NOVA SCOTIA COURT OF APPEAL

Citation: *Waye v. Nova Scotia (Chief Firearms Officer)*, 2018 NSCA 89

Date: 20181120
Docket: CA 471656
Registry: Halifax

Between:

Laurie Richard Waye

Appellant

v.

John W. Parkin, in his capacity as the Chief Firearms Officer for Nova Scotia

Respondent

Judge:	The Honourable Chief Justice J. Michael MacDonald
Appeal Heard:	October 9, 2018, in Halifax, Nova Scotia
Subject:	Administrative law; standard of review; Chief Firearms Officer; application for authorization to carry a restricted firearm
Summary:	The respondent Chief Firearms Officer (CFO) denied the appellant's application for a permit to carry a restricted .22 calibre handgun (while engaged in his occupation of trapping wild animals). Essentially the CFO felt that the appellant did not need to carry a restricted handgun in order to safely carry out his work. The appellant sought judicial review before the Supreme Court of Nova Scotia, asserting that the governing legislation established his need and the CFO therefore had no option but to issue the permit.
Issues:	Did the reviewing judge apply the appropriate standard of review when considering the merits of the CFO's refusal? Should the CFO's refusal be upheld?
Result:	Appeal dismissed.

The reviewing judge was correct to apply a reasonableness standard when reviewing the CFO's decision.

The CFO, in interpreting his "home" statute, concluded that he held a residual discretion to deny the permit. This was a reasonable interpretation in the circumstances.

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Judges:	MacDonald, C.J.N.S.; Hamilton and Bryson, JJ.A.
Appeal Heard:	October 9, 2018, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs, per reasons for judgment of MacDonald, C.J.N.S.; Hamilton and Bryson, JJ.A. concurring
Counsel:	Guy Lavergne, for the appellant Duane Eddy, for the respondent

Reasons for judgment:

BACKGROUND

[1] The appellant has been trying for years to secure a permit to carry a restricted .22 calibre handgun while engaged in his occupation of trapping wild animals. His many applications have all been refused by successive provincial chief firearms officers. In response to three of these refusals, he has launched judicial review applications before the Supreme Court of Nova Scotia. All have been unsuccessful to date, with Justice Christa M. Brothers issuing the most recent judicial review dismissal. It is her decision that Mr. Waye now challenges before this Court.

[2] The impugned refusal was issued by the respondent Chief Firearms Officer in May of 2017. In the prescribed form, Officer Parkin provided:

> Reasons for Refusal:
>
> The applicant does not meet the requirement of "needs" for an Authorization to carry as a trapper in Nova Scotia. Provincial legislation already provides for the use of non-restricted firearms for the requested purpose. The applicant's argument on the grounds of safety has been addressed in previous applications that have been refused. Additional pages are attached to this document.

[3] With this Officer Parkin attached a letter which (a) supplemented his reasons by highlighting reasonable alternatives and (b) incorporated detailed explanations for two previous refusals. He explained:

> Dear Mr. Waye,
>
> Thank you for your application. I have attached this correspondence to the prescribed form as the form restricts the number of characters of text and a full response is not possible through that document.
>
> I have noted that your response to my request for information as to why you need a restricted firearm for the purpose you have expressed, dated April 13th 2017, was to submit the same grounds that were refused in past applications in 2014 and 2015. Those decisions have been upheld at judicial review.
>
> The submission that you require a restricted firearm in order to be able to comply with transportation regulations is without merit. As expressed in the letter of 2015, small, compact and light weight non-restricted firearms are available and can be carried with little effort. Given the common ground from past applications I have attached my letters from 2014 and 2015 as further explanation.

> Therefore, under the provisions of Section 68 of the *Firearms Act* your application for an authorization to carry has been refused.

[4] Officer Parkin's reliance on s. 68 of the Federal *Firearms Act* is significant to this appeal because it grants a wide discretion to refuse a permit for "any good and sufficient reason":

> 68 A chief firearms officer shall refuse to issue 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.

