

**CASE TYPE: PUBLIC LAW, ADMINISTRATIVE ORDER – JUDICIAL REVIEW
EASTERN CARIBBEAN SUPREME COURT**

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2016/0226

[1] WAYNE WARNER JAMES

Applicant

and

**[2] THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF DOMINICA**

[3] THE CHIEF OF POLICE

Respondents

Before: The Hon. Justice M E Birnie Stephenson

Appearances

Mr J Gildon Richards for the Applicant

Dr Eddie Ventose with Mrs Jo Anne Xavier Cuffy for the Respondents

2017: January 23
2018: July 31

RULING ON APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW

- [1] **Stephenson J.:** This is an application for leave to file Judicial Review. Judicial review may be defined as the jurisdiction of the superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers.

The Relevant Facts

- [2] The relevant facts of the case are as has been stated in the submissions filed on behalf of the intended respondents ('the respondents'). By letter dated the 23rd day of June 2016 the Chief of Police ('the COP'), revoked the intended applicant's ('the applicant') Firearm User Licence. The revocation was stated to have been made pursuant to section 13(1)(a)(iv) of the *Firearms Act*¹ ("**Firearms Act**"). By letter dated the 27th day of June 2016 the applicant wrote, through his attorney, alleging that the COP had unlawfully revoked his firearm user licence.
- [3] On the 25th day of July, 2016 the applicant filed an application for leave seeking Judicial Review of the decision to revoke his firearm user licence. In his application the applicant seeks an order of *certiorari* to remove into this Honourable Court and quash the said decision made by the COP.
- [4] In considering the procedural complaint made in this application for leave to apply for Judicial Review, the court is mindful of the fact that it is called upon not to review the merits of the COP's decision but rather to consider whether the applicant has made out a prima facie case that the procedure adopted by the COP was unfair, unreasonable or in violation of the principles of natural justice. The primary facts that are relevant to my consideration are therefore those that set out the series of events which culminated with the COP's decision under complaint.

¹ No. 3 of 2011 of the laws of Dominica

[5] Procedural fairness requires that the applicant be given a fair hearing, which will dictate that he should be informed of the allegations against him, be given an opportunity to meet the allegations, and if there is a hearing he should be informed of his right to be assisted by legal counsel. Mason J in the case of **Kioa v West**² said

"In this respect the expression 'procedural fairness' more aptly conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case. The statutory power must be exercised fairly, that is, in accordance with procedures that are fair to the individual considered in the light of the statutory requirements, the interests of the individual and the interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations ..."

[6] A person seeking judicial review must pursuant to part 56.3(1) of the Civil Procedure Rules, 2000 (CPR) first obtain leave to do so.

[7] The permission stage in Judicial Review Proceedings serves to filter out challenges which are unarguable, doomed to fail or subject to some legal or discretionary bar. Lord Bingham in **R v Secretary of State for Trade and Industry exp Eastaway** said "The requirement of permission to apply for judicial review is imposed primarily to protect public bodies against weak and vexatious claims."³

[8] The issues arising in this matter are those which arise generally in all applications for leave to file for judicial review and those substantive issues peculiar to this case.

[9] At the permission stage, the question of standing is merely a "threshold" question for the Court, designed to weed out frivolous and vexatious claims.⁴ The Court must be satisfied that there is an arguable ground for judicial review, with a realistic prospect of success.⁵

² (1985) 60 ALJR 113, 127:

³ [2000] 1WLR 2222, 2227H

⁴ R v Monopolies and Mergers Commission ex parte Argyll Group plc [1986] 1 WLR 763.

⁵ R v Secretary of State for the Home Department, ex p Cehblak [1991] 1 WLR 890 at 901C-D.

[10] There are certain public authorities that are clothed with discretion and it is expected that this discretion is exercised reasonably and in accordance with law. Where this does not happen one may well approach the Court to review the decision of that public authority as being an abuse of discretion.

[11] Lord Hailsham LC in **Chief Constable of North Wales Police v Evans**⁶ stated what has been described as the essential function of Judicial Review, he said:

“It is important to remember in every case that the purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the Authority constituted by law to decide the matter of question.”

[12] In Judicial Review proceedings the court can determine whether or not administrative decisions are unlawful and invalid. In so doing the court has a duty to ensure that administrative decisions are taken properly. It is noted however, that the court cannot determine whether decisions are right or wrong on their merits.

[13] Further, the court cannot require that a power be exercised in any particular way; it can only require that the discretion is exercised lawfully. The court in these proceedings is empowered to make declarations which indicate the rights of applicants. In the case at bar, the applicant has indicated his intention to seek certain declarations from the court.

The Application for leave – The Test

(a) Standing – Is the Applicant entitled to apply for Judicial Review

[14] Part 56.2 (1) and (2)(a) of CPR 2000 provides that

(1) “An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.

