JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE LAING JA (AG)

APPLICATION NO COA2021APP00185

BETWEEN	**KEVIN BERTRAM**	**APPLICANT**
AND	**FIREARM LICENSING AUTHORITY**	**1ST RESPONDENT**
AND	**REVIEW BOARD**	**2ND RESPONDENT**
AND	**MINISTER OF NATIONAL SECURITY**	**3RD RESPONDENT**

Lemar Neale instructed by John Clarke for the applicant

Miss Courtney Foster instructed by Courtney N Foster and Associates for the 1st respondent

2nd respondent not represented

Miss Shaniel Hunter instructed by the Director of State Proceedings for the 3rd respondent

5 May and 3 June 2022

P WILLIAMS JA

[1] I have had the privilege of reading in draft the judgment of Laing JA (Ag). I agree entirely and have nothing useful to add.

SIMMONS JA

[2] I, too, have read the draft judgment of Laing JA (Ag). I agree with his reasons and conclusion and have nothing to add.

LAING JA (AG)

Introduction

[3] On 22 November 2012, Mr Kevin Bertram ('the applicant') applied for a firearm user's licence ('the first application'). By letter dated 3 October 2013, the applicant was informed that the first application was refused by the 1st respondent, the Firearm Licensing Authority ('the FLA'), on the ground that the applicant had not established a need to be armed. In January 2014, the applicant appealed that decision to the 2nd respondent, the Review Board ('the Board'), which recommended that the FLA's decision be upheld. The Board sent its recommendation to the 3rd respondent, the Minister of National Security ('the Minister'), for his directions. In August 2016, the Minister directed the FLA to conduct further investigations to aid his decision. The investigations were completed, and the results were inadvertently sent to the FLA's board (which I understand to mean the board of directors as distinct from the 2nd respondent, the Board) instead of the Minister. While the Minister's decision was still pending, the applicant's file was submitted to the FLA, which approved a firearm user's licence for the applicant on 24 April 2017. On 23 March 2018, the Minister advised the FLA of his denial of the applicant's appeal and his direction that the Board's recommendation would be upheld. The applicant was informed of this decision in a letter dated 5 April 2018, and the approval for a firearm user's license, given on 24 April 2017, was rescinded.

[4] The applicant submitted another application dated 30 January 2018 for a firearm user's licence ('the second application'). By letter dated 11 March 2019, the applicant was informed that the second application was denied on the ground that "[t]he need to be armed is not established". The applicant appealed that decision to the Board in June 2019. The Board heard the appeal and, in a letter to the Minister dated 3 December 2020, it indicated that having reviewed the history of the matter, it recommended that the applicant's previous denial be upheld. In a letter dated 10 December 2020, the FLA was advised that the Minister had accepted the Board's recommendation and that the applicant's request to obtain a firearm user's licence was denied. The applicant was informed of the Minister's decision by a letter from the FLA, dated 29 December 2020.

[5] On 8 February 2021, the applicant filed an application for leave to apply for judicial review, which was amended on 28 April 2021 ('the application for leave'). The application for leave was heard on 8 July 2021 by Mott Tulloch-Reid J (Ag) ('the learned judge'). On 30 July 2021, the learned judge delivered her reasons in writing, refusing the application for leave, and awarding costs to the FLA and the Minister to be taxed if not agreed. She also refused leave to appeal her decision.

[6] The applicant sought to renew his application for leave to appeal the learned judge's decision before this court. However, as the time for filing that application had passed, on 6 October 2021, the applicant filed a notice of application for court orders in which he sought the following orders:

> "1. The time to appeal this order is extended to the date of the filing of the Notice of Application.
>
> 2. Permission to appeal the order of the Honourable Mrs. Justice T. Mott Tulloch-Reid [(Ag)] dated 30[th] day of July 2021:
>
> a. the applicant's leave to apply for judicial review is refused.
>
> b. The applicant is to pay the [FLA] and [the Minister] costs in the application, which [costs] to be taxed if not agreed.
>
> 3. Any other order the Court sees fit."

[7] The court formed the view that it would be futile to grant the application to enlarge time if it might conclude that permission to appeal ought not to be given. However, in this case we requested that the parties first address us on the application for an extension of time since we were of the view that this was a more efficient way of proceeding.

