

SUPREME COURT OF NOVA SCOTIA

Citation: *Waye v. Nova Scotia (Chief Firearms Officer)*, 2017 NSSC 298

Date: 20171120

Docket: Hfx No. 464350

Registry: Halifax

Between:

Laurie Richard Waye

Applicant

v.

John W. Parkin, in his capacity as
Chief Firearms Officer for Nova Scotia

Respondent

JUDICIAL REVIEW

Judge: The Honourable Justice Christa M. Brothers

Heard: October 4, 2017, in Halifax, Nova Scotia

Counsel: Guy Lavergne, for the Applicant
Duane A. Eddy, for the Respondent

Brothers, J:

[1] For many years, Mr. Laurie Richard Waye has sought permission to use a .22 calibre handgun, as opposed to a rifle, in connection with his occupation as a licensed trapper and fur harvester. Mr. Waye seeks judicial review of the Chief Firearms Officer's ("CFO") most recent refusal of his request to carry a restricted firearm. This is the third judicial review brought by Mr. Waye following a refusal by the CFO to grant him an authorization to carry ("ATC") a restricted firearm.

STATUTORY FRAMEWORK

[2] The *Firearms Act*, S.C. 1995, c. 39, governs the acquisition and possession of firearms in Canada. Section 20 of the *Act* is applicable:

20. An individual who holds a license 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 with his or her lawful profession or occupation.

1995, c. 39, s. 20, 2003, c. 8, s. 56

[3] Mr. Waye's argument revolves around the interpretation of a particular regulation made pursuant to the *Firearms Act*. Section 3 of the *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations*, SOR/98-207 ("the Regulations"), describes the circumstances when an individual "needs" a restricted firearm or a prohibited handgun for use in their "lawful profession or occupation". Section 3 provides:

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

(a) the individual's principal activity is the handling, transportation or protection of cash, negotiable instruments or other goods of substantial value, and firearms are required for the purpose of protecting his or her life or the lives of other individuals in the course of that handling, transportation or protection activity;

(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; or

(c) the individual is engaged in the occupation of trapping in a province and is licensed or authorized and trained as required by the laws of the province.

[4] Section 68 of the *Firearms Act* sets forth the power of a CFO to refuse to issue an ATC:

Refusal to Issue and Revocation

Licenses 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**.

[Emphasis Added]

[5] In his listed ground of review, Mr. Waye says he is a licensed and trained trapper and therefore he meets the “needs” requirement of the *Firearms Act* and associated Regulations.

THE APPLICANT’S PREVIOUS APPLICATIONS FOR AN AUTHORIZATION TO CARRY

[6] Mr. Waye has been applying to the CFO for an ATC for many years. Two of the resultant refusals by the CFO have been upheld by the courts: *Waye v. Nova Scotia (Chief Firearms Officer)*, 2013 NSSC 148, upheld on appeal, 2013 NSCA 154, and *Waye v. Parkin*, 2016 NSSC 36. A review of these applications was undertaken by Justice Wood in *Waye v. Parkin*, 2016 NSSC 36:

[7] In the fall of 2012 Mr. Waye applied for an Authorization to Carry for use in his occupation as a trapper in Nova Scotia. He explained that it would be safer for him to carry a handgun rather than a long gun in travelling through dense brush where most of his trapping was done. He identified it as an occupational health and safety issue.

[8] On January 11, 2013 the CFO issued a decision refusing Mr. Waye’s application. The reason for the refusal was the CFO’s interpretation that Regulation 3(c) did not apply because Nova Scotia had no provincial laws or regulations licensing or authorizing a fur harvester to carry a restricted firearm for the purposes of dispatching an animal.

[9] Mr. Waye unsuccessfully sought judicial review of the refusal to this Court (2013 NSSC 148) and the Nova Scotia Court of Appeal (2013 NSCA 154). Both

courts decided the applicable standard of review for the CFO's decision was reasonableness and his interpretation of Regulation 3(c) was reasonable.

[10] In October 2014 Mr. Waye again applied for an Authorization to Carry. By this time a different individual had been designated as the CFO for Nova Scotia. Mr. Waye's submission again focussed on the issue of occupational health and safety. He also argued that as a person licensed and trained as a trapper under the laws of Nova Scotia he met the requirements of Regulation 3(c).

