

Federal Court



Cour fédérale

**Date: 20191127**

**Docket: T-2030-18**

**Citation: 2019 FC1509**

**Ottawa, Ontario, November 27, 2019**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**ELLIOT LEE SEXSMITH**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**Background**

[1] Mr. Sexsmith is a self-employed commercial helicopter pilot who applied under s. 20 of the Firearms Act, SC 1995 c 39 (the *Act*) for two Authorizations to Carry (ATC) a handgun while operating in British Columbia, the Yukon, and the Northwest Territories.

[2] Mr. Sexsmith provides services to outfitters by transporting guides and hunters to and from remote areas. He says he worries about bears while working in remote northern areas and needs the ATCs for wilderness protection. Although he can carry a shotgun, he says there is limited interior space in his helicopter to accommodate one, and he therefore requires a handgun.

[3] The ATC applications were denied under s. 68 of the *Act*, as the Firearms Officers were not satisfied that Mr. Sexsmith required a handgun in connection with his occupation or for wilderness protection.

[4] Mr. Sexsmith, who is self-represented, seeks judicial review of those refusals and argues that the Officers did not appreciate his operational environment. Mr. Sexsmith asks the Court to quash both decisions and issue an order of *mandamus* compelling the Officers to issue the ATCs.

[5] For the reasons explained below, I am dismissing Mr. Sexsmith's judicial review application. I have concluded that the Officers' decisions are reasonable and there was no breach of Mr. Sexsmith's procedural fairness rights.

### **Decision Under Review**

[6] There are two written decisions under review; however, the Firearms Officer for British Columbia and the Yukon (Officer Hardy) and Chief Firearm Officer for the Northwest Territories (Officer Maurizio) jointly interviewed Mr. Sexsmith on March 27, 2018. At the conclusion of the interview, both Officers informed Mr. Sexsmith that they would not be issuing

the ATCs. Both Officers relied on s. 3(b) of the *Authorizations to Carry Restricted Firearms Regulations* Can. Reg. 98-207 (the *Regulations*). The combined effect of s. 20 of the *Act* and s. 3(b) of the *Regulations* is that an officer may only issue an ATC for a restricted firearm to a person who is working in a remote area if they need the firearm for use in connection with their occupation and if it is for protection from wild animals. The Officers found that failing to meet the need requirement was "good and sufficient reason" within the meaning of s. 68 of the *Act* and they would therefore not issue the ATCs.

#### *Northwest Territories Decision*

[7] In her April 9, 2018 written decision, Officer Maurizio noted that Mr. Sexsmith did not need a handgun to work as a helicopter pilot in remote areas and that the request was based on his personal preference. Officer Maurizio sought advice from a Superintendent with the Environment and Natural Resources and an investigator with Transport Canada and found that a shotgun was more appropriate for Mr. Sexsmith's needs. Further, she also noted that the shotgun could be stored in the outside compartment for cargo or clipped to the side of the helicopter if interior space was limited. Officer Maurizio noted the absence of any reports of wildlife attacks on pilots during landing, lifting off, or sitting in the helicopter. She further noted that Mr. Sexsmith had not taken any predatory awareness training. Although she refused an ATC, Officer Maurizio did note that Mr. Sexsmith could carry a non-restricted firearm.

*British Columbia / Yukon Decision*

[8] Officer Hardy issued his written decision on May 18, 2018. In his decision, he noted that Transport Canada does not have any requirement for pilots operating over wilderness areas to carry a firearm on board, and that doing so is a matter of personal choice. He also noted that the manner in which Mr. Sexsmith proposed to store his handgun (locked in a box under his seat) and his preference for a handgun because of its weight and size, demonstrate that he does not need the handgun as part of his job, but rather, Mr. Sexsmith was seeking the handgun as an emergency tool.

**Does The Federal Court Have Jurisdiction?**

[9] Officer Maurizio operates out of the Northwest Territories. She is a member of the RCMP who is "appointed to issue limited firearms possession licenses by the R.C.M.P. Commissioner" (9037-9694 *Québec Inc c Canada (Procureur général)*, 2002 FCT 849, at para 38 citing *Warren Delbert St Germaine v R and Brian G Watt; Barry Taylor v R and James C Howie* [1993] NWTR 137 at para 22 [*St Germaine*]). She falls within the definition of a federal board, commission or other tribunal (*St Germaine* at para 22).

[10] Officer Hardy's decision applies to both the province of British Columbia and the Yukon Territory. In *R v Lovig*, File no: 77551-1 (BCPC) at para 72, the Provincial Court of British Columbia determined it does not have jurisdiction to hear references for denials of ATC applications when it stated at para 72:

...a reference to a Provincial Court judge for a refusal of a Chief Firearms Officer to issue an authorization to carry is not provided for in s. 74 of the *Firearms Act*, I find the Provincial Court does not have jurisdiction...

[11] Accordingly, based upon the facts of this case, I conclude that the Federal Court has jurisdiction pursuant to *St Germaine* and *R v Lovig*.

### Relevant Legislation

[12] The relevant legislative provisions are ss. 20 and 68 of the *Act* and s. 3(b) of the *Regulations*.

[13] Section 20 of the *Act* states:

Carrying restricted firearms and pre-February 14, 1995 handguns

**20** An individual who holds a licence authorizing the individual to possess restricted firearms or handguns referred to in subsection 12(6.1) (pre-December 1, 1998 handguns) may be authorized to possess a particular restricted firearm or handgun at a place other than the place at which it is authorized to be possessed if the individual *needs* the particular restricted firearm or handgun

(a) to protect the life of that individual or of other individuals; or

(b) for use in connection

Port d'armes à feu à autorisation restreinte et d'armes de poing

**20** Le particulier titulaire d'un permis de possession d'armes à feu à autorisation restreinte ou d'armes de poing visées au paragraphe 12(6.1) (armes de poing : 1er décembre 1998) peut être autorisé à en posséder une en particulier en un lieu autre que celui où il est permis de la posséder, s'il en a besoin pour protéger sa vie ou celle d'autrui ou pour usage dans le cadre de son activité professionnelle légale.

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with his or her lawful profession or occupation.  
[emphasis mine]

[14] Section 3(b) of the *Regulations* states:

Lawful Profession or Occupation

**3** For the purpose of section 20 of the Act, the circumstances in which an individual needs restricted firearms or prohibited handguns for use in connection with his or her lawful profession or occupation are where

...

**(b)** the individual is working in a remote wilderness area and firearms are required for the protection of the life of that individual or of other individuals from wild animals; ...

Activité professionnelle légale

**3** Pour l'application de l'article 20 de la Loi, un particulier a besoin d'une arme à feu à autorisation restreinte ou d'une arme de poing prohibée dans le cadre de son activité professionnelle légale dans l'un ou l'autre des cas suivants :

...

**b)** il travaille dans une région sauvage éloignée, et l'arme à feu est requise pour protéger sa vie ou celle d'autrui contre des animaux sauvages; ...

[15] Section 68 of the *Act* states:

Licences and authorizations

**68** A chief firearms officer shall refuse to issue a licence if the applicant is not eligible to hold one and may refuse to issue an authorization to carry or authorization to transport for any good and sufficient reason.

Non-délivrance : contrôleur des armes à feu

**68** Le contrôleur des armes à feu ne délivre pas de permis au demandeur qui ne répond pas aux critères d'admissibilité et peut refuser la délivrance des autorisations de port ou de transport pour toute raison valable.

## Issues

[16] Based upon the submissions of Mr. Sexsmith, the following are the issues for determination:

1. Was there a breach of Mr. Sexsmith's procedural fairness rights?
2. Are the decisions to refuse the ATCs reasonable?

## Standard of Review

[17] Breaches of procedural fairness are assessed for correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 43).

[18] The standard of review for a Firearms Officer's refusal to grant an ATC is reasonableness (*Waye v Nova Scotia (Chief Firearms Officer)*, 2018 NSCA 89 at para 12).

## Analysis

1. *Was there a breach of Mr. Sexsmith's procedural fairness rights?*

[19] Mr. Sexsmith argues that the Officers had already made up their mind not to allow his application before their interview and therefore did not actually consider his application. In his words: "they were looking for a reason to not issue a permit". He argues that they were predisposed "to not issue the permit". Mr. Sexsmith effectively argues that he is entitled to an ATC unless the Officers "prove" otherwise. Unfortunately for Mr. Sexsmith, that is not the law.

As the Supreme Court of Canada stated in *R v Wiles* (2005 SCC 84 at para 9): “possession and use of firearms is not a right or freedom guaranteed under the Charter, but a privilege.”

[20] As there is no right to carry a restricted firearm, a permit is required pursuant to the legislation. The process involves an application and a requirement that the Applicant establish he needs the firearm in connection with his profession or occupation. Mr. Sexsmith claimed to require a permit because he works in a remote area and needs to protect himself from wild animals, which is a purpose permitted by s. 3(b) of the Regulations. The burden was on Mr. Sexsmith to provide sufficient evidence and justification for the issuance of the permit. Despite his allegations of unfairness, Mr. Sexsmith did not point to any procedure that was not followed, or evidence that was ignored to suggest that either Officer did not properly consider his application.

[21] Mr. Sexsmith also argues that he should have had the opportunity to respond to the information the Officers obtained from Transport Canada and Environment and Natural Resources. Had the information from these sources caused the Officers to change their decision, this argument might be persuasive. However, the Officers obtained this information after they advised Mr. Sexsmith that they would not be issuing the ATC. Therefore, any information they acquired after the denial cannot be said to have informed their decisions to deny his permit because the Officers already made their decisions and told Mr. Sexsmith the results.

[22] In the circumstances, there was no breach of Mr. Sexsmith's procedural fairness rights.



2. *Are the decisions to refuse the ATCs reasonable?*

[23] Mr. Sexsmith argues that the Officers were dismissive of his professional experience and the record of bear attacks in the areas where he operates. As noted above, Mr. Sexsmith appears to be operating under the misapprehension that he is entitled to an ATC for a restricted handgun unless the Officers can demonstrate that he should not have one. That, however, is not the test.

[24] When reviewing a decision for reasonableness on judicial review, the question for the reviewing court is if the decision is “justified, transparent and intelligible” and whether the decision falls within the acceptable range of outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[25] Officer Maurizio told Mr. Sexsmith that she did not believe he needed a handgun to do his job and told him that it was because the Superintendent and the Investigator recommended shotguns instead. She noted that Mr. Sexsmith has not taken predatory awareness training, that his preference seems to be based on convenience rather than need. She noted that the Superintendent has concerns about “under-trained persons utilizing inadequate firearms”. Officer Maurizio described the information on which she based her decision, and provided recommendations for different safety procedures. Finally, she linked the preferability of non-restricted firearms and Mr. Sexsmith's lack of training, and noted that he could carry a shotgun. The Officer provided ample justification for her decision.

[26] In Officer Hardy's decision, he considered Mr. Sexsmith's stated preference for a small gun. This led Officer Hardy to conclude that the handgun was not necessary for execution of his

daily employment, and was instead a tool for emergencies. Officer Hardy relied on facts that Mr. Sexsmith's request for a handgun ATC was based on preference rather than need, specifically, that he wanted a smaller gun due to its weight and size.

[27] Both Officers properly referenced s. 68 of the *Act* in their decisions. As Mr. Sexsmith did not demonstrate a “need” for the ATC pursuant to s. 20 of the *Act* and s. 3(b) of the *Regulations*, the Officers had “good and sufficient reason” to refuse his application pursuant to s. 68 of the *Act*. Their decisions are therefore reasonable and fell within the acceptable range of outcomes.

### **Conclusion**

[28] Obviously, Mr. Sexsmith disagrees with the Officers' decisions. However, a disagreement with the decisions is not sufficient to support a successful judicial review application - more is necessary. There is no evidence to support the procedural fairness arguments and the Officers' decisions are reasonable. Accordingly, there are no grounds for this Court to intervene and this judicial review application must be dismissed.

I decline to award costs.

**JUDGMENT in T-2030-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed  
and no costs are awarded.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2030-18

**STYLE OF CAUSE:** ELLIOT LEE SEXSMITH v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 7, 2019

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** NOVEMBER 27, 2019

**APPEARANCES:**

Elliot Lee Sexsmith

APPLICANT  
ON HIS OWN BEHALF

Graham Stark

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

- Nil -

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