[2021] JMSC Civ. 87

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU 2021 00171

BETWEEN	**ANDREW BOBB**	**APPLICANT**
AND	**THE FIREARM LICENSING AUTHORITY**	**RESPONDENT**

IN CHAMBERS

Mr Lemar Neale instructed by NEA | LEX for the Applicant

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

Heard: 20th April, 7th and 14th May, 2021.

Application for extension of time to obtain leave to seek Judicial Review – revocation of Firearm User's License by The Firearm Licensing Authority – no opportunity given to firearm licence holder to be heard – no response from the Review Board or the Minister of National Security to Applicant's application for review – Application for leave to apply for Judicial Review

Cor: V. SMITH, J (Ag.)

INTRODUCTION

[1] The Applicant, Mr Andrew Bobb, is a member of the Jamaica Constabulary Force (JCF) and was previously the holder of a Firearm User's Licence. This licence was revoked by The Firearm Licensing Authority (FLA), the Respondent, by way of a Revocation Order dated March, 29, 2019. The Applicant appealed the decision of the Respondent by writing to the Review Board and later to the Minister of National

Security, hereinafter referred to as the Minister. Having received no word from either, the Applicant now seeks the intervention of the Court.

[2] By way of Notice of Application for Court Orders, the Applicant seeks, inter alia, the following:

i. An extension of time within which to apply for leave to seek Judicial Review of the decision of the Respondent to revoke the Applicant's Firearm User's Licence;

ii. Leave to apply for Judicial Review of the Respondent's decision to revoke the Applicant's Firearm User's Licence by way of an order of Certiorari to quash said decision;

iii. Costs; and

iv. Such further or other relief as this Honourable Court may deem necessary or appropriate.

BACKGROUND

[3] The Applicant, by his affidavit evidence, states that he was first granted a Firearm User's Licence by the Respondent in or around 2002. He renewed said Licence annually up until 2012 but states that due to financial difficulties he did not renew the licence for the period 2012 to 2014. He however renewed his licence in 2015 and was permitted by the Respondent to pay the arrears for the period 2012 to 2014 and exhibits receipts as proof of same. According to his affidavit, he also renewed his licence for the years 2016 and 2017.

[4] The Applicant indicates that he was arrested and charged on or about July 27, 2014 for the offences of forgery, conspiracy to deceive and uttering forged documents. He maintains his innocence and states that after being charged he

wrote to the Respondent requesting permission to keep his firearm whilst the case was ongoing and was permitted to do so.

[5] Mr Bobb appeared before the Kingston and St Andrew Parish Court (Criminal Division) on April 24, 2018 in relation to the previously mentioned charges. On the said date, no order was made for indictment against him. He exhibits a copy of the Certificate of Acquittal in those proceedings, dated May 3, 2018, as evidence of the final determination of the matter.

[6] On or about April 30, 2018, the Applicant visited the offices of the FLA with the intention of renewing his firearm licence. His firearm was however seized by a representative of the Respondent. Despite numerous requests for information with regard to the seizure, the Applicant states that he received no feedback until April 9, 2019 when he was served with a Revocation Order, dated March 29, 2019, a copy of which has been exhibited. The reason stated in the Order for the Respondent's decision to revoke the Applicant's licence is that the Applicant is, "***no longer considered fit and proper to be entrusted with a firearm licence***."

[7] The Revocation Order stated that the Applicant had twenty-one (21) days from the service of the Order within which to apply to the Review Board to review the Respondent's decision. In accordance therewith, the Applicant wrote to the Review Board by way of letter dated April 23, 2019 and same was submitted on April 25, 2019. The Applicant complains that to date, he has not received any response from the Review Board.

[8] Having not received a response to his application, Mr Bobb retained counsel in December 2020 at which point he was advised that he could also submit his application for review of the Respondent's decision to the Minister. This was done by way of letter dated December 28, 2020 and submitted on December 29, 2020, a copy of said letter has been exhibited in proof thereof.

[9] The Applicant maintains that to date he has not received a response from the Review Board nor the Minister and as such he has sought the intervention of the Court to grant the relief as set out in his Notice of Application for Court Orders.