The application for extension of time

[8] The parties agreed that the relevant law in relation to the principles to be applied on an application for extension of time are not in dispute and have been clearly expressed in cases such as **Leymon Strachan v The Gleaner Co Ltd and Another** (unreported),

Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999. In exercising its discretion, the court will consider:

(i) the length of the delay;

(ii) the reasons for the delay (although, even in the absence of good reasons, the court is not bound to reject an application for extension of time);

(iii) whether there is an arguable case for an appeal; and

(iv) the degree of prejudice to the other parties if time is extended.

Delay and explanation

[9] Mr Lemar Neale ('Mr Neale') submitted that the delay of 54 days was not inordinate in all the circumstances, especially having regard to the explanation proffered by the applicant's counsel Mr John Clarke ('Mr Clarke'). The reason provided by Mr Clarke, in his affidavit filed 29 April 2022, was that he was "under the misapprehension that time did not run for the filing of notice of applications until the beginning of the court term". He deponed that it was only after seeing the learned judge's judgment on 27 September 2021 and doing further research that he realised that the application should have been filed during the long vacation. Mr Clarke also averred that "[t]he [applicant] was away and was unable to attend our office until the 5th of October 2021 at around 4:35 pm when it was too late to file the documents".

[10] Representatives for the Board were absent, and it was unrepresented. However, counsel for the FLA and the Minister each submitted that a delay of 54 days was inordinate. Miss Shaniel Hunter ('Miss Hunter') submitted on the Minister's behalf that in **Paulette Richards v Orville Appleby** [2016] JMCA App 20, a delay of 42 days in filing an application for extension of time to appeal was regarded as inordinate. Both counsel argued that no good reason had been provided for the delay. Miss Hunter indicated that the applicant's absence should not have affected his ability to file his application, given that we are now in a technologically advanced era. Moreover, she argued that there was

ambiguity as to whether the misapprehension was on the part of the applicant or his counsel, and whether that misapprehension applied to the fact that the timeline did not run at all until the written judgment was delivered, or did not run until after the court term had commenced.

[11] It is my view that the delay of 54 days is inordinate in the circumstances. Regarding the reasons given for the delay, I must indicate that both the applicant and Mr Clarke have demonstrated a nonchalant approach to the appeal. It bears repeating that where counsel is unaware or uncertain of the procedural requirements and timelines applicable to an appeal, or any proceedings for that matter, he has an obligation to conduct diligent research to enlighten himself and be in a position to advise his client properly. Mr Clarke's explanation that he thought time did not run for filing the application during the long vacation is not a good reason.

[12] Litigants also have a responsibility to consult with their counsel in a timely manner in order to explore an appeal where this possibility is within their contemplation. It ought to have been obvious to the applicant that there must be an applicable time limit for filing an appeal, and if he desired to have such consultation with counsel, he needed to take this into account. It cannot be acceptable for a litigant to ignore his matter and proceed on vacation without any investigation as to what deadlines may be applicable, and only to seek to take steps to prosecute an appeal at his convenience. The applicant confirmed, in his affidavit filed on 2 May 2022, that he proceeded on holiday during August 2021 and called Mr Clarke about the status of the appeal when he returned to work on 19 September 2021. The flippant attitude with which the applicant treated his proposed appeal in this matter, in my view, demonstrates that the applicant himself had no good reason for the delay.

[13] Consequently, in all the circumstances, the delay of 54 days in filing the application for an extension of time is inordinate and inexcusable.

The merits of the proposed appeal

[14] Despite my conclusion that the delay was inordinate and that the reasons for the delay were not good, the court is obliged to consider whether there is an arguable case for an appeal. The gravamen of Mr Neale's submissions in this regard was that the applicant had an appeal with a real prospect of success because the learned judge erred in law or acted on a wrong principle of law when she refused to grant the application for leave.

[15] Mr Neale candidly conceded that, in light of the decision in **Robert Ivey v Firearm Licensing Authority** [2021] JMCA App 26. ("**Ivey**"), he could not reasonably advance the position that the FLA was required by law to provide the applicant with its reasons for its decision not to grant him a firearm licence. However, he submitted that the applicant's position is different in respect of the obligation of the Board.

[16] Mr Neale also submitted that implicit in the FLA's approval of the first application, was its conclusion that the applicant satisfied the requirement of a need to be armed. Accordingly, its subsequent decision to the contrary, in respect of the second application, was irrational.

