



[2020] JMSC Civ. 199

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV03579

IN THE MATTER of an Application for Judicial Review

AND

IN THE MATTER of Part 56 of the Civil Procedure Rule 2002

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|----------------|---|---------------------------------|
| BETWEEN | ORVILLE HENRIQUES | CLAIMANT |
| AND | THE MINISTER OF NATIONAL SECURITY | 1ST DEFENDANT |
| AND | THE ATTORNEY GENERAL OF JAMAICA | 2ND DEFENDANT |
| AND | THE BOARD OF THE FIREARM LICENSING AUTHORITY | 3RD DEFENDANT |

IN OPEN COURT

Mr. Aon Stewart and Ms. Ashleigh Ximines instructed by Knight, Junor & Samuels for the Claimant.

Ms. K Ruddock and Ms. K Fletcher instructed by the Director of State Proceedings for the Defendants.

Heard: July 30, 2020 & October 9, 2020

JUDICIAL REVIEW- REVOCATION OF FIREARM USER'S LICENCE BY FIREARM LICENSING AUTHORITY- REVOCATION UPHeld BY MINISTER- AT WHAT STAGE

**UNDER THE FIREARM'S ACT DOES A PARTY HAVE A RIGHT TO BE HEARD-
PROCEDURAL IMPROPRIETY- ILLEGALITY- WHETHER THE MINISTER IS BOUND
TO ACCEPT THE RECOMMENDATIONS OF THE TRIBUNAL.**

WOLFE-REECE, J

INTRODUCTION

[1] On November 8, 2019, The Honourable Mr. Justice D. Fraser granted leave to the Claimant to make the current application. The application is for Judicial Review of the decisions of the Firearm Licensing Authority and the Minister of National Security to revoke the licences granted to him under the Firearms Act as well as a review of the decision of the Review Board on the hearing of the Claimant's Appeal. The Claimant filed a Fixed Date Claim Form on the 21st November, 2019 seeking the following orders:

- 1) *An Order of Certiorari quashing the decision of the Firearm Licensing Authority on or about the 9 July, 2018 to revoke the licenses granted by them to Applicant [sic].*
- 2) *An Order of Certiorari quashing the decision of the Minister of National Security made on or about the 29th July 2019 dismissing the Claimant's application for review of the decision of the Authority and upholding the Authority's decision to revoke the Claimant's licenses.*
- 3) *An order of Mandamus ordering the Authority to restore the Claimant's licenses.*
- 4) *A Declaration that the proceedings by the Review Board and the decision arrived at by the Minister to revoke the Claimant's licenses stands in breach of sections 37A (2)(a) and section 37A (4) of the Firearms (Amendment) Act 2005.*
- 5) *A Declaration that the decision of the Minister of National Security on or about the 29 July 2019 to deny the Applicant's appeal against the revocation of his licenses was irrational and/or unreasonable.*
- 6) *A Declaration that the Minister of National Security acted ultra vires in the exercise of his statutory powers under 37A of the*

Firearms Act in making his decision on or about the 29 July 2019 to deny the Applicant's appeal.

- 7) *A Declaration that the proceedings before the Review Board and the Minister leading to the decision of the Minister to uphold the Authority's decision to revoke the Claimant's licenses was conducted in breach of the principles of natural justice.*
- 8) *A Declaration that the Board of the Firearm Licensing Authority acted ultra vires its powers under section 36 of the Firearm Act, in making the order for revocation made on or about the 9 July, 2018.*
- 9) *A Declaration that the decision of the Board of the Firearm Licensing Authority to revoke the Applicant's licenses was unlawful, irrational and/or unreasonable.*
- 10) *A Declaration that the Board of Firearm Licensing Authority failed to adhere to the principles of natural justice prior to making its decision on or about the 9 July, 2018 to revoke the Applicant's licenses.*
- 11) *A Declaration that the decision taken by the Minister to uphold the revocation of the Claimant's licenses is ultra vires and, therefore, null and void.*
- 12) *A Declaration that the Claimant has not breach, contravened, or acted contrary to the Firearms Acts.*
- 13) *Costs;*
- 14) *Such further and or other relief as this Honourable Court deems just.*

BACKGROUND

- [2] The Claimant in this matter, Mr. Orville Henriques, is the owner and manager of a shooting range known as Manchester Rifle and Pistol Club Limited (MRPC). Mr. Henriques is also the owner of Central Dealers Limited (CDL); both entities are registered under the Companies Act of Jamaica.
- [3] Prior to the 9th of July, 2018, the Claimant was the holder of the following licences issued by the Firearm Licensing Authority (FLA):

- a. Firearms Users Licence;
- b. Range Operator Approval;
- c. Trainer Approval;
- d. Firearm Dealer's Licence; and
- e. Gunsmith Licence.

- [4] On January 5, 2018 a representative from MRPC wrote to Mr Shane Dalling, the Chief Executive Officer of the FLA, indicating that the club would be participating in the 2018 Florida Open which was scheduled to take place in Frostproof, Florida, United States of America, on Thursday, February 15, 2018 to February 18, 2018. It was indicated that five (5) members of the club would be participating in the competition and the club requested permission to purchase ammunition for the purpose of training for the competition. In a subsequent correspondence another member, Mr Alvin Amore was added to the list of club members to participate and therefore desirous of purchasing the additional ammunition for training purposes.
- [5] Miss Sue-Ann Marie Henriques completed a form titled '*Firearm Licensing Authority Request for Additional Ammunition Purchase*' signed on the 7th January, 2018, wherein she requested permission to purchase twelve thousand (12,000) rounds of ammunition per member for use by the MRPC for training purposes. The FLA approved the request for the additional purchase on the 10th January, 2018.
- [6] On March 12, 2018, (which would have been after the date of the proposed competition in Florida), a team from the FLA visited Central Dealers Limited (CDL) for auditing purposes. During the audit it was discovered that of the 12,000 rounds of ammunitions which were purchased 8,700 rounds remained unused.
- [7] The FLA served the Claimant with a Revocation Order dated July 9, 2018 in which the FLA noted that pursuant to section 36 of the Firearms Act, the FLA has taken the decision to revoke the following licenses which were held by him:

Range Operator Approval

Trainer Approval

Firearm Dealer's Licence

Gunsmith Smith Licence [sic]

- [8] Following the revocation of the licenses held by the Claimant, the Minister exercised his power under section 35A of the Firearms Act by issuing the Firearms (Delivery of Firearms and Ammunition) (Orville Henriques) Notification 2018 dated the 13th August, 2018 which was published in the Jamaica Gazette Supplemental on Monday the 13th August, 2018 requiring the claimant to surrender all firearms and ammunitions held by him under the revoked licences to the Firearm Licencing Authority.
- [9] The Claimant made an application to the Review Board of the FLA to review the decision to revoke the licenses. The Review Board, comprised of The Honourable Mr. Justice Seymour Panton, OJ, CD (retired), Mrs. Caroline Hay, QC and Mr. Kelso Small, B.H.M., heard the Claimant's application on January 17, 2019.
- [10] The Review Board wrote to the Minister of National Security (the Minister) by letter dated May 14, 2019 with its findings and recommendations. The last two paragraphs of the letter are of importance as they capture the recommendations to the Minister. The paragraphs provide as follows:

"The Review Board understands and appreciates the concerns of the Authority that led to the revocation of these licences. As the Board sees the situation, it is clear that there is a complete breakdown as regards the level of trust that the Authority has in Mr. Henriques. The lack of trust relates to the storage of ammunition that on the face of it has been sold, without the Authority being made aware of the situation.

As regards the personal user's licences, the Board recommends that Mr. Henriques be allowed such licences as would be necessary for personal protection and participation in shooting competitions. In respect of the operation of the dealership and range, it seems that the Authority would have to be satisfied that it can trust Mr. Henriques to operate on a basis of full disclosure. We have noted that in March 2018 the Authority and Mr. Henriques were in the process of discussing the implementation through FLOW Jamaica of the Business Virtual Private Network which would no doubt aid transparency. There may well be room here for discussions to take place between the parties, with a view to settling this question of trust and full disclosure.

- [11] By letter dated June 6, 2019 the Minister wrote to Mr. Dalling, directing that Mr. Henriques' firearm licence should be restored to him both for protection and participation in shooting competitions. The last paragraph of the letter required that there be continued discussions to ensure that Mr. Henriques *"abides by the order and hand over all firearms, ammunitions and other accouchements from his stock which are not in use and send them to the Jamaica Defence for safe keeping."*
- [12] Following a certain report which the Minister received that the Claimant failed to comply with the aforementioned order which was published in the Jamaica Gazette requiring him to deliver up certain firearms and ammunitions, the Minister sent a second letter to Mr Dalling dated the 16th July, 2019 wherein he stated that none of the licences which were revoked should be reinstated. The contents of the letter are hereunder provided:

Dear Mr. Dalling,

Re: Mr. Orville Henriques- 2018/H014

Reference is made to letter dated June 6, 2019 concerning the matter at caption.

It has come to my attention that as at the date of this letter, Mr. Henriques has still not complied with my order published in the Jamaica Gazette dated August 13, 2018 requiring him to deliver to the Firearms Licensing Authority all firearms and ammunitions in respect of certain licences which were revoked on July 9, 2018. I have been duly advised that Mr. Henriques' failure to comply with the requirements, without lawful excuse (the proof whereof shall lie on him), is an offence under the Firearms Act.

In this regard, and pursuant to section 37A (3) of the Firearms Act which confers upon me the power to give to the Authority such directions as I may think fit upon receipt and consideration of the reports of the Review Board, I am instructing that none of the licences which were revoked are to be reinstated.

This letter supersedes letter dated June 06, 2019 on this matter.

Yours sincerely,

*Dr. Horace Chang, MP
Minister*

Claimant's case

[13] The Claimant's Fixed Date Claim Form filed on the 21st November, 2019 was supported by his affidavit filed on the same date. Mr. Henriques explained that prior to the revocation of the licenses, MRPC operated a range facility at Lincoln in the parish of Manchester. He more specifically explained at paragraph 8 of the said affidavit that the range provided the following services:

"I was an approved FLA trainer, supervising the training of new firearm holders, recertification of existing firearm holders, competency practice for licensed firearm holders as well as regular competitive shooting competitions for qualified shooters island-wide who wish to participate competitively"

[14] He raised the point in his affidavit that when the FLA approved the additional ammunition purchase, they indicated the date by which the additional ammunition should be purchased. However, there was no stipulation as to when the rounds were to be used.

[15] According to Mr. Henriques, during the audit he was advised by members of the FLA team that the document approving the purchase of the additional ammunition was for 30 days and the FLA had the right to seize the ammunition, which they did despite his protests.

[16] He further explained that the purpose of the purchase of the additional rounds of ammunition was not only for participating in the 2018 Florida open. He insisted that the rounds were also purchased to facilitate training for several other local and international tournaments two of which were anticipated to take place in April, 2018 and another in July, 2018.

[17] Mr. Henriques went on to describe a series of steps taken by the FLA to revoke the various licenses held by him. He explained that on or about the 28th March, 2018 he received a telephone call from one Ms. Mullings, a representative of the FLA, who told him that the competency training scheduled at MRPC was to be cancelled. The Claimant explained that despite his request for an explanation as

to why this decision was taken, Miss Mullings did not provide any reasons other than to tell him that persons scheduled for the training could go elsewhere.