[11] On October 29, 2014 the CFO refused Mr. Waye's application. Mr. Waye did not seek judicial review of that decision.

[12] Mr. Waye submitted another application for an Authorization to Carry which was dated August 19, 2015. In support of that application he repeated his concerns with respect to occupational health and safety and provided more information concerning that issue. He repeated his assertion that as a licensed trapper he met the requirements of Regulation 3(c). By decision dated September 30, 2015 the CFO refused Mr. Waye's application. . . .

[7] Justice Wood concluded that the CFO's decision represented a result that fell within the range of possible, acceptable outcomes, and therefore, found the decision reasonable.

CURRENT APPLICATION

[8] On May 2, 2017, CFO John W. Parkin refused Mr. Waye's request for an ATC providing, in form 5505, the following reasons:

The applicant does not meet the requirement of "needs" for an Authorization to carry as a trapper in Nova Scotia. Provincial legislation already provides for the use of non-restricted firearms for the requested purpose. The applicants argument on the grounds of safety has been addressed in previous applications that have been refused. Additional pages are attached to this document."

[9] The CFO's written reasons were supplemented in a letter of the same date:

May 2nd 2017,

Mr. Laurie Waye
1618 Wet Jeddore Rd
Jeddore NS
B0J 1P0

RE: NOTICE OF REFUSAL OF AN AUTHORIZATION TO CARRY

Supplement to reasons on form 5505

Dear Mr Wayne,

Thank you for your application. I have attached this correspondence to the prescribed form as the form restricts the number of characters of text and a full response is not possible through that document.

I have noted that your response to my request for information as to why you need a restricted firearm for the purpose you have expressed, dated April 13th 2017, was to submit the same grounds that were refused in past applications in 2014 and 2015. Those decisions have been upheld at judicial review.

The submission that you require a restricted firearm in order to be able to comply with transportation regulations is without merit. As expressed in the letter of 2015, small, compact and light weight non-restricted firearms are available and can be carried with little effort. Given the common ground from past applications I have attached my letters from 2014 and 2015 as further explanation.

Therefore, under the provisions of Section 68 of the *Firearms Act* your application for an authorization to carry has been refused.

While there is no provision in the *Firearms Act* to appeal my decision I do note that past advice to this office, which was communicated to you on a previous application, you may do so in the Supreme Court of Nova Scotia by filing a Notice of Judicial Review under rule 7 of the Nova Scotia Civil Procedure Rules.

(signed)
John W. Parkin
Chief Firearms Officer (NS)
1690 Hollis Street
Halifax, NS
B3J 2L6

[10] In addition, the CFO attached past refusal letters dated 2014 and 2015 as further explanation for the current refusal. The letter of September 30, 2015, is reproduced below:

September 30th 2015,
Mr. Laurie Wayne
1618 Wet Jeddore Rd
Jeddore NS
B0J 1P0

RE: NOTICE OF REFUSAL OF AN AUTHORIZATION TO CARRY
Supplement to reasons on form 5505

Dear Mr. Wayne,

Thank you for your application. I have attached this correspondence to the prescribed form as the form restricts the number of characters of text and a full response is not possible through that document. The following includes my response to your application and includes the reasons for my decision in accordance with section 8 (1) and (2) of the *Authorization to Carry Restricted Firearms and Certain Handguns Regulations*.

I note that in your letter of application you are applying under the provisions of section 3(c) of the *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations* SOR/98-207, which reads:

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
(c) the individual is engaged in the occupation of trapping in a province and is licensed or authorized and trained as required by the laws of the province.

That you are licensed and trained as a fur harvester as required by the Province of Nova Scotia is not in contention here.

I have noted that in your letter you have made assertions regarding being able to safely carry a long gun through brush, on a sling, and make reference to the Canada Labour Code and the Nova Scotia Occupational Health and Safety Act.

I have reviewed your past correspondence on this subject and note these same assertions have been made and responded to previously. Much of this was addressed in 2014 and I have attached a copy of that correspondence as well.

