

# IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Shepherd*, 2005 YKSC 17

Date: 20050330  
Docket No.: S.C. No. 03-AP0015  
Registry: Whitehorse

Between:

**HER MAJESTY THE QUEEN**

Respondent

And

**EDWARD PHILLIP SHEPHERD  
(a.k.a. EDWARD "TED" PHILLIP SHEPHERD)**

Appellant

Before: Mr. Justice R.S. Veale

Appearances:

Ludovic Gouaillier  
Robert Pritchard

For the Crown  
For Edward Phillip Shepherd

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] Mr. Shepherd applied for a firearms licence on December 30, 2000. On August 19, 2003, the Chief Firearms Officer (CFO) refused to issue Mr. Shepherd a licence. Mr. Shepherd referred his application to the Territorial Court which confirmed the decision of the CFO. Mr. Shepherd appeals to this Court. The main issues are whether it is in the interests of public safety to issue Mr. Shepherd a licence to possess a firearm and whether the CFO is limited to a five-year period when considering the evidence about Mr. Shepherd.

[2] The broad interpretation of section 5 of the *Firearms Act*, S.C., 1995, c. 39 (the Act) given by the CFO would permit him to consider Mr. Shepherd's criminal record dating back to 1982 which included public mischief, two assaults, pointing a firearm and possession of a weapon up to and including the date of Mr. Shepherd's application.

[3] The narrow interpretation given by the territorial court judge would limit the matters to be considered by the CFO to those that arose between August 19, 1998 and the hearing date of August 19, 2003.

[4] Despite the different interpretations of section 5 of the *Act*, both the CFO and the territorial court judge refused to issue Mr. Shepherd a licence to possess a firearm.

[5] I will set out the decision of the CFO, the decision of the territorial court judge, the issues, the law to be applied and my analysis and decision. For the reasons that follow, I decline to issue Mr. Shepherd a licence to possess a firearm and dismiss his appeal.

#### **THE DECISION OF THE CHIEF FIREARMS OFFICER**

[6] The CFO interpreted section 5(1) of the *Act* to permit him to refuse a licence if it is in the interests of that person or any other person that the applicant not possess a firearm. He also interpreted section 5(2) of the *Act* to specifically direct his attention to criminal convictions, mental illness associated with violence and a history of behaviour of actual, threatened or attempted violence, all within five years of the application. He did not interpret section 5(2) as limiting section 5(1) to a five-year period.

[7] Under the title "History of Actual, Threatened or Attempted Violence", the CFO listed the following:

- 1.) In 1996 in Whitehorse a complaint was made that you assaulted a female at your residence. It was alleged that you slapped her twice and she fell to the floor. Police investigated this matter and after a review by Crown counsel, they found

sufficient evidence to proceed to court. However at trial, the complainant failed to appear and the case was dismissed.

2.) On January 28, 2000 you made threats to harm a worker at the Social Services office in Whitehorse. As a result of the police investigation you were charged with Utter Threats and Cause a Disturbance. The two criminal charges were stayed and a Peace Bond was imposed by the court. It was reported that this was not the first time that you had made such threats to workers at that Social Services office.

3.) On February 27, 2002 you became involved in an argument with a female who was visiting you in your residence. You pushed her causing her to loose (sic) her balance. She fell against a television and a counter. This resulted in bruising and swelling to her head. On July 3, 2002 you were convicted of this assault, fined \$400 and placed on 1 year probation.

4.) On April 25, 2003 an allegation was made by two persons that you accosted them in a park in Whitehorse and accused them of using the bathroom on park property. You were reported to be acting in a manner that was not normal. You later had contact again with one of the two persons (a female) who alleges you pushed her violently causing her to fall to the ground, and also threatened to throw her in the river. You are presently before the courts charged with Assault and Utter Threats with regards to the incident.

5.) On January 20, 2002 you called Firearms Officer Dan Otterbein and an interview was scheduled to review your application for a firearms licence as he had eligibility concerns. The interview was scheduled for January 31, 2002 at the firearms office in Whitehorse, however you failed to show and did not contact Firearms Officer Otterbein again.