- [18] The Claimant further explained that under letter dated April 5, 2018 the FLA wrote to him advising him that the FLA has taken the decision to remove him from the list of approved trainers and that the FLA would therefore no longer use MRPA to conduct competence examination until further notice.
- [19] The Claimant asserts that on May 8, 2018 he was accompanied by his attorney-at-law, Mr. John Junor, to the FLA where his attorney made enquiries as to the nature of the investigations. During their visit to the FLA they spoke to one Ms. Silivia Virgo. Mr. Henriques claims that despite his request for details from Ms. Virgo she refused to disclose the reason for the investigation.
- [20] At the request of his attorney-at-law, the FLA sent to him a list of questions to which both Mr. Henriques and his wife, Sue-Ann Henriques provided their respective responses by way of voluntary affidavits
- [21] Mr. Henriques argued that the decision of the FLA to revoke the aforementioned licenses was in breach of principles of natural justice. The reason proffered by the FLA was simple that the Claimant is not considered a fit and proper person to retain a firearm licence.
- [22] Mr. Henriques' evidence is that at no time prior to the hearing of the application by the Review Board or thereafter was he furnished with the reasons that led the FLA to the conclusion that he was not a fit and proper person. At paragraph 29-30 of his affidavit he explained that this mode of operation by the FLA prevented him from being able to answer and defend the allegations against him. He stated as follows:

“That despite my Sworn Affidavit/Declaration in response to questions sent by the investigator of the FLA on the 9th day of July, 2018 in breach of principles of natural justice, and without any lawful or rational basis for so doing revoked the licenses and I am now unable to carry on my lawful businesses which affecting me not only financially but also emotionally....

That the reason given in the Notice of Revocation is unsound and unfounded as the term 'not fit and proper' gives no specificity as to what exactly made my wife and I "unfit and improper" not fit and proper to hold such licenses and as such I am unable to answer and defend effectively the allegations made for the revocation of my licenses."

- [23] Mr. Henriques stated in his affidavit that on or about the 27th July, 2018 he made an application to the Review Board of the FLA to review the decision of the FLA to revoke his licenses. The Claimant's evidence is that on or about the 17th January, 2019 he appeared before the Review Board, who heard his application.
- [24] Again, the Claimant submits that the proceedings before the Review Board was in breach of principles of natural justice, in that, at no point was he advised of the allegations being levied against him.
- [25] According to Mr. Henriques, the Review Board reserved its findings and recommendations which was communicated to the Minister. Mr. Henriques explained that the findings and recommendation of the Review Board was not revealed to his attorney within a reasonable time. He argued that following several letters from his attorney to the Minister enquiring about the outcome of the appeal, the Minister responded by WhatsApp message on the 7th June, 2019 indicating that the Review Board recommended that all personal licenses be returned but not the trade licenses.
- [26] Mr. Henriques explained that despite this message from the Minister he received a letter dated July 29, 2019 from the Chief Executive Officer of the FLA outlining the Minister's decision to deny his appeal. He argued that the decision of the Minister was unreasonable and irrational.

The Defendant's case

- [27] Ms. Tonelle Beecher and Mr. Shane Dalling responded to the affidavit evidence of Mr. Henriques in their respective affidavits which were both filed on the 20th March, 2020.

- [28] Ms. Beecher's evidence is that the FLA made the decision to revoke the Claimant's licenses after coming to the conclusion that he was being deceptive in making arrangements on behalf of six members of the club for the purchase of 12,000 rounds of ammunition each, in circumstances where he knew that they could not have been expended by them by the time specified in his formal request.
- [29] Further, Ms. Beecher noted that while the Claimant gave the impression that the six (6) members of the club purchased the 12,000.00 rounds, the club's records indicated otherwise. The records showed that each member paid for the rounds that were used after each session with the remainder remaining in the club's stock unbeknown to the FLA.
- [30] Mr. Dalling also addressed the issue of Mr. Henriques' request for 'Additional Ammunition Purchase'. He explained that Mr. Henriques failed in making the application for the purchase of the additional rounds to mention that the 12,000 rounds were to be used for other local and international tournaments. He went on to state that the sole justification given for the additional purchase was for training in preparation for the 2018 Florida Open in Frostproof, Florida.
- [31] Mr. Dalling highlighted that at the bottom of the form there is a warning which provides that *"providing false and/or misleading information in support of your request/application can lead to the suspension or revocation of your licence."* Mr. Dalling went on to note that while some of the rounds were used for the training purposes specified by the Claimant, the rest remained at the CDL without the knowledge of the FLA when they were led to believe otherwise.
- [32] On the issue of whether the hearing of the appeal by the Review Board was heard in breach of principles of natural justice. Ms. Beecher argued that both Mr. Henriques and his attorney were well aware of the reasons for the revocation of the aforementioned licences. Ms. Beecher noted that at the hearing of the appeal it was argued on behalf of the Claimant that the payment arrangement employed

by the Claimant for the purchase of the rounds was not designed to be deceptive as receipts were issued to the purchasers upon use of and payment of the rounds.

[33] According to Ms. Beecher, following the revocation of the Claimant's license, the FLA became concerned about the Claimant still being in possession of a large number of firearms without a license. This she said led to the Minister of National Security exercised his powers under section 35A of the Firearms Act to call for the delivery of firearms and ammunition in the possession of an unlicensed person by publishing in the Jamaica Gazette Supplement on Monday, the 13th August, 2018 the Firearms (Delivery of Firearms and Ammunition) (Orville Henriques) Notification.

[34] According to Ms. Beecher the Review Board produced its report with its findings and recommendations dated May 14, 2019 which was received by the Minister of National Security on the 27th May, 2019. Ms. Beecher explained the Minister initially directed the Chief Executive Officer of the FLA to restore the Claimant's firearm Licence for protection and participation in shooting competitions and he also directed the FLA to ensure that the Claimant abides by certain orders requiring the Claimant to hand over all firearms, ammunitions (sic) and accouchements (sic) in his stock which are not in use over to the Jamaica Defence Force for safe keeping.

