[2021] JMSC Civ 56

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU2020 CV00712

BETWEEN	**ANDRE FULLWOOD**	**CLAIMANT**
AND	**THE FIREARM LICENCING AUTHORITY**	**DEFENDANT**

IN CHAMBERS

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

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

Application for Leave for Judicial Review - Whether there is a discretionary bar of delay- Whether time begins to run from the date of the decision/order or from the date of service of the notice of the decision. No application for extension of time - Whether the Court can on its own motion grant an extension of time. Discretionary Bar - Appeal was filed to the Fire Arms Licensing Review Board prior to the names of the appointees being published in the Jamaica Gazette - Whether the appointment took effect on the date of the signing of the instrument of appointment by the Minister or the date of publication in the Gazette - Whether the Board was properly constituted at the date of the filing of the appeal - Whether the alternative remedy of Appeal to the Review Board is available - (Rule 56).

Heard: February 1, and March 8, 2021

THOMAS, J.

INTRODUCTION

[1] This is an application by Mr. Andre Fullwood for leave to apply for Judicial Review. He is seeking to challenge the decision of the Firearm Licensing Authority ("the FLA") to revoke his Firearm Licence. In his Notice of Application for Leave for Judicial Review filed on the 24th of February 2020 the Applicant seeks the following orders:

> "(i) A Declaration that the purported Revocation Order of the Applicant's Firearm Licence on the 27th May, 2019, by the Respondent on the basis that the Applicant is no longer considered fit and proper to retain a firearm licence and that the Applicant lives and works overseas, is procedurally improper, null and void and of no effect.
>
> (ii) A Declaration that the Revocation Order of the Applicant's Firearm Licence on the 27th of May 2019, by the Respondent on the basis, that the Applicant is no longer considered fit and proper to retain a firearm licence and the Applicant lives and works overseas, is irrational.
>
> (iii) An order of Certiorari quashing the Revocation order of the Applicant's Firearm Licence on the 27th of May 2019, by the Respondent on the basis, that the Applicant is no longer considered fit and proper to retain a firearm licence and the Applicant lives and works overseas.
>
> (iv) A stay of the Order of the Respondent revoking the Applicant's Firearm Licence on the 27th May, 2019, pending the determination of this Application for Leave for Judicial Review".

[2] I must say that I found the section of the application containing the grounds a bit lengthy and in part repetitive. In this regard, the grounds as it relates to these proceedings, can be summarized as follows:

(i) The Applicant was not given a reason for the detention of his firearm and the subsequent revocation of the User's Licence. He was not given the gist of the information upon which the revocation was based and the opportunity to respond. He was never afforded the opportunity to be heard before the decision was taken to revoke his licence.

(ii) The Respondent acted irrationally and arbitrarily and there is no basis under the law for the Respondent to revoke a Firearm User's Licence on the basis that the Applicant is not a fit and proper person to retain a firearm by reason of him living and working overseas.

(iii) Although the Applicant has submitted his appeal to the Review Board, the appeal process is not an effective remedy.

(iv) The failure of the Respondent to afford the Applicant a right to be heard goes to jurisdiction and renders its action a nullity. The Review Board has no jurisdiction to pronounce on a nullity or to grant the appropriate relief.

(v) The review process is not a convenient, expeditious or effective remedy. The history of the Appeal Tribunal has demonstrated that it has not complied with the statutory requirements in respect of matters that have been brought before it on a timely basis. The Applicant fears that in relying on the review process, he would be without the use of a firearm "for an inordinate period and be exposed to the obvious risk of a business man who operates his business in a crime infested area of the country".

(vi) The application was made promptly.

[3] The Respondent is resisting the application on the following grounds:

(i) The Application for Leave was filed out of time.

(ii) Under the ***Firearms Act***, the Respondent is not required to disclose its reason for revocation. In any event, the Applicant was advised of the said reasons on the revocation order. He had been given the opportunity to address the Respondent on matters for its consideration. These are, his conviction and his residing and working overseas, prior to the licence being revoked on the 27th of May 2019.

(iii) The Applicant filed an appeal to the Review Board and shortly thereafter he filed this application for leave to appeal. He has exercised the alternative remedy available to him. He is pursuing two legal remedies at the same time.

(iv) The Review Board was properly constituted at the time the Applicant's licence was revoked and at the time he filed his appeal to the Review Board.

THE FACTS

[4] The salient facts in this application are that Mr. Fullwood first applied for a Firearm User's Licence in April 2015. Initially his application was denied. However, there was further written communication between himself and the FLA, in which he requested that his application be reconsidered. He was subsequently issued with a Firearm User's Licence in August of 2016. The letter informing Mr. Fullwood of this approval for the licence indicated that the licence was conditional upon certain conditions being satisfied. It also stated that the "conditional approval" was valid for a period of 12 months from the date of the letter and" may be revoked in the event of any adverse report resulting from the security clearance process, failure to meet the competency requirements, or failure to satisfy the authority that the required security facility is in place".

[5] Shortly after the Applicant was issued with the aforementioned licence he travelled to the United States of America to work. Prior to leaving, that is, on the 2nd of November 2016, he delivered his firearm and ammunition, on his account, to the Respondent for safe keeping. After some intervening events, which will be later highlighted, the Applicant's Firearm User's Licence was revoked on the 27th of May 2019. Notice of the revocation order was first sent by registered mail to his last known address on the 20th of August 2019. He was later personally served with the said order on the 30th of January 2020.

ISSUES

[6] The following issues arise on this application:

(i) Whether there is a discretionary bar of delay. That is, whether the application was filed promptly.

