

PROVINCIAL COURT OF NEW BRUNSWICK
JUDICIAL DISTRICT OF SAINT JOHN

Citation: 2008NBPC24

Date: 2008.05.16

Docket: 05783902

BETWEEN:

JON PHILLIP GOULD

Applicant

-and -

NEW BRUNSWICK (Chief Firearms Officer)

Respondent

BEFORE: Judge W. Andrew LeMesurier

HEARING HELD: Saint John, N. B.

DATE OF HEARING: January 29th, 2008 and April 1st, 2008

DATE OF DECISION: May 16th, 2008

COUNSEL:

Jon Phillip Gould - Per se

Michael Keating -for the Respondent

DECISION

LEMESURIER, W. A.

[1] The Applicant, Jon Phillip Gould, age 53, is the holder of a Firearms Licence, issued pursuant to the Firearms Act, S.C. 1995, (the "Act").

[2] By letter dated July 13, 2007 the Applicant submitted in prescribed form an Application For Authorization To Transport Restricted Firearms And Prohibited Firearms, Including Prohibited Handguns, (the "ATT") (Exhibit C-2) to the Chief Firearms Officer, (the "CFO"), for the Province of New Brunswick.

[3] The ATT was to enable the Applicant to transport his firearms to attend 83 International Practical Shooting Confederation, ("IPSC") competitions in New Brunswick, Nova Scotia and Ontario, between July 13, 2007 and July 13, 2008. IPSC is a practical shooting organization with members throughout Canada and in over 60 countries worldwide.

[4] The requested ATT listed 21 firearms for which the Applicant held Firearm Registration Certificates under the Act.

[5] The CFO issued a Notice Of Refusal Of An Authorization To Transport, dated September 11, 2007 (the "Refusal") (Exhibit C-1) respecting the ATT.

[6] Pursuant to Section 74 of the Act, the Applicant on October 10, 2007, referred the Refusal by the CFO to this Court.

[7] Pursuant to Section 75(3) of the Act, the **burden of proof is on the Applicant to satisfy this Court** that the CFO's decision to refuse the ATT was not justified.

[8] In the Refusal, the CFO detailed his reasons for not issuing the ATT to the Applicant.

[9] The Refusal states that the CFO determined that the Applicant was not eligible for an ATT, as he had not demonstrated that he was a member of an approved shooting club or that he was a registered participant, or an invited guest of a member or officer of an approved shooting club

regarding the 83 IPSC competitions for which the ATT was sought, a requirement of Section 6 of the Shooting Clubs and Shooting Ranges Regulations, SOR/98-212, (the, "Shooting Clubs Regulation") made pursuant to Sections 117 (d) and (e) of the Act.

[10] Section 6 of the Shooting Clubs Regulation is as follows:

6. No person may use a restricted firearm or prohibited handgun at a shooting range unless the person is:
 - (a) a member or an officer of an approved shooting club;
 - (b) a guest of a person referred to in paragraph (a); or
 - (c) an individual who ordinarily resides outside of Canada who is either a member of a recognized shooting organization ,or a guest described in paragraph (b).

[11] The Applicant testified at the reference hearing and acknowledged he is a resident of Saint John, New Brunswick and that when he applied for the ATT, he was not a member or an officer of an approved shooting club. However, in the ATT application he indicated he was an invited guest of the approved clubs which were hosting the IPSC shooting competitions referenced therein.

[12]. By occupation, the Applicant is a professional police officer who has been involved in the activities of target shooting for many years. He has attended numerous shooting competitions over the years in New Brunswick, throughout Canada and internationally. Additionally the Applicant successfully completed the Canadian Restricted Firearms Instructors Course several years ago.

[13] Mr. Brian Doyle, the CFO for the Province of New Brunswick testified at the reference hearing. He acknowledged that he, has known the Applicant for many years and that the Applicant is a well-respected and safe target shooter and took no issue with the Applicant's trustworthiness or integrity.

[14] The CFO reviewed how his office applies the provision of Section 6 of the Shooting Clubs Regulation. **In 2007 when an applicant who was not a member or officer of an approved shooting club requested an ATT to attend a shooting competition anywhere, an applicant was required to provide verification of invitation or registration confirmation for the shooting competition event.**

[15] The CFO testified at the reference hearing that because the Applicant did not provide the information referred to in paragraph 14 herein, he concluded that he had good and sufficient reason to issue the Refusal.

