

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA  
THE HON MRS JUSTICE FOSTER-PUSEY JA  
THE HON MR JUSTICE BROWN JA**

**SUPREME COURT CIVIL APPEAL NO COA2022CV00058**

<b>BETWEEN</b>	<b>DUWAYNE REID</b>	<b>APPELLANT</b>
<b>AND</b>	<b>FIREARM LICENSING AUTHORITY</b>	<b>RESPONDENT</b>

**Hugh Wildman for the appellant**

**Neco Pagon for the respondent**

**13 October 2025 and 27 February 2026**

**Civil Procedure – Application for permission to apply for judicial review – Whether application for judicial review made promptly – Whether application disclosed an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar – Judicial Review – Civil Procedure Rules, 2002 – Part 56, rule 56.6**

**Statutory Interpretation – Natural and ordinary meaning of words in statute – *Ejusdem Generis* – Firearms Act – Firearms Licensing Authority – Whether Firearms Act empowered the Firearms Licensing Authority to seize firearm for the purpose of carrying out an investigation – The Firearms Act, section 26B**

**F WILLIAMS JA**

[1] I have read, in draft, the judgment of Brown JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

**FOSTER-PUSEY JA**

[2] I, too, have read the draft judgment of Brown JA. I agree with his reasoning and conclusion.

## **BROWN JA**

### **Background**

[3] This appeal is against the order of Stamp J ('the learned judge'), made on 28 October 2021, refusing to grant the appellant permission to apply for judicial review of the decision of the respondent, the Firearm Licensing Authority ('FLA'), to seize the appellant's licensed firearm. The learned judge also refused the appellant permission to appeal against his decision. However, upon the appellant's application to this court on 22 May 2022, the appellant was granted permission to appeal.

[4] The legal entanglement between the appellant and the FLA had its genesis in the FLA's grant of a firearm user's licence to the appellant on 6 April 2017 under the now repealed Firearms Act of 1967 ('the 1967 Firearms Act'). The 1967 Firearms Act was replaced by the Firearms (Prohibition, Restriction and Regulation) Act, 2022. The provisions of the new legislation are not relevant to this appeal.

[5] After the 2017 grant of the firearm user's licence, the appellant successfully renewed that licence annually until the year 2020. On 31 December 2020, the appellant attended the FLA's offices to renew his firearm user's licence. He was directed to speak with one of the FLA's investigators, Lloyd Thomas ('Mr Thomas'). Mr Thomas informed the appellant that the FLA was in receipt of a report from Miss Tania Bansey ('Miss Bansey'), the appellant's former intimate partner, that the appellant was a gunman who was engaged in impersonation of the police and "scamming". Mr Thomas showed the appellant photographic images in which the appellant was dressed as a policeman.

[6] The appellant explained that the photographs were generated from his acting involvement. Further, the appellant detailed his estrangement from Miss Bansey and gave a statement to Mr Thomas. Notwithstanding the appellant's denial of the charges levelled by Miss Bansey, the FLA seized the appellant's firearm, on the basis that it was "necessary and expedient" on account of the nature of the "complaint/allegations".

[7] Up to March 2021, the FLA neither renewed the appellant's firearm user's licence nor returned his firearm. Consequently, on 29 March 2021, the appellant filed an application in the Supreme Court seeking leave to apply for judicial review of the FLA's decision to retain his firearm and refusal to renew his firearm user's licence, supported by evidence on affidavit.

[8] The FLA filed an affidavit in response, acting through its Overseeing Director of Investigations, Mervin McNab ('Mr McNab'), on 9 July 2021. In the evidence of Mr McNab, prior to the grant of the firearm user's licence to the appellant in 2017, the appellant made an application for a like licence on 16 March 2015. That application was denied on 2 November 2015. That decision was communicated to the appellant by letter that the appellant personally collected at the FLA's offices on or about 1 December 2015. The appellant did not appeal that decision under the procedure set out in section 37 of the 1967 Firearms Act ('section 37 review'). Mr McNab deponed that resort to the appellate procedure is a necessary precondition to any later approval of a firearm user's licence. He alleged that not only did the appellant not apply for the section 37 review, he also did not make a new application for the grant of a firearm user's licence. Despite not doing either of those things, the appellant's application of 2015 was granted on or about 6 April 2017 (see para. 6 of Mr McNab's affidavit, filed 9 July 2021).

[9] Without making any further comment on the grant of the firearm user's licence to the appellant, beyond the implicit irregularity in its grant in 2017, Mr McNab asserted that the FLA did not act outside its powers under the 1967 Firearms Act in seizing the appellant's firearm; specifically, the power to investigate any complaint under section 26B(1)(c) of the 1967 Firearms Act.

[10] The appellant filed an affidavit in response to Mr McNab's affidavit of 9 July 2021. In that affidavit, the appellant asserted that he made a fresh application for a firearm user's licence in 2017 and referenced his 2015 application. He, however, admitted that he did not have recourse to the section 37 review in 2015. By this

affidavit, the appellant made allegations of corruption against Mr Thomas concerning the latter's alleged receipt of US\$3,000.00 from Miss Bansey.

[11] Mr McNab filed another affidavit on 28 June 2022, after the appellant had been granted leave to appeal. Exhibited to this affidavit was a letter dated 7 June 2021 and addressed to the appellant, under the hand of Shane Dalling ('Mr Dalling'), the FLA's Chief Executive Officer. Through that medium, it was communicated to the appellant that the Board of the FLA had taken the decision to "CANCEL your firearm licence". The letter also referred to the history of the appellant's application leading to the grant of the licence (detailed at paras. [8]-[9] above). Mr Dalling's missive concluded, "[t]he circumstances under which your licence was granted was [sic] unlawful, and therefore renders [sic] your licence null and void".

