

Attachment: Relevant Statutory and
Regulatory Provisions (4 Pages)

**THIS EXAMINATION CONSISTS OF 10 PAGES (INCLUDING ATTACHMENT).
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.**

THE PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2022

LAW 372
Administrative Law

Section 004
Professor Ford

MARKS: 50

TIME ALLOWED: 2 HOURS

NOTES:

1. This is an open book examination.
2. This examination is worth 60% of your final grade. Your exam will be 2 hours long.
3. This examination consists of one fact pattern, with 5 questions. **Please answer *all questions***. Each question is weighted, and given an approximate time, as set out below. Students are cautioned to allocate their time accordingly.

EXAM PART	MARKS	SUGGESTED TIME including reading time
Fact Pattern		
Question 1	6	15 minutes
Question 2	7	15 minutes
Question 3	20	45-50 minutes
Question 4	10	25 minutes
Question 5	7	15 minutes
TOTAL	50 marks	120 minutes (2 hours)

4. If you are hand-writing your exam, please double-space your answers.
5. Good luck!

FACT PATTERN (120 minutes)MARKS

- 50 Mr. Jimmy Bay is a 65-year-old, self-employed commercial helicopter pilot based in Déline, Northwest Territories (“NWT”). He transports guides and wildlife photographers by helicopter to and from remote areas in the Mackenzie Mountains, NWT.

Mr. Bay owns a handgun. Canadian gun ownership laws are set out in the *Firearms Act*, SC 1995 c 39 (the “*Act*”). **An excerpt of this statute and associated regulations are attached to this examination.** Under the *Act*, “non-restricted” firearms include regular rifles and shotguns. “Restricted” firearms include many handguns, including the particular kind that Mr. Bay owns – a .460 calibre Smith & Wesson revolver. (The third category of “prohibited” firearms is not relevant here.)

For many years, Mr. Bay has held a valid licence under the *Act* to possess his restricted firearm. He has registered his handgun, as he is required to do. He has taken the Canadian Firearms Safety Course, and has met all other conditions for possessing that handgun. However, Mr. Bay needs a separate authorization under the *Act* and its *Regulations* in order to carry that restricted firearm in his helicopter while on the job.

Mr. Bay applies for Authorization to Carry

On February 1, 2022, in anticipation of the coming summer tourism season, Mr. Bay applies for an Authorization to Carry (“ATC”) his restricted firearm under s. 20 of the *Act*, and its Regulation SOR/98-207, *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations* (the “*Regulations*”).

In his application for the ATC, Mr. Bay states that he needs his restricted firearm to ensure his and his passengers’ safety when they are on the ground, in case of a grizzly bear attack. If he “lands or crashes” and is isolated in the bush, he says in his application that “people and food and shiny objects ... attract grizzly bears” and so he needs his restricted firearm to protect them. He intends to keep his handgun locked in a case and stowed under his seat in the helicopter, in a compartment where passengers cannot see or access it.

Mr. Bay says that his concern about being isolated in the bush, vulnerable to attacks from bears, is a real one: he has crashed twice in his thirty years as a commercial helicopter pilot. As well, he says the threat from bears is very real. In his application, he writes that “guides and outfitters in the Mackenzie Mountains have plenty of stories of problems with grizzly bears,” and that “every year people are killed or attacked in this job.” He recounts one specific incident of a hunter killed by a bear and adds that there are “lots of stories of grizzly problems that do not make the news.”

In his application, Mr. Bay suggests that other means of protection are neither available nor effective. When his small helicopter is packed with guides, photographers and their equipment, unrestricted weapons (i.e., shotguns or rifles) are too long and too heavy. His handgun is more compact. Mr. Bay writes that bear spray cannot be safely stowed in the helicopter because “it may discharge accidentally,” incapacitate everyone, and “cause the helicopter to crash.” Also, he says that bear spray is not effective when the bear is 150 metres away. And at close range, if the bear is charging, it may be too late. In Mr. Bay’s words on his application, due to the speed of the bear, at 10 metres “you are already dead.”

The Firearms Officer’s Decision

The firearms officer assigned to consider Mr. Bay’s application is Carly Colombo (“Colombo”). Officer Colombo is a member of the RCMP who has been validly appointed by the RCMP Commissioner to issue firearms possession licences and ATCs in NWT.

On March 1, after receiving Mr. Bay’s application, Officer Colombo interviews him. At the end of the interview, she informs him that she will deny his application. She provides no reasons on March 1.

After the interview, Officer Colombo seeks advice from a Superintendent she knows from Environment and Natural Resources Canada, as well as an Investigator with Transport Canada.

