Date: 1999 02 18
Docket: CR 03580

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

JEFFREY ROSS PEYTON

Respondent

Appeal of Territorial Court ruling as to respondent's lawful entitlement to a firearm. Appeal allowed.

Heard at Iqaluit, NT, on February 9, 1999

Reasons filed: February 18, 1999

REASONS FOR JUDGMENT OF THE HONOURABLE J.Z. VERTES

Counsel for the Crown (Appellant): Jim Marshall

Counsel for the Respondent: Susan T. Cooper

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

JEFFREY ROSS PEYTON

Respondent

REASONS FOR JUDGMENT

[1] The Crown appeals a ruling by a Territorial Court Judge that the respondent is lawfully entitled to possession of a certain firearm. For the reasons that follow, I respectfully conclude that the judge erred in law and the decision must be reversed.

[2] The respondent is a gun collector. In February 1992, he purchased a Thompson, model M1A1, submachine gun. The firearm was one manufactured as a fully automatic weapon but converted to a semi-automatic one. On February 3, 1992, he registered the firearm as a restricted weapon within the scope of the *Criminal Code* as it existed then. On August 1, 1992, the legislation was amended. In December 1993, the Royal Canadian Mounted Police took possession of the firearm since they were concerned that it was not validly registered. The concern was that the weapon, by reason of the new legislation, was a prohibited weapon. The respondent then completed an application to register that firearm as a restricted weapon. He did not receive a new registration certificate.

[3] In early 1998 the respondent brought proceedings pursuant to s.102(3) of the Code for an order returning the firearm to him. At the hearing, the Crown argued that the

legislation enacted in 1992 required the respondent to re-register the firearm as a restricted weapon, or at least make an application to register, by October 1, 1992. His failure to do so meant that the firearm was no longer a registered restricted weapon. The result was, according to the Crown, that the firearm was now a prohibited weapon subject to forfeiture.

[4] The learned trial judge held in favour of the respondent. In doing so she held that:

(a) the legislation enacted on August 1, 1992, did not change the classification of semi-automatic weapons so if the firearm here was registered as a restricted weapon prior to that then it remained a restricted weapon;

(b) if Parliament had intended to require re-registration of these types of firearms, it would have said so in clear language; and,

(c) the respondent acted with due diligence to comply with the legislation.

[5] To analyze these conclusions, and the arguments advanced on this appeal, I must review in detail the admittedly complex scheme of firearms legislation in the *Criminal Code*. The issue before me is one of statutory interpretation. Was the learned trial judge correct in her interpretation of the relevant provisions?

[6] The proper approach to statutory interpretation, according to the Supreme Court of Canada judgment in *Re Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27, is based on two elements. The first is the methodology set forth in what Professor E.A. Driedger, in his *Construction of Statutes* (2nd ed., 1983), called the "modern principle" (at page 87):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

The second element is the general directive to regard every enactment as remedial and to provide a fair, large and liberal construction in order to ensure the attainment of the object of the enactment according to its true intent and meaning: as per s.12 of the *Interpretation Act*, R.S.C. 1985, c.I-21.

[7] Counsel on the appeal did an excellent job in taking me through the various permutations of the legislation. To understand the legislation before the trial judge requires an understanding of the evolution of that legislation. A thorough review of the

legislative history is provided in *R v. Barnes* (1996), 104 C.C.C.(3d) 374 (Ont.C.A.). As noted in that case, the history of the firearms legislation in the *Criminal Code* is indicative of a clear and continuing intention on the part of Parliament to impose ever-more restrictive safeguards on the use and possession of firearms, in particular automatic firearms, so as to protect the public. The restrictions on use and possession of firearms have been progressively increased while, at the same time, attempting to minimize interference with rights acquired by genuine gun collectors prior to the imposition of each additional restriction.

[8] The legislative history shows that, prior to 1968, automatic firearms were simply "firearms" subject to registration. The *Criminal Law Amendment Act* of 1968-69 introduced the distinction between "prohibited" weapons (which were banned completely) and "restricted" weapons (which had to be registered). Automatic firearms were restricted weapons. The *Criminal Law Amendment Act* of 1977 designated automatic firearms as prohibited weapons. However, if an automatic firearm was already registered as a restricted weapon and formed part of a *bona fide* gun collector's collection on the date that amendment came into force (January 1, 1978) then it was still a restricted weapon. This "grandfather" clause remained untouched until the recent amendments in Bill C-68 (the "*Firearms Act*") were proclaimed in force on December 1, 1998.

