

IN THE HIGH COURT OF JUSTICE  
CO/2750/98  
QUEEN'S BENCH DIVISION

Royal Courts of Justice,

Strand,

London WC2

Friday 2<sup>nd</sup> October 1998.

Before:

MR JUSTICE POPPLEWELL

REGINA

-v-

H M GOVERNMENT

Ex parte MICHAEL JAMES BURKE

MR JUSTICE POPPLEWELL: This is an application by the applicant in person to challenge the decision of the Chief Constable of Thames Valley and the Home Office refusing him a certificate or permit to hold a firearm for self-defence.

The applicant seeks Judicial review on two grounds.

Firstly, he says that the provisions of the Firearms Act 1968 are contrary to the rights conferred on citizens by the Bill of Rights and that the Firearms Act has not repealed the Bill of Rights: secondly, that from the correspondence, it appears to suggest that the secretary of State has a policy that on no account will a permit be granted for personal protection purposes.

Section 7 of the Firearms Act 1968 reads:

“A person who has obtained from the chief officer of police for the area in which he resides a permit for the purpose in the prescribed form may, without holding a certificate under this Act, have in his possession a firearm and ammunition in accordance with the terms of the permit.”

By section 5(1A):

“Subject to section 5A of this Act, a person commits an offence if, without the authority of the Secretary of State, he has in his possession, or purchases or acquires, or sells or transfers...”

and then various items, including effectively, a gun.

It is not in dispute that the Bill of Rights gave the citizen a right to hold arms. The Question which is posed is whether the Firearms Act, which does not expressly repeal the Bill of Rights, should be taken implicitly so to have repealed. The general position in law is this. Where a later enactment does not expressly repeal an earlier enactment which it has power to override, but the provisions of the later enactment are contrary to those of the earlier, the latter by implication repeals the earlier. The commentary in Bennion on Statutory Provisions says that:

“If a later Act makes contrary provision to an earlier, Parliament, thought it has not said so, is taken to intend the earlier to be repealed. The same applies where a statutory provision is contrary to a common law rule.”

I have no doubt that the Firearms Act 1968 which is a successor to a number of Firearms Acts going back to 1920 was intended to repeal the right of the citizen to bear arms. Accordingly, in my judgement, the applicant is governed by the Firearms Act 1968 and reference to the Bill of Rights will not assist him.

The second point is the question of the secretary of State's approach. His letter dated 2<sup>nd</sup> October 1997 reads as follows:

“Thank you for your letter of 24 September 1997 about the Secretary of State's authority to possess section 5(1) (aba) prohibited weapons under section 5 of the Firearms Act 1968 (as amended).

The secretary of State gives careful consideration to the grant or renewal of authorities to possess prohibited weapons, and I regret to inform you that having considered all the circumstances of the application he has decided not to grant an authority.

Applications for the authority of the Secretary of State are usually made by persons who wish to trade (manufacture, buy, sell etc) in prohibited weapons and/or prohibited ammunition, or who otherwise consider they have a need arising from the nature of their trade, profession, occupation or business. The Secretary of State normally regards these as acceptable reasons for making an application.

It is not the policy of the Secretary of State's authority to be granted for personal protection purposes.

If you consider yourself to be at risk, I have to say that the proper agency for the protection of a country's citizens is its police force. I can only suggest therefore that you contact your local police force and discuss the level of threat you feel yourself to be facing and the precautions you might need to take.”

There was a further letter from the Home Office dated 30th April 1998 in which the Secretary of State said:

“The Secretary of State gives careful consideration to the grant or renewal of authorities to possess prohibited weapons and I regret to inform you that having considered all the circumstances of the application he has decided not to grant an authority.”

He repeats what was in the letter of 2<sup>nd</sup> October

“Applications made for other reasons are given careful consideration, however unless there are exceptional circumstances involved, an authority will not normally be granted.”

Mr. Burke says that that is a change from the previous letter in which they have set out a blanket policy not to grant the applicant permission for personal protection. He drew my attention to a letter addressed to a Mr. Berry, which says that it is the policy of the government not to allow possession of firearms for personal protection.

Mr. Burke does not suggest that he has been under any threat which would give rise to the need for personal protection. Although a challenge can sometimes be made to a blanket policy which is operated without personal consideration, the letters appear to mean that the Secretary of State does consider the personal position, namely those who wish to trade, but he will not grant an authority for self-defence. In the instant case, it is clear that there is no threat to the applicant, so that if the policy were to be challenged, it is clear that the Secretary of State would not in any event grant permission in the instant case because there would be no good reason for it.

For all those reasons, this is an application which I shall not grant because it would be doomed to failure if I granted leave.