[35] Ms. Beecher claims that the Mr. Henriques has failed to show that the decision of the Minister constituted a breach of natural justice, was ultra vires to his powers under the Firearms Act or was irrational or unreasonable.

Submissions of Counsel

[36] I have received written submissions from the respective counsel in the matter. I have read their respective submissions and have taken all factors into consideration in determining the matter before me. However, for the sake of brevity I have decided not to recite their submissions but simply to address the issues raised in my analysis and conclusion.

Law and Analysis

Overview of the law

- [37] Judicial review is the means by which the Supreme Court exercises its inherent supervisory jurisdiction over persons or bodies that perform public law functions or make decisions which affect the public to ensure that they exercise their power within the ambit of the law.
- [38] It is generally accepted that there are three distinct grounds on which administrative action may be subject to judicial review. These grounds were enunciated by Lord Diplock in the celebrated case of **Council of Civil Service Unions and others v Minister for the Civil Service** - [1984] 3 All ER 935 where His Lordship expressed the grounds to be that of illegality, irrationality and procedural impropriety. His Lordship expressed at page 950 of the judgment as follows:

“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.”

- [39] Lord Diplock then went on to explain the meaning of each concept on pages 950-951, Lord Roskill too explained the three grounds on pages 953-954. The grounds as described by the law lords may be summarized in the following terms: Illegality speaks to an error of law; this captures situations where the decision maker exercises a power which he does not in law possess. The second ground of irrationality was described as Wednesbury unreasonableness, (**see Associated Provincial Picture Houses Ltd v Wednesbury Corp** [1947] 2 All ER 680). To

satisfy the second ground the decision must be so unreasonable or outrageous that no reasonable person who addressed their mind to the question to be decided would not have arrived at it. The third ground was described by Lord Diplock as procedural impropriety. This ground includes instances of breaches of natural justice or procedural fairness but as Lord Diplock pointed out, the concept goes beyond that and captures instances where the decision maker failed to follow procedures laid down by statute in instances where such failure may not have amounted to a breach of natural justice.

[40] It is trite law that judicial review is not synonymous to an appeal. In judicial review proceedings, the Court is not concerned with the merits of the matter or the correctness of the decision. Rather, the court is tasked with supervising the procedure adopted to arrive at the decision. Lord Greene said it best in the case of **Associated Provincial Picture Houses Limited v Wednesbury Corporation** [1948] 1 K.B. 223 on page 228 when he expressed the following:

“When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal.”

[41] With that being said I find it necessary to state at this point that it would not be appropriate for this court to adjudicate on the 12th order being sought, that is: “[A] Declaration that the Claimant has not breach, contravened, or acted contrary to the Firearms Acts.”

[42] The FLA is a creature of statute that is empowered by virtue of sections 26A and 26B of the Firearms Act to grant, renew and revoke firearm licenses, certificates and permits. It is clear that Parliament’s intent was to vest the FLA with the power to regulate the licensing of firearms. The role of FLA cannot be undermined, especially in face of the alarming rate of gun related homicides in our land. Similar sentiments were shared by Carey J.A. over 3 decades ago when His Lordship gave judgment in the case of **Raymond Clough v Superintendent Greyson v**

Attorney General (1989) 26 J.L.R. 292. On page.... of the judgment the learned Justice of Appeal expressed the following:

“The subject matter in this case is the licence to hold or possess a firearm. There is no constitutional or legal right to own a firearm or to be allowed to hold a firearm. The entitlement to or the refusal of or the revocation of grant of a licence is in the lands of the police. The Firearms Act is concerned with the control of, the use, and misuse of firearms in this country. The incidence of violence involving guns is such that the greatest care has to be taken to ensure that such weapons do not fall into the wrong hands. The welfare and security of the entire country is at stake. The national security must be a matter of the greatest concern. Criminal activity is unarguably a matter which affects national security.”

- [43] While the Firearms Act has seen some changes with the various amendments over the years, the aim of the act as pronounced by Carey J.A. remains the same and it is my view that his words of wisdom bear even more relevance today when gun related crimes are at an all-time high. Despite the critical role played by the FLA, in all things there must be a balance and in this particular case, the balance of justice dictates that in the exercise of its powers the authority must act fairly, rationally and within the ambit of the very Act from which it derives its powers.
- [44] As it relates to the twelfth order being sought, it is important to note that matters of that nature are not for judicial review proceedings. The function of the court is not to usurp the authority of the FLA by replacing the decision of the licensing body with a decision of its own. Simply put, the court is not concerned with whether the FLA made the right decision, rather, the court is concerned with whether the decision was legal, rational and procedurally sound.

Illegality and procedural impropriety

Whether all or any of the Defendants can be said to have acted contrary to the power vested in them by the firearms act or whether there was a breach of the procedure laid down in the act.

- [45] An assessment of a breach under the ground of illegality requires the court to interpret the relevant provisions of the Firearms Act to ensure that the FLA, the

Review Board and the Minister understood correctly the law that governs them and gave effect to it. Lord Diplock defined illegality in the case of **Council of Civil Service Unions and others v Minister for the Civil Service, supra**, at page 950 as follows:

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

[46] He went on further in the judgment to explain that procedural impropriety included instances where the decision failed to follow procedures laid down by statute. It is clear that both grounds are concerned with statutory construction and it would therefore be more efficient to deal with both grounds together.

Firearms Licensing Authority

[47] The FLA is created by virtue of section 26A (1) of the Firearms Act and the scope of its power is outlined at section 26B (1) & (2) of the Act. The relevant sections provide as follows:

26A.-(1) There is hereby established for the purposes of this Act, a body to be known as the Firearm Licensing Authority.