#### The application for leave to apply for judicial review

[12] In his application for leave to apply for judicial review, the appellant sought the following:

- "1. A Declaration that section 26B (1) of the [1967] Firearms Act does not permit the Respondent to seize the Applicant's firearm pending the determination of the Respondent's investigation.
2. A Declaration that the seizure of the Applicant's firearm on the 31<sup>st</sup> of December 2021 by the Respondent, is illegal, null and void and of no effect.
3. An Order of Certiorari quashing the Respondent's decision to seize the Applicant's firearm." (Reproduced from the FLA's written submissions)

[13] At the conclusion of the hearing, the learned judge made the following orders:

- "a. Section 26 of the [1967] Firearm [sic] Act permits the Respondent to seize the Appellant [sic] firearm during an investigation.

- b. The Respondent did not act unlawfully when it purported to seize the Appellant's firearm while conducting an investigation into the Appellant's licence to determine whether the Appellant [sic] licence should be revoked.
- c. That the Appellant did not file his Notice of Application for Leave to Apply for Judicial Review promptly.
- d. Costs to the Respondent to be agreed or taxed."

The learned judge gave his decision orally, and no written reasons followed. Neither did the parties provide an agreed note of what was said at the pronouncement of the orders. It is evident from these orders that the learned judge purported to decide the question that leave was being sought to pursue. Consequently, the treatment of the appeal will entail more detail than is customary in this type of appeal.

#### The appeal

[14] The appellant filed four grounds of appeal that are extracted below:

- "a. The Learned Trial Judge erred in law in failing to appreciate that Section 26 does not permit the Respondent to seize the Appellant's firearm while conducting its investigation into the Appellant's licence.
- b. The Learned Trial Judge erred in law in failing to appreciate that Section 35 of the [1967] Firearm [sic] Act provides a mechanism for the Appellant to be asked to surrender his licensed firearm to the Respondent, through the avenue of the Minister of National Security and that mechanism does not reside with the Respondent under Section 26 of the [1967] Firearm [sic] Act.
- c. The Learned Trial Judge erred in failing to appreciate that the Respondent is a creature of statute and does not have any inherent power to seize the Appellant's firearm; and that any seizure of the Appellant's firearm by the Respondent is illegal, null and void and of no effect.
- d. The Learned Trial Judge erred in failing to appreciate that the Appellant did file the Notice of Application for Leave to Apply for Judicial Review within three (3) months of the

seizure; and in any event the continued seizure of the Appellant's firearm by the Respondent constitutes a continuous act of illegality and therefore time would not run against the Appellant."

[15] Two pertinent issues may be distilled from grounds of appeal a, b and d. Firstly, whether there is an arguable case with a realistic prospect of success that the FLA is not empowered under the 1967 Firearms Act to seize the firearm of the holder of a firearm user's licence during and for the purpose of carrying out an investigation into allegations of misconduct or unlawful user in relation to that firearm (Grounds a and b). Secondly, whether the application for permission to apply for judicial review was made promptly (Ground d).

[16] Ground c raises the issue of whether the FLA has the inherent power to seize the appellant's firearm. That is not an issue that can be extrapolated from the orders made by the learned judge. In any event, the learned judge grounded his decision in section 26B of the 1967 Firearms Act and, by that fact, ruled out consideration of any inherent power. Accordingly, ground c is irrelevant and can be given short shrift. In the absence of written reasons for the learned judge's decision, the court has considered the grounds of appeal within the context of the terms of the orders he made.

**Issue 1: Whether there is an arguable case with a realistic prospect of success that the FLA is not empowered under the 1967 Firearms Act to seize the firearm of the holder of a firearm user's licence during and for the purpose of carrying out an investigation into allegations of misconduct or unlawful user in relation to that firearm**

Submissions for the appellant

[17] Mr Wildman's main complaint was that the Firearms Act does not bestow any power on the FLA to seize the firearm of the holder of a firearms user's licence under section 26B(2)(c) of the 1967 Firearms Act. If Parliament had intended to clothe the FLA with this power, it would have expressly stated it. From his reading of the provision, this power cannot be inferred from the wording. The language of the section must be given its plain and natural meaning, unless to do so would result in an

absurdity, Mr Wildman advanced. He submitted that giving the section its plain and natural meaning does not lend itself to any absurdity.

[18] In seeking to bolster his point, Mr Wildman submitted that this court previously declared that the approach to statutory interpretation must be one that gives the statute its plain and ordinary meaning, save where the result is manifest absurdity. He cited **Commissioner of the Independent Commission of Investigations v Police Federation and others; Dave Lewin (Director of Investigations) v Albert Diah** [2020] UKPC 11 (**'INDECOM v Police Federation'**) in support of this proposition. In Mr Wildman's precis, the Privy Council upheld this court's interpretation of INDECOM's enabling statute to deny the Commissioner of INDECOM the power to arrest and charge anyone during its investigation for a substantive offence, holding that no absurdity resulted from giving the words their plain and ordinary meaning. According to Mr Wildman, his position that the power to seize the firearm during an investigation cannot be implied into section 26B(2)(c) of the 1967 Firearms Act is strengthened by Parliament's express vesting of the like power in the Minister.