[17] Mr Neale accepted that there was no requirement for the applicant to be afforded an oral application before the Board for the review and admitted that the applicant was heard through his then counsel Mr Clarke. However, the main thrust of the challenge to the decision of the Board was that it failed to provide the applicant with sufficient material, including the reasons for the FLA's decision to deny his application and any document which supported that decision. This failure, it was argued, prevented the applicant from making a meaningful, worthwhile, and effective representation before the Board, because he was deprived of the opportunity to address any deficiencies and or challenge any inaccuracies.

[18] Mr Neale also submitted that the learned judge misdirected herself on the law, which caused her to erroneously award costs against the applicant in his application for

leave. This, he submitted, was because the learned judge had failed to accurately construe rule 56.15(5) of the Civil Procedure Rules ('CPR') and the decision in **Latoya Harriott v University of Technology Jamaica** [2022] JMCA Civ 2 ('**Harriott v UTECH**').

[19] Counsel for the FLA and the Minister argued that the applicant's proposed appeal did not give rise to any arguable ground of appeal. They contended that although the applicant had challenged various findings of fact in his proposed appeal, there was no demonstration that the learned judge had misinterpreted the law or misapplied the law to the facts or had made an order that no reasonable judge would make. They also submitted that the Firearms Act ('the Act') and case law supported the findings of law made by the learned judge, so there was no error in the orders she made.

[20] Historically, there were three main bases on which the courts would intervene in a decision of a public authority in order to provide redress by way of judicial review. These were on the grounds of illegality, irrationality and procedural impropriety. However, recently, it has been suggested that unconstitutionality should also be considered an applicable ground. Support for this position may be found in the case of **Harriott v UTECH**, a decision of this court in which Brooks P at para. [47] made the following observation:

> "Lord Diplock's judgment in [**Council of Civil Service Unions and Others v Minister for the Civil Service** [1985] AC 374] is also important for his exposition of the classification of the grounds upon which administrative action is subject to judicial review. He said, in part, at page 410 of the report:
>
> > '…Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality,' the second 'irrationality' and the third

> 'procedural impropriety.' That is not to say that further development on a case by case basis may not in course of time add further grounds….'
>
> In addition to those three headings, Lord Diplock also considered that proportionality would be an important category. Professor Albert Fiadjoe, at page 27 of his work, Commonwealth Caribbean Public Law (third edition), further suggests that, for the Commonwealth Caribbean, a heading of 'unconstitutionality' would also be an appropriate addition to Lord Diplock's classification."

[21] An applicant for judicial review must show a real prospect of success. It is not disputed that the case of **Sharma v Brown-Antoine and others** [2006] UKPC 57 offers guidance on how the test is to be applied, particularly at para. 14(4), where their Lordships state the following:

> "The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is 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: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in *R(N) v Mental Health Review Tribunal (Northern Region*) [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:
>
> > '… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of

> the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.'
>
> It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen': *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733."

[22] In considering whether the applicant has demonstrated an arguable ground of appeal with a reasonable prospect of success, it is necessary to examine the application for leave that was before the learned judge for consideration. In the application for leave, the applicant sought against the respondents, among other things, the following orders:

> "1. That the Applicant be granted an extension of time to apply for judicial review in relation to the administrative actions and decisions of the Respondents as follows:
>
> a. The decision of the [FLA] to deny permission to the Applicant to have a firearm user's license
>
> b. The decision of the [Board] to recommend that the [Applicant's] appeal/review in relation to the decision of the authority be denied
>
> c. The decision of the [Minister] to deny the Applicant's appeal of the decision of the [FLA].
>
> 2. Leave for judicial review is granted in relation to the decision of:
>
> i. the [FLA] to deny permission to the Applicant to have [a] firearm [user's] license.
>
> ii. the [Board] to recommend to the Minister of National Security that [the Applicant's] review/appeal should be denied.
>
> iii. the [Minister] to deny application for review/appeal of the decision of the [FLA]."

[23] The applicant identified 12 grounds on which he sought these orders before the learned judge. However, Mr Neale stated that the two grounds which were material were grounds 8 and 9, which provide as follows:

> "8. The Applicant alleges that the original decision is illegal, procedural [sic] unfair an [sic] irrational since: (a) the [sic]
>
> 9. The Applicant has never been advised as to why he is not a 'fit and proper' person by any of the Respondent [sic]. The Applicant has not been provided with any basis to suggest why the Respondents believe he does not satisfy the factors outlined in section 29 of the Firearms Act for the granting of a firearm user's license."