[16] Section 68 of the Act is as follows:

Licenses and Authorizations - A chief firearm officer shall refuse a license if the applicant is not eligible to hold one and may refuse to issue an authorization to carry or authorization to transport for, any good and sufficient reason.

[17] The Applicant admits that no invitation verification or confirmation of registration information was provided to the CFO at the time when he applied for the ATT or thereafter.

[18] However, the Applicant argues that no such information should be required from him, for the following reasons:

(a) Prior to requesting the ATT, he had received ATT's without providing any invitation verification or confirmation of registration information referred to in paragraph 14 herein. He referred to issued ATTs dated June 18, 1999 and June 27,2006. (Exhibits D4, D-5 and D-6)

(b) The Applicant believes the CFO should examine the individual circumstances of each applicant of an ATT and that if the CFO does not believe that public safety would be jeopardized, he should issue an ATT.

(c) He argues that as the CFO had a long relationship with the Applicant and was aware of the Applicant's good reputation, an ATT should have been issued without requiring the Applicant to file the requested documentation referred to in paragraph 14 herein.

(d) There is no specific requirement in the Shooting Clubs Regulation for an applicant of an ATT to provide any verification to the CFO that an applicant is an invited guest or a registered participant at a shooting competition.

(e) The CFO erred in applying the Shooting Clubs Regulation which related to users of firearms at shooting competitions in determining whether an ATT should be issued. Instead, the CFO should have been

concerned with the provisions of the Act and regulations that were related to the transport of firearms.

[19] The CFO testified and agreed that the Applicant may have received ATTs previously without providing the information referred to in paragraph 14 herein. However, he indicated that in recent years it was his opinion there had been an increased awareness by Canadians respecting the use and misuse of restricted handguns in Canada.

[20] As a result, his office reviewed its practices and responsibilities in issuing ATTs and became more rigorous in issuing same, including requiring the detailed information referred to in paragraph 14 herein.

[21] In 2007 when the Applicant applied for the ATT, the CFO testified these new policies had been implemented and were applied equally to all applicants of an ATT. There was no evidence to indicate that the Applicant was treated any differently in this regard.

[22] Pursuant to Section 75(3) of the Act, the burden of proof is on the Applicant to satisfy this Court that the CFO's decision to require the detailed information referred to in paragraph 14 herein and to issue the Refusal was not justified.

[23] The Act's purpose is public safety and the regulation of firearms. In Reference Re: Firearms Act (Canada), [2000] S.C.R.783, at paragraphs 1 and 4, the Supreme Court of Canada stated:

[1]"In 1995, Parliament amended the Criminal Code, R.S.C.1985, C-46 by enacting the Firearms Act, S.C., C-39, commonly referred to as the gun control law to require the holders of all firearms to obtain licences and register their guns."

[4] "We conclude that the gun control law comes within Parliament's jurisdiction over criminal law. The law in "pith and substance" is directed to enhancing public safety by controlling access to firearms through prohibitions and penalties."

[24] Several sections of the Act and regulations thereunder provide assistance to this Court in deciding whether or not the CFO's decision to require the information referred to in paragraph 14 herein was justified.

[25] Section 19(1)(a) of the Act is as follows:

"19.(1) TRANSPORTING AND USING PROHIBITED FIREARMS OR RESTRICTED FIREARMS - An individual who holds a licence authorizing the individual to possess prohibited firearms or restricted firearms may be authorized to transport a particular prohibited firearm or restricted firearm between two or more specified places for any good and sufficient reason, including, without restricting the generality of the foregoing,

(a) for use in target practice or a target shooting competition under specified conditions or under the auspices of a shooting club or shooting range that is provided under section 29."

[26] Sections 54(1) and (2) of the Act are as follows:

"54.1(1) APPLICATIONS - A licence, registration certificate or authorization may be issued, only on application made in the prescribed form - which form may be in writing or electronic - or in the prescribed manner. The application must set out the prescribed information and be accompanied by payment of the prescribed fees.

(2) TO WHOM MADE - An application for a licence, registration certificate or authorization must be made to

(a) a chief firearms officer, in the case of a licence, an authorization to carry or an authorization to transport;"

[27] Section 55(1) of the Act is as follows:

"55(1) FURTHER INFORMATION - A chief firearms officer or the Registrar, may require an applicant for a licence or authorization to submit such information, in addition to that included in the application, as may reasonably be regarded as relevant for the purpose of determining whether the applicant is eligible to hold the licence or authorization."