(2) This includes –

⁶ [1982] 1 WLR 1155

(a) any person who has been adversely affected by the decision which is the subject of the application;

...

[15] There is no dispute in the case at bar as to whether the applicant has sufficient interest in the subject matter of the application as he is a person who, based on the averments in his affidavit sworn in support, is directly affected by the decision of the COP not to renew his Firearm Licence.

[16] The applicant's case is that the said COP's decision was not compliant with section 13 of the Firearms Act⁷. The applicant submitted that the decision by the COP to revoke his firearms licence violated the provision of section 13 of the Firearms Act and the COP acted unlawfully and/or unfairly to his prejudice and detriment.

[17] It was contended by Learned Counsel Mr Gildon Richards on behalf of the applicant that the COP was required by law to first have a hearing with the applicant and to inform him of the reasons which must include reasons provided by section 13 of the Fire Arms Act which states:

"Subject to section 14, the appropriate authority may revoke a licence:

- (a) If the appropriate authority is satisfied that the holder:
 - (i) is prohibited from possessing a firearm or ammunition under section 15;
 - (ii) has intemperate habits or is of unsound mind;
 - (iii) is under the age of eighteen;
 - (iv) is for any reason considered unfit to be entrusted with a firearm;
- (b) the holder fails to comply with a notice under subsection 2;
- (c) if the holder is charged with or convicted of an offence in which the use of firearm or ammunition is an element of the offence;

⁷ No 3 of 2011 of the Laws of Dominica

- (d) if the holder has ceased to be a member of a shooting club where he was licenced for that purpose;
- (e) if the holder fails to comply with section 3 (Parts v, vi, vii or viii);
- (f) for non-payment of fees.”

[18]Mr Richards submitted that this is procedural and not substantive application. It was also submitted that the letter from the COP was void of the reasons as required by law and that in the circumstances of this case the applicant had to seek the court’s intervention dealing with this issue by way of Judicial Review.

[19]Mr Richards further submitted that the Applicant falls within the meaning of applicant as is stated in section 14 of the Firearms Act⁸ which states

“14. (1) An applicant aggrieved by a decision of the appropriate authority –

- (a) refusing to grant a licence;
- (b) refusing to amend any licence;
- (c) revoking any licence; or
- (d) refusing to grant any exemption pursuant to section 6;

who desires to question the validity of the refusal or revocation, on the ground that the refusal or revocation is not within the powers of the appropriate authority or that any requirement of this Act has not been complied with in relation to the refusal or revocation, may make an application to the High Court under this section in accordance with any rules of court for the time being in force.

(2) Where the aggrieved party is the holder of a licence and has in his possession the firearm or ammunition which is the subject matter of the appeal, he shall deposit the firearm or ammunition with the appropriate authority before making the application under subsection (1).

⁸ Act no. 3 of 2011 of the Laws of Dominica

(3) This section does not apply to a decision made by the appropriate authority under section 15.”

[20] Mr Richards submitted that this section of the Firearms Act enables the applicant who is an aggrieved licence holder to apply to the High Court under the rules for the time being.

[21] It is clear that the applicant has standing in that he is a person who falls squarely within the provision of the Part 56 (2) (a) of CPR and who is an applicant within the meaning of section 14 of the Firearms Act.

(b) Delay

[22] Delay is considered a discretionary bar to the granting of leave to apply for Judicial Review⁹.

[23] Part 56.5 CPR states

- (1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
- (2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to – (a) be detrimental to good administration; or (b) cause substantial hardship to or substantially prejudice the rights of any person.

[24] The issue of delay does not arise in this matter as the applicant averred that he was notified on the 25th June 2016 of the revocation of his firearms licence and he made his application for leave on the 18th July 2016. It is clear the application was a timely one.

⁹ Sharma –v- Antoine and others Op Cit

Alternative Remedy

[25]The question of whether there is an alternative remedy available to the applicant which will operate as a bar to the Application for leave was hotly contested by the parties in this case.

[26]The thrust of the respondents' opposition to the application before the court is that the applicant has an adequate alternative remedy available to him and that he is firstly required to state in his application whether or not he has an alternative remedy and whether he has pursued the said alternative and in the case at bar he has failed even to state in his application that an alternative form of redress exists and why judicial review is the more appropriate remedy to be pursued.

[27]Part 56.3 (3) of CPR 2000 "states that when a person is making their application for leave they are required to state among other things

... (e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;"

[28]It was submitted that section 14 of the Firearms Act¹⁰ makes provision for any person aggrieved by a decision of the appropriate authority by the revoking of his licence may make application to the High Court.

