

NOVA SCOTIA COURT OF APPEAL

Citation: Jesty v. Nova Scotia (Chief Firearms Officer), 2003 NSCA 135

Date: 20031210

Docket: CA 200302

Registry: Halifax

Between:

Franklyn John Jesty

Appellant

v.

Maarten Kramers, Chief Firearms Officer Nova Scotia
and Attorney General of Nova Scotia

Respondents

Judges:

Roscoe, Cromwell and Fichaud, JJ.A.

Appeal Heard:

November 18, 2003, in Halifax, Nova Scotia

Held:

Appeal dismissed per reasons for judgment of Cromwell, J.A.; Roscoe and Fichaud, JJ.A. concurring.

Counsel:

D. Bruce Clarke and Jennifer Ross, for the appellant
Stan W. McDonald, for the respondent Chief Firearms
Officer
Respondent Attorney General not appearing

Reasons for judgment:

[1] The appellant, Franklyn Jesty, applied for a firearms license and for a waiver of the license fee. He sought the waiver on the basis that he is an aboriginal person who requires firearms to hunt or trap in order to sustain himself or his family as set out in the Firearms Fees Regulations, SOR/98-204. The respondent Chief Firearms Officer decided that Mr. Jesty was eligible for a license but not for a fee waiver. In refusing the waiver, the Officer applied provincial and federal policies (apparently not having statutory or regulatory force) that it is not an acceptable basis for a fee waiver that an applicant hunts or traps for reasons of culture, heritage or tradition. The Officer's decision was set out in a form letter which quoted the policies.

[2] Not satisfied, Mr. Jesty applied in the Supreme Court for two orders: the first in the nature of *certiorari* to quash the Chief Firearms Officer's decision refusing to waive the license fee and the second in the nature of a declaration that the Chief Firearms Officer:

... shall take into account, and accord substantive weight to [Mr. Jesty's] Aboriginality, his cultural heritage as Mi'kmaq and the cultural significance of harvesting activity involving the use of firearms to the Applicant as Mi'kmaq, when deciding upon the merits of his application for a sustenance hunter's designation."

[3] In the Supreme Court, MacAdam, J. granted *certiorari* to quash the decision and remitted the matter to the Chief Firearms Officer, but made no other order. I accept as accurate the respondent's characterization of the basis and effect of MacAdam, J.'s decision:

JUSTICE FICHAUD: So what would the Chief Firearms Officer take from Justice MacAdam's decision by way of principle to assist him the next time?

MR. MacDONALD:[counsel for the respondent] I would suggest, my lord, that what the Chief Firearms Officer would take is that he must determine and exercise his jurisdiction as it was laid out by the legislation, perhaps giving some consideration to the policy as a guideline but not being fettered by it; not being required to not consider certain things if he felt that they were relevant in the application that was before him, to exercise as his discretion in an appropriate matter and that's specifically from Justice MacAdam's decision that he should not allow himself to be blindly fettered or arbitrarily fettered by the policy that was,

that he was acting upon at the time. I would suggest that it's clear that Justice MacAdam told him you are to go back, you are to reconsider this application in light of all factors that you find as relevant notwithstanding what policy says; notwithstanding what the Canadian Firearms Centre says; notwithstanding what the Province says. You may agree with them and things may or may not be factors in your mind in your capacity as a discretionary body but you must make the decision based on your discretion not on the discretion that is arbitrarily being exercised over you by the Canadian Firearms Centre

The argument that was fought and won by the appellant at the lower level was that the Chief Firearm's Officer as a discretionary body should not be fettered in what is to be considered relevant, what is to be given consideration and what ultimately might influence final decision as to whether or not a fee waiver is granted.

[4] I also agree with the respondent that the Officer, in these circumstances, ought to give meaningful reasons for the refusal to exercise his discretion to grant a fee waiver. As respondent's counsel appropriately said in his factum, "... the Chief Firearms Officer accepts that he should provide written reasons for a refusal of a fee waiver application pursuant to s. 7 of the Firearms Fees Regulations ...".

[5] Mr. Jesty now appeals, arguing principally that the judge erred in failing to give directions to the Chief Firearms Officer as to how the appellant's aboriginality and cultural heritage should be taken into account in considering his application for a license fee waiver. The appellant, in effect, wants a direction as to how the Officer should interpret the fee waiver regulations, particularly the condition that firearms are required "to sustain" the applicant or his family.

[6] Given that *certiorari* has been granted quashing the decision as requested by Mr. Jesty, it is only open to him to appeal the refusal of the judge to grant the declaratory relief he sought. The decision to grant a declaration is discretionary: see for example **Civil Procedure Rule 5.14**. On appeal, the exercise of that discretion will be interfered with only if it is based on an error in principle or gives rise to a patent injustice.

[7] It is implicit in the judge's reasons that he thought it best to remit the matter to the Officer for full consideration in light of the Regulations and that it was not appropriate to give further directions by way of declaratory relief at this time. In our view, the judge's order ought to have reflected explicitly his decision to refuse

the declaration. However, on this record, we see no error in principle or patent injustice in his refusal of the declaration. The points raised by the appellant are both fundamental and potentially far-reaching. The decision of the Officer is a discretionary one. The material before the Court does not afford an appropriate context in which to address definitively by way of a declaratory judgment the interplay between the factors raised by the appellant and the exercise of the Officer's discretion.

[8] Accordingly, the appeal is dismissed.

[9] We emphasize that nothing we have said precludes the appellant from renewing in future proceedings the arguments he wishes to make about the interpretation of the Regulations in light of his aboriginal status and culture.

Cromwell, J.A.

Concurred in:

Roscoe, J.A.

Fichaud, J.A.