On April 1, 2022, Officer Colombo issues the following written reasons:

In making this decision I rely on s. 3(b) of the *Regulations* and s. 20 of the *Act*. Read together, they say that a firearms 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.

I have read and considered Mr. Bay’s February 1, 2022 application, and have considered all the information he provided in his interview on March 1, 2022. I am also informed by policy of Environment and Natural Resources Canada, and of Transport Canada.

I conclude that Mr. Bay does not “need” a handgun to work as a helicopter pilot in remote areas. This is just his personal preference. I note that Transport Canada does not have any requirement that pilots operating over wilderness areas carry a firearm on board. I have been told by Transport Canada that there

have been no reports of wildlife attacks on pilots during landing, lifting off, or sitting in the helicopter. I also note that the manner in which Mr. Bay proposes 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. Rather, he wants the handgun as an emergency tool. Other small deterrents he could use include bear spray.

I am advised by Environment and Natural Resources Canada that in general, handguns are not effective against bears. They recommend shotguns. Environment and Natural Resources Canada have concerns about under-trained persons using inadequate firearms. Mr. Bay has not taken any predatory awareness training. Therefore, if Mr. Bay believes that he needs a firearm to protect against bears, he could consider a shotgun. He does not need an ATC to carry a shotgun. It could be clipped to the side of the helicopter or stored in its outside cargo compartment, if interior space is limited.

Mr. Bay has not established a “need” for an ATC under s. 20 of the *Act* and s. 3(b) of the *Regulations*. This failure to demonstrate need is “good and sufficient reason” within the meaning of s. 68 of the *Act*. Mr. Bay’s application for an ATC is denied.

Mr. Bay comes to you for advice

You are a lawyer and a member of both the BC and NWT bars. Mr. Bay comes to see you, very upset about Officer Colombo’s decision. It seems to him that Officer Colombo had already made up her mind not to allow his application before his interview, and therefore did not consider his application in an open-minded way. In his words, the Officer was “looking for a reason not to issue that carry permit to me.”

Mr. Bay also tells you that he should have had the opportunity to respond to the information that Officer Colombo seems to have obtained from Transport Canada and Environment and Natural Resources. Those aspects of Officer Colombo’s reasons came as a complete surprise to him. As your discussion goes on, it seems that Mr. Bay is a bit unclear as to whether he says the Officer came into the interview predisposed to refuse him an ATC, which he says would have been unfair; or whether the information from the other government officials affected her decision, in which case he says she should have told him about those consultations and given him an opportunity to respond to them. Either way, he believes that he was treated unfairly.

Mr. Bay also believes that Officer Colombo was dismissive of his professional experience and the record of bear attacks in the areas where he operates. He tells you that Officer Colombo knows nothing about handguns and the risks of being “downed,” i.e., stuck on the ground due to weather, equipment failure, or other unforeseen

circumstances. Mr. Bay says that in such situations, bear spray and shotguns mounted outside the helicopter are inadequate alternatives to his handgun. He thinks that Officer Colombo should have considered the features and capability of the specific handgun that Mr. Bay owns. He is offended at the apparent suggestion that he is “under-trained.” Mr. Bay further tells you that, since he has held a valid license for a registered handgun for many years, he should be entitled to an ATC unless the Officer “proves” otherwise.

Finally, Mr. Bay thinks that in making the decision she did, Officer Colombo violated his Charter right to life, liberty, and security of the person. Mr. Bay agrees that he has no general Charter right to carry a handgun, but he says that Officer Colombo’s decision not to grant him an ATC forces him to put his life in greater danger when he is working.

QUESTIONS

Mr. Bay wants to go to court to have an ATC issued in his favour. Provide him with answers to the following questions:

MARKS

- 6 1. The *Act* does not provide for a statutory right of appeal. Explain to Mr. Bay which court is the appropriate court to consider his situation, what kinds of decisions it can consider, and the relevant provisions of the relevant *Act* that set out the bases on which that court could overturn the ATC decision.
- 7 2. Looking at the specific concerns that Mr. Bay mentions to you, is he likely to succeed in a claim that his procedural fairness rights were infringed? Explain.
- 20 3. Not including any Charter issues (which are discussed in the next question), is Mr. Bay likely to succeed in a substantive review of Officer Colombo’s decision? Identify and apply the appropriate standard of review. Explain your answer, including a specific description of how the court would approach the question and the likely outcome.
- 10 4. Did Officer Colombo commit reviewable substantive error in failing to consider Charter values in denying Mr. Bay’s ATC? Identify and apply the appropriate standard of review. Explain your answer, including a specific description of how the court would approach the question and the likely outcome.
- 7 5. Now imagine that this whole scenario takes place under provincial law – that Mr. Bay is a commercial helicopter pilot in northern British Columbia, that the *Firearms Act* and