6.) I was assigned to review your licence application after Firearms Officer Otterbein returned to the RCMP. I reviewed the above incidents from police files and also saw a note from Cst. Corbett of the Whitehorse RCMP dated November 11, 2002 stating that you should not receive a firearms license (sic). Considering the incidents of violence from 1996 to the present time, and your outstanding charges for Assault and Utter Threats, I felt that I must meet with you personally for an interview in order to determine whether or not you were eligible to hold a firearms licence. As such, I made arrangements to travel to Whitehorse. I contacted you in August 2003 and set up

an appointment for an interview on August 12, 2003 at the firearms office in Whitehorse. You told me that you would be able to see me at either 2:30 p.m. or 5:00 p.m. on August 12, 2003.

Accordingly, I drove to Whitehorse to meet with you (and for other firearms matters). I waited for you at the 2:30 p.m. time period and again at the 5:00 p.m. time period. You failed to show for either appointed time and did not contact me to indicate you would not be able to make it or reschedule.

You have failed to make any further contact with me.

[8] Under the title "Evidence Considered", the CFO considered the following:

**Databases Reviewed:**

CPIC (Canadian Police Information Centre)  
PIRS (Police Information Retrieval System)  
FIP (Firearms Interest Police)  
CFRS (Canadian Firearms Registration System) Licence application # 0042080686

**Criminal Record:**

See attached. You have been convicted of assault in 1985, 1986, 1995 and 2002. You were prohibited from owning/possessing firearms as a result of three convictions (assault, point a firearms, possession of a weapon) for a period of 5 years.

**Previous FAC Refusal:**

In 1994 you applied for a Firearms Acquisition Certificate and were refused as, at that time, it was determined it was not in the interests of safety that you acquire firearms. A review of available material on the previous refusal has a note from a Cst. Fairman, Firearms Officer with the Ontario Provincial Police of Picton, Ontario, stating that he felt you should not be issued the F.A.C.

**Police Files Reviewed:**

RCMP Whitehorse 1994-367 – May 16, 1995 conviction for Assault on your common-law spouse; 14 days jail sentence and 9 months probation imposed.  
RCMP Whitehorse 1996-3392 – Assault on female that was dismissed in court when she failed to show for trial.  
RCMP Whitehorse 1997-5198 – Assault allegation made by female but insufficient evidence to support a charge.

RCMP Whitehorse 2000-386 – Threats made to workers at Social Services in Whitehorse that resulted in charges of Utter Threats and Cause a Disturbance laid and then a Peace Bond being entered into by yourself.

RCMP Whitehorse 2002-1618 – July 3, 2002 conviction of Assault on a female; fined \$400 and placed on 1 year probation.

RCMP Whitehorse 2003-3500 – Allegation made that you assaulted a female in a park in Whitehorse and threatened to throw her in the river. You are presently before the courts on this matter charged with Utter Threats and Assault.

[9] The CFO considered Mr. Shepherd's convictions for assault (1985, 1986 and 1995) and the 1994 refusal of a Firearms Acquisition Certificate in his decision.

However, it was the recent history of a 1996 assault charge, the peace bond in 2002, the conviction for assault in 2002 and the present charge of Assault and Uttering Threats that concerned him most. The CFO also considered Mr. Shepherd's failure to show up for appointments with the CFO to be relevant to his final conclusion that it was not desirable, in the interests of public safety, to issue Mr. Shepherd a firearms licence.

#### **TERRITORIAL COURT DECISION**

[10] Overend T.C.J. decided that the previous five-year period described in section 5(2) of the *Act* must be within five years of the CFO's hearing of the application, which in this case was August 19, 2003. As a result, he concluded that only matters that arose between August 19, 1998 and August 19, 2003 could be considered by the CFO in determining whether a person is eligible to hold a licence to possess a firearm.

[11] He ruled that the CFO had considered matters that arose before or outside the five-year period both in the "History" and "Evidence Considered" sections of his decision. Thus, the judge ruled that the criminal convictions in 1985, 1986 and 1995 could not be considered.

[12] Judge Overend also stated that, in this country there is no right to possess firearms. There is only a licence to acquire and possess firearms which may be granted to a person who poses no risk to public safety. Further, he reiterated that Parliament has decided that the best way to measure public safety, while at the same time recognizing the privilege of possessing firearms, was to limit the inquiry of the firearms officer to the five-year period prior to the hearing of the application.

