IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Goulden, 2006 NSPC 34

Date: 20060719
Docket: 1577365
Registry: Bridgewater

Between:

Michael Goulden

v.

R.

Judge:	The Honourable Judge Anne E. Crawford
Heard:	June 19, 2006, in Bridgewater, Nova Scotia
Charge:	Reference Hearing 74 FAA
Counsel:	Dale Darling, for the Crown Alan G. Ferrier, for the Defence

By the Court:

[1] Michael Goulden referred the rejection of his application for a firearms licence to the Provincial Court under s. 74 of the *Firearms Act*. At the conclusion of the hearing, the matter was set over for the submission of written arguments.

Facts

[2] In 2004 the applicant applied for a firearms licence, following the 2001 revocation of his licence by a court in regard to his conviction for an offence involving the use of firearms .

[3] Because of his "yes" answers to questions on the application regarding convictions in the preceding 5 years, the application was sent to the area firearms officer, John Chant, for further investigation and report. Mr. Chant spoke to the references supplied by the applicant; and also spoke to his ex-wife and the applicant himself.

[4] Mr. Chant watched a lot of video from cameras the applicant had set up on a road on or near his land and described the applicant as being entrenched in his position that others were not to use the road, except "over my dead body".

[5] Mr. Chant also met with a group of local residents – mostly on the other side of the property dispute – who had sent letters to the Chief Firearms Officer expressing their concern and fear of the applicant, especially if he were to have a firearms licence.

[6] Mr. Chant recommended to the Chief Firearms Officer that the applicant's application be refused on the basis of his history of violent behaviour and his convictions for firearms offences within the preceding five years.

[7] On cross-examination Mr. Chant emphasized that his decision was not based on the property dispute, or on the incidents leading to the defendant's convictions, but simply on his record of convictions for violent offences. The fact that the court did not order a firearms prohibition at the time of his 2003 conviction for assault causing bodily harm was not a factor in his decision.

[8] Maarten Kramers, Chief Firearms Officer with the Department of Justice, testified that after receiving Mr. Chant's report on the application he made the

decision to refuse Mr. Goulden's application and a formal Notice of Refusal was sent to the applicant.

[9] Mr. Kramers testified that the application was refused mainly because of the applicant's convictions and that the fact that the court ordered prohibition was later removed had no effect on his decision.

[10] Both Mr. Chant and Mr. Kramers were aware that the applicant had been a gun collector and that the background to his convictions was a property dispute.

[11] On cross-examination Mr. Kramers emphasized that the land dispute itself was not of concern to the Firearms Office, but the behaviour of the applicant arising out of it was. In Mr. Kramer's view that behaviour makes him a risk to public safety, as demonstrated by his criminal convictions.

[12] Mr. Clare Smith is a neighbour of the applicant, living about a mile west of the applicant on Shore Road , Shelburne County, Nova Scotia. He testified that he had hunted with the applicant and was a member of the same gun club as the applicant. He said that he was a friend of the applicant and appeared because he asked him to. He said that he had only seen the defendant handle his guns in those settings and that he had seen nothing that would give him concern. He also testified that he and the applicant fished from the same wharf and that over 14 years he had never seen him involved in any disputes with other fishers.

[13] The applicant testified that guns and hunting have always been a big part of his life, and that he has a collection of 39 guns, seven of which he described as "working guns" and that all of them have been seized by the RCMP.

[14] Throughout his testimony it was apparent that the applicant feels justified in doing whatever he feels is necessary to protect what he believes to be his land, and that he feels a sense of grievance against others in the community who are asserting a right to cross his land. He made it clear that he has no intention of referring the dispute to the courts, stating, "I know what I own; the dispute is on their side." He complains that he was "set up" by the other side in regard to both confrontations which resulted in his criminal convictions. His attitude can only be described as confrontational and pugnacious.

The *Firearms Act*

[15] The relevant provisions of the *Firearms Act* state:

> 5. (1) A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.
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> (2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,
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> > (a) has been convicted or discharged under section 730 of the Criminal Code of
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> > > (i) an offence in the commission of which violence against another person was used, threatened or attempted,
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> > > (ii) an offence under this Act or Part III of the Criminal Code,
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> > > (iii) an offence under section 264 of the Criminal Code (criminal harassment), or
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> > > (iv) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act;
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> > (b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or
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> > (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.
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> 74. (1) Subject to subsection (2), where
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> > (a) a chief firearms officer or the Registrar refuses to issue or revokes a licence, . . .

> the applicant for or holder of the licence, . . . may refer the matter to a provincial court judge in the territorial division in which the applicant or holder resides.
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> 75. (2) At the hearing of the reference, the provincial court judge shall hear all relevant evidence presented by or on behalf of the chief firearms officer, . . . and the applicant or holder.
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> (3) At the hearing of the reference, the burden of proof is on the applicant or holder to satisfy the provincial court judge that the refusal to issue or revocation of the licence, . . . was not justified.

Issue

[16] The main issue to be decided here is whether or not the applicant has met the burden on him to satisfy the court that the refusal to issue a licence to him was not justified. In order to determine this, I must first consider the applicable standard of review.

Standard of Review

[17] The issue of the standard of review has not yet been considered by the Supreme Court of Canada. At the trial level there are divergent opinions as to whether the standard is correctness, as would be the case if the reference is in the nature of a trial *de novo*, or whether it is reasonableness, as would be the case if the reference is in the nature of an appeal. For example, in *R. v. Turner*, 2003 CarswellOnt. 5430, 182 C.C.C. (3d) 438 (Ont.S.C.), Misener, J. held that the standard was one of correctness; whereas in *Alberta (Chief Firearms Officer) v. Rolls*, 2004 ABQB 582, 2004 CarwswellAlta 1061, the standard was stated to be that of reasonableness.

[18] The only relevant appellate consideration in Canada appears to be *British Columbia (Chief Firearms Officer) v. Fahlman*, [2004] B.C.J. No. 1246, 2004 BCCA 343. In that case Low, J.A. for the court stated:

> ¶ 22 With respect, I do not agree that the Provincial Court reference is a hearing *de novo* of the matter determined by the firearms officer in the first instance, that is, refusal to issue a licence or revocation of a licence. I do not think that s. 75 of the statute provides for such a hearing. An appeal or hearing *de novo* by definition is one in which the reviewing judge considers only what is presented in his or her court without regard to the decision of the lower court, tribunal or administrative

> decision-maker. If Parliament intended that the reference was to be an entirely new hearing of the issue it would have said so in explicit terms. The imposition of the onus on the applicant for a licence or the holder of a licence, as the case may be, is inconsistent with a *de novo* hearing. The onus on the person dissatisfied with the decision of the firearms officer to establish that the decision was not justified clearly indicates that the judge must review the decision, not conduct a fresh hearing.
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> ¶ 23 In my opinion, because the judge must determine whether the decision under review was justified based on the record as amplified by relevant evidence heard on the review, the test is one of reasonableness. . . .

[19] He went on to quote, with approval, the following passage from the decision of Dorgan, J. in *R. v. Pagnotta*, 2001 BCSC 444, [2001] B.C.J. No. 2260:

> ¶ 62 Regardless of the specific term used, the question that the Provincial Court judge must ask is, given all the relevant evidence, is the original decision of the firearms officer one that was reasonable, even if the judge does not agree with it. In *Southam* the court provided some guidance for a court applying the standard of reasonableness simpliciter, and it is, therefore, relevant to the approach that should be taken under the Act:
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> > ... An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it. The defect, if there is one, could presumably be in the evidentiary foundation itself or in the logical process by which conclusions are sought to be drawn from it. An example of the former kind of defect would be an assumption that had no basis in the evidence, or that was contrary to the overwhelming weight of the evidence. An example of the latter kind of defect would be a contradiction in the premises or an invalid inference.
> >
> > The difference between "unreasonable" and "patently unreasonable" lies in the immediacy or obviousness of the defect. If the defect is apparent on the face of the tribunal's reasons, then the tribunal's decision is patently unreasonable. But if it takes some significant searching or testing to find the defect, then the decision is unreasonable but not patently unreasonable.

[20] The *Pagnotta* case was also quoted by Scanlan, J. of the Nova Scotia Supreme Court in *R. v. Craig*, 2002 NSSC 262, [2002] N.S.J. No. 548:

> ¶ 3 The first issue that I want to deal with is the standard of review. The standard of review to be exercised by a Provincial Court Judge in reviewing the decision of a firearms officer was set out in *R. v. Pagnotta* [2001] B.C.J. No. 2260, a decision of Judge Dorgan. In that case at paragraph 65 Judge Dorgan concluded, and I quote;

> The test on a reference to the Provincial Court is whether or not the firearms officer's decision was reasonable, and this standard is akin to both "clearly wrong" and "reasonableness simpliciter". The Provincial Court judge may consider evidence that was not before the firearms officer, but the latter need not call evidence to support its original findings unless it is necessary to support its case.

[21] The *Craig* case is, of course, binding upon me; the standard I must apply is therefore that of reasonableness.

Was the Firearms Officer's refusal reasonable?

[22] I find that the decision of the Firearms Officer was reasonable for the following reasons:

> 1. It was based on a thorough and unbiassed investigation by Regional Firearms Officer John Chant. With one exception, Mr. Chant interviewed everyone involved; it was not unreasonable for him to refuse to see Mr. Smith when, from his perspective, Mr. Goulden was requiring that he set up the interview. As it turned out, the testimony of Mr. Smith at the hearing added little that was relevant to the investigation conducted by Mr. Chant. Although Mr. Smith testified that Mr. Goulden knows how to use firearms safely and that Mr. Goulden has not been involved in disputes with fishers, he had no knowledge of Mr. Goulden's land dispute with his neighbours, which is the major source of concern both to the Firearms Officers and to this court;
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> 2. Nothing would be gained by reviewing court transcripts; the fact of the convictions is what is relevant to the determination of the Firearms Officer. The focus of the Firearms Officer under s. 5(1) of the *Firearms Act* is public safety, having regard to the criteria set out under s. 5 (2). Unlike the situation in *Re Ludington*, 2002 CarswellOnt 5987, Mr. Chant conducted a long interview with the applicant, as did Mr. Kramers, in which he was given every opportunity both to respond to the allegations of his neighbours and to explain his criminal record.
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> 3. The fact that this court did not order a further firearms prohibition in 2003, although relevant, is in no way conclusive as to whether or not a firearms licence should now issue. At that time, the court was considering only a much narrower issue, as to the appropriate sentence in one case. Important issues then were that the firearms prohibition sought was discretionary and that firearms had not been involved in that offence. In the present case the larger issue of public safety is the focus, and the parameters of the inquiry are therefore much broader.

> 4. Mr. Goulden's attitude on the witness stand amply demonstrates the reasonableness of the concerns of the Firearms Officer. As stated above, he expresses neither regret nor remorse for the assaultive behaviour which resulted in his criminal convictions and persists in refusing to refer the underlying property dispute to the courts for a proper resolution. As long as Mr. Goulden insists on fighting his own battle with his neighbours, without reference to proper authority, he is a clear danger to public safety.

[23] Having reviewed the decision of the Firearms Officer in the light of all of the evidence presented by both parties, I find that the applicant has not satisfied me that the refusal to issue the firearms licence to the applicant was not justified. In fact, I find that it was justified not only under s. 5 (2) (a) (i), but also under s. 5(c).