(ii) In the event that the application was not filed promptly, whether an extension of time should be granted.

(iii) Whether there is any other discretionary bar to the application being granted. That is, whether there is an alternative remedy available to the Applicant.

(iv) If it is found that there is an alternative remedy available, whether there are exceptional circumstances justifying the grant of leave, notwithstanding the availability of this alternative remedy.

(v) If the issues above are determined in favour of the Applicant, the other issue that would fall to be considered is whether the Applicant has demonstrated that he has an arguable case.

Whether the Application has been filed promptly

The Law

[7] ***Rule 56.6*** of the ***Civil Procedure Rules*** ("The Rules") provides:

"(1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose

(2) ***However the court may extend the time if good reason for doing so is shown.***

(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".

Discussion

[8] It is clear that under the aforementioned Rule, an application for leave for Judicial Review must be filed as early as possible, and in any event it must be filed no later than three months after the grounds for leave first arose. It is to be noted, there have been occasions where the Courts have ruled that applications have not been filed promptly despite the fact that they were filed within the three months. (See **R *v Independent Commission Ex parte TV Northern Island LTD*** Times Ca 1991

TLR 806, par 22;) Andrew ***Finn-Kelcey v Milton Keynes Borough Council*** [2008] EWCA Civ 1067).

[9] In any event the decision as to whether this application has been filed promptly is dependent on how the passage of time should be calculated. The Rules indicate that the counting of time should commence from the time the grounds for the application first arose. In his Notice of Application filed on the 24th of February 2020, the Applicant referred to the "***purported Revocation Order of the Applicant's Firearm Licence on the 27th of May 2019***". Therefore, the Applicant has not denied that the decision that he is seeking to have reviewed was in fact made on the 27th of May 2019.

[10] However, Counsel for the Applicant Mr. Wildman submits that:

"Having regard to the fact that the Respondent chose to give Mr. Fullwood a written copy of the notice of revocation in January 2020, it suggests that they were not relying on any postal communication; they were relying on the handing of the revocation to him in January. The postal communication was in 2019. This was the first indication that it was being revoked but, choosing to serve him personally on January 30, 2020, the Respondent is estopped from relying on the first postal revocation."

[11] He therefore submits that the revocation order ought to be treated as being given on January 30, 2020 and this should be taken as the date that the Applicant became aware of the order. He is also of the view that time starts to run from the date the Applicant became aware of the revocation order. He therefore submits that the Applicant, having filed his application on the 24th of February 2020, would have filed his application promptly and that the view should be taken by this Court that the application was filed within the three (3) months stipulated by the Rules.

[12] In support of this position he relies on the case of **R (on the application of Anufrijeva) v Secretary of State for the Home Department** [2003] UKHL 36. He states:

"The House of Lords made the point that because of the constitutional implications of people's property being taken away, one cannot ascribe time to any date other than the date when the Applicant became aware of the decision because it has constitutional implications."

[13] In light of the position put forward by Counsel, and in resolving the issue of promptitude, a determination must first me made as to when time begins to run. In the case of ***City of Kingston Co-operative Credit Union Limited v Register of Co-operative Societies and Friendly Societies*** in The Supreme Court of the Judicature of Jamaica Claim NO. 2010 HCV 0204, Sykes J. as he then was had this to say on this issue:

*"Unfortunately …., all the cases of which I am aware all point in 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.**" (See paragraph 18)***

[14] At paragraph 19 he examined and quoted from several authorities which support this position: He said:

"*I now turn to the authorities to support the point. Hayton A.J. (as an Associate Justice of the Supreme Court of the Commonwealth of the Bahamas now Judge of the Caribbean Court of Justice) in the case of **Securities Commission of the Bahamas ex pwte Petro/eum Products Limited** BS 2000 5C 24 (delivered July 4, 2000) (Suit No. 1440 of 1999) laid out the position quite clearly. His Lordship, in the passage I am about to cite, summarized the facts and reasoning in a number of cases that are relevant to this issue. His Lordship said at pages 5 to 8:*

Was the application made promptly and in any event within six months? No. Is there good reason for extending time? No. Counsel for the Commission submitted that the date when grounds for the application first arose was 1 June 1999 when the Commission registered the FOHCL prospectus in respect of which the applicants seek relief Counsel for the applicants submitted that it was 5 July 1999 when the applicants first acquired knowledge of the public offering of shares (as apparent from their letter of 6 July to lawyers acting for FOHCL). Failing that, it was the day the prospectus was published. The application forms indicated the offer ran from I July 1999 to 5 p.m. on 30th July 1999 (the declaration therein acknowledging "receipt of the prospectus dated I July 1999 while the offer was given full publicity on Friday 2 July 1999 in the Freeport News and in a full page advertisement in the Nassau Guardian. After all, was it not the very publication of the prospectus to the world that caused the alleged detriment to the applicants? The applicants' ex parte application for judicial review was filed on 21 December 1999, more than six months after I June 1999 but fewer than six months after the period I to 5 July 1999. Authority for I June 1999 being the key date is found in the English Court of Appeal 's decision ***in R v. Secretary of State for Transport ex p Presvac*** *of 25 June 1991 published in (1992) 4 Admin LR 121. In that case the applicant submitted that time did not run until he knew of the issue of a certificate indicating that a competitor 's valves complied with certain Regulations or, rather, did not run*

until he had enough admissible "ammunition" to enable him to formulate his application with reasonable confidence in its success. In response, Purchas, L.J. (with whom the other Lord Justices simply concurred) stated (pp 122-134).

