling then informed Mr Bertram of Minister Chang's decision in a letter dated December 29, 2020. The process of review took approximately one year which means that Mr Bertram's application to this Court for leave to apply for judicial review would have been unavoidably late.

[4] Both Ms Foster and Ms Hunter argue that the application is out of time and should not be heard. In fact, Ms Foster goes as far as to say that the Applicant ought to have come to the court when the FLA had first handed down its decision and asked for a stay of those proceedings until the issue was fully ventilated by the Review Board and Minister. Where other remedies are available to an applicant who is dissatisfied with the decision of a decision maker, the application for leave will not usually be permitted (see generally CPR 56.3(3)(d)). In circumstances where Mr Bertram sought to utilise all the remedies available to him under the Firearms Act, and the time slipped away through no fault of his, I can see no reason not to extend the time within which he should be allowed to make this application.as to do otherwise would be detrimental to good administration (see CPR 56.6(5)(b)).

The Applicant's case

[5] The Applicant relies on his Affidavit filed on March 8, 2021 and his Supplemental Affidavit filed on April 28, 2021 which were both filed in support of his application for leave for judicial review. Mr Bertram's issue with the Respondents is that he was never advised by any of the respondents of:

a. *The date of their decision*
b. *The reason for their decision*
c. *Any cogent reason(s) for believing he was unfit to hold a firearm/ammunition*
d. *The documents or information or (any other basis) considered by them to deny his 'application for appeal' (or his application for a firearms licence)*

(see paragraph 4 of Affidavit filed on March 8, 2021).

[6] I must say that his evidence is not very clear as at paragraph 7 of the March 8, 2021 affidavit, he seems to limit his complaint to the 3rd Respondent but then in subsequent paragraphs he refers in to all three Respondents generally. It cannot be that Mr Bertram is saying that he was deprived of his constitutional right to a fair hearing when there is unrefuted evidence from Mr Paul Bailey in his Affidavit filed on May 25, 2021 that the Review Board *"received representations from Mr John Clarke, attorney-at-law*". This is Exhibit PB-6 referred to above. I can see no reason why the Honourable Mr Justice Seymour Panton OJ CD, retired President of the Court of Appeal, would say that the Board on which he sat received representations from Mr Clarke, if it were not so. In fact, Mr Bertram's own evidence (discussed in detail below at paragraph 9) is that his attorney participated in proceedings at the Review Board hearing.

[7] I also note that at paragraph 3 of Mr Bertram's March 8, 2021 affidavit he says that he did not personally receive… *any letter from any of the Respondents in relation to the denial of [his] application for a firearm user's license [sic]".* This cannot be entirely true when Exhibit PB 5 has his signature endorsed thereon as accepting the letter from the FLA. He has not denied that it is his signature so I can only conclude that it is his. I also note that on January 15, 2021 at 3:26pm Mr Clarke's admit stamp is stamped on the copy letter informing Mr Bertram of Minister Chang's decision. If Mr Clarke is Mr Bertram's counsel and the letter was sent to Mr Clarke I can see no reason for it to be personally delivered to Mr Bertram especially when the Act does not stipulate that it must be personally served on the applicant. I believe that when the letter was delivered to Mr Clarke then Mr Clarke as Mr Bertram's attorney would bring it to his attention and that would have been sufficient notice to Mr Bertram of Minister Chang's decision. It is also important to note that the statute does not mandate the Minister giving reasons to the applicant. The Minister is to give directions to the FLA when he comes to his conclusion (section 37A (4) of the Firearm Act).

[8] Mr Bertram seeks leave to apply for judicial review of the decision of the Respondents on the basis that no reasons were given for refusing his application for a firearm licence. He complains that the FLA's basis for refusing the application was that "***the need to be armed is not established"***. He argues that that reason is not a basis for refusing an application under the Act and asks the Court to define what "need to be armed" means. He also complains that when he applied to the Review Board, he had filed a detailed letter asking them to provide further and better particulars as to why he needed to be armed. Although the Applicant was interviewed on multiple occasions while his application was under review, he was never given any reason as to why he had not established a need to be armed. He also complains that the Minister has never contacted him with a view to obtaining any comment from him in relation to any document which he utilised in coming to his decision.