ISSUES TO BE DETERMINED

[10] Two main issues arise for determination in this matter. They are:

i. Whether the Applicant should be granted an extension of time for leave to seek Judicial Review.

ii. Whether leave to apply for Judicial Review should be granted.

APPLICANT'S SUBMISSIONS

[11] Mr. Lemar Neale, Counsel for the Applicant, asserts that persons wishing to make an application for leave to seek Judicial Review must do so in accordance with the timeframes stipulated in Rule 56.6(1) of the Civil Procedure Rules, 2002 as amended (CPR).

[12] Mr. Neale concedes that his client would have applied out of time. However, that notwithstanding, he contends that the Court has the discretion to extend time if the delay is explained and there is good reason for same. Mr. Neale further argues that even though the Applicant has good reasons for the delay, this is not the end of the matter and the Court must consider whether good reason exists for the extension of time.

[13] Mr. Neale has invited the Court to find that the dicta of Kay, J in the case of ***R*** v ***Secretary of State for Trade and Industry Ex p Greenpeace***[1], is instructive and that the following factors should be considered by the Court in determining whether good reason exists for extending time: the fact that no hardship will be caused to third party rights, there being no detriment to good administration should the extension be permitted and there being a public interest requirement for the application to proceed.

[14] In addressing the factors as espoused by Kay, J, Mr. Neale contends that the Applicant in the instant case has a good reason for applying out of time. Counsel asserts that the Applicant was served with a Revocation Order informing him of his right to appeal to the Review Board within twenty-one (21) days of his receipt of notice of the revocation. His subsequent appeal to the Review Board and later to the Minister of National Security, should therefore only be seen as the Applicant pursuing his statutory right of appeal and exhausting all alternative avenues of redress open to him.

[15] Mr. Neale submits that an Applicant seeking Judicial Review should first exhaust alternative forms of redress available to him before approaching the Court, as can be gleaned from Rule 56.3(3)d. He therefore argues that if the Applicant had applied to the Court for leave to apply for Judicial Review within the prescribed three (3) months, without first pursuing alternative available remedies, then he would likely have had his application refused.

[16] Mr. Neale has cited and placed reliance on the case of ***Constable Pedro Burton v The Commissioner of Police***[2]. In this case, the Applicant submitted his

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[1] [2000] Env L.R. 221
[2] [2014] JMSC Civ 187

application for Judicial Review almost some thirty-one (31) months after the ground for Judicial Review first arose. The main reason put forward for the delay was that the Applicant was pursuing his statutory avenue of redress.

[17] Counsel therefore invites the Court to find that the Applicant, having complied with the statutory procedure to have his appeal heard by applying to the Review Board and then the Minister, was seeking to exhaust the statutory avenues available to him. Having received no response from the Review Board or the Minister, the Applicant was compelled in the circumstances to apply to the Court. The delay occasioned as a result of this ought not to prevent his application from being favourably considered by the Court. Counsel therefore submits that the Applicant has overcome the first hurdle as set out by Kay, J in ***Exparte Greenpeace***, mentioned above.

[18] He suggests that it is not discernible what hardship or prejudice could be caused to third parties if the Court were to grant the application for the extension of time. In fact, he posits that it is the Applicant who is experiencing hardship and prejudice by the decision of the Respondent to revoke his firearm licence. This, he says, is especially so because the Applicant, as a crime fighting member of the JCF, has been deprived of the means to protect his life and property whilst off duty.

[19] Mr. Neale contends that good administration requires finality to the appellate process undertaken by the Applicant. The absence of finality results in the Applicant being denied due process and procedural fairness as, in good faith, he has embarked upon a review process with no end in sight. Mr. Neale therefore posits that in the circumstances of the instant case there will be no detriment to good administration if the application to extend time is granted. He argues further that public interest also warrants the hearing of the application due to the arbitrary and capricious manner in which the decision to revoke the licence was taken. This,

he says, is further compounded by the failure on the part of the Review Board and the Minister to hear and determine the Applicant's appeal.

[20] For these reasons, Counsel submits that the principles outlined in ***Exparte Greenpeace*** mentioned earlier, when applied to the circumstances of the instant case, should allow for the granting of the application for the extension of time.