¹⁰ 14. (1) *An applicant aggrieved by a decision of the appropriate*

authority –

(a) refusing to grant a licence;

(b) refusing to amend any licence;

(c) revoking any licence; or

(d) refusing to grant any exemption pursuant to section 6;

[29] It was submitted on behalf of the respondents that one of the grounds being relied on by the applicant is that the COP exceeded his jurisdiction to revoke his firearm user licence the COP and that the COP violated the provisions of section 13(1)(a)(iv) of the *Firearms Act*, in that he gave no reason and or no valid reason for his said decision. That therefore in the circumstances of this case it is clear that the Applicant's claim falls within section 14 of the *Firearms Act* in that:

- (1) he is an applicant who is aggrieved by a decision of the appropriate authority in revoking his firearm user licence;
- (2) the Commissioner of Police is the appropriate authority (see section 2 of the *Firearms Act*);
- (3) he is an applicant who desires to question the validity of the refusal or revocation of his firearm user licence; and
- (4) he bases his claim, *inter alia*, on the ground that section 13(1)(a)(iv) of the *Firearms Act* has not been complied with in relation to the revocation.

[25] It was further submitted by Learned Counsel Dr Ventose on behalf of the respondent that the section stipulates that an applicant may make an application to the High Court under this section in accordance with any rules of court for the time being in force.

who desires to question the validity of the refusal or revocation, on the ground that the refusal or revocation is not within the powers of the appropriate authority or that any requirement of this Act has not been complied with in relation to the refusal or revocation, may make an application to the High Court under this section in accordance with any rules of court for the time being in force.

(2) *Where the aggrieved party is the holder of a licence and has in his possession the firearm or ammunition which is the subject matter of the appeal, he shall deposit the firearm or ammunition with the appropriate authority before making the application under subsection (1).*

(3) *This section does not apply to a decision made by the appropriate authority under section 15.*

[26] Learned Counsel opined that based on the marginal note to Section 14 of the Firearms Act which states “Appeals”, that there is provision for a limited appeal to the High Court, under applicable rules of court, that is available for any applicant who can satisfy the requirements of the section.

[27] Learned Counsel then drew the Court’s attention to Part 60 of CPR 2000 which deals with appeals to the High Court and which states

60.1 (1) This Part deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated.

[28] It was submitted on behalf of the respondent that CPR Part 60 (1) makes reference to enactments such as the Firearms Act at section 14 which is entitled “Appeals” in that a person aggrieved by a decision of the appropriate authority can appeal that decision under part 60 and pursuant to Section 14. It was further noted on behalf of the respondents that section 14 also enables the aggrieved person to make application to the High Court by way of Appeal to “question the *validity of the refusal or revocation*”, which means, that the High Court can decide on both the merits of the decision and the decision making process itself.

[30] It was submitted by the respondents that there is an alternative remedy available to the Applicant namely an appeal to the High Court by way of Case stated and therefore the Application for leave should not be granted.

[31] Further it was submitted, that the applicant has not provided the court with any evidence as to whether there are any exceptional circumstances existing that would warrant his approaching the court for leave to file Judicial Review. That therefore in the circumstances of this case there is an alternative form of redress available to the applicant and in the circumstances leave should not be granted.

[32] Learned counsel for the respondents submitted that the leave should only be granted to the Applicant if he can establish that there are exceptional circumstances

[33] The respondents submitted the following cases and urged the court not to grant leave to the applicant on the ground that there is an adequate alternative remedy available to the applicant and that where this is such an alternative the general rule is that leave to apply for Judicial Review will be refused.

[34] It was acknowledged that this was not an absolute rule and that in the face of exceptional circumstances, leave can be granted to apply for judicial review even when there are alternative remedies available to the applicant. Learned Counsel submitted the following cases in support of his argument:

- i. In **Leech v. Deputy Governor of Parkhurst Prison** ¹¹ where the House of Lords stated that “*the existence of an alternative remedy has never been sufficient to oust the jurisdiction in judicial review*” and the inadequacy, and the consequences, of a decision by the SOS which meant that the finding of guilt remained on the prisoners record was held to be exceptional circumstances warranting the grant of leave to apply for judicial review.
- ii. In **R v Chief Constable of the Merseyside Police, ex parte Calveley** ¹². The court exercised its discretion to grant judicial review. In this case, the exceptional circumstance was the substantial delay that prejudiced the appellants at the hearing and the failure to give notice to the officers was a serious breach of disciplinary procedure.

It was pointed out to the court by Learned Counsel that the Court considered **R v Epping & Harlow General Commissioners, ex parte Goldstraw** [1983] 3 All ER 257 where it was stated

¹¹ [1988] AC 533

¹² [1986] 1 All ER 257

“it is a cardinal principle that, save in the most exceptional circumstances, [the judicial review] jurisdiction will not be exercised where other remedies are available and have not been used”, stated that that statement “does not support the proposition that judicial review is not available where there is an alternative remedy by way of appeal. It simply asserts that the court, in the exercise of its discretion, will very rarely make this remedy available in these circumstances”. This of course does not alter the principle that the court would only in exceptional circumstances allow a matter to proceed to judicial review where an alternative remedy exists.”

