



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 1681 of 2010

BETWEEN ASTON REDDIE CLAIMANT

AND THE FIREARM LICENSING AUTHORITY FIRST DEFENDANT

AND THE MINISTER OF NATIONAL SECURITY SECOND DEFENDANT

AND THE ATTORNEY GENERAL THIRD DEFENDANT

Mr. Ian Wilkinson and Mrs. Dionne Jackson-Miller of Ian G. Wilkinson & Co.

instructed by Ms. Saverna C. Chambers for the claimant.

Ms. Lisa White instructed by the Director of State Proceedings for the defendants.

Heard: May 2, and November 24, 2011

Judicial Review - revocation of Firearm User's Licence by Firearm Licensing Authority – revocation upheld by Minister- no opportunity given to firearm licence holder to be heard - whether action of Authority and Minister amenable to judicial review- grounds for judicial review-illegality—procedural impropriety- breach of natural justice – ultra vires

McDONALD-BISHOP, J

[1] Mr. Aston Reddie, the claimant, has brought this claim for judicial review of the action of the Firearm Licensing Authority (the Authority) revoking his Firearm User's

Licence and which was upheld by the Minister of National Security, the Honourable Mr. Dwight Nelson (the Minister). The factual background to the claim is summarized below.

THE BACKGROUND

[2] The claimant is a tour operator with his operations extending over several parishes of the island. On October 6, 2004, he was granted a Firearm User's Licence for a Smith and Wesson .38 Revolver. On or around August 18, 2008, arising out of an alleged altercation between him and his wife, he was arrested and charged with several offences for appearance in the Hanover Resident Magistrate's Court. At the time of his arrest his licensed firearm and firearm booklet were seized by the investigating officer, Sergeant Ainsley McLathly, and submitted to the Firearm Licensing Authority for action to be taken. Subsequently, all the charges brought against the claimant in the Hanover Resident Magistrate's Court were eventually dismissed for want of prosecution and/or 'no order made'.

[3] By written notice dated January 19, 2009 issued by the Authority, the claimant was informed that his Firearm User's Licence was revoked for what was termed his "intemperate behaviour." The claimant, through his then attorney-at-law, objected to this revocation and, as a result, filed a Notice of Appeal to the Chairman of the Review Board set up under the Firearms Act (the Review Board or the Board). The gravamen of his grounds of appeal was that he was not afforded an opportunity to be heard and that in the circumstances of the case, the decision of the Authority was unfair and unreasonable as it was made without giving him a chance to be heard and without any proper evidential basis.

[4] Following on this appeal to the Review Board, the claimant heard nothing further until he received a letter dated July 9, 2009 issued under the hand of the Permanent Secretary of the Ministry of National Security. This letter advised him that the Minister, acting on the advice of the Review Board, had dismissed his application for review and that the revocation of the licence by the Authority was upheld.

[5] Consequently, on the 18th day of March 2010, the claimant sought and obtained leave to seek Judicial Review of the decision of the Authority and the Minister. Now, by an Amended Fixed Date Claim Form filed April 5, 2011, he now seeks the following remedies:

- (1) An Order of Certiorari quashing the decision of the Authority wherein his Firearm User's Licence was revoked on the basis of his "intemperate behavior" and which revocation was upheld by the Minister.
- (2) An Order of Mandamus setting aside the decision of the Minister and ordering the Authority to restore and or renew his firearm user's licence.
- (3) A Declaration that the decision to revoke the Firearm User's Licence is in breach of sections 26B (2), 36(1) and 37(A) of the Firearms (Amendment) Act, 2005.
- (4) A Declaration that the proceedings leading to the revocation of the Firearm User's Licence was against the principles of natural justice.
- (5) A Declaration that the claimant has not breached, contravened, or acted contrary to the Firearms Act.
- (6) A Declaration that the decision of the Review Board is null and void.
- (7) A Declaration that the decision of the Minister is null and void.
- (8) A Declaration that in the circumstances of this case the decision of the Authority, the Board and the Minister is manifestly unreasonable and without legal basis
- (9) Damages

Claimant's case

[6] The claimant was his own historian through his affidavit and witness statement filed in the proceedings. He was not cross-examined. His evidence is, therefore, undisputed. The main planks of his case that are of immediate materiality are outlined as follows. He does not agree that he is of intemperate behavior. He has never pulled his firearm to threaten or physically abuse his wife or anyone else. The police officer who seized his firearm and submitted the report to the Authority was "blatantly wrong" when he stated to the Authority that he threatened to kill his wife and that she fled from the island. He gave a statement in writing to the Authority when an officer visited his home and his wife also did. To the best of his recollection those statements contained no accusatory information. He handed over his firearm and ammunition upon

request to the Authority. His licence was revoked without him been given a hearing. He filed a Notice of Appeal to the Chairman of the Review Board stating his grounds. The Review Board heard no evidence from him or from anyone on his behalf. His case was reviewed by the Minister who also heard no evidence from him or anyone on his behalf. For the period he has had his firearm licence he has never used his firearm in an unlawful manner nor had he used it to threaten anyone. His application for renewal of his licence has always been granted, he has never threatened to use his firearm contrary to the terms and conditions of the licence and he has no criminal conviction either in relation to the firearm or otherwise.

Case for the defendants

[7] The defendants' case rests on the affidavit evidence of Mr. Errol Strong, Chairman of the Authority and on the affidavit of the Minister given on his own behalf. From the evidence presented on behalf of the Authority, the following summary of the material features is made. The Superintendent of Police in charge of Hanover furnished the Authority with copies of documents that form part of a police file compiled as a result of investigation in relation to criminal charges brought against the claimant. The Authority also conducted its own investigations. Having considered the information received by these means, the licence was revoked. Notice of the revocation was given to the claimant. The information provided by the police, as well as the results of the Authority's own investigation, was sufficient to cause the Authority to be satisfied that the claimant is of intemperate habit and ought not to be entrusted with a firearm and/or ammunition. The Authority need not receive evidence of a conviction to determine whether a Firearm User's Licence should be revoked. Neither does the Authority only revoke a licence issued to a restricted person.

[8] The Minister, for his part, and on his behalf, stated that the Review Board, acting pursuant to section 37A of the Firearm's Act, submitted to him a written report of its findings and recommendations in relation to the claimant in March

2009. He reviewed those findings and recommendations. In the course of so doing, he also reviewed the information forwarded to the Authority by the police as contained in various documents submitted to him. He also perused the Authority's Investigation Report Summary Sheet as to the Authority's investigation. Having perused all that information and after reviewing the Authority's decision to revoke the licence, he upheld the decisions of the Board and the Authority as there was sufficient information to cause him to be satisfied that the claimant is of intemperate habit and ought not to be entrusted with a firearm. Neither affiants giving evidence for the defence was cross-examined.

ISSUES

[9] As can be seen from the synopsis of the parties' respective case, there is no factual dispute. It is quite plain that the issues that arise for deliberations are primarily issues of law. It is also clear from all that has been said that the decision to revoke was arrived at by the Authority and was upheld by the Minister without an opportunity to be heard presented to the claimant. This is viewed as the core of the claimant's complaint particularly as he is asserting that he has a good antecedent history as a firearm holder, he has never been convicted and that the criminal charges that prompted the report to the Authority were dismissed by the Court.

[10] These issues of law, as I have distilled them from the parties' cases as presented, may conveniently be summarized under three broad headings within the context of the claim for judicial review:

- (i) Whether the decision taken by the Authority, the Review Board and the Minister to revoke the Firearm User's Licence in the circumstances was illegal and/or *ultra vires* as being in breach of the relevant provisions of the Firearms (Amendment) Act as alleged.
- (ii) Whether the proceedings were conducted in breach of the principles of natural justice.
- (iii) Whether the decision to revoke the claimant's licence was unreasonable in all the circumstances.

