SUPREME COURT OF NOVA SCOTIA
Citation: *Weddleton v. R.*, 2023 NSSC 121

Date: 20230414
Docket: Hfx. No. 515115
Registry: Halifax

Between:

Gordon Weddleton

v.

His Majesty the King and Registry of Firearms

CERTIORARI DECISION

Judge:	The Honourable Justice Joshua Arnold
Heard:	October 26, 2022, in Halifax, Nova Scotia
Final Written Submissions:	November 4, 2022
Counsel:	Gordon Weddleton, Self-Represented Applicant Patricia MacPhee, for the Respondents

Overview

[1] Gordon Weddleton held Registration Certificates for a number of restricted firearms. On July 20, 2020, he received a letter from the Registrar of Firearms notifying him that on May 1, 2020, Parliament instituted regulatory amendments such that five previously restricted firearms that Mr. Weddleton had lawfully been in possession of were now prohibited. The letter advised that as a result, his Registration Certificates were now automatically nullified and an amnesty was in place until April 30, 2022.

[2] Mr. Weddleton applied to the Nova Scotia Provincial Court for a revocation reference in accordance with s. 74(2) of the *Firearms Act*, S.C. 1995, c. 39, on August 19, 2020. The Attorney General brought a motion in Provincial Court to dismiss Mr. Weddleton's reference for want of jurisdiction.

[3] The Honourable Judge William Digby received written submissions from both parties, Mr. Weddleton made a disclosure request of the A.G. in the interim which counsel refused to entertain, and although oral argument was scheduled, Digby J. later determined that the Provincial Court had no jurisdiction to hear the reference and dismissed Mr. Weddleton's application.

[4] Mr. Weddleton has now brought an application for *certiorari*.

Facts

[5] As noted in the Crown's brief:

> 5. On May 1, 2020, the Governor in Council (GIC) issued an Order in Council (OIC) amending certain firearms regulations (*Regulations*). The effect of the amended *Regulations* was that some firearms previously classified as restricted, are now classified as prohibited.
>
> 6. That same day, an *Order Declaring an Amnesty Period*, ("Amnesty"), made under subsection 117.14 of the *Criminal Code*, came into force. The Amnesty protects persons from criminal liability, who on May 1, 2020 owned or possessed one or more of these newly prohibited firearms. The Amnesty is in effect until October 30, 2023.
>
> 7. The amended *Regulations* had the effect of reclassifying the Applicant's firearm from restricted to prohibited. The Registrar sent a letter titled "Firearm Registration Certification Impacted by the Amended Classification Regulations" (the "Registrar's letter) to the Applicant,

which was filed in the Provincial Court as part of the Applicant's application.

8. The Registrar's letter advised the Applicant of the regulatory change, the Amnesty, and listed the Applicant's affected firearm that is newly-prohibited. The Registrar's letter noted that the Applicant's previously-held registration certificate for a restricted firearm was automatically nullified and no longer valid. The Registrar's Letter also referenced the government's intention to implement a buy-back program to compensate for the affected firearm.

[6] On May, 1, 2020, the Governor in Counsel issued Order in Council SOR/2020-96, which reclassified certain specified firearms from restricted to prohibited. An amnesty period was provided through Order in Council SOR/2020-97.

[7] On July 20, 2020, Mr. Weddleton received the following correspondence:

Firearm Registration Certificate Impacted by the Amended Classification Regulations

On May 1, 2020, the Government of Canada amended the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted* (commonly referred to as the *Classification Regulations).*

An Amnesty Order, expiring April 30, 2022, was also issued by the Government of Canada. This Order protects owners from criminal liability for unlawful possession of a newly prohibited firearm if those owners were in lawful possession of one or more of the newly prohibited firearms or prohibited devices on the day the amendments to the *Classification Regulations* came into force. With respect to the newly prohibited firearms which were previously restricted, the Amnesty Order protects owners who held a valid registration certificate for that restricted firearm on April 30, 2020.

Certain restricted firearms which were registered to you have been affected by the recent regulatory amendments. These firearms, listed below, are now classified as prohibited and the previous registration certificates are automatically nullified and are therefore no longer valid but should be retained as a historical registration record.

Registration Certificate Number (no longer valid)	**Make**	**Type**	**Serial Number**	**Firearms Identification Number**

18451150.0001	Smith & Wesson	Rifle	DUR6002	10910447
18288722.0001	Smith & Wesson	Rifle	SU47056	12516445
18894837.0001	Smith & Wesson	Rifle	TF80372	12774857
18876060.0001	Smith & Wesson	Rifle	TF97094	12774913
19081444.0001	Smith & Wesson	Rifle	TF77760	12774931

The Government has publicly announced that it intends to implement a buy-back program for the newly prohibited firearms. More information on the buy-back program will be available at a later date.

Owners of the newly prohibited firearms are:

- To keep them securely stored in accordance with their previous classification.
- They cannot be sold or imported.
- They may only be transported under limited circumstances.
- They cannot be legally used for hunting unless allowed through the Amnesty Order.
- They cannot be used for sport shooting, either at a range or elsewhere.

What are your options now?

- Wait for further instructions to participate in the buy-back program.
- Have your firearm deactivated by an approved firearms business and advise the Registrar of Firearms once completed.
- Legally export your firearm in which case you can engage businesses with the proper firearms licence privilege. Once exported you are requested to advise the Registrar of Firearms.