[24] Mr Neale implored the court to consider the substance of these grounds and to take into account the affidavit evidence to the extent that it supported the grounds as filed. He confirmed that the reference to "the original decision" in ground 8 was in relation to the 2018 decision of the FLA refusing the first application for a firearm user's licence, which was the decision that the learned judge considered. However, he also argued that inextricably linked to that decision are the decisions made thereafter by the Board and the Minister.

[25] I find it necessary to note that before the learned judge, counsel John Clarke who appeared for the applicant did not focus on the strict limits of the amended notice of application and the grounds in support thereof. He expanded the breadth of his submissions to include areas that were not the subject of the application for leave and, in doing so, led the learned judge into the consideration of matters which were not strictly necessary for a determination of the application for leave. For the purposes of this application, I have narrowed the scope of my review to the issues that touch and concern its merits.

[26] Having regard to the relief sought by the application for leave and the grounds outlined in support thereof, at its core, the application for leave was focused on a

challenge to the decisions of the FLA, the Board and the Minister, which collectively resulted in the applicant not being granted a firearm user's licence. In determining whether there is an arguable ground with a reasonable degree of success, I have analysed whether an arguable basis exists for challenging the decision not to grant a licence by way of judicial review. In particular, whether the failure to provide the applicant with detailed reasons may provide a good basis for a challenge to the decision on the ground of illegality, irrationality and/or procedural impropriety.

[27] It is necessary, at the outset of this analysis, to reinforce the point that, as Lord Brightman stated in **Chief Constable of the North Wales Police v Evans** [1982] 3 All ER 141, at page 154:

> "Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

[28] Having regard to the high levels of crime in the country, quite understandably, the views as to the level at which the bar should be set for persons to be granted a firearm user's licence run the full gamut, from excluding almost everyone, to universal entitlement, similar to a right to bear arms. The legislature has devised a statutory regime incorporating appropriate bodies and mechanisms in order to determine which individuals ought to receive a licence. Therefore, it is not for this court to enquire into whether the applicant ought to have received favourable consideration based on the merits of his application.

<u>The decision of the FLA</u>

Was there illegality?

[29] This ground did not require considerable interrogation. In **Council of Civil Service Unions and Others v Minister for the Civil Service** [1985] AC 374 ('**CCSU v Minister**'), Lord Diplock at, page 410, in clarifying what he meant by "illegality" as a ground for judicial review, explained that "the decision-maker must understand correctly

the law that regulates his decision-making power and must give effect to it". I am of the view that it cannot reasonably be posited that there were elements of illegality which arise on the facts of this matter. Quite sensibly, this ground was only mentioned in passing.

Was the decision of the FLA irrational especially having regard to the previous approval?

[30] In **CCSU v Minister**, at page 410, Lord Diplock described irrationality as follows:

> "By 'irrationality' I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system."

[31] It was not advanced before us that the mere refusal to grant the application for a firearm user's licence was irrational. The applicant's complaint of irrationality rested primarily on the fact that his first application was approved. In my view, the fact that the applicant was previously approved for a firearm user's licence does not mean that a subsequent determination by the FLA, the Board and the Minister that he had not established a "need to be armed" is necessarily evidence of the irrationality of the later decision. An important factor to be considered is the process which led to the approval of the first application, and, in that regard, there is evidence of irregularity.

[32] The unchallenged evidence of Ms Letine Allen, a director of compliance and enforcement at the FLA, described the process of the applicant's first application, as previously set out above. Ms Allen averred that additional investigations were done, and the results were inadvertently sent to the FLA's Board (the board of directors as distinct from the 2nd respondent, the Board). It was not sent to the Minister to enable him to give

further directions to the FLA. Without the additional direction from the Minister, the FLA then approved the first application on 24 April 2017.

[33] It is my understanding of the process, as laid down in the Act, that since an application for review was made to the Board, it is the Minister who was required to make a final decision by giving directions to the FLA. The absence of any directions from the Minister, after instructions had been given for further investigations, constituted the irregularity which Ms Allen addressed in her affidavit.

[34] Ms Allen further averred that the irregularity was brought to the attention of the Chief Executive Officer of the FLA, who advised the Ministry of National Security. The applicant was also notified of the error by e-mail on 26 March 2021. Ms Allen did not offer an explanation for the inordinate delay in advising the applicant. However, subsequent events appear to have overtaken that notification because the applicant had submitted a new application dated 30 January 2018.

[35] It is, therefore, my conclusion that the 2020 decision refusing the second application cannot be found to be irrational, by reason of the fact that there was a previous approval of the first application since the procedure which resulted in the approval of the first application was obviously flawed.

