

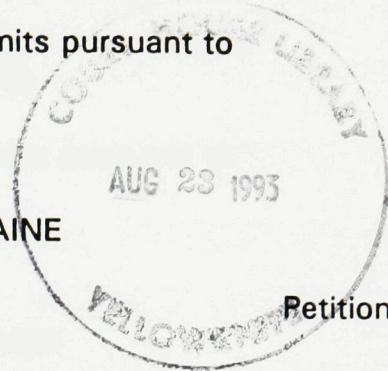
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of applications by the Applicants For Orders in the nature of Mandamus and Certiorari in aid;

AND IN THE MATTER of applications for permits pursuant to Section 110 of the Criminal Code;

BETWEEN:

WARREN DELBERT ST. GERMAINE



Petitioner

- and -

HER MAJESTY THE QUEEN AND BRIAN G. WATT

Respondents

AND BETWEEN:

BARRY TAYLOR

Petitioner

- and -

HER MAJESTY THE QUEEN AND JAMES C. HOWIE

Respondents

Applications for orders in the nature of mandamus directing the issuance of permits pursuant to s.110(1) of the Criminal Code. Dismissed for lack of jurisdiction.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife, Northwest Territories
April 7, 1993

Reasons filed: April 28, 1993

Counsel for the Petitioners: Richard J. Peach
Counsel for the Respondents: Brett O. Webber

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER of applications by the Applicants for Orders
in the nature of Mandamus and Certiorari in aid;

AND IN THE MATTER of applications for permits pursuant to
Section 110 of the Criminal Code;

BETWEEN:

WARREN DELBERT ST. GERMAIN



HER MAJESTY THE QUEEN AND BRIAN G. WATT

Respondents

AND BETWEEN:

BARRY TAYLOR

AND
SOMA

Petitioner

- and -

HER MAJESTY THE QUEEN AND JAMES C. HOWE

Respondents

Applications for orders in the nature of mandamus directing the issuance of permits
pursuant to s.110(1) of the Criminal Code. Dismissed for lack of jurisdiction.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.L. VERTES



Heard at Yellowknife, Northwest Territories
April 7, 1993

Reasons filed: April 28, 1993

Richard J. Poirer
Brett G. Washburn

Counsel for the Petitioner:
Counsel for the Respondents:

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of applications by the Applicants For Orders
in the nature of Mandamus and Certiorari in aid;

AND IN THE MATTER of applications for permits pursuant to
Section 110 of the Criminal Code;

BETWEEN:

WARREN DELBERT ST. GERMAINE

Petitioner

- and -

HER MAJESTY THE QUEEN AND BRIAN G. WATT

Respondents

AND BETWEEN:

BARRY TAYLOR

Petitioner

- and -

HER MAJESTY THE QUEEN AND JAMES C. HOWIE

Respondents

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

1 These two applications were heard together since they raise the same issue.

2 The petitioner in each case applies for an order in the nature of mandamus with

certiorari in aid directing the issuance of a permit to carry a restricted weapon pursuant to s.110(1) of the Criminal Code. In its essence, the argument is that the named respondents, being officers authorized to issue such permits, failed to take into account relevant factors and did take into account irrelevant ones in deciding to reject each petitioner's application for such a permit.

3 After hearing argument on the application, I directed further submissions on the question of whether this court has jurisdiction to hear this case, or whether, because of s.18(1) of the Federal Court Act, R.S.C. 1985, c.F-7, exclusive jurisdiction is vested in the Federal Court.

4 As background to this question, I will set out some of the applicable statutory provisions and pertinent facts.

5 The Criminal Code stipulates that a permit to carry a restricted weapon may be issued by "the Commissioner, the Attorney General of a province, a chief provincial firearms officer or a member of a class of persons that has been designated in writing for that purpose by the Commissioner or the Attorney General of a province". The Criminal Code also provides definitions:

(a) "Commissioner" means the Commissioner of the Royal Canadian Mounted Police (s. 84); and,

(b) "Attorney General" means, with respect to the Northwest Territories, the Attorney General of Canada (s. 2).

The individually named respondents Watt and Howie are both members of the R.C.M.P. and each is a member of a class of persons designated by the Commissioner to issue such permits.

6 It should be readily apparent that the respondents are persons exercising powers conferred by a federal enactment, the Criminal Code, and this application seeks an extraordinary remedy against them. As such it would seem to fall squarely within the exclusive jurisdiction of the trial division of the Federal Court.