[18] In the light of the useful guidance afforded by the authorities on the subject at hand, it seems to me that the grounds for judicial review are well-established as they are varied. To my mind they ought to be readily identifiable, however, whatever the classification adopted. One should be able to pinpoint a ground for judicial review once it exists based on the guidance afforded by the authorities. It is my view, however, that given the issues that arise in the instant case for consideration, I need not go further than to commence my investigation into the matter with a consideration of the conventional grounds identified by Lord Diplock in C.C.S.U. v Minister of State for Civil Services

ANALYSIS: APPLICATION OF THE LAW TO THE FACTS

[19] In considering whether legitimate grounds do exist for judicial review of the decision in issue, I have used as my first point of departure a consideration of the legislative instrument under which the Authority and the Minister purportedly acted. This is essential because the issues of illegality and to an extent, procedural impropriety can only properly be explored by an examination of the statutory source from which the first and second defendants purportedly derived their authority and under which they purportedly acted in making a decision to revoke the claimant's firearm licence.

The Power to Revoke Firearm User's Licence: The law

[20] The Firearms (Amendment Act), 2005 (the Act) as validated, confirmed and amended by the Firearms (Validation and Amendment) Act 2008, has brought about a change in the system for, among other things, the revocation of firearms licences. Prior to the passing of this Act, the appropriate authority under the Firearms Act for carrying out such function was the chief of police for the parish in which the licence holder lived or carried on business.

[21] The Act has changed that by making provisions for the establishment of the Authority as the appropriate authority under section 26A. The functions of the Authority are outlined in section 26B, one of which is the revocation of Firearm User's Licences (see s. 26B (c)) and another is to receive and investigate any complaint regarding a

breach of a firearm licence (sub para. (c)). It is by this Authority assumed jurisdiction over the claimant's case and proceeded to take action revoking his firearm licence.

[22] In relation to revocation of a Firearm User's Licence, section 36(1) provides, in so far as is immediately relevant to these proceedings:

"36. (1) Subject to section 37, the Authority may revoke any licence, certificate or permit if-

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

[23] Section 36(2) then provides, in part:

"(2) Where the Authority revokes any licence, certificate or permit under this section..., it shall give notice in writing to the holder thereof-

(a) specifying that the Authority has revoked such licence, certificate or permit;

(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 the notice."

[24] It is quite evident that the Authority in revoking the claimant's firearm licence sought to exercise the power conferred on it by section 36. It cannot be said that the revocation of the licence was done without or for want of jurisdiction on the part of the Authority.

[25] In so far as the jurisdiction of the Minister in endorsing this decision is concerned, section 37 now becomes immediately relevant. It reads:

"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)...

(b)...

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

[26] Section 37A (2) then goes on to provide that the Review Board, within ninety (90) days of receiving an application for review of a decision, "shall (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."

[27] Section 37(3) then provides that the Minister, upon receipt and consideration of the reports of the Review Board, shall give to the Authority such direction as he may think fit. Where, however, the Review Board fails to comply with subsection 2, then the Minister by virtue of section 37(4) may, himself, hear and determine the matter under review.

[28] As is seen upon a reading of section 37A of the Act, the Review Board is the body established under the Act to review the revocation of a Firearm User's Licence by the Authority upon the application of a person aggrieved by that decision. The Review Board is thus a new addition to the firearms licensing system and creates an intermediate stage before one gets to the Minister for his decision. The Review Board has the statutory authority to recommend to the Minister that a decision of the Authority to revoke a licence should stand. It cannot be said then that when the Review Board purported to make its recommendations, it did so for want or lack of jurisdiction or in excess of jurisdiction.

[29] In so far as the Minister is concerned, it is also clear then from an examination of the relevant statutory provisions that he does have authority derived from the statute to uphold the Authority's decision as he had sought to do. In the end, I do accept Miss White's submission that the Authority, the Board and the Minister had the jurisdiction to consider the revocation of the claimant's licence and to make a determination on the matter as they saw fit. It cannot be said that the defendants acted without jurisdiction in seeking to carry out that particular function. The crucial question arising from this aspect of the claimant's complaint against them, however, is whether they carried out that

which they had the jurisdiction to do legally, properly and fairly within the ambit of the applicable statutory provisions that have conferred on them the authority to act. It is within this context that the question as to whether they might have exceeded their jurisdiction arises.

Whether there was illegality and/or procedural impropriety within the context of the legislative framework

[30] The claimant has, in effect, contended under this head that in the light of the statutory authority conferred on the Authority, the Board and the Minister, they all acted in breach of that legal provisions and, therefore, acted illegally when they revoked the licence without a hearing and in the circumstances that they did. I find, though, that in examining the first and second defendants' conduct, within the context of the legislative framework defining their authority, that this argument of the claimant does not only raise the question of whether there was illegality but also whether there was procedural impropriety within the broad meaning of the third head identified by Lord Diplock in **C.C.S.U v Minister of State for Civil Services**. Under that categorization, a decision is said to be rendered susceptible to judicial review on the grounds of procedural impropriety where the administrative tribunal failed to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even when such failure does not involve any denial of natural justice.

[31] As far as I see it, this component of procedural impropriety is closely connected to the question of illegality in the sense that, like with illegality, the administrative body would be acting contrary to the law governing its operations and authority by failing to observe lawful procedures explicitly provided for by the statute itself.

The decision of the Authority

[32] I will first examine the question as to whether it may be said that the Authority, in revoking the claimant's firearm licence, acted illegally or with procedural impropriety within the statutory framework by failing to afford the claimant a hearing and in the light of all the circumstances of the case. Ms. White, submitting on behalf of the defendants, argued that the legislative scheme of the Act does not stipulate that the Authority should

conduct a hearing before making the decision to revoke a licence issued under the said Act. She maintained further that this is buttressed by the recourse that the aggrieved party has under the Act to apply for a review of the Authority's decision either to the Review Board or directly to the Minister.. According to her, the Authority in revoking the licence was carrying out merely an administrative function and had no duty to have a hearing before acting. As far as she is concerned, therefore, the Authority acted legally and properly within the legislative scheme.

[33] In support of this argument, counsel relied on the Full Court decision of Regina v. the Superintendent of Police for the Parish of Saint Andrew (Central), ex parte Raymond Anthony Clough. (1988) 25 J.L.R. 67. In that case Mr. Clough's firearms' licences were revoked by the Superintendent for the parish of St. Andrew Central, who was then the appropriate authority under the Act. Mr. Clough received no reasons for the revocation although he had requested the reasons and was not given an opportunity to be heard. He appealed to the then Minister but received no word as to the outcome of the appeal. He then brought proceedings in the Full Court for an order to quash the decision of the Superintendent. One of his arguments was that the revocation was unlawful as it was a judicial act that must be performed in accordance with the principles of natural justice and since those principles were not observed in making of the revocation order, the order should be quashed.

[34] The Full Court, led by Wolfe, J (as he then was), in dismissing the motion, rejected that argument and held that the function exercised by the appropriate authority under section 36 of the Firearms Act was a purely administrative act and did not require the Superintendent to hear the applicant or to give any reason for the revocation of the licences. The Full Court found that the Superintendent was only required to give reasons to the Minister if an appeal was received under the then regulations made under section 48 of the Act. The Court concluded that Superintendent did not, therefore, act unlawfully.