[13] The trial judge made the following comments on the “History” section of the CFO’s decision:

1. the paragraph 1 assault complaint in 1996 was outside the 5-year period;
2. the paragraph 2 peace bond based on the allegation that he threatened to kill a social services worker should be given very little weight because Mr. Shepherd, in his evidence before the judge, denied any threat to a worker at the social services office. There was no evidence led that the CFO interviewed the worker alleged to be threatened nor was a transcript of the proceeding filed.
3. the assault of April 25, 2002 on a female person visiting his residence was validly considered. The assault was a push, which caused the victim to fall, receiving a small cut and bruise to her head.
4. a charge of assault and uttering threats on April 25, 2003 was stayed. The victims were not called to give evidence and the CFO did not interview the alleged victims. Nevertheless, the incident could be considered under the history of violence and threatened violence.

5. paragraphs 5 and 6 of the CFO's decision took into consideration the failure of Mr. Shepherd, by his own agreement, to show up for interviews with the CFO regarding his application. Although the judge did not accept Mr. Shepherd's explanation for not appearing, a failure to show was not a proper consideration for the CFO.

[14] Under the CFO's heading "Evidence considered", the trial judge ruled that the 1994 refusal of a Firearms Acquisition Certificate could not be considered as it was clearly outside the five-year period. The trial judge also ruled that a 1997 assault allegation which had "insufficient evidence to support a charge" was not in the five-year period.

[15] Judge Overend concluded that the CFO could consider the peace bond of January 27 (sic), 2000; the assault conviction of February 27, 2002; and the threats and assault on April 25, 2003. The trial judge concluded at paragraph 23:

The incidents considered by the firearms officer, particularly the conviction on February 17, 2000 and the assault and threats on April of 2003, were sufficiently serious that I can come to no other conclusion but that his decision was justified.

[16] It appears to me that Judge Overend was mistaken about "the conviction on February 17, 2000", which should refer to the incident of February 27, 2002 that resulted in an assault conviction on July 3, 2002.

## **ISSUES**

[17] The following issues must be considered:

1. What is the appropriate standard of review for the territorial court judge in the reference from the CFO?
2. What is the appropriate standard of review in this appeal?

3. In reviewing the decision of the territorial court judge,
  - a) What is the time frame for evidence that can be considered by the CFO under section 5 of the *Act*?
  - b) Did the territorial court judge consider the evidence of Mr. Shepherd?
4. In reviewing the decision of the CFO, can hearsay evidence be considered by the CFO?
5. Has Mr. Shepherd established to the satisfaction of this Court that his appeal should be allowed?

**Issue 1: What is the appropriate standard of review for the territorial court judge in the reference from the CFO?**

[18] In this case, Mr. Shepherd referred his matter to a territorial court judge. On the receipt of the reference, the territorial court judge holds a hearing as set out in section 75(2) and (3) of the *Act*.

**Evidence**

75(2) At the hearing of the reference, the provincial court judge shall hear all relevant evidence presented by or on behalf of the chief firearms officer, Registrar or provincial minister and the applicant or holder.

**Burden of proof**

(3) At the hearing of the reference, the burden of proof is on the applicant or holder to satisfy the provincial court judge that the refusal to issue or revocation of the licence, registration certificate or authorization, the decision or the refusal to approve or revocation of the approval was not justified.

[19] At the conclusion of the hearing, pursuant to section 76 of the *Act*, the territorial court judge may confirm the decision of the CFO, direct the CFO to issue a licence or cancel the revocation of the licence.

[20] The direction to the territorial court judge to “hear all relevant evidence” on behalf of the CFO and the applicant means that Overend T.C.J. heard the evidence of the



CFO. He also heard the evidence of Mr. Shepherd which had not been heard by the CFO.

[21] The first thing that the trial judge must do is to determine what standard of review should be applied to the decision of the CFO. See *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paragraph 21, which instructs the reviewing court to apply “the pragmatic and functional approach” to determine the standard of review. There are four factors to address:

1. Statutory mechanism of review;
2. Expertise of the tribunal;
3. Purpose of the *Act*;
4. The nature of the problem – a question of law or fact.

#### **1. Statutory Mechanism of Review**

[22] The *Act* does not contain a privative clause protecting the decision of the CFO from judicial review; rather, it provides for a reference to a provincial court judge “to determine whether the decision under review was justified based on the record as amplified by relevant evidence heard on the review” (See *British Columbia (Chief Firearms Office) v. Fahlman*, 2004 BCCA 343 at paragraph 23).

[23] The absence of a privative clause and the right of review based on amplified evidence implies less deference to the CFO’s decision.