[21] In addressing the issue as to whether leave to apply should be granted, Mr. Neale suggests that his client has an arguable ground for Judicial Review with a realistic prospect of success as the Respondent breached the principles of natural justice and procedural fairness thus rendering its decision void and of no legal effect. Counsel contends that where the Respondent seeks to revoke a firearm licence on the basis that the holder of the said licence is no longer considered to be a fit and proper person to be entrusted with same, then the principles of fairness and natural justice require that reasons should be communicated to the aggrieved party so that he understands the grounds for the revocation and, if needs be, can put himself in a position to challenge same. Counsel argues that although the Respondent is exercising a purely administrative function and the Firearms Act places no obligation on the FLA to give a hearing or to provide reasons, the modern approach requires the Respondent to give reasons to an aggrieved party. In a bid to support this proposition counsel relies on the case of ***Fenton Denny v The Firearm Licensing Authority***[3].

[22] Mr. Neale submits that the explanation given by the Respondent as to the reason for the revocation was simply that the Applicant was no longer deemed fit and proper to retain the licence. This he argues presupposes that the Applicant was initially deemed fit and proper when he was first given the licence in 2002, which

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[3] [2020] JMSC Civ 97

he was allowed to maintain until 2018. Counsel contends therefore, that if the Respondent became aware of circumstances that no longer rendered the Applicant fit and proper, then procedural fairness would dictate that those reasons should be declared to him. The failure of the Respondent to give adequate reasons for its decision has served to hinder the Applicant's ability to make worthwhile representation to the appellate body. Counsel posits that embarking on an appeal in these circumstances would be an exercise in futility.

[23] Counsel concluded his submissions by arguing that the Applicant in the circumstances of this case has exhausted all alternative forms of redress by appealing to the Review Board and the Minister. He has been left in the dark as to the outcome of that appeal and as such has no alternative but to seek the intervention of the Court. Mr. Neale posits that the Applicant has established that he has more than an arguable ground for Judicial Review with a realistic prospect of success as the Respondent breached the principles of natural justice and procedural fairness in relation to its decision to revoke his firearm licence.

RESPONDENT'S SUBMISSIONS

[24] Ms. Foster, on behalf of the Respondent, asserts that the Court should take note of the fact that the Applicant's application to seek leave to apply for Judicial Review has been made almost two (2) years after the decision to revoke his firearm licence was taken. She sought to remind the Court that the Applicant submitted his appeal to the Review Board on April 25, 2019 and based on the provisions of section 37A of the Firearms Act, where the Review Board fails to hear the application within ninety (90) days of receiving same, then the Minister may hear and determine the matter under review. Counsel further states that the Applicant did not refer the matter to the Minister until December 29, 2020, some eighteen (18) months after filing his appeal with the Review Board. She argues therefore that the Applicant could have significantly mitigated the delay had he appealed to the Minister as

soon as the ninety (90) day period prescribed by the Act had elapsed. She therefore asks this Court to find that the inordinate delay is as a result of the tardiness on the part of the Applicant and as such this Court ought not, in the circumstances, to exercise its discretion to have time extended.

[25] Ms. Foster also expressed the concern that if the Court is to extend time in the circumstances of this case then it may serve to suggest to others, who have had their firearm licenses revoked, that they need not act with promptitude in seeking to have decisions of the Respondent reviewed. This, she says will have the unsatisfactory consequence of keeping the Respondent in an extended state of abeyance with regards to the finality of its decisions.

[26] Counsel avers that the Applicant's assertion that his delay is attributable to his attempts to exhaust the available alternative remedies open to him, should not be accepted as justification for the Court to extend time. She argues that it was open to the Applicant to file an application before the Supreme Court, in a timely manner, seeking leave to apply for Judicial Review and then ask the Court to stay proceedings pending the outcome of that appellate process. Ms. Foster further surmises that the Applicant's failure to do so means that he has not acted promptly and as such has not provided this Court with a good reason for the delay.

[27] Counsel argues that the Applicant has no arguable grounds to advance in seeking leave to apply for Judicial Review and as such has no case that has a realistic prospect of success. It is her position that the mere fact that the Applicant is not in agreement with the decision of the Respondent is not sufficient for leave to be granted especially in the absence of any evidence that the Respondent's decision was not fair. She maintains that the Firearms Act grants the Respondent the discretionary power to revoke any licence if satisfied that the holder thereof is, inter alia, unfit to be entrusted with a firearm. She posits that the Applicant has failed to

adduce any evidence to suggest that the Respondent had taken extraneous matters into contemplation when deciding to revoke the Applicant's licence.