[19] He argued that Parliament, in its division of the powers under the 1967 Firearms Act, conferred on the FLA powers in respect of issuing and revocation of firearm licences, among other things. On the other hand, Parliament gifted the Minister with the power to require a licensed firearm holder to surrender his firearm if that is necessary in the interest of national security. He posited that this is the only basis on which a licensed firearm holder can lawfully be deprived of his firearm, in the absence of a revocation order.

[20] In Mr Wildman's view, if, without revoking the firearm licence, the FLA has reason to take possession of a firearm, the FLA must go through the Minister, and it cannot be said that the FLA went through the Minister as he did not issue any notification under section 35A of the 1967 Firearms Act to the appellant to surrender his firearm. Aside from lacking a statutory remit to confiscate a firearm during an investigation, the FLA has no inherent power to seize a firearm. For these statements of

the law, **Carlton Smith v Lascelles Taylor, Commissioner of Police and The Attorney General of Jamaica** [2015] JMCA Civ 58 (**Smith v Lascelles Taylor and Others**) and **National Transport Co-operative Society Limited v The Attorney General of Jamaica** UKPC No 0017/2009 (**NTCS Ltd v The AG**) were cited. In oral arguments, Mr Wildman further submitted that if the FLA can seize the appellant's firearm in these circumstances, the power of the Minister to require the surrender of the firearm becomes redundant.

[21] Mr Wildman submitted that, based on the preceding arguments, when the FLA seized the appellant's firearm, it acted outside its legal authority. The FLA's action of seizure was, therefore, legally void. Accordingly, the act of seizure should be subjected to a quashing order. Mr Wildman went on to submit, in his skeleton arguments, filed on 5 February 2024, that the FLA did not revoke the appellant's firearm user's licence; perhaps in disregard of the FLA's letter of 7 June 2021, communicating the cancellation of the licence.

[22] Unlike revocation, Mr Wildman submitted, there is no alternative remedy to seeking judicial review under the 1967 Firearms Act, for the seizure of a firearm by the FLA. It was argued that the absence of any alternative remedy to judicial review underlines the appellant's position that the FLA has no power of seizure. Therefore, all the cases on revocation, cited by the FLA, are irrelevant.

[23] In the vein of his submission that the FLA's power is confined to revocation of the firearm user's licence, Mr Wildman argued that the FLA can serve a revocation notice upon the licensed firearm holder. Contemporaneously with the service of that notice, the FLA has two options. Firstly, the FLA can call in the police to seize the firearm. Failing that, and secondly, the FLA can request the Minister to act under section 35 of the 1967 Firearms Act. In the face of those options, there is no need to bestow another power on the FLA, by implying it into section 26B(2)(c) of the 1967 Firearms Act. Responding to a question from the court, Mr Wildman submitted that even in the face of allegations which sound in the vein of the unfitness of the licensed

firearm holder to continue being in possession of the firearm, the FLA has no power of seizure.

#### Submissions on behalf of the FLA

[24] Although there was no assertion to the contrary, Mr Pagon commenced his oral submission by saying there is no constitutional or statutory right to bear arms in Jamaica. Moving on from there, Mr Pagon submitted that section 26B(2)(c) must include a function to allow the FLA to properly maintain gun control, its core function. He sought to amplify his point with the following analogy: The FLA receives a complaint of domestic violence, which does not involve the use of the firearm, but there is a belief that the firearm may be brought into play in the future. In this scenario, it would lead to an absurdity if the FLA had no power to confiscate the firearm until the conclusion of the investigation. If the FLA were to proceed to revocation in these circumstances, it would leave the FLA open to charges of acting without a hearing.

[25] Turning to section 35 of the 1967 Firearms Act, Mr Pagon submitted that the section is directed at the firearm and ammunition generally, not any specific person. Therefore, section 35 does not contemplate the circumstances of this case. Furthermore, the section does not say that it is the Minister alone who has the power of seizure; neither does it limit the operation of section 26B(2)(c). Significantly, section 35(3) of the 1967 Firearms Act demonstrates that notwithstanding the Minister's power of seizure, the FLA retains its authority over gun control through its power to grant an exemption to a person to whom the Minister's request to surrender his firearm or ammunition applies.

[26] In his written submissions, Mr Pagon referred to a number of provisions of the 1967 Firearms Act and delineated the framework of the FLA's assertion of the power of seizure during an investigation as follows:

- i. "It is an offence for a person to be in possession of a firearm without an appropriate license [sic];

- ii. A firearm licence is not indefinite, that is it has a period of expiry;
- iii. The [FLA] has the power to revoke a license [sic] where a person is unfit to be in possession of same and this power is discretionary; and
- iv. The [FLA] has all incidental powers thereto to ensure compliance with the [1967 Firearms] Act."

Mr Pagon then adverted to the adoption by Brooks JA's (as he then was) of three of Sir Rupert Cross' five statements of the rules of English statutory interpretation in **Jamaica Public Service Company Limited v Dennis Meadows, Betty-Ann Blaine, Cyrus Rousseau, The Office of Utilities Regulations and The Attorney General** [2015] JMCA Civ 1 ('**JPS v Meadows and Others**').

[27] Brooks JA, at para. [54], prefaced his quotation of those rules by opining that the learned editors emphasised the use of the natural or ordinary meaning of the words and expressed wariness with reading words into a statute (judicial legislation). Mr Pagon highlighted the third of those principles. I quote:

"3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and **he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute ...**" (Emphasis as in the original)

In reliance on this extract (and in relation to i, ii and iii at para. [26] above), Mr Pagon submitted that by virtue of its functions under the 1967 Firearms Act, there is an implied power to seize a firearm in two circumstances. Firstly, where an application is being made after the expiration of the firearm user's licence. Secondly, in instances where the licence is being revoked or an investigation is being undertaken for the purpose of determining whether a renewal would be permissible.