- iii. In ***Ex Parte Calveley***,¹³ Sir John Donaldson MR noted that the appeals process was not as speedy, and it was not certain that, a judicial review application had been made, the appeal would not have been determined long before the time of hearing the judicial review application. Leave may be granted within days, together with interim relief if appropriate. In cases where there is an urgent need to resolve an issue, judicial review will therefore be more appropriate than an appeal if the appellate mechanism is likely to take longer.

(In this case, the exceptional circumstance was the substantial delay that prejudiced the appellants at the hearing and the failure to give notice to the officers was a serious breach of disciplinary procedure.)

- iv. ***Pyx Granite Co Ltd v Ministry of Housing and Local Government***¹⁴, In this case Pyx Granite had the right to quarry in two areas of the Malvern Hills. The company required permission to break fresh surface on one of the sites. The respondents argued that the court had no jurisdiction to hear the matter since section 15 of the Town and Country Planning Act 1947 provided that the decision of the Minister on an application to determine whether permission was required was final. Further, the only method of determining that question was via section 17(1) which provided that

¹³

¹⁴ [1960] AC 260

a person “may ... apply” to the local authority to determine it. The House of Lords held that nothing in section 17 excluded the jurisdiction of the court to grant declarations; section 17 merely provided an alternative method of having the question determined by the minister.

That the existence of a procedure (alternative remedy) which made any such determination final, thereby excluding the jurisdiction of the court.

[35]As it regards the **Leech Case** it was submitted by Learned Counsel Dr Ventose on behalf of the respondents, that in the case at bar the situation that existed in that case is not the same here because the High Court will be considering the appeal by way of rehearing.

[36]Similarly in the ***Constable of the Merseyside Police*** Case, the circumstances of that case was not the case as in the case under consideration as both an appeal under Part 60 and judicial review are by fixed date claim form and Part 27.2(1) prescribes: *27.2 (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.* That in the instance case, the jurisdiction of the Court is preserved in section 14 because the appeal is not to a minister, administrative body, or tribunal but to a judge of the High Court.

[37]Unlike in the **PYX Granite Case** it was submitted that in the instance case, the jurisdiction of the Court is preserved in section 14 because the appeal is not to a minister, administrative body, or tribunal but to a judge of the High Court.

[38]The respondent made the following submissions regarding intended applicant’s claims as to the existence of exceptional circumstances of his case, that there were:

- a. *issues of excess of jurisdiction, abuse of power, breach of natural justice which the Respondents contend that these are matters which are covered by section 14 of the Firearms Act;*

- b. *no reasons given by the COP for his decision it was contended by the Respondents that there is no duty at common law to provide reasons for decisions; and*
- c. *negative implications for his reputation it was submitted that this is not a ground of judicial review;*

[39] That the issue of Burglary was not related to the revocation of licence and the issue of Damages and Mandamus – both can be awarded under Part 60. Further that both the Appeal and the Judicial Review would have been heard in the same High Court which makes the case even stronger that judicial review should not be allowed because the appeal is by a judge not an officer, minister or tribunal.

The Applicant's response to the Respondents objections

[40] On the issue on the availability of an alternative remedy the applicant urged the court to reject the respondent's contention that leave should not be granted on that ground that the applicant has an alternative remedy as provided for by Section 14 of the Firearms Act.

[41] It is the applicant's submission that the respondents have failed to consider the entire circumstances of the case at bar. It was contended by Learned Counsel Mr Gildon Richards that *"notwithstanding the "appeal" appearing in the margin of the section the substance of the section clearly supports the approach employed by the Applicant"*.¹⁵ It was further submitted that the application for judicial review is not divergent from the process provided for in Section 14.

[42] Learned Counsel Mr Richards submitted that the respondents were erroneously construing section 14 of the Firearms Act in a limited way. Mr Richards also submitted that section 14(1) of the Firearms act speaks to an aggrieved person making an application in accordance with any rule of court which impliedly acknowledges the

¹⁵ Paragraph 6 of the submissions in reply filed by the Applicant pursuant to Order of Court dated 2nd September 2016

applicant's option to come by way of judicial review. Learned Counsel urged the court to give section 14 (1) in its ordinary plain meaning and effect and that he submitted that the "rules of the Court for the time being in force" speaks to Part 56 of CPR which are the rules that govern Judicial Review.