[35] Upon appeal by Mr. Clough to the Court of Appeal, in the matter cited as Raymond Clough v. Superintendent Greyson and Attorney General (1989) 26 J.L.R. 292, the Court of Appeal was to affirm the decision of the Full Court that there was no duty on the Superintendent under the Act to conduct a hearing at that stage or to provide reasons. However, on the issue as to whether the authority was exercising a mere administrative function rather than a judicial one to render his action amenable to judicial review the Court of Appeal (per Carey) had this to say at pp. 297-298:

"If it is being suggested that because the function exercised by the appropriate authority is administrative and thus the Court could not judicially review it, such a view is wholly misconceived. The modern attitude is that judicial review, that is, an application for an order of certiorari, mandamus or prohibition, is no longer limited to bodies exercising some judicial or quasi-judicial function but extends to administrative proceedings. If, however, that statement is to be understood to mean that the statutory procedure of the Act did not give to the appropriate authority, the duty to hear the appellant but to the Minister then, it is unimpeachable."

[36] It is clear from that dictum, and as advanced by Mr. Wilkinson on the claimant's behalf, that the issue as to whether the Authority's action is susceptible to judicial review cannot simply be resolved by a categorization of the act as being administrative as distinct from being judicial or quasi-judicial. It is now well settled on strong authority that administrative action of a decision making body or person is just as susceptible to judicial review as judicial or quasi-judicial actions. The fundamental principle is that there is a duty to act fairly whether the decision maker be exercising merely administrative function or judicial/ quasi-judicial functions. Failure to do so will render such decisions amenable to judicial review. See in this regard, the Trinidad and Tobago case, Barl Naraynsingh v. The Commissioner of Police, Privy Council Appeal No. 42 of 2003 delivered April 20, 2004, as cited on behalf of the claimant on this point.

[37] This means that even if the Authority was carrying out a merely administrative act, that does not, without more, end the matter in relation to its decision. I have to

consider whether its action is, nevertheless, amenable to judicial review on any of the grounds alleged by the claimant and according to the law.

[38] In considering the claimant's claim against the backdrop of the relevant authorities, I have closely examined section 26B that sets out clearly the functions of the Authority as well as section 36(1) under which it exercised its function in revoking the claimant's licence. Having reviewed those provisions, particularly, against the background of the Court of Appeal's decision in *Clough*, it is seen that there is no radical change to the provisions relating to the revocation of firearm licence under which the then appropriate authority was to act (the basis on which *Clough* was decided) and how the Authority is to now act under the current regime. The only new feature of the Act that has been brought about by the amendment is the insertion of section 26B (2) which was absent from the principal Act. By that provision the Authority is given the power "*to summon witnesses, to call for and examine documents and to do all such things as it considers expedient for the purpose of carrying out its functions under the Act.*"

[39] I form the view, having looked at the whole scheme of the Act pertaining to revocation of a firearm licence, that the insertion of this provision does not, by its terms, expressly impose any obligation or duty on the Authority to conduct a hearing or to act in a quasi-judicial manner. What it has done, in my view, is to leave it to the Authority, in its absolute discretion, to determine the steps it would take and the procedure it would adopt in seeking to carry out on its functions under the Act. It would appear that if the Authority forms the view that it would be necessary and expedient for a hearing to be conducted then it could do so by virtue of 26B (2) (c). In my opinion, it is by no means obliged to do so on the express terms of the statute. So, I conclude that section 26B (2), while enlarging the power of the Authority under the Act, has still not expressly cast upon it the burden to conduct a hearing before it revokes a Firearm User's Licence.

[40] When all the terms of the statutory regime for the revocation of the firearm licence are broadly considered, it remains quite clear, as it was in *Clough's* case, that

the Act itself provides for a procedure to be followed upon the revocation of a licence and part of that procedural regime is for the hearing and reception of evidence. This, however, is not at the stage of the decision of the Authority but at the stage of a review where there is an application for that to be done. It is at the review stage that the right to a hearing would operate. Parliament by expressly providing for a hearing at that level, and without expressly doing so at the level of the Authority, is taken to have intended not to cast a legal duty or obligation on the Authority to conduct a hearing before the revocation of a licence.

[41] This is what Carey J.A. had to say on this point in *Clough* at page 297:

"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 the Minister) Regulations, the aggrieved party is able to present his side of the story... These regulations provide that the "appropriate authority" must supply the reasons for his 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".

[42] Applying that observation to the facts at hand, it can be said that on a contextual reading of the Firearms Act, as it now stands amended, that there is no real change in the position as to the right to be heard. That right would operate at the stage where the application for review is being considered. There is thus no legal duty imposed by the Act, either expressly or inferentially, for the Authority to have conducted a hearing before revoking the claimant's firearm licence.

[43] I find in this regard that, the Authority acted within the express terms of the statutory authority bestowed on it. It cannot be said to have failed to observe procedural rules that are expressly laid down in the Act governing its functions in revoking a licence. As such, it did not act outside the ambit of the legislative instrument from which it derived the authority to revoke the licence. It cannot be said that the authority acted illegally, *ultra vires* or with procedural impropriety in relation to the legislative instrument

under which it exercised its jurisdiction. As to whether it acted unfairly, i.e. within the context of natural justice, will be considered under that head at the material time but for now under the head of illegality and procedural impropriety as a matter of law, I can find no basis on which the decision of the Authority to revoke the claimant's licence should be disturbed as a matter of law.

Legality and procedural propriety of the Minister's decision

[44] As indicated before, the Act provides for a right to apply for review of the Authority's decision by the aggrieved party. Under the new regime, there is an intermediate stage before it gets to the Minister for his action. Prior to the Amendment, the appeal would be from the Authority's decision to the Minister directly and the procedure to do so was prescribed by regulations passed by the Minister. What the Act has not done is to set out in any great detail the prescribed procedure to be followed upon an application to the Review Board. That notwithstanding, section 37 speaks clearly to the fact that upon an application for appeal done within the time prescribed, the Board *shall* (and I take this to be in mandatory terms) *hear, receive and examine evidence* and to forward its findings and recommendations to the Minister. (Emphasis added).

[45] The duty of the Review Board to "hear" evidence is not interpreted by me to be discretionary. The use of the word "shall" serves to import to my mind a mandate given. This is in contra-distinction to the "may" used under section 37 (4) where the duty of the Minister is concerned. I conclude that the section imposes on the Review Board an obligation to hear evidence once it undertakes the review and this includes hearing the party aggrieved.

[46] This raises the question as to what is a "hearing". An attractive description of what constitutes a "hearing" has been succinctly given by the Indian textbook writer, S.P. Sathe, in his book Administrative Law (7th edition) pp. 188-189. The relevant portion of the passage, which I have adopted for these purposes, reads:

"Hearing means giving an opportunity to a person against whom an adverse action is proposed to be taken to say why it should not be so taken. What does

such an opportunity mean? It means that the person must be given a notice as to what is proposed to be done against her and why. Further, it should be possible for her to put forth her say either orally or in writing; she should be able to cross-examine the witnesses, if any, who might have testified against her, and be able to contradict the allegations against her through such evidence as may be necessary. In order to be able to do so, she must have access to such documents as might have been used against her."

[47] In R. v. Commissioner of Police ex parte Keith Pickering (1995) 32 JLR 123 at page 127, Langrin, J (as he then was) in delivering the judgment of the Full Court noted in similar vein that the ingredients of a fair hearing may be divided in three categories as follows: (1) advance notice of charges or accusations; (2) right to see factual evidence in the possession of the decision-maker and (3) the right to make representations.

[48] The legislature by the wording of this section has incorporated the right of the aggrieved party to be heard and to be entitled to a fair hearing. I take it to be to the full extent of the meaning of the term as described in the two foregoing paragraphs. This is but one important component of the standard of fairness required in matters of this nature where a body is carrying out at least a quasi-judicial function as the Review Board would have been doing.