26B.-(1) Subject to section 38, the functions of the Functions of the Authority shall be-

(a) to receive and consider applications for firearm licences, certificates or permits;

(b) to grant or renew firearm licences, certificates or permits;

(c) to revoke any firearm licence; certificate or permit granted under this Act;

(d) to amend the terms of a firearm licence, certificate or permit;

(e) to receive and investigate any complaint regarding a breach of a firearm licence, certificate or permit.

(2) The Authority shall have the power to-

(a) summon witnesses;

(b) call for and examine documents; and

(c) do all such other things as it considers necessary or expedient for the purpose of carrying out its functions under this Act.

[48] Section 29(1) provides that issues surrounding the grant of any licence, certificate or permit is within the discretion of the FLA. On the issue of revocation, section 36(1)(a) gives the FLA the discretion to revoke a licence, permit or certificate if it is satisfied that the holder is of intemperate habits or of unsound mind, or is unfit to be entrusted with a firearm or ammunition.

[49] Where it is that the FLA sees it fit to revoke a licence, permit or certificate, the authority is required by virtue of 36(2) to give notice to the holder that the licence has been revoked and require the holder to deliver up the licence, permit or certificate which was revoked. Given that the Claimant is at odds with the process of revocation it is necessary to outline the exact wording of the provision.

(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,

(b) requiring such person to deliver up such licence, certificate or permit to the Authority on or before the day (not being less than three days after delivery of such notice) specified in such notice.

[50] At paragraph [30] of Mr. Henriques' affidavit which was filed on the 21st November, 2019, he took issue with the fact that the notice from the FLA did not specify the reason for the revocation. He stated as follows:

That the reason given in the Notice of Revocation is unsound and unfounded as the term 'not fit and proper' gives no specificity as to what exactly made my wife and I "unfit and improper" not fit and proper to hold such licenses and as such I am unable to answer and defend effectively the allegations made for the revocation of my licenses.

[51] The issue raised by the claimant in this regard was discussed by the Court of Appeal in the case of **Raymond Clough v Superintendent Greyson v Attorney General, supra**. On page 297 of the judgment at paragraph Carey J.A. expressed the following:

“By section 36 of the Act the appropriate authority is entitled to revoke the licence but that power is subject to a right of appeal to the Minister. It is at this point that the right to be heard operates, for by the Firearms (Appeals to Minister) Regulations, the aggrieved party is able to present his side of the story. He is given no right to be seen but he must be heard. He can submit the grounds of his appeal. These regulations provide that the “appropriate authority” must supply the reasons for its decision to the Minister. There is no requirement that the reasons should be supplied to the aggrieved party by the appropriate authority. In my view, this is of significance for it shows that the statute does not intend that any hearing should take place before the “appropriate authority”” A chief officer of police might well be acting contrary to the law if he were to supply the reason for his decision to any person other than the Minister. It is at the hearing before the Minister that attacks on the basis of illegality, irrationality and procedural impropriety can properly be pursued.”

[52] There have been certain amendments to the Firearms Act since Carey J.A. passed his judgment in July, 1989. The Act has been amended by the establishment of a Review Board, which is now an intermediary between the Minister and the FLA. The effect of this amendment is to vest the Review Board with the duty of hearing appeals from a party who is aggrieved by the FLA's decision to either revoke a license, permit or certificate or the authority's refusal to grant same.

[53] A second and important amendment is that the authority vested with the power to grant, renew or revoke firearm licences, permits or certificates is no longer the Superintendent of Police, instead, it is the FLA, (see section 26A of the Act provided above).

[54] Despite these amendments to the Firearms Act, the exercise of the FLA's discretion remains the same as that which was exercised by the superintendent of police prior to the amendments. This therefore means that the dicta of Carey J.A. is of equal force in construing the lawfulness of the FLA's exercise of its discretion in the case at bar.

[55] Carey J.A. ruled that at the revocation stage the statute does not impose a duty on the FLA to conduct a hearing nor does it require that the authority convene a hearing prior to the revocation of the license. Therefore, on this point it cannot be said that the FLA acted outside of the ambit of the Firearms Act.

The Review Board

[56] It is patently clear that a party who has been aggrieved by the FLA's refusal to grant a license, or in this case, the authority's decision to revoke the licenses, may apply to the Review Board for a review of the decision of the Authority. This right is granted under section 37(1) of the Act which provides as follows:

37.-(1) Subject to this section and section 37A, any aggrieved party may within the prescribed time and in the prescribed manner apply to the Review Board for the review of a decision of the Authority-

a) refusing to grant any application for a licence, certificate or permit; or

(b) amending or refusing to amend any licence, certificate or permit; or

(c) revoking or refusing to revoke any licence, certificate or permit; or

(d) refusing to grant any exemption pursuant to subsection (3) of section 35A or any certificate pursuant to subsection (4) of section 35A.

37A.-(1) For the purpose of a review under section 37, there is hereby established a Review Board consisting of persons appointed by the Minister in accordance with the Fourth Schedule.

(2) The Review Board appointed under subsection (1) shall within ninety days of receiving an application for review-

(a) hear, receive and examine the evidence in the matter under review; and

(b) submit to the Minister, for his determination, a written report of its findings and recommendations.

[57] To my mind, the facts of the case do not reveal that the board acted outside of the scope of its authority nor is it suggested that the Board failed to follow some procedural rule laid down in the statute. The contention that the Claimant puts forward is that the Board failed to adhere to principles of natural justice in that he was not provided with the reasons for the revocation, whether before or during the

hearing of his appeal before the Board. The issue of breach of the principles of procedural fairness will be discussed further on.