As noted in previous correspondence, provincial legislation already provides for you to carry a non-restricted firearm for the purpose of your occupation. I refer to the *Firearm and Bow Regulations*:

7 (1) Any person who is the holder of a valid Fur Harvesters License may possess and use a rim fire rifle of .22 calibre or less during the open season for harvesting fur-bearing animals, including Sundays during that season, for the purpose of dispatching animals in traps.

In your present application you have resumed your submission that you cannot safely carry or sling a non-restricted firearm while carrying the other accoutrements of a trapper. This was addressed in 2014 as noted in the attached letter. I would further submit that there are other options such a scabbard on the side of your pack. These are commercially available or can be custom made and would free your hands.

With respect to length, there are a number of compact .22 calibre rifles that have an overall length of approximately 30 inches and some with a breakdown length of half that.

Given that you propose to carry the firearm unloaded and to unencumber yourself of your pack prior to using a firearm, then load and use the firearm to dispatch a trapped animal there is no evident safety issue in carrying the firearm attached to your pack.

You have also submitted that weight of the non-restricted firearm is an issue. I would point out that the handgun you propose to carry weighs approximately 30 ounces (less than 2 lbs), any of the commercially available compact .22 rifles weighs less than 48 ounces (less than 3 lbs). The difference is less than a pound of weight.

I have reviewed the letter from Mr. Paddock, that you included with your submission. I note that he writes, speaking in reference to both long guns and restricted firearms, “regardless of which firearm is used”. He does not make a recommendation. He states only that a properly designed and implemented safe-work procedure must be used.

In the proposed Safe Work Procedure you have submitted the word handgun can easily be replaced with firearm. As noted above, you are already permitted to carry a firearm for the purpose you propose, provided it is non-restricted and rim fire. It only remains for you to select the manner in which you wish to carry it.

Having reviewed your application I conclude that “...the circumstances in which an individual needs restricted firearms or prohibited handguns...” in connection with the profession or occupation of trapping within Nova Scotia is not made out.

Therefore, under the provisions of Section 68 of the *Firearms Act* your application for an authorization to carry has been refused.

While there is no provision in the *Firearms Act* to appeal my decision I do note that past advice to this office, which was communicated to you on a previous application, you may do so in the Supreme Court of Nova Scotia by filing a Notice of Judicial Review under rule 7 of the Nova Scotia Civil Procedures Rules.

(signed)
John W. Parkin
Chief Firearms Officer (NS)
1690 Hollis Street
Halifax, NS
B3J 2L6

[11] The correspondence to Mr. Waye of October 29, 2014, was also attached to the Notice Of Refusal Of An Authorization To Carry form 5505. That correspondence is reproduced below:

October 29th 2014,

Mr. Laurie Waye
1618 West Jeddore Rd
Jeddore NS
B0J 1P0

RE: NOTICE OF REFUSAL OF AN AUTHORIZATION TO CARRY

Supplement to reasons

Dear Mr Waye,

Thank you for your application. I have attached this correspondence to the prescribed form as the form restricts the number of characters and a full response is not possible through that document. The following includes my response to your application and includes the reasons for my decision in accordance with section 8(1) and (2) of the *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations*.

I note that in your letter of application you are applying under the provisions of section 3(c) of the *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations* SOR/98-207, which reads:

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
(c) the individual is engaged in the occupation of trapping in a province and is licenced or authorized and trained as required by the laws of the province.

That you are licenced and trained as a fur harvester as required by the Province of Nova Scotia is not in contention here.

You mention several times in your application that the requirement for a firearm in conjunction with your trapping activities is for the dispatching of trapped animals. The *Firearm and Bow Regulations* made under section 113 of the *Wildlife Act* (NS) already addresses this issue in section 7 (1), which reads:

7 (1) Any person who is the holder of a valid Fur Harvesters License may possess and use a rim fire rifle of .22 calibre or less during the open season for harvesting fur-bearing animals, including Sundays during that season, for the purpose of dispatching animals in traps,

I have noted that in your letter you have made assertions regarding being able to safely carry a long gun through brush, on a sling, and make reference to the Canada Labour Code and the Nova Scotia Occupational Health and Safety Act.