[9] Mr Bertram is concerned that by the Respondent's failing to give reasons for their decisions, he was deprived of his constitutional right to a fair hearing and the actions of the Respondents flew in the face of "procedural fairness and due process principles." (see paragraph 8 of Affidavit filed on March 8, 2021). His evidence is also that the 2nd Respondent having reviewed the documents found nothing to suggest that he was "unfitted to be entrusted with a firearm or ammunition (see paragraph 14 of the Affidavit) or to suggest that he was of intemperate habits or unsound mind" (see paragraph 15 of the Affidavit). It appears that Mr Bertram was present at the hearing of the Review Board as he says he listened keenly to the questions asked by the 2nd Respondent and that the queries made were geared at confirming whether he was wealthy enough to be issued with a firearm. He said he pointed the Review Board to his letter to the FLA outlining his financial resources and which sought to establish that he had financial and other assets which he needed to protect. He indicates that his attorney, participated in the process by referring to his statutory declaration filed in support of the application for review. He argues he should have been provided with the gist of the reason for the 1st and 2nd Respondents forming the view that he was

unfitted to hold a licence as the reasons would have armed him with information that would enable him to make worthwhile representation in respect of the case he was required to answer. It does not appear on his own evidence, that the issue of his alleged conviction was paramount in the minds of the members of the Review Board.

[10] Paragraph 13 of Mr Bertram's affidavit also suggests that he made certain requests of the Review Board for the disclosure of information to assist him in putting his case to the Board. The request is contained in KB2 a letter to Justice Panton as Chairman of the Review Board, dated December 5, 2019. In the letter Mr Clarke asks for

(a) *A copy of any or all applications made by Mr Bertram and any supporting reasons provided in such an application for a permit*

(b) *Any letters given to Mr Bertram from the FLA or the Minister indicating or communicating a decision in relation to his current or previous application(s)*

(c) *Any document which contains any reason for a finding by the board in relation to the point that Mr Bertram has not 'established a need to be armed'*

(d) *Any other document which would be material to the decision of the Review Board which is disclosable.*

Items a and b are documents which the Applicant himself would have because they are his own documents, either prepared by him or sent to him. Item c would not now be relevant to this application as Mr Clarke said that the application was focused on his 2018 application to the FLA and to no other application. If this is so, then the Board would not have yet made a finding and as such it would not be in a position to disclose any document which contained any reason for a finding by the Board that Mr Bertram had not established a need to be armed. As at December 5, 2019 the Board had not yet made a decision on the 2018 application. Item d is too wide and vague and could amount to a fishing expedition. Specific

disclosure requires that the person who requires that type of disclosure should state specifically what he wants to be disclosed. Anything else, would in my opinion, be inappropriate.

Mr Clarke ends his letter by saying that the disclosure of documents requested in items a-d above would ensure that Mr Bertram got a fair trial. Given my reasons as to why there was no need for those documents to be disclosed by the Board to Mr Clarke, I do not believe that the Applicant was precluded from having a fair hearing before the Review Board.

[11] I should also mention that Mr Clarke's letters dated October 22, 2020 to Justice Panton Chairman of the Review Board and the Ministry of National Security Exhibits KB11 and 12 would not be relevant to this application as they do not concern the 2018 application for firearm licence.

[12] Another one of Mr Clarke's main speaking points in this application is that the Respondents failed to provide any reasons for refusing to grant him the firearms licence. Mr Clarke argues that the failure to disclose the reasons despite the many requests made by him on behalf of his client prevented him from examining the legal options available which based on the documents which the Respondents used to form their decision, could involve him making applications for administrative orders especially if the wrong procedure was followed by the relevant authorities. He urged on me, sections 13(2) and 16(2) of the Constitution of Jamaica which guarantee individuals the right to a fair hearing. He argues that the administrative duties and responsibilities of the Respondents are to be interpreted in a manner consistent with the constitutional duties and as such the Applicant has an arguable case deserving of leave.