The Minister

[58] Once the Review Board has heard the application, section 37A stipulates that they should provide the Minister with its findings and recommendations, it is then for the Minister to make the final determination after considering the Board's recommendation. Section 37A (3) provides as follows:

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

[59] The Minister acted on the recommendations of the Review Board when he wrote to Mr. Dalling, the Chief Executive Officer of the FLA on the June 6, 2019 directing him to restore Mr. Henriques' licence both for protection and participation in shooting competitions. However on July 16, 2019 The Minister wrote a second letter to Mr. Dalling instructing that none of the licenses which were revoked were to be reinstated. He noted the reasons for the revocation as failure on the part of the Claimant to comply with an Order published by the Minister in the aforementioned Gazette dated August 13, 2018.

[60] It is important to examine the provision which relates to the publication of the Gazette to determine whether the Minister acted within the scope of the statute in ordering the revocation of the licenses by reason of the Claimant's failure to adhere to the Gazette. Section 35A of the Firearms Act provides as follows:

35A.-(1) Where the Minister is satisfied that it is necessary in the interest of national security so to do, he may by notification in accordance with subsection (2), require the delivery to the Authority, of such firearms and ammunition as may be specified in the notification, subject to such terms and conditions as may be specified in that notification.

(2) A notification pursuant to subsection (1) shall be published in the Gazette and in a daily newspaper published and circulating in Jamaica, and upon a notification being so published, any person

to whom the requirement contained therein applies shall, within fourteen days from the date of such publication, deliver any firearm and ammunition to which the notification relates, to the Authority for safe keeping.

(6) Subject to the provisions of subsections (3) and (4) of this section and of subsection (1A) of section 37, where after the expiry of ninety days from the date of publication of any notification pursuant to subsection (1) any firearm or ammunition to which the notification relates has not been delivered to the Authority in accordance with that notification, any licence, certificate or permit in relation to that firearm or ammunition as the case may be, shall forthwith be deemed to be revoked.

- [61]** A review of sections 35A (1) & 35A (2) reveal that the Minister has the authority to publish notification in the Jamaica Gazette and the daily newspaper for the delivery of firearm and ammunition in the possession of a firearm holder where the Minister is satisfied that to do so is in the interest of national security. Section 35A (6) provides that where the firearm holder fails to comply the license stands as revoked. The effect of section 35A is that failure to comply with such notification within the ninety (90) day period has the automatic effect of revocation without the need for any further action by either the executive or the FLA.
- [62]** Section 35A (2) specifies that the notification should be by way of publication in the Gazette and the daily newspaper, the drafters use of the word “and” makes it clear that it is intended that the notification should be published in both and not one or the other. Ms Beecher’s evidence is that the notification was published in the Gazette but she made no mention of it being published in the newspaper. Nor did she provide any evidence such as a tear sheet to indicate same.
- [63]** The implication of this is that the notification was defective. This therefore meant that it could not be said that his licenses were automatically terminated and any attempts to terminate the licence under section 35A would be null as this section never granted the Minister with the power to terminate the licenses in the first place. Rather, the section is so worded that once the Minister issues the notification in accordance to sections 35A (1) & 35A (2), failure on the part of the firearms holder to comply would have the ripple effect of automatically causing his/her own license to be revoked without any further action from the Minister.

[64] Therefore, the fact that the Minister cited the Claimant's failure to comply with the order as the reason for him revoking the Claimant's licenses without affording him a fair hearing raises the question of whether there was in fact a breach of natural justice. This question I will consider below.

Whether any or all of the Defendants acted in breach of principles of natural justice

[65] The doctrine of natural justice is based on two fundamental principles which are known in law as *nemo iudex in causa sua* (a man cannot be a judge in his own cause) and *audi alteram partem* (no one is to be condemned unheard). While a breach of the aforementioned principles of natural justice continue to form bases for judicial review, the law has evolved to the point where natural justice now broadly speaks to procedural fairness or the need to act fairly.

[66] The case of **Naraynsingh v The Commissioner of Police** [2004] UKPC 20 is useful for illustrating the point that the concept of fairness is not rigid. At paragraph 16 of the judgment Lord Brown having applied the dicta of Lord Mustill in the case of *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531 stated

"As for the demands of fairness in any particular case, their lordships, not for the first time, are assisted by the following passage from Lord Mustill's speech in R v Secretary of State for the Home Department, ex parte Doody [1994] 1 AC 531 at 560:

"What does fairness require in the present case? My lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system

within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

The Authority

[67] It is now well settled that the FLA does not possess a judicial or quasi-judicial function. Rather, their role is administrative (see **Raymond Clough v Superintendent Greyson v Attorney General, supra.**) All the authorities that I have traversed have made it abundantly clear that where a public authority exercises an administrative function they are expected to act fairly in the exercise of such duty. Take for example the words of Carey J.A. in the case of **Corporal Glenroy Clarke v Commissioner of Police and the Attorney-General of Jamaica** (1996) 33 J.L.R. where he expressed as follows:

In the case of re-enlistment, the Commissioner is exercising administrative functions in which case it is trite law that he must act fairly.

[68] Carey J.A. expressed the same principle years earlier in the **Raymond Clough** case where he expressed the following:

Before parting with this case, I desire to observe that when a Superintendent of Police is exercising his power of revocation of a Firearm User's Licence, he is not required to act judicially; he is required to act fairly but that does not involve either hearing the holder or giving him reasons. For all practical purposes, it means having a prima facie case, or acting bona fide. He is obliged to give his reasons only the Minister if the holder is aggrieved by the decision. But the Minister is bound to hear him or his legal representative and the Minister is bound to provide to provide him with the with reasons for the decision to enable the holder, as an aggrieved party, to rebut any allegations made against him. The Minister, it seems to me, must act fairly, but I have no need to consider Ministerial action any further for the appellant chose not to prosecute his appeal to finality.

[69] Based on the foregoing, it is clear that the FLA did not act in breach of the principles of natural justice by failing to hear the Claimant prior to making its decision to revoke his licence or by not providing him with reasons for the revocation.

