

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN  
3

Cause No: 0301/2011

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5 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL  
6 REVIEW PURSUANT TO GCR O.53 r.3  
7



8 BETWEEN:

DENNIE WARREN JR.

PLAINTIFF/APPLICANT

11 AND:

THE COMMISSIONER OF POLICE

DEFENDANT/RESPONDENT

12 Appearances:

Mr. Dennie Warren Jr.

13 Before:

The Hon. Mr. Justice Charles Quin

14 Heard:

23<sup>rd</sup> August 2011 and 1<sup>st</sup>, 6<sup>th</sup> September 2011

15 JUDGMENT  
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- 18 1. On the 5<sup>th</sup> August 2011 the Plaintiff filed an *ex parte* application for leave to apply  
19 for Judicial Review pursuant to GCR O.53 r.3. In his application the Plaintiff seeks:

20 "1. To quash the decision of the Commissioner of Police;

21 2. A declaration on how to interpret the Firearms Law."

- 22 2. The Plaintiff filed an affidavit, sworn on the 4<sup>th</sup> August 2011, together with six  
23 grounds on which he sought relief.

- 24 3. The Plaintiff's grounds in support of his application for Judicial Review were that:  
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- 1 (i) *The Commissioner of Police acted without legal authority;*
- 2 (ii) *The Commissioner of Police acted with procedural impropriety;*
- 3 (iii) *The Commissioner of Police's decision to revoke his licence was*
- 4 *biased;*
- 5 (iv) *The Commissioner of Police's decision to revoke his licence was for an*
- 6 *improper purpose;*
- 7 (v) *Judicial Review is the most effective and convenient remedy, because of*
- 8 *the exceptional circumstances of the case; and*
- 9 (vi) *The matter is one of great public interest.*

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4. In essence, the Plaintiff is seeking an order of *certiorari* to quash the decision of the Commissioner of Police dated the 23<sup>rd</sup> May 2011 which revoked the Plaintiff's firearm licence #CAFA00002326. In addition, the Plaintiff seeks a declaration pursuant to GCR O.53 r.1(2) which reads:

*"An application for a declaration .....may be made by way of an application for judicial review, and on such an application the Court may grant the declaration .....claimed if it considers that, having regard to –*

- (a) *the nature of the matters in respect of which relief may be granted by way of an order of certiorari;*
- (b) *the nature of the persons and bodies against whom relief may be granted by way of such an order ;and*
- (c) *all the circumstances of the case,*

*It would be just and convenient for the declaration to be granted on an application for judicial review."*



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4. *That this application is adjourned to the 6<sup>th</sup> September 2011 at 9:30 a.m. for the parties to appear and for further directions.*

8. On the 1<sup>st</sup> September 2010 the Plaintiff rang my secretary and asked for more time to file the evidence and serve it on the Respondent. Accordingly, the Court acceded to the Plaintiff's application and ordered that the Plaintiff had until close of business on Friday the 2<sup>nd</sup> September 2011 in which to file his Supplementary Affidavit with exhibits, and further, that the Plaintiff had until close of business on Friday the 2<sup>nd</sup> September 2011 in which to serve, on the Defendant, the Order dated the 23<sup>rd</sup> August 2011, the application for leave to apply for Judicial Review dated the 4<sup>th</sup> August 2011, and all the affidavit evidence upon which the Plaintiff is relying.

9. At the hearing on the 6<sup>th</sup> September 2011 the Plaintiff confirmed that his application for leave to apply for Judicial Review, the grounds for his application, the Order of the Grand Court dated the 23<sup>rd</sup> August 2001 and his affidavit evidence had all been served on the Defendant on the 2<sup>nd</sup> September 2011.

10. The Plaintiff relied on his First Affidavit and his Supplementary Affidavit sworn on the 2<sup>nd</sup> September 2011. The Plaintiff's Supplementary Affidavit exhibited forty-nine (49) exhibits including the letter from the Defendant dated the 23<sup>rd</sup> May 2011 revoking the Plaintiff's firearm licence, and the subsequent letter from the Defendant dated the 13<sup>th</sup> July 2011 refusing the Plaintiff's request to renew his firearm licence.

11. At the hearing on the 6<sup>th</sup> September 2011 the Plaintiff, again, chose to represent himself. There was no appearance at the hearing on behalf of the Defendant.

