

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA No 11 of 2011

G301/2011

BEFORE

**Rt Hon Sir John Chadwick, President
Hon Elliott Mottley, Justice of Appeal
Rt Hon Sir Anthony Campbell, Justice of Appeal**

ON APPEAL FROM THE GRAND COURT

BETWEEN

DENNIE WARREN Jnr

Applicant

and

THE COMMISSIONER OF POLICE

Respondent

Hearing: 15 November 2011

REASONS FOR JUDGMENT

Sir John Chadwick, President:

1. Section 15(1) in Part 4 of the Firearms Law (2008 Revision) provides that, subject to subsection (2), no person shall be in possession of any firearm, except under and in accordance with the terms of a Firearm User's (Restricted) Licence. Subsection (2) sets out a number of circumstances in which subsection (1) shall not apply, none of which are relevant to the present application. Section 19, in Part 5 of the Law provides that, subject to section 17 and the other provisions in Part 5, "the appropriate authority" may grant the licences or permits there described. Those include, at sub-paragraph (e), "a Firearm User's (Restricted) Licence authorising the holder thereof, subject to the provisions of

section 17 and such restrictions as the appropriate authority may impose, to be in possession of a firearm specified in such licence”. Section 17 is not material in the present case.

2. Subsection (1) of section 21 of the Law provides that, subject to section 20, subsections (2), (3), (4) and (5) of section 21 and section 29, the grant of any licence or permit shall be in the absolute discretion of the appropriate authority. Section 20 sets out the matters which shall be included in any application for a licence or permit. Those include the requirement that the application shall be in the prescribed form; shall contain the prescribed particulars; and shall be accompanied by the prescribed application fee. Subsection (2) of section 21 prohibits the grant of a licence or permit to a person who is of intemperate habit, liable to fits of uncontrollable temper, notoriously careless in the use of firearms or of unsound mind or who is for any reason unfitted to be entrusted to be with a firearm. Subsection (3) prohibits the grant of a licence or permit in relation to a prohibited firearm or a restricted person. Neither of those subsections is applicable in the present case.
3. “The appropriate authority” in Grand Cayman for the purposes of sections 19 and 21, in the case of a Firearm User's (Restricted) Licence, is the Commissioner of Police.
4. Section 29, to which subsection 21(1) is made subject, confers on an aggrieved party the right to appeal to the Governor against a decision of the appropriate authority refusing to grant a licence or permit; and prescribes the time within which such an appeal shall be brought.
5. The provisions to which I have referred – and, in particular, section 20 of the Law - refer to matters which may be prescribed. Section 43 of the Law empowers the Governor to make regulations “for the better carrying out of this Law and in particular, but without prejudice to the generality of the foregoing, for prescribing anything required or permitted by this Law to be prescribed”. Regulations under that section were made on 8 June 1999, replacing an earlier version.
6. Those regulations are found in the Firearms Regulations (1999 Revision). As might be

expected, those regulations provide that they apply to applications for, amongst other things, a Firearm User's (Restricted) Licence; and they require that applications for licences or permits to which they do apply shall be in the form specified in the first schedule, shall contain the particulars therein specified and shall be accompanied by a fee.

7. The regulations impose a restriction which is not found in the Law itself. Regulation 6 requires that no person shall be issued with a Firearm User's (Restricted) Licence unless, in the case of a shotgun, air pistol, air gun or air rifle he has attained the age of 18 years of age, or, in the case of all other types of firearms he has attained the age of 21 years.
8. Regulation 7 prescribes the fee to be paid on making an application. The forms to be used for making an application appear in the schedule to the regulations. Form A is the form to be used for application for a licence or permit for a new or additional firearm. It includes a requirement to state whether the applicant has a secure place in his dwelling in which to keep the firearm. By contrast, application form F, which is to be used for an application to renew a firearm user's licence, simply requires the applicant to state the number of his existing firearm user's licence and the day on which it will expire.
9. The applicant, Mr. Dennie Warren Jnr., has been the holder of a Firearm User's (Restricted) Licence for a number of years; since, I think, 1993 or thereabouts. A Firearm User's (Restricted) Licence expires on 1 January in the third year after the year in which it is granted (save that, where a licence is granted in December, the period of three years runs from 1 January in the following year): section 26(1) of the Law. The effect of that provision is that the various licences which have been held by Mr Warren over the years have been limited to three years' in duration; and the most recent licence, issued on 2 May 2008 in respect of a Winchester shotgun, expired on 1 January 2011.
10. It was in those circumstances that, on 26 January, 2011, Mr. Warren, applied to the Commissioner of Police to have his Firearm User's licence renewed. His application was made on the form prescribed as "Form F" in the Firearms Regulations 1999. Indeed, in order to do so, it seems that Mr Warren needed to reconstruct the original

Form F in the schedule to the regulations because the form that had been posted on the Royal Cayman Islands Police Service website (and so available to be downloaded) was an amended version of the original Form F.