7 The Federal Court Act (as amended by S.C. 1990, c.8) sets out that court's exclusive jurisdiction in s. 18(1):

18.(1) Subject to section 28, the Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

The term "federal board, commission or other tribunal" is defined in s. 2 of that Act:

"federal board, commission or other tribunal" means any body or any person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*;

The combined effect of these sections, submits counsel for the respondents, is to oust the jurisdiction of this court. A similar result was reached in **Martinoff v.**

Simmonds et al, [1978] 2 W.W.R. 97 (B.C.S.C.).

8 Counsel for the petitioners, however, makes two substantive arguments to establish that these proceedings do not come within the ambit of the exclusive jurisdiction of the Federal Court.

9 First, it is submitted that the individual respondents are vested with their authority as "local registrar of firearms" not by virtue of the Criminal Code but by virtue of a Northwest Territories statute, The Royal Canadian Mounted Police Agreement Act, R.S.N.W.T. 1988, c. R-8, pursuant to which the Commissioner of the Northwest Territories, on behalf of the territorial government, may enter into agreements with the federal government for the employment of the R.C.M.P. in the territories. Therefore, it is argued, the respondents come within the exception contained in s.2 of the Federal Court Act for any person appointed under or in accordance with a law of a province (which for this purpose also applies to a territory).

10 There are a number of difficulties with this submission.

11 There is no evidence before me of the existence or content of any federal-territorial agreement for employment of the R.C.M.P. in the territories. Even if the agreement was in evidence, it seems to me that it could not derogate from the clear

words of the Criminal Code which empower the R.C.M.P. Commissioner to designate a class of persons to carry out the functions required by s.110(1) of the Code.

12 It also seems to me that counsel has misapprehended the effect of any such federal-territorial agreement.

13 The Royal Canadian Mounted Police Agreement Act authorizes the territorial government to enter into an agreement with the federal government to provide for the use and employment of the R.C.M.P. to aid in the administration of justice in the territories and in carrying into effect the laws in force in the territories. This provision is complementary to s.20(1) of the Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10, which authorizes the Solicitor General of Canada to enter into arrangements with provincial and territorial governments for the employment of the force in carrying into effect the laws in force in the particular province or territory. The laws that are to be enforced are all laws in force in the Northwest Territories whether they be territorial or federal. The status of the force, pursuant to such an agreement, does not become a territorial one nor can it be said that the force carries out its functions pursuant to territorial law.

14 In addition, I am not convinced that counsel's characterization of the designation held by each respondent as a "local registrar of firearms" is accurate.

15 The Criminal Code uses several different terms but they are not used interchangeably. For example, s.110(4) refers to a "local registrar of firearms" while s.110(7) refers to a "firearms officer". Both of these terms are defined in s.84 of the Code. Section 110(1), however, does not refer to either category. It simply refers to certain specific individuals, all of whom hold positions in the federal level of government, and to members of "a class of persons that has been designated in writing for that purpose" by the R.C.M.P. Commissioner or the Attorney General, who, with reference to the territories, is the federal Attorney General. The phrase "that purpose" can only refer to the purpose of s.110(1), that being to issue permits to carry restricted weapons. The only evidence before me is that the respondents have been designated for that purpose by the R.C.M.P. Commissioner. I am not aware of what else, if anything, they have been designated for or authorized to do.

16 Second, it is submitted that, since the function carried out pursuant to s.110(1) is an administrative one, then this court would have concurrent jurisdiction with the Federal Court since the petitioners seek relief against the respondents for something they omitted to do in the performance of their duties as servants of the Crown. In this regard the applicants rely on s.17(5)(b) of the Federal Court Act:

(5) The Trial Division has concurrent original jurisdiction ...

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

17 This argument, however, is premised on a faulty assumption: that the functions carried out by the respondents are purely administrative ones. As pointed

out by MacGuigan J., on behalf of the Federal Court of Appeal in **The Commissioner of the R.C.M.P. et al v. Turenko**, No. A-1626-83, September 7, 1984, the Commissioner and his authorized agents are licensing authorities but ones who exercise a discretion. That discretion must admittedly be carried out with reference to the criteria set out in s.110(2) but, as noted in **Turenko**, the test is still a subjective one: the issuing authority must be satisfied that the applicant satisfies one of the stipulated criteria. The discretion is not arbitrary or totally unfettered, in the sense that only the specified criteria may be taken into account, but it is still a discretion.

18 Even if I were to find that the function is an administrative one, and I do not, I would hold that s.17(5)(b) of the Federal Court Act does not apply to this situation.

19 It is correct to say that s.17(5)(b) enables a litigant to sue a Crown servant in either the provincial/territorial Supreme Court or the Federal Court. This is usually the case where the cause of action, such as a claim in negligence, is not based on federal law: **Pacific Western Airlines v. The Queen** (1980), 105 D.L.R. (3d) 46 (F.C.A.). But here the cause of action is based on a federal law and the form of relief sought is specifically addressed by the statute.