[28] According to Ms. Foster, the Applicant's complaint that he was not given an opportunity to be heard before the revocation of his licence or that the Respondent failed to provide him with reasons for the revocation, runs afoul of the Firearms Act, which places no such burden on the Respondent. Counsel then invited the Court to take note of section 36 of the Act which only requires the Respondent to give notice of revocation in writing specifying that the licence has been revoked. Counsel contends that this was complied with by virtue of the Revocation Order that was served on the Applicant and maintains that the Respondent has no duty to conduct a hearing or to provide reasons at the revocation stage and cites in support of this position the case of ***Raymond Clough v Superintendent Greyson and Attorney General.***[4]

DISCUSSION AND ANALYSIS

[29] It falls for the determination of the Court whether the Applicant should be granted an extension of time to seek leave to apply for Judicial Review and if so, whether leave should be granted. Just before proceeding, I wish to thank Counsel on both sides for their detailed and worthwhile submissions with supporting authorities. Whilst I may not make mention of each authority, I have read them and taken them into account during the course of my deliberations.

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[4] (1989) 26 J.L.R 292

Should an extension of time be granted?

[30] It is settled that the Court has the authority to extend time to an Applicant seeking leave to apply for Judicial Review, if he/she is out of time when making the application. Rule 56.6 of the CPR prescribes the timeline within which the application must be made and then deals with the issue of delay if the timeline is not adhered to.

[31] It may be useful at this point to state Rule 56.6 in its entirety:

> 56.6(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.
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> (2) However the court may extend the time if good reason for doing so is shown.
>
> (3) Where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.
>
> (4) Paragraphs (1) to (3) are without prejudice to any time limits imposed by any enactment.
>
> (5) 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.

[32] In light of the fact that the Applicant is seeking an order of certiorari to quash the decision of the Respondent to revoke his firearm licence, then in keeping with rule

56.6(3), the date on which the grounds for the application first arose would have been March 29, 2019, the date of the Revocation Order. The application for leave to apply was filed on January 19, 2021, some twenty-one and a half (21½) months after the date on which the grounds first arose.

[33] There is no dispute between the parties that Mr. Bobb's application is out of time. Through his Counsel, he has proposed that the Court should exercise its discretion pursuant to rule 56.6(2) to extend time as he has good reasons for the delay. The main reason provided for the delay was Mr. Bobb's attempts to exhaust the alternative remedies available to him prior to seeking the Court's intervention.

[34] Dunbar-Green, J (Ag), in the ***Pedro Burton*** case opined that conduct in relation to the exhaustion of remedies can be favourably advanced in support of an application to extend time for leave to apply for Judicial Review.

[35] At paragraph 18 of the judgment, she stated:

> *"[18] The Court agrees with the applicant that if the reason for the delay in seeking leave to apply for judicial review is the exhaustion of the remedy available to him, that is a relevant factor for a favourable consideration of the application."*

[36] By way of his affidavit evidence, the Applicant in the instant case has stated that he was served with the Revocation Order on the 9th day of April, 2019. On the 25th day of April, 2019, he submitted an application to the Review Board seeking the review of the Respondent's decision. He states further that he made numerous telephone calls to the Respondent between June, 2019 and November, 2020 enquiring as to the status of the appeal but was advised that the process takes time and that he would be notified of the outcome once a determination had been made. He indicates that he waited in the hope that the Review Board would bring finality to the process.

[37] Having not received a response as to the outcome of his appeal, he became frustrated with the length of time it was taking to have the matter resolved and retained an Attorney in December 2020 to assist him with the process. Acting on the advice of counsel, he sought the intervention of the Minister by way of letter submitted on the 29th day of December, 2020, requesting that the Minister hear and make a determination in relation to his appeal. Having not received any response from the Minister, Mr. Bobb filed the application now before the Court on January 19, 2021.