I have reviewed your past correspondence on this subject and note these same assertions have been made and responded to previously. Further, you have written that “these hazards were considered severe enough for the Department of Natural

Resources to order that all slings be removed from firearms belonging to the department.

I must inform you that I have consulted with representatives of the Department of Natural Resources and been advised that neither that departments OHS Coordinators nor local Regional Services staff are aware of any OHS related directive indicating that sling straps are an OHS concern or directing their removal DNR long guns.

I have reviewed your comments about the reduced dangers of using a .22 handgun to dispatch animals versus a .22 long gun, especially at night. I cannot agree with your observation that it could increase public safety “since it is impossible to know what in behind the intended target at night”. Shooting at targets without knowing what is behind it is a fundamental lapse in safety. Given the margin of error that would be introduced shooting in low light conditions, the difficulty in discerning one sights, let alone point of aim, and the increased margin of error introduced by the shorter sight radius on the handgun I would contend that the opposite is true.

There is also a significant difference between effective range of a type of firearm and how far a projectile will travel.

Having reviewed your application I conclude that “...the circumstances in which an individual needs restricted firearms or prohibited handguns...” in connection with the profession or occupation of trapping within Nova Scotia is not made out.

Therefore, under the provisions of Section 68 of the *Firearms Act* your application for an authorization to carry has been refused.

While there is no provision in the *Firearms Act* to appeal my decision I do note that past advice to this office, which was communicated to you on a previous application, you may do so in the Supreme Court of Nova Scotia by filing a Notice of Judicial Review under rule 7 of the Nova Scotia Civil Procedures Rules.

(signed)
John W. Parkin
Chief Firearms Officer (NS)
1690 Hollis Street
Halifax, NS
B3J 2L6

POSITION OF THE APPLICANT

[12] Mr. Waye argued initially that this judicial review should have proceeded as a Reference to the Provincial Court pursuant to s. 74 of the *Firearms Act*. He went

on, however to ask the Court to hear this judicial review. The Respondent neither addressed this argument nor opposed proceeding.

[13] Mr. Wayne argues that s. 3(c) of the Regulations was interpreted incorrectly by the CFO, and consequently, this raises a jurisdictional issue that must be reviewed by the court on the standard of correctness. Mr. Wayne says that s. 117(c) of the *Firearms Act* prescribes the circumstances in which a person does or does not need a firearm(s).

[14] Mr. Wayne argues that s. 3(c) of the Regulations provides no discretion to the CFO to deny an ATC a firearm once an applicant has proven that they are a trapper, as this alone satisfies the “need” requirement in the Regulation.

[15] Mr. Wayne argues that s. 3(c) of the Regulations provides that individuals, like him, who engage in trapping, as a lawful occupation, meet the “needs” requirement.

[16] Mr. Wayne further argues that the CFO is not permitted to interpret the provincial hunting and trapping legislation i.e., the *Wildlife Act*, R.S.N.S. 1989, c. 504 as all of the powers of the CFO are rooted in the *Firearms Act*.

[17] Put simply, the Applicant’s submission is that, once its conditions are met, s. 3(c) of the Regulations take away all discretion from the CFO with regards to issuing an ATC.

[18] Mr. Wayne argues the CFO has fettered his discretion by precluding the use of the requested firearm in connection with trapping activities, instead of focusing on public safety considerations, subsumed in s. 68 of the *Firearms Act*.

[19] The Applicant argues that the two prior refusals were predicated on a false assumption by all parties that the CFO had the power to determine whether the Applicant, as a trapper, had a need to carry a restricted firearm in connection with his lawful occupation.

POSITION OF THE RESPONDENT

[20] The CFO submits that all of the grounds challenging his decision to refuse an ATC have been argued in previous judicial review applications. In particular, arguments have been made that there was no requirement on the part of the CFO to consider whether a handgun is “needed” given s. 3(c) of the Regulations.

