

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *Norris v. Nova Scotia (Chief Firearms Officer)*, 2013 NSPC 96

Date: 20121022

Docket: 2370195, 2370196

Registry: Pictou

Between:

Jason Roderick Norris

Applicant

v.

John W. Parkin, Chief Firearms Officer for Nova Scotia

Respondent

***DECISION REGARDING REFERENCE OF REFUSAL TO ISSUE
A SUSTENANCE FIREARMS LICENCE***

Judge: The Honourable Judge Del W. Atwood

Heard: October 22, 2013, in Pictou, Nova Scotia

Written decision: October 28, 2013

Counsel:

Ian A. (Sandy) MacKay, Q.C. for the Applicant
Duane Eddy for the Chief Firearms Officer

By the Court:

[1] Thank you very much. The Court has for decision the reference of Jason Roderick Norris arising from his rejected application for a sustenance firearms licence; it is being heard under the provisions of section 74 of the *Firearms Act*.

[2] That section states:

74. (1) Subject to subsection (2), where

(a) a chief firearms officer or the Registrar refuses to issue or revokes a licence, registration certificate, authorization to transport, authorization to export or authorization to import,

(b) a chief firearms officer decides under section 67 that a firearm possessed by an individual who holds a licence is not being used for a purpose described in section 28, or

(c) a provincial minister refuses to approve or revokes the approval of a shooting club or shooting range for the purposes of this Act,

the applicant for or holder of the licence, registration certificate, authorization or approval may refer the matter to a provincial court judge in the territorial division in which the applicant or holder resides.

Limitation period

(2) An applicant or holder may only refer a matter to a provincial

court judge under subsection (1) within thirty days after receiving notice of the decision of the chief firearms officer, Registrar or provincial minister under section 29, 67 or 72 or within such further time as is allowed by a provincial court judge, whether before or after the expiration of those thirty days.

[3] There is no dispute that the application by Mr. Norris is timely. Notice was given to the Provincial Firearms Officer.

[4] I have reviewed in detail the application and affidavit of Mr. Norris, as well as the affidavit in reply, sworn to by the incumbent Chief Firearms Officer for the Province of Nova Scotia, John W. Parkin. I have also heard the sworn testimony of Firearms Officer Plomp and the applicant's wife, Mrs. Norris.

[5] There is a history to this case. On 10 September 2012, Mr. Norris was sentenced by me in relation to a section 7(1) *CDSA* offence that attracted a mandatory sub-s. 109(2) *Criminal Code* firearms-prohibition order, given the provisions of para. 109(1)(c). On application by Mr. Norris at that time, and with the consent of the federal prosecutor, the order included the following proviso as permitted under sub-s. 113(1) of the *Code*:

The Court orders that the Chief Firearms Officer may issue to Jason Roderick Norris an authorization, license or registration certificate and so forth for the purposes of sustenance.

[6] That authorization was made by the Court under the provisions of section 113 of the *Criminal Code*. Section 113 states:

Where a person who is or will be a person against whom a prohibition order is to be made, establishes to the satisfaction of competent authority

(a) that the person needs a firearm or restricted weapon to hunt or trap in order to sustain the person or the person's family,

(b) or a prohibition against the person would constitute a virtual prohibition against employment in the only vocation open to the person,

the competent authority may, notwithstanding that the person is or will be subject to a prohibition order, make an order authorizing a Chief Firearms Officer or the Registrar to issue, in accordance with such terms and conditions as the competent authority considers appropriate, an authorization, a license or a registration certificate as the case may be, to the person for sustenance or employment purposes.

[7] The grounds that were established before me at the sentencing hearing last year were that Mr. Norris required a license for sustenance purposes.

[8] It is important that the Court make one thing clear: the Court does not issue firearms licenses. Rather, the court has the jurisdiction to order that a person be prohibited from possessing firearms. Sometimes, when the requirements of s. 113 of the *Code* are met, the Court may make an order authorizing—but not ordering—a CFO to issue a license to a person under prohibition, but for sustenance purposes only. In fulfilling his duties in such a case, the Firearms Officer must be governed by the provisions of ss. 4, 5 and 39 of the *Firearms Act*.

[9] After the s. 109 prohibition order was made, with the s. 113 proviso included in it, Mr. Norris applied to the CFO for a sustenance-related firearms licence. He was rejected. The issue before me on this reference is whether I should confirm that rejection or direct the CFO to issue Mr. Norris a licence for sustenance purposes.

[10] With respect to the standard of review, it is clear to the Court, having reviewed in detail the licencing provisions of the *Firearms Act*, that there is in this case a discrete administrative regime for which the Chief Firearms Officer has a particular expertise. As appositely reviewed by Bourgeois J. in *Waye v. Nova*

Scotia (Provincial Firearms Office):

[19] Is there a discrete administrative regime for which the decision maker has particular expertise? The answer to this inquiry is “yes”. The *Firearms Act* provides a comprehensive administrative scheme for the licensing, registration, transfer, manufacturing and importation/exportation of firearms, restricted firearms, prohibited weapons and devices and ammunition. A review of the “purpose” of the legislation, as outlined in s. 4 is illustrative of its breadth. That scheme further provides for the appointment of a CFO to make various determinations thereunder.