Registrar of Firearms

[8] On August 19, 2020, Mr. Weddleton filed a Notice of Application for a revocation reference pursuant to s. 74(2) of the *Firearms Act*. Section 74 states:

References to Provincial Court Judge

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.
>
> **(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.

[9] Mr. Weddleton's August 19, 2020, application states, in part:

> **1. APPLICATION HEARING, REFERENCE TO A PROVINCIAL COURT JUDGE**
>
> **Pursuant to Section 74(2) of the Firearms Act**

Application Hearing Date:	September 30, 2020	**Time:**	9:30 a.m.
Court Address:	Dartmouth Provincial Court 277 Pleasant Street, Dartmouth, NS		
Courtroom Number:	#4		

> **2. LIST CHARGES**

#	Case #	Crown File #	Brief Description	Section	Date
1.			Revocation of a Registration Certificate	FA 71	July 20, 2020
2.			Revocation of an Authorization to Transport	FA 70	July 20, 2020

> …
>
> **6. STATEMENT OF WHAT IS BEING REQUESTED**
>
> Reinstatement of Certificate of Registration and Authorization to Transport

Registration Certificate Number:	18288722.0001
Make:	Smith & Wesson
Type:	Rifle
Serial Number:	SU47056
Firearms Identification Number:	12516445

[10] In addition to the application Notice, Mr. Weddleton also filed:

- A copy of Sections 72-81 of the *Firearms Act*;
- A copy of the Firearm Registration Certificate of the above noted Firearm;
- A Notice from the Royal Canadian Mounted Police (RCMP) & Registrar of Firearms;
- Legal Opinion by Mr. Michael Loberg;
- Applicant's Submissions.

[11] The Attorney General of Canada and the Registrar of Firearms brought a motion to dismiss the application for want of jurisdiction on December 17, 2020. Included with that motion to dismiss, the Crown filed a list of authorities.

[12] On March 17, 2022, Mr. Weddleton appeared in Provincial Court. At that time there was a discussion about updating the evolving case law regarding the relevant issues. Mr. Weddleton outlined his position on jurisdiction and requested disclosure from the Crown regarding the government decision making process. The following exchange occurred:

> **THE COURT:** With respect to jurisdiction of the Court, you're talking about evidence; I'm not quite sure I understand your point. Would you like to elaborate on that, sir?
>
> **MR. WEDDLETON:** Certainly, Your Honour. When it comes to the whole mechanism, the way that we were notified about the term that the government is using, the "nullification" of our registration certificates, we'd like the Crown to present evidence explaining how they came to that – the government came to that decision; the mechanics of it, not so much the – the Order itself, but how it managed to come from the Registrar of Firearms without the Registrar of Firearms being involved with it; being sent to us, just to paraphrase.
>
> **THE COURT:** Yeah, I heard you, but I'm still not sure I understand you. Do you want to reply?

MS. MacPHEE: Sure. And Mr. Weddleton and I have had several discussions about this, and I believe when he filed originally, his Notice of Application here, he had appended the copy of the correspondence he received with respect to the change in the classification of the firearms. I don't believe that we require evidence on that point. Again, it's a jurisdictional argument, it's a legal argument, simply made on, you know, the basis that the Court doesn't have jurisdiction on this matter, so I don't see a place for evidence at this particular juncture.

THE COURT: Would you like to respond to that?

MR. WEDDLETON: Yes, Your Honour. From the perspective -- from my perspective, we received a -- I received a notification in regard to my firearms. We understand that it's related to the Order in Council, and we're not -- I'm not disputing that in any way; it all falls back to the **Firearms Act**, and the way that we were notified was not in a manner that's outlined in the **Firearms Act**, it wasn't -- I wasn't properly notified. It wasn't -- there wasn't terminology used that's contained in the **Firearms Act**, so it questions, from my perspective, the legality of the process. And so it's my understanding that under the **Firearms Act**, if I do receive a revocation, and that's what I'm characterizing this as, in my opinion, it's a revocation. If, in fact, it was a revocation, in my opinion, it was, I was supposed to be notified in a certain manner, in a certain form, and so that I could respond and find myself here before Your Honour to get to the bottom of it, so there's a clear understanding of the process, and why the proper procedure wasn't followed because I do have that right as a, you know, a restricted firearms and licensed firearms owner. If I do receive a revocation, then I have the right to apply to a provincial court judge and to come before Your Honour and get to the bottom of it.

THE COURT: Well, isn't that the essence of what this is about, whether it is a revocation that brings into play that section of the **Code** or whether it's a classification issue on which the firearms officer plays no part.

MR. WEDDLETON: Well, Your Honour, in this case, it's – it has the same effect as a revocation, and so that's why I submitted an application to the Provincial Court. The jurisdiction issue was raised by the Crown, Ms. MacPhee. We're prepared if we must have a hearing on jurisdiction, but we would rather understand the formula that the case is going to be presented. If we don't have to have a jurisdictional hearing, we'd rather just go to the merits of my arguments, you know, from the standpoint that I did receive a revocation, the proper procedure and process wasn't followed, and somebody has to be accountable for that, you know, from the Registrar of Firearms office, and I would expect that perhaps the Crown would be – maybe not having witnesses, but maybe have Affidavits from the Registrar of Firearms to what actually happened and how it happened and why the process wasn't followed, because if something is done outside the law, Your Honour, there has to be questions asked why a law wasn't followed. The **Firearms Act** is our, you know, bread and butter, if you will; we

have our training, we have our licensing, we follow **Firearms Act** and the **Criminal Code**. When things happen outside of that, and we don't understand what's going on, we want to get to the bottom of it, for lack of a better term.