*In my judgment the words of the order are perfectly clear and do not admit of any implication of the kind which would be necessary to support [the applicant 's submission. In my judgment Order 53, r.4 provides that (a) the application should be made promptly (b) that in any event it should be made within three months [the English period] from the date when the grounds for the application first arose. Therefore, the subjective experience and state of knowledge of [the applicant] upon which they relied for his submission that time did not run until mid-April or May 1988 are not relevant. They may, however, be relevant when the Court comes to consider the proviso sunless the Court considers that there is good reason for extending the period.**"***

[15] In the case of ***R (on the application of Anufrijeva) v Secretary of State for the Home Department*** (Supra), on which the Applicant relies, the facts are as follows:

The Claimant applied for asylum, and also made a claim for income support under ***Regulations 70(3A***) of the ***Income Support (General) Regulations 1987,*** (UK). The regulation provided for the payment of income to persons who were asylum seekers within the provisions of the regulations. The Regulation also provided that a person ceased to be an asylum seeker and lost the right to income support 'in the case of a claim for asylum which … is recorded by the Secretary of State as having been determined (other than on appeal) or abandoned, on the date on which it is so recorded…" (That is ***Regulation 70(3A)(b)(i))***

[16] On the 20th of November 1999 an internal file note was signed in the Home Office, refusing the claimant's asylum application "for the reasons given in the letter aside", It concluded, "Case hereby recorded as determined." The content of that note was communicated to the Benefits Agency on the 30th of November. However this was not communicated to the claimant, and the 'letter aside' containing the Secretary of State's reasons for refusal of asylum was not sent to her. Payment of income to her ceased without any explanation to her with effect from the 9th of December 1999, although the Benefits Agency later informed her solicitors that payments had been stopped because it had been notified that her asylum claim had been refused on the 20th of November.

[17] The Claimant was subsequently notified by letter dated the 25th of April 2000 of the decision to refuse her asylum claim. (The practice of delaying for over four months the dispatch of letters explaining why asylum claims had been refused was a consistent practice of the Secretary of State) The Claimant thereupon applied for Judicial Review of the decisions to refuse her claim for asylum and to withdraw her income support on the grounds that the decision to withdraw her income could not take effect prior to her being notified.

[18] Her application was dismissed, as was her subsequent appeal to the Court of Appeal, because both courts regarded themselves as being bound by a previous decision of the Court of Appeal to the effect that, *"for the purposes of* **Regulation 70(3A)(b)(i),** *a person ceased to be entitled to income support from the date when his claim for asylum was recorded as determined on an internal file note in the Home Office, even though he had not yet been informed of the determination*".

[19] ***Rule 333 of the UK Rules*** prescribed the procedure to be followed when an application for asylum was denied. It states:

> "A person who is refused leave to enter following the refusal of an asylum application ***will be provided with a notice informing him of the decision and of the reasons for refusal. The notice of refusal***

will also explain any rights of appeal available to the applicant and will inform him of the means by which he may exercise those rights ... The applicant will not be removed from the United Kingdom so long as any appeal which he may bring or pursue in the United Kingdom is pending." (Emphasis, mine)

[20] The Claimant grounded her claim on the premise that it was wrong to treat her claim as "determined" until she was informed of the decision. The Court of Appeal did not find favour with this position. Therefore, she appealed to the House of Lords. In a 4/5 majority decision the House of Lords handed down a decision in her favour.

[21] The major issue that the Law Lords had to grapple with was the interpretation of the statutory provision of the words "***as having been determined***" and as a corollary, at what date would a person cease to be entitled to income support.

[22] At paragraph 21 of that judgment, Lord Steyn who was among the majority stated:

> "*The question is how regulation 70(3A)(b)(i) of the Income Support (General) Regulations 1987 should be interpreted. The question is whether Parliament intended to authorise the withdrawing of income support by an internal note on a departmental file with legal effect from a date before notification of the decision. At first glance it may appear to be a rather technical issue. But the decision by the House may have a more general bearing on the development of our public law".*

[23] At paragraph 26 he further stated:

> *"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."*

[24] At paragraph 30 he made the following pronouncement:

> *"Where decisions are published or notified to those concerned accountability of public authorities is achieved. Elementary fairness therefore supports a principle that a decision takes effect only upon communication*"

[25] He further stated at paragraph 31 that:

> *"The decision in question involves a fundamental right. It is in effect one involving a binding determination as to status. It is of importance to the individual to be informed of it so that he or she can decide what to do. Moreover, neither cost nor administrative convenience can in such a case conceivably justify a different approach. This is underlined by the fact that the bizarre earlier practice has now been abandoned. Given this context Parliament has not in specific and unmistakeable terms legislated to displace the applicable constitutional principles"*

[26] However, having examined the aforementioned authority, it is my view that this case is distinguishable from the instant case and does not address the issue of when time begins to run in relation to an application for leave to apply for Judicial Review for the following reason:

> The notice and reasons for refusal of asylum was not sent to the Claimant prior to her being deprived of property. That is, the Claimant's income support. This is against the background that the relevant legislation provided that the cessation of her income would occur on the determination of her claim by the Secretary of State, subject to her having a pending appeal, which had not been abandoned.

[27] Therefore when the relevant provision is examined, it is clear that the effect of the provision is that the income could only have been withdrawn upon communication of the relevant information provided for by ***Rule 333*** of the ***UK Rules*** and the Claimant's failure to exercise her right to appeal, or her abandoning the appeal, or

the Appeals Tribunal's confirmation of the decision of the Secretary of State. The relevant information that should have been provided were: the decision, reasons for the decision, information that the Claimant had the right to appeal, and the means to exercise that right to appeal. Additionally, the Claimant would have been deprived of the right to remain in the UK as a result of the failure of the Secretary of State to communicate his decision and reasons, as she was entitled to remain in the UK while her appeal was pending.