[9] The definition of "prohibited weapon" in the 1977 amendment resulted in a curious situation. That definition included any firearm, not subject to the "grandfather" clause noted above, that is "capable" of firing bullets in rapid succession during one pressure of the trigger. In *R v. Hasselwander* (1993), 81 C.C.C.(3d) 471 (S.C.C.), a majority of the Supreme Court held that the term "capable" was broad enough to capture converted semi-automatic firearms that could readily and quickly be reconverted to an automatic state. Therefore, a prohibited automatic weapon converted to a semi-automatic weapon still retained its status as a prohibited weapon if it can be easily reconverted to its original state. What this meant was that a genuine gun collector could still possess a semi-automatic firearm as a "restricted weapon" so long as the firearm could not be easily converted to an automatic firearm.

[10] In 1992, Bill C-17 (now S.C.1991, c.40) introduced further definitional amendments and restrictions. These were proclaimed in force on August 1, 1992, and were the provisions contained in the *Criminal Code* up until the amendments introduced by Bill C-68 came into force at the end of 1998.

[11] Under Bill C-17, the definition of "prohibited weapon" found in s.84(1) of the Code was amended to include:

> (c) any firearm, not being a restricted weapon described in paragraph (c) or (c.1) of the definition of that expression in this subsection, that is capable of, or assembled or designed and manufactured with the capability of, firing projectiles in rapid succession during one pressure of the trigger, whether or not it has been altered to fire only one projectile with one such pressure.

Thus, by this amendment, all automatic weapons, whether converted to a semi-automatic state or not, were prohibited unless they were restricted weapons within the meaning of paragraphs (c) or (c.1) of the definition of "restricted weapon". Those paragraphs provided that the definition of "restricted weapon" included:

> (c) any firearm that is designed, altered or intended to fire bullets in rapid succession during one pressure of the trigger and that, on January 1, 1978, was registered as a restricted weapon and formed part of a gun collection in Canada of a genuine gun collector,
>
> (c.1) any firearm that is assembled or designed and manufactured with the capability of firing projectiles in rapid succession with one pressure of the trigger, to the extent that
>
> > (i) the firearm is altered to fire only one projectile with one such pressure,
> >
> > (ii) on October 1, 1992, the firearm was registered as a restricted weapon, or an application for a registration certificate was made to a local registrar of firearms in respect of the firearm, and the firearm formed part of a gun collection in Canada of a genuine gun collector, and
> >
> > (iii) subsections 109(4.1) and (4.2) were complied with in respect of that firearm...

Paragraph (c) was the "grandfather" clause carried over from the 1977 amendment. Paragraph (c.1) was new. The respondent's firearm was thus captured by the new definition of prohibited weapon as well as the definition of restricted weapon (looking at only (c.1)(i) of the new definition). To fully be classed as a restricted weapon, the respondent's firearm also had to meet the elements set forth in (c.1)(ii) and (iii).

[12] Paragraph (c.1)(iii) referred to subsections 109(4.1) and (4.2) of the Code. These, along with a subsection (4.3), were also introduced by Bill C-17:

> (4.1) A registration certificate may only be issued in respect of a restricted weapon described in paragraph (c.1) of the definition "restricted weapon" in subsection 84(1) where a local registrar of firearms, in addition to the matters referred to in subsection (3),
>
> (a) indicates on the copy of the application that is sent to the Commissioner pursuant to subsection (5) that the restricted weapon will form part of a gun collection of the applicant who is a genuine gun collector whose collection includes one or more restricted weapons described in that paragraph; and
>
> (b) describes on the copy referred to in paragraph (a) all alterations that have been made to the restricted weapon to enable it to fire only one projectile with one pressure of the trigger.
>
> (4.2) Where the description of the alterations referred to in paragraph (4.1)(b) changes in respect of a restricted weapon, the restricted weapon registration certificate issued in respect of the weapon is automatically revoked and the holder of that certificate shall immediately apply for a new registration certificate in respect of the weapon.
>
> (4.3) Notwithstanding anything in this Act, no registration certificate may be issued in respect of a restricted weapon described in paragraph (c.1) of the definition "restricted weapon" in subsection 84(1) to a person who did not lawfully possess such a restricted weapon at the time of the coming into force of this subsection.