THE COURT: Isn't that what some of the Applications in the Federal Court are all about?

MR. WEDDLETON: Well, this is for me, Your Honour; it's me, personally. I'm a licensed firearms owner. In my particular case, the firearms some – one or more of their firearms that I possess were possessed at a time when I was in a position that the provincial police were not able to provide adequate protection if you will; we didn't have a sense of security, so at least one of the firearms were purchased to defend life in our community at the time; so it's a very serious matter for us, taking away if you will, our ability to defend ourselves under the **Criminal Code**.

[13] Judge Digby refused Mr. Weddleton's disclosure request but allowed for updated cases to be filed on the jurisdictional argument:

THE COURT: Thank you. I'm not directing the Crown to provide any further information to you in that regard. How soon can you get your case references in, Crown and Defense, or Crown and Mr. Weddleton, since you're not the Defendant here, you're the Applicant.

…

THE COURT: And if there's anything else that you want to put in to update your briefs, you're welcome to put them in.

MR. WEDDLETON: Okay, thank you. Will we still be proceeding with the jurisdictional hearing, Your Honour?

[14] In organizing the jurisdictional hearing, Digby J. made it clear that the parties could file affidavits but he did not want *viva voce* evidence to be called:

MR. WEDDLETON: ---admissibility of evidence or Affidavits? When we have the jurisdictional hearing, I should just bring information and any information pertaining to jurisdiction, but not the – not the actual case?

THE COURT: Yes. If you want to put in an Affidavit or – you're welcome to do so.

MR. WEDDLETON: So, it's safe to say I could bring evidence or Affidavits to the jurisdictional hearing?

THE COURT: You can submit Affidavits – I'm really not keen on hearing a parade of witnesses.

MR. WEDDLETON: Okay. So, we'll just say, no witnesses.

THE COURT: Prefer no witnesses, yes.

MR. WEDDLETON: Okay, prefer; I'll put "Prefer no witnesses." Excuse me, Your Honour?

THE COURT: Sure.

MR. WEDDLETON: I think we've just about covered everything on the list that I had today.

[15] April 27, 2022, was scheduled by Digby J. as a "status check":

THE COURT: What I'd like to do is to set it for a date the end of April for a status check.

MR. WEDDLETON: Okay.

THE COURT: Part of the issue that I have with scheduling is that I'm not a full-time judge; I'm only sitting part-time as directed, and I don't know when there's court days available, so I'm saying April 27th for a status check. And that can be handled by phone because it'll be a matter of trying to work out a day to complete the jurisdictional hearing.

MR. WEDDLETON: Okay.

[16] Virtual court was held before Digby J. on April 27, 2022, and although scheduled as a status check, Mr. Weddleton advised the court that the Crown had refused his disclosure request. He reiterated his request for disclosure and orally summarized some of his written submissions. Judge Digby referred Mr. Weddleton to the recent decision of Sakalauskas J. in *Moulaison v. Canada (Attorney General)*, 2021 NSPC 7, and said:

THE COURT: In Nova Scotia, one of my colleagues, Judge Sakalauskas, has dealt with a similar factual situation, and her conclusion, which I'm reading from Paragraph 25 of her decision which is **Moulaison v. Canada (AG)**, 2021 NSPC 7, and it was a decision made or rendered on February 2nd, 2021. Judge Sakalauskas concluded that the Provincial Court did not have jurisdiction to hear an application.

Her decision reads as follows:

> "[25] I am sympathetic to Mr. Moulaison's desire to have these decisions reviewed and note that the Federal Court hearings in that respect are the way to do so. I am not persuaded by the reasoning in **Stark** and related cases. I agree with the distinction made in decisions declining jurisdiction that the actions of the Registrar were informational in nature and not based on separate decision making. The Registrar had no discretion here, made no

> independent decision, but advised Mr. Moulaison of the impact of the decisions made by the government. This Court does not have jurisdiction to hold the reference hearing requested. The AG's preliminary motion is granted."

[17] Judge Digby also referred to *Hulit v. Canada (AG)*, 2021 ABPC 81, and said:

> I'd also reference a decision of Judge LeGrandeur, a judge or sorry, where he says in the decision of Thomas David Hulit, H-u-l-i-t. The citation is **Hulit v. Canada (AG)**, 2021, ABPC 81,
>
> > "[35] The decision **Kurina** provides a detailed analysis of how this court reached the aforementioned conclusion for these expressed in **Kurina**, the application of Mr. Hulit and Mr. McShane for a Section 74 reference are struck. The Provincial Court of Alberta does not have jurisdiction to hear a 74 reference in the circumstances presented by either of the firearm owners, Hulit or Mr. McShane."
>
> And then, there is a further decision, it's contained in Ms. MacPhee's brief which I had marked and the marker has disappeared on me. Another – it's the decision of **Kurina v. Canada (AG)**, 2021 ABPC 74, and reference Paragraph 59 and the following paragraphs.