Was there procedural impropriety?

Is there a requirement for the FLA to provide detailed reasons for refusing an application for a firearm user's licence?

[36] The current regime provided for by the Act is for an application to be made to the FLA for a firearm user's licence. Section 29 of the Act expressly states that subject to that section and sections 28 and 37, the grant of any licence, certificate or permit shall be at the discretion of the FLA.

[37] The argument by an applicant that he is entitled to reasons for the refusal of his application for a licence is not novel. They have been advanced in slightly different formulations and scenarios over the years. A useful starting point which demonstrates

this is the case of **Raymond Clough v Superintendent Greyson and Attorney General** (1989) 26 JLR 292 ('**Clough**'). That decision arose in the context of the challenge to a decision revoking Mr Clough's licences under the earlier firearm licencing regime. Under that regime, the chief officer of police for the police division where an applicant resided was the "appropriate authority" to grant or revoke firearm users' licences.

[38] In **Clough**, the appellant, who could be described as a firearm enthusiast, held two firearm users' licences in respect of five firearms. His firearm users' licences were revoked with immediate effect by the superintendent of police. The appellant requested reasons for the superintendent's action, but none were provided. The appellant appealed to the Minister of National Security. This was the procedure available then. Having not been advised of a decision, he applied to a judge of the Supreme Court for leave to apply for an order of *certiorari* to quash the superintendent's decision. Two grounds of appeal were filed. The first was that contrary to rules and principles of natural justice, the superintendent decided to revoke the appellant's firearm users' licenses without giving the appellant a chance to be heard and failed to provide any reasons for the said revocations. Reasons for the revocations were disclosed to the Full Court in an affidavit filed by the superintendent. The Full Court dismissed the application for an order of *certiorari*, quashing the superintendent's decision. Mr Clough appealed that order to this court, which dismissed the appeal and upheld the order of the Full Court.

[39] Carey JA made the following observation at page 296, which provides a useful context within which the court ought to consider the various proceedings touching firearm user's licences:

> "This then is the regime set up by statute, and it involves two tiers, and to be precise two individuals. Wherever executive action is involved, the law requires the official to act fairly. But it is a misconception that at the first tier, there is necessarily and inevitably any requirement for a hearing so that the citizen might disabuse the first tier official of any wrong impression. Lord Denning in *R. v. Gaming Board for Great*

Britain, Ex parte Benaim and Anor. [1970] 2 All E.R. 528 at p. 533 pointed out that there are no inflexible rules as to the applicability of the rules of natural justice. He said this:

> 'I think that the board are bound to observe the rules of natural justice. The question is: what are the rules? It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject-matter;...'

The subject matter in this case is the licence to hold or possess a firearm. There is no constitutional or legal right to own a firearm or to be allowed to hold a firearm. The entitlement or to [sic] the refusal of or the revocation of a grant of a licence is in the hands of the police. The Firearms Act is concerned with the control of, the use, and misuse of firearms in this country. The incidence of violence involving guns is such that the greatest care has to be taken to ensure that such weapons do not fall into the wrong hands. The welfare and security of the entire country is at stake. The national security must be a matter of the greatest concern. Criminal activity is unarguably a matter which affects national security."

[40] The decision in **Clough** was considered recently in the case of **Ivey**, in which the applicant received a notice from the FLA informing him that it had revoked his four firearm user's licences. The reason given in the notice was that "he was no longer considered fit and proper to retain a firearm [user's] licence". A judge of the Supreme Court refused Mr Ivey's application for leave to apply for judicial review of the FLA's decision. The learned judge refused his application for leave to appeal that decision. Mr Ivey sought leave to appeal before this court which was also refused.

[41] It is appreciated that the application for leave before the learned judge in the instant case concerned the refusal of an application for a firearm user's licence, while in **Clough** and **Ivey**, the complaint was in respect of the withdrawal of licences. Notwithstanding that difference, the applicable principles of law relating to the requirement for reasons are similar.