[38] It is important to note that the Applicant's evidence as to his attempts to follow-up on the status of the appeal and the responses to his queries were not disputed by the Respondent. In the circumstances, the Court accepts that the reason for the delay is that the Applicant was seeking to exhaust his available remedies and as enunciated in the ***Pedro Burton*** case, this would amount to a good reason which would be deserving of favourable consideration by the Court.

[39] Counsel for the Respondent has argued that the Applicant failed to mitigate the delay as he should have filed an application seeking leave to apply for Judicial Review pending the outcome of the appeal process once the ninety (90) day period prescribed for the Review Board to review the appeal had passed.

[40] Support for this position is found in rule 56.4(7) of the CPR which states as follows:

> *56.4(7) Where the applicant seeks an order for certiorari relating to any matter in respect of which there is a right of appeal subject to a time limit the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.*

[41] Had the Applicant taken advantage of this position, the delay occasioned would have been significantly reduced. Nonetheless, as mentioned before, the Court has accepted that the Applicant made several attempts to follow-up on the appeal with

the Review Board in an effort to bring finality to the proceedings. The Court is therefore satisfied that the delay occasioned is as a result of the Applicant seeking to exhaust his available remedies prior to seeking the Court's intervention. Consequently, based on these circumstances, the Court is not of the view that the failure of the Applicant to mitigate the delay should be fatal to his application seeking an extension of time.

[42] As per Dunbar-Green, J. (Ag.) in the ***Pedro Burton*** case, having determined that the Applicant has shown good reason for the delay, consideration must now be given to whether good reason exists for the extension of time. She stated at paragraphs 24 and 25, the following:

> *"[24] It is my view that the Applicant's pursuit of a statutory remedy is good reason for the delay. But that is not the end of the matter. The Court must now decide whether good reason exists to extend time.*
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> *[25] Maurice KJ in R v Secretary of State for Trade and Industry Exp Greenpeace [2000] Env L. R. 221, 261-264 stated that good reasons for extending time could include no hardship or prejudice to third party rights, no detriment to good administration were permission granted, and a public interest requirement for the application to proceed. It is also recognised that a good reason for extending time may also be found in the reasons for delay as well as the strength of the merits of a particular case."*

[43] This therefore involves a determination as to whether granting the application as prayed is likely to cause substantial hardship to or substantially prejudice the rights of any person or be detrimental to good administration as provided for by rule 56.6(5) of the CPR. Authorities cited by Counsel on both sides confirm that these are relevant factors to be considered when determining whether there is good reason to extend time.

[44] In considering whether the circumstances of the case in ***Exparte Greenpeace*** (supra) were appropriate for extending time, Kay, J adopted the position that the material questions to be posed are as follows:

> *"(i) Is there a reasonable objective excuse for applying late?"*
>
> *"(ii) What, if any, is the damage, in terms of hardship or prejudice to third-party rights and detriment to good administration which would be occasioned if permission were now granted?"*
>
> *"(iii) In any event, does the public interest require that the application should be permitted to proceed?"*

[45] According to Professor Albert Fiadjoe in his book Commonwealth Caribbean Public Law (second edition), Lord Donaldson in the case of ***R*** v ***Monopolies and Mergers Commission ex p Argyll Group plc,***[5] opined that good public administration is concerned with substance rather than form, speed of decision, particularly in the financial field, a proper consideration of the public interest, and a proper consideration of legitimate interests of individual citizens.

[46] In addressing the issue of good administration, counsel for the Respondent argued that if time is extended it will serve to persuade other persons who have had their licences revoked, not to pursue the review process with alacrity. This Court is, however, not in a position to agree with this submission. The CPR clearly sets out the requirements for persons who seek an extension of time to apply for Judicial Review. An applicant must apply promptly and in any event within three (3) months and if this timeline is not adhered to then the applicant must show not only that he has good reasons for the delay but also that the other provisions of rule 56.6 have been complied with. This therefore means that every case will be decided on its own merit and it is only cases which satisfy these aforementioned provisions that will be allowed to benefit from the relief sought.

[47] I therefore find favour with the submission of counsel for the Applicant that it cannot be in the interest of good administration or in the public's interest for an Applicant

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[5] [1986] 1 WLR 763

to embark, in good faith, upon an appellate process with no subsequent determination of the issue. Good administration would demand that there be some finality to the issue as good administration must work in tandem with procedural fairness. As stated by Dunbar-Green, J (Ag) in ***Constable Pedro Burton*** "good administration cannot be divorced from procedural fairness" and "good administration has embedded in it the tenets of administrative justice".

