ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

GORDON HONEYMAN

REASONS FOR JUDGMENT

BEFORE THE HONOURABLE JUDGE B. DUNCAN,

on the 8th day of July, 1997, at Brampton, Ontario.

APPLICATION HEARING

A P E A R A N C E S:

M. Denomme, Ms. Counsel for the Crown

C. Martin, Mr. Counsel for the accused

REASONS FOR JUDGMENT

B. DUNCAN, Prov.Ct.J. (orally):

This is an application under s. 105 and 107 of the Criminal Code for review of the decision of the firearms officer rejecting the accused's application for a firearms acquisition certificate in December of 1995 to January of 1996. The date is somewhat flexible for reasons the officer explained.

The applicant applied for a firearms acquisition certificate. It was refused by the firearms officer, Officer Robinson, acting pursuant to s. 106 (5) of the Criminal Code where a firearms officer receives an application for a F.A.C. where he has notice of any matter that may render it desirable in the interest of the safety of the applicant or any other person that the applicant should not acquire a firearm, the firearms officer shall notify the applicant accordingly, et cetera et cetera, and, essentially, refuse the application. The reason given in writing by the officer in this case was that it was not desirable in the interest of safety of "...yourself and the general public ..." that you acquire a firearm on the grounds that "... you made a false statement on your F.A.C. application."

The applicant has now applied to this court for a reference for confirmation or more particularly for a variation and reversal of that opinion.

In this court the refusal to grant the F.A.C. was supported on basically two grounds which are somewhat interwoven but which I wish to deal with separately.

The first ground, the one stated most prominently in the refusal notice is the falsity of the application. The second ground is what might be called the public safety concern. If I could just deal with the public safety concern initially. The facts as I understand it are these: In 1994 the accused had been separated from his wife and had been charged under s. 264(l) of the Criminal Code with harassment. Now, I do not know the underlying facts of that charge. Nothing has been put before me concerning that. All I do know is that he was convicted in this court in August of 1994 and appealed that matter to the Ontario Court, General Division, where the appeal was allowed and the accused was found not guilty in February of 1995.

I do not know the reasons for judgment of either the trial judge in that case or more importantly the summary conviction Appeal Court judge. I do have a copy of the order allowing the appeal before me.

While this matter was proceeding, that is, the harassment matter was proceeding before the court complaints were received by Officer White and probably others of the Peel Regional Police from the ex wife to the effect that the accused was causing damage to her car. Extraordinary efforts were made by the police officers, including taking up residence near the wife's home and conducting surveillance on, I believe it was 20 nights over some period of time to attempt to catch the culprit in the act, or at least gain some evidence in support of a charge against the accused or whoever was doing that. Notwithstanding these considerable efforts no evidence turned up. There was no sign of the accused and no charge was ever laid.

It is told to me today that the wife is still frightened of the accused, but I note that she would not come to court today to give evidence, for whatever reason she might have.

Now, following the accused's acquittal of the harassment charge, or more particularly, the allowance of his appeal, the accused attempted to retrieve his guns that had been held by the police following his surrender of them pursuant to bail conditions connected with the bail order made on the harassment charge. The return of the guns was refused. To justify that refusal and other concerns the police brought a prohibition application, that is: an application that initiated pursuant to s. 100(4) of the Criminal Code, to prohibit the accused f rom having in possession any firearms, explosives or am munition. That application was eventually heard by a Judge of this court, I do not know who, and I am told that it was denied, that is, the application for prohibition was denied and the -accused was, effectively, permitted to get his guns back. I do not know the reason for that judge's decision. I observe, however, that the issue before him on that application under s. 100(4) and 100(6) is (I'll paraphrase somewhat here) that the judge had to be satisfied that there were reasonable grounds to believe that it was not desirable in the interest of safety of any person that the accused should possess firearms. As I said, I do not know the judge's reasons in that case but it is a fair assumption that he concluded that he was not satisfied.

On this application before me today it is governed by s. 100 (7) and the test is that I be satisfied that the officer's opinion -- that it is not desirable in the interest of safety of the applicant or any other person, is justified. Now in my opinion, while the wording differs somewhat, there is very little difference between the two tests. The one that was before the judge last year required a finding of reasonable grounds to believe -- The present section does not use the term reasonable grounds to believe nor does the firearms officer apparently have to have reasonable grounds to believe, but it does require that the firearm officer's opinion be justified. And in my opinion it cannot be justified if it is not based on reasonable grounds, so the test is essentially the same. I am fortified in that view by the fact that 106(4) of the Criminal Code, which sets out certain matters upon which the court has deemed to have notice in the omnibus paragraph sub (d) talks about any good and sufficient reason, which in my opinion is the equivalent of a reasonable ground.

In any event, the judge on the prohibition application must have concluded that he was not satisfied that there were reasonable grounds to believe that public safety was compromised. The guns were returned to the applicant approximately a year ago. Since then there has been no new development except the fact that he has been in possession of the gun since that time. And I am told that the wife is still afraid of him. She has moved away and is apparently living under a different name.

Now, Mr. Martin for the applicant argues that I am not at liberty to come to any different conclusion than the judge in the prohibition application. Though the expression was not used by Mr. Martin, I understand him to effectively raise a defence of res judicata. or issue estoppel. Now I do not find it necessary to decide whether I am bound by what was decided last year on the prohibition application because I would come to the conclusion, in any event, with respect to the public safety. I say that because in my view really is not a substantial basis put before me to justify the denial of an F.A.C.. on public safety concern s. Just to reiterate, there is nothing put before me about the circumstances surrounding the original harassment charge. All I know is he was charged and he was acquitted, eventually.

The second aspect regarding the reports of damage to her vehicle and her suspicion that the applicant was involved have nothing to substantiate them.. Now, I appreciate that these kind of suspicions or feelings are very difficult to verify or substantiate and the intuition involved often is very accurate. Nevertheless, in my opinion there must be something more than the mere unsubstantiated suspicion. There must at least be some basis put forward to support the suspicion that is held by the person, and that does not exist here.

Finally, there is what is said to be the ongoing fear of the complainant of the applicant. On the other side of the coin the applicant has had guns in his possession at least since before he was married. It is significant that he has been in possession of his other guns legally since at least last year. He wants the firearm acquisition certificate in this case to obtain a further gun for use in some competitive or sporting way.

It is difficult for me to see how the wife or the public in general would be significantly protected by the refusal of the firearms acquisition certificate in this case given the fact that he already has a number of guns.

I appreciate the comment made by Officer Robinson that in effect he does not want to add more fuel to the potential fire, but in my view to conclude at this stage that the safety of the public is compromised by the granting of the F.A.C. on the basis of what I call the public safety concern would not be justified as of today.

Now I want to deal with the question of falsity on the application, which is the other aspect of this. Now, the accused answered "No" to question 34 on the application which reads, "Do you know if you have been reported to the police or social services for violence, threatened or attempted violence or other conflict in your home or elsewhere?" He answered, "No". There is a provision for space on the form that if the applicant answers yes he can explain in that space. Of course, since the accused answered no there is no explanation there. It is conceded by Mr. Martin that the answer was not accurate and that, in fact, he has been reported to the police in the past at least for conflict in the home or elsewhere even if that did not amount to violence.

At the time the application was filled out the accused had been acquitted of the harassment charge and testified before me saying that he believed, with some assistance from a lawyer, that the acquittal had effectively reversed or nullified all factual occurrences including the report to the police that initiated that charge. I must say that I have some difficulty accepting that explanation. I think at a minimum the accused was wilfully blind as to what his situation was with respect to properly answering question 34 and he was really prepared to give himself the benefit of the doubt in answering that question, whereas, had he been more careful he certainly would have come to a different conclusion, or at least put explanatory note in there. I do not find it difficult to accept that. But even assuming that the answer was knowingly false, I ask myself what is the effect here? Can a firearms acquisition certificate be refused solely because of false statements made by the . applicant? Now, there is nothing in the Criminal Code that requires the rejection of an F.A.C. application on the basis of a false statement, or that prevents a further application being made if an initial one is found to be false. However, it would seem to be a matter of common sense that a false application is no proper basis for the firearms officer making any decision. And in my opinion the firearms office is entitled to reject such an application, not because of safety concerns but because, really there is no proper application before him at all if it contains falsity. It does not in my opinion follow that such falsity logically supports or justifies the necessary opinion that is in issue here, and again, that opinion is that (to paraphrase) it is not in the interest of safety of the applicant or the public that lie be granted a certificate and possess a firearm.

Section 100(7), the section that I am operating under here, requires that I hear all relevant evidence, and that includes information not before the firearms officer together with information that was before him. With that information I am to determine whether the opinion that it is not desirable for safety reasons is today justified, not whether it was justified at the time and on the

basis of the information known to the firearm officer. And in determining whether it is justified that we come to the test, and the issue stated by the section, (again to paraphrase) whether a public safety denial has been made out. Now, I have already concluded that the public safety concern here is not so compelling that refusal of the F.A.C. would be justified. I ask myself does the falsity on the application change that or does it augment the public safety concern? While it is very tempting for the court to say that anytime there is a false application for a firearms acquisition certificate the applicant is out of luck and the application shall be refused and the applicant can get no support from this court, that is not what the Criminal Code says. And again, I have to ask myself whether the safety of the applicant or any other person is such a concern that a refusal of the certificate is justified. In this case I do not think it is. And I say that for two reasons. First of all, as already noted, the accused already legally possesses firearms and the granting of the F.A.C. is not going to put the public at any further risk. Secondly, and when I say public, I mean the public in general and the ex wife in particular. Further, on the true state of facts if they had been known, that is, if section 34 had been answered differently in my opinion the applicant would have or should have been granted an F.A.C. Now, I realize that Officer Robinson said he would not have because of the public safety concern but as I have already said I find that, as did the judge last year, not to be sufficiently compelling to justify a concern for public safety that would justify either a prohibition order or the refusal of an F.A.C.

So in summary I conclude that the opinion that is not desirable in the interest of the safety of the applicant or any other person that the applicant acquire a firearm it is not justified. And accordingly, by s. 100(8) I am required to direct the firearms officer to issue to the applicant a firearms acquisition certificate on payment of the prescribed fee.

is there some order -- Have you drafted an order or should I simply endorse this or is my oral saying so sufficient?

Mr. MARTIN: It's gone both ways in my experience, sir I'll send an order to you if it's required that the registrar decides to do it. The last one, I send an order across to be signed; it got signed but the F.A.C. was issued before the registrar got the order. So whatever this registrar wants. If he wants an order I'll draft one and send it to you.

OFFICER ROBINSON: I've done them on notice of disposition of the trial from the court officer. As long as...

MR. MARTIN: I guess we don’t need a formal order.

THE COURT: Okay. Well, if you do require one you know where to find me.

MR. MARTIN: Thank you.

THE COURT: All right

MR. MARTIN: I appreciate the time you’ve taken to consider this. There aren't too many reported cases on it.

THE COURT: Don't tell me there will be now.

MR. MARTIN: Wait till next year. Thank you very much.

THE COURT: Thank you.

I hereby certify the foregoing to be a true and accurate transcript of my stenomask tapes, to the best of my skill and ability.

“Angie E. Capobianco”
Angie E. Capobianco
Official Court Reporter