1           12.     In addition to the material set out above, the Plaintiff provided two further Skeleton  
2                    Arguments.

3           13.     The Plaintiff contends that an appeal to the Governor in Cabinet would not serve  
4                    the interests of justice for the following reasons:

5                                   a)   *That an appeal to the Governor in Cabinet is likely to result in*  
6   *considerable delay in the matter being resolved;*

7                                   b)   *That further, and in the alternative, the issues arising from this*  
8   *matter are almost exclusively legal in nature. In essence, the*  
9   *Plaintiff complains that the Commissioner acted illegally in*  
10    *issuing new forms, which can only be done by the Governor in*  
11    *Cabinet;*

12                                   c)   *That the Governor in Cabinet is unlikely to go against the*  
13    *Legal Department and the Complaints Commissioner;*

14                                   d)   *That the matter is of fundamental importance to the rule of law*  
15    *in the Cayman Islands;*

16                                   e)   *That an administrative decision cannot usurp a regulation;*

17                                   f)   *That the powers of the Commissioner under the Firearms Law*  
18    *are being used for an improper purpose;*

19                                   g)   *That the Police Firearm Policy has language clearly indicating*  
20    *that there is an aim to reduce gun ownership – both legal and*  
21    *illegal. The Plaintiff submits that this is not the purpose of the*  
22    *Firearms Law and it is therefore ultra vires;*

23                                   h)   *That the Commissioner is unduly fettering his discretion by, for*  
24    *example, trying to restrict people to owning only one gun;*

25                                   i)   *That the Commissioner is acting outside the scope of his power*  
26    *to impose “restrictions” contained in s.19(e) of the Firearms*





1           23.     On the 9<sup>th</sup> June 2011 the Plaintiff wrote to the Attorney General’s Chambers, copied  
2                     to the Defendant, stating:

3                     *“I am amenable to giving your office until the 30<sup>th</sup> June 2011 to respond to my*  
4                     *concerns raised. However as you may well know section 29(2) of the Firearms*  
5                     *Law states that if I also intend to exercise my right of appeal via the Governor*  
6                     *in Cabinet I would have twenty-one days in which to do so. Those twenty-one*  
7                     *days expire tomorrow. Therefore, I am willing to wait for your response not*  
8                     *later than the 30<sup>th</sup> June 2011 on the condition that given the circumstances my*  
9                     *right of appeal would be begin to run twenty-one days from the Commissioner*  
10                    *of Police’s final decision to be received not later than the 1<sup>st</sup> July 2011.”*

11           24.     On the 10<sup>th</sup> June 2011 the Attorney General’s Chambers wrote, on behalf of the  
12                     Defendant, to the Plaintiff stating that they:

13                     *“...would not object to the Plaintiff exercising his right of appeal against the*  
14                     *decision of the Commissioner made after reconsideration of his application in*  
15                     *the event that his application is refused.”*

16           25.     Accordingly, the Plaintiff obtained the consent of the Attorney General’s  
17                     Chambers, and by inference, the Defendant’s consent, that the time period for his  
18                     right of appeal under the Firearms Law would not begin to run until the final  
19                     decision of the Defendant after reconsidering the Plaintiff’s application.

20           26.     On the 6<sup>th</sup> July 2011 the Defendant wrote to the Plaintiff and stated:

21                     *“My understanding is that your refusal to grant the Royal Cayman Islands*  
22                     *Police Officer access to your home in order to examine your gun safe was*  
23                     *based upon a belief that such actions were not authorised by the relevant*

1                    *legislation. My position is clear, in that I contend that such entry is authorised*  
2                    *within the law and moreover is an essential element in ensuring that firearm*  
3                    *holders comply with conditions and requirements to ensure that firearms are*  
4                    *secure and appropriately stored to fulfill your responsibility as a fit and proper*  
5                    *person to hold a firearms licence. That approach is taken to ensure your*  
6                    *personal actions do not compromise the safety of the wider community. It is, I*  
7                    *believe, a reasonable imposition which balances individual rights and*  
8                    *responsibilities with my responsibility as the authorizing officer for firearm*  
9                    *licence grants to ensure the appropriateness and suitability of those granted*  
10                   *such licences. Your refusal to agree to that reasonable request gives me cause*  
11                   *for concern as to your compliance with security conditions upon which your*  
12                   *licence was granted; and therefore despite a further request to permit access,*  
13                   *led to my revocation of your licence when again access was refused.”*

