



[2020] JMSC Civ 197

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE CIVIL DIVISION  
CLAIM NO. SU2020HCV00096**

**BETWEEN                      STEADMAN BRODERICK                      APPLICANT**

**AND                              FIREARM LICENSING AUTHORITY                      RESPONDENT**

**IN CHAMBERS**

Mr. Hugh Wildman and Ms. Faith Gordon instructed by Hugh Wildman & Company for the Applicant.

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

Heard: September 17, October 1 and 9, 2020

**Application for leave for judicial review – Whether there is an arguable case for leave – Order made by the respondent revoking an expired firearm licence – Duty of decision maker to give notification of its decision – Notification of revocation sent by registered post – The date from which three-month time limit for filing the application should run – Whether the date of the revocation order or the date of its receipt should be regarded as the date of notification – Whether an alternative remedy was available to the applicant at the date of notification of the decision – Part 56 of the Civil Procedure Rules, 2002, as amended.**

**N. HART-HINES, J (Ag.)**

## BACKGROUND

- [1] The respondent, the Firearm Licensing Authority was established in 2005 as a statutory organization within the Ministry of National Security, to regulate the granting, renewal and revocation of firearm licences in Jamaica. The respondent comprises of an Executive body, a five-member Board (appointed by the Minister), and a five-member Review Board (also appointed by the Minister). The Executive body, headed by a Chief Executive Officer, has responsibility for daily administrative functions, including investigations into applicants. The Board reviews applications and reports in respect of investigations carried out by the Executive body, and then makes decisions in respect of the grant, renewal and revocation of firearm licences. The Review Board is the designated statutory appellate body to which an applicant may apply for a review of the Board's decision.
- [2] On April 5, 2017 the applicant was issued with a firearm licence by the respondent pursuant to **section 29** of the **Firearms Act** ("the Act"). The firearm licence expired on April 9, 2018. The applicant subsequently applied for a renewal of his firearm licence on October 17, 2018. At that time, the respondent conducted an investigation which revealed that the applicant resides and works in Canada. The respondent also received intelligence in respect of the applicant. Following its investigation, the respondent issued a revocation order purporting to revoke the applicant's licence on August 12, 2019. The reason given for the revocation is that "*the need to continue to be armed has not been established*".
- [3] The respondent made efforts to serve the revocation order but was unable to do so as the applicant was not on the island. The revocation order was therefore sent to the applicant by registered post. It is unclear from the applicant's affidavit, filed on January 14, 2020, whether or not he was in fact away from the island between August 12, 2019 and October 16, 2019. However, the applicant averred that he only received the revocation order on October 16, 2019.

## THE APPLICATION

[4] By way of notice of application filed on January 14, 2020 the applicant seeks leave to apply for judicial review, to obtain relief by way of declaration that the revocation of the applicant's firearm licence, on the basis indicated, was irrational, improper, null and void, and to obtain an order of certiorari quashing the revocation order.

## THE ISSUES

[5] The primary issues for the determination of this court are:

1. Whether the reason given for the revocation of the applicant's firearm licence appears to be a valid reason within **section 36** of the Act;
2. Should the effective date of notification of the revocation order be the date of the order or the date of its receipt?
3. Whether there are applicable discretionary bars which would prevent leave to apply for judicial review being granted. Specifically, was an alternative remedy available to the applicant at the date of notification of the revocation order, and has the applicant delayed in making the application?

[6] Other issues are discussed at paragraphs 53 to 62.

## THE EVIDENCE

[7] In support of his application, the applicant swore to an affidavit indicating that he is an electrician with contracts to carry out work for entities including the Jamaica Public Service Company Limited and that his contractual obligations require him to work in dangerous areas throughout Jamaica and he therefore required a firearm licence. No explanation was offered by the applicant for the six-month delay in seeking to renew of his firearm licence between April 9, 2018 and October 17, 2018. The applicant did not indicate why he did not receive the notification of the revocation order until October 16, 2019, and he did not give an explanation for the delay between October 16, 2019 and the filing of his application on January 14, 2020.