[42] In my opinion, it is patently clear that the statutory framework to which the FLA is subject does not require it to provide detailed reasons to an applicant whose application for a firearm user's licence is refused. Support for this position is also derived from **Clough** at page 297, where Carey JA made the following observations:

> "By Section 36 of the Act the appropriate authority is entitled to revoke the licence but that power is subject to a right of appeal to the Minister. It is at this point that the right to be heard operates, for by the Firearms (Appeals to the Minister) Regulations, the aggrieved party is able to present his side of the story. He is given no right to be seen but he must be heard. He can submit the grounds of his appeal. These regulations provide that the 'appropriate authority' must supply the reasons for its decision to the Minister. There is no requirement that the reasons should be supplied to the aggrieved party by the 'appropriate authority'. In my view, this is of significance for it shows that the statute does not intend that any hearing should take place before the 'appropriate authority'. A chief officer of police might well be acting contrary to law if he were to supply the reason for his decision to any person other than the Minister. It is at the hearing before the Minister that attacks on the basis of illegality, irrationality and procedural impropriety can properly be pursued."

[43] It should be noted that, although the regime in existence when Carey JA gave his consideration was amended in 2005, the introduction of a review process involving the Board has not changed the spirit of the pre-existing, two-tiered statutory regime, which remains intact. Consistent with the views of Carey JA, I do not consider that the procedure at the first tier, which does not require the FLA to give reasons to the applicant, is insufficient to achieve justice and, in that regard, requires the intervention of this court.

[44] In the instant case, it should be appreciated that the applicant received a reason for the refusal of his application, namely, that he did not satisfy the FLA of the need for him to have a firearm. To the extent that the applicant's complaint on ground 9 of his application is that he "has not been provided with any basis to suggest why the Respondents believe he does not satisfy the factors outlined in section 29 of the Act for

the granting of a firearm user's license", the applicant is asserting a right to detailed reasons.

[45] There was no illegality in the decision of the FLA to refuse the applicant's application. The applicant's application was duly considered, and having received a reason for the refusal of his application, I find that there was no procedural impropriety. Furthermore, I have also found that the decision was not irrational. Accordingly, I have concluded that there is no basis for judicial review arising from the first stage of the application process.

Was the FLA required to provide other information to the applicant to enable him to pursue his application for a review by the Board adequately?

[46] Section 37 of the Act provides that any aggrieved party (which for purposes of this application is the applicant) may, within the prescribed time and in the prescribed manner, apply to the Board for the review of a decision of the FLA in respect of a number of matters, including the refusal to grant any application for a licence. Section 37A of the Act provides that the Board shall consist of the following persons listed in the Fourth Schedule of the Act:

> "(a) a person who has served in the post of-
>
> (i) Director of Public Prosecutions; or
>
> (ii) a senior member of staff of the Office of the Director of Public Prosecutions;
>
> (b) a person who has served as a Judge of the Court of Appeal or the Supreme Court;
>
> (c) a person who served as an Officer of the Jamaica Constabulary Force not below the rank of Superintendent."

[47] Within 90 days of receiving an application for review, the Board is required to: (a) hear, receive and examine the evidence in the matter under review; and (b) submit to the Minister, for his determination, a written report of its findings and recommendations.

Upon receipt and consideration of the Board's report, the Minister shall give the FLA such directions as the Minister may think fit.

[48] Mr Neale has argued that Brooks P at para. [28] of **Ivey** has supplied support for the need for the applicant to be given reasons for the decision refusing his application in order to make representations before the Board as follows:

> "[28] Carey JA, in the penultimate paragraph of [**Clough**], again discussed that, on an application for a review of a decision of a superintendent in respect of a firearm licence, it was the Minister who was obliged to afford the aggrieved party a hearing. He said, at page 299F-H:
>
> > 'Before parting with this case, I desire to observe that when a Superintendent of Police is exercising his power of revocation of a Firearm User's Licence, he is not required to act judicially; he is required to act fairly but that does not involve either hearing the holder or giving him reasons. For all practical purposes, it means having a prima facie case, or acting bona fide. He is obliged to give his reasons only to the Minister [if] the holder is aggrieved by the decision. **But the Minister is bound to hear him or his legal representative and the Minister is bound to provide him with the reasons for the decision to enable the holder, as an aggrieved party, to rebut any allegations made against him.** The Minister, it seems to me, must act fairly...'" (Emphasis supplied by Brooks P)

[49] However, I am of the view that that paragraph must be considered in the context of other insightful observations of Brooks P, which are well worth reproducing as follows:

> "[39] Although the application for review is made to the Review Board, it is the Minister who makes the decision. He, thereafter, gives directions to the Authority. It is worthy of note that, unlike the earlier formulation of the Act, where the term 'appeal' was used, the present provisions of the Act use the term 'review' in describing the exercise which the Review Board is mandated to undertake. Nonetheless, the details of

the Review Board's functions are more akin to an appeal, in the sense that the Review Board is required to conduct a hearing. Section 37A(2)(a) of the Act requires the Review Board to 'hear, receive and examine the evidence in the matter under review'. The previous iteration of section 37(1) of the Act spoke to an 'appeal to the Minister against any decision of an appropriate authority'. The Firearms (Appeals to the Minister) Regulations 1967 ('the 1967 regulations'), then, as now, require the Minister to consider the material that is placed before him, grant a hearing if he is so minded, and give directions to the appropriate authority, which is now the Authority.