14                   The Defendant went on to ask of the Plaintiff:

15                   *“Do you have any further commentary or observation to make in support of*  
16                   *your request that I reinstate the revoked firearm licence? I await your*  
17                   *commentary in order to review the revocation notice currently in place.”*

18                   The Defendant concluded by confirming that:

19                   *“This request does not, in any way, negate your right of appeal to the Governor*  
20                   *in order to challenge my decision.”*

21                   27.        The Plaintiff’s response to the Defendant’s decision not to renew his licence was  
22                   contained in an email dated the 6<sup>th</sup> July 2011 in which he stated:



1 Lord Templeman added at paragraph D on page 862:

2 *“Judicial Review should not be granted where an alternative remedy is*  
3 *available.”*

- 4
- 5 31. In *Harney Development Inc. and Another v. Commissioner of Inland Revenue*  
6 [1996] WLR 727 the House of Lords judgment delivered by Lord Jauncey of  
7 Tullichettle stated in the holding at page 728:

8 *“Where a statute laid down a comprehensive appeals procedure for*  
9 *administrative decisions, and such a decision had not been appealed, the court*  
10 *would only entertain an application for Judicial Review in exceptional*  
11 *circumstances, typically where an abuse of power was alleged; that, since the*  
12 *assessments involved no unfairness, and therefore no abuse of power, Judicial*  
13 *Review proceedings were inappropriate.”*

14

15 *Conclusion*

- 16 32. It is clear from a review of the correspondence that the Plaintiff had sought legal  
17 advice and was aware of his right to appeal under the Firearms Law as an  
18 “aggrieved party” against the decision of the Defendant. Indeed, the Plaintiff  
19 specifically requested and was granted an extension of time in which to file his  
20 appeal.

- 21 33. The Respondent acted fairly and reasonably in specifically agreeing to allow the 21  
22 days to be extended until after reconsidering the Plaintiff’s position some weeks  
23 after revoking the Plaintiff’s licence.

- 24 34. Ground 5 of the Plaintiff’s grounds for the Relief contends that:

25 *“Judicial Review is the most effective and convenient remedy and that the*  
26 *alternative statutory remedy pursuant to section 29 of the Firearms Law is*

1                   “nowhere near so convenient, beneficial and effectual” as the requested  
2                   Judicial Review process.”

3           35.       In the English Court of Appeal case of *Regina (Sivasubramaniam) v. Wandsworth*  
4           *County Court* [2003] 1 WLR 475, Lord Phillips, the then Master of the Rolls  
5           reviewed the case law on alternative remedy, including the decisions of *Harley*  
6           *Development Inc. v. Comr of Inland Revenue* [1996] 1 WLR 727 and *R v. Inland*  
7           *Revenue Comrs, Ex p Preston* [1985] A.C. 835 and then stated at paragraph 47 on  
8           page 490:

9                   “What these authorities show is that Judicial Review is customarily refused as  
10                  an exercise of judicial discretion where an alternative remedy is available.  
11                  Where Parliament has provided a statutory appeal procedure it will rarely be  
12                  appropriate to grant permission for Judicial Review. The exceptional case may  
13                  arise because the statutory procedure is less satisfactory than the procedure of  
14                  judicial review. Usually, however, the alternative procedure is more convenient  
15                  and judicial review is refused.”

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17           36.       Having heard the submissions of the Plaintiff and having reviewed the affidavit  
18           material on behalf of the Plaintiff and the exhibits, I can find no “exceptional  
19           circumstances” which would justify the Plaintiff not filing an appeal as an  
20           “aggrieved party” pursuant to s.29(1) of the Firearms Law.

21           37.       The Court receives further guidance from the English Court of Appeal decision of  
22           *Judith Jay Sekala v. Secretary of State for the Home Department* [1984] Imm  
23           A.R. 227 Sir Thomas Bingham, Master of the Rolls, as he then was, stated at page  
24           231:

25                   ““It does seem to me to be an abuse of process in principle for an applicant,  
26                  having allowed a time-limit [for an appeal] to expire, then to seek to challenge  
27                  by Judicial Review that which should have been challenged by way of appeal”,  
28                  at least there was “what has to be regarded as a deliberate decision not  
29                  appeal.””