- [8] The applicant averred that he was aware that there is an alternative remedy available to him pursuant to **section 37** of the Act. However, he said that his Attorneys-at-Law advised him that applications to the Review Board to review the Board's decisions to revoke or refuse firearm licences "*have not been determined within the statutory period of ninety days, as required by law*". Further, he said that his Attorneys-at-Law contend that the respondent's action, being null and void, did not require him to invoke the provisions contained in **section 37(1)** of the Act.
- [9] An affidavit was sworn to by Ms. Lethine Allen on behalf of the respondent. As the respondent's Director of Compliance and Enforcement, Ms. Allen stated that she was in charge of investigations in respect of the applicant's complaint in this matter. Ms. Allen stated that an investigation revealed that the applicant resides and works in Canada, although he provided a Jamaican address as his place of residence when he first submitted his application for the firearm user's licence. Further, Ms. Allen stated that intelligence was obtained by the respondent during the course of its investigation, which cannot be disclosed. Ms. Allen stated that the findings of the investigation were submitted to the Board. The applicant's firearm licence was revoked on August 12, 2019 and the respondent's decision was sent by registered post to the applicant as is permitted by **section 49** of the Act.
- [10] Ms. Allen averred that there had been no breach of the principles of natural justice since the applicant had been afforded an opportunity to be heard when the respondent requested a statement of him explaining why he failed to promptly submit his application for renewal of his licence.

## **THE SUBMISSIONS**

- [11] Counsel Mr. Wildman submitted that the reason stated in the revocation order that "*the need to continue to be armed has not been established*" is not a reason within the ambit of **section 36** of the Act, and consequently the

revocation order is a nullity and should be set aside *ex debito justitiae*. Counsel submitted that the decision was irrational and illegal. Mr. Wildman relied on the Privy Council decisions in ***Strachan v Gleaner Company Ltd and another*** [2005] 1 WLR 3204, ***Commissioner of the Independent Commission of Investigations v Police Federation and others*** [2020] UKPC 11, and ***National Transport Cooperative Society Limited v Attorney General of Jamaica*** [2009] UKPC 48.

- [12] Mr. Wildman reviewed some of the paragraphs of the affidavit of Lethine Allen, filed on behalf of the respondent. Counsel submitted that the respondent's position that it has an absolute power to revoke a licence, is incorrect as there is no absolute power in the statute. Counsel opined that any revocation of a licence must be in keeping with the grounds indicated in **section 36** of the Act.
- [13] Further, counsel submitted that the process by which the licence was revoked, did not afford the applicant an opportunity to be heard before the revocation. Counsel relied on the Privy Council decision in ***Barl Naraynsingh v The Commissioner of Police*** [2003] UKPC 20. Counsel indicated that although Ms. Allen alleged that the respondent gave the applicant an alleged opportunity to be heard when a statement was requested of him, this alleged opportunity was insufficient.
- [14] Mr. Wildman further submitted that the decision taken by the respondent also appears to be void since the respondent did not seem to be properly constituted at the time of its decision on August 12, 2019. **Section 26A** of the Act and the Third Schedule thereto indicates how the Firearm Licensing Authority ("the Authority") is to be constituted. Counsel relied on the affidavit of Indira Patmore and the documents exhibited thereto for the proposition that, save for two members of the Board (referred to in the Act as "the Authority"), the constitution of the Board as Gazetted on March 29, 2018 differs from that currently indicated on the Authority's website. Pursuant to provision 10 of the Third Schedule of the Act, the quorum of the Board shall be three (3) members.

However, when Ms. Patmore visited the website on May 12, 2020, only two (2) of the names gazetted appeared to still be members the respondent's Board.

[15] Mr. Wildman submitted that the applicant had satisfied the threshold test that there was a strong case that the respondent exceeded its powers. Counsel submitted that there were no discretionary bars applicable which ought to prevent leave to apply for judicial review being granted. Counsel submitted that the three-month time limit for filing the application (pursuant to **rule 56.6(1)** of the CPR) should run from the date on which the applicant received the revocation order. Since the applicant received the revocation order on October 16, 2019, he had until January 16, 2020 to file the application for leave to apply for judicial review, and the application was filed in time.