The requirements of subsection 109(4.1) clearly added new criteria for the issuance of a registration certificate for a restricted weapon caught by paragraph (c.1) of the definition. As noted in *Barnes* (at page 385):

> ...there can be no doubt that the 1992 amendments were intended to place further restrictions on the registration and possession of automatic firearms and no wider meaning should be attributed to the provisions exempting certain automatic weapons from the more stringent restrictions being imposed than is made absolutely necessary by the wording of the Act.

[13] The learned trial judge stated in her reasons as follows:

> By adding section 84(c) to the definition of prohibited weapons and (c.1) to the definitions of restricted weapons Parliament did widen the definitions of prohibited weapons to include semi-automatic guns not registered by October 1, 1992.

> Section 109(4.1) provides for the formal recording of alterations required on the semi-automatic weapons. This section addresses a legitimate concern to inspect weapons that are to be registered as semi-automatic guns to insure that they have been properly altered and to record those alterations. However, Mr. Peyton's gun was already registered as semi-automatic when purchased, only months before the new registration regime became law...
>
> The legislation does not change the classification of semi-automatic weapons. If they are registered they remain as they were before, restricted weapons. If they are not registered, they are prohibited weapons. The amended Firearm Regulation do not change the classification of semi-automatic weapons except that they require registration by particular date October 1, 1992.

[14] In my respectful opinion, the trial judge erred when she concluded that the legislation, meaning Bill C-17, did not change the classification of semi-automatic weapons. As I noted previously, because of the *Hasselwander* decision, some converted semi-automatic firearms were prohibited weapons. Others were restricted weapons. The distinction turned on how readily the firearm could be reconverted to its automatic state. But, pursuant to Bill C-17, all converted semi-automatic firearms were prohibited weapons. The exception (besides the ones subject to the "grandfather" clause) was a firearm that met the requirements of the new subsection (c.1) of s.84(1). Among those requirements were the additional criteria stipulated by the new subsection 109(4.1).

[15] Pursuant to s.109(4.1)(b), a registration certificate could only be issued lawfully if all of the alterations made to the firearm were indicated on the copy of the application for registration. Therefore, as Crown counsel put it in his written brief, if such information was not contained in an application for a registration certificate issued prior to August 1, 1992, that earlier registration certificate could not be regarded as valid for a (c.1) restricted firearm as the certificate was not issued in compliance with clause (iii) of subsection (c.1). A new application for registration, one that complied with subsection 109(4.1), was therefore required. It seems to me that this is the precise reason why subsection (c.1)(ii) provided for an October 1, 1992, deadline to register the weapon or at least apply for registration. Because previous certificates were not in compliance with s.109(4.1)(b), the holders of such firearms were given between August 1, 1992, the date the new legislation came in force, and October 1, 1992, to comply with the additional requirements imposed by Bill C-17.

[16] This compliance requirement is also implicit in s.109(4.2) which provides that, if the alterations specified on the application are changed, the certificate issued as a result

of that application is automatically revoked. This provision would be futile and meaningless if there was no requirement to file an application that specified the alterations. Such an application, however, was not required until Bill C-17 came into force.

[17] This interpretation is strengthened when one examines s.109(4.3). It says, in essence, that no registration certificate may be issued for a (c.1) restricted weapon to anyone who did not lawfully possess such weapon at the time Bill C-17 came into force (August 1, 1992). The only way for someone to lawfully possess a restricted weapon was by having it registered. Therefore, if a pre-Bill C-17 registration was still valid after August 1, 1992, subsection (4.3) would also be meaningless since it clearly contemplates the issuance of a registration certificate to one who already has a registration certificate. In my opinion this too leads to the conclusion that Bill C-17 required the re-registration of a (c.1) restricted firearm prior to October 1, 1992, notwithstanding that the firearm may have been registered prior to Bill C-17 coming into force.