1 38. When one considers the procedure under the Firearms Law, and the right of appeal  
2 of the “aggrieved party”, there are no restrictions on the Plaintiff identifying the  
3 issues between himself and the Defendant, and having the appellate body make a  
4 determination on the issues in dispute.

5 39. This Court finds further assistance on the question of alternative remedy in the  
6 English Court of Appeal case of *Ex Parte Waldron* [1986] 1 Q.B. 824 where Lord  
7 Justice Glidewell at page 852 paragraph F stated:

8 *“If Mr. Brooke is hoping (though I doubt whether he is) that this court should*  
9 *formulate a detailed set of circumstances in which, or conditions on which,*  
10 *judicial review of action under the powers of the Mental Health Act 1983 might*  
11 *properly be granted, I fear he will be disappointed. What we can properly do,*  
12 *in my view, is to reiterate what was said by Lord Widgery C.J. in Reg. v.*  
13 *Hillingdon London Borough Council, Ex p Royco Homes Ltd. [1974] Q.B.*  
14 *720, 728: “In particular, it has always been a principle that certiorari will go*  
15 *only where there is no other equally effective and convenient remedy.” Whether*  
16 *the alternative statutory remedy will resolve the question at issue fully and*  
17 *directly; whether the statutory procedure would be quicker, or slower, than*  
18 *procedure by way of Judicial Review; whether the matter depends on some*  
19 *particular or technical knowledge which is more readily available to the*  
20 *alternative appellate body; these are amongst the matters which a court should*  
21 *take into account when deciding whether to grant relief by way of Judicial*  
22 *Review when an alternative remedy is available.”*

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24 40. I can find no basis for saying that the appellate body could not resolve the question  
25 at issue fully and directly. Arguably the statutory procedure would be quicker than  
26 the procedure by Judicial Review. Further, I can find no exceptional circumstances  
27 in this case for the Court to intervene before the Plaintiff exhausts all his available  
28 remedies.

29 41. The Firearms Law (2006 Revision) provides the machinery for any “aggrieved  
30 party” to appeal to the Governor against any decision of the Defendant as the  
31 appropriate authority, and in particular, any decision by the Defendant revoking a

1 licence or refusing to grant a licence. The Plaintiff was clearly aware of his right of  
2 appeal under the law and he had taken legal advice. Like *Judith Jay Sekala* in  
3 paragraph 37 above, he took the deliberate decision not to appeal.

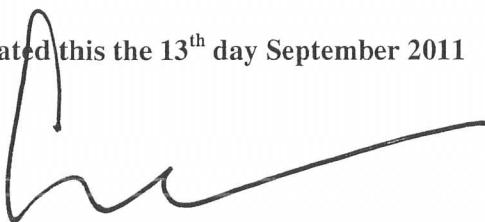
4 42. Having reviewed the law and the exchange of correspondence between the parties, I  
5 cannot find that an appeal under the Firearms Law is in any way limited. The  
6 Plaintiff will be able to present all the arguments that he has put forward in his  
7 skeleton arguments to the appellate body. Indeed there are many occasions when an  
8 Appeal may be wider than Judicial Review and the appellate body may be able to  
9 look at facts, opinion and policy where a reviewing Court would not.

10 43. I cannot find any basis for finding that the alternative remedy of the appeal under  
11 the Firearms Law is inadequate, nor can I find that it is “*nowhere near so*  
12 *convenient, beneficial and effectual*” as contended by the Plaintiff.

13 44. The Legislative Assembly has provided for a statutory appeals procedure and, as  
14 has been stated before, it is not for the Court to usurp the functions of the appellate  
15 body.

16 45. Accordingly, and for the aforesaid reasons, I refuse to grant the Plaintiff leave to  
17 apply for Judicial Review of the Defendant’s decision to revoke the Defendant’s  
18 firearm licence.

19  
20 Dated this the 13<sup>th</sup> day September 2011

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23 **Honourable Mr. Justice Charles Quin**  
24 **Judge of the Grand Court**