[18] Judge Digby then went on to refuse jurisdiction in accordance with the Crown's application. He explained:

> I'm persuaded, Mr. Weddleton, that the Provincial Court does not have jurisdiction in these circumstances; our jurisdiction is restricted to a narrow ground. I take the view that the Registrar's decision was informational and was not a revocation in the usual sense; simply, Parliament decided to change the ground rules. That's not something that the Registrar has control over. You may have a remedy in another court, but Section 74 doesn't apply.
>
> Having said all that, I acknowledge that the Federal government might have handled this differently, in a way that didn't cause as much angst and confusion and disappointment to responsible firearms owners such as yourself, and there are many of them across the country, and I know that you feel disadvantaged and aggrieved by the actions of the Federal government; however, that doesn't change the fact that I don't think the Provincial Court has jurisdiction to hear the matter that Federal Government of Canada's application to dismiss the…your application is granted.

[19] Mr. Weddleton filed an appeal of Digby J.'s decision on May 27, 2022, in accordance with s. 77 of the *Criminal Code*. His Notice of Appeal reads:

1) The Honourable Justice Digby's decision to dismiss for want of jurisdiction is unreasonable.

2) The Learned Judge's oral ruling lacks justification, transparency, and intelligibility, and fails to address the submissions of the applicant.

3) The Learned Judge erred in dismissing the application summarily at a 'status' check, without conducting a full and fair hearing of the AGC (Registrar's) motion to dismiss.

4) The Learned Judge erred in granting the motion without first ruling the Applicant's disclosure request for evidence applicable to the jurisdiction motion.

5) The Learned Judge erred in granting the motion without first receiving the evidence of the Applicant which would have been relevant to the motion.

6) The Learned Judge erred in failing to identify the correct legal test for determining the jurisdiction of the Provincial Court on a S74 reference. Subsequently, the learned Judge failed to properly apply the correct test to the facts and law at issue in this application.

7) The Learned Judge erred in making the factual finding that this application was similar to Moulaison v. Canada (AG), 2021 NSPC 7, when no facts were admitted to establish that the cases were similar, nor did the judge provide an opportunity to the applicant to specifically address the applicability of this non-binding ruling.

8) The Learned Judge erred in making the finding that the Registrar's letter was informational without receiving any evidence from the Registrar, or allowing the applicant to cross examine the author of the letter.

9) The Learned Judge erred in not considering the ruling of the Alberta Court of Queen's Bench in Canada (Attorney General) v. Smykot, 2022 ABQB 61, a case that the judge had specifically indicated would be considered and applicable. Canada v Smykot is the only Superior Court decision directly related to this application.

[20] I note that this matter comes before the court in the form of an application for *certiorari*, not as an appeal.

Issues

[21] The issues have been restated by me:

1. Did Judge Digby breach Mr. Weddleton’s right to procedural fairness by granting the Respondent’s motion to dismiss on a jurisdictional basis without a full oral hearing?;

2. Did Judge Digby err in dismissing Mr. Weddleton's application for a reference hearing under the *Firearms Act* for lack of jurisdiction?

Standard of Review

[22] This is an application for *certiorari.* Strictly speaking, there is no standard of review for procedural fairness (see *CanMar Contracting Ltd. v. Labourers International Union of North America, Local 615*, 2016 NSCA 40, at paras. 45-51). The issue is the tribunal's process, not the decision. The standard of review regarding Judge Digby's decision on jurisdiction is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 65-68.).

Analysis

Issue One: Did Judge Digby breach Mr. Weddleton's right to procedural fairness by granting the Respondent's motion to dismiss on a jurisdictional basis without a full oral hearing?

[23] As noted by the Crown, firearms are governed in the following fashion:

> **Legislative Framework Governing Firearms**
>
> 17. The *Act* and *Criminal Code*, R.S.C, 1985, c. C-46 ("*Criminal Code*"), operate in conjunction to provide a legal framework governing firearms. The *Act* regulates the possession, acquisition, transportation and storage of firearms by individuals and businesses. The *Criminal Code* sets out the offences relating to the criminal use and unlawful possession of firearms.
>
> 18. Firearms in Canada are prescribed to fall into 3 different classes: non-restricted, restricted and prohibited. Pursuant to subsection 117.15(1) of the *Criminal Code*, the Governor in Council (GIC) has authority to make prescribing regulations.
>
> **Jurisdiction of the Provincial Court**
>
> 19. The jurisdiction of the Provincial Court is set out within provincial legislation. The *Provincial Court Act* gives judges of the Provincial Court the jurisdiction to exercise all the powers and all the duties conferred upon it by any Act of the Legislature or of the Parliament of Canada.

> 20. In *Mills v. The Queen*, the Supreme Court acknowledged that the jurisdictional boundaries created by Parliament and the legislatures restrain the courts to their allotted spheres:
>
> > To begin with, it must be recognized that the jurisdiction of the various courts is fixed by the legislatures of the various provinces and by the Parliament of Canada. It is not for the judges to assign jurisdiction in respect to any matters to one court or another. This is going beyond judicial reach. In fact, the jurisdictional boundaries created by Parliament and the legislatures are for the very purpose of restraining the courts by confining their actions to their allotted spheres.
>
> 21. It is well established law that nothing is within the jurisdiction of an inferior court except that which is expressly directed to be so; and that jurisdiction should not be inferred. The jurisdiction of the Provincial Court in this case depends on the *Act* for the source of its authority.