[49] The statute is clear, and it must be taken to mean, that it has expressly incorporated by its terms the right of an aggrieved party to a fair hearing which was, before the passing of the Act, enshrined as a principle at common law. In fact, The Act is taken to have incorporated that principle of natural justice which would have to be applied, in any event, in the absence of any legislative provision in light of the function being carried out by the Board and, by extension, the Minister.

[50] I find that the statute has established, without question, that it is after the hearing, reception and examination of evidence (all stated conjunctively rather than disjunctively) that findings and recommendations should be made by the Review Board to the Minister as to whether the licence should be revoked. So, quite apart from the

issues of natural justice and fairness, which have been raised by the claimant, I find that the legislative instrument expressly imposes a duty on the Review Board to conduct a hearing.

[51] From the evidence presented by the defendants, there is no indication that any form of hearing of evidence was held in which the claimant participated following on his application for review. Furthermore, there is no indication that the claimant was served with the statements of his accusers or reports from the police that were forwarded to Board or, that, at the very least, he was advised of the gist of them so as to give him a chance to properly prepare his case in response and to say whether he wished to cross-examine witnesses on oath. Neither was he invited by the Review Board to make submissions as to why the decision ought not to be upheld.

[52] The Review Board merely acted on documents that were submitted to it by the Authority (none of which, incidentally, was made upon oath) even in the face of the complaint to them by the claimant that he was never given an opportunity to be heard before the licence was revoked. This ground of appeal alone should have prompted the Review Board to carry out the mandate of the Act to "hear, receive and examine evidence." Indeed, on the evidence of both sides in this case, the facilities to be in place for a hearing, and above all, for a fair hearing were not extended to the claimant by the Review Board when he applied for review of the Authority's decision.

[53] In the light of all this, I cannot, with all sincerity, find that there was any form of hearing by the Review Board within the contemplation of the law when it acted on the reports of the police and the Authority and subsequently communicated to the Minister its findings and recommendation. In fact, after the claimant's application to the Board, the next thing the claimant received was the decision of the Minister by letter issued under the hand of the Permanent Secretary of the Ministry. Up to then, there was no hearing, whatsoever, at any stage before the Minister's letter was received informing the claimant of the decision on appeal. Carey J. A. in *Clough* had said, in speaking of the right to appeal to the Minister (which is no different, in essence, from the right to make

an application for review to the Review Board), that it is at that level that the right to be heard operates. I endorse that view, even now in the context of the amended statute, and say that Parliament intended, and, accordingly, made express provision that a right to a hearing should operate at that stage of the system. Notwithstanding this, the claimant was denied that right as expressly provided by law.

[54] Failure on the part of the Review Board to afford the claimant that right to be heard means the Review Board acted outside the ambit of the law defining its authority. It therefore, for that reason, acted illegally and also with procedural impropriety as that term is coined by Lord Diplock under his third classification of the grounds for judicial review. It can also be said that by reaching a decision and making a recommendation without a hearing, it exceeded its jurisdiction and, therefore, acted *ultra vires*.

[55] It follows logically, then, that when the Board sent its findings and recommendations to the Minister, the recommendation to uphold the revocation would by then have been irremediably flawed based on the legally and procedurally flawed process by which it was arrived at. It means, therefore, that the Minister's decision to act on that recommendation, without more, would have been intrinsically tainted by the illegality and procedural impropriety of the Review Board's decision-making process.

[56] Furthermore, the Minister, upon receiving the reports of the Review Board and the Authority, ought to have recognized that the law was not complied with by the Review Board since it had failed to *hear, receive and examine evidence* concerning the matter as required by law. The Minister, in exercising jurisdiction by virtue of the same Act, ought to have been aware of the provisions of the law that govern his functions and so ought to have been mindful that at the review stage of the procedure, the law requires that there be a hearing. He failed to see that omission on the part of the Review Board which would have been a failure to comply with the express provision of the law. Even with that omission, the Minister did not seek to exercise his discretion under the Act to hear and determine the matter himself. He, instead, acted on the tainted recommendation of the Review Board and upheld the decision.

[57] Ms. White had argued that the Minister cannot be faulted in acting on the advice of the Review Board in circumstances, as obtained here, where the aggrieved party (the claimant) failed to ask the Minister to himself hear and determine the review. Her contention, basically, is that if the claimant was of the view that the initial decision taken by the Authority was unfair or that the decision taken by the Review Board did not conform with section 37A (2) of the Act, he should have applied directly to the Minister for the Minister to act pursuant to section 37A (4) of the Act. She argued that the claimant, in not doing so, has failed to exhaust the remedies available to him by appealing to the Minister directly and so for that reason, the Minister cannot be faulted in upholding the revocation.

[58] I have no alternative but to reject this contention of Ms. White with all due respect. The Act has laid down the procedure to be followed where a party is not satisfied with the decision of the Authority. The first tier in that process provides for application to the Review Board. There is no provision for a direct application to the Minister. It is when the Review Board fails to comply with the Act, that the Minister himself may hear and determine the matter under review. So the Minister, it seems on a strict interpretation, can only come in where the Board fails to act in conformity with the law. The Act does not say the aggrieved party can go directly or, in the first instance, to the Minister. The crux of the matter, though, is that for the aggrieved party to go to the Minister and ask for his intervention, it would have to first be brought home to him that the Board is in breach of the law. If he is not aware of that, then there is no "trigger" event invoking his right to go to the Minister.

[59] The facts of this case show that the claimant followed the procedure for appeal. He wrote to the Review Board stating his need for a review and the grounds therefor. He heard nothing more from the Review Board. He was never alerted that the Review Board was considering his application or had done so and what were their findings. In fact, the law does not provide for the Review Board to give its findings to the applicant but rather to the Minister. In essence, and in reality, there was nothing to alert the claimant that the Board was not acting, or had not acted, in accordance with the law

before the file had been submitted to the Minister. The next thing the claimant heard after writing to the Board was that the Minister had dismissed his application and that the revocation is upheld.

[60] This shows that the Board did consider the appeal and forwarded its findings to the Minister. So the Board, by doing so, was purportedly acting in accordance with the Act by bringing its findings to the Minister. The Minister acted on that. The claimant was therefore not mindful of any non-compliance with the law by the Board until after he received the decision that was made by the Minister. This was not a case where the aggrieved party was presented with the opportunity or the right to go directly to the Minister. He was 'kept out of the loop', so to speak, right up until the Minister made his decision. Therefore, this argument that the Minister's decision cannot be faulted on the basis that the claimant did not appeal to him directly cannot hold ground. The Minister was acting on an application for review presented to the Board and which the Board passed on to him in keeping with the Act.

[61] It is indisputable that the Minister's ultimate decision affirming the revocation was done without notice to the claimant. It was arrived at without a hearing of evidence at any stage. This was not what the Act contemplated. A hearing at some stage is expressly provided for by the clear words of the statute. In fact, the questions as to the role of the Minister upon an appeal for review under the Act as being a quasi-judicial one, and the right of an aggrieved party to be heard by him at that stage, have been settled in several cases prior to the amendment. However, the right to a hearing at that stage by the Minister was rationalized in those cases on the grounds of natural justice. (See again *Clough* as well as *Danhai Williams v The Attorney General, the Minister of National Security and the Superintendent of Police, St. Andrew Division* (1990) 27 JLR 512).