[28] Declining to imply the power of seizure of the firearm while an investigation is ongoing, in these circumstances, would result in an absurdity, Mr Pagon argued. The absurdity would arise because the FLA would then be facilitating an illegality where the firearm licence had already expired or been revoked, depriving the holder of any lawful authority to continue to keep or carry the firearm, Mr Pagon advanced.

[29] Turning to item iv at para. [26] above, Mr Pagon submitted that by virtue of section 26B of the 1967 Firearms Act, the FLA has wide powers in investigating a complaint concerning a firearm holder's firearm. The breadth of the powers under section 26B (2) is clear from the wording, "do all such other things as it considers necessary or expedient for the purpose of carrying out its functions under this Act". For good measure, the words in inverted commas were placed in bold.

### Discussion

[30] Before embarking on the discussion of the interpretative question raised by the first issue (grounds a and b), it is useful to advert to the legislation, together with a short history of the FLA. The FLA is a creature of statute, created by Act 26 of 2005, which amended the 1967 Firearms Act. Section 26A (1) of the 1967 Firearms Act, which appears under Part V, under the heading "Licences, Certificates and Permits," reads:

"There is hereby established for the purposes of this Act, a body to be known as the Firearm Licensing Authority."

The FLA is constituted by a group of five eminent persons, appointed by the Minister for renewable three-year terms, at a remuneration determined by the Minister. These eminent persons are drawn from retirees from the posts of Director of Public Prosecutions, Senior Civil Servant, Judge of the Court of Appeal or Supreme Court and rank of Senior Superintendent of Police or higher (see the Third Schedule).

[31] The day-to-day administration of the FLA is in the hands of a "Secretary" or Chief Executive Officer, while the efficiency of its operation is complemented by other officers and agents, all appointed by the Governor-General. The FLA is required to keep

accounts that are subject to annual auditing by the Auditor-General. The FLA is also required to prepare and present to the Minister an annual report of its activities, within four months of the end of each financial year. The Minister is mandated to table the annual report and "the Auditor-General's report thereon" in both Houses of Parliament. The FLA is also required to submit to the Minister, for his approval, annual estimates of income and expenditure for the ensuing year (see the Third Schedule).

[32] The FLA, which was created in the image of an executive agency, has five comprehensive functions. These are set out in section 26B(1) of the 1967 Firearms Act and appear below:

- "a) to receive and consider applications for firearm licences, certificates or permits;
- b) to grant or renew firearm licences, certificates or permits;
- c) to revoke any firearm licence; certificate or permit granted under this Act;
- d) to amend the terms of a firearm licence, certificate or permit;
- e) **to receive and investigate any complaint regarding a breach of a firearm licence, certificate or permit.**" (Emphasis added)

In addition to these functions, the FLA is given, what may be termed quasi-judicial powers. Section 26B(2) states:

- "The [FLA] shall have the power to –
- (a) summon witnesses;
  - (b) call for and examine documents; and
  - (c) **do all such things as it considers necessary or expedient for the purpose of carrying out its functions under this Act.**" (Emphasis added)

### The meaning of section 26B(2)(c)

[33] And so, we come to the meaning of section 26B(2)(c) of the 1967 Firearms Act. Without deciding the question, it seems fair to say that the root of the interpretative question raised is not so much the meaning of the words in the subsection as the scope of the catch-all phrase used by the draftsman. This device is often used, not to limit a preceding list, but to expand it. Therein lies the rationale behind the use of the catch-all phrase. The argument is this. Legislatures, being aware they cannot identify in advance everything they would like to capture in the list, resort to the catch-all (see Linda D Jellum, *Mastering Statutory Interpretation*, 2<sup>nd</sup> ed, at page 138).

[34] The catch-all phrase, "all such things as it considers necessary or expedient", appears to be very broad. The modifier "all", on one possible view, seems to call for an expansive interpretation. According to *Words and Phrases Legally Defined Vol. 1: A-C* 3<sup>rd</sup> ed, at page 68:

"... the proper way of construing a word like "all", is to say that it means "all", and does not mean "some", unless one finds a compelling context which forces one to place some limitation on the word. **Re Wellsted's Will Trust, Wellside v Hanson** [1949] Ch 296 at 306 per Lord Greene MR."

Applying this guidance to the catch-all phrase in this case, the word "all" as a determiner in "all such things as it considers necessary and expedient" means "all", not "some" things the FLA finds necessary or expedient. Therefore, it is arguable that this subsection could be interpreted to mean the FLA shall have the power to do whatsoever it finds necessary or expedient in fulfilment of its function under section 26B(1)(e).

[35] In the absence of the learned judge's reasoning, it seems fair to assume that this is the interpretation which guided his decision that section 26B(2)(c) of the 1967 Firearms Act allows the FLA to seize the appellant's firearm during its investigation. This interpretation is susceptible to the critique that it is over broad, resulting in the

bestowal of a discretion upon the FLA that is simply without borders, resting as it does upon the amorphous pillars of necessity and expedience.

[36] The perceived breadth of the catch-all phrase arguably lends itself to vagueness which may be subject to a limitation imposed by its context. That limitation may find expression in the linguistic canon or rule of interpretation that general words at the end of more particular words take their meaning from the preceding list (*ejusdem generis*, Latin for 'of the same class'). Ian McLeod, in *Principles of Legislative and Regulatory Drafting*, at page 21, states the principle this way:

“... where general words follow particular words there is a presumption that the general words are limited to things of the same kind (or class) as those which are specifically mentioned.”