Procedural Fairness

[24] Mr. Weddleton, who is self-represented, at the *certiorari* application relied on the principles for judicial review set out in various cases, including *Canada v. Vavilov*, [2019] 4 SCR 653. The Crown addressed those issues but also referred to the principles set out in *R. v. Cody*, [2017] 1 S.C.R. 659. While the guidelines for procedural fairness in *Vavilov* are of course binding and instructive, in my opinion the principles set out in *Cody*, and the related cases, are most relevant to determining whether there was a breach of procedural fairness when the judge dismissed the matter on the basis of jurisdiction without a full hearing.

[25] Court resources must be managed properly. In *R. v. Jordan*, [2016] 1 S.C.R. 631, the court reset the approach to be taken to the right to be tried within a reasonable time and stated:

> [19] As we have said, the right to be tried within a reasonable time is central to the administration of Canada's system of criminal justice. It finds expression in the familiar maxim: "Justice delayed is justice denied." An unreasonable delay denies justice to the accused, victims and their families, and the public as a whole.
>
> [20] Trials within a reasonable time are an essential part of our criminal justice system's commitment to treating presumptively innocent accused persons in a manner that protects their interests in liberty, security of the person, and a fair trial. Liberty is engaged because a timely trial means an accused person will spend as little time as possible held in pre-trial custody or living in the

> community under release conditions. Security of the person is impacted because a long-delayed trial means prolonging the stress, anxiety, and stigma an accused may suffer. Fair trial interests are affected because the longer a trial is delayed, the more likely it is that some accused will be prejudiced in mounting a defence, owing to faded memories, unavailability of witnesses, or lost or degraded evidence.
>
> …
>
> [25] Last but certainly not least, timely trials are important to maintaining overall public confidence in the administration of justice. As McLachlin J. (as she then was) put it in *Morin*, "delays are of consequence not only to the accused, but may affect the public interest in the prompt and fair administration of justice" (p. 810). Crime is of serious concern to all members of the community. Unreasonable delay leaves the innocent in limbo and the guilty unpunished, thereby offending the community's sense of justice (see *Askov*, at p. 1220). Failure "to deal fairly, quickly and efficiently with criminal trials inevitably leads to the community's frustration with the judicial system and eventually to a feeling of contempt for court procedures" (p. 1221).
>
> [26] Extended delays undermine public confidence in the system. And public confidence is essential to the survival of the system itself, as "a fair and balanced criminal justice system simply cannot exist without the support of the community" (*Askov*, at p. 1221).
>
> …
>
> [29] While this Court has always recognized the importance of the right to a trial within a reasonable time, in our view, developments since *Morin* demonstrate that the system has lost its way. The framework set out in *Morin* has given rise to both doctrinal and practical problems, contributing to a culture of delay and complacency towards it.

[26] Following *Jordan*, the Supreme Court of Canada provided further guidance regarding trial management in *Cody.* In *Cody* the court stated:

> [38] In addition, trial judges should use their case management powers to minimize delay. For example, before permitting an application to proceed, a trial judge should consider whether it has a reasonable prospect of success. This may entail asking defence counsel to summarize the evidence it anticipates eliciting in the *voir dire* and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily (*R. v. Kutynec* (1992), 7 O.R. (3d) 277 (C.A.), at pp. 287-89; *R. v. Vukelich* (1996), 108 C.C.C. (3d) 193 (B.C.C.A.)). And, even where an application is permitted to proceed, a trial judge's screening function subsists: trial judges should not hesitate to summarily dismiss "applications and requests the moment it becomes apparent they are frivolous" (*Jordan*, at para. 63). This screening function applies equally to Crown applications and requests. As a best practice, all counsel — Crown and defence —

> should take appropriate opportunities to ask trial judges to exercise such discretion.
>
> [39] Trial judges should also be active in suggesting ways to improve efficiency in the conduct of legitimate applications and motions, such as proceeding on a documentary record alone. This responsibility is shared with counsel. [Emphasis added]

[27] As noted above, the unanimous court in *Cody* referred with approval to two cases that encourage trial judges to exercise their screening function and consider whether a defence application has a reasonable prospect of success before permitting an application to proceed: *R. v. Kutynec* (1992), 7 O.R. (3d) 277 (C.A.), 1992 CarswellOnt 79, at paras. 35-37, and *R. v. Vukelich* (1996), 108 C.C.C. (3d) 193 (B.C.C.A.). In *Kutynec*, Finlayson J.A. spoke for the court and stated:

> 35 In some cases, when the defence indicates, prior to the calling of evidence, that it intends to advance a *Charter* application to exclude evidence, the trial judge may call upon the defence to summarize the evidence that it anticipates it would elicit on the application. This kind of procedure is well known to the criminal process: see *R. v. Sproule* (1975), 30 C.R.N.S. 56, 26 C.C.C. (2d) 92 (Ont. C.A.) , at pp. 97-98 [C.C.C.], pp. 62-64 [C.R.N.S.], *R. v. Dietrich*, 11 C.R.N.S. 22, [1970] 2 O.R. 725, 1 C.C.C. (2d) 49 (C.A.) [leave to appeal to S.C.C. refused [1970] 3 O.R. 744n, 1 C.C.C. (2d) 68n (S.C.C.)], at p. 62 [C.C.C.], pp. 738-739 [O.R.], [pp. 36-37 C.R.N.S.]. If the defence is able to summarize the anticipated evidentiary basis for its claim, and if that evidence reveals no basis upon which the evidence could be excluded, then the trial judge need not enter into an evidentiary inquiry. In other words, if the facts as alleged by the defence in its summary provide no basis for a finding of a *Charter* infringement, or a finding that the evidence in question was obtained in a manner which infringed the *Charter*, or a finding that the test for exclusion set out in s. 24(2) was met, then the trial judge should dismiss the motion without hearing evidence.
>
> 36 There is nothing unique in this position. Where an accused bears the burden of proving the admissibility of evidence, it is incumbent on counsel to put forward a factual and legal basis on which the evidence could be admitted. Counsel is not entitled to proceed immediately to a *voir dire* on the issue. The same principle should be applied where the onus is on an accused to establish that certain evidence is inadmissible.
>
> 37 In many cases, the accused's entitlement to an evidentiary hearing with respect to an alleged *Charter* violation will be readily established on the basis of information provided through disclosure, cross examination at prior proceedings, or by an indication by counsel for the accused that he or she intends to call evidence which will substantiate the *Charter* violation. I see no difficulty in a trial judge asking counsel what evidence will be called on the application to exclude evidence and what witnesses will be called. Direct answers to these simple questions will

> often quickly determine the need for an evidentiary inquiry and will assist in deciding the format and timing of that inquiry.

[28] In *Vukelich*, McEachern C.J., speaking for the court, discussed the need for trial judges to consider the proper threshold for holding a *voir dire* and emphasized the need for proper judicial screening in this regard:

> 15 This appeal, therefore, raises the question of the proper threshold for a *voir dire* in such circumstances.
>
> 16 I digress to mention the question of the proper procedure for seeking a *voir dire* to determine the admissibility of evidence either for *Charter* or other purposes. All of the authorities assume full Crown disclosure as required by *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.
>
> 17 Generally speaking, I believe that both the reason for having, or not having, a *voir dire*, and the conduct of such proceedings, should, if possible, be based and determined upon the statements of counsel. This is the most expeditious way to resolve these problems: see *R. v. Dietrich* (1970), 1 C.C.C. (2d) 49 at 62 (Ont. C.A.); *R. v. Hamill* (1984), 14 C.C.C. (3d) 338 (B.C.C.A.); and *R. v. Kutynec* (1991), 70 C.C.C. (3d) 289 at 301 (Ont. C.A.). I suggest that judges must be more decisive in this connection than they have been in the past because far too much judicial time is consumed by the conduct of these kinds of enquiries.

[29] Chief Justice McEachern explained the process to be implemented if a trial judge is to undertake such a screening exercise:

> 20 *Kutynec* was followed by a majority of this court in *R. v. Feldman* (1994), 91 C.C.C. (3d) 256 (B.C.C.A.), affirmed (1994), 93 C.C.C. (3d) 575 (S.C.C.). The principal issue in that case related to who bore the onus of establishing a *Charter* breach. Hinkson J.A., speaking for the majority, essentially adopted what was said in *Kutynec*, but also discussed the procedure to be followed in establishing the necessity for a *voir dire*. Specifically, relying in part upon what was said by Esson J.A. (as he then was) in *Hamill*, Hinkson J.A. said that defence counsel should, in the first instance, summarize the facts upon which it relies in support of its submission that there has been a *Charter* breach. If that does not persuade the trial judge to embark upon a *voir dire*, as occurred in this case, then the defence must go further or fail on this issue, subject to its eventual right of appeal.
>
> 21 In both *Kutynec* and *Feldman*, there are discussions about what the next stage might be, although there would be nothing to prevent the defence from advancing its full position in the first instance. Both of these cases suggest that an affidavit verifying the defence position with particulars might be necessary. In this respect, while there is nothing to suggest that the accused cannot file his or her own affidavit, it is recognized that such a practice may be prejudicial, as it could expose

> the accused to cross-examination. In such circumstances, it may be acceptable to submit an affidavit sworn on information and belief, and to call the informant. Some leeway in cross-examination of the informant may be appropriate even if he or she is not established to be an adverse witness.
>
> 22 In this case, after the trial judge refused to order a *voir dire* on the basis of counsel's statements, the defence furnished an affidavit sworn by associate counsel. In my view, it is preferable for counsel not to swear affidavits in their own cases, but the nature of this affidavit, containing averments about the difference between disclosure evidence and the contents of the Information, constitutes an understandable exception to that useful rule, and may well be preferable to an affidavit sworn by a paralegal or secretary. I shall, however, return to the form of counsel's affidavit in a moment.
>
> 23 My conclusions on the foregoing, briefly stated, are that counsel's statements, possibly supported by an affidavit, are a useful first step in persuading the judge to order a *voir dire*. If these are found to be insufficient, a more formal approach, involving affidavits and possibly an undertaking to adduce evidence (including calling the deponent as a witness), may be required. In other words, I would opt for the flexible approach recommended by the Ontario Court of Appeal in *Kutynec*, rather than the formal procedure described on the earlier appeal in that case. In doing so, I do not purport to have exhaustively mentioned all the possible steps that should, or may, be taken in this flexible approach.