[28] Section 58(1) of the Act is as follows:

"58.(1) CONDITIONS - A chief firearms officer who issues a licence, an authorization to carry or an authorization to transport may attach any reasonable condition to it that the chief firearm officer considers desirable in the particular circumstances and in the interest of the safety of the holder or any other person."

[29] Section 106(1) of the Act is as follows:

"106.(1) FALSE STATEMENTS TO PROCURE LICENCES, ETC.- Every person commits an offence who, for the purpose of procuring a licence, registration certificate or authorization for that person or any other person, knowingly makes a statement orally or in writing that is false or misleading or knowingly fails to disclose any information that is relevant to the application for the license, registration certificate or authorization."

[30] Sections 117(d)(e) and (h) of the Act are as follows:

117. REGULATION;-The Governor in Council may make regulations
(d) regulating the use of firearms in target practice or target shooting competitions;
(e) regulating
(i) the establishment and operation of shooting clubs and shooting ranges;
(ii) the activities that may be carried on at shooting clubs and shooting ranges;
(iii) the possession and use of firearms at shooting clubs and shooting ranges, and,
(iv) the keeping and destruction of records in relation to shooting clubs and shooting ranges and members of those clubs and ranges;
(h) regulating the storage, handling, transportation, shipping, display, advertising and mail-order sale of firearms and restricted weapons and defining the expression "mail-order sale" for the purposes of this Act;

[31] Pursuant to Section 117 (h) of the Act, the Authorizations to Transport Restricted Firearms and Prohibited Firearms Regulations (SOR/98-206), (the "Transportation Regulation") was enacted.

[32] This regulation provides the specific requirements and procedures for an applicant to obtain an ATT permitting the transportation of restricted and prohibited firearms.

[33] Sections 1.1 and 1.2 of the Transportation Regulation are as follows:

"1.1 A chief firearms officer may issue to an individual an authorization to transport if the chief firearms officer determines that the transportation of a restricted firearm or prohibited firearm, as the case may be, between two or more specified places will

not pose a threat to the safety of the individual or any other individual." ,

"1.2 For the purposes of subsection 54(1) of the Act, an application for an authorization to transport a restricted firearm or prohibited firearm made by an individual, other, than a non-resident, who holds a licence and a registration certificate for the firearm or by a non-resident may, in addition to being made in the prescribed form, be made by telephone by either speaking to a person or to an interactive voice response system."

[34] In 2006 Annotated Firearms Act & Related Legislation (Brunet & Goode), Lexis Nexis Canada Inc. 2006, at page 304, the authors state the following:

"Sections 1.2 to 1.5 of the Regulations make for Significant flexibility in the process of applying for an authorization to transport. While an authorization to transport may only be issued for one of the purposes set out in section 19 of the Firearms Act, it should be noted that by the virtue of the variety of purposes set out therein, the document itself can be tailored to the needs of the individual applicant, and may authorize either a single transportation or multiple conveyances, of one or more firearms."

[35] A copy of the ATT application was entered into evidence at the reference hearing and was in proper form and contained the information required under the Transportation Regulation.

[36] The Shooting' Clubs Regulation provides for the operation of shooting clubs and shooting ranges and makes no reference to the transportation of firearms.

[37] Sections 5, 14 and 15 of the Shooting Clubs Regulation are as follows:

"Compliance with Safety Standards and Other Obligations

5. The operator of an approved shooting range shall ensure that the discharge of firearms on the shooting range does not endanger the safety of persons at the shooting range or in the portion of the surrounding area described in paragraph. 3(2)(a), by taking appropriate measures, including ensuring that

- (a) the design and operation of the shooting range
 - (i) is such that projectiles discharged from firearms will not leave the shooting range if they are discharged there in accordance with the safety rules/and
 - (ii) promotes the safety of .all persons on the shooting range, including by

accommodating any adaptation that may be appropriate given the nature of the shooting activities that may take place and the type and caliber of firearms that may be used there;

(b) the shooting range has an adequate warning system to warn persons that they are entering a shooting range and to inform them, when such is the case, that shooting activities are taking place at that time;

(c) appropriate safety rules for the shooting range are applied that are consistent with the nature of the shooting activities that may take place and the type and caliber of firearms that may be used there;

(d) the safety rules are posted in a conspicuous place on the shooting range; and

(e) if more than one person is simultaneously engaged in shooting activities on the shooting range, a person acts as the range officer."