The canon comes into play where there is class or genus, meaning, there is some commonality between the specified things. In **Winston Leiba and Otrs v Beverley Warren** [2020] JMCA Civ 19, at para. [63], this court accepted Bennion’s explanation of the principle.

[37] In his *Understanding Common Law Legislation* (2009), at page 106, Bennion says:

“The Latin phrase *ejusdem generis* (of the same kind or nature), has been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string genus-descending terms followed by wider residuary or sweep-up words.”

*Ejusdem generis* was also discussed in **Darnel Fritz v John Collins** [2021] JMCA Civ 3. In that case there was an unsuccessful attempt to argue that a mortgagee’s power of sale fell within the phrase “action, suit or other proceedings” under section 33 of the Limitation of Actions Act. The argument was rejected because the meaning of any of

those words or phrases did not embrace either 'power of sale' or 'power' (see paras. [41]-[49] of the judgment. See also **Jennifer Mamby-Alexander and Otrs v Jamaica Public Service Co Ltd** [2020] JMCA Civ 48 at paras. [54]-[59]).

[38] Further elucidation may be provided by the following passage from the dissenting judgment of Justice Breyer in **Ali v Federal Bureau of Prisons et al** 552 USA 214 (2008), that is included here purely for the clarity of the exposition of the principle. In that case, the Federal Tort Claims Act ('FTCA') waived sovereign immunity for claims arising out of torts committed by federal employees (see 28 U.S.C § 1346(b)(1)) but exempts from the waiver "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any ... property by any officer of customs or excise or any other law officer," (see 28 U.S.C § 2680(c)).

[39] The petitioner, a federal inmate, was transferred from one penitentiary to another. His bags arrived some days later. When he inspected his bags, he noticed several items were missing. He sued under the FTCA, alleging the Federal Bureau of Prisons ('BOP') officers had lost his belongings. He contended that the clause applied only to law enforcement officers enforcing customs or excise and therefore did not affect the waiver of sovereign immunity for his property against the officers of the BOP. He relied on *ejusdem generis*. The BOP asserted that the claim was barred by the exception in § 2680(c) for property claims against law enforcement officers. His claim was dismissed by the District Court, ruling that it was barred by § 2680(c). The Eleventh Circuit affirmed the decision of the District Court. There was a further appeal to the Supreme Court. The issue was whether the BOP officers fell within the exception of "other law enforcement officers".

[40] The majority rejected the petitioner's argument, holding that the phrase suggested a broad meaning. Justice Thomas, speaking for the majority (5/4), and relying on an earlier decision, said (at page 3), "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind'". The court concluded the phrase should be read to mean what it literally said (see page 6). As I

observed above (see paras. [34]-[35]), the learned judge's order is possibly explained by this approach.

[41] On the contrary, Justice Breyer disagreed with the majority's reliance on the meaning of the word 'any'. In Justice Breyer's opinion, the issue turned on the scope of the statute, rather than the meaning of the words. At pages 243-244, he expounded:

"The word 'any' is of no help because all speakers (including writers and legislators) who use general words such as 'all' 'any,' 'never' and 'none' normally rely upon context to indicate the limits of time and place within which they intend those words to do their linguistic work. And with the possible exception of the assertion of a universal truth, say by a mathematician, scientist, philosopher or theologian, such limits almost always exist. When I call out to my wife, 'There isn't any butter,' I do not mean, 'There isn't any butter in town.' The context makes clear to her I am talking about the contents of our refrigerator.

That is to say, it is context, not a dictionary, that sets the boundaries of time, place and circumstance within which words such as 'any' will apply... Context, of course, includes the words immediately surrounding the phrase in question. And canons such as *ejusdem generis* and *noscitur a sociis* [meaning, words are to be known by their companions] offer help in evaluating the significance of those surrounding words."

Justice Breyer went on to observe that the assistance from these canons is limited as other contextual features may suggest the legislature intended a broader meaning than the surrounding words suggest.

[42] In this learning, applying the dictionary meaning to words such as "all" should give way, not only to the meaning suggested by the context of the words surrounding the modifying word, but also the wider statute and even the legislative history. The general rule appears to be this. The meaning of a word in a statute, and consequently the intention of Parliament, should be ascertained by reference to its context and, by

considering whether that word and its companions are *ejusdem generis* and referable to the same subject-matter.

[43] In the circumstances of this case, the genus-describing terms are the powers listed at sections 26B(2)(a) and (b). It could be contended that summoning witnesses and ordering the production of and conducting examination of documents are judicial powers and, as it relates to the FLA, quasi-judicial powers. The genus is, therefore, powers quasi-judicial. If that is correct, then the limiting context would be such things a formal court may do that is probative of a matter before it. That is, "all" in the catch-all phrase would accordingly be limited to additional powers to administer the oath or affirmation to witnesses, admitting items into evidence and things of a similar character. Consequently, and of necessity, the genus would exclude coercive, confiscatory, penal and the like powers of a formal court.