#### **2. Expertise of the tribunal**

[24] The CFO certainly has some expertise by training and experience but a provincial court judge has an expertise in determining public safety. I agree with Dorgan J. in *R. v.*

*Pagnotta*, 2001 BCSC 444, at paragraphs 45 – 49, that some deference should be given to the CFO but not a high degree that might be given to a very specialized tribunal.

### **3. Purpose of the Act**

[25] The question to be determined under this factor is whether the *Act* requires a balancing of a variety of interests (which requires judicial deference) or whether the *Act* requires a balancing of competing interests and less judicial deference.

[26] I agree with *R. v. Pagnotta*, cited above, at paragraph 53, that the *Act* focuses on the balance between one person's wish to possess a firearm and the public safety interest in restricting possession of a firearm by some people. This requires less deference to the CFO's decision.

### **4. The Nature of the Problem – A Question of Law or Fact**

[27] A review based solely on a question of law will generally favour a less deferential standard, as judges for the most part have greater expertise in the law than a tribunal.

[28] On the other hand, where the question is solely a review of the facts, greater judicial deference would usually be given to the tribunal because the tribunal would have the advantage of a first hand examination of the evidence.

[29] This is not simply a case of a review of the CFO's decision according to the requirements of section 5 of the *Act*. Rather, it is a determination in two stages. Firstly, it is a determination of the proper legal interpretation of section 5 of the *Act*. Secondly, it is a determination of whether the CFO properly applied the correct legal principle to the relevant facts.

[30] I conclude that there are two standards of review. The legal interpretation of section 5 of the *Act* should be on a standard of correctness. The review of the CFO's

application of the legal principle to the facts should be on a standard of reasonableness, thereby giving some deference to the decision of the CFO.

[31] The judgment of the territorial court judge did not consider the appropriate standard of review to be applied to his review of the CFO's decision. However, as I read his decision, he impliedly or instinctually applied the appropriate standard for each question.

**Issue 2: What is the appropriate standard of review in this appeal?**

[32] Section 76(a) of the *Act* provides Mr. Shepherd with a right to appeal to this Court. Pursuant to section 79(2):

A superior court shall dispose of an appeal against an order made under paragraph 76(a) by dismissing it, unless the appellant establishes to the satisfaction of the court that a disposition referred to in paragraph (1)(b) is justified.

[33] Section 79(1)(b) permits the court to direct the CFO to issue a licence.

[34] According to *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, cited above, at paragraph 43, this court sits as an appellate court reviewing a subordinate court, not in judicial review of an administrative decision.

[35] The task of this court is to determine whether the territorial court judge has applied the correct standard of review and assessed the CFO's decision according to that standard.

[36] The Supreme Court of Canada, in *Housen v. Nikolaisen*, 2002 SCC 33, has reviewed the role of appellate courts and the standard to be applied on appeal from a decision of a trial judge. Accordingly, the question of the proper interpretation of section 5 of the *Act* is a legal one and the standard of review on appeal is correctness. I will

discuss the standard to be applied to a question of applying a legal principle to a set of facts below.

**Issue 3: In reviewing the decision of the territorial court judge,**

**a) What is the time frame for evidence that can be considered by the CFO under section 5 of the Act?**

[37] The issue requires an interpretation of section 5(1) and (2) of the *Act* which read as follows:

**Public Safety**

**5. (1)** A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.

(2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,

- (a) has been convicted or discharged under section 730 of the *Criminal Code* of
  - (i) an offence in the commission of which violence against another person was used, threatened or attempted,
  - (ii) an offence under this Act or Part III of the *Criminal Code*,
  - (iii) an offence under section 264 of the *Criminal Code* (criminal harassment), or
  - (iv) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the *Controlled Drugs and Substances Act*,
- (b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or
- (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

[38] The CFO interpreted section 5(1) to mean that the interests of the person's safety or public safety could be considered without reference to a specific time frame. As to section 5(2), he interpreted that to mean that "specific attention" had to be paid to certain matters arising within five years before the application.

[39] The trial judge interpreted section 5(2) of the *Act* as limiting the matters that could be considered under section 5 to those that occurred in the five years running back from the date of the hearing, i.e. August 19, 2003.

[40] The trial judge's interpretation is incorrect. Unfortunately, the trial judge did not have the benefit of reading *British Columbia (Chief Firearms Officer) v. Fahlman*, cited above, which was decided on June 23, 2004.