[48] Having carefully considered the submissions from counsel on both sides, the relevant provisions of the CPR as well as the authorities on point, this Court is of the view that it is both in the public interest and in the interest of good administration for time to be extended and finds that the circumstances of this case establish good reasons for the extension of time.

Should leave to apply for Judicial Review be granted?

[49] Rule 56.3(1) of the CPR makes provision for a person desirous of applying for Judicial Review to first obtain the Court's permission. It is established that the clear purpose of this is to allow for the elimination at the earliest stage of the process, those cases that fail to satisfy the Court that they have an arguable ground with a realistic prospect of success as stated in the case of ***Minister of Transport Works and Housing v The Contractor General***[6]. The Court must therefore examine the case for the Applicant to see whether it discloses an arguable ground with a realistic prospect of success in relation to the relief being sought.

[50] Palmer Hamilton, J (Ag.), as she then was, in the case of ***Marlon Dwayne Mullings v The Commissioner of Police et al***,[7] referenced the decision of Lords Bingham and Walker in the Privy Council decision of ***Sharma v. Brown-Antoine***

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[6] [2013] JMSC Civ 12 paragraph 13
[7] [2018] JMSC Civ 126

and others,[8] in which it was stated that "The ordinary rule now is that the Court will refuse 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".

[51] In the case before her, Palmer Hamilton, J (Ag.), opined that as it was not a substantial judicial review hearing, the Court at this stage should not determine what remedies would be appropriate, but rather the nature and gravity of the issues to be argued.

[52] Mr. Bobb complained that his firearm user's licence was revoked by the Respondent in circumstances where he was not provided with reasons for the revocation nor was he given an opportunity to be heard. This, he argues, amounts to procedural impropriety and is in breach of the principles of natural justice.

[53] It is however submitted on behalf of the Respondent that the Firearms Act (hereinafter referred to as "the Act") places no burden on the FLA to give reasons or to provide a hearing when exercising its discretionary power to revoke. Counsel, Ms. Foster, went further to state that the FLA is a separate statutory body from the Review Board and the Act places a duty on the Review Board and the Minister to hold a hearing where a party is aggrieved by a decision of the FLA. The clear inference to be drawn from this submission is that the fact that Parliament made specific provision for hearings to be had by the Review Board and the Minister, means that the legislators had no intention of reasons being given or hearings being had at the revocation stage. She argues therefore, that the Applicant's

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[8] [2007] 1 WLR 780

attempt to now place that burden on the FLA runs contrary to what was intended by Parliament.

[54] Having read and digested the pertinent sections of the Act I am compelled to agree with the interpretation given by Counsel. The relevant sections are as follows:

> 36.(1) Subject to section 37 the Authority may revoke any licence, certificate or permit if –
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> (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
>
> …
>
> (2) Where the Authority revokes any licence, certificate or permit under this section…the Authority shall give notice in writing to the holder thereof –
>
> (a) specifying that the Authority has revoked such licence, certificate or permit;
>
> …
>
> 37.(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-
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> …
>
> (c) revoking or refusing to revoke any licence, certificate or permit: or
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> …
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> 37A.(1) For the purpose of a 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 to 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.

[55] In light of the clear wording of the statute, the FLA has no duty to give reasons or to hold a hearing when exercising its decision making power under section 36 of the Act. The Applicant has not sought to join the Review Board or the Minister as parties to these proceedings, and as such the Court is asked to determine whether the actions of the Respondent, in the context of the statutory framework within which it operates, should be made subject to judicial review.

[56] This issue was addressed by McDonald-Bishop, J (as she then was) in the case of ***Aston Reddie v. the Firearm Licensing Authority and others,***[9]. Mr. Reddie was granted a firearm user's licence on October 6, 2004. He was arrested and charged in August of 2008 in relation to several offences arising from an alleged altercation between himself and his wife. His firearm was seized by the police and submitted to the FLA for action to be taken.

