

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Maillet, 2009 NSPC 18

**Date:** May 1st, 2009

**Docket:** C#1831482

**Registry:** Digby

**Between:**

Her Majesty The Queen

Respondent

v.

Donald William Maillet

Applicant

**Judge:**

The Honourable Judge Jean-Louis Batiot, J.P.C.

**Heard:**

October 27, 2008 at Comeauville and December 2,  
2008 at Digby, Nova Scotia

**Written Decision:**

May 1, 2009

**Counsel:**

Alison Campbell, for the Crown

Philip J. Star, Q.C. , for Donald William Maillet

### **By the Court:**

1. In this Reference, pursuant to s. 74, and subseq., of the **Firearms Act**, S.C. 1995, C. 39 (hereinafter **the Act**), Donald William Maillet appeals Chief Firearm Officer Martin Kramers' refusal to issue him a firearm license, dated July 24<sup>th</sup>, 2007.

2. The applicant argues that to visit upon him his past record is unreasonable; it would not be contrary to the interest of the safety of any person for him to have a licence or firearms; and the charge contrary to section 5(2) is irrelevant since it was resolved through a conviction under section 4(1) of the CDSA; further, Sergeant Lacroix's beliefs are mere suspicions and the use of drugs is not sufficient to deny him a license.

3. The Crown argues that not to issue is reasonable, given all the circumstances, that these are not limited to the last five years; that the refusal to issue was justified through the evidence obtained by Mr. Chant, acted upon by CFO Kramers because of the clear pattern of behavior exhibited by Mr. Maillet while in the community.

### STATUTORY PROVISIONS

4. S. 75 of the **Act** provides that:

(2) *... the provincial court judge shall hear all relevant evidence presented by or on behalf of the chief firearms officer, Registrar or provincial minister and the applicant or holder.*

(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, registration certificate or authorization, the decision or the refusal to approve or revocation of the approval was not justified.*

5. By S. 76, the Provincial Court Judge may, by order,
- (a) confirm the decision of the chief firearms officer, Registrar or provincial minister;
  - (b) direct the chief firearms officer or Registrar to issue a license, registration certificate or authorization or direct the provincial minister ....
  - (c) cancel the revocation of the license, registration certificate, authorization or approval or the decision of the chief firearms officer under section 67.

6. In addition to the Notice of Refusal, the Crown presented the report of John Chant, Western Region Firearms Officer, disclosing the results of his investigation. This is the basis of CFO Kramers' decision and his refusal to issue the firearms license. This report includes the criminal record of the applicant, including the sentences imposed, between 1977 and 2007, the conditions imposed on community based dispositions, particularly as they relate to undertakings (s. 264.1(2)(b) -- Uttering Threats, March 20<sup>th</sup>, 2001) and of the Peace Bond of July 27<sup>th</sup> 1999. It also includes results of interviews of different persons, including Sergeant Michel LaCroix; a witness in this hearing; Ms. Therese Maillet, mother of the applicant; the applicant himself; and his daughter Natasha. It concludes with a summation, and formulates the grounds to make the recommendation to Mr. Martin Kramers not to issue the license, referring to section 5 of the **Firearms Act, supra**.

S. 5 of the said **Act** states

- (1) A person is not eligible to hold a license 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.
- (2) In determining whether a person is eligible to hold a license 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,
  - (a) has been convicted or discharged under section 730 of the Criminal Code of
    - (i) an offence in the commission of which violence against another person was used, threatened or attempted,
    - (ii) an offence under this Act or part III of the Criminal Code,
    - (iii) an offence under section 264 of the Criminal Code (criminal harassment), or
    - (iv) an offence relating to the contravention of subsection 5(1) or (2) or 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act;
  - (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*  
 (c) *has a history of behaviour that includes violence or threatened or attempted violence on the part of a person against any person.*

7. It is now common grounds that the charge of possession of Ketamine for the purpose of trafficking, contrary to s. 5(3)(a) of the CDSA on the 16<sup>th</sup> of September 2006 was resolved through a conviction of simple possession of narcotics (s. 4(1), CDSA). This prohibited substance, better known as date rape drug, was originally a drug to treat horses.