[18] I think this interpretation accords with the statements of the federal Minister of Justice, as to the intended scope of paragraph (c.1) and the significance of the additional criteria of subsections 109(4.1) and (4.2), made before a legislative committee in 1991 (as quoted in *Barnes* at pages 387-388):

> Turning to converted fully automatic firearms, the legislative provision prohibiting converted fully automatic firearms is similar to the proposal contained in Bill C-80. All such guns became prohibited on a fixed date unless registered by a genuine gun collector. The registration process accomplishes three things. It ensures that the person registering the gun is in fact a genuine gun collector as required by the legislation. Inspection of the firearms ensures it has been properly converted, and a list of the actual conversion steps is recorded and kept so that the converted status can be checked later if the gun is transferred to another eligible owner.

[19] The conclusion that Bill C-17 required re-registration of converted semi-automatic firearms is one that was reached by another Territorial Court judge in *R v. Davies*, a decision rendered on March 3, 1995. The same issue came up in that case. The trial judge in the case before me did not refer to *Davies* in her judgment although it was referred to in argument before her.

[20] In *Davies*, His Honour Judge Bruser held that there was a requirement for re-registration. He also referred specifically to the registration deadline of October 1, 1992, contained in clause (ii) of subsection (c.1). He addressed the suggestion that the

reference to registration by that date could encompass registration prior to Bill C-17 coming into force:

> Paragraph (c.1)(ii), can only apply to registration under the new scheme. It does not include registration under the old scheme. Although the words "was registered" are used, they have to be read in context. The overall context of the new scheme is that the past tense covers the period from August 1, 1992, when the law came into effect to October 1, 1992. Had Parliament intended pre-August 1, 1992, registration to be included, Parliament would not have used the October 21, 1992, date as the reference date. August 1, 1992 would have been used. The purpose of the statutory scheme was to allow registration to take place from August 1, 1992, to October 1, 1992 and as extended by amnesty.

I respectfully adopt these comments.

[21] It seems clear to me that, having regard to the objective of Bill C-17, whereby all converted semi-automatic firearms were to be designated as prohibited weapons unless registered in accordance with the terms of subsection (c.1), the intent of Parliament was to require re-registration. The legal quality of these types of firearms was changed by Bill C-17. Therefore, it cannot be said that a prior registration must perforce continue to be valid.

[22] The learned trial judge also referred to the lack of clear language used by Parliament to express its intention as cause to find in favour of the respondent. The trial judge wrote:

> I agree with the conclusion set out in the case of *Regina v. Berkitt*, a decision of the Ontario Court (Provincial Division), The Honourable Judge D.G. Scott, March 25, 1996. If Parliament had intended to require the re-registration of converted semi-automatic weapons they could have done that using clear language. An example of clear language appears to be section 109(4.2). Even this section becomes less clear as there is no registration procedure after October 1992 to register newly altered semi-automatic weapons that have been previously registered.

The judge in the *Berkitt* case (referred to in this extract) described this legislation as "a monumental piece of obscurity".

[23] There is no question that criminal statutes must delineate understandable and ascertainable standards. It is a principle of fundamental justice (under s.7 of the *Charter of Rights and Freedoms*) that laws may not be too vague. So said the Supreme Court

of Canada in *R v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, and numerous other cases. One of the rationales for this doctrine of vagueness is "fair notice to the citizen", i.e., an understanding that certain conduct is the subject of legal restrictions. A law will be found to be unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate as to its meaning. The question is: Can the law be given a sensible meaning? This is necessarily a relatively high test.

[24] In my opinion, to say that this legislation could have been more clear or direct is not the test. Complexity of statutory interpretation or application is not the same thing as vagueness or uncertainty as to the intent of the statute. Here one is still able to reach a conclusion as to the statute's meaning by reasoned analysis and by applying legal criteria.