[5] Before Justice Brothers, Mr. Waye offered a new approach to challenge Officer Parkin's latest refusal. Instead of challenging the merits of the decision, Mr. Waye asserted that the legislative scheme established his need to carry a restricted weapon and, as such, Officer Parkin had no jurisdiction to look beyond that. He relies on this regulation:

> 3 For the purpose of section 20 of the Act, **the circumstances in which an individual needs restricted firearms or prohibited handguns for use in connection with his or her lawful profession or occupation are where**
>
> (a) the individual's principal activity is the handling, transportation or protection of cash, negotiable instruments or other goods of substantial value, and firearms are required for the purpose of protecting his or her life or the lives of other individuals in the course of that handling, transportation or protection activity;
>
> (b) the individual is working in a remote wilderness area and firearms are required for the protection of the life of that individual or of other individuals from wild animals; or
>
> (c) **the individual is engaged in the occupation of trapping in a province and is licensed or authorized and trained as required by the laws of the province**.
>
> [Emphasis added]

[6] Mr. Waye explained it this way in his pre-hearing submissions to Justice Brothers:

> 38. Subsection 3 c) of the Regulations provides that ATC [authorization to carry] applicants who are trappers and are duly licensed to engage in trapping under the laws of the province have a recognized "need" to carry a restricted firearm in connection with their lawful occupation, without having to prove such need to the satisfaction of the Chief Firearms Officer. It is not open to a Chief

> Firearms Officer to try and disprove the "need", or to argue that an Applicant could make do with a non-restricted firearm.
>
> 39. Hence, all that the Applicant had to prove is that he is indeed a trapper, and that he is duly licensed to engage in trapping under the laws of the province. Neither of those facts is in dispute. This has been specifically and expressly acknowledged by the Respondent.
>
> 40. The Respondent had no jurisdiction to dispute the Applicant's need for an ATC for a restricted firearm. That need is clearly and conclusively established by the clear and unequivocal language of Sub-Section 3 c) of the Regulations.
>
> 41. The Respondent's only margin of discretion in reviewing the Applicant's request for an ATC was to determine whether there was another "good and sufficient reason" to refuse the issuance thereof, per Section 68 of the Firearms Act. In re: Firearms Act, (2000) 1 S.C.C. 31 (See tab 7), the Supreme Court of Canada held that any such reasons should always be related to public safety.
>
> > "The courts will interpret the words "good and sufficient reason" in ss. 68 and 69 in line with the public safety purpose of the Act, ensuring that the exercise of discretion by the chief firearms officer and the Registrar is always wed to that purpose." (at Page 86)
>
> 42. In any event, no such other "good and sufficient reason", whether or not related to public safety, was stated by the Respondent as the basis for the refusal of the ATC, and none appears from the record. Indeed, the Respondent's entire focus is on the fact that the Applicant's circumstances do not, according to the Respondent, meet the "needs requirement" of the Act and the Regulations. Indeed, that clearly appears from the Respondent's letter dated March 29th, 2017, as well as from the Notice of refusal dated May 2, 2017.

[7] Justice Brothers rejected this argument in the course of dismissing the application by noting the broad discretion offered by s. 68:

> [42] The Applicant argues that there is no discretion in the CFO to refuse an ATC once there has been proof that an individual is a licensed trapper, as per s. 3(c) of the Regulations. This ignores s. 68 of the *Firearms Act* which provides the CFO with an overarching mandate permitting him or her to refuse to issue an ATC for any good and sufficient reason.

[8] Mr. Waye insists that both the reviewing judge and Officer Parkin are wrong on this point and accordingly seeks our intervention.

ISSUES

[9] As with most judicial review appeals, our task is two-fold. First, we must determine if the reviewing judge correctly identified the appropriate level of

deference (if any) owed to Officer Parkin. See *Creelman v. Truro (Town)*, 2010 NSCA 27, ¶ 19 and *United Gulf Developments Ltd., Re* 2009 NSCA 78, ¶ 41. Second, applying that standard, we then "step into the shoes of the reviewing judge" in order to assess the merits of Officer Parkin's decision. See *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82, ¶ 11.