[43] It was also submitted on behalf of the applicant that subsection 14(1) only makes available to the applicant a basis for seeking a remedy and that this construction is supported by the dicta of Lord Simonds in the **Pyx Granite Case**¹⁶

*"The question is whether the statutory remedy is the only remedy and the right of the subject to have recourse to the courts of law is excluded. Obviously it cannot altogether be excluded; ... It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words. That is, ... a "fundamental rule" from which I would not for my part sanction any departure. It must be asked, then, what is there in the Act of 1947 which bars such recourse. The answer is that there is nothing except the fact that the Act provides him with another remedy. Is it, then, an alternative or an exclusive remedy? There is nothing in the Act to suggest that, while a new remedy, perhaps cheap and expeditious, is given, the old and, as we like to call it, the inalienable remedy of Her Majesty's subjects to seek redress in her courts is taken away."*¹⁷

[44] Learned Counsel went on to submit that the principle enunciated by Lord Simonds is applicable to the case at bar. It was submitted that it is significant to note that it would be unrealistic for parties to expect the same court which considered the appeal to afterwards consider an application for Judicial Review which would be an appeal of that decision.

¹⁶ PYX Granite Co. Ltd. –v- Ministry of Housing and Local Government [1960] AC 260

¹⁷ Ibid at page 286

[45] It was also submitted on behalf of the applicant that the Firearms Act states that any application to be considered must be determined by “any” rule over which the High Court has jurisdiction, therefore the existence of other rules is not an absolute bar to the applicant to proceed by judicial review in the circumstances. It was also noted by Mr Richards that the language of Section 14(1) is not mandatory.

[46] Further, that application to the High Court to challenge decisions such as is being made in the case at bar is usually by way of judicial review and administrative actions and the relief which the applicant is seeking includes declarations, mandamus and damages which are not available to him by way of appeal.

[47] Learned Counsel urged the court to construe the word “appeal” as appears in the marginal note to mean application within the context of section 14(1) of the Firearms Act, that is that application could be made by the way of Application for judicial review or by way of appeal. Learned Counsel relied on the case of **R –v- Inland Revenue Commissioners, ex p Preston**¹⁸ where it held that in appropriate circumstances even where there are elaborate statutory appeal procedures Judicial Review may be pursued.

[48] It is the applicant’s case that the section 14(1) of the Firearms Act provides him with an option to approach the court by way of application either by way of judicial review or by appeal.

[49] The applicant contends that there are exceptional circumstances attendant to his case making it more appropriate for him to make application for judicial review. The applicant submitted that the circumstances in his case which amount to exceptional circumstances are as follows:

- I. The manifest excess of jurisdiction, abuse of power and injury by the COP when he refused to provide reasons in spite of the request so to do from the applicant;
- II. the breach of natural justice;

¹⁸ [1985] AC 835

- III. the exceptional negative implications of the decision of the applicant's reputation which amongst other things convey the impression that the applicant is guilty of criminal misconduct and that he could not be entrusted with a licence to keep a firearm;
 - IV. the burglary at his home only after one day that his licence was revoked and his firearm seized;
 - V. the applicant's claim for damages and mandamus which will not be available in the appeal process;
 - VI. that both the appellate jurisdiction and the judicial review jurisdiction are vested in the High Court.
- [51] That in all the circumstances of the case leave should be granted to the Applicant Leave to file Judicial Review Proceedings.

Courts Considerations

[50] The essence of this application can be briefly stated. Whether or not the applicant can be given leave to apply for Judicial Review of the COP's decision when the Firearms Act makes provision for appeal.

The test for the grant of leave to apply for Judicial Review

[51] In order to obtain leave to apply for judicial review, an applicant has to show that he had an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. **Sharma v Browne-Antoine**¹⁹. It is important for the applicant to show that he has a case that is not frivolous.

¹⁹ (2006) 69 WIR 379 at 387-388.

[52]The grant of leave is a matter within the discretion of the Court. The Court when considering a leave application must take into account any alternative remedy that may be available to the applicant as where there is an alternative remedy and it has not been exhausted Judicial Review will not normally be available, put in other words leave will not be granted where there is a suitable alternative remedy unless there are exceptional circumstances existing

[53]An applicant for judicial review must satisfy the Court about the availability or non-availability of any alternative form of redress. If an alternative form of redress exists, the applicant must indicate why judicial review is the more appropriate remedy and why the alternative has not been pursued. The Court has a broad discretion as to whether or not to grant leave to apply for judicial review this gives it some flexibility in matters such as these.

[54]The issue arising in the application before the Court is whether or not section 14(1) of the Firearms Act provides the applicant with an alternative form of redress excluding an application for judicial review. The applicant says not whilst the Respondent says yes.

[55]It is the applicant's case that the word "appeal" as appears in the marginal note of the Firearms Act is to be construed to mean application where as it is the respondents case that this section as is stated in the marginal note provides an avenue for appeal for the applicant which is an alternative remedy available to him and in that the applicant has failed to address this in his application for leave and in the circumstances ought not to be granted leave.

[56]The Interpretation and General Clauses Act²⁰ states

"Marginal notes and heading in a written law and citations references to other written laws in the margin or at the foot of the page of a written law form part of

²⁰ Section 20(2) of chapter 3:01 of the Laws of the Commonwealth of Dominica

such written law from no part of such written law but shall be deemed to have been inserted for convenience of reference only.”