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[9] 2010 HCV 1681

[57] All the charges brought against Mr. Reddie were eventually dismissed by the Court for want of prosecution and/or 'no order made'. Mr. Reddie was thereafter informed by way of a written notice dated January 19, 2009, issued by the FLA, that his firearm user's licence was revoked due to his "intemperate behaviour". Mr. Reddie objected to the revocation and submitted a notice of appeal to the chairman of the Review Board indicating, inter alia, that he was not given an opportunity to be heard and as such the decision of the FLA was unfair and unreasonable. He heard nothing further from the Review Board.

[58] On July 9, 2009, he received a written notice advising him that the Minster, acting on the advice of the Review Board, had dismissed his application for review and that the revocation of the licence by the FLA was upheld. He sought and obtained leave to apply for Judicial Review and in hearing the application for Judicial Review, McDonald-Bishop. J stated at paragraph 40 as follows:

> *"[40] When all the terms of the statutory regime for the revocation of the firearm licence are broadly considered, it remains quite clear, as it was in **Clough's** case, that the Act itself provides for a procedure to be followed upon the revocation of a licence and part of that procedural regime is for the hearing and reception of evidence. This, however, is not at the stage of the decision of the Authority but at the stage of the review where there is an application for that to be done. It is at the review stage that the right to a hearing would operate. Parliament by expressly providing for a hearing at that level, and without expressly doing so at the level of the authority is taken to have intended not to cast a legal duty or obligation on the Authority to conduct a hearing before the revocation of a licence."*

[59] In applying the dictum of Carey, J.A. from the case of ***Regina v. The Superintendent of Police for the Parish of Saint Andrew (Central), ex parte***

Raymond Anthony Clough,[10] to the ***Reddie*** case, McDonald-Bishop, J concluded that there is no legal duty imposed by the Act for the FLA to have conducted a hearing before revoking the Applicant's licence. As a result, she held that in the circumstances of that case, the FLA would have acted fairly and not in breach of the principles of natural justice. Counsel for the Respondent placed significant reliance on this authority and invited the Court to adopt a similar approach in determining the issues herein.

[60] On the other hand, Counsel for the Applicant, invited the Court to accept that the modern approach taken by the Courts is to require decision-making bodies to give reasons for their decisions even in circumstances where they have no statutory obligation to do so. In support of this contention, reliance was placed on the case of ***Fenton Denny v. The Firearm Licencing Authority.***[11]

[61] In that case, Mr. Denny was a District Constable who had first been granted a firearm licence by the FLA in 2015. The licence was last renewed on March 3, 2017 and when he went to renew his licence on May 3, 2018, he was told by an agent of the FLA that he had an outstanding matter in the Parish Court from 1999 for assault.

[62] As a result, his firearm was confiscated during that renewal process. The Applicant returned to the Parish Court in relation to the outstanding case and the case was subsequently dismissed. Mr. Denny then advised the FLA that the matter was resolved in his favour. On May 16, 2019, Mr. Denny received a letter from the FLA advising him that his firearm licence was revoked on the basis that he was not a "fit and proper person" to be granted a firearm licence.

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[10] (1988) 25 JLR 67
[11] [2020] JMSC Civ 97

[63] In seeking leave to apply for Judicial Review, Mr. Denny contended that the FLA should have provided him with the gist of the investigation that was done and the reason for the decision to revoke his licence. He also complained that he should have been given an opportunity to be heard. It should be noted that Mr. Denny did not file an appeal to the Review Board within the prescribed twenty-one (21) day period.

[64] In granting leave to Mr. Denny to apply for Judicial Review, Thomas, J., having considered the decision in ***R v. Secretary of State for the Home Department, Exp. Fayed and Another***,[12] found that "…even where there is an express provision in a statue that a decision-maker is not required to give reasons, the Court has nevertheless held that reasons should be given."

[65] At paragraph 78 of her judgment, Thomas, J. stated:

> *"[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."*

[66] Thomas, J. concluded that Mr. Denny established that he had an arguable case that in exercising its administrative function under the Act, the FLA acted unfairly by failing to provide him with a gist of the complaint, that is, the information they relied upon in making the decision to revoke his firearm licence. She found

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[12] [1997] 1 All E.R. 228

therefore that he had satisfied the requirement for the grant of leave for Judicial Review.