[30] While the aforementioned cases refer to *Charter voir dires,* there is no question that it is incumbent on a trial judge, in an effort to use court time efficiently, to screen hearings that are doomed to failure. The screening process is meant to be expeditious and the burden on an accused wishing to embark on a hearing, including a *Charter voir dire* (which is not the type of application here), is low. The ability of a trial judge to screen defence applications doomed for failure is not limited exclusively to those applications brought as a deliberate and calculated tactic employed to delay a trial or *Charter voir dires*. In *R. v. Chapman and Honeyman*, 2016 BCPC 275, (another decision referencing *Charter voir dires*) Hewson J. described the various considerations for the trial judge and the burdens on the parties when screening is contemplated:

> [7] The law is clear that trial judges have the authority to declare a *voir dire* in which the accused can challenge the admissibility of evidence to be used against him or her, or to decline to embark upon an evidentiary enquiry when the accused is unable to show a reasonable likelihood that the hearing can assist in determining the issues before the court. The decision is made following what in British Columbia is known as a "Vukelich Hearing". The hearing is so named for the leading case in the area, *R. v. Vukelich* (1998) C.C.C. (3d) 383 (B.C.C.A.).

[8] The rigour with which the law in *R. v. Vukelich* is applied and the way in which a trial judge exercises his or her discretion in relation to an application for a *voir dire* is case-specific and highly contextual. At least three factors will shape the exercise of the trial judge's discretion:

1. the extent to which the anticipated evidence underlying the alleged *Charter* breach is legitimately in dispute;

2. the state and clarity of the law on the issue sought to be litigated, and

3. the infinite number of practical considerations that will arise in any particular case.

[9] An accused person is not entitled as of right to a *voir dire* to challenge the admissibility of evidence on constitutional grounds. However, the threshold for embarking on a *voir dire* is low. The Vukelich hearing itself was never intended as a mechanism to prevent investigation of alleged *Charter* breaches where a sufficient foundation for the alleged breach could be demonstrated, nor was the Vukelich hearing itself intended to be a protracted examination of the precise details of the accused's proposed Charter application.

[10] What underlies the Vukelich enquiry is the need to balance the accused's fair trial interests against the public interest in the efficient management of criminal trials by avoiding lengthy and unnecessary pretrial applications in circumstances where the remedy sought could not reasonably be granted.

[11] A review of rulings following Vukelich hearings suggests that the following procedural steps should be observed:

1. The Vukelich application must be made before or at the time when the evidence is tendered. Counsel may provide a copy of the Information to Obtain in question to the trial judge, in advance of the application.

2. The procedure should be flexible and should be adapted to the circumstances of the case.

3. The onus is on the accused applying to have a *voir dire* declared.

4. The application should be determined upon the statements of counsel, if possible.

5. Counsel for the accused should summarize the facts that the accused is relying on in support of his or her submission that there has been a *Charter* breach.

6. The Court should assume for the purposes of the Vukelich application that the facts as alleged by counsel are true.

7. If the trial judge declines to declare a *voir dire* on the basis of the statements of counsel, counsel for the accused must either choose to go further, or to accept the Court's ruling, subject to his or her eventual right of appeal.

> 8. When counsel for the accused chooses to go further, a more formal approach will be required. That may include the filing of affidavits or an undertaking to adduce evidence. In essence, there must be some factual basis supporting the application before the trial judge can declare a *voir dire*.
>
> 9. The accused is not required to file an affidavit, as it may expose him or her to cross-examination.
>
> 10. Ultimately, if the statement of counsel or the evidence adduced on the Vukelich application do not disclose a basis on which the court could reasonably make the order sought, the application to declare a *voir dire* should be dismissed.
>
> [Emphasis added]

[31] Here, Mr. Weddleton had the opportunity to file foundational materials, including the letter from the Registrar of Firearms. He filed written submissions and cases, as did the Crown. Judge Digby assessed the factual information, the parties' submissions, and the relevant case law and found Mr. Weddleton's application was doomed to failure. Judge Digby did precisely what *Cody*, *Vukelich, Kutynec* and *Chapman* all say he should do. While those cases dealt with different forms of proceeding, I am satisfied that the broad principles they stand for are applicable in the circumstances here.

[32] There was no breach of procedural fairness. Judge Digby was correct in following the process recently endorsed by the Supreme Court of Canada.

Issue Two: Did Judge Digby err in dismissing Mr. Weddleton's application for a reference hearing under the *Firearms Act* for lack of jurisdiction?

[33] If the letter from the Registrar was merely informational, simply notifying Mr. Weddleton about a change of the law, then Judge Digby's decision was reasonable. If the letter from the Registrar was a true revocation letter, whereby the Registrar exercised discretion and made a decision, then Judge Digby's decision was unreasonable, because he deprived Mr. Weddleton from a hearing in accordance with s. 74 of the *Firearms Act.*

[34] Judge Digby had each party's written submissions, along with the *Classification Regulations*, the Amnesty Order and the Registrar's Letter prior to making his decision. He also had relevant and up-to-date case authorities. Digby J. concluded:

> I'm persuaded, Mr. Weddleton, that the Provincial Court does not have jurisdiction in these circumstances; our jurisdiction is restricted to a narrow ground, I take the view that the Registrar's decision was informational and was not a revocation in the usual sense; simple, Parliament decided to change the ground rules. That's not something that the Registrar has control over.