[41] The British Columbia Court of Appeal, at paragraph 25, interpreted section 5 of the *Act* as follows:

1. Section 5(2) is not exhaustive of the matters to be considered as affecting safety concerns under section 5(1).
2. The firearms officer and the judge are entitled to consider anything about the background or conduct of the application or licence holder that is relevant to public safety.
3. There is no statutory obligation to decide the safety issue in favour of the applicant or licence holder when none of the criteria in section 5(2) is present and there is no obligation to refuse a licence or order a revocation if one or more of those criteria is present.

[42] I accept the British Columbia Court of Appeal's interpretation. Section 5 clearly states that the firearms officer and the trial judge "shall have regard to" certain matters in the five years prior to the hearing. However, section 5(2) in no way limits what may be considered in "the interests of safety" which was broadly stated in section 5(1). Thus, I

find the interpretation of the CFO to be the correct interpretation as developed by the British Columbia Court of Appeal.

**b) Did the territorial court judge consider the evidence of Mr. Shepherd?**

[43] Counsel for Mr. Shepherd submitted that the trial judge failed to consider the evidence of Mr. Shepherd, who testified before him, in addition to the evidence of the CFO. He bases this submission on two references.

[44] The first reference is found in the transcript during the reference at page 41, lines 14 – 18, where the trial judge said:

... I am not sure what the *Act* says, but my gut reaction is that I have to deal with the information that was available to the firearms officer at the time the decision was made.

[45] The second reference to buttress the submission is found in the judgment of the trial judge at paragraph 13 where he stated:

In order for me to decide whether the firearms officer came to a reasonable decision, i.e. one which he was entitled to make based on the evidence properly before him, I must examine what evidence, falling within the parameters of s. 5, was available to the firearms officer on the 19<sup>th</sup> of August, 2003.

[46] I do not interpret these passages to be anything more than a statement that the evidence “properly before” the CFO must be considered. I do not interpret either statement as an indication that the trial judge was ignoring evidence that he heard at the reference.

[47] The transcript reference is clearly a musing during the trial which should not be raised to the level of a legal pronouncement.

[48] The statement at paragraph 13 of his judgment is a comment on the five-year period which I have already ruled on. It is not appropriate to characterize it as a

statement that he was ignoring the evidence of Mr. Shepherd which can clearly be taken into consideration in assessing the evidence considered by the CFO. See *Fahlman*, paragraph 23.

[49] In fact, the trial judge did consider the testimony of Mr. Shepherd. He used it in assessing the threat to a worker at the Social Services office. He also considered Mr. Shepherd's explanation of his failure to attend appointments, albeit negatively, in that he did not accept the evidence of Mr. Shepherd. Finally, the trial judge took into consideration the fact that Mr. Shepherd stated that the April 25, 2003 assault charge was stayed.

[50] I conclude that the trial judge must and did assess the evidence before the CFO in light of the amplification evidence heard by him both from the CFO and Mr. Shepherd.

**Issue 4: In reviewing the decision of the CFO, can hearsay evidence be considered by the CFO?**

[51] In the *Dr. Q. v. College and Surgeon of British Columbia*, cited above, the Supreme Court of Canada decided that the court sitting in judicial review applied an incorrect standard of review. The Supreme Court concluded that this materially affected the judicial review of the tribunal's decision. The Supreme Court concluded that it should "step into the shoes" of the court below and conduct the judicial review according to the correct standard.

[52] The case before me is analogous in that I have concluded that the trial judge applied an incorrect interpretation of section 5 of the *Act*. This had a material effect on the trial judge's assessment of the CFO's decision, in spite of the fact that he agreed with the CFO. I conclude that my role is to "step into the shoes" of the territorial court

judge and conduct the judicial review of the CFO's decision based upon the correct interpretation of section 5 of the *Act*.

[53] In proceedings to obtain a licence to possess a firearm, the burden of proof that it is in the interests of the safety of the applicant or any other person is on the applicant.

[54] As stated in *British Columbia (Chief Firearms Office) v. Fahlman*, cited above, at paragraph 25, "the firearms officer and the judge are entitled to consider anything about the background or conduct of the applicant ... that is relevant to public safety".

[55] As stated in *R. v. Pagnotta*, cited above, at paragraph 9, the hearing before the CFO is administrative and not bound by the strict rules of evidence that govern criminal and civil trials.