[13] Section 13(2) of the Constitution guarantees citizens of Jamaica certain rights and freedoms and prohibits Parliament from passing laws that would negatively impact those rights and freedoms. Section 16(2) provides that

> "*In the determination of a person's civil rights and obligations or of any legal proceedings which may result in a decision adverse to his interests, he shall be entitled to a fair hearing within a reasonable time by an independent and impartial court or authority established by law*".

I do not see how Mr Bertram's civil rights have been negatively impacted by the decision of the Respondents. He argues that he was not given a fair hearing and it was the Respondents' failure to give even a gist of the reason for their decision which prevented him from receiving that fair hearing at each level. At this juncture, it is useful to set out the arguments of Ms Foster's and Ms Hunter on behalf of their respective clients and the case law relied on by all the attorneys in the matter, in order to show why I concluded that this is not a case in which leave to apply for judicial review should be granted.

First Respondent's argument

[14] Ms Foster relies on the evidence set out in Letine Allen's affidavit filed on May 20, 2021. Ms Allen's evidence is that Mr Bertram's affidavit said he needed the firearm to safeguard himself, his family and property. However, when site visits were done by the FLA's investigators to Mr Bertram's home and the alleged location of his car dealership, there was nothing there to substantiate the information contained in his application. Ms Allen's evidence is that Mr Bertram was informed about the alleged premises for the car dealership and what appears to have stood out in the investigator's mind is the fact that Mr Bertram did not even have a safe.

[15] I make reference to paragraph 17 of Ms Allen's May 20, 2021 affidavit. Her evidence is that in August 2019 the Respondent (she did not say which one but as she is swearing the Affidavit on behalf of the FLA I will assume that is the one she is referring to), "*received information that the security clearance revealed that on or about July 14, 1994 the Applicant was deported from the United Sates after being convicted of possession of crack cocaine and was sentenced to two years' imprisonment.*" She says that this would be a significant factor that was taken into

account by the Respondent in assessing an application for a firearm user's licence. It is to be noted that the evidence of Mr Bertram and Ms Allen is that the application was denied in March 2019. It means that the 1st Respondent would not have taken the information about the conviction into account when coming to its decision for it would have only received that information after it had already denied the application. It seems to me that the main issue in determining whether or not to grant the licence was the conclusions arrived at based on the investigations carried out at the Applicant's residential and business premises.

[16] It is to be noted that Ms Allen's evidence did not say what happened with respect to the investigations which took place regarding Mr Bertram's 2018 application. I note however that the 2018 application is pretty much the same application which was made earlier. The content had not changed. I also note that the evidence of Mr Bertram with respect to the second application had not changed. The FLA gave as reason for its decision not to grant the firearm licence the "*need to be armed is not established."* Ms Foster also argues that that reason is sufficient and that there is no right to be armed under the Act. The right to be armed is entirely at the discretion of the FLA pursuant to Section 29(1) of the Firearms Act.

Third Respondent's arguments

[17] The Affidavit of Paul Bailey, Legal Officer in the Ministry of National Security, which was filed on May 25, 2021 sets out the case for the 3rd Respondent. His evidence as it relates to the application to the FLA, is similar to that which was set out in the affidavit of Ms Allen. As it relates to the 3rd Respondent, Mr Bailey depones that pursuant to Section 37A(3) of the Firearms Act the 3rd Respondent need not inform the Applicant of his decision. Although the 3rd Respondent was not so obligated, the Minister's decision was communicated to Mr Bertram. Also of note in Mr Bailey's evidence is a letter dated December 3, 2020 addressed to the Minister from the Chairman of the Review Board. In that letter the Chairman informed the Minister that an application for review of the FLA's decision had come up before the Review Board and that the Board received representations from Mr John

Clarke, Mr Bertram's attorney-at-law. The Review Board came to its decision to uphold the FLA's decision based on the investigator's report dated October 31, 2018 and having reviewed the history of the matter. At paragraph 19 of the affidavit, Mr Bailey says that the documents used to inform the 3rd Respondent's decision are documents attained in the internal processes utilised by the 1st Respondent. The documents tend to be of a confidential and sensitive nature. I take this to be an explanation as to why the documents were not disclosed to the Applicant as per his request.