[44] This interpretation strengthens the argument of the Mr Wildman that a plain reading of section 26B(2)(c) does not result in the bestowal of the power of seizure of a licensed firearm for the purposes of an investigation conducted under section 26B(1) of the 1967 Firearms Act. On the other hand, Mr Wildman's reliance on **INDECOM v Police Federation** may not be misplaced. In that case, INDECOM argued, among other things, that "the like powers, authorities and privileges as are given by law to a constable," under section 20 of the Independent Commission of Investigations Act 2010 ('the 2010 Act'), conferred upon the Commissioner and the investigative staff the powers, authority or immunities enjoyed by a constable concerning an arrest, charge or prosecution. This court disagreed.

[45] On further appeal to the Privy Council, the Board agreed with this court. According to the Board, the scope of the conferral of "like powers, authorities and privileges of a constable" is demarcated by the power to investigate under the sections referred to in the 2010 Act. This interpretation derived from giving the words of the statute their plain and ordinary meaning. Consequently, there was no need to resort to supplemental rules of construction such as *ejusdem generis*. However, the broader

principle of context curtailment of meaning of broad, catch-all or umbrella wording is a close cousin. That said, I bear in mind that caution ought to be exercised in transposing interpretation from one case to another: D Neil MacCormick and Robert S Summers in *Interpreting Statutes* at page 378.

[46] Mr Pagon implicitly concedes that a plain reading of the section confers no power of seizure upon the FLA by the submission that this court should recognise an implied power to seize a firearm that is the subject of a firearm user's licence.

[47] Accepting, for the sake of argument, that the interpretation of the section speaks more to the scope, rather than the meaning of the words in section 26B(2)(c), I will now examine the scheme of the 1967 Firearms Act as it stood in 2005. The FLA, exercising the function to revoke any firearm licence, certificate or permit (section 26B(1)(c)), is mandated to revoke or consider the revocation, of any licence, certificate or permit in specified circumstances where the holder: (a) is of intemperate habits, unsound mind or otherwise unfitted to be entrusted with the type of firearm the subject of the grant; (b) has been convicted here or abroad for illegal importation or exportation of firearms or ammunition; illegal possession or user of a firearm or ammunition; and conviction for an offence involving violence where a sentence of a minimum three months was imposed; (c) has been convicted of any offence under the Dangerous Drugs Act or any other offence and was incarcerated for two years or more; (d) was convicted for an offence involving the prohibited, negligent or careless use of the firearm, for example, unlawful discharge of the firearm and failing to adequately secure the firearm or ammunition at his residence, place of employment or on his person; or (e) failed to comply with the Minister's section 35A notice (see section 36 of the 1967 Firearms Act).

[48] Additionally, the FLA may revoke the licence of a licensed dealer whose conviction for either an offence under the 1967 Firearms Act or the Customs Act, in relation to the import or export of firearms or ammunition, has been certified to the FLA by the court (see section 18 of the 1967 Firearms Act). Lastly, a person who was either

convicted of an offence against the Firearms Act and sentenced to imprisonment, with or without hard labour or, made the subject of a police supervision order or enter into recognizance to keep the peace on condition that he neither possess, use or carry a firearm or ammunition was liable to have his firearm licence, certificate or permit revoked by the FLA, upon notice (see section 46 of the 1967 Firearms Act).

[49] Where the FLA revoked the licence, certificate or permit under sections 36(1), 18 and 46 of the 1967 Firearms Act, section 36(2) required the FLA to give written notice to the holder. That notice would be complete if it specified the fact of the FLA's revocation and required the holder to deliver up the licence, certificate or permit to the FLA, in such time as specified, being no less than three days post the date of delivery of the notice (see section 36(2) of the 1967 Firearms Act). Failure to comply with the notice is an offence, punishable by the payment of a fine or up to 12 months' imprisonment (see section 36(3) of the 1967 Firearms Act).

[50] Conspicuously absent from the FLA's notice under section 36(2) of the 1967 Firearms Act is any empowerment of the FLA to require the holder of the firearm licence, certificate or permit to surrender the firearm or ammunition. In the circumstance of revocation, Mr Pagon's submission that the power to seize the firearm and ammunition ought to be implied, to effectuate the function of revocation, bears some force. The force of this argument stems from the fact that without authorization from the FLA, the holder would run afoul of section 20 of the 1967 Firearms Act (illegal possession).

[51] There is, therefore, a strong argument that an absurdity could result in the absence of an implied power of seizure of the firearm and ammunition where the licence, certificate or permit is revoked. That is to say, for the function of revocation of a firearm licence on the one hand, and possession of a firearm except under and in accordance with the terms and conditions of a firearm user's licence on the other hand, to be consistent, it may be necessary to read into section 26B (1)(c) the words, 'and require the holder to deliver the firearm to the Authority'. Implying these words seem to

sit comfortably with the criteria for implication distilled in **BP Refinery (Westernport) Pty Ltd v Shire of Hastings** (1977) 180 CLR 266, at pages 282-283:

“(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that “it goes without saying” (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.”

These criteria were accepted by this court in **Jamaica Public Service Company Limited v Dennis Meadows, Betty-Ann Blaine, Cyrus Rousseau, The Office of Utilities Regulations and The Attorney General**.

[52] However, investigation is invariably a preliminary step to revocation, if revocation be the goal. In my view, it would have to be demonstrated that the FLA’s investigative function would either be rendered nugatory or become hamstrung without an implied power to require the surrender or effect the seizure of the firearm. Or, to put the point in the language of the legislation, the FLA would have to show that it was necessary or expedient for the purposes of its investigation to seize the firearm belonging to the holder of a Firearm User’s Licence.