[20] A CFO under the *Firearms Act* would possess a specialized expertise to appreciate the sensitivities and nuances inherent in the decisions required by the legislation. This weighs in favour of deference. This, in my view, is further supported by what appears to be Parliament’s endorsement of the CFO’s discretion in s. 68 of the *Act*, whereby he or she can refuse to issue licenses or authorizations for “any good and sufficient reason”. .¹

[11] With respect to the standard of review, again, this was canvassed in detail by Bourgeois J.:

¹2013 NSSC 148 at paras. 19-20.

[22] The nature of the question addressed by a CFO is one where particular facts are applied to the legislative scheme to determine the outcome. This may, as it did in the present instance call upon a CFO to interpret the statutory provisions in which the decision is to be made. I have noted the comments of Rothstein, J. in *Alberta (Information and Privacy Commissioner) v. Alberta Teacher's Association* 2011 SCC 61 as follows:

[34] . . . However, in the absence of argument on the point in this case, it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of “its own statute or statutes 2013 NSSC 148 (CanLII)Page 7 closely connected to its function, with which it will have particularly familiarity” should be presumed to be a question of statutory interpretation subject to deference on judicial review.

[23] Based upon the above analysis, the Court views the appropriate SOR as being reasonableness, not correctness.²

[12] Clearly, the CFO was required to interpret the order that was made by this Court, interpret his own legislation and apply principles that are transparent, objectively reasonable and inherently rational.

[13] In exhibit #2 at paragraph 7 of the affidavit of John W. Parkin, the affiant states:

²*Ibid.*, at paras. 22-23.

The Canadian Firearms Centre has provided guidelines to Chief Firearms Officers to aid in decision making regarding applications for sustenance hunters. Factors to be weighed include the person demonstrates that he or she requires a firearm

(a) to hunt or trap;

(b) to provide food or gain a livelihood;

(c) for oneself or one's family; and

(d) the degree of dependence is not casual reliance on the use of the firearm;

(e) hunting or trapping is required to obtain the necessities of life; and

(f) there are no alternate sources for obtaining the necessities of life or the alternate sources are not without hunting or trapping sufficient to provide the necessities of life for oneself and/or one's family.

[14] The fact that each separate lettered paragraph of this list of criteria does not end in a conjunctive "and" does not alter my view—notwithstanding the very capable argument of counsel for the applicant—that these factors are to be read as an integrated whole—essentially as one, all encompassing criterion. It is a rational policy; it is comprehensible; it is transparent in the sense that I doubt that there

could be any better description of what constitutes sustenance hunting, so that there are no hidden or obtuse requirements a sustenance-licence applicant must fulfil.

[15] It is clear to me that a sustenance licence is not to be issued by a CFO simply to provide a venison course for the supper table. Nor is it to provide a recreation or hobby for the applicant. A sustenance-licence application must be sought for one purpose: sustenance, as outlined in the policy followed by the CFO.

[16] The CFO would undoubtedly have applied that policy in reaching the decision that he did as set out in the notice of refusal that was sent to Mr. Norris on 16 April 2013: “Client does not meet the requirements for a sustenance license under section 113.”

[17] I am satisfied, having reviewed the notice– amplified by the *viva voce* evidence given by Officer Plomp here today and amplified by the exhibits that are appended to Mr. Parkins’ Affidavit, all of which I consider to be relevant evidence presented on behalf of the CFO, within the context of sub-s.75(2) of the *Firearms*

Act—that it was reasonable, based on the information that the CFO had from Officer Plomp concerning the household income of Mr. and Mrs. Norris, for the CFO to have concluded that the sustenance criteria were not fulfilled.

[18] With respect to Ms. Norris' evidence regarding her income, it is clear that Mr. Plomp had a telephone conversation with Ms. Norris about her income; he made a written record of that telephone conversation; it would have been evident to the applicant that household income was a live and germane issue in this hearing; yet, other than Ms. Norris' testimony, there is no hard evidence before the court regarding her income. The burden of proof at a reference hearing is upon the applicant, given sub-s. 75(3) of the *Act*; however, no financial documentation has been presented to the Court in the form of a notice of assessment from Revenue Canada, pay stubs, T4 slips or the like, to substantiate the position that the applicant takes now with regard to household income. Based on the absence of that evidence, I find that the burden of proof has not been discharged by the applicant.

[19] I am satisfied that, in acting on the information that he did, the CFO made a

reasonable decision to not issue a sustenance license to Mr. Norris. I am satisfied, based on the thorough and comprehensive decision of Bourgeois J. in *Waye*, that “reasonableness” is the test that I must apply. It is not whether I would have made a different decision, or whether I agree necessarily with the decision made by the CFO. The issue today is whether the CFO’s decision was reasonable: it was based on objectively reasonable criteria; it was based on evidence that was trustworthy and reliable; finally, it conformed to the criteria that the Chief Firearms Officer was required to consider under the *Firearms Act*.

[20] Accordingly, the Court by order directs that the decision of the Chief Firearms Officer be confirmed in accordance with the provisions of para. 76(a) of the *Firearms Act*.

[21] Mr. Eddy, if you require a written order to that effect, I would invite you to draft it and I will sign it at the earliest opportunity.

J.P.C.