[40] Despite the amendments to the Act, the two-tier structure described by Carey JA remains materially intact. It is the Minister who makes the decision at the second tier, under both iterations of the Act. The difference is that under the present dispensation, it is the Review Board that actually receives the application instead of the Minister. There is no material difference that would alter the stance of the court in relation to the obligations, or lack thereof, which are placed on the Authority, as opposed to those, which Carey JA opined, had been placed on the 'appropriate authority' under the previous dispensation.

[41] **In applying the reasoning in [Clough] to the present statutory framework, the similarity to that which applied in the previous dispensation of the Act, dictates a finding that although the Authority is obliged to act fairly and in accordance with an ostensibly legitimate basis, it is not obliged to grant a hearing to a licence holder before revoking a licence. The Authority is also not obliged to give reasons for its decision to the licence holder. If, however, the licence holder requires a review, the Review Board must:**

> **a. secure the Authority's reasons for its decision;**
>
> **b. grant the licence holder a hearing, which need not be orally conducted; and**
>
> **c. provide its recommendations to the Minister**." (Emphasis supplied)

[50] Having regard to the clear terms of para. [41] of **Ivey**, I do not accept that para. [28] gives support to the proposition that the FLA or the Board is required to provide the applicant with more detailed reasons for its decision.

[51] I accept, as fairly well settled, the proposition that where there is no statutory requirement for disclosure of detailed reasons by the Board and where there is no such obligation created by statute, the giving of detailed reasons is discretionary. However, in considering the exercise of this discretion against the backdrop of procedural impropriety, it must be appreciated that procedural impropriety also includes fairness.

[52] Lord Diplock, at page 411 of **CCSU v Minister**, expressed the position as follows:

> "I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

[53] The applicant has submitted that there was an obligation on the Board to provide the applicant with fairly detailed reasons for the FLA's refusal of his application to enable him to adequately pursue his application for a review. Accordingly, he has sought to invoke the broad umbrella of fairness or procedural fairness.

[54] There are special circumstances where fairness will necessitate that detailed reasons be given. This may be the case where, for example, a person's firearm user's licence has been revoked. Support for this position may be found in the case of **Danhai Williams v The Attorney General and others** (1990) 27 JLR 512, at page 520, where Gordon JA said:

> "The law gives the aggrieved party the right to appeal against the decision revoking his licence. It also gives him a right to a hearing for the first time and it would seem in these

> circumstances that there should be conformity with the rules of natural justice, he must be told what he has to meet. If the right to appeal is real and not illusory then the grounds of appeal should relate to a specific basis of complaint for revocation of the licence. Section 36(1)(a) contains bases of complaint viz:
>
> (i) intemperate habits
>
> (ii) unsound mind
>
> (iii) otherwise unfitted . . .
>
> This latter complaint is wide enough to include involvement in criminal activity (which is itself extremely wide).
>
> The right to appeal involves the right to the legitimate expectation that the rules of natural justice will apply. These rules subscribe to a right to fairness. How can one submit meaningful grounds of appeal if he is unaware of the basis for the revocation? In my view the appellant should have been informed of the basis of complaint."

[55] However, while acknowledging the need for more than skeletal reasons in appropriate cases, it would not be prudent for this court to make sweeping generalisations as to when reasons (or detailed reasons) should be provided to an applicant to facilitate a review. This is because the possible scenarios in which such considerations may arise are numerous.

[56] As with most cases, the issue of whether there is an obligation of disclosure in the interest of fairness will depend on the particular facts. In the instant case, the applicant's application disclosed that he was a businessman. He was married and needed a firearm to safeguard his family, self and property. It is not challenged that the relevant investigations were conducted in accordance with the FLA's standard procedures. His application was refused on the ground that he did not establish a need to be armed. In my view, that reason, although terse or economical, provides a sufficient "gist" of the decision and was sufficient to permit the applicant to pursue his application for a review.