[28] The issue in that case therefore concerned the execution of an order and specifically one depriving a person of their property prior to the communication of that decision. It did not operate to change the date of the decision but its effectiveness, that is, the date of implementation of the decision.

[29] It is my view that ***R (on the application of Anufrijeva) v Secretary of State for the Home Department*** is not of general application as it relates to the determination of the date when a decision or an order was made. For example, the effective date of a judgment is the date when it was handed down. However, in terms of enforceability, notice (service) of the order or judgment is generally required before enforcement can take place. Therefore, to my understanding, the essential issue in that case concerned the consequences flowing from an uncommunicated decision and in particular, the effective implementation of same. That is, the decision could not be implemented until it was communicated.

[30] Drawing a parallel with the case at bar, in the event that Mr. Fulwood was still in possession of his firearm, despite the fact that the date of revocation would still be considered, the 27th of May 2019, he could not be held responsible for any failure to surrender the firearm until the decision for revocation was communicated to him**.**

[31] This reasoning becomes even more apparent when the judgment of Lord Millet who was also in the majority in the case of **R *(on the application of Anufrijeva) v Secretary of State for the Home Department (Supra)*** is examined. At paragraph 39 and 40 he stated:

"*I agree that a determination must actually be made before it can properly be recorded;* ***and that it is not necessarily merely provisional until it is notified to the person or persons adversely affected by it. But it does not follow that it has legal effect before it has been notified; and it is fallacious to suppose that an uncommunicated decision must be effective for all purposes or for none***. (See paragraph 39. Emphasis mine)

"***I am satisfied that the appellant's asylum application was determined on 20 November 1999, that the determination was final and not provisional, and that it had immediate legal effect for some purposes***. *(emphasis mine) Thus it returned the responsibility for deciding the appellant's immigrant status to the immigration officer, so that he could consider whether she should be granted exceptional leave to remain. But she could not be removed from or required to leave the United Kingdom until she had been given notice of the decision on her claim: section 6 of the 1993 Act expressly so provided. The question is whether the refusal of her application had immediate effect for the purpose of ending her entitlement to income support or took effect for this purpose only when she was notified of it*" (See paragraph 40. Emphasis mine)

[32] He further stated at paragraph 43:

"***I do not subscribe to the view that the failure to notify the appellant of the decision invalidated* it**, but I have come to the conclusion that it could not properly be recorded so as to deprive her of her right to income support until it was communicated to her; or at least until reasonable steps were taken to do so. This does not require any violation to be done to paragraph (3A) of regulation 70 of the Regulations. ***It means only that the word "determined" in that paragraph should be read as meaning not merely "actually***

determined" but as meaning "determined in such manner as to affect the claimant's legal rights."

[33] However, I find the case of ***Regina v. London Borough of Hammersmith and Fulham and Others, Ex P Burkett and Another*** [2002] UKHL 23 to be of greater relevance to the issue under consideration. In that case one of the main issues the court had to decide was the interpretation of the relevant UK Rule governing the time when applications for leave to apply for Judicial Review should be filed. Similar to rule ***56.6(1***) of the Rules it reads "*from the date when the grounds for the application first arose".*

[34] Significantly, it is the Judgment of Lord Steyn himself that has clarified the issue under consideration. He made the observation that:

> "*These provisions apply across the spectrum of judicial review applications*." (See par 37). "*It weighs in favour of a clear and straightforward interpretation which will yield a readily ascertainable starting date*". (see paragraph 45) "*The lack of certainty is a recipe for sterile procedural disputes and unjust results. By contrast if the better interpretation is that time only runs under Ord 53, r 4(1), from the grant of permission, the procedural regime will be certain and everybody will know where they stand*" (See paragraph 49)

[35] At paragraph 51, he concluded:

> "*For all these reasons I am satisfied that the words 'from the date when the grounds for the application first arose' refer to the date when the planning permission was granted.*"

[36] In light of the foregoing authorities it is beyond question that as it relates to an application for leave for Judicial Review within the context of ***Rule 56.6(1***) time is to be counted from the date of the impugned decision.

[37] I acknowledge the fact that it does not accord with the basic tenets of justice that a person should be held responsible for failing to exercise a right to challenge an adverse decision in circumstances where due to the fault of the decision maker, he was not made aware of decision. I nonetheless take the view that a proper application of ***Rule 56*** does not engender such an unjust result. It is my view that the purpose of the time limit is to force parties to move speedily in matters of this nature, bearing in mind that when decisions are made by public bodies, there are implications for effective administration with regards to implementation. That is timely implementation enhances good administration. It therefore lends to reason that provisions for challenging these decisions would mandate challengers to act speedily.

[38] Essentially, the effect of the Rule and the imposition of a time limit is not to shut out a litigant who was never given notice of the decision. The fact is. the Rule has in fact made provision for challenge even outside of the three (3) month period, provided that he essential requirements in this regard have been satisfied.

[39] The evidence on behalf of the Respondent is that the Applicant was first sent the notice of the revocation by registered mail at his last known address on the 27th of August 2019. On this evidence, the deemed date of service would be after three (3) months from the date of the revocation. Therefore, the failure to communicate the decision, within a timely fashion would be a compelling reason to extend the time. However, this does not change the fact that time began to run from the time the decision was made. That is, from the 27th of May 2019. The Applicant having filed this application on the 24th of February 2020, would have filed his application 9 months after the grounds for the application first arose. I am therefore constrained to find that the application was not filed promptly.