[16] Counsel Mr. Wildman relied on the House of Lords decision in ***Regina v Secretary of State for the Home Department ex parte Anufrijeva*** [2003] UKHL 36 and submitted that the House of Lords said time runs when the decision is communicated or received. He cited paragraph 26 of the judgment where Lord Steyn said:

*"Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system"*

[17] Counsel also opined that time ought not to run at all when a revocation order ought to be set aside *ex debito justitiae*. Further, Mr. Wildman submitted that there was no need for the applicant to seek an alternative remedy as the respondent did not have the power to make the decision which it did. Counsel opined that as the respondent exceeded its jurisdiction, the best institution to set aside that decision was the court, rather than the respondent's Review Board. Mr. Wildman further submitted that as the Review Board was tardy in not hearing review applications within 90 days, the court was the better forum.

[18] Mr. Wildman submitted that even where an alternative remedy is available, this does not preclude leave to apply for judicial review being granted. Counsel

relied on dicta in ***R v Devon County Council, ex parte Baker*** [1995] 1 All ER 73 at page 77, paragraph H that “*the jurisdiction of the courts to grant relief by way of judicial review was not ousted by the existence of an alternative statutory remedy available to the applicants*”.

- [19] Counsel Ms. Foster submitted that in considering whether or not there was a likelihood that the respondent acted outside its powers, the court should consider not only **section 36** but also **section 29(1)** and **29(4)** of the Act, which provide for the respondent’s discretion to grant a firearm licence and which indicates two criteria which must be met before the respondent to grant a firearm licence the applicant.
- [20] Ms. Foster submitted that it would be an absurdity if the respondent, in exercising its power to revoke a licence, were to be prohibited from considering whether the applicant has a good reason for acquiring or having a firearm in his possession, yet be allowed to consider that fact when granting the licence. If the applicant no longer resided or worked in Jamaica, she submitted there would be no good reason for acquiring or having a firearm in his possession.
- [21] Ms. Foster opined that the applicant was afforded the opportunity to be heard when he was given the opportunity to supply a statement. However, counsel also stressed that the applicant has the right to be heard by the Review Board and there is no prescribed right to be heard by the Board itself.
- [22] Further, Ms. Foster submitted that the applicant had not exhausted the alternative remedy which was available to him and there is no good explanation put forward by the applicant himself for not first seeking a review of the revocation order through the Review Board.
- [23] Counsel Ms. Foster submitted that the applicant had delayed in filing his application, since **rule 56.6** states that the application ought to be made promptly or within three months from when the grounds first arose. Counsel referred to the decision of Sykes J (as he then was) in ***City of Kingston Co-***

**operative Credit Union Ltd. v Registrar of Co-operatives and Friendly Societies** (unreported), Supreme Court, Jamaica, Claim No 2010HCV0204, judgment delivered on October 8, 2010. There, the learned judge ruled that the date of the decision is the date from which time begins to run. Ms. Foster submitted that the applicant should have filed the application promptly, and by November 12, 2019. Counsel also relied on the decision in **John Mais v Administrator General** [2019] JMSC Civ 40, wherein Justice Anderson cited dicta in **R v Stratford-on-Avon District Council and another, ex parte Jackson** [1985] 3 All ER 769 at page 772 paragraph D Ackner LJ:

*“The essential requirement of the rule is that the application must be made ‘promptly’. The fact that an application has been made within three months from the date when the grounds for the application first arose does not necessarily mean that it has been made promptly. Thus there can well be cases where a court may have to consider whether or not to extend the time for making the application, even though the application has been made within the three-month period....”*

## LAW AND ANALYSIS

[24] The threshold test for leave to apply for judicial review is set out in the Privy Council decision in **Satnarine Sharma v Carla Browne Antoine, Wellington Virgil and another** [2006] UKPC 57 at paragraph 14(4) as follows:

*“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. L.R. 623 at 628, and Fordham, Judicial Review Handbook 4<sup>th</sup> edition, (204), 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.*

[25] I have also given consideration to the authorities referred to me by both counsel including the recent decisions in **Aston Reddie v Firearm Licensing Authority and Others** (unreported), Supreme Court, Jamaica, Claim No 2010HCV1681, judgment delivered on November 24, 2011 and **Fenton Denny v Firearm Licensing Authority** [2020] JMSC Civ 97, which accurately summarise the applicable principles.