[18] Ms Hunter submits that the Minister is not required to give the Applicant reasons for his decision. The Minister gives directions to the FLA after obtaining relevant recommendations from the Review Board. In any event she argues, since the Minister upheld the Review Board's decision which upheld the FLA's decision the Applicant could draw the conclusion that the Minister's reason for upholding the decision of the FLA was because the Applicant had not established a need to be armed. This, Ms Hunter, argues is a reason and the Applicant therefore has not shown that he has an arguable ground for judicial review with a realistic prospect of success.

Case law and analysis

[19] My role in these proceedings is to determine whether the Applicant has an arguable ground for judicial review with a realistic prospect of success. I will make that determination by considering whether the Respondents acted fairly in coming to their decision.

[20] Section 29(1) of the **Firearms Act** provides that"

> *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."*

I start with that section of the Act as it must be made clear that there is no absolute right to a person in Jamaica obtaining a grant to carry a firearm. The right to be a

licenced firearm holder is at the discretion of the Firearm Licensing Authority. This point was confirmed in the case of **Raymond Clough v Superintendent Greyson and Attorney General (1989) 26 JLR 292**. It concerns the revocation of a firearms licence but there are principles of law outlined by the Court of Appeal that were helpful in guiding me to my decision. Carey JA in his decision highlighted the fact that there is no constitutional or legal right to own a firearm or to be allowed to hold a firearm. The entitlement to or the refusal or revocation of a grant of a licence was in the hands of the police (in 1989 but under the present dispensation is in the hands of the FLA). The Firearm Act, he said, is concerned with the control of, the use and misuse of firearms in this country. The incidence of violence involving guns is such that the greatest care has to be taken to ensure that the weapons do not fall into the wrong hands because the welfare and security of the country is at stake. Of note Carey JA said at page 296 of the judgment

> *"the loss of use of a firearm is not a loss of security since guns are false security. Robberies and burglaries are often committed for the purpose of acquiring firearms from householders licensed to have such weapons.*

This was true in 1989 when the judgment was delivered and even more so now in 2021. Indeed, I would go further to say, that the expectation to continue to be in possession of a firearm licence is stronger when one already had been granted a licence and had had that licence for years with the licence being continuously renewed, than it is for someone, like Mr Bertram, who never had a licence before.

[21] Section 29(4) provides that

> *A Firearm Import Permit, A Firearm User's Licence, …shall be granted by the Authority* ***only if he is satisfied that the applicant has a good reason for importing, purchasing, acquiring, or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace****:*

> *Provided that such a permit, certificate or licence shall not be granted to a person whom the Authority has reason to believe to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm or ammunition:…"* (emphasis mine)

Section 29(4) is clear that the licence will only be granted if the Authority feels that the Applicant has a good reason for having the firearm. The Applicant must so satisfy the Authority and if he fails to do so, then the licence will not be granted. If the Applicant has a good reason for having a firearm, he still will not be granted the licence if the Authority has reason to believe that the applicant is of intemperate habits or is of unsound mind or is for any reason unfitted to be entrusted with the firearm. Such persons, i.e., those with intemperate habits and are of unsound mind, will definitely not be granted a licence. This section simply means that the FLA's overarching consideration is whether the applicant has a good reason for having the firearm he is applying for the licence for. When the FLA says that "the need to be armed is not established" that, in my view, is another way of saying that the applicant has not satisfied the FLA that he 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.

[22] The FLA, in exercising its discretion, having conducted its various investigations came to the decision that the Applicant did not have a good reason for having a firearm, which simply put meant that he did not establish a need to be armed. I believe that the FLA provided a reason for denying the Applicant's application and that the reason given was in keeping with the Firearms Act.

[23] The Applicant relies on the **Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223** to say the FLA acted unreasonably in coming to its decision. I however found the case helpful in another way. I was reminded that Lord Greene MR at page 228 said that the Courts would only interfere with an act of executive authority if it be shown that the authority contravened the law. It is for the Applicant who asserts that the local authority contravened the law to establish that proposition. However, the court must not

substitute itself for the authority if it is alleged that the authority has contravened the law. The Court in coming to a decision must consider whether the authority exercised its discretion reasonably when coming to its decision. He went on to say that

> *"…a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably".*

If, however, the authority considers extraneous matters, then the authority's decision will be seen as so unreasonable that it might almost be described as being done in bad faith. Mr Clarke has not put any evidence before me to suggest that any of the Respondents acted unreasonably in coming to their decision. The evidence is that the Respondents took into account the investigations done based on the Applicant's application.