11. On 14 April, 2011, the Commissioner of Police wrote to Mr. Warren. He drew his attention to sections 19(e) and 20 of the Firearms Law; which, as he said, conferred on the Commissioner of Police the authority to impose restrictions on any Firearm User's (Restricted) Licence which the authority might grant. He went on to say this:

“You are aware of the requirement to permit the inspection of your safe in order to ensure you are behaving responsibly and securing your weapons appropriately. Having been subject of a prior inspection of that safe, it remains a requirement at my direction that all applications for, and renewals of, firearm's licences are reviewed and examined to ensure the required criteria remain in place and are current. To that end I require that you permit the firearms' safe to be examined as part of your firearm's renewal application. I require that you permit that inspection to occur within three days of the receipt of this letter. Refusal to agree to that requirement will result in my exercising my discretion to not review your current renewal permit, and also to review your suitability to retain any other firearms' licences currently held.”

12. The requirement to which reference is made in that letter had found expression in a document which seems to have been issued (whether or not to the public) some time after 1 March 2009. That document is headed “Royal Cayman Islands Police Service Firearm's Licence Policy for the Cayman Islands”. The introduction states that the RCIPS will recognise a person's right to hold licensed firearms to use for hunting and to compete in sporting events and will ensure that the Firearms Law - both present and future - is complied with. It also emphasises that the RCIPS will continue to manage, inspect and ensure that all licensed firearms are kept in a safe and secure manner. Under the heading “Application for a New Firearm's Licence, Renewal of Licence, Import of a New Firearm and Transfer of Firearm”, there are nine numbered paragraphs. Paragraph 6 is in these terms:

“If a licence is approved, a member of the board or a person approved by them must carry out a full inspection of the premises where the firearms/ammunition will be kept. During this process all firearms and ammunitions must be documented, photographed and may be ballistically tested. A licence will not be issued unless the applicant satisfies the board that the premises and arrangements for storage for

the relevant firearms are sufficiently secured. An example of suitable storage facilities would include a secure lockable gun cabinet bolted to the wall or floor of a premise.”

In a later passage, under the heading “Renewing a Firearm Licence”, the policy document states:

“The applicant must fill out the renewal form and submit to the Firearms Licencing Department. An inspection of the applicant’s safe and firearm is to be carried out by the RCIP. If the safe, firearm or ammunition are found to be in an unsatisfactory condition, suitable advice will be given to the applicant to remedy the situation. The Commissioner, in his absolute discretion, can refuse to renew a firearm licence if it is found in an unsafe or unsatisfactory condition .”

13. Mr. Warren’s response to the Commissioner’s letter of 14 April 2011 was to challenge, in a lengthy e-mail, the Commissioner’s power to impose the requirement that his firearms’ safe be examined as part of his firearm’s renewal application. In a letter dated 23 May 2011 the Commissioner pointed out that Mr. Warren’s interpretation of the relevant law differed from his own. He went on to say that: “as a consequence of your failing to comply with my requirements to permit your storage safe to be inspected as part of the renewal process, I hereby revoke your firearm’s licence”. And he pointed out that the law required that the firearm be surrendered within three days. The final paragraph of that letter reminded Mr. Warren that if he wished to appeal the decision, he might do so to the Governor under section 29 of the Firearms Law.
14. There was some further correspondence between the parties; but the underlying dispute as to the Commissioner’s powers was not resolved. In due course Mr. Warren’s firearm was surrendered to the police. Mr. Warren did not choose to exercise his right of appeal to the Governor under section 29 of the law; notwithstanding that the Commissioner indicated that no point on the expiry of time for appeal would be taken until a final decision had been reached. Rather, he chose to file an *ex parte* application in the Grand Court for leave to apply for a judicial review of the Commissioner’s decision.
15. That application, which is dated 4 August, 2011, describes the decision in respect of which judicial review is sought as “refusal of firearm’s licence”. On a true analysis, as it seems to me, the decision which Mr. Warren seeks to challenge is the Commissioner’s

decision not to renew, indicated in the letter dated 14 April 2011. The letter of 23 May 2011 - which purports to revoke a current firearm's licence - did not, in fact, have that effect: as at 23 May 2011 Mr Warren held no current firearm's licence which was capable of being revoked. On a proper understanding of the position, the letter of 23 May 2011 must, I think, be regarded as confirmation that the decision not to renew the licence or permit which had expired on 1 January 2011 would have effect unless Mr. Warren agreed to inspection within three days of receipt of that letter.