## JURISPRUDENCE

8. Mr. Justice Veale in **R. v. Shepherd**, 2005 YKSC 17 has considered these sections. It is a helpful decision, clarifying the jurisdiction of this court in hearing such a reference.

9. On the issue of the standard of review, and the lesser deference owed to a CFO's decision, at para. 23, he held that "*The absence of a privative clause and the right of review based on amplified evidence implies less deference to the CFO's decision.*". Similarly, with respect to the expertise of the tribunal, at para. 24, he states: *some deference should be given to the CFO but not a high degree that might be given to a very specialized tribunal*, in light of the provincial court judge's *expertise in determining public safety*.

10. As to whether the review was a question of law or fact, Veale, J. concluded, at para. 30 "*... there are two standards of review. The legal interpretation of section 5 of the Act should be on a standard of correctness. The review of the CFO's application of the legal principle to the facts should be on a standard of reasonableness, thereby giving some deference to the decision of the CFO.*"

11. In that case an issue was the interpretation of s. 5 and more particularly the interplay between ss. (1) and (2), i.e. the criteria, and whether ss. (2) limited “... *the matters that could be considered under section 5 to those that occurred in the five years running back from the date of the hearing ...*” (para. 39). He refers and accepts the British Columbia Court of Appeal decision in **British Columbia (Chief Firearms Officer) v. Fahlman** [2004] BCCA 343 which held, at paragraph 25

1. *Section 5(2) is not exhaustive of the matters to be considered as affecting safety concerns under section 5(1).*
2. *The firearms officer and the judge are entitled to consider anything about the background or conduct of the application or licence holder that is relevant to public safety.*
3. *There is no statutory obligation to decide the safety issue in favour of the applicant or licence holder when none of the criteria in section 5(2) is present and there is no obligation to refuse a licence or order a revocation if one or more of those criteria is present.*

12. He concludes, at para 42 “... *section 5(2) in no way limits what may be considered in “the interests of safety” which was broadly stated in section 5(1).*”

13. Since s. 55.(1) of the *Firearms Act* gives a CFO a broad mandate

*“... to conduct an investigation of the applicant ... with neighbours, community workers, social workers, individuals who work or live with the applicant, spouse or common-law partner, former spouse or former common-law partner, dependants or whomever in the opinion of the chief firearms officer may provide information pertaining to whether the applicant is eligible under section 5 to hold a licence.”,*

Veale, J. concludes that such investigation necessarily includes hearsay and the provincial court judge may do so as well, as he or she must hear all relevant evidence (section 75(3)).

14. I hasten to say that not only must it be relevant, it also ought to be reliable, but I accept this framework for a review.

#### CFO's DECISION

15. CFO Maarten Kramers confirms the main criteria for not issuing such licence: the safety of that, or any other, person, given the background, a pattern of violent behavior and illegal activity, particularly related to drugs, and a continued acquaintanceship with known drug users.

16. Mr. Chant relied on a nameless informant who was not involved in the drug scene and has a good reputation in the community.

17. Sergeant Michel Lacroix , with the RCMP for 21 years, has been active, for 13 years, in drug investigations, between Bridgetown, Bridgewater and Middleton. In that capacity he became acquainted with Mr. Maillet who was the subject of several investigations. It includes:

- a. the 1992 execution of a search warrant at his residence, resulting in a conviction for a trafficking offence, and a 90 day intermittent sentence;
- b. Mr. Maillet became a suspect in 1993, through an authorized wire tap surveillance, but was not arrested;
- c. In 2003 there were further criminal investigations into drug trafficking of known drug traffickers, showing Mr. Maillet's involvement.
- d. These traffickers were part of a well organized and well established drug trade; their modus operandi included violence and shooting, and one person was killed. All these people were contact for Mr. Maillet; yet there is no clear evidence of Mr. Maillet's direct involvement. The investigation showed some links to organized crime, particularly the Hells Angels.

18. It must be noted that in 2006, when Mr. Maillet was arrested with the drug Ketamine, he was

also in possession of \$2,200 cash. Mr. Maillet testified at this hearing that he uses it personally as it is better than Viagra to enhance sexual pleasure. He is 48.