[53] There are three arguments against implying such a power for the purposes of investigation. Firstly, the power of firearm seizure during an investigation was conferred upon the constable who, acting under a search warrant issued by a Justice of the Peace, may enter any premises where he has reasonable grounds to suspect an offence under the 1967 Firearms Act is being or about to be committed. The constable is thereby authorised to retain any “firearm or ammunition” found on the premises “for so long as may be necessary for the purpose of any investigation in relation thereto ...”. If the investigation results in legal proceedings, the retention of the firearm and ammunition are authorised until the proceedings are disposed of (see section 43 of the 1967 Firearms Act).

[54] As a matter of legislative history, the provisions under section 43 antedate the creation of the FLA in 2005. Specifically, this power was denied to the FLA's statutory ancestor, the appropriate authority (the Minister, Commissioner of Police, Superintendents of Police and Collector of Taxes under section 38 of the 1967 Firearms Act). It may, therefore, be advanced as a reasonably arguable proposition that since the legislature specifically gifted the power to seize a firearm and ammunition, during an investigation to a named figure outside the remit of the FLA, there was no intention to endow the FLA with the like power.

[55] Secondly, in a situation that could reasonably call for an investigation, Parliament denied the FLA an express power of firearm seizure. Reference is here made to the facility given under section 37(1A) of the 1967 Firearms Act to an aggrieved party (holder of any licence, certificate or permit) to retain possession of his firearm or ammunition pending a review of the FLA's refusal to grant an exemption from a requirement to deliver them up, pursuant to the Minister's section 35A power. For ease of reference, section 37(1A) is extracted below:

"Where any aggrieved party appeals to the Minister pursuant to paragraph (d) of subsection (1) [refusing to grant any exemption under section 35A (3)], the firearm or ammunition in relation to which the appeal is made may be retained by the holder of a licence, certificate or permit in respect thereof until such time as the appeal has been determined."

[56] Arguably, this review may be preceded by the gathering of information by the FLA (an investigation if you will) to bolster its refusal to grant the exemption. Accepting this as correct, then it may be said that the surrender or seizure of the firearm or ammunition is not compulsory even in the face of notification pursuant to the Minister's exercise of the section 35A power.

[57] Thirdly, when Parliament created the FLA, it understood that the Minister possessed the section 35A power to require the delivery of previously licensed firearm and ammunition, in the interest of national security. While I take Mr Pagon's points that

the section 35A power is general in its application, does not contemplate the circumstances of this case and does not expressly limit the power to require delivery to the Minister, a contrary argument can be made. That is, the expressed gift of the power to the Minister, with a subordinate role for the FLA (competence to grant an exemption), demonstrates that the FLA was within the contemplation of the legislative overhaul of the 1967 Firearms Act, and a deliberate decision was made to exclude the power, or something akin to it, from the FLA's remit.

[58] Considering these possible arguments, together with the discussion of the *ejusdem generis* rule, it is arguable that to fill in the perceived gap between the function of investigation and the catch-all phrase in section 26B (2)(c) of the Act is to tread the illegitimate path of substantive gap-filling. Put another way, it is arguable that to gap-fill in these circumstances would be a naked attempt to write in the statute what the legislators never wrote. It is, therefore, axiomatic that the FLA's investigative function under section 26B(1)(e) cannot be treated with as one could the function of revocation.

[59] Based on the foregoing discussion, it appears to me that there is an arguable case with a realistic prospect of success: **Sharma v Browne Antoine and others** [2006] UKPC 57. It is a matter for judicial determination whether Parliament, in the creation of the FLA together with the bestowal of the function to investigate complaints of breaches of a firearm licence, certificate or permit, intended the FLA to have the power to either seize or require the surrender of the firearm during the investigation. That question begs exploration in the face of (i) the express withholding of that power from the FLA's predecessor, the appropriate authority; (ii) the bestowal of the power on a constable to seize and retain the firearm during an investigation; (iii) clothing the Minister with a like, though general power; and (iv) the possible limitation that may be imposed on section 26B (2)(c) by the *ejusdem generis* rule, if it is found to be applicable.

[60] Accordingly, the appellant ought to have succeeded in establishing an arguable case for judicial review with a realistic prospect of success, contrary to the learned judge's decision. Therefore, the learned judge would have erred on this basis when he refused the appellant's application for permission to apply for judicial review. The appeal succeeds on this issue.

## **Issue 2: Whether the application for permission to apply for judicial review was made promptly**

[61] This issue may be dealt with briefly. Mr Wildman submitted that the learned judge erred in law in concluding that the application for leave to apply for judicial review was not made promptly. This, Mr Wildman argued, flew in the face of the application having been made within three months of the seizure of the firearm. In any event, he contended, the continuing illegal act of the FLA removes all questions of delay. This continuing illegal conduct also militates against any concern that any prejudice was caused to good administration, according to Mr Wildman.

[62] In response, Mr Pagon submitted that it was incumbent upon the appellant to explain why he waited until the last minute to make his application. The appellant provided no reasons for this in the accepted form of an affidavit, Mr Pagon argued. Mr Pagon cited **Lynden Simpson and Jamaica Civil Service Association v Permanent Secretary Ministry of Transport & Mining, Hugh M Salmon, Mary Cresser and Loraine Robinson (All members of the committee of enquiry)** [2025] JMCA Civ 17 ('**Lynden Simpson v PS Ministry of Transport & Mining**').