[67] In considering the principles enunciated in the ***Aston Reddie*** case and applying them to the case at bar, this Court is of the view that there is no statutory obligation on the part of the FLA to give reasons or to provide a hearing at the stage of the revocation but that the statute seeks to provide an avenue for the review of decisions of the FLA in a bid to ensure that the principles of natural justice and procedural fairness are adhered to.

[68] The Court is however minded to go further and to apply the modern approach to the instant case. In so doing, this Court finds that in order to ensure fairness to the Applicant with regard to the exercise of the Respondent's decision-making power, though under no statutory obligation, the Respondent ought to provide a gist of the reasons for the revocation at the time of communicating its decision to revoke. This is in keeping with the principles adopted by Thomas, J in the ***Fenton Denny*** case.

[69] It was argued that in the circumstances of the instant case, Mr. Bobb was aware of the reasons for the revocation of his firearm user's licence as in or around December 2017, he had been asked to provide a statement as to the charges he was facing, but refused to do so and was also questioned about his lateness in renewing his licence previously. The Revocation Order issued on March 29, 2019 however, states that the reason for the revocation is as follows:

> *"Your licence is hereby revoked because you are no longer considered fit and proper to be entrusted with a firearm licence."*

[70] This is the sole reason given by the Respondent for the revocation. The Applicant would therefore not be in a position to know precisely the basis for the revocation as no finding was ever communicated to him as to the result of any investigation done. The said Revocation Order indicates that the Applicant can apply to review the decision and that in doing so, the Applicant must state the grounds of his

application. The Applicant would be placed at a serious disadvantage in providing these grounds for the review of the decision of the Respondent in the absence of adequate reasons for the decision. This would serve to hinder the Applicant's ability to make worthwhile representation to the appellate body and thus run counter to the concept of procedural fairness.

[71] In dealing with the issue of fairness, the dictum of Lord Mustill in the Privy Council case of ***R v. Secretary of State for the Home Secretary, ex parte Doody,***[13] is instructive. At paragraphs D-G on page 560, he states:

> *"D What does fairness require in the present case?...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….*
>
> *E. …(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.*
>
> *F. …(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.*
>
> *G. …(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."*

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[13] [1994] 1 AC 531

CONCLUSION

[72] In the case at bar, it cannot be fair for the Applicant to be required to state the grounds of his application for review in circumstances where he has not been provided with the basis for the decision taken. This Court is therefore unable to find that the reason given for the revocation as contained in the Revocation Order was sufficient to provide him with a gist of the results of any investigations which had been concluded or the basis upon which the decision to revoke was taken. The Applicant would therefore not have been put in a position to adequately or properly respond to the decision and to ground his appeal. As a result, the process could not be said to have been fair.

[73] Fairness would also dictate that the appeal process as established by the Act would serve to ensure that the Applicant is given an opportunity to be heard if he is aggrieved by the Respondent's decision. In light of Mr. Bobb's complaint, that he was never granted a hearing by the Review Board, then it is arguable that in light of the ninety (90) day timeline prescribed in the Act, the Review Board would now be statute-barred from embarking upon the review process.

[74] Further, fairness also dictates that when applied to directly, the Minister is expected to respond within a reasonable time. The Applicant having applied to the Minister for redress in December, 2020 and having received no response to date, this Court is compelled in the circumstances to agree with the submissions of Mr. Neale, Counsel for the Applicant, that Mr. Bobb has exhausted all alternative available avenues of redress and his only recourse for relief is to the Court.

[75] For the reasons stated, this Court is of the view that the applicant has successfully established that he has an arguable case with a realistic prospect of success. I find therefore that this is an appropriate case for leave to be granted, to the Applicant, to apply for Judicial Review.

DISPOSITION and ORDERS:

1. An extension of time is granted for the Applicant to seek leave to apply for Judicial Review.

2. Leave is granted to the Applicant to apply for Judicial Review.

3. Leave is conditional on the Applicant making a claim for Judicial Review within (14) days of the receipt of this Order granting leave.

4. The first hearing for Judicial Review is scheduled for June 15, 2021 at 2:00pm for 30 minutes.

5. Leave to appeal is granted to the Respondent

6. The cost of this application is to be costs in the proceedings for Judicial Review.