[26] The relevant portions of **section 36** of the Act provides:



*“36(1) Subject to section 37 the Authority may revoke any licence, certificate or permit if –*

- (a) the Authority is satisfied that **the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfitted to be entrusted with such a firearm** or ammunition as may be mentioned in the licence, certificate or permit; or*
- (b) **the holder thereof has been convicted** in Jamaica or in any other country for an offence involving-
  - (i) **the illegal importation or exportation of firearms or ammunition;***
  - (ii) **the illegal possession or use of a firearm or ammunition;***
  - (iii) **the use of violence** for which a sentence of imprisonment of three months or more was imposed;**
- (c) **the holder thereof has been convicted of an offence against the Dangerous Drugs Act or any other offence for which a sentence of two years or more was imposed;***
- (d) **the holder thereof has been convicted of an offence involving-**
  - (i) the unlawful discharge of a firearm in a public place;*
  - (ii) failure to adequately secure a firearm or ammunition at his place of abode or work or on his person;*
  - (iii) the unlawful use of a firearm to threaten violence against another person; or*
  - (iv) negligence, resulting in the loss of a firearm or ammunition;**
- (e) the holder thereof fails to comply with a notice under section 35.*

*(2) Where the Authority revokes any licence, certificate or permit under this section or under section 18 or 46, the Authority shall give notice in writing to the holder thereof*

*(a) specifying that the Authority has revoked such licence, certificate or permit; ...” (My emphasis)*

**[27]** **Section 18** and **section 46** deal with a licensed dealer who is convicted of an offence and with a person who is convicted of an offence under the Act, respectively. These sections are not relevant to the matter before the court.

**[28]** Having regard to Ms. Foster’s submissions, I have given consideration to **section 29(1)** and **29(4)** specifically which provide:

*“29(1) Subject to this section and to sections 28 and 37, the grant of any licence, certificate or permit shall be in the discretion of the Authority....*

*(4) A Firearm Import Permit, a Firearm User's Licence, a Firearm User's (Special) Permit, a Firearm User's (Employee's) Certificate or a certificate issued under paragraph c) of subsection (2) of section 20 **shall be granted** by the Authority **only if 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...***” (My emphasis)

[29] I believe that **section 36** is clear, and there is no need to read it in conjunction with **section 29** of the Act. I am therefore not persuaded by Ms. Foster’s submission in this regard. I will address this further below.

#### **Does the reason for the revocation appear to fall within section 36 of the Act?**

[30] **Section 36** of the Act lists five specific bases on which the respondent may revoke a licence. The provision does not state that there may be other bases, and makes no mention of **section 29** or factors listed therein. The list in **section 36** therefore appears to be exhaustive.

[31] As aforesaid, there is no need to read **section 36** in conjunction with **section 29** of the Act. The “literal rule” approach of statutory construction means that a Court must apply the literal meaning of the exact words of a statute or rule. However, if giving the word its natural and ordinary meaning might result in “*some absurdity, or some repugnance or inconsistency with the rest of the instrument*”<sup>1</sup>, then the court may apply the “golden rule” approach and substitute another word or meaning in place of the word used. I am satisfied that there is no resulting absurdity when **section 36** is given its literal meaning.

[32] I am aware that in other jurisdictions, legislation concerning the grant of certain licences are often drafted so that there is one provision which relates to the grant, renewal and/or revocation of a licence<sup>2</sup>. The single provision therefore assists a decision maker to consider the same matters relevant to the grant of a licence when deciding whether to renew or revoke a licence. However, our Firearms Act is drafted similarly to the **English Firearms Act 1968** (amended

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<sup>1</sup> Per Lord Wensleydale in **Grey v Pearson** (1857) 10 ER 1216 at page 1234.

<sup>2</sup> See for example, section 117 of the English Licensing Act 2003.

in 1997), which has one provision for the grant of a licence or certificate<sup>3</sup> and a separate provision for its revocation<sup>4</sup>.

[33] **Section 29(4)** in our Act is similar to **section 27(1)(b)** of the **English Firearms Act** in indicating that a consideration for the grant of the licence is that the applicant “*has a good reason for having in his possession ... the firearm*”. However, while **section 30A(4)** of the **English Firearms Act** (as amended) indicates that a firearm certificate may be revoked if the chief officer of police is satisfied that the holder “*no longer has a good reason for having in his possession ... the firearm*”, **section 36** of our Act does not indicate that this is a basis for revocation. It is clear that the drafters of the **English Firearms Act** were careful to make **section 30A** sufficiently wide as to include a factor considered in **section 27**, and to list other specific bases on which a firearm certificate may be revoked. The consideration in **section 30A(4)** of the **English Firearms Act** was not included in our Act. In my opinion, that which was not expressly included in our Act cannot now be implied by seeking to read this section conjunctively with **section 29**.