Records

14. (1) "The operator of an approved shooting club shall keep records, with respect to the following users of restricted firearms or prohibited firearms, that include

(a) with respect to a member or officer of the club

(i) his or her name, address and phone number,

(ii) his or her membership card number, and

(iii) the number of his or her licence to possess firearms or, if one does not exist, his or her date of birth; and

(b) with respect to a guest of a member or officer of the club

(i) the information required in subparagraph (a)(i), and

(ii) the number of his or her, licence to possess firearms, if one exists.

(2) Every record made under subsection (1) must be maintained for at least six years.

(3) At the chief firearms officer's request, the operator of the approved shooting club shall submit to the chief firearms officer a report containing all or any requested part of the information described in subsection (1).

Participation of Officers, Members and their Guests

15. (1) The operator of an approved shooting club shall, on the request of a chief firearms officer, supply a written description of the participation, if any, of a current or past member or officer of the shooting club or his or her guest, in target practice or target shooting competitions within the previous five years, where subsection 67(2) of the Act applies to the member, officer or guest.

(2) The operator of an approved shooting club shall, on the request of a current or past member or officer of the shooting club or his or her guest, supply to the requestor the description referred to in subsection (1) that concerns the requestor.”

[38] As earlier stated, the Applicant must satisfy this court that the CFO's decision to issue the Refusal of the ATT was not justified.

[39] When a CFO receives an ATT application, he/she is statutory mandated under the Act to address a number of questions in determining whether to issue an ATT. These questions are as follows:

(a) Is the applicant an individual and is that individual a holder of a firearms license authorizing that individual to possess prohibited firearms or restricted firearms? (Section 19-Act)

(b) Does the applicant have good and sufficient reason, such as for use in target practice or a target shooting competition? (Section 19-Act)

(c) Did the applicant submit the application for an ATT in the prescribed form, set out the prescribed information and include any prescribed fees? (Section 54-Act)

[40] Based on the evidence heard at the reference hearing and a review of the documentary evidence, I find the Applicant met this criterion when he submitted his application for the ATT.

[41] Next, the CFO must determine whether he/she requires the applicant of an ATT to submit any further information, in addition to that included in the application, as may reasonably be regarded as relevant for the purpose of determining whether the applicant is eligible to hold the ATT (Section 55-Act).

[42] At page 99-100 of 2006 Annotated Firearms Act & Related Legislation (supra) it states:

" . . . The issue of what is "reasonably required" should likely be, analyzed from a subjective perspective (i.e., taking into account the chief firearms officer's view) and an objective perspective (i.e., taking into account the view of a "reasonable person" in all of the circumstances) "

[43] The CFO must also decide whether **any reasonable condition** should be attached to an ATT that he/she considers desirable in the particular circumstances **and in the interests of the safety of the holder or any other person** (Section 58-Act).

[44] The CFO must also determine whether the **transportation** of a restricted firearm or prohibited firearm, **between** two or more specified **places** **would pose a threat to the safety of an applicant or any other individual.** (Section 1.1 Transportation Regulation)

[45] In my view, based upon the evidence at the reference hearing, the CFO had no specific concerns that the Applicant would pose a threat to the safety of himself or anyone else.

[46] **The only concern of the CFO was that the Applicant had not provided any confirmation he was an invited guest or a registered participant of the shooting competitions referenced in the ATT application. In my view, this information is not relevant for the purpose of determining whether the Applicant is eligible to hold an ATT under Section 55 of the Act.**

[47] The Shooting Clubs Regulation provides for operators of shooting clubs and shooting ranges to ensure that users at these facilities comply with the requirements of that regulation including keeping proper records of any guests at their shooting clubs.

[48] If the CFO had some, safety concerns about the Applicant pursuant to Section 58 of the Act, he could have attached a reasonable condition to the ATT. In *Crocker v. British Columbia (Chief Firearms Officer)* (2004) 67W.C.B.(2d) 89, Stewart, P.C.J. states at paragraph 27, of which I adopt in relation to the issuance of an ATT:

"One might argue that as Chief Firearms Officer Kembel did not issue a license, that s. 58 does not apply, however, my learned colleague, the Honourable Judge H.C. Stansfield, Provincial Court Judge, considered this issue in the decision of *R.Bohn v. The Chief Firearms*

Officer for the Province of British Columbia, file num Q53732-1 in the Kelowna registry dated September 4, 2002. Quoting from that decision at paragraph 52, the Honourable Judge Stansfield states, as follows:

“It was seen above that pursuant to Section 58, of the Act the CFO who issues a licence "may attach any reasonable condition to it that the CFO considers desirable in the particular circumstances and in the interests of the safety of the holder or any other person.”