[24] In the case of **Associated Provincial Picture Houses Ltd. Wednesbury Corporation [1948] 1 KB 223** Lord Greene MR at page 234 said

> *'The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned and concerned only to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."*

[25] I do not find that the Respondents in coming to their respective decisions contravened the law or acted in excess of the powers of Parliament and as such I do not believe the Applicant's application for judicial review would have a realistic prospect of succeeding. The Court is not to be seen as a means through which Mr Bertram can seek a further appeal of the Respondents' decision. There was

no unfairness or unreasonableness on the part of the Respondents. The 1st Respondent made decisions based on investigations carried out and having conducted interviews with the Applicant. The Applicant is not entitled to be heard at the stage when the application is being considered by the FLA. His evidence is that he provided the information contained in the application and responded to the interviewer's questions. The 1st Respondent then made its decision, informed the Applicant and gave a reason – he had failed to establish a need to be armed. I can see no reason for any further explanation given what the statute says must be satisfied if a licence is to be granted. The Applicant cannot therefore be said not to have been given reasons for the 1st Respondent's decision.

[26] As it relates to the 2nd Respondent, the evidence is that the Applicant participated in those proceedings. He requested that documents be disclosed to him by the 2nd Respondent but they were not. I see no reason for those documents to be disclosed as those would have been the same documents he would have already had in his possession. Was there anything else the Review Board should have done, for example hear, receive and examine evidence? None of the parties have put forward any evidence to suggest that the Review Board should have heard, received and examined evidence based on the information that it had before it. I have no evidence from the Review Board that it considered the alleged conviction of the Applicant in coming to its decision. What seemed to be the basis was the investigator's report dated October 31, 2018 which is the same report which formed the basis of the FLA's decision and did not seem to include any report on convictions. Further, as highlighted in paragraph 9 above, Mr Bertram's evidence is that the Review Board questioned matters relating to the depth of his pocket and not to his conviction.

[27] As it relates to the 3rd Respondent, the Applicant argues that no reasons were given for his decision. I accept Ms Hunter's argument as set out in paragraph 18 above. I do not understand section 37A to mean that the Minister has to have a hearing before coming to his decision. Section 37A(2) reads as follows:

> *"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.*
> *(2) The Minister upon receipt and consideration of the reports of the Review Board shall give to the Authority such directions as the Minister may think fit.*

[28] My understanding of that section of the statute is that the Minister does not conduct a hearing. It is the Review Board that must conduct the hearing. If the Review Board denies the appeal, then the matter goes automatically to the Minister for review. There is no appeal *per se* to the Minister. Upon receiving the report from the Review Board the Minister will consider all the reports and then give directions to the FLA. Mr Bertram seems to have wanted to make representations to the Minister. The Act does not require the Minister to hear those representations. So long as the Review Board carries out its quasi-judicial functions properly, then the Minister need go no further. In carrying out his function, the Minister was acting in accordance with the Act. I am supported in this view by McDonald-Bishop J (as she then was) in the case of **Aston Reddie v The Firearm Licencing Authority and ors Claim No HCV 01681 of 2010 heard on May 2 and November 24, 2011** wherein she considered the meaning of sections 37A(2) and 37A(3) in seeking to determine if the FLA, the Review Board or the Minister acted without jurisdiction in carrying out their respective functions (see paragraphs 25-29 of the **Aston Reddie** judgment).

[29] I do not find that the Minister acted in an unreasonable manner. If Mr Bertram has a difficulty with the wording of the statute and finds it to be unconstitutional, then that is a different matter. The application before me does not address the unconstitutionality of section 37A of the Act. The application addresses the issue that the Applicant did not get a fair hearing and received no reasons for the decision to deny his application. I do not find that to be the case.