### Discussion

[63] The Civil Procedure Rules, 2002 ('CPR') stipulate that an application for leave to apply for judicial review must be made promptly, and in any event, within three months of the date when the grounds for the application first arose (rule 56.6(1) of the CPR). It has been established that the primary requirement is promptitude, and three months is a 'back stop' (Judicial Review Principles and Procedures, by Jonathan Auburn, Jonathan Moffett and Andrew Sharland, 2013, at para. 26.30). Therefore, an application that is

made within three months may still be defeated if it was not made promptly (**R v Stratford on the Avon District Council, ex parte Jackson** [1985] 3 All ER 769; *Judicial Review in the Commonwealth Caribbean, 2007*, by Rajendra Ramlogan, at para. 4.3). Time starts to run from “the date of the judgment, order, conviction or proceedings” (rule 56.6(3) of the CPR).

[64] The operative date for the purpose of a marker to assess the promptness of the appellant’s application for leave is not altogether clear from the available evidence. That date should, therefore, be a fact for the learned judge to find. In the absence of his reasons, I will endeavour to ascertain that fact from the record of appeal. 31 December 2020 was the date on which the appellant sought to renew his firearm user’s licence. On that date, he also handed over his firearm to the FLA. In his affidavit (filed 3 November 2021), the appellant said that, upon his denial of the allegations disclosed by Mr Thomas, he was asked to supply certain documents relating to his business. He returned to the FLA “[w]ithin days of speaking with Mr Thomas” with those documents (see para. 12 of that affidavit). The appellant also gave a statement which Mr Thomas “signed off on” and informed him that the statement would be sent upstairs for a review of his information and the return of his firearm (see para. 34 of that affidavit). At para. 37 of the same affidavit, the appellant deposed, “it has been almost three (3) months since the [FLA] seized my firearm and to date, I have not heard anything about the return of the firearm and renewal of the licence”.

[65] Mr McNab agrees that the appellant visited the FLA on 31 December 2020 for the purpose of renewal of his firearms licence (see para. 14 of affidavit filed 9 July 2021). He, however, conflates this date with the seizure of the firearm. However, seizure and a voluntary handover are distinct concepts. Mr McNab said that on or about 26 March 2021, “three months after the seizure of his licensed firearm,” the appellant “indicated” to the FLA that “it had no legal authority to seize his firearm during an investigation” (see para. 22 of affidavit filed 9 July 2021). After that, Mr McNab observed that the

application in the court below was made “in relation to the December 31, 2020 seizure of his firearm”.

[66] Although there is no direct evidence of this, it appears that the firearm was voluntarily handed over as part of the renewal of licence procedure. The decision to seize the firearm seems to have been taken some time after the voluntary handover and before the appellant “indicated” to the FLA that it was without legal grounding to seize the firearm. That indication suggests the FLA may have informed the appellant that it was seizing his firearm outside of a formal medium.

[67] Be that as it may, the application for permission to apply for judicial review was filed on 29 March 2021. Since the FLA was awaiting business documents from the appellant, that were submitted “within days” after 31 December 2020, the supposition is that the FLA probably made the decision to seize the firearm in January 2021. It may then be assumed that the decision to seize the firearm was communicated to the appellant either in the month of January or February 2021. When the decision was communicated to the appellant is relevant to the question of promptitude, although irrelevant to the date of the decision (**R v Secretary of State for Transport ex p Presvac Engineering Ltd** (1991) 4 Admin LR 121).

[68] Although it is difficult to appreciate by what calculus the learned judge found that the appellant did not act promptly, in essence, that there was delay, having so found, he was required to go another step. That is, he had to consider the question of substantial hardship or prejudice to the rights of any person and detriment to good administration (rule 56.6(5) of the CPR). The learned judge made no order from which it can be inferred that he directed his mind to these considerations.

[69] Be that as it may, it does not seem fair to say there was culpable delay on the part of the appellant in these circumstances; no date has been given as to when the decision to seize his firearm was made, and there is no evidence of when this was communicated to him. I considered **Lynden Simpson v PS Ministry of Transport &**

**Mining.** In that case, the application for permission to apply for judicial review was made six months after the relevant date. Consequently, there was also an application for an extension of time within which to make the application. That case is palpably distinguishable from the present. It is instructive that the dispositive determination in that case was the lack of an arguable ground upon which to grant leave. Therefore, respectfully, the respondent's reliance on **Lynden Simpson v PS Ministry of Transport & Mining** is misplaced.

[70] The upshot of the preceding discussion is that, in the face of the equivocal evidence concerning the date of seizure, there was no factual basis upon which to arriving at a finding that the appellant's application for permission to apply for judicial review lacked the required promptitude. Delay, therefore, could not properly operate as a bar to grant permission to apply for judicial review. Accordingly, the learned judge erred in so holding and the appeal succeeds on this point also.

#### Conclusion

The appellant having shown that there is an arguable ground for judicial review with a realistic prospect of success and that there was no delay in making the application, leave to apply for judicial review ought to have been granted by the learned judge. Therefore, the appeal should be allowed, the orders of the learned judge set aside, leave for judicial review be granted with the necessary consequential orders that the learned judge ought properly to have made.

#### **F WILLIAMS JA**

#### **ORDER**

1. The appeal is allowed.
2. The orders of Stamp J made on 28 October 2021 are set aside.
3. The appellant is granted leave to apply for judicial review.

4. Leave is granted on condition that the appellant file a claim for judicial review within 14 days of the date of this order.
5. The appellant is to consult the Registrar of the Supreme Court to fix a date for the first hearing of the claim for judicial review to take place on or before 25 September 2026, or as soon thereafter as the fixtures reasonably allow.
6. There shall be no costs of the application in the court below.
7. Costs of the appeal are awarded to the appellant, to be agreed or taxed.