[57] If the applicant accepts the position that not every businessman with a family automatically satisfies the requirement of a need to be armed, then the applicant ought to appreciate that it would be incumbent on him to provide any additional information he may have to the FLA which would serve to demonstrate such a need. Alternatively, if he has no additional information and decides to rest on the information he had already provided, having been advised that it was previously deemed insufficient, he could attempt to demonstrate that the material submitted does indeed establish such a need to be armed. In either case, being advised of the reason for the refusal of his application would have been sufficient to permit him to submit meaningful grounds for a review of the decision in respect of his application.

[58] Having been provided with an adequate reason for the refusal of his application, the applicant was 'armed' with sufficient information to pursue his application for a review. For the reasons I have stated, I have concluded that there was no procedural impropriety or unfairness in the applicant's application for review before the board.

Did the issue of unconstitutionality arise?

[59] I do not accept the submission on behalf of the applicant that it was irrational or that there was procedural impropriety for the applicant not to have received more detailed reasons for the decision to refuse the applicant's application for a firearm user's licence or that this prevented the applicant from making a meaningful, worthwhile representation on his application for a review. In some instances, a ground on which judicial review is being sought may also support a breach of a constitutional right. However, in the instant case, it follows from my previous conclusion on the absence of any grounds for judicial review with a realistic prospect of success, that not providing reasons beyond notifying the applicant that he had not demonstrated the need to be armed, could not have amounted to a breach of a constitutional right to a fair hearing.

The issue of costs

[60] I find compelling the submission of Mr Neale that there is a real prospect of success on the applicant's appeal of the learned judge's order as to costs. Rule 56.15(5) of the CPR provides as follows:

> "The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

The learned judge concluded at para. [34] of her reasons for her decision that the application before her was not an application for an administrative order and, therefore, the general rule did not apply. There is also no indication that she had given any consideration to the issue of whether the applicant had "acted unreasonably in making the application or in the conduct of the application", which may have justified the order for costs. Accordingly, there is an arguable ground of appeal with a real prospect of success relating to the learned judge's costs decision.

Prejudice

[61] I did not conclude that there would be prejudice to the other parties if time was extended, despite the submission of Miss Courtney Foster to this effect. However, the applicant has deponed that he has been served with a bill of costs for $750,000.00 and would be severely prejudiced should he be forced to pay this sum if it is based on an erroneous conclusion by the learned judge.

Conclusion on the application for extension of time

[62] In all the circumstances, there was an inordinate delay in the filing of the application for extension of time. The reasons for that delay are not good. Having explored the merits of the applicant's proposed challenge to the learned judge's decision regarding the application for leave, I do not find that the applicant has demonstrated any grounds of appeal with a real prospect of success, save for the ground of appeal relating to the learned judge's decision on costs. Consequently, in my view, the application for

extension of time to seek to leave to appeal should only be granted with respect to the issue of costs only.

The application for permission to appeal

[63] As indicated, the applicant is seeking permission to appeal the learned judge's decision. This court will only grant permission to appeal if it is satisfied that the appeal will have "a real chance of success" (see rule 1.8(7) of the Court of Appeal Rules). In the light of my previous findings, there would be no chance of success on appeal against the learned judge's refusal to grant leave to seek judicial review. However, a real chance of success exists in relation to the learned judge's findings on costs. Therefore, in my view, permission to appeal ought to be granted with respect to the issue of costs only.

Costs

[64] Although the application should only be allowed in part, I believe that, in the spirit of the costs regime which governs administrative orders, there should be no order as to costs.

P WILLIAMS JA

ORDER

1. The application to extend the time to appeal the order of Mott Tulloch-Reid J (Ag) dated 30 July 2021, refusing the applicant leave to apply for judicial review, is refused.
2. The application to extend the time to appeal the order of Mott Tulloch-Reid J (Ag) dated 30 July 2021 awarding costs to the Firearm Licensing Authority and the Minister of National Security is granted.
3. The time to appeal the order of Mott Tulloch-Reid J (Ag) dated 30 July 2021, that the applicant is to pay the costs of the Firearm Licensing Authority and the

Minister of National Security to be taxed if not agreed, is extended, and the applicant is permitted to file the notice of appeal within 14 days of the date of this order.

4. Permission is granted to appeal the order of Mott Tulloch-Reid J (Ag) dated 30 July 2021 awarding costs to the Firearm Licensing Authority and the Minister of National Security to be taxed if not agreed.

5. No order as to costs.