

No. 53

Application for Leave to Apply for Judicial Review (0.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS CAUSE NO: ³⁹ OF 2018

BETWEEN:

THE QUEEN
On the application of
RODRICK VON OWEN EVANS



PLAINTIFF

AND

THE COMMISSIONER OF POLICE

DEFENDANT

AND


THE ATTORNEY GENERAL

SECOND DEFENDANT

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	Roderick Von Owen Evans, Policier Officer
Judgment, order, decision or other proceeding in respect of which relief is sought	Commissioner of Police's Failure to consider to grant and the failure to grant Firearm Permit
Relief Sought	
<ol style="list-style-type: none"> 1) A declaration that the Commissioner of police have acted unlawful in failing to consider at all or within a reasonable time the applicant's application; 2) A declaration that the Commissioner of police's inaction to exercise his discretion by failing to apply his mind to the Applicant's application at all is unlawful; 3) A mandamus order that the Commissioner of Police's apply his mind to the Applicant's Application for a firearm permit, taking into consider the peculiar surrounding circumstances; 4) A declaration that the Commissioner of Police by his conduct has created a legitimate expectation in the Applicant that a firearm licence shall be granted and issued to the same; 5) That there are no public policy reasons or statutory grounds for refusing to grant a firearm permit to the Applicant; 6) Damages; 	

THIS APPLICATION FOR LEAVE FOR JUDICIAL REVIEW was filed by Stenning & Associates, Attorneys-at-Law, on behalf of the Plaintiff whose address for service is the 3rd Floor, Marquee Place, 433 West Bay Road, George Town, Grand Cayman, Cayman Islands (Ref: 1636/001).

7) Costs; and	
8) Such further and other reliefs as the Honourable Court sees fit.	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Stenning & Associates 3 rd Floor Marquee Place 433 West Bay Road, P.O. Box 901, Grand Cayman KY1-1103
Signed 	Dated <i>27 Feb 2018</i>

THIS APPLICATION FOR LEAVE FOR JUDICIAL REVIEW was filed by Stenning & Associates, Attorneys-at-Law, on behalf of the Plaintiff whose address for service is the 3rd Floor, Marquee Place, 433 West Bay Road, George Town, Grand Cayman, Cayman Islands (Ref: 1636/001).

GROUND ON WHICH RELIEF IS SOUGHT

Requirements

1. Section 21 The Firearm Law (2008 Revision) provides that:
 - (1) *Subject to section 20, subsections (2), (3), (4) and (5) of this section and section 29 (Appeals- no decision to appeal), the grant of any licence or permit shall be in the absolute discretion of the appropriate authority. General provisions as to grant and issue of licences and permits*
 - (2) *No licence or permit shall be granted to any person who(a) is of intemperate habits, liable to fits of uncontrolled temper, notoriously careless in the use of firearms or of unsound mind; or (b) is for any reason unfitted to be entrusted with a firearm.*
 - (3) *No licence or permit shall be granted(a) in relation to any prohibited firearm; or (b) to any restricted person, except with the prior approval of the Governor: Provided that this subsection shall not apply to the grant to any restricted person of a Firearm Disposal Permit.*

User's (Restricted) Licence

2. Section 22 The Firearm Law (2008 Revision) provides that:
 - (1) *Subject to section 20, the appropriate authority, on the payment of the prescribed fee and on the surrender to him of the appropriate application, may grant a Firearm User's (Restricted) Licence in respect of the firearm specified in such application, or if no firearm is so specified, a firearm of the type specified in such application. Special provisions relating to Firearm User's (Restricted) Licence*
 - (3) *Every Firearm User's (Restricted) Licence shall specify the premises specified in the application pursuant to which such Licence is granted as being the premises, other than premises owned or occupied by the Licensee, upon which he may be in possession of the firearm to which the Licence relates.*

User's (Special) Licence

3. Section 23 The Firearm Law (2008 Revision) provides that:
 23. (1) *Subject to section 29, the appropriate authority on the application of any person who is the holder of a Firearm User's (Restricted) Licence may, in his absolute discretion, grant to such person a Firearm User's (Special) Permit authorising such person during the continuance in force of any Proclamation under section 17 to carry the firearm in respect of which he is the holder of a Firearm User's (Restricted) Licence in any public place within the area, district, town or village to which such Proclamation applies upon the occasions and subject to the conditions specified in such Permit. Special provisions relating to Firearm*

The is compounded by the further lack of or the delay giving in the Commissioner making a decision even after the firearm arrival.

- (4) ***Irrationality/unreasonableness:*** That the Commissioner granted three firearm import permits to the Applicant without the grant of a firearm license at the same time, considering that the possession of a firearm without a firearms permit is unlawful, it is irrational and unreasonable not to issue the Applicant with a firearm licence.
- (5) ***Legitimate expectation:*** That the Commissioner granted a firearm import permit on 17th September 2010, renewed the same on the 17th March 2017 and again on the 8th of September 2017, along with the actual importation of the firearm into the Cayman Islands and the firearm being released by customs to the Commissioner to be held on trust for the Applicant on the 1st December 2017, creates a legitimate expectation that the Applicant would be granted a firearm user permit to possess the imported firearm;
- (6) ***Breach of natural justice:*** That there is a breach of natural justice in that by not considering the application and making a decision either way the applicant is denied the opportunity to present his case for the grant of a firearm or to be made aware of any argument against it and reasonable opportunity to comment or even to appeal;