[21] The CFO conceded that “safety” is not a relevant consideration for the CFO under s. 3(c) of the Regulations. The CFO argues that s. 68 of the *Firearms Act*

provides a broad discretion to refuse an ATC for “any good and sufficient reason.” For this submission, the Respondent relies on *Waye v. Nova Scotia (Provincial Firearms Office)*, 2013 NSSC 148, at para. 20:

[20] A CFO under the *Firearms Act* would possess a specialized expertise to appreciate the sensitivities and nuances inherent in the decisions required by the legislation. This weighs in favour of deference. This, in my view, is further supported by what appears to be Parliament’s endorsement of the CFO’s discretion in s. 68 of the *Act*, whereby he or she can refuse to issue licenses or authorizations for “any good and sufficient reason”.

[22] The Respondent argues that s. 3(c) of the Regulations does not remove the discretionary decision-making power given to the CFO under s. 68 of the *Firearms Act* to refuse an ATC for “any good and sufficient reason”.

STANDARD OF REVIEW

[23] Mr. Waye argues that the appropriate standard of review is correctness and the question before the CFO was a true question of jurisdiction or *vires*.

[24] Mr. Waye says that the CFO was not authorized under s. 3(c) of the Regulations to deny him an ATC and, consequently, the court must review the decision on the standard of correctness.

[25] In rejecting this argument and concluding that the standard to be applied in reviewing the CFO’s decision is reasonableness, I refer to *Dunsmuir v. New Brunswick*, 2008 SCC 9:

59 . . . "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction: D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf ed.), at pp. 14-3 to 14-6. An example may be found in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485, 2004 SCC 19. In that case, the issue was whether the City of Calgary was authorized under the relevant municipal acts to enact bylaws limiting the number of taxi plate licences (para. 5, Bastarache J.). That case involved the decision-making powers of a municipality and exemplifies a true question of jurisdiction or *vires*. These questions will be narrow. We reiterate the caution of Dickson J. in *CUPE* that reviewing judges must not brand as jurisdictional issues that are doubtfully so.

[26] As noted in *Dunsmuir, supra*, and by Fichaud, J.A. in *Police Association Pension Plan v. Amherst (Town)*, 2008 NSCA 74, the first step in determining the applicable standard of review is to ascertain whether there exists any jurisprudence that has determined the degree of deference which should be afforded on the issue.

[27] The case of *Waye v. Nova Scotia (Provincial Firearms Office)*, 2013 NSCA 154, has already set forth the standard of review to be applied when reviewing a CFO's decision to refuse a request for an ATC. Fichaud, J.A., writing for the court, stated:

11 **First -- Standard of Review:** Justice Bourgeois' Decision conducted a thorough standard of review analysis. I agree with her analysis. The Chief Firearms Officer considered the provisions of his home legislation. Generally, the court's standard of review to such a decision is reasonableness: *McIntyre v. Nova Scotia (Community Services)*, 2012 NSCA 106, paras 22-24 and authorities from the Supreme Court of Canada there cited; *Jivalian v. Nova Scotia (Community Services)*, 2013 NSCA 2, paras 13-14, leave to appeal denied May 30, 2013, [2013] S.C.C.A. No. 83, (S.C.C.).

[28] The CFO has considered the provisions of his home legislation, both the *Firearms Act* and the Regulations made pursuant to the *Firearms Act*. In considering his home legislation, the CFO's decision should be reviewed on a reasonableness standard.

DETERMINATION

[29] In determining whether the decision of the CFO was reasonable, the Applicant suggests that the CFO's letter of June 21, 2017, should not form part of the record. In reaching the conclusion that the CFO's decision in this matter was reasonable, I neither considered nor relied upon the CFO's letter of June 21, 2017.

[30] In refusing the Applicant's request for an ATC pursuant to s. 68 of the *Firearms Act*, the CFO provided reasons, which included the following:

1. The Applicant did not meet the requirement of "needs" for an ATC.
2. The Applicant did not satisfy the CFO that the ATC was required on safety grounds.

[31] The CFO also relied upon past decisions refusing an ATC by attaching his letters of 2014 and 2015 as further reasons or explanation. The CFO did so by way of letter dated May 2, 2017, noting the common ground from past applications as the

basis and rationale for relying on past reasons given to the Applicant in 2014 and 2015.