The Review Board

[70] As I have indicated earlier in the judgment, since the **Raymond Clough** ruling was handed down, the Firearms Act has seen certain amendments, in that the duty to conduct appeals is no longer vested in the Minister, rather the Review Board was developed for this purpose and the Minister will only revert to this role under 37A (4) if the Review Board fails to conduct the hearing. In applying the reasoning of Carey J.A. in the **Raymond Clough** case, it is at the stage of the appeal before the Review Board that the Claimant has a right to be heard and provided with the reasons for the revocation (see also **Naraynsingh v The Commissioner of Police**).

[71] Mr. Henriques argues that he was not provided with the reasons for the revocation whether before or during the appeal before the Review Board. Ms. Beecher claimed that Mr. Henriques knew the reasons for the revocation, however, Ms. Beecher failed to indicate what steps were taken by either the Review Board or the FLA to notify the Claimant of such reasons. At paragraphs 12 to 13 of his affidavit filed on March 20, 2020 Ms. Beecher expressed the following:

The Claimant provided written answers to questions from the Review Board. At the hearing, he was represented by Knight, Junor & Samuels, Attorneys-at-law, and submissions were made on his behalf. It was argued on behalf of the Claimant that payment arrangements utilised by the club were not designed to be deceptive as receipts were issued to purchasers upon use of and payment for ammunition. It was further submitted that the club had no obligation to advise the Authority of the method of payment for ammunition or to keep the Authority informed of ammunition in stock without a physical audit.

In the circumstances and in response to paragraph 34 of the Henriques Affidavit, I verily say that the Claimant and his Attorney-at-law were well aware of the allegations against him as well as the basis upon which the Firearm Licensing Authority arrived at its decision. He also participated in

the oral hearing before the Review Board and would have been aware of the issues.

[72] I am somewhat doubtful of the Claimant's assertion in this regard. Firstly, the Revocation Order clearly states the reason for the revocation as not being fit and proper to retain a Firearm License. If there was any ambiguity or if the Claimant was unclear as to reason for the revocation, it seems somewhat strange that in the letter applying to the Review Board from their attorneys at law dated July 27, 2018 that the ground of appeal was that;

"the Authority in arriving at its decision that the Appellants/ Applicants were not considered fit and proper to retain a firearm license acted without full consideration of the Appellants'/Applicants conduct and or took into consideration irrelevant extraneous or prejudicial information in arriving at an erroneous conclusion"

[73] Further to that, at no point was it raised in the oral hearing that the Claimant or his Counsel did not know of the Authority's reasons and was disadvantaged. The issue is not whether '*he would have been aware*' the issue is whether he was made aware of the reasons so as to enable him to properly defend the allegations against him. I find that there is no evidence to suggest that the Review Board acted or failed to act in such a way that constitutes a breach of the principles of natural justice.

The Minister

[74] The Minister's decision was influenced by certain information that he received that Mr. Henriques failed to deliver to the FLA all firearms and ammunitions in respect of certain licenses which were revoked on July 8, 2018. The Minister seemed to have accepted the allegations against the Claimant as true and sought to revoke his licence on this basis. I find the Australian decision of **Minister of Immigration, Local Government and Ethnic Affairs v Veselko Kurtovic** [1990] FCA 22 (7 February 1990) to be persuasive in addressing all the issues which the Minister's conduct raises. However, for the purpose of the current proceedings, I will focus on whether the Honourable Minister's conduct breached principles of natural justice.

[75] In that particular case Mr. Kurtovic was resident in Australia for less than ten years. During that period, he shot and killed his parents-in-law which led to be being convicted on manslaughter in New South Wales. Section 12 s. of the Migration Act 1958 empowered the Minister to deport persons in positions which Mr. Kurtovic found himself in. The section provides as follows:

"Where - (a) a person who is a non-citizen has, either before or after the commencement of this section, been convicted in Australia of an offence; (b) at the time of the commission of the offence the person - (i) was not an Australian citizen; and (ii) had been present in Australia as a permanent resident for a period of less than years or for periods that, in the aggregate, do not amount to a period of years; and (c) the offence is an offence for which the person was sentenced to death or to imprisonment for life or for a period of not less than one year, the Minister may order the deportation of that person."

[76] A deportation order was made against Mr. Kurtovic on July 23, 1984. He appealed to the Administrative Appeals Tribunal which recommended that the order to deport Mr. Kurtovic be revoked. The Minister adopted that recommendation on the 25th November, 1985 by revoking the deportation order. Unlike the facts presented to the Court in the current case, the decision of the Minister to revoke the deportation order was communicated to Mr. Kurtovic by letter on December 17, 1985 which included a warning that any further conviction would render him liable for deportation.

[77] Following the refusal of the Parole Board of New South Wales to grant an application by Mr. Kurtovic to be released on parole, he appealed against that decision to the New South Wales Court of Criminal Appeal. The New South Wales Court of Criminal Appeal made a recommendation to the Minister to reconsider the decision revoking the deportation order and adjourned the hearing of the appeal pending such reconsideration.

[78] While the Minister initially refused to overturn his previous decision, he signed a deportation order against Mr. Kurtovic on January 28, 1998. The evidence before the Court was that the Minister took into account two reports from the Parole Service of New South Wales dated 24th September, 1986 and a report by the New

South Wales Prison Medical Service dated 12th February, 1987, both of which were adverse to Mr. Kurtovic. A copy of the reports were not provided to Mr. Kurtovic for him to respond to them because of the Boards' concern for the writer of the report and for the persons named in it who had provided information to the writer.