[62] I strongly believe that it is due to those decisions (and others) in which our Courts have declared that a party has a legal right to be heard by the Minister that has led to

the express words of the statute being amended and now providing that the Review Board that is set up to advise the Minister must hear, receive and examine evidence upon an application for review. The statute, therefore, has left no doubt that the role of the Review Board, acting as an advisory body to the Minister, is a quasi-judicial one. In so far as being a quasi-judicial body is concerned, it stands in the same position as the Minister stood prior to the introduction of the Review Board. On the strength of the statute and on the basis of the authorities examined, I conclude that there is a right to be heard at the tier at the Board level in the process concerning revocation of a licence.

[53] The Minister had failed to ensure that this requirement of law was satisfied by the Review Board before he himself made a decision to act on its advice to him concerning the matter. By acting on the Board's advice in the absence of a hearing, the Minister himself failed to be guided by the law that confers on him the authority to act in these matters. The Minister, in order to act lawfully, must understand correctly the law that regulates his decision-making power and must give effect to it. If he fails so to do, then he acts illegally. I find that the Minister's action is not in keeping with a correct understanding of section 37 of the Act and he failed to give effect to the Act. He is, therefore, held to have acted unlawfully.

[54] The Minister also failed to observe the express procedure laid down by the section for the revocation of a firearm licence thereby acting inconsistently with the legal instrument that confers on him the authority to review the decision of the Authority. This amounts to procedural impropriety. In the premises, I conclude that there are substantial grounds to say that the Minister acted illegally, with procedural impropriety and, as such, in excess of the jurisdiction conferred by the Act thereby making his action *ultra vires*. On this basis, without more, the Minister's decision could be declared as being null and void.

[55] The claimant has, however, contended that there is more and so I will go on to consider the remaining contentions of the claimant in the event it could be concluded

that my findings as to illegality, procedural impropriety and *ultra vires* are wrong in this regard.

Whether there was breach of natural justice

[56] The substantive complaint of the claimant is that the decisions of the Authority, the Board and the Minister were arrived at in breach of the principles of natural justice or after a failure on their part to act with procedural fairness. This would fall within Lord Diplock's third head as a ground for judicial review.

[57] The claimant's contention is that the Authority and the Minister acted contrary to the rules of natural justice and thus unfairly for the following reasons which I have seen fit to paraphrase. The claimant was denied due process. He was never accorded a hearing to rebut the allegations made against him. He was never informed of the date for a hearing of his appeal at which time he could have requested to be present either in person or to be represented by counsel and to make detailed oral or written submissions in the matter. He was never given the reasons for the revocation with any specificity that would have allowed him to respond adequately or at all. The Authority and the Minister came to their decision by considering allegations not tested in a court of law and for which the claimant was acquitted. They failed to take into account adequately, or at all the good antecedent of the claimant to include the fact that he has never been convicted or that he is not restricted person. For these reasons, the decision-making process must be regarded as manifestly unfair.

[58] In support of these submissions, the claimant placed reliance on several authorities all of which I have duly considered and have found remarkably useful but which I will not re-state at this juncture as a matter of convenience. They have, however, been discussed at various points in this judgment and guidance taken from them as is appropriate.

[59] Ms. White, in seeking to shield the decisions of the first and second defendants from the verbal attack of Mr. Wilkinson on behalf of the claimant argued that the legislative scheme of the Act underscores the point that the decisions in respect of the

revocation of a licence (made by the Authority) or the review of such decisions of the Authority (by the Review Board and/or the Minister) is purely administrative. According to her it is not quasi-judicial or judicial. As far as she is concerned, the legislative scheme makes no provision for a hearing before, during or after the decision is taken for a Firearm User's Licence to be revoked. She saw no breach in the rules of natural justice as they were upheld in the circumstances by the decision makers acting fairly. She maintained that acting fairly does not mean that there is any need to disclose the allegations or give a hearing where the decision maker is fulfilling an administrative act which is neither judicial nor quasi-judicial in nature. For this argument she cited Ridge v Baldwin [1964] AC 40.

[60] Of course, I must reiterate that I reject this categorization of an act as being an administrative one as being dispositive of the question under consideration. Furthermore, as already noted, I find that the functions of the Board and the Minister, to whom it reports, fall within the purview of a quasi-judicial function rather than administrative one in so far as the revocation of firearms licences is concerned. They, therefore, had a duty, upon the claimant's application for review, to act judicially which carries with it the duty to act independently, fairly and impartially. The Authority, on the other hand, whilst it may be said to be carrying out, primarily, an administrative function rather than a judicial one, nevertheless, had a duty to act fairly even if not judicially.

[61] It follows too, as already been indicated, that merely classifying an act of a body as being administrative does not automatically mean that the right to a hearing is put out the window. If fairness dictates that a hearing be held then it ought to be held. There can be no set rules as to what fairness entails; this can only be determined from the circumstances of a given case. It cannot be laid down then, as an inflexible rule of law, that where the function being exercised is administrative that the need for a hearing is ousted. The law has long gone past this line of thinking.

[62] I, therefore, accept, as sound, the submissions of counsel for the claimant to the following effect as summarized: The law is very clear that the fact that statute gives the discretionary power to revoke the licence of a firearm licence holder does not mean that

the power is to be exercised unfettered by any considerations. If the body empowered so to do does not act in accordance with the guidance laid down in the law, its decision may be held to be null and void. The Authority and the Minister must act reasonably, fairly, and according to the principles of natural justice. In R v Commission for Racial Equality ex parte Cottrell and Rother [1980] 1 WLR 1580 Lord Lane at p. 1586 stated: "...all that the rules of natural justice mean is that the proceedings must be conducted in a way which is fair...fair in all the circumstances."

[63] To take the discussion even further, I must state what I accept natural justice to be. Natural justice is said to be an expression used for describing the criteria of procedural fairness of the administrative process that ensure that decisions are taken objectively, impartially, without prejudice and after hearing the person likely to be affected. One more rule of procedural fairness is that the actions must be accompanied by reasons. It has been settled by the courts as a general principle of English common law that the rules of natural justice are pre-requisites to the procedure that all decision making authorities ought to observe. The presumption, it is said, is that Parliament could not have intended to dispense with them and hence only when it does so explicitly they are excluded. (See: S.P. Sathe, Administrative Law, 7th edn. pp 210-211.)

[64] The function of the principles of natural justice in cases of this nature has been helpfully clarified by Sathe (supra at page 189), who noted that in judicial proceedings, the laws of procedure and evidence ensure that the parties get enough opportunities to put forward their case. In administrative proceedings, where the rules of procedure and evidence applicable to judicial proceedings are not entirely applicable, the rules of natural justice constitute the irreducible minimum procedure that must be observed.

[65] It is against this background as to what constitutes natural justice and its import in matters of this nature, that I have conducted my enquiry in the claimant's assertion that there has been a breach of natural justice with the first and second defendants coming to a decision to revoke his firearm licence. I have once again elected to consider firstly the complaint as it relates to the decision of the Authority.

The Authority's decision

[66] The standard of fairness required to be satisfied in these matters in order to allow an administrative decision to stand was examined in some detail by the Judicial Committee of the Privy Council in *Naraynsingh*. I think an insight into the facts of that case would prove quite useful at this juncture. In *Naraynsingh*, the Appellant's firearm was confiscated after several charges were laid against him. Those charges involved being in possession of an unlicensed firearm and ammunition. Those charges were strenuously denied by the Appellant. The charges were dismissed for want of prosecution, but the Police Commissioner (being the appropriate authority under the statute), nevertheless, revoked the firearm licence. Before doing so, however, he had allowed the appellant to put his account into writing which the appellant did through his solicitor.