[35] There are a number of cases from across the country dealing with this issue. There are two distinct lines of authority, one determining in various ways that the letter from each provincial Registrar in these circumstances was merely informational, simply notifying the recipient about a change of the law, and the other determining that the letter from the Registrar was a true revocation letter, whereby the Registrar exercised discretion and made a decision.

[36] Those cases reviewed by me in support of the Crown's position include: *In The Matter of an Application for a Reference Hearing, Made Pursuant to Section 74(1) of the Firearms Act, R.S.C. 1985*, [2020] N.J. No. 218; *R v. Yates*, 2021 BCPC 68; *Filippi v. Canada (Attorney General)*, 2021 ABPC 323; *Canada (Attorney General) v. Tiede*, 2021 ABPC 249; *Moulaison v. Canada (Attorney General)*, 2021 NSPC 7; *Canada (Attorney General) v. Fritz*, 2021 ONCJ 20; *J.C. v. Canada (Attorney General)*, 2021 ONCJ 118*; Ek v. Registrar of Firearms*, 2021 QCCQ 1620; *R. v. Wyville*, 2020 ONCJ 555; *Kurina v. Canada (Attorney General)*, 2021 ABPC 74; *Nagy v. Canada (Attorney General)*, 2021 ONCJ 50; *R v Schafer*, 2021 BCPC 64; and *Hulit v. Canada (Attorney General*), 2021 ABPC 81.

[37] Those cases reviewed by me in support of Mr. Weddleton's position include: *Canada (Attorney General) v. Stark*, 2020 ABPC 230; *Canada (Attorney General) v. Smykot*, 2022 ABQB 61; *Canada (Attorney General) v. Crawford*, 2021 ABPC 106; *Barrett v. Canada (Registrar of Firearms)*, 2010 BCSC 345; and *R. v. MC*, 2022 ONSC 6299.

[38] Courts that have declined jurisdiction have generally found that the Classification Regulations had the effect of revoking the registration certificates by operation of law. In some cases courts have considered the purpose of the Classification Regulations (to remove these firearms from civilian possession) and the effect of the Amnesty Order, and found that the certificates were automatically nullified (see, for instance, *Yates*, *Filippi*, *Tiede,* and *Moulaison*). In other cases, courts have interpreted the legislative provisions in the *Firearms Act* and *Criminal Code* that require a person to possess a licence and registration certificate for prohibited weapons to disqualify firearms owners from validly holding registration

certificates because their certificates were issued for restricted firearms, not prohibited ones. Individuals can only possess registration certificates for prohibited weapons under specific grandfathering provisions under section 12 of the *Firearms Act.* These courts concluded that since the certificates were revoked/nullified by the Classification Regulations they could not have been revoked by the Registrar (see, for instance, *Fritz, J.C.,* and *Ek*).

[39] Some cases, such as *Wyville* and *Fritz,* have interpreted the definition of "decision" to require an element of discretionary decision-making, and determined that the Registrar's Letter did not constitute a decision. The Classification Regulations changed the law to require the Registrar to change the certificate status, providing no discretion to the Registrar. The court in *Tiede* specifically drew a connection between the Registrar's duty to update the certificate database and the letter it sent out. These courts concluded that the Registrar's letter was informational in nature and not subject to review in a revocation reference hearing.

[40] Courts that have affirmed jurisdiction have taken a different analytical approach. The courts in *Stark* and *Crawford* held that registration certificates are valid until they are revoked by the Registrar or explicitly revoked or invalidated by operation of law. These courts noted that the Classification Regulations did not explicitly state they were revoking/nullifying the certificates by operation of law, and determined that it would be inappropriate to read in this effect. *Stark* and *Crawford* suggest that "revoke" and "nullify" have essentially the same meaning, but s. 71(1) is the only statutory provision that provides for revocations apart from automatic revocations by operations of law. Based on the legislative scheme, the courts in *Stark* and *Crawford* concluded that only the Registrar had the power to revoke the certificates, which were valid until the Registrar's letter was sent. *Symkot* and *MC* are to the same effect.

[41] In my view, the legal effect of the legislation is to leave the Registrar with no discretion, and no decision to make.

Analysis

[42] Section 74 of the *Firearms Act* mandates judicial oversight of the Registrar's decisions. The problem for Mr. Weddleton is that when the Governor in Counsel issued Order in Council SOR/2020-96, which reclassified a number identified firearms from restricted to prohibited, this did not leave any sort of discretionary decision-making authority to the Registrar. In light of the Order in Counsel SOR/2020-96, the letter of July 20, 2020, from the Registrar of Firearms, could

have been nothing other than an informational notification. There was no discretion available to the Registrar to exercise regarding the guns that had been reclassified by Parliament from restricted to prohibited. The letter was merely informational.

Conclusion

[43] Judge Digby did exactly what he was supposed to do when faced with a defence motion that was doomed to failure. He dismissed it. Further, Judge Digby's decision that the July 20, 2020, letter from the Registrar was purely informational was reasonable.

[44] Mr. Weddleton's application for *certiorari* is dismissed.

Arnold, J.