[57]It is therefore clear that the marginal note is to be of used as a reference. The word appeal means a legal proceeding by which a case is brought before a higher court for review of the decision of a lower court.²¹ The word application means a process whereby a person seeks an order of court.

[58]In the case at bar, the applicant is dissatisfied by the decision of the COP and seeks leave to have this court review same.

[59]It is the applicant's case that there are exceptional circumstances which exist which would warrant the Court granting to him Leave to pursue Judicial Review.

[60]At this preliminary stage the Court is not required to look in depth at the substantive issues involved in the proposed judicial review claim. The Firearms Act under which the COP derives his authority to grant, refuse or revoke a firearms licence makes provision for appeals when one is aggrieved by his decision. Section 14 of the Firearms act makes provision for same.

[61]The issue to be resolved is whether or not there is an adequate alternative remedy provided solely for the applicant to pursue provided for in the Firearms Act. If this is so whether the applicant's failure to pursue same is fatal to his application for leave to file judicial review.

²¹ Merriam Webster Dictionary

[62]If this is so there ends the matter. If not, then this court will proceed to apply the balance of the test as laid down in the **Sharma** case to see whether or not leave should be granted to the applicant as sought. That is whether there “*is an arguable ground for judicial review having a reasonable prospect of success*”... .

[63]It is well established law that judicial review is a remedy of last resort and leave to pursue a prerogative writ will not be granted where an alternative remedy is available to the applicant.

Alternative Remedy

[64]The Court will not normally grant leave to file for Judicial Review where there is an alternative remedy available to the applicant unless there are exceptional circumstances justifying the claim proceeding. **Re: R-v-Epping and Harlow General Commissioners, EX p Goldstraw**²².

[65]Where there is a possible alternative remedy the Court will look all the relevant circumstances of the case, the adequacy of the alternative remedy, the availability of the alternative remedy and the adequacy of the procedure by which the alternative remedy is obtained.

[66]In **R v Chief Constable of the Merseyside Police, ex p Calveley**²³, Sir John Donaldson MR in commenting on the inter-relationship between remedies by way of judicial review on the one hand and appeal procedure said that “*judicial review is 'very rarely' available when there is an alternative remedy by way of appeal*”²⁴ and May LJ in the same case said that “‘the normal rule' in cases such as this is that an applicant for judicial review should first exhaust whatever other rights he has by way of appeal”²⁵

²² [1983] 3 All E R 257 CA 262 per Sir John Donaldson MR

²³ [1986] QB 424

²⁴ Ibid at 433

²⁵ Ibid at 435

[67] In **R v IRC, ex p Opman International UK** ²⁶ Woolf J said

“The fact that there is an alternative procedure available in revenue matters does not mean that an application for judicial review should never be made; however, particularly in such matters, applicants’ should bear in mind that ‘an application for judicial review is the procedure, so to speak, of last resort. It is a residual procedure which is available in those cases where the alternative procedure does not satisfactorily achieve a just resolution of the applicant’s claim’.

[68] Is the appeal as provided for by the Firearms act and adequate alternative remedy available to the Applicant? What remedy will be achieved if the applicant were to comply and appeal the COP’s decision? In **R(Humber Oil Terminal Trustees Ltd) –v- Marine Management Organisation**²⁷ King J stated

“For relief to be denied on this basis it has to be demonstrated that there is or was some other remedy or route of redress available to the Claimant to challenge the decision under challenge as for example where there is or was some statutory right of appeal against the decision, or an order made under the decision, which was suitable to determine the real issue to be determined between the parties, ie in this case as between the Claimant and the Defendant (not as between the Claimant and ABP)”²⁸.

In the case of **R v Birmingham City Council, ex parte Ferrero Ltd** ²⁹ it was held that

“Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure it was only exceptionally that judicial review would be granted. In determining whether an exception should be made and judicial

²⁶ [1986] 1 All ER 328 at 330, [1986] 1 WLR 568 at 571,

²⁷ [2012] EWHC 3058 (QB)

²⁸ Ibid para 118

²⁹ [1993] 1 All ER 530,

review granted it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and to ask itself what, in the context of the statutory provisions, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it...

[69] Mr Gildon Richards learned Counsel for the applicant submitted that the present case is a case in which the Appeal Process would not avail his client of the relief he is pursuing to wit declarations, mandamus and damages. That this relief is available to him only by way of judicial review and not in the appeal process.

[70] It is extremely unlikely that leave to apply for Judicial Review will be granted where there is a statutory right of appeal against the impugned decision unless there are wholly exceptional circumstances. **Re: R-v- Falmouth and truro Port Health Authority, ex p South West Water Ltd**³⁰

[71]The question to be asked is what; in the context of the provisions of the Firearms Act is the real issue to be determined and whether the appeal as provided by this section was suitable to determine it. The real issue is whether or not the COP was right to revoke the appellant's firearm licence. I am of the considered view that section 14 is geared to deal with this issue.