[67] The appellant challenged the Commissioner's decision on various grounds including, in particular, that it was reached unfairly and without any sufficient investigation having been made into the circumstances alleged. The claim failed at first instance and before the Court of Appeal of Trinidad and Tobago causing the appellant to proceed to the Privy Council. At the Privy Council, he focused almost entirely on the fairness and adequacy of the process by which the impugned decision was arrived at.

[68] In determining the issue as to whether the Appellant had been accorded a fair hearing, the Privy Council, in a judgment delivered by Lord Brown of Eaton-under-Heywood, cited, as being helpful, the dictum of Lord Mustill in *R. v Secretary of State for the Home Secretary, ex parte Doody* [1994] 1 AC 531, 560, Lord Mustill in dealing with this issue of fairness case stated the following principles that I have distilled and listed in point form for convenience.

- (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.*

[69] The Board, in making the point that the Commissioner was required to act fairly in the exercise of his administrative power, considered what fairness required and then looked at the statutory context within which his discretionary power fell to be exercised. Having done so, their Lordships stated: *"It is noteworthy that, unlike the position in the United Kingdom, no right of appeal lies to the Court against any adverse decision - compare section 44 of the Firearms Act as amended."* It means that under the statutory regime under which the Commissioner was acting in *Naraynsingh* there was no right of appeal to an appellate body as exists within our regime. I must indicate that this is a critical point of distinction I have borne in mind in examining the circumstances of the case at hand.

[70] The Board also took into account the particular circumstances peculiar to the licence holder such as his age and good antecedent history, the nature of the charges leveled against him and the adequacy of the investigations carried out. Their Lordships then concluded that the Commissioner acted unfairly albeit that he was carrying out an administrative act.

[71] One thing that should be abundantly clear from that decision is that a purely administrative act can be struck down on the grounds of unfairness in the decision

making process. What is also important coming from that decision, as we have also seen coming from our Court of Appeal's decision in *Clough*, is the relevance of the question as to whether the administrative power was exercised fairly within the legislative context from which the power was derived, that is to say, as regards both the language of the act and the shape of the legal and administrative system within which the decision was taken. In *Naraynsingh*, there Lordships taking that question into account found that there was no right of appeal within that administrative machinery.

[72] It is patently clear from this that our Act is different from the Trinidadian Act that was under review in *Naraynsingh*, a point that cannot be ignored if the legislative scheme within which the decision is taken is of any relevance. We know by now that it is highly relevant. Our Act does provide for a right of appeal and at that stage gives the right to be heard to an aggrieved party. That is a distinguishing feature between the circumstances of *Naryansingh* and the instant case which could impact on the question of what is fair in this case. It means the findings and decision of the Board cannot be applied 'stock and barrel' to the circumstances of this case because two different statutory regimes are involved.

[73] Having taken that into account, and while following the guidance afforded by their Lordships in *Naraynsingh*, I examined the special circumstances of this case. In so doing I have duly considered all that the claimant has urged on me to find that the Authority acted unfairly and in breach of natural justice. Those include his good antecedent, the seriousness of the allegations made against him, the fact that there had been no hearing on the merits of the allegations before the decision was taken and that the charges against him had been dismissed in the Resident Magistrate's Court.

[74] I do agree that there was still no ventilation of the issues or hearing of the merits in court at the time the Authority made the decision but I share the view of the defendants that a conviction or an acquittal in court are not conditions- precedent for the Authority to act under the Act particularly when viewed within the context of the provision under which the Authority sought to exercise its power. The Authority had an independent right to assess the situation and to come to a determination as to whether

the claimant could be entrusted with a firearm. It is not bound at all by the results of the court proceedings particularly in light of the fact that there had been no hearing on the merits. The Authority formed the view that he ought not to continue holding a firearm on the grounds of what they saw as his "intemperate behaviour." This is a basis for revocation provided by law once the Authority, on a *prima facie* case, is satisfied that that basis exists. For there to have been a conviction or for the claimant to have been first declared a restricted person before the Authority could act would be more relevant to other grounds for revocation under the Act but not under the section invoked by the Authority.

[75] I find, on what the Authority has presented in support of its case, that it cannot be said that it did not have a *prima facie* case upon which it could have *bona fide* acted.

Carey, J.A. in *Clough*, again helpfully noted (page 299):

"Before parting with this case, I desire to observe that when a Superintendent of Police is 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."

[76] Similarly, in *Westminster Corporation v London and North Western Railway Company* [1905] A.C. 207, it was held, as expressed in the head notes, which is accepted as being reflective of the views of their Lordships in the House of Lords, that a statutory authority in carrying out its functions under the particular enabling statute must use its statutory powers *bona fide* and reasonably, and if it so acted, its discretion as to the mode of acting cannot be interfered with. Looking at all the facts presented in this case, I am not in a comfortable position to say that the claimant has satisfied me that the Authority did not use its statutory powers *bona fide* and reasonably in the context of the statutory authority it had. I have not found a case of unfairness made out in this regard.

[77] Over and above that, I would conclude, that based on the nature of the administrative system provided by statute within which the decision was made, the

claimant was not deprived of an opportunity for relief from this decision. He had a right under the statute to have that decision of the Authority reviewed. The statutory context within which the Authority purportedly acted has not omitted giving the claimant a right to be heard, unlike what obtained in *Naraynsingh*. The right to be heard would come at the review stage. There is thus no legislative omission that would bear adversely on the notion and reality of fairness that would warrant an intervention by this Court in respect of the Authority's failure to hold a hearing.

[78] This brings forcefully to mind the words of Carey, J.A. in *Clough* (p. 297) that:

"Where executive action is concerned, there is a duty to act fairly. If the Court is to intervene, it must be shown that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation..."

The statute by allowing a hearing by the Minister, after revocation by another official, provided a procedure whereby the principles of natural justice, for example, reasons for the decision and a hearing, could be satisfied. I am quite unable therefore, to appreciate where the procedure in its setting operates unfairly to the holder of a Firearm user's licence to the point where we are called upon to supply the legislative omission."

[79] To the extent that the statutory function of the Authority, within the legislative scheme for revocation of a licence under the Act, is in no way different from that which obtained when the Superintendent was the appropriate authority prior to the amendment, I find that the *ratio decidendi* of the Court of Appeal's decision in *Clough* would apply to the facts of the instant case and would, therefore, be binding on this Court in the absence of any basis upon which the circumstances in the two cases may sensibly be distinguished as a matter of law. Following on the strength of that authority, I find it safe to conclude that there was no breach of the principles of natural justice on the part of the Authority in revoking the claimant's Firearm User's Licence. I find that the decision of the Authority is quite unassailable on this ground.

Whether the Minister's decision was in breach of natural justice

[80] The question now to be determined is whether the Minister's decision to uphold the revocation was unfair as being in contravention of natural justice or, otherwise, procedurally improper. As already been established, the Review Board did not give the claimant a right to be heard and that has already been found to be illegal, procedurally improper and *ultra vires* in relation to the express provisions of the Act. For that reason, it has been held that the Minister, acting on its advice, fell into an error of law when he upheld the decision without giving the claimant a right to be heard. Quite apart, however, from the unlawful departure from the legislative framework is the question of the departure from natural justice. The rules of natural justice would have had to be applied if there were no legislative provision setting out the procedure to be followed.

[81] Of course, the inclusion of proceedings before the Review Board is a new introduction to the procedural regime which would not have been in existence when cases like *Clough* and *Danhai Williams* were decided. It is abundantly clear now, on the unambiguous and literal wording of the section, that there is a duty on the Board to *hear evidence, to receive evidence and to examine the evidence before making findings* which would be submitted to the Minister (emphasis added). There can be no guessing, therefore, as to what the statutory duties of the Board entail in dealing with an application for review. Of course, the ultimate decision on the application is for the Minister and it is for him to advise the Authority as to the appropriate action to be adopted after the matter had been reviewed. The Board's role is thus advisory while at the same time being quasi-judicial.