And at paragraph 54:

I asserted earlier that the apparent legislative intent of Parliament is that the possession of firearms be understood to be a privilege, and not a right. It follows, however, that in refusing a licence, the CFO is denying to a citizen a privilege which may be enjoyed by other citizens. In my view, both procedural and substantive fairness demand that the CFO consider the least intrusive or limiting result that still affords appropriate protection to the applicant and the public.

And at paragraph 56:

I have concluded that it was procedurally unfair, and evidentially unreasonable, and thus, not justified, to refuse to issue a licence which, through the imposition of reasonable conditions, restricted Mr. Bohn's possession of firearms to hunting and guiding activities."

[49] I am mindful of the case law which sets out the standard of review by a provincial court judge of a decision by a CFO at a reference hearing. In *Alberta (Chief Firearm's Officer) v. Hoiland* [2004] A.J. No. 51, Sanderman, J. of the Alberta Court of Queen's Bench at paragraph 15 states, the following:

"It is clear that the standard that must be applied upon review by the provincial court judge is similar to that found in the cases of *Garofoli* and *Araujo*. The reviewing provincial court judge cannot merely substitute his or her own opinion for that of the chief firearms officer merely because he or she does not agree with it. After amplification, the reviewing provincial court judge must decide whether the original decision is a reasonable one that can be justified even if the reviewing judge does not agree with it. If it is reasonable and can be justified it must stand. If not, the reviewing provincial court judge can change it. In this scheme deference to the original decision must be shown and it can only be altered and changed if the record and relevant evidence heard reveal that the original decision cannot be justified. Then interference is permitted."

[50] Also in *R. v. Dumont (D.)* N.B.C.Q.B.(2002) 254, N.B.R.(2nd) 238, Lavigne, J. states at paragraphs 52 and 55, as follows:

"Even if it is practical to speak of control standards, fundamentally, the question that arises is what weight should be given to the chief firearms officer's opinion. I believe that it was the legislator's intention that the chief firearms officer's expertise should be applied to considerations of public safety with regard to licence applications. In this case, the reasonableness simpliciter standard only tells the courts responsible for reviewing the chief firearms officers' decisions to give considerable weight to these views."

"The reviewing judge therefore must not disregard the initial decision. He must evaluate it and show some restraint with regard to the chief firearms officer's conclusion, especially if the evidence examined is ostensibly the same as that which the chief firearms officer considered. In the absence of convincing evidence, the chief firearms officer's decision will be presumed to be well founded."

[51] Having carefully considered the evidence at the reference hearing, I am of the view that the decision of the CFO in refusing the ATT was not justified and that the Applicant has met the burden upon him under Section 74 of the Act.

[52] I find there were no good and sufficient reasons provided by the CFO in issuing the Refusal for the following reasons:

- (i) Considering the overall purposes of the Act, the Applicant complied with all of the requirements of the Act and Transportation Regulation and that the CFO had no good and sufficient reason to refuse the ATT to the Applicant.,
- (ii) The CFO erred in applying Section 6 of the Shooting Clubs Regulation instead of applying the provisions of the Act and the Transportation Regulation relating to the issuance of an ATT.
- (iii) The ATT application specified that the Applicant was an invited guest for the listed competitions. In my view this fulfilled the requirements of section 6(b) of the Shooting Clubs Regulation. In addition, based on the history of the Applicant attending shooting competitions in previous years, without providing any invitation verification or registration confirmation, to request this additional documentation was unreasonable in my view. Furthermore, pursuant to Section 106(1) of the Act, it is an offence to knowingly make a false statement in procuring an ATT.
- (iv) The Applicant is of good character and there is no evidence whatsoever of him being of any danger to himself or the public. Should the CFO have some concern about the Applicant attending shooting competitions as an uninvited guest, the Shooting Club Regulation in Section 14 permits the CFO to request verification records from the shooting clubs in this regard.

(v) In relation to these particular circumstances, to require the Applicant to provide the CFO with this verification documentation for the 83 IPSC events is onerous and unreasonable, especially when you take into account the objective of the Transportation Regulation to be quick and flexible in issuing an ATT. The Transportation Regulation even permits an ATT application to be submitted by telephone.

[53] Therefore, for these reasons, I find the decision by the CFO to refuse the issuance of an ATT was not reasonable or justified and the reference application is allowed. Pursuant to Section 76(b) of the Act, I direct the CFO to issue an ATT to the Applicant for the time period requested.

W. Andrew LeMesurier
A Judge of the Provincial Court of New Brunswick