[56] There is no explicit statutory language in the *Act* stating that the normal rules of evidence do not apply and hearsay may be relied upon by the CFO in deciding an application under the *Act*. However, the *Act* gives broad investigation powers to the CFO as follows:

55. (1) A chief firearms officer or the Registrar may require an applicant for a licence of authorization to submit such information, in addition to that included in the application, as may reasonably be regarded as relevant for the purpose of determining whether the applicant is eligible to hold the licence or authorization.

(2) Without restricting the scope of the inquiries that may be made with respect to an application for a licence, a chief firearms officer may conduct an investigation of the applicant, which may consist of interviews with neighbours, community workers, social workers, individuals who work or live with the applicant, spouse or common-law partner, former spouse or former common-law partner, dependants or whomever in the opinion of the chief firearms officer may provide information pertaining to whether the applicant is eligible under section 5 to hold a licence.



[57] My interpretation of this section is that the CFO can consider hearsay evidence from “whomever in the opinion of the chief firearms officer may provide information pertaining to whether the applicant is eligible under section 5 to hold a licence”. The *Act* does not require interviews but simply permits them. In my view, the CFO “may conduct an investigation of the applicant” and that does include hearsay. The only caveat I place on the CFO’s investigation is that the subject matter of the investigation be relevant to the required assessment under section 5 of the *Act*. By the same token, on the reference to the territorial court judge under section 75(3) of the *Act*, the provincial court judge shall “hear all relevant evidence”.

[58] I conclude that relevant hearsay evidence can be considered by both the CFO and the trial judge. The upshot is that the CFO may give hearsay evidence at the reference before the trial judge. However, the applicant may give evidence that challenges that hearsay evidence and calls into question the CFO’s decision. There may be some risks for the CFO to simply testify as to the investigation conducted when some or all of it is based on hearsay evidence that may be challenged at the reference.

**Issue 5: Has Mr. Shepherd established to the satisfaction of this Court that his appeal should be allowed?**

[59] It is usually not appropriate to consider the weight given to evidence by the tribunal in judicial review with a standard of review of reasonableness or patent unreasonableness. See *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraphs 37 and 38. Moreover, in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, at paragraph 46, Iacobucci J. stated that “Judicial review of administrative action on a standard of reasonableness involves deferential self-discipline”. At paragraph 55, Iacobucci J. states that “A decision will be unreasonable

only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived.” At paragraph 56 he states: “This does not mean that every element of the reasoning must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision.”

[60] Therefore, this Court sitting in judicial review will not reassess or reweigh evidence that was before the firearms officer. At the same time, pursuant to the *Act*, where there is new evidence, this Court should independently examine it to determine whether the firearms officer’s decision was reasonable in the light of the new evidence.

[61] The task of this Court is to dismiss the appeal of Mr. Shepherd unless he establishes to the satisfaction of the Court that his appeal should be allowed.

[62] I am going to group certain types of evidence relied on by the CFO in this case for the purpose of analysis.

### **Criminal Convictions**

[63] Criminal convictions can be relied upon as reasons for a decision to refuse a licence. They are extensive in this case, encompassing violence, firearms offences and alcohol offences:

- 1985 assault, pointing a firearm and possession of a weapon for a purpose dangerous to the public peace
- 1986 assault
- 1987 impaired driving  
refuse breathalyzer
- 1988 impaired driving
- 1989 impaired driving  
driving while disqualified
- 1995 spousal assault
- 2002 assault

[64] No evidence was presented by the applicant on these convictions. Indeed, it would be unusual that convictions could be challenged by the applicant unless the CFO erred in setting out the underlying facts.

[65] I note that the 1985 assault conviction resulted in a sentence that included a prohibition of possessing a firearm for five years.

[66] The impaired driving offences do not have much relevance to an application under the *Act* unless the offences have a factual connection to firearm use. However, assault, spousal assault and firearms convictions are very relevant.

### **Previous FAC Refusal**

[67] Mr. Shepherd applied for a Firearms Acquisition Certificate on May 27, 1993. It was refused based on information received from Ontario where he previously resided.

[68] The FAC refusal (*In the Matter of a Firearms Acquisition Certificate made by Edward Phillip Shepherd, Old Crow, Yukon Territory, 8 February 1994*) was reviewed by the Chief Judge Heino Lilles and confirmed on February 8, 1994. He stated:

During the hearing of this matter in Old Crow, Mr. Shepherd reviewed all of his previous involvements with the police at great length. Throughout, he minimized his own responsibility, and tended to place all or most of the blame on others, including his wife and her "gang member" friends. He appeared unwilling to accept responsibility for his own actions. And while he may have completed the FAC application technically correctly, he did not advise the Firearms Officer of the outstanding warrants for his arrest in Ontario.