[34] Nonetheless, it seems that the drafters of the Act might have contemplated a situation such as those in this case, where, after a firearm licence has been granted, the holder becomes unfit to hold the licence. The words “*otherwise unfitted to be entrusted with such a firearm*” in **section 36(1)(a)** seem wide enough to encompass circumstances where the conduct, activities or circumstances of the licence holder make him/her unsuitable to continue to hold the licence. In my opinion, reliable intelligence relating to the applicant’s activities might form the basis of a decision that an applicant’s firearm licence should be revoked. However, it is noted that although Ms. Allen states that the intelligence received in respect of the applicant was forwarded to the board, this was not the stated reason for the revocation. It might be that the respondent felt constrained not to reveal that it had received intelligence, lest

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<sup>3</sup> See section 29 of our Act and section 27 of the English Firearms Act.

<sup>4</sup> See section 36 of our Act and section 30A of the English Firearms Act.

it prejudice any ongoing investigations. However, the respondent was obliged to give valid reasons for its decisions.

- [35] The revocation order did not state that the applicant was “unfit” to continue to be entrusted with a firearm and hold the licence. Instead, it referred to a reason which is not listed in **section 36** as a basis on which to revoke a licence. The applicant has therefore satisfied this court that there exists an arguable ground for judicial review which has a realistic prospect of success.

#### **Observation on the lateness of the application for the renewal of the licence**

- [36] I feel it necessary to indicate my observation that a revocation order was perhaps unnecessary since this the applicant’s licence expired on April 9, 2018 and his application was submitted six (6) months later. In such circumstances, it might have been possible for the respondent to treat the application as a fresh application for a firearm licence and thereby give consideration to matters referred to in **section 29** of the Act. In such circumstances, the respondent might have informed the applicant that the licence having expired six months before, his application was being treated as a fresh application. The respondent could have gone on to indicate that it was refusing to grant a new licence pursuant to **section 29** of the Act on the basis that the applicant had not shown that he has a good reason for having a firearm. More detailed reasons could then have been supplied for the refusal to grant a licence, namely, that the applicant resides and works outside of Jamaica. The applicant would then be directed to surrender his firearm.

- [37] I make this observation as it cannot be good practice for licence holders to submit their applications for a renewal of the licence after the expiration of the licence. The respondent ought not to permit late applications. Any firearm held by a licence holder becomes illegally held after the date of expiration of the licence. Tardiness on the part of a licence holder could result in him being charged by the police for illegal possession of a firearm, and it would be no defence in law that he has submitted an application for a renewal after the expiration of the licence. In England, a licence holder is required to submit the

application for the renewal of a certificate at least eight weeks before the expiration of the certificate<sup>5</sup>. The **English Firearms Act** then provides that the certificate continues in force until the application is determined or an extension of the certificate is granted, pending the determination of the application<sup>6</sup>. There are no similar provisions in our Act, but it is only logical, for licence holders to submit their applications for a renewal of the licence weeks before the expiration of the licence.

- [38] In my opinion, in this case, once the licence had expired before a renewal application had been made, and where no good reason was supplied in respect of the delay, the respondent could have treated the application as a new application for a firearm licence. However, the notification to the applicant is headed “revocation order” and the document refers to **section 36** of the Act. Consequently, the decision purports to be taken pursuant to **section 36** and to be a valid decision, the respondent must have considered only the factors listed in **section 36** of the Act, and not those listed in **section 29**.

#### **Was the applicant given an opportunity to be heard?**

- [39] In *Naraysingh*, the Privy Council said that there was no right of appeal against the decision of the commissioner of police in Trinidad and Tobago to revoke the appellant’s firearm licence, but fairness to the appellant required that the commissioner adopt some procedure, whether in writing or by oral hearing, to enquire into the facts, and giving the appellant an opportunity to be heard.
- [40] The decision of the Court of Appeal of Trinidad and Tobago in *Burroughs and Another v Rampargat Katwaroo* (1985) 40 WIR 287, was approved by the Privy Council in *Naraysingh*. There, the Court of Appeal held that although there was no express or implied provision in the Firearms Act requiring the commissioner to allow a licence holder a formal hearing before revoking his licence, the exchange of correspondence between the applicant and the

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<sup>5</sup> See section 28B(1)(a) of the English Firearms Act.

<sup>6</sup> See section 28B(2) of the English Firearms Act.

commissioner whereby the applicant 'appealed' to the commissioner after revocation of the licence, was a sufficient hearing for the purposes of the Act.

[41] It the instant case, it has not been denied by the applicant that the respondent requested a statement of him regarding the reason for the delay in seeking to renew his licence, or that he did not supply a statement. By requesting a statement of the applicant, the respondent gave the applicant a reasonable opportunity to be heard before the revocation of his licence.

[42] In any event, I am persuaded by the decision of McDonald-Bishop J (as she then was) in **Aston Reddie** that the **Naraysingh** decision is not strictly applicable here, since a right of appeal is provided for in our Act. Further, it is accepted that the Act does not provide for a formal procedure which gives the applicant an opportunity to be heard prior to the revocation of a licence. The learned judge stated at paragraph 40 that:

*"Parliament by expressly providing for hearing at that level and without expressly doing so at the level of the Authority is taken to have intended not to cast a legal duty or obligation on the authority to conduct a hearing before the revocation of a licence."*

**Is the date of notification the date of the revocation order or date of receipt?**

[43] Principles of fairness require that a decision maker give notification of its decision, and to do so within a reasonable time. One issue to be decided is what is the effective date of notification of the revocation order. In this jurisdiction the Act is silent on the date of notification of a decision, as is Part 56.

[44] I am guided by the decision in **City of Kingston Co-operative Credit Union Ltd**. In that case there was an eighteen-day period of delay between the date of the relevant decision and the date of its receipt. At paragraph 18 of the judgment, the learned judge stated that "*all the cases of which I am aware point tin one direction, namely, that the date of the decision (and not the date the applicant acquires subjective or actual knowledge of the decision) is the date from which time begins to run against the applicant*".

[45] I have also found the decision in **Anufrijeva** to be instructive. Contrary to Mr. Wildman's assertions, the House of Lords did not say that notification of a decision is given when the decision is "received". In fact, what was said is that proper notice of the decision-maker's decision is given from the date of the document indicating the decision. Lord Steyn said at paragraph 36:

*"36. I recognise, of course, that in some ways the appellant's case does not merit great sympathy. But even in unprepossessing cases fundamental principles must be upheld. The rule of law requires it. **In my view the appellant is entitled to recover income support until proper notification of the determination on 25 April 2000.** I would therefore allow the appeal."* (My emphasis)

[46] In the **Anufrijeva** case, the date of April 25, 2000 was significant as it was the date of the letter notifying the appellant of decision of the Home Secretary as well as that of the immigration officer refuse her entry into the United Kingdom. The first of the two decisions, being primarily administrative, did not require any interaction with the appellant, but the second decision would usually require an interview with the appellant. However, it was the first decision that set in motion the cancellation of the appellant's interim entitlement to income support and the appellant sought to appeal these decisions as well as the decision to cancel her income support benefit.

[47] In that case, the House of Lords considered two pieces of legislation, first, the Asylum and Immigration Appeals Act 1993 ("Asylum Act") and secondly, the Income Support (General) Regulations 1987. The Asylum Act provided for notification but the Income Support (General) Regulations did not, and in fact stated that the date of cessation of the benefit was the date when the person ceased to be an asylum seeker, as determined by the Home Secretary. The House of Lords said that the decision whether or not to grant asylum was a two-stage process and the right to appeal began from the date of the second stage. This was usually when the immigration officer refused (or revoked) entry and gave reasons for the refusal (rather than the date of the Home Secretary's decision), but the process of notification required the appellant to attend an interview. At the request of her solicitors, the interview date was postponed for weeks and eventually her income support allowance was cancelled before she

attended the interview and before she received any communication in relation to the decision of the Home Secretary. When the final interview date arrived several weeks later, the appellant alleged that she was too impecunious to travel by train to attend the interview. Consequently, the letter dated April 25, 2000 was finally sent to her, notifying her of the Home Secretary's decision and the decision to refuse her entry to the United Kingdom. Lord Steyn said April 25, 2000 was the date of "*proper notification of the determination*" of her application for asylum, and she was entitled to income support until that date.

[48] In the instant case, date of notification of the revocation order is August 12, 2019 and it is appropriate that time should begin to run against the applicant from that date, and not the date of his alleged receipt of the revocation order.

**Was an alternative remedy available at the date of notification of the revocation?**

[49] The editors of Judicial Review, Principles and Procedure 2013, state the following at paragraphs 26.90, 26.97 and 26.104:

*"26.90: ... The availability of an adequate alternative remedy is a matter that is relevant to the exercise of the courts discretion to grant permission to apply for judicial review.*

***26.97: ... if what would otherwise have been an adequate alternative remedy ceases to be available to a claimant because he or she have instead, choosing to bring a claim for judicial review the previous availability adequate alternative remedy may cause the court to refuse permission.***

***26.104: A court is extremely unlikely to grant permission to apply for judicial review in any case where there is a statutory right of appeal against the decision under challenge unless there are wholly exceptional circumstances. The fact that a claim raises a point of law of general importance might constitute exceptional circumstances for this purpose. but when considering this issue the court will be likely to have regard to whether the relevant appellate body can itself definitively determine the relevant point."** (My emphasis)*

[50] Counsel Mr. Wildman submitted that the breach of principles of natural justice in this case is more egregious than in the recent decision in ***Fenton Denny v Firearm Licensing Authority*** where the court granted leave to apply for judicial review. However, counsel did not indicate why the applicant in the



*Denny* case did not pursue the alternative remedy before seeking leave to apply for judicial review. In the instant case, the applicant has expressly said (at paragraphs 11 to 13 of his affidavit) that, on the advice of counsel, he has elected not to apply to the Review Board. In my opinion, this case is distinguishable from the decision in the *Denny* case in that here, the applicant seems to have accepted that an alternative remedy was available to him, but he elected to make this application to the court.

[51] An alternative remedy existed at the date of notification of the revocation on August 12, 2019. The applicant asks the court to accept that he only received the revocation order on October 16, 2019, more than eight weeks after it was posted to him. Even if the requisite 21-day period for applying to the Review Board had passed by October 16, 2019, when he allegedly received the revocation order, the applicant could still have attempted to pursue that remedy and explain the reason for his tardiness to the Review Board. Ms. Allen has indicated that efforts to reach the applicant proved unsuccessful as he was outside of the country up to August 12, 2019. If he was still outside of the country between August 12, 2019 and October 16, 2019, it seems to me that the Review Board was likely to give him an opportunity to be heard, as that would be reasonable. In those circumstances, an alternative remedy would still have been available to the applicant on October 16, 2019.

[52] Without an exceptional reason, this court cannot sanction the applicant's election to file this application instead of applying to the Review Board pursuant to **section 37**.

### **Was the respondent properly constituted at the date of the decision?**

[53] The **Firearms Act** provides for the appointment of members of the Board and the Review Board by the Minister by an instrument in writing<sup>7</sup>. Further, it provides that the names of all members of the Board and the Review Board

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<sup>7</sup> See provision 2 of the Third and Fourth Schedules of the Act respectively. Subject to Cabinet's approval, the Minister has power to make the appointments and remove, suspend or reappoint and make overlapping appointments (see **sections 35** and **37** of the **Interpretation Act**).

are to be published in the Jamaica Gazette<sup>8</sup>, although it does not stipulate a date by which such publication should be made and the effect of publication.

[54] I have been urged to accept the affidavit evidence of Indira Patmore that there is no Gazette issued after March 29, 2018 which refers to the appointment of the current members the respondent's Board, and that consequently, the Board's decision to revoke the applicant's licence is void. However, Ms. Patmore has not satisfied me that sufficient searches have been made for Gazettes in respect of the appointments to the respondent's Board and Review Board. Ms. Patmore averred that she searched the library of the Supreme Court for Gazettes issued after March 29, 2018. However, Ms. Patmore ought to have conducted a search at the library of the Houses of Parliament or the Government Printing Office since such Gazettes concerning appointments to Boards are more likely to be there.