[32] I note the past reasons in 2014 were never the subject of a judicial review application by the Applicant. The reasons given on September 30, 2015, were judicially reviewed in *Waye v. Parkin*, 2016 NSSC 36, and the CFO's decision was upheld by Justice Wood as being reasonable.

[33] The Applicant has argued that the CFO's decision relying on "safety" considerations and a lack of "need", demonstrates that he focussed on irrelevant considerations to deny the ATC. First, the CFO in referring to safety and "needs", was responding to the Applicant's own arguments. However, and regardless, whether the CFO's decision was focussed on irrelevant considerations, the decision can still be reasonable. In *Dunsmuir, supra*, the court articulated the standard of reasonableness as follows:

47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[34] In assessing the CFO's refusal to issue an ATC, it is not enough to consider the reasons offered. I must also consider the reasons which could have been offered. *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, at para. 12:

12 It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:

"Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator,

the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Emphasis added.]

[35] The appellant argued that the reasons in this matter were not sufficient. However, this fails to appreciate the caselaw and direction that a court, in considering the reasonableness of reasons, must “first seek to supplement them before it seeks to subvert them” (*N.L.N.U., supra*).

[36] The fact remains that over the course of several years the Applicant has submitted applications seeking an ATC for a .22 calibre handgun for use in his occupation as a trapper. The CFOs in place at the times of those applications have denied the Applicant an ATC and two prior decisions of CFO's of the time have been reviewed and found to be reasonable.

[37] The fact that the current CFO, in his decision of May 2, 2015, addressed any irrelevant considerations in response to the Applicant's submissions, or sought additional information regarding any irrelevant considerations, does not automatically result in a quashing of that decision, as argued by the Applicant.

[38] The refusal of Mr. Wayne's application for an ATC was obviously within the range of permissible outcomes, as this was both the conclusion of the Court of Appeal in an earlier judicial review, and a subsequent conclusion of Justice Wood.

[39] In upholding the earlier refusal, Justice Fichaud, writing for the Court concluded:

33 Regulation 3(c) of the *Authorization to Carry Regulations* under the *Firearms Act* expressly defers to, and incorporates, the provincially legislated licensing and authorization scheme. The use of a .22 handgun in a wildlife area in Nova Scotia would contravene the provincial provisions for licensing of trappers and for authorization of firearms by trappers. Accordingly, under the federal legislation, the Chief Firearms Officer has denied the Authorization to Carry.

34 The federal and provincial laws are compatible. Nova Scotia's legislation does not frustrate the purpose of the federal *Firearms Act*.

[40] Addressing a further refusal Justice Wood, in *Waye v. Parkin*, 2016 NSSC 36, stated at para. 32:

32 The CFO could have relied on the same reasons used in 2012 (and upheld on judicial review) to refuse Mr. Wayne's application. He did not expressly do so, however that does not prevent me from considering that explanation in deciding whether the outcome here was reasonable.

[41] I follow the same analysis as Justice Wood.

[42] The Applicant argues that there is no discretion in the CFO to refuse an ATC once there has been proof that an individual is a licensed trapper, as per s. 3(c) of the Regulations. This ignores s. 68 of the *Firearms Act* which provides the CFO with an overarching mandate permitting him or her to refuse to issue an ATC for any good and sufficient reason.

[43] The Applicant asked the court to apply its own interpretation of s. 3(c) of the Regulations, however this would not be an appropriate exercise under the reasonableness standard. As Justice Bourgeois said in *Waye v. Nova Scotia (Chief Firearms Officer)*, 2013 NSSC 148, at para. 33:

33 At the risk of being repetitive, this Court is not tasked with determining how it would interpret the above provisions. The issue is whether the CFO's interpretation falls within a range of reasonable outcomes based upon the legislative scheme and facts disclosed in the Record. It does.

CONCLUSION

[44] The decision of the CFO refusing the Applicant an ATC a .22 calibre handgun falls within the range of reasonable outcomes. Mr. Waye's application for judicial review is dismissed.

[45] The respective parties both sought \$1,000 in costs if successful on this judicial review. Accordingly, costs are awarded to the Respondent in the amount of \$1,000.

Brothers, J.