Whether there is any Basis For Extending the Time

[40] It is clear from the Rules that that the major objective of the rule surrounding applications for leave to apply for judicial review is promptitude. However, despite setting an upper limit of three (3) months, provision has been made for time to be extended in favour of an Applicant who is able to demonstrate that he or she has good reason for the delay.

[41] Therefore having determined that the application has not been filed promptly and in any event outside of the three months from when the grounds first arose, the next issue to be determined is whether the court can grant an extension of time without any application, whether oral or written, to do so. ***Rule56 .6 (2)*** clearly states that:

> "T*he court may extend the time if good reason for doing so is shown".*

[42] When this provision is construed it becomes apparent that the court cannot extend the time on its own volition but that the rule places the responsibility on the Applicant to initiate the process for the extension of time. That is, the Applicant is expected to "show" the court the good reason for extending the time. This suggests that the Applicant would have to put material before the court for it to consider whether to grant the extension of time prior to considering the application for leave. This material would have to be in the form of evidence, either oral or on affidavit. In the instant case there has been no application for extension of time for the court to consider. In fact, counsel for the Applicant is insisting that there is no need for an extension of time.

[43] Furthermore, I again refer to the evidence of Ms. Letine Allen, Director of Application and Certification of the Respondent, that the revocation order was sent by registered mail to Mr. Fullwood's last known address in Jamaica on the 20th August, 2019 and that on the 30th January, 2020, he was personally served with the said revocation order. Mr. Fullwood further states in his affidavit that on the 29th of January 2020, he returned to Jamaica and on the 30th January 2020, he

went to the Respondent's office (Montego Bay) where he was served with the Revocation Order. He has however made no mention of the service by registered post. In any event, he has put no evidence before the court rebutting these assertions of Ms. Allen. Therefore the court has no choice but to accept that service by registered post was indeed effected prior to the personal service on the 30th of January 2020.

[44] Consequently, by the 10th of September 2019 in accordance with the ***Rule 6.6 (1)*** Mr. Fullwood would have been deemed served with the revocation order. (That is 21 days from the date of posting). Therefore, from that date it would be expected that the Applicant would have acted speedily to have his application placed before the court. However, the Applicant has placed no evidence before the court as to the reason for his delay between the 10th of September 2019 and the 24th of February 2020 in making the application. This is apart from his attorney –at- law submitting that the Respondents are estopped from relying on the first notice. However, there is insufficient demonstration on the evidence of any good reason for the extension of time, as is required by ***Rule 56.6 (2.)***

[45] Therefore, even if it were permissible for me to extend time without a written application being filed by the Applicant, he would not have placed sufficient reason before the court for an extension of time to be granted in his favour. This finding is sufficient to establish that there is in fact a discretionary bar to this application. That is having failed the promptitude test this application for leave to apply for Judicial Review must fail. However, for completeness I will go on to consider whether there is another discretionary bar to the application.

Whether there is an Alternative Remedy available to the Applicant

[46] In these proceedings, Mr. Wildman on behalf of the Applicant, made certain oral submissions as to the legitimacy of the Review Board. I will try to capture the essence of his submissions in this regard.

[47] He submits that there was no alternative remedy available to the Applicant, because at the relevant time, the Review Board, as established under the ***Firearms Act (the Act)***, was not properly constituted. He says that the Act states that the Review Board should last for three [3] years, however, the last appointment of the Review Board was in May 2016. Therefore, any reappointment or reconstitution of the Review Board ought to have taken place in May 2019. This, he contends, was not done.

[48] Further, he submits that ***Section 31*** of the ***Interpretation Act***, makes it "abundantly clear that all appointments, subsidiary or otherwise, unless the statute says otherwise, come into effect on the date of publication" in the Gazette.

[49] I understand his submissions to say that the failure to publish the appointment of the members of the Board when it fell due in May 2019, in the Gazette means that the Review Board was improperly constituted. Ms. Allen on behalf of the Respondent, exhibited a copy of the Gazette dated June 16, 2020, which "gave notice of the Appointments made in May 2019". To this, Counsel for the Applicant took the point that the June 16, 2020 publication sought to backdate the appointment of the Board, which is illegal.

[50] In support of the Applicant's decision to seek leave to apply for Judicial Review, he argues that the Review Board, being improperly constituted at the time, was not a remedy that the Applicant had at his disposal in seeking to have the FLA's decision reviewed.

[51] On account of these submissions, I will highlight the relevant section of the Fourth Schedule to the ***Firearms Act*** and the relevant provisions of the ***Interpretation Act***.

Section 2 of the Fourth Schedule to the ***Firearms Act*** states:

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

[52] Section 31 of the Interpretation Act provides:

> "*(1) All regulations made under any Act or other lawful authority and having legislative effect shall be published in the Gazette and* ***unless it be otherwise provided*** *shall take effect and come into operation as law on the date of such publication. (Emphasis mine)*
>
> *(2) The production of a copy of the Gazette containing any regulations shall be prima facie evidence in all courts and for all purposes of the due making and tenor of such regulations*."

[53] It is noted that ***Section 31*** of the ***Interpretation Act***. unequivocally speaks to regulations. **Section 3** of the Act defines "regulations" as including "rules, by-laws, proclamations, orders, schemes, notifications, directions, notices and forms"

[54] Nonetheless, I comprehend Section **31 (1)** of the ***interpretation Act to*** be saying, that generally, regulations, to include notifications, take effect on the date of the publication except in circumstances where a specified date is stated in the Gazette itself or in the particular legislative instrument for the regulation to take effect. Essentially this is the effect of the insertion of the words "*unless* ***it be otherwise provided*** in the section.