16. The application for leave to bring proceedings for judicial review came before Justice Quin on a number of occasions. On each of those occasions Mr. Warren appeared in person and the Commissioner of Police was not represented. Ultimately, the application was heard by Justice Quin on 6 September 2011. He delivered his judgment in writing on 13 September 2011. He refused the application on the ground that the legislature had provided an alternative route for the challenge of the Commissioner's decision by an appeal to the Governor under the provisions of section 29 subsection (1) of the law .
17. It is plain on the correspondence – and it was plain to Justice Quin - that Mr. Warren was aware of that alternative route; and that he had made a conscious choice not avail himself of it. Mr. Warren's position is that he challenges the Commissioner's decision on a pure point of law; and that the appropriate forum in which to ventilate that challenge is a court of law rather than the Governor in Cabinet. In any event, that is the course that he has taken.
18. At the hearing of Mr Warren's application for leave to appeal to this Court the Commissioner, in written submissions prepared by counsel, took a preliminary objection. It is said, first, that an appeal to this Court would be out of time; and; second, that this is an appeal for which Mr Warren needs leave which he has not sought or obtained.
19. Whatever merit there may be in that preliminary objection, we have taken the view that the more sensible course is to address the underlying challenge which Mr. Warren seeks to make. His challenge can, indeed, properly be described as a short point of law. Expressed as a point of law, it is this: "Is the absolute discretion which is conferred on

the Commissioner of Police (as the appropriate authority) by section 21 (1) of the Firearms Law fettered, and if so, to what extent and in what manner?” In stating the point in those terms, I have necessarily compressed the arguments addressed to this Court; but I am satisfied that the effect of those arguments can properly be encapsulated in the question as posed.

20. Section 43 of the Law empowers the Governor to make regulations for the better carrying out of the Law. Mr. Warren's point - which he has advanced before us with courtesy and some skill - is that the requirement that his premises and gun safe be inspected before his application for renewal of a Firearm User's (Restricted) Licence will be granted is a requirement which can only be imposed by regulations made by the Governor under section 43 and is not a requirement which the Commissioner of Police can impose as a matter of policy informing the exercise of his discretion under section 21(1).
21. It became clear in the course of argument, that Mr Warren's real complaint is directed at the policy which is set out in the document headed "Royal Cayman Islands Police Service Firearm's Licence Policy for the Cayman Islands" to which I have referred. It is not said - and, in my view, could not be said - that the policy is irrational: in the sense that no reasonable Commissioner of Police, acting reasonably and seeking to inform the exercise of the discretion conferred by section 21 (1) of the Law, could take the view that, in order to satisfy himself that a licence or permit should be granted to an applicant, he needed to insist on a prior inspection of the applicant's safe and premises in which and on which the firearm was to be kept. As paragraph 6 of the policy document makes clear, the Commissioner has taken that view: he has taken the view that he needs to be satisfied that the arrangements for storage of the firearm are sufficiently secure. An example of suitable storage facilities is given: "a secure lockable gun cabinet bolted to the wall or floor of the premises". Nor is it suggested - nor, as it seems to me, could it be suggested - that the Commissioner has not followed his own policy in reaching the decision which is recorded in the letter of 14 April, 2011. As I have said, the sole basis of Mr Warren's challenge is that the Commissioner has no power to impose such a requirement as a matter of policy: the requirement can only be

imposed by regulation made by the Governor under section 43 of the Law.