[30] In the case of Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44 Lord Sales said

> ***"****The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether the Respondent has an arguable ground for judicial review which has a realistic prospect of success.*

[31] Ms Foster recommended the case of **Re JR 20's (Firearms Certificate) Application for Judicial Review [2010] NIQB 11** to me. In that case the applicant's ground for the judicial review included, the authority's determination that the applicant was not a fit and proper person to hold a firearm certificate was unfair in that the decision maker withheld substantial information and material from the applicant, failed to give full and proper reasons for his conclusions in a way that failed to indicate what matters he took into account in the applicant's favour and failed to indicate how he judged the question of unfitness. The Court considered the case of **Donnelly and Donnelly's Applications [2007] NIQB 34** where the Court dismissed the applicant's challenge to the refusal of the firearms certificate. It was held that the decision maker had to rely on information from the police which information would assist in the decision-making process. The Court went on to hold that the policy behind the firearms legislation is that the authorities must have full confidence in the holder of the firearms certificates. The court was bound to recognise that there is no legal right to a firearm. The protection of the public must assume the primary role in the granting or revocation of the certificates. In the **Re JR case** the Court held that the decision-maker having given the applicant the gist of its reasons need not give further information in the circumstances. The applicant was not entitled to a statement of the process of reasoning.

[32] Ms Foster relies on this case as she is of the view that the Applicant, having been given the gist of the reason for not granting him the licence need not be privy to

any additional information. Ms Foster argues that should the FLA inform applicants of what they need to provide to the FLA to establish a need to arm, the applicants will falsify documents. It is for the applicant to put forward their application in fulsome detail and then for the FLA to carry out its investigations to determine if the applicant needs to be armed. She further argues that Mr Clarke's submissions that the FLA took into account extraneous issues which should not be considered by the Court as Mr Clarke has failed to submit any evidential material to this Court to support those assertions.

[33] Carey JA in the case of **Raymond Clough** in considering whether the applicant had a right to be given reasons for the revocation of his licence said that the reasons of the decision-maker are supplied to the Minister not to the applicant which by extension suggests that no hearing is intended to take place before the decision-maker (see page 297 of the judgment). At page 299 of the judgment he went to say that the decision maker (in this case the FLA) is not obliged to act judicially, it is only required to act fairly but acting fairly does not involve either hearing the applicant or giving him reasons. The case against the FLA would therefore have no realistic prospect of succeeding.

[34] The Review Board did not participate in the proceedings and so I had no submissions from them. However, based on my foregoing conclusions (see paragraphs 9-11 and 17) I have not been convinced that the Applicant would have a realistic prospect of succeeding against the 2nd Respondent if he were allowed to seek judicial review of the Review Board's decision. In this case, the Applicant was heard at the Review Board Stage unlike in the **Aston Reddie case**. Mr Clarke made submissions on behalf of his client and that along with the investigator's report and the history of the matter led the Review Board to uphold the FLA's decision. Given that there was a hearing before the Review Board, and the Minister was informed of the results of the hearing and the decision of the Review Board (in contrast to the **Aston Reddie case**) I can see no reason to find that the Minister was not within his right to accept the Review Board's recommendation. The hearing that was conducted at the Review Board stage relieves the Minister

of any obligation to conduct a hearing when the matter was brought to his attention for consideration.

Costs

1. This is not an application for an administrative order. This is an application for leave to apply for judicial review (which comes under the definition of administrative order in CPR 56.1(3)). The Applicant has failed to convince me that he should be afforded the opportunity to apply for judicial review. I am not of the opinion that any of the Respondents acted in an unreasonable or illegal manner or acted with procedural impropriety and therefore I do not believe that an application for judicial review would be successful. I understand the general rule as it relates to costs not being awarded against an applicant for an administrative order (see CPR 56.15(5)) to be in circumstances where the substantive administrative case is being heard, not at the application for leave to apply stage. I therefore order that the Applicant pay costs in the application for leave to apply for judicial review to the First and Third Respondents.

[35] Orders

1. The Applicant's application to extend time to file application for leave to apply for judicial review is granted.
2. The Applicant's application for leave to apply for judicial review is refused.
3. The Applicant is to pay the 1st and 3rd Respondents costs in the application, which costs are to be taxed, if not agreed.
4. The Applicant's attorney-at-law is to file and serve the Formal Order.
5. The Applicant's application for leave to appeal is refused.