[25] This argument, however, also raises the principle of "strict construction" of penal statutes. This principle has been defined as meaning that where the import of some enactment is inconclusive or ambiguous, the court may then properly lean in favour of an interpretation that will avoid the penalty or leaves private rights undisturbed: see Driedger, *op.cit*., pages 204 and 207. Any uncertainty as to the meaning or scope of the law should be resolved in favour of the citizen. This principle of strict construction appears to conflict with the remedial interpretation required by s.12 of the *Interpretation Act*. This apparent conflict was discussed in the *Hasselwander* case where Cory J. wrote on behalf of the majority (at pages 477-478):

> The apparent conflict between a strict construction of a penal statute and the remedial interpretation required by s.12 of the *Interpretation Act* was resolved by according the rule of strict construction of penal statutes a subsidiary role. In *Belanger v. The Queen*, [1970] 2 C.C.C. 206, 10 D.L.R. (3d) 683, [1970] S.C.R. 567, Cartwright C.J.C. harmonized these opposing principles. In so doing he cited with approval the following words of Maxwell (*The Interpretation of Statutes*, 7th ed. (1929), p.244 at p.573:
>
> > Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself.
>
> . . .
>
> Thus, the rule of strict construction becomes applicable only when attempts at the neutral interpretation suggested by s.12 of the *Interpretation Act* still leave reasonable doubt as to the meaning or scope of the text of the statute. As Professor Côté has pointed out, this

> means that even with penal statutes, the real intention of the legislature must be sought, and the meaning compatible with its goals applied...

[26] In my opinion this is not a situation calling for the application of the rule of strict construction. The firearms provisions, while complex, are not obscure. Nor are they so ambiguous that one is incapable of giving them a sensible meaning. I have come to the conclusion that the intent of Parliament can be discerned and delineated without resort to this rule of construction. The requirement to re-register the firearm in question as a restricted weapon is, in my view, beyond doubt when the entire scheme of the legislation is examined.

[27] The final point made by the trial judge in her reasons was that the respondent did everything he could to comply with the legislation. I take this as a due diligence issue although I have doubt whether the concept can even apply to pure criminal law enactments. The short answer to this point is that the respondent did not do everything. He did not apply to re-register prior to October 1, 1992. His application for re-registration was not made until December of 1993. It is acknowledged that his application was on the wrong form but that is immaterial. It was too late to apply at all.

[28] I accept that the respondent was not personally aware of the need to re-register (although there was some evidence in the *Davies* case as to the widespread publicity given to the provisions of Bill C-17). I would have thought that a genuine gun collector would make it a point to keep abreast of legislative changes. In any event, the response to this is the common law rule, codified in s.19 of the *Criminal Code*, that ignorance of the law is no excuse. This rule applies equally to ignorance of the existence of the law and a mistake as to its meaning, scope or application: *Molis v. The Queen* (1980), 55 C.C.C.(2d) 558 (S.C.C.).

[29] Finally, the respondent's counsel made the argument that the firearm in question was not subject to the requirements of subsection (c.1) since that type of firearm was specifically designated as a restricted weapon pursuant to a Restricted Weapons Order issued in 1992. The definition of "restricted weapon" in s.84(1) includes:

> (d) a weapon of any kind, not being a prohibited weapon or a shotgun or rifle of a kind that, in the opinion of the Governor-in-Council, is reasonable for use in Canada for hunting or sporting purposes, that is declared by order of the Governor-in-Council to be a restricted weapon.

[30] Counsel's point was that if a firearm is declared to be a restricted weapon then it is one regardless of the requirements of subsection (c.1). In my view, however, subsection (d) quoted above is merely another of several definition elements. It is not an overriding element. The Restricted Weapons Order itself contains a qualification. It states:

> 3. The following firearms, other than those described in paragraph (c) of the definition "prohibited weapon" and paragraphs (c) and (c.1) of the definition "restricted weapon" in subsection 84(1) of the *Criminal Code*, are hereby declared to be restricted weapons...

The exclusion of those weapons caught by subsection (c) of the definition of prohibited weapons would exclude the respondent's firearm. It seems to me that these Orders are meant as a safety net to catch all these types of firearms, even ones that may slip through any legislative loopholes or those that are not otherwise categorized by the definitional elements in s.84(1) of the Code.

[31] The appeal is therefore allowed. The order made below is set aside. The firearm in question is hereby forfeited to the Crown.

J.Z. Vertes,
J.S.C.

Dated at Yellowknife, NT, this
18th day of February 1999

Counsel for the Crown (Appellant): Jim Marshall
Counsel for the Respondent: Susan T. Cooper

CR 03580

IN THE SUPREME COURT OF
THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

JEFFREY ROSS PEYTON

Respondent

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