[79] Mr. Kurtovic sought judicial review of the January 28, 1998 deportation order which was determined in his favour at first instance when Einfeld J. who ruled that the deportation order should be set aside on the grounds of breach of principles of natural justice, that the Minister took into account irrelevant consideration and that the appellant was estopped from making that deportation order. The appeal against the decision of Einfeld J, raised several pertinent issues such as whether the Minister was officio functus upon the making of the first deportation order or whether he was estopped from making a decision contrary to the interest of Mr Kurtovic, having made an earlier decision on the same facts in favour of him. For the purpose of these proceedings, I will only highlight that the members of the Court ruled that the Minister's reliance upon the reports without giving Mr. Kurtovic the opportunity to respond to them was a breach of the principles of natural justice and was sufficient to have the decision of the Minister set aside.

[80] To my mind, when one considers Section 37A (3) Firearms Act, it is apparent that the allegations concerning the failure on the part of Mr. Henriques to turn over firearms in his possession constituted a fresh offence, one which he had the right to be heard on before a final decision adverse to his interest could properly have been made.

[81] It is also important to note that the Minister had acted on the Review Boards report when he wrote the letter dated June 6, 2019 where he sated "*Mr. Henriques Firearm License should be restored to him both for protection and participation in shooting competitions*". The July 16, 2019 letter by the Minister was in regard to a failure of the Claimant to comply with the notification made pursuant to Section 35A Firearms Act. Having determined that the notification was not in compliance with Section 35A (2) which required it to be published in the Gazette and a daily

newspaper I conclude that the decision of the Minister was in breach of the principles of natural justice and should be set aside.

Whether the recommendation and decision of the board and/or the Minister, respectively are irrational within the Wednesbury sense.

[82] The Claimant argues that the decisions and recommendation, as the case may be, of the FLA, the Review and the Minister are unreasonable. Unfortunately, the Claimant's attorney did not articulate how or why he considered the respective decisions and processes to be irrational or unreasonable within the **Wednesbury sense**. Nevertheless, it is the duty of this Court to evaluate the facts before it to determine whether it can be said that the relevant bodies or person has acted so irrationally so as to cause the Court to make an order to set the decision aside.

[83] The submission that the decision was unreasonable has to be carefully examined. Simply because a decision is unfavourable does not render it unreasonable within the Wednesbury sense. Similarly, this Court is not focused on the correctness of the decision and it is irrelevant whether in hearing this application, I think the decision is unreasonable. As Lord Greene pointed on page 232 of **Associated Provincial Picture Houses Ltd v Wednesbury Corp**, (supra):

"I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a local authority on matters of high public policy of this kind."

[84] In order to succeed under this, ground it must be shown that the relevant body or person has taken into account matters which they should not have or they failed to take into account matters which ought to have been taken into account. More importantly, even where it can be shown that the FLA considered matters which a reasonable decision maker would be expected to consider, the Claimant may still be able to succeed on this ground if he is able to establish that the decision is so

unreasonable, that no reasonable authority which directed its minds to the matters to be resolved, would have come to that conclusion. This point was expressed by Lord Greene on pages 233-234 of the case of **Associated Provincial Picture Houses Ltd v Wednesbury Corp**, (supra), where his Lordship expressed the following:

“...I do not wish to repeat myself but I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority has kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them...”

[85] The Claimant has not put forward any argument as to how each or any of the named defendants breached this ground. Nevertheless, I cannot conceive how it could be argued that the issue of whether the holder of a firearm licence is being deceptive and may be using ammunitions for purposes which have not been disclosed to the FLA could be seen as an irrelevant consideration. The very role of the authority is to regulate all matters concerning firearms and ammunitions. Also, on the issue of whether either of the named defendants made a decision which is so outrageous that a reasonable decision maker faced with all the facts would not have made, I again conclude in the negative.

[86] As indicated before, what I find is that the Minister of National Security failed to adhere to the principles of natural justice and therefore deprived the Claimant of the right to a fair hearing and the right to be heard before a decision adverse to his interest is made against him.

DISPOSITION

1. Order of Certiorari quashing the decision of the Firearm Licensing Authority on or about the 9th July, 2018 to revoke the licenses granted by them to Applicant [sic] is denied.
2. Order of Certiorari quashing the decision of the Minister of National Security made on or about the 29th July 2019 dismissing the Claimant's application for review of the decision of the Authority and upholding the Authority's decision to revoke the Claimant's licenses is granted.
3. Order of Mandamus ordering the Authority to restore the Claimant's licenses is denied.
4. Declaration that the proceedings by the Review Board and the decision arrived at by the Minister to revoke the Claimant's licenses stands in breach of sections 37A (2)(a) and section 37A (4) of the Firearms (Amendment) Act 2005 is denied
5. A Declaration that the decision of the Minister of National Security on or about the 29th July 2019 to deny the Applicant's appeal against the revocation of his licenses was irrational and/or unreasonable is denied.
6. Declaration that the Minister of National Security acted ultra vires in the exercise of his statutory powers under 37A of the Firearms Act in making his decision on or about the 29th July 2019 to deny the Applicant's appeal is granted.
7. Declaration that the proceedings before the Review Board leading to the decision of the Minister of National Security to uphold the Authority's decision to revoke the Claimant's licenses was conducted in breach of the principles of natural justice is denied.
8. Declaration that the Board of the Firearm Licensing Authority acted ultra vires its powers under section 36 of the Firearm Act, in making the order for revocation made on or about the 9th July, 2018 is denied.
9. Declaration that the decision of the Board of the Firearm Licensing Authority to revoke the Applicant's licenses was unlawful, irrational and/or unreasonable is denied.
10. Declaration that the Board of Firearm Licensing Authority failed to adhere to the principles of natural justice prior to making its decision on or about the 9th July, 2018 to revoke the Applicant's licenses is denied.

11. A Declaration that the decision taken by the Minister of National Security that none of the Claimant's licenses which were revoked are to be instated is ultra vires and, therefore, null and void is granted.
12. A Declaration that the Claimant has not breach, contravened, or acted contrary to the Firearms Acts is refused.
13. Each party is to bear their own Costs.