[72]It is to be noted that Judicial Review does not review the merits of the decision in respect of which the application for judicial review is made, its purpose is to ensure that the bodies exercising public functions observe the substantive principles of public law and that the decision-making process itself is lawful. In Chief **Constable of the North Wales Police v Evans**³¹ Lord Brightman succinctly stated that '*Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision*

³⁰ [2001] QB 445

³¹ 1982] 3 All ER 141 at 154, [1982] 1 WLR 1155 at 1173, HL,

was made' ³² Judicial Review is thus different from an ordinary appeal, where the concern is the merits of the decision.

[73] In **Re Amin** ³³ Lord Fraser of Tullybelton observed that:

'Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made . . . Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer'.

[74] Another question to be considered by the Court is whether or not under the statutory procedure the applicant would be able to ventilate the arguments he seeks to rely. I am of the considered view that he could. Further, would the statutory procedure be quicker or slower than the proposed procedure of Judicial Review? In the case at bar the statutory procedure available to the applicant is application to the High Court. Section 14. of the Firearms Act provides

(1) An applicant aggrieved by a decision of the appropriate authority –

... (c) revoking any licence; or

who desires to question the validity of the refusal or revocation, on the ground that the refusal or revocation is not within the powers of the appropriate authority or that any requirement of this Act has not been complied with in relation to the refusal or revocation, may make an application to the High Court under this section in accordance with any rules of court for the time being in force.

This section is referred to in the marginal note as appeals.

³² Ibid at 155 and 1174

³³ [1983] 2 AC 818 at 829, [1983] 2 All ER 864 at 868, HL,

[75]Part 60 of CPR 2000 makes provision for such an appeal. It was submitted on behalf of the respondents that section 14 of the Firearms act allows for the Court to decide on both the merits of the decision and the decision-making process itself.

[76] Learned Counsel Mr Gildon Richards submitted that there is an alternative remedy available to the applicant, however, based on proper construction of the Firearms Act to appeal is an option available to his client. Further, that the application for leave to file Judicial Review is not “*Injuriously divergent*”³⁴. It was further submitted that notwithstanding the word appeal in the marginal note of the Act, the substance of the section supports the application begin made by his client.

[77]Learned Counsel further submitted that the wording of the section leaves it open to an aggrieved person to proceed by way of judicial review. Further that the process of Judicial review is well within the terms of section 14 of the Firearms Act and does not detract from the basic purpose that the subsection only makes available to the applicant a basis for seeking judicial review. Counsel relied on the dictum of Viscount Simmons in the **Pyx Granite Co. Ltd –v- Ministry of Housing & Local Government et al**³⁵ when he said “*It is not a principal not by any means to be whittled down ... that the subjects recourse to her Majesty’s courts for determination of his rights is not to be excluded except by clear words ... a fundamental rule from which I would not for my part sanction any departure.*”³⁶

[78] Learned Counsel submitted that section 14 of the Firearms Act does not oust the jurisdiction of the High Court from hearing Judicial Review applications.

Exceptional Circumstances

³⁴ See Paragraph 15 of the applicant’s Amended Submissions in support

³⁵ [1960] AC 260

³⁶ Ibid Page 263

[79] It was submitted to this court by Mr Richards that there are exceptional circumstances warranting the applicant approaching the court for Judicial Review to wit:

- a. the manifest excess of jurisdiction, the abuse of power and injury by the Chief of Police, which he refused to cure, even at the request of the applicant to do so;
- b. the breach of natural justice;
- c. the absence of any lawful reason/s for the decision and the refusal by the Chief of Police to provide reason/s when requested to do so by the applicant;
- d. the exceptional negative implications of the decision on the applicant's reputation which, amongst other things, convey the impression that the applicant is guilty of criminal misconduct and that he could not be entrusted with a licence to keep a firearm;
- e. the burglary at the applicant's home only one day after the licence was revoked and his firearm was seized;
- f. the fact that the applicant seeks to claim damages and mandamus, which will not be available by the appeal process;
- g. both the appellate jurisdiction and the judicial review jurisdiction are vested in the High Court. Both are proceeded with by way of fixed date claim. The Courts have found exceptional, even much narrower breadths of circumstances, especially where they included excess of jurisdiction and or error of law.

[80] That when one considers all the circumstances of the case, leave should be granted to the applicant Leave to file Judicial Review Proceedings.

[81] Learned Counsel relied on the decision in **R-v- Chief Constable of the Mersey Police, ex parte Calveley and others**³⁷. In that case police officers sought and obtained judicial review of a disciplinary decision without first exhausting the internal statutory appeal procedures. By their delay to inform the officers of the nature of the complaint made against them, the investigators had breached a regulation which required that the

³⁷ [1986] 1 ALL E R 257

officers should have been informed within a shorter specified time. It was held that in [those] exceptional circumstances the court could in its discretion grant judicial review of disciplinary proceedings to an applicant who had not exhausted or pursued his alternative rights of appeal against the decision of the disciplinary body.