## THE APPLICANT

19. Mr. Maillet recognizes his criminal record, but he is older, a grandfather now, of two grandchildren, ages 7 and 5, and would like a licence to possess firearms to hunt deer, rabbits and birds. He denies being involved in the drug trade.

20. He could have been at the residence of Blake Robbins or Randy Mersereau (other traffickers), people associated with organized crime and noted by Sergeant Lacroix.

21. He knew Shawn Hewling, one of the traffickers, but has not seen him for two years and does not know where he is.

22. He has never sold Ketamine. He lives with his partner and says that his, and her, income is between fifteen and twenty thousand dollars a year, clamming, each. He explains that in March 2001 the undertaking was as a result of a break up of an intimate relationship and a dispute over child access.

23. Mr. Maillet's criminal record shows in 1977 four break and enters, a conviction for dangerous driving in 1980, theft over and theft under - two charges each in 1982, possession of narcotic in 1989, assault with weapon in 1993, on the 10<sup>th</sup> of February, possession of a narcotic; 4<sup>th</sup> of May 1993 - failure to comply, 11<sup>th</sup> of January 1995 - dangerous operation of motor vehicle, 1997 - possession of schedule substances s. 4(1) of the CDSA. The sentences range from fines to

incarceration. Probation or Undertakings included limitations as to the exercise of his liberty, such

as reporting to the RCMP, remaining within the province, no contact with an ex-partner or abstaining from the excessive consumption of alcohol or other intoxicating substances.

24. It is somewhat dated, but not so much so that it becomes irrelevant. Indeed it exhibits violent behaviour, and illegal activity related to drugs, a practice associated with violence and firearms.

## CONCLUSIONS

25. The main reason the licence was not issued or was refused was on the basis of section 5(1) of the *Firearms Act* “ ... *desirable, in the interest of the safety or that of any other person, that a person not possess a firearm*”. It is based on the information received from a reliable source in the community, and Sergeant LaCroix’s first hand observation, during his work as a drug investigator, of the contact Mr. Maillet had with members of organized crime, not long before the 24<sup>th</sup> of July 2007.

26. I do accept the principle that s. 5 of the **Act** gives broad discretion to the CFO - and to this court - to hear reliable hearsay evidence, to gather information, to formulate an opinion as to what may be contrary to the safety of the public and that this was done properly in this case.

27. It was further based on the appreciation that the mother of the applicant, used as a reference, was at the very least uninformed about her son’s past involvement in illegal drug activity and Mr. Maillet’s unjustifiable explanation for the illegal possession of the Ketamine. As for the applicant’s daughter, her evidence appears uninformed as well.

28. The applicant explains that these contacts with known traffickers were innocent, and now dated, given the date of this Application; he has lost contact with such persons, and simply wishes



to lead a law abiding life, hunting for pleasure. As for the Ketamine, he uses it personally to enhance his own sexual pleasure, and did not administer to anyone.

29. One particular issue raised in this hearing was the source of income for Mr. Maillet, who appears otherwise to be without gainful employment. He says both his partner and himself work full time as clam diggers, earning each \$ 15,000 to \$20,000 a year. He was hesitant as to the amount, and did not provide any receipts evidencing such income, a work that is physically very demanding.

30. On the evidence presented before me, I can conclude in light of the past violent history of the Applicant, his fairly recent association with known drug dealers involved in violent enterprises, his continuous use of illegal drugs (until recently at any rate), thus his continued involvement in that culture and trade (he has to procure it illegally), that CFO Kramers acted reasonably in denying, at this time, the issuance of a licence to the Applicant.

31. This Reference was heard some one and half year after that decision. The delay gave to the Applicant the advantage of further distancing himself from his past criminal record and improve his position and reputation in the community. Of particular import was the additional evidence, not disclosed to the CFO, of his source of income. At the very least, I can conclude, that his evidence on that point was not persuasive, and appeared to have been an afterthought, and not a very convincing one.

32. Pursuant to s. 76 of the **Act**, I confirm the decision of the Chief Firearm Officer, and deny the issuance of a firearms license.

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Jean-Louis Batiot, J.P.C.

May 13<sup>th</sup>, 2009

Comeauville, Nova Scotia