#### **Complaint about the legitimacy of the appointment of the Review Board**

[55] Likewise, Ms. Patmore seeks to challenge the constitution of the Review Board on the basis that there is no Gazette issued after March 29, 2018 which refers to the appointment of its current members. Ms. Patmore averred that the appointments to the Review Board expired in 2018 and that "*it would be a futile exercise for the Applicant herein, to invoke the alternative remedy under the Firearms Act as the current members of the Review Board has [sic] not been Gazetted*".

[56] An instrument in writing appointing members of the Review Board is required, and must be presumed to have been issued in this case. As aforesaid, Ms. Patmore should have made searches at the library of the Houses of Parliament, if she wished to show that no Gazette was issued.

#### **Complaint that the decision is a nullity and the better forum is the court**

[57] I have also given consideration to Mr. Wildman's submissions that where the respondent did something so outrageous, which it lacked jurisdiction to do, the

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<sup>8</sup> See provision 9 of the Third and Fourth Schedules of the Act respectively.

only appropriate body to review the decision is the court. I am not persuaded by either Ms. Patmore's affidavit, or the submissions made by Mr. Wildman on this point. The Act clearly provides a process for redress in respect of decisions of respondent's Board, which must first be exhausted. At least two members of the Review Board are esteemed persons with a wealth of legal of legal experience and knowledge. I am confident that these persons will fairly determine whether the Board's decision is a nullity.

### **Complaint about delay by the Review Board**

[58] Finally, it is also the applicant's complaint (at paragraph 11 of his affidavit) and that of his counsel Mr. Wildman, that the Review Board takes too long to review decisions of the respondent's Board and consequently, this application has been made for leave for judicial review. However, **section 37A(4)** makes it clear that this step was not the expectation of the drafters of the Act, as it provides that an application for a review may be made to the Minister if the Review Board fails to comply with **section 37A(2)** and fails to submit a written report of its findings and recommendations to the Minister within 90 days of receiving an application for review. Anticipated delay on the part of the Review Board cannot be a good reason to avoid the remedy or appeal process provided for by the Act. Further, it is noted that more than 240 days passed between the filing of and the hearing of the application for leave. This is clearly a longer period than that complained of by the applicant.

[59] The editors of De Smith's Judicial Review, Sixth Edition, 2007 state at paragraph 16-021:

**16-021:** "... *the question ought to be whether the substitute for judicial review adequately protects the rights and interests of the claimant. The other body may for example, lack the power to deal with the issue.... The other procedure may be less expeditious, and if the matter is urgent, the court may allow the application to proceed. Among the factors to be considered are the comparative speed, expense and finality of the alternative processes, the need and scope for fact finding, the desirability of an authoritative ruling on any point of law arising, and (perhaps) the apparent strength of the claimant's substantive challenge.*" (my emphasis)

**[60]** I am satisfied that the application procedure to the Review Board will adequately protect the applicant's rights and/or interests. Further, an application to the Review Board will be comparatively faster and less expensive than an application to the court for judicial review.

**[61]** It is inappropriate for an applicant to seek to avoid an appeal process provided for by statute unless there is very good reason so to do. No good reason has been provided in this case.

**Has the applicant delayed in making the application?**

**[62]** I find that the applicant is deemed to have been notified of the respondent's decision on August 12, 2019 and that he should have filed his application for leave to apply for judicial review by November 12, 2019. The applicant has provided no explanation for his delay, and since he has not exhausted the remedy available to him under to **section 37** of the Act, I see no hardship or prejudice being caused to him by the refusal of his application.

**DECISION AND DIRECTIONS**

**[63]** I now make the following orders: -

1. The application for leave to apply for judicial review is refused.
2. The applicant having not first sought to appeal to the Review Board of Firearm Licensing Authority, the applicant is now directed to do so.
3. The order of this court and the written judgment are to be served on the Review Board of Firearm Licensing Authority.
4. Costs awarded to the respondent on the basis that the court considers that the applicant has acted unreasonably in making the application, when an alternative remedy was available to him. Costs to be agreed or taxed.
5. Leave to appeal granted.
6. The applicant's Attorneys-at-Law are to prepare, file and serve this order.