[82]It was submitted by Mr Richards that the decision of the court in that case made it clear that judicial review may be pursued instead of the statutory appeal where the decision was made without jurisdiction and where there was an error of law. Further, Counsel submitted, the applicant's case is based on a case for abuse of power by the COP that he acted in excess of his jurisdiction which included a patent error of law and breach of natural justice. Learned Counsel also submitted that there are also negative implications and the effect of the challenged decision on his client's reputation and property which all constitute exceptional circumstances.

[83]The applicant also contended that the failure and or refusal of the COP to give reasons for his decision gave rise to the implications that he committed or was likely to commit a criminal wrongdoing. Further that in revoking his firearm licence the COP took possession of the Applicant's firearm which he would have otherwise have had in his possession for his personal security and other lawful use.

[84]Learned Counsel also submitted that to proceed by way of appeal as provided for in the Act would mean appealing to the High Court and if the applicant sought to apply for judicial review of the High Court's decision he does not expect the same court which determines his appeal to afterwards grant him leave to pursue judicial review to obtain remedies which are not possibly by his exercise of the option to appeal. This would open the door for an allegation of abuse of process to be leveled against the applicant and in the circumstances to pursue the appellate option would effectively bar the option of judicial review for the applicant.

[85]It was finally submitted on behalf of the applicant that the remedies that he is seeking will not be adequately resolved by the appeal process and the circumstances attendant to the facts of his case are exceptional and sufficiently justify his application for judicial review.

Disposition

[86]At the heart of the applicant's complaint against the COP's decision is his failure to give reasons despite of the request for same. In **Civil Service Appeal Board ex parte Cunningham**³⁸ it was held that notwithstanding the fact that there is no statutory duty to give reasons, the common law may none the less impose a duty to give reasons. Lord Mustill in **R –v- Secretary of State for the Home Department Exp. Dooly**³⁹ said that *“the imposition of such a duty is an aspect of the duty to act fairly”*. It has been stated in decided cases that fairness will often require that an individual who is affected by a decision has an opportunity not only to make representations before the decision is taken but also to take steps after it was taken with a view to procuring its revision or challenging it. Steps cannot be taken in a meaningful manner unless the person knows the reason for the decision in question. Fairness may require that the person is informed of the reasons for the decision⁴⁰.

[87]It is noted that the absence of reasons cannot be assumed to be necessarily arbitrary or irrational or necessarily a breach of natural justice and fairness. Where a person is clothed with a right to exercise his discretion it cannot be exercised arbitrarily without regard to Natural justice. (**Re: Chief Constable of North Wales Police –v- Evans**⁴¹)

³⁸ [1991] 4 All E R 310

³⁹ [1994] AC 531 at 560

⁴⁰ R –v- Civil Service Appeal Board Exparte Cunningham [1994] 4 ALL E R 310 & R-v- Secretary of State for the Home Department Exp. Dooly [1994] AC 531

⁴¹ [1982]1WLR1155

[88] There is a duty to act fairly and in accordance with the highest public standards. In the case at bar the applicant seeks to challenge the decision of the COP to revoke his Firearm Licence. The applicant's case is that in making his decision the COP departed from a procedure as a matter of fairness which he should have observed. Clearly this seems to me to be a cause of action, to apply for judicial review and in the circumstances of this case appeal may not be the way to go.

[89] I would agree with Learned Counsel Mr Richards that there are unusual circumstances in this case warranting the granting of leave even though there is the option of appealing the COP's decision those circumstances being:

- I. the alleged breach of natural justice;
- II. the perceived negative implications of the decision of the applicant's reputation which amongst other things convey the impression that the applicant is guilty of criminal misconduct and that he could not be entrusted with a licence to keep a firearm;
- III. the applicant's claim for damages and mandamus which will not be available in the appeal process;

[89] I am satisfied that the Applicant has grounds for a judicial review claim that have reasonable prospects of success. Accordingly, the application for leave is granted.

[90] Pursuant to Part 56.13(6) of CPR 2000 I make no order as to costs.

[91] The Court's order is therefore that:

- 1 Leave is granted to the applicant to seek judicial review.
- 2 The application making a claim for judicial review must be filed within fourteen (14) days of today.
- 3 No order as to costs.

[92] As a post script this decision was essentially completed to be delivered in January 2018 but due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, there was a delay in delivering this ruling and the Court apologises for this and for any errors which may appear herein.

[93] I wish to thank Counsel for their assistance rendered to the Court in this matter and to apologise for the length of time that it has taken me to render my decision. However Counsel is well aware of the constraints experienced by the Court.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar