

ONTARIO COURT OF JUSTICE

JEFFREY THOMPSON

REFERENCE HEARING REGARDING
THE FIREARMS ACT (Section 74(1))

REASONS FOR JUDGMENT

BEFORE THE HONOURABLE MR. R. A. MINARD
on Friday, March 1, 2002
at Newmarket, Ontario

APPEARANCES:

Ms. P. Colavecchia

Counsel for the Crown

Mr. C. Martin

Counsel for the Applicant, Jeffrey Thompson

REASONS FOR JUDGMENT

MINARD, O.J. (Orally):

I've considered - I appreciate the onus is on the applicant to show that the decision under Section 75(2) - that the decision to refuse to grant a licence was not justified.

The thing that is of concern to the Court here is that, number one, I appreciate that it's a privilege in this country to acquire a firearm, it's not a right. And number two, the applicant, at first blush, has a history that should cause any firearms officer to take a long and considered look at the application, before coming to a determination.

But the firearms officer, in this case, never interviewed the applicant, and took at face value the police synopsis with respect to some of these matters. There's nothing in the Act that requires the firearms officer to interview the applicant.

Nonetheless, when you proceed on a decision of this nature without interviewing the applicant and getting his side of some of your concerns, it can potentially leave the firearms officer with a less than full picture of the history of the applicant. And I'm well aware that in even administrative decisions, it's certainly

preferable that the applicant whose privilege is been affected by the decision, generally, should be heard with respect to it before a final decision is made...

MS. COLAVECCHIA: Yes.

THE COURT: ...and that wasn't done here.

MS. COLAVECCHIA: Your Honour?

THE COURT: And - yes?

MS. COLAVECCHIA: I'm sorry to - to interrupt. And you had asked if I wanted to call any reply evidence, and I indicated at the time that I....

THE COURT: You had said no.

MS. COLAVECCHIA: I had said no. The officer, afterwards, had indicated to me that he did speak to this gentleman a week after the refusal and...

THE COURT: But the refusal was already...

MS. COLAVECCHIA: ...he had a conversation with him.

THE COURT: in effect, so....

MS. COLAVECCHIA: Okay.

THE COURT: In any event, he did not speak to this gentleman to get his side of the story. There was an effort to contact him, but only for the purposes of serving the notice of refusal on him.

He has given a detailed explanation with respect to the incident of his sister, which

has been corroborated by affidavit by his wife. No charges were ever laid. The officer - that is Officer Gilchrist - proceeded on the assumption that the accused had been guilty of a very serious assault on his sister, that for some reason or other was not proceeded with, but nonetheless, that's what had happened. And there's every basis to believe that that is far from what happened.

And secondly, there are large mitigating circumstances with respect to the conditional sentence that was imposed. It was done on the basis that the accused, perhaps, was negligent in some of his activities. This seems to have been confirmed by his counsel. Certainly, based on the letter from his counsel and the applicant's testimony today, had the matter gone to trial - had that evidence been accepted or raised a reasonable doubt, the accused certainly would have been acquitted of the offence and from counsel's letter and the accused's evidence - and again, there's been no contrary evidence put before me on behalf of the respondent that the accused would appear to have been, in fact, not guilty of that offence.

So I think, had this information been know to the firearms officer, there is every reason to believe that his decision, bearing in mind that this applicant has had three previous firearms acquisition certificates without incident, that

his decision would have been to the opposite effect.

So in the end, I've come to the conclusion that the decision that was made was not justified and I'm going to direct the firearms officer to issue the applicant with the licence that was applied for.

5 THIS IS TO CERTIFY that the
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made by sound recording apparatus
to the best of my skill and
ability.

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Kathy Pinfold
Court Reporter

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January 1, 1990.

25 Transcript ordered: March 1, 2002
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