ANALYSIS

Standard of Review

[10] Mr. Waye says that Officer Parkin exceeded his jurisdiction by engaging in a needs assessment when his need was expressly pre-determined by valid regulation. This, he says, represents a fundamental question of law for which Officer Parkin is entitled to no deference. He explains in his factum:

> 12. The Appellant respectfully submits that the issues raised in this appeal pertain to the scope of the Respondent's jurisdiction. Hence, the applicable standard of judicial review is correctness. This will be discussed at length in Part 5, hereafter.
>
> …
>
> 31. The applicable standard of review depends upon the nature of the question that the Respondent had to decide. In this instance, they are jurisdictional questions.
>
> 32. It has long been established that questions touching upon the scope of the powers and/or jurisdiction of an administrative body must be decided in accordance with the "correctness" standard. That approach was not modified, but was rather confirmed in Dunsmuir v. New Brunswick:
>
> > 36. (…) in Bibeault, the Court affirmed that there are still questions on which a tribunal must be correct. As Beetz J. explained, "the jurisdiction conferred on administrative tribunals and other bodies created by statute is limited, and … such a tribunal cannot by a misinterpretation of an enactment assume a power not given to it by the legislator" (p. 1086).
>
> 33. This is so, because the legal basis for judicial review is the rule of law. Per the Supreme Court in Dunsmuir:
>
> > (28) By virtue of the rule of law principle, all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution. Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore

> to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.
>
> (29) Administrative powers are exercised by decision makers according to statutory regimes that are themselves confined. A decision maker may not exercise authority not specifically assigned to him or her. By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law. Thus, when a reviewing court considers the scope of a decision-making power or the jurisdiction conferred by a statute, the standard of review analysis strives to determine what authority was intended to be given to the body in relation to the subject matter. This is done within the context of the courts' constitutional duty to ensure that public authorities do not overreach their lawful powers: *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220, p. 234; also *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, 2003 SCC 19, at para. 21. (our emphasis)
>
> (…)
>
> 34. The "reasonableness" standard of review applies only to decisions made by the Respondent, within the scope of his jurisdiction and/or powers. It does not apply to his interpretation or determination of that scope. On the latter, the Rule of law requires that the "correctness" standard be applied. Per Beetz J. of the Supreme Court of Canada, in UES, Local 298 v. Bibeault, and as reiterated in Dunsmuir:
>
> > (117) The idea of the preliminary or collateral question is based on the principle that the jurisdiction conferred on administrative tribunals and other bodies created by statute is limited, and that such a tribunal cannot by a misinterpretation of an enactment assume a power not given to it by the legislator. The theoretical basis of this idea is therefore unimpeachable – which may explain why it has never been squarely repudiated: any grant of jurisdiction will necessarily include limits to the jurisdiction granted, and any grant of a power remains subject to conditions. The principle itself presents no difficulty, but its application is another matter.

[11] Respectfully, I disagree. Post *Dunsmuir* jurisprudence has all but vitiated this concept of jurisdictional error attracting a correctness standard. Most recently, it was declared to be on life support. See *Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2018 SCC 31*, ¶ 41.

[12] Clearly, it was within Officer Parkin's jurisdiction to either grant or refuse the permit. He is Nova Scotia's representative to make that call. Instead, this aspect of the appeal is really about how Officer Parkin interpreted his home statute, with which he is abundantly familiar. That commands deference. As long as it is

reasonable, we will defer to it. The concept of reasonableness will be discussed next.

Was Officer Parkin's Refusal Reasonable?

[13] In assessing whether Officer Parkin's refusal was reasonable I must consider his reasons along with the outcome. See: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), [2011] 3 SCR 708, 2011 SCC 62* ¶14.

[14] Here Officer Parkin's reasons were clear and articulate. With his brief reasons in the prescribed form (as supplemented by his comprehensive earlier explanations to Mr. Waye) we know exactly why the permit was refused. Simply by way of example, note the following clear explanation contained in Officer Parkin's September 30, 2015 letter to Mr. Waye:

> As noted in previous correspondence, provincial legislation already provides for you to carry a non-restricted firearm for the purpose of your occupation. I refer to the *Firearm and Bow Regulations*:
>
> > 7 (1) Any person who is the holder of a valid Fur Harvesters License may possess and use a rim fire rifle of .22 calibre or less during the open season for harvesting fur-bearing animals, including Sundays during that season, for the purpose of dispatching animals in traps.
>
> In your present application you have resumed your submission that you cannot safely carry or sling a non-restricted firearm while carrying the other accoutrements of a trapper. This was addressed in 2014 as noted in the attached letter. I would further submit that there are other options such a scabbard on the side of your pack. These are commercially available or can be custom made and would free your hands.
>
> With respect to length, there are a number of compact .22 calibre rifles that have an overall length of approximately 30 inches and some with a breakdown length of half that.
>
> Given that you propose to carry the firearm unloaded and to unencumber yourself of your pack prior to using a firearm, then load and use the firearm to dispatch a trapped animal there is no evident safety issue in carrying the firearm attached to your pack.
>
> You have also submitted that weight of the non-restricted firearm is an issue. I would point out that the handgun you propose to carry weighs approximately 30 ounces (less than 2 lbs), any of the commercially available compact .22 rifles weighs less than 48 ounces (less than 3 lbs). The difference is less than a pound of weight.

> I have reviewed the letter from Mr. Paddock, that you included with your submission. I note that he writes, speaking in reference to both long guns and restricted firearms, "regardless of which firearm is used". He does not make a recommendation. He states only that a properly designed and implemented safe-work procedure must be used.
>
> In the proposed Safe Work Procedure you have submitted the word handgun can easily be replaced with firearm. As noted above, you are already permitted to carry a firearm for the purpose you propose, provided it is non-restricted and rim fire. It only remains for you to select the manner in which you wish to carry it.
>
> Having reviewed your application I conclude that "…the circumstances in which an individual needs restricted firearms or prohibited handguns…" in connection with the profession or occupation of trapping within Nova Scotia is not made out.
>
> Therefore, under the provisions of Section 68 of the *Firearms Act* your application for an authorization to carry has been refused.

[15] In short, these reasons offer no call for us to interfere.

[16] Furthermore, in my view, the permit denial represents a reasonable outcome. I will elaborate.

[17] Mr. Waye asserts that Regulation 3 unequivocally establishes his need to carry a handgun with no role for Officer Parkin. He explains in his factum:

> 28. Subsection 3 c) of the Regulations does not merely create a rebuttable presumption. This is abundantly clear from the language of Section 117 of the Firearms Act. Parliament gave the Governor in Council the power to "prescribe" (i.e. determine in a general manner), by way of regulations, the circumstances in which the "need" arises. Indeed, Subsection 3 c) of the Regulations prescribes that ATC applicants who are trappers and are duly licensed to engage in trapping under the laws of the province have a recognized "need" to carry a restricted firearm in connection with their lawful occupation.
>
> 29. It is worthwhile noting that the only other professions or occupations mentioned in the Regulations are: i.) handling, transportation or protection of cash, negotiable instruments or other goods of substantial value (3 a)); and ii) the individual is working in a remote wilderness area (3 b). It is also quite telling that the words: "firearms are required" appear in both Subsections 3 a) and 3 b), but not in Subsection 3 c), which is the one dealing with trappers.
>
> 30. Consequently, the Respondent had no jurisdiction to dispute the Appellant's "need" to carry a restricted firearm. That need is clearly and conclusively established by the clear and unequivocal language of Sub-Section 3 c) of the Regulations. It is not up to a Chief Firearms Officer to try and disprove the "need", or to argue that an applicant could use a non-restricted firearm instead. It is not up to the Respondent either to second-guess the wisdom of the

> Governor in Council, by ignoring the clear and unequivocal language of the Regulations.

[18] This submission would be compelling if one were to look at Regulation 3 in isolation. However, as Justice Brothers noted, one cannot ignore the broad discretion bestowed by s. 68, which Officer Parkin interprets as overriding Regulation 3. In my view, this is a reasonable interpretation of s. 68. Furthermore, in exercising this overarching discretion, Officer Parkin has concluded that Mr. Waye need not resort to a restricted weapon in order to safely carry out his livelihood. That represents a reasonable outcome.

DISPOSITION

[19] I would dismiss the appeal with costs of $400.00 including disbursements, being 40% of the costs awarded below, to be paid by the appellant to the respondent.

MacDonald, C.J.N.S.

Concurred in:

Hamilton, J.A.
Bryson, J.A.