[55] The Fourth Schedule to the ***Firearms Act***, as provided for by Section 37A of the said Act, treats with the establishment and appointments of the Review Board. ***Section 2*** of the Fourth Schedule states that members to the Board are appointed by the Minister in an instrument in writing. A literal interpretation of the section conveys the meaning that it is the instrument, that gives effect to the appointment and not the publishing in the gazette. Publishing in the Gazette serves to inform the general public of the said appointment. Indeed, ***Section 9*** of the ***Fourth Schedule*** states:

> "*The names of all members of the Review Board as first constituted and Gazetting of every change therein, shall be published in the Gazette*." [emphasis mine]

[56] The wording of ***Section 9*** suggests that the appointment of the members of Board should occur prior to the gazetting of the names. The cover page of any Gazette publication, conveys the intention of the particular publication. The publication in question, is dated June 16, 2020. It is headed "*Government Notice*", with the subheading "*Appointmen*t" and states that the notification is "*published for general information*. Under the subheading *"Appointment*" it states "*In accordance with the powers conferred upon the Minister of National Security, by the provisions of the Firearms Act, the following persons have been appointed Chairman and members of the Firearm Licencing Authority (FLA) Review Board* ***for a period of three (3) years with effect from May 20,2019 to May 19, 2022" (emphasis mine).*** This is followed by the listing of the names of the Chairman and members.

[57] In concluding this point, I turn to ***section 5 the Gazette Act*** 1906. It reads:

> "*A document purporting to be the Jamaica Gazette, and to contain… a notification of any appointment by the Queen, her heirs or successors, or by the Governor General or by a Minister, of any person to any office in Jamaica… shall be prima facie evidence in all Courts and in all legal proceedings of the fact that… such appointment was made… or that such notice so required to be inserted in the Jamaica Gazette was given by the persons, at the time, in the manner and terms, and to the extent stated or appearing in such document, and that all such matters as stated or appearing in such document were duly published in the Jamaica Gazette*…"

[58] Having regard to aforementioned provision, and in particular the words **"shall be prima facie evidence in all Courts and in all legal proceedings of the fact that… such appointment was made… or that such notice so required to be inserted in the Jamaica Gazette was given by the persons, at the time, in the**

manner and terms, and to the extent stated or appearing in such document" it is apparent that as it relates to appointments by the state whether by the Governor General or a Minister, publication in the Jamaica Gazette serves as notice and evidence that such appointment was made at the time it is stated that it was made.

[59] Consequently it is my view that the ***Firearms Act*** to include the Fourth Schedule, the ***Interpretation Act*** and the ***Gazette Act***, do not support Mr. Wildman's position that the fact that the appointment of the Chairman and members of the Review Board on May 20, 2019 was not published until June 16, 2020 is an indication that at May 20, 2019, the Review Board was not legally constituted. Consequently, I find that the alternative remedy of appeal to the Review Board is available to the Applicant.

Whether the Availability of the Alternative Remedy is a Bar to the Present Application

[60] In the case of ***Regina v Inland Revenue Commissioners, ex p Preston*** [1985] AC 835, it was sated by the House of Lords that "it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision". (See page 852D) Therefore the established principle of law on this issue is very clear. It is only in exceptional cases that the court will entertain an application for Judicial Review where an alternative remedy is available. On this issue the evidence of Ms. Allen on behalf of the Respondent is that on the 16th of April, 2020, the Respondent was served with Mr. Fullwood's Notice of Application for Leave to Apply for Judicial Review. She contends that Mr. Fullwood, having filed an appeal to the Review Board and shortly thereafter filing an application for leave to apply for Judicial Review has embarked on two legal processes simultaneously. He has also exercised the alternative remedy available to him by filing the appeal to the Review Board.

[61] Mr. Wildman submits that the Applicant's application to the Review Board has not yet been determined and the Review Board "has been notorious for not abiding

by the law in not giving decisions within 90 days which is a mandatory requirement". He further takes the view that and any decision after 90 days is illegal.

[62] However, Ms. Foster submits that there is nothing in the Applicant's affidavits to explain why he had not pursued the alternative remedies. She also takes the position that it was incumbent on the Applicant, if he is saying that there was no action by the Review Board within 90 days, to apply to the Minister. Further, she submits that the leave for Judicial Review was filed before the 90 days expired. On that basis she submits that the Applicant has not satisfied the court that: Judicial Review is more appropriate; or that he has exhausted all other remedies.

[63] I share the view of Counsel Ms. Foster that as the law now stands, in order to be granted leave for Judicial Review the Applicant must convince the court that either that there is no alternative remedy available or if there is there is one, there is good reason for not pursing this remedy, (See ***Sharma v Brown-Antoine and others; Gorstew Limited*** *and* **Gordon Stewart O.J. v The Contractor General***,* Claim No. 2012 HCV 04918)

[64] In the case of, ***Fenton Denny v The Firearm Licencing Authority*** [2020] JMSC Civ 97 I did make the observation that the availability of an alternative remedy was not an absolute bar to the grant of leave for Judicial Review. However, in that case the distinction is this: I found that Mr. Denny was not provided with the gist of the information on which his licence was revoked. That is there was *"no indication that the Applicant was ever informed of this gist of this complaint. 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*" (See paragraph 81 of that Judgment).

[65] It was against that background that I found that Mr. Denny the Applicant in that case would not have been able to properly prepare himself to exercise his rights under the appeal process. Additionally, by the time his application for leave for

Judicial Review was heard the right to appeal to the Review Board had become statute barred. Consequently, it was on the principle of fairness that Mr. Denny was granted leave.