[82] As already indicated, at this tier of the procedural regime created by the Act, there is a right of all interested parties, particularly the one to be most affected by the decision, to have their evidence heard, received and examined by the Review Board. It is on all the evidence heard, received and examined that the findings of the Review Board is to be predicated and recommendations made to the Minister.

[83] The Review Board in this case, did not hear from the claimant following his application for review and in the light of the grounds on which he sought the review. The claimant had specifically stated in his grounds of appeal that he was not given a right to be heard by the Authority. By this he was saying, in effect, that he believed he ought to have been heard and he wishes to be heard. Regardless of that, however, no opportunity was given to him to be heard at that level. Since the application to the Board for review is, essentially, an appeal to the Minister, it means the position of the Review Board is akin to that of Minister under the former procedural regime which the courts have already established as being quasi-judicial.

[84] The courts have established too that a person who applies for review of the decision must at that stage be given a hearing in accordance with natural justice. It means then that the failure of the Review Board to do so in this case constitutes a breach of natural justice, even if the statute did not, itself, expressly provide for a hearing. Again, the Board's recommendation to the Minister to uphold the revocation would be flawed as being afoul of the principles of natural justice.

[85] On top of this, section 37A (4) states that where the Review Board fails to comply with subsection 2, the Minister may hear and determine the matter under review. Of course, I am mindful that in looking at the Minister's duty where the Board should failed to act in accordance with the statute, the use of the word "may" does connote that there is no strict obligation on the Minister to hear and determine the matter under review. I must indicate, however, that even if this is read as being merely discretionary rather than mandatory, the position of the Minister under the old regime was the same but yet our Court of Appeal ruled that the Minister must act in accordance with the rules of natural justice in exercising his discretion.

[86] In *Clough*, for instance, Carey J.A. was quite clear when he stated: "*the statute by allowing a hearing by the Minister after revocation by another official, provided a procedure whereby the principles of natural justice, for example, reasons for the decision and a hearing, could be satisfied.*"

[90] Of course, the observation and findings of the Court of Appeal in respect of the Minister's decision in Danhai Williams can be applied with equal force to the decision of the Review Board and the Minister in the instant case. The claimant was not notified as to the hearing of the review and he was not given an opportunity to participate even though his disgruntlement, as expressed on appeal, was that he was not heard by the Authority and that there was no evidential basis for the decision. The rules of natural justice demands that he ought to have been given an opportunity to be heard. By not doing so, the Board, and the Minister, acting on its advice, in my view, acted in breach of the rules of natural justice.

[91] Furthermore, I find it necessary to go on to indicate that I strongly believe, given the nature of the allegations against the claimant, being one amounting to criminal conduct, and the fact that there had been no prior ventilation of the issues in accordance with law, that the right to a hearing ought not to have been denied by the Board and/or the Minister. I am fortified in my view by the dictum of Edun, J.A. in Aston Kane v Minister of Home Affairs and Justice (1975) 13 JLR 109, which was brought to my attention by counsel for the claimant. His Lordship had this to say at pages 111-112:

"From the facts in this appeal the Minister in hearing an appeal under s. 37 of the Act was called upon to carry out a quasi-judicial function. Although he had a discretion under r. 5 of the Regulations not to permit the appellant to appear before him to put forward arguments in support of his appeal, yet, because of the personal accusations against the appellant involved in terms of s. 36 (1) (a) of the Act as the reason for revoking the appellant's licences, the failure of the Minister to give the appellant an opportunity to be heard in defence of those allegations in my view constituted a breach of the rules of natural justice."

92. I do endorse and adopt the view expressed by Edun, J.A. and say that the failure of the Board, and by extension the Minister, in this case to give the

[87] Again, in *Danhai Williams* Carey, J.A., in speaking of Minister's role in the appeal process, stated at page 515:

"The Minister is clearly called upon to adjudicate, to hear both sides and to give a decision. He is in a position akin to a judge holding an "inter partes" hearing after the grant of an ex parte injunction. Although the aggrieved party had no right to be present, it seems to me he should know the date on which the hearing of the application is to take place. It will enable him to decide whether he should retain counsel to appear. He may wish to apply for further time to submit further representation."

[88] Wright J.A., in the same case, shared similar sentiments at p. 517:

"The appeal to the Minister invokes the intervention of a tribunal at a higher level than the appropriate authority. Accordingly, to sanction treatment by him similar to that of the appropriate authority, in which the appellant takes no part, labels the right of appeal illusory. It would be an exercise in futility to enable a person to appeal and then to deny him meaningful participation in the resultant proceedings. Merely to file grounds of appeal denying any breach of the qualifications for a licence, which is all he can do at this stage, is just a general denial that does not come near meeting the specific reasons for the revocation."

[89] It was held by the Court of Appeal in *Danhai Williams* that the failure of the Minister to inform the appellant as to when his appeal would take place and to allow him to participate in the process meant that he failed to act judicially or fairly and his decision was, therefore, in breach of natural justice. This decision was arrived at even though the legislative instrument under which the Minister acted did not make it mandatory for the aggrieved person to be present at the hearing or be given reasons for the decision to revoke his licence. The Court dealt with the omission in the interest of justice and fairness. Wright J.A. sums it up nicely when he said at page 518:

"The omission from the Firearms (Appeals to the Minister) Regulation requiring the Minister to inform the applicant of the allegations he has to meet is both patent and unfortunate, unless, of course, it is thought to be so inherent an aspect or (sic) of the appeal process as not to require legislation."

claimant an opportunity to be heard in the light of the nature of the allegations against him constituted a breach of natural justice.

93. In the final analysis, having closely, and I hope carefully, considered the evidence, the law and the helpful and enlightening submissions of counsel on both sides, I do find favour with the argument advanced on behalf of the claimant that there has been a breach of the rules of natural justice in the process giving rise to the Minister's decision to dismiss the claimant's application for review and to uphold the revocation of his licence. This fundamental breach occurred at the point of the intervention of the Board and continued up until the ultimate decision left the hands of the Minister. This finding, I think, is of enough gravity to dispose of the matter on the ground that procedural impropriety resulting in unfairness has also been established as a basis to disturb the impugned decision of the Minister.

Whether decision unreasonable

94. I will say, however, that the claimant has also raised before me, as a ground for judicial review of the first and second defendants' action in revoking the licence, the issue of unreasonableness. I have, therefore for completeness, gone on to also examine that contention. Of course, it is by now well settled as a matter of law that the unreasonableness that would form a basis for disturbing the decision in this case must be in the sense described by Lord Greene, M.R. in Associated Provincial Picture Homes v. Wednesbury Corporation, that is, what has become popularly known as "Wednesbury unreasonableness."

[95] As already been alluded to under the issue of fairness, a statutory body exercising its power by virtue of statutory authority must do so *bona fide* and reasonably failing which its action is liable to be struck down as being in excess of authority and unreasonable. (See for instance Westminster v. London and North West Railway and Breen v. Amalgamated Engineering Union [1971] 2 Q.B. 175).

[96] However, in Associated Provincial v Wednesbury Lord Greene M.R. clarified what is meant by reasonableness in these matters. He indicated that when it is said that a discretion must be exercised reasonably it means, for instance, that a person entrusted with a discretion must direct himself properly in law. In this regard his Lordship continued:

"He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

[97] Lord Diplock in Bromley London Borough Council v. Greater London Council [1983] 1 AC 768 at 821 noted in that case that the "Wednesbury Principle" had been subject to sub-division in the course of argument. He pointed out that it had been divided in the first place to apply to decisions reached in the exercise of a statutory discretion that are unlawful because it can be shown that in reaching the decision, the body exercising the discretion has acted on an erroneous view of the applicable law. On the other hand, it applies to decisions that when looked at objectively are so devoid of any plausible justification that no reasonable body of persons would have reached such decisions. It seems to me having examined Lord Greene's formulation that there are, indeed two dimensions to the unreasonableness one of which, at least, would have to exist to render a decision amenable to judicial review.

[98] In looking at the decision of the Authority in the instant case against the backdrop of the relevant authorities, I am mindful that I am not concerned with the merit or demerit of the decision but, of course, with the process by which it was arrived at. Now, the Authority, in determining, whether to revoke the licence would have to take into account the material before it and to act according to law governing its functions. If it formed the view that there was reason to believe, and that it was satisfied, that the

accused is of intemperate behaviour, then it would be justified in taking the decision and would be acting within the ambit of the law.

[99] The claimant has alluded to what he is saying was taken into account and what was not. In not having any detailed analysis of the reasons for the decision tantamount to a finding of fact, I am not placed in a good position to say that the Authority excluded relevant matters from their consideration and included irrelevant ones. It is the Authority's decision as to what is important to its consideration unless it can be shown that by the law under which it purportedly acted, it ought to have taken those things complained of into account or that it ought to have excluded others. The claimant has not proved that the claimant acted contrary to law in paying regard to the information it received. As such, I find that the case does not fit within the first plank of "Wednesbury unreasonableness".

[100] It follows from this that in order for me to properly interfere with the Authority's decision, the claimant would have to prove to my satisfaction that the decision made by the Authority is so unreasonable that no reasonable authority could ever have come to it which is the second plank of the "Wednesbury principle". This is not an easy task as Lord Greene M.R., himself, noted in Associated Provincial v Wednesbury. Therein, he stated in relation to this second limb of irrationality, that "to prove a case of that kind would require something overwhelming". The learned Master of the Roll then went on to state that it is not what the Court considers unreasonable. According to him, the court may very well have different views to that of a local authority but the effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that is set in that position and, provided it acts within the four corners of its jurisdiction, then, in his opinion, the court cannot interfere (p. 231).

[101] Following the lead of his Lordship's guidance, I find that there is nothing on the facts to prove to me that the Authority acted unreasonably in the 'Wednesbury sense' of the term. As Lord Greene noted and which I find truly instructive:

"It is clear that the local authority are entrusted by Parliament with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. The subject matter with which the condition deals is one relevant for its consideration. They have considered it and come to a decision upon it. It is true to say that if a decision on a competent matter is so unreasonable that no reasonable authority could ever come to it, then the courts can interfere. That I think is quite right; but to prove a case like that requires something overwhelming..."

[102] I find that the claimant has not managed to bring the facts of this case into that sphere where it would be legitimate for me to interfere with the Authority's decision on the basis of the second plank of "Wednesbury unreasonableness." The Authority has acted within the four corners of the Act under which it exercised its jurisdiction and there is no evidence on which I could safely conclude that no reasonable authority could ever come to the decision the Authority made. I find there is no basis on which I can interfere with the decision of the Authority on the ground of unreasonableness. This aspect of the claimant's claim, inevitably, fails.

Whether the Minister acted reasonably

[103] Having taken into account the principles relevant to this question of unreasonableness as alleged by the claimant, what has become evident to me is that at the point of the review, the Board, and later, the Minister failed to take into consideration the provision of the Act as well as the rules of natural justice that there should be an opportunity given to the claimant to be heard. In R. v. Secretary of State for the Home Department exp. Olahinde [1991] 1 A.C. 254, it was stated that a failure to grant a person affected by a decision a hearing in breach of the principles of procedural fairness may result in failure to take into account relevant considerations. This would, in effect, amount to unreasonableness within the first limb of the "Wednesbury Principle". If this is accepted, which I am minded to do, then that would bring the decision of the Minister within the realm of unreasonableness in the "Wednesbury sense".

[104] Even without that, however, there is evidence to show that the Review Board and the Minister, whom it advised, would have acted on an erroneous view of the applicable

law- statutory as well as common law- when they failed to give the claimant an opportunity to be heard. This failure rendered the decision not only procedurally unfair but also unreasonable as contemplated within the first plank of the "Wednesbury formulation" that is to say, the Board and the Minister failed to call attention to the matter of holding a hearing upon the application for review that they were bound to do by law. It stands to reason that, ultimately, the Minister acted unreasonably, and therefore, irrationally, on this basis.

Conclusion

[105] Having reviewed the facts of this case within the framework of the relevant law, I am propelled to a conclusion that the Authority's decision revoking the claimant's licence ought not to be disturbed as there is no ground properly established rendering it susceptible to judicial review. The Authority acted lawfully, fairly and reasonably within the law governing its operation. The Authority's decision is unimpeachable as a matter of law. I find, therefore, that the claimant is not entitled to any relief as claimed against the Authority.

[106] I have found, however, that the decision arrived at by the Minister, acting on the flawed recommendation of the Board, to dismiss the claimant's application for review and to uphold the decision of the Authority to revoke the licence was, ultimately, arrived at unlawfully (illegality), with procedural impropriety (unfairness), and unreasonably (irrationality). Indeed, these are enough to declare the decision as being *ultra vires*. As such, the Minister's decision made to revoke the licence is null and void and will have to be set aside. The findings and recommendations of the Review Board on which he acted must, inevitably, suffer the same fate for the same reasons. I will declare that the decision of the Minister, dismissing the claimant's application for review and upholding the revocation of his firearm licence, cannot legally stand.

[107] It leaves me to say that in my attempt to properly dispose of this matter as to the proper terms of the orders to be made I have gained much assistance from the approach of the Court of Appeal in *Danhai Williams*, and having been so guided, I now

make the following declarations and orders by reference to the claimant's Amended Fixed Date Claim Form.

ORDERS

1. Order of Certiorari quashing the decision of the Firearm Licensing Authority (the Authority) wherein the claimant's Firearm User's Licence was revoked by notice dated January 19, 2009 on the basis of his "intemperate behavior" DENIED.
2. Order of Certiorari quashing the decision of the Minister of National Security, (the Minister) dismissing the claimant's application for review of the decision of the Authority and upholding the Authority's decision to revoke the claimant's Firearm User's Licence GRANTED.
3. Order of Mandamus ordering the Authority to restore and/ or to allow the claimant to renew his firearm user's licence DENIED .
4. A Declaration that the proceedings by the Review Board and the decision arrived at by the Minister to revoke the claimant's Firearm User's Licence stand in breach of sections 37A (2) (a) and section 37A (4) of the Firearms (Amendment) Act, 2005 (the Act) GRANTED.
5. 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 Firearm User's Licence was conducted against the principles of natural justice GRANTED.
6. A Declaration that in the circumstances of this case the decision of the Minister to uphold the revocation of the claimant's Firearm User's Licence was unreasonable GRANTED.

7. A Declaration that the decision taken by the Minister to uphold the revocation of the claimant's Firearm User's Licence is *ultra vires* and, therefore, null and void GRANTED.

8. A Declaration that the claimant has not breached, contravened, or acted contrary to the Firearms Act DENIED.

9. Damages DENIED

10. The Minister is required to remit the claimant's application to the Review Board for consideration in accordance with section 37A (2) of the Act which includes hearing the claimant.

11. If the Review Board shall fail to comply with section (37A (2)), the Minister is required to hear and determine the matter under review, including hearing the claimant, pursuant to section 37A (4) of the Act.

12. liberty to apply

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Marva McDonald- Bishop, J