20 The Federal Court Act establishes a general jurisdiction in the Federal Court for all claims against the Crown:

17.(1) Except as otherwise provided in this Act or any other Act of Parliament, the Trial Division has concurrent original jurisdiction in all cases where relief is claimed against the Crown.

21 Section 17(5)(b) grants concurrent jurisdiction to the Federal Court in proceedings where the relief sought is against an individual officer or servant of the Crown. This general concurrent jurisdiction, however, must give way to the specific exclusive jurisdiction established by s.18(1) in proceedings such as this one where mandamus is sought. This specific grant of exclusive jurisdiction provides otherwise to the general grant of concurrent jurisdiction.

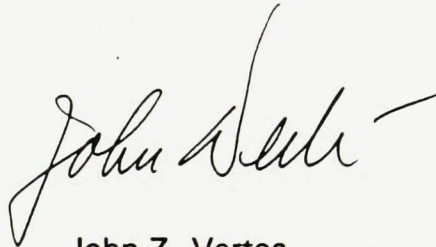
22 In my opinion, the respondents Watt and Howie exercise jurisdiction or powers conferred under an Act of Parliament, that being the Criminal Code, and therefore come within the definition of "federal board, commission or other tribunal". This case also meets the essential requirements for a finding of Federal Court jurisdiction:

1. There must be a statutory grant of jurisdiction by the federal Parliament.
2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
3. The law on which the case is based must be "a law of Canada" as the phrase is used in s.101 of the *Constitution Act, 1867*.

See *ITO - International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752 (at page 766).

For the foregoing reasons, I conclude that this court lacks jurisdiction to grant the relief requested. The Federal Court enjoys exclusive jurisdiction by virtue of s.18(1) of the Federal Court Act. Accordingly, the applications are dismissed.

24 In the circumstances, considering that neither counsel raised the jurisdictional issue at the hearing, there will be no costs.



John Z. Vertes
J.S.C.

Counsel for the Petitioners:
Counsel for the Respondents:

Richard J. Peach
Brett O. Webber

For the foregoing reasons, I conclude that the court lacks jurisdiction to grant the relief requested. The Federal Court enjoys exclusive jurisdiction by virtue of s.18(f) of the Federal Court Act. Accordingly, the court cannot grant the relief requested.

In the circumstances, considering that neither counsel raised the jurisdictional issue at the hearing, there will be no costs.

Order: The application is dismissed, with costs to the respondent. The respondent is to pay the applicant's costs of the application, including disbursements, on a full costs basis.

[Handwritten signature]
Justice Gauthier

J.S.C.

Richard J. Gauthier, Counsel for the Petitioner
Lisa O. Wood, Counsel for the Respondent

It is noted that the Charter of Rights and Freedoms, which is part of the Constitution of Canada, does not apply to the Federal Court. The Federal Court is a court of law, and its jurisdiction is defined by statute. The Federal Court Act, s. 18(f), provides that the Federal Court has exclusive jurisdiction to hear and determine any matter in which the Crown is a party, and any matter in which the Crown is a party, and any matter in which the Crown is a party.

1. There must be a statutory grant of jurisdiction by the federal Parliament.
2. There must be an existing body of federal law which is essential to the disposition of the matter which necessitates the statutory grant of jurisdiction.
3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the Constitution Act, 1871.

See ITO - International Terminal Services Ltd. v. Middle Electronics Inc., [1988] 1

S.C.R. 752 (at page 766).

IN THE DISTRICT COURT OF THE MONTANA TERRITORY

IN THE MATTER of application by an Applicant for orders in the estate of Montana and

AND IN THE MATTER of application for permits pursuant to Section 100 of the Criminal Code

WILLIAM B. BERRY, ST. GERMAIN

PERMISSIBILITY OF QUEEN AND

CHRY TAYLOR

PERMISSIBILITY OF THE QUEEN AND

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the Court at Helena, Montana, this 13th day of August, 1902.



WILLIAM B. BERRY, Clerk of the Court

**IN THE SUPREME COURT OF THE NORTHWEST
TERRITORIES**

**IN THE MATTER of applications by the Applicants
For Orders in the nature of Mandamus and
Certiorari in aid;**

**AND IN THE MATTER of applications for permits
pursuant to Section 110 of the Criminal Code;**

BETWEEN:

WARREN DELBERT ST. GERMAINE

Petitioner

- and -

**HER MAJESTY THE QUEEN AND
BRIAN G. WATT**

Respondents

AND BETWEEN:

BARRY TAYLOR

Petitioner

- and -

**HER MAJESTY THE QUEEN AND
JAMES C. HOWIE**

Respondents

**REASON FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE J.Z. VERTES**