[66] In the instant case, the Applicant Mr. Andre Fulwood alleges that he was not provided with the reason for the revocation of his Firearm User's Licence. In his affidavit evidence he states that two months after receiving his Firearm User's Licence he spent about a year and four months in the United States of America. Upon returning to Jamaica, he was denied access to the firearm that he had given to the Respondent for safe keeping. He further alleges that he was not given a reason for the detention but was only told by the Respondent he would be contacted (without more).

[67] He however admits that sometime in 2018, he was informed that Mr. Wilkie, of the Respondent was trying to make contact with him. By this time, on his own evidence, he had already returned to the USA. He states that he made contact with Mr. Wilkie and informed him that he would not be returning to Jamaica until the end of January 2019.

[68] He further admits that having communicated his whereabouts to Mr. Wilkie, Mr. Willkie then asked him to email him a letter with regards to his employment status to which he complied. He also states that upon his return to Jamaica in January 2019, "he attended on the Respondent's office (Kingston) to see Mr. Wilkie. Mr. Wilkie again asked the Applicant for an update on his job status and asked him if he recalled giving a statement to the Respondent's investigator in Montego Bay about a matter in the St. James Parish Court to which he answered "yes".

[69] The Applicant asserts that in 2015 when he was applying for the Firearm User's Licence he gave a statement to an investigator of the Respondent about a "marijuana" charge laid against him sometime prior to the Firearm User's Licence being issued to him. However, I note that on his Application Form he stated that he was never convicted of a criminal offence.

[70] The evidence of Ms. Letine Allen for the Respondent is that less than three months after Mr. Fullwood received the conditional approval, on the 2nd November, 2016, he delivered his firearm and ammunition to the Respondent. ln 2017, he did not attempt to renew his firearm licence. Mr. Fullwood's licence has not been renewed since the issuance of the conditional approval to him in the year 2016.

[71] She further states that on the 9th of July, 2018, she was advised by a Mr. Shane Dailing, the Chief Executive Officer of the Respondent and did verily believe that he received intelligence from an entity about Mr. Fullwood. He also advised her of the nature of this intelligence. She asserts that as a result of this information she placed an alert on the Respondent's database. The purpose of this alert was that in the event that Mr. Fullwood attended upon the Respondent's office to renew his Firearm User's Licence, she would be notified and the renewal would not be processed.

[72] Her evidence continued as follows

> "Sometime in 2018 the respondent received a formal complaint from said entity. An investigator of the Respondent was assigned to carry out investigations in relation to Mr. Fullwood. The investigator made attempts to make contact with Mr. Fullwood but these attempts proved futile until December 2018. Mr. Fullwood also submitted a letter dated the 3rd of December, 2018 to the investigator indicating that he (Mr. Fullwood) was employed overseas. Mr. Fullwood thereafter provided a detailed statement to the office of the Respondent on the 2nd of May, 2018 and addressed matters which the investigator was investigating. She cannot disclose the matters because of reasons of national security. At the end of the investigation, Mr. Fullwood's file was submitted to the Respondent for their consideration. On the 27th May, 2019, Mr. Fullwood's Firearm Licence was revoked by the Respondent under **Section 36 of the Firearm Act**. The

reason for the revocation was, inter alia, that Mr. Fullwood was "no longer considered fit and proper to retain a firearm licence".

[73] She also states that

> “The Respondent also found that Mr. Fullwood living and working overseas is an additional basis for the revocation of the firearm licence. From my experience at the office of the Respondent, Mr. Fullwood embarking on a job overseas would have undermined his application that he needed a firearm user's licence to protect his life and property in the conduct of his business which is located in Jamaica”

[74] It was stated in the case of ***Aston Reddie v FLA and Ors.*** HCV1681 0f 2019), and also the **Denny Case (supra)** that the **Firearms Act** has in fact established the mechanism for the right to be heard. However, the procedure is for this right to be exercised through an appeal to the Review Board. Essentially the obligation of the FLA on revoking the Firearms User’s Licence is to provide the Applicant with the gist of the allegation so as to provide him with sufficient information to enable him should he so chose to exercise his right to, appeal.

[75] Accordingly, I will now proceed to examine the evidence to decide whether the Respondent met its obligation. Mr. Fullwood states in his affidavit that the initial denial was based on him not being able to sufficiently demonstrate that he had a reason to be armed. He further admits that subsequent to his travel to work overseas he was contacted by an investigator who made enquiries regarding his presence overseas. Based on his own evidence he had the Firearm User’s Licence for only 2 months prior to him getting the job in the USA. This would suggest that he got the job in October 2016. If he spent 1 year and 4 months overseas he would have returned to Jamaica in February 2018. By then the conditional approval would have been expired.

[76] On the Applicant’s own evidence, it would have been conveyed to him by Mr. Wilkie in January 2019 that there were concerns about his being away in the USA working

and also as it related to previous charges. This is against the background that he was aware from as far back as February 2018, that the FLA had refused him access to the Firearm. Therefore it is apparent that from that time the Applicant was made aware that the FLA had concerns regarding his continued possession and use of the Firearm.

[77] By January 2019 he would have been provided with the gist of those concerns. That is the issue concerning his status overseas and the issue relating to the offences for which he was charged. Therefore, by the time he was issued with the Revocation Order he would already have had some amount of information, forming the basis of the revocation.