[69] This finding and confirmation of refusal to issue an FAC is relevant to the decision of the CFO. It must be considered in the light of Mr. Shepherd's evidence at the reference that he successfully completed and obtained a 1994 Certificate of Canadian

Firearms Safety Course and Test. The 1994 Certificate does not address the public safety issues in Mr. Shepherd's conduct that were of great concern in 1994.

### **Failures to Appear at Appointments**

[70] The CFO took into consideration the failure of Mr. Shepherd to show up for appointments relating to his application. Obviously, this failure had an impact on the decision of the CFO because no evidence was presented by Mr. Shepherd for consideration in the CFO's decision.

[71] However, I do not consider failures to make appointments, especially when they are for meetings initiated or agreed to by Mr. Shepherd, to be relevant grounds for refusing a licence to possess a firearm. Failure to attend the two appointments in this case has little relevance, if any, to public safety.

### **The CFO Stated Reasons**

[72] The CFO did not have the benefit of an interview with Mr. Shepherd to assist in his assessment of the information before him.

[73] The essence of the CFO's decision and reasoning is as follows:

In your case, I noted from reviewing your criminal record that you have dated convictions for assault (1985, 1986 and 1995) and were refused an FAC in 1994. However, it was your more recent history of violence or threatened violence that concerned me. In 1996 an Assault charge was dismissed, but it was because the complainant failed to show. In 2000, you were placed on a Peace Bond after making threats at the local Social Services office. In 2002, you were convicted of Assault. Presently, you stand before the courts charged with Assault and Uttering Threats.

[74] Mr. Shepherd responded at the reference before the territorial court judge to the CFO's reasons as they relate to the more recent history.

[75] The 1996 charge of assaulting a female at his residence was dismissed, as the complainant, his common-law wife, did not appear. He testified at the reference before Overend T.C.J. that his common-law wife had not been in his residence that night. It would not be appropriate to give any weight at all to this incident given the dismissal of the charge and Mr. Shepherd's unchallenged evidence that it did not happen.

[76] The peace bond he was placed on in 2000 was considerably less than a conviction for uttering threats and cause a disturbance that he was originally charged with. His evidence at the reference before Overend T.C.J. was unchallenged. He testified that he did not threaten any social worker. There was no evidence provided by the CFO from a social worker or a transcript from the court proceedings. It is difficult in these circumstances to attach great weight to the peace bond.

[77] He also testified about the assault conviction in 2002 where he pushed a female visiting his residence causing her to fall and sustain bruising and swelling to her head. His evidence before Overend T.C.J. suggested that he wanted to appeal the conviction. However, it was not appealed and it would not be appropriate to go behind the conviction. This recent assault against a female cannot be explained away.

[78] The final matter to address is the April 5, 2003 report by two women that Mr. Shepherd assaulted them and uttered threats at a park in Whitehorse near the river. Mr. Shepherd advised that this charge had been stayed or withdrawn and the Crown agreed. Although the evidence of the two women could still be considered by the CFO, they were not interviewed. At the reference, the Crown intervened to admit the stay of proceeding when Mr. Shepherd was about to explain the incident. I interpret that intervention as meaning that little weight can be placed upon that incident.

[79] The question that I must address is whether Mr. Shepherd has established that his appeal should be allowed and the decision of the CFO set aside. The evidence indicates an extensive historical record dating from 1985 to 1995 and again in 2002 that includes violence against women and a firearm's offence of pointing a firearm and possession of a weapon for a purpose dangerous to the public peace in 1985. Because of the 2002 offence of assaulting a woman, I am not satisfied that Mr. Shepherd has come to grips with his unlawful conduct which clearly affects the safety of other persons. The refusal of a court in 1994 to issue an FAC is also significant.

[80] It is my view that the criminal convictions that were before the CFO give a line of reasoning that could lead the CFO to the conclusion he arrived at. Although the history of violence in recent years is not as extensive as the CFO originally contemplated, it is still problematic. Therefore, I am not satisfied that Mr. Shepherd has established that the CFO should be directed to issue a licence to Mr. Shepherd.

## **CONCLUSION**

[81] Mr. Shepherd's appeal is dismissed and the CFO's refusal to issue Mr. Shepherd a licence stands.

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VEALE J.