22. While accepting that Mr. Warren sincerely believes that he is correct on the point, I have no doubt that his contention is misconceived. Section 21(1) of the Law plainly does vest in the Commissioner, as the appropriate authority, a discretion - described as an “absolute discretion” - whether or not to grant a licence or permit of the nature described in section 19; and, in particular, whether or not to grant a Firearm User’s (Restricted) Licence, to which reference is made in section 19(e). It is plain, as it seems to me, that, in granting a licence or permit in the exercise of that discretion, the Commissioner must be satisfied that the circumstances are such that it is appropriate, having regard to the public interest, that such a licence or permit should be granted.
23. Sub-sections (2) and (3) of section 21 of the Law contain specific restrictions which do fetter the Commissioner’s discretion under the section. Those sub-sections set out circumstances in which no licence or permit shall be granted. It is not suggested that the present case falls within one of those subsections. Further, the discretion under section 21 is subject to section 20; which requires that the application must be made in the prescribed form. But the effect of section 20, read with section 21(1) is not that the Commissioner must grant a licence or permit if the application is made in the prescribed form and otherwise complies with section 20: rather, it is that an application shall not be granted if it is not made in the prescribed form and does not contain the necessary particulars and comply with the other matters in section 20.
24. I would be prepared to hold, if it were necessary to do so, that the Commissioner’s discretion, under section 21(1) of the Law, to grant a licence or permit is fettered to the further extent that he should not - or has no power to - grant a licence or permit which is inconsistent with regulations made by the Governor for the better carrying out of the Law. But the requirement that an applicant must satisfy the Commissioner that he has a safe and secure cabinet in which to keep a firearm is not inconsistent with the regulations which have been made under section 43. The regulations deal, principally at least, with matters which the Law requires to be prescribed. Arrangements for the security of the firearm is not one of those matters.

25. The Commissioner must, of course, exercise the discretion conferred by section 21(1) of the Law on a rational basis. Mr Warren suggests, I think, that it is irrational – because unnecessary – for the Commissioner to require that he be satisfied by inspection that the applicant has a secure gun safe. He drew attention to the express requirement, in Form A of the first schedule to the regulations, that an applicant state whether or not he has a secure place in which to keep the firearm. He submits that a statement to the effect that he does have a secure place should be enough. I am unable to accept that submission.
26. It has been stated in these courts, on numerous occasions, that it must be accepted that the Legislature has perceived gun crime in this jurisdiction to be on the increase; and has determined that measures should be taken to reduce it. Serious penalties attach to the unlicensed possession of firearms. One way of reducing gun crime is to make it more difficult to obtain possession of firearms for unlawful purposes. The concern which the Commissioner's policy is plainly intended to meet is that a firearm lawfully in the possession of a person to whom a license or permit has been issued may be stolen from the premises of the licensee. It follows, as it seems to me, that, far from it being irrational to insist on the existence of a secure gun safe as a condition of granting a licence, the Commissioner would be acting irresponsibly if he did not require to be satisfied that the gun or firearm would be kept in a secure safe. And, if it is open to him to require that he be satisfied that the gun or firearm would be kept in a secure safe (as, in my view, plainly it is), then it must be open to him to satisfy himself, by an inspection of the safe itself, that the requirement is met.
27. This is not, as the applicant has sought to suggest, a case in which the Commissioner is seeking to arrogate to himself a draconian power to enter and inspect the premises of private individuals without cause: rather, this is a case in which, in order properly to exercise the powers conferred on him under the Firearms Law, the Commissioner has properly imposed a reasonable condition on those who seek the privilege, under the Law, of possessing of a firearm. It is because they seek a licence that the Commissioner takes the view that he needs to satisfy himself that the firearm will be kept securely. Given the importance of ensuring that firearms do not fall into the wrong hands as a result of a failure to keep them in a secure place, it is not at all surprising that he finds it

necessary to confirm the statement in the Form A by a physical inspection.

28. For those reasons, I am satisfied that the policy adopted by the Commissioner is not open to challenge on the grounds of excess of power. There is no substance in the point which Mr. Warren wishes to raise by way of judicial review.
29. In those circumstances, it is unnecessary to address in any detail the point which found favour with Justice Quin: namely, that judicial review is not an available remedy in a case, such as this, where the Legislature has provided a route of appeal through the Governor. I would say only this: if I were persuaded that there was substance in Mr. Warren's underlying point, I should still need to be persuaded that it was appropriate for the courts to deal with the matter by way of judicial review without having the benefit of the Governor's conclusion on an appeal to him under section 29. But in the circumstances, for the reasons I have explained, that point does not arise.
30. Given that Mr. Warren requires an extension of time to bring his challenge formally before this Court, I am satisfied that the sensible course is to refuse that extension. I would do so on the basis that to extend time would serve no useful purpose. Having heard and considered the arguments that he wishes to advance, I have reached a clear conclusion that his challenge must fail. The application is dismissed.

Chadwick P

Elliott Mottley, Justice of Appeal

I agree.

Sir Anthony Campbell, Justice of Appeal

I agree.