[78] The FLA has also stated that in addition to these issues, they also received a formal complaint of which the Applicant was made aware. They have also indicated that the Applicant provided the Respondent with a detailed statement in response to this particular allegation. Incidentally, it is my view that if the provision of the details of this information would threaten the safety of other individuals, then certainly the FLA is required provide only as much information as is necessary for the Applicant to exercise his right to appeal. No affidavit evidence has been filed in reply to rebut this evidence of Ms. Allen

[79] Therefore, I find that Applicant would have had sufficient information to participate in the appeal process. In any event, the fact that he did indeed file an appeal would suggest that he did in fact have sufficient information to form the basis of his appeal. In this instant case therefore it cannot be argued on the principle of fairness that the Applicant was denied the right to access the alternative remedy, on the basis that the FLA failed to provide him with the gist of the information to ground his appeal.

[80] Additionally, the fact that one of the reasons provided by the FLA for the revocation is that the Applicant was residing and working overseas, and the Applicant's admission that enquiries were made of him regarding this issue, sufficiently demonstrates that he was in fact provided with the gist of this allegation. A proper

reading of Section 29 of the ***Firearms Act*** leads to the conclusion that a Firearm User's Licence should be denied if the Applicant does not sufficiently demonstrate he has a good reason for possessing it.

[81] The relevant subsections read:

> "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"*
>
> …
>
> 29 (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".*

[82] While it is trite law that a discretion should not be exercised arbitrarily, it is clear that the Applicant's failure to satisfy the FLA that he has a good reason for the possession of the Firearm would be a proper exercise of the FLA's discretion to deny him a User's Licence. It is arguable that ***Section 36.(1***), which inter alia allow the FLA ,to revoke a Firearm User's Licence, where it is found that the holder is "unfitted to be entrusted with such a firearm" would be applicable in these circumstances. The relevant section reads

> *"36. (1) Subject to section 37 the Authority may revoke any of licences, certificates licence, certificate or permit if*

(a) the Authority is satisfied that the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfitted to be entrusted with such a firearm or ammunition as may be mentioned in the licence, certificate or permit;"

[83] However, it is not for me at this stage to determine whether these particular circumstances would be covered by the provision. The relevant consideration it not whether the FLA was correct with regards to the reason it gave for revoking the licence but whether the gist of the allegations on which the reason was founded was conveyed to the Applicant. Essentially, contrary to the decision in the ***Denny*** *case.* I do not find that the Applicant was" kept in the dark" regarding the gist of the allegations on which the decision was taken to revoke his licence.

[84] The fact is, there is a basis for me to find and I so find, that on the Applicant's own evidence and on the unchallenged evidence of Ms. Allen for the Respondent, the Applicant was provided with sufficient information, that is the gist of the allegations surrounding the decision to revoke his Firearms User's Licence. This is supported by the fact that Mr. Fullwood was able to and did file an appeal before the Review Board. In fact, his complaint against the Review Board, does not identify any handicap on his part in proceeding with the hearing of his appeal.

[85] He alleges failure on the part of the Review Board to hear and determine appeals within the statutory period. Regarding this particular issue, Mr. Wildman has made general reference to four (4) cases. These are **Johnson v Firearms Licensing Authority** 2018 HCV 03756, **Denny v Firearms Licensing Authority** [2020] JMSC Civ 97, **Hananan v Firearm Licensing Authority** SU2019CV04097 and **Summerville v Firearm Licensing Authority** SU2019CV01288. This is notwithstanding the fact that, it is in only one of these cases, that is **Denny v Firearms Licensing Authority (supra**) that there has been a determination of the Application for the Leave for Judicial Review. In all the other cases the applications for leave are still pending and in any event there have been no pronouncements

or findings in any of the afore-mentioned cases with regards to any tardiness on the part of the Review Board to determine appeals.

[86] Additionally, and as correctly pointed out by Ms. Foster, Counsel for the Respondent, there is no application to review the actions of the Review Board. That would have been the correct procedure in relation to that complaint. In any event the Applicant has not denied the contention of the Respondent that the Applicant filed his application for leave for Judicial Review only 10 days after he filed his appeal before the Review Board.

[87] Nevertheless, it is also reasonably expected that the Review Board would not have proceeded to hear his appeal while the matter is still pending before the Court. Therefore, the Applicant cannot rely on the position that the Board did not hear his appeal in the statutory period of 90 days when he is the one that would have prevented the appeal from proceeding within that period by filing this action so soon after he filed the appeal. Additionally, I cannot see how the Applicant, as a basis of his application, is raising the issue that there is a likelihood that his appeal to the Review Board would not be heard within the 90 days, when this matter is now being heard approximately one year after it was filed in this court. Therefore, it is my view that any complaint about tardiness on the part of the Board with regards to this particular application is without merit.

Conclusion

[88] I find that the Applicant has failed to satisfy the requirements for the grant of leave to apply for Judicial Review due to the discretionary bars of delay and the availability of an alternative remedy. Additionally, I find that the Applicant has failed, to show any reason for extension of time, or to bring himself within the exception for leave to be granted in spite of the availability of an alternative remedy. Consequently, I do not believe it is necessary or even prudent for me at this stage to consider the other issues that have been raised with regards to the legitimacy of the reasons the FLA has given for revoking the Applicant’s Firearms User’s Licence. That is, whether he has an arguable case. This is in light of my finding

that the alternative remedy off appeal to the Review Board remains open to the Applicant, and it is my view that these are issues that are determinable by the Review Board.

Orders

[89] Consequent upon my findings I make the following orders.

(i) Application for Leave for Judicial Review is denied.
(ii) The appeal before the Review Board is to proceed.
(iii) Cost to the Respondent to be agreed or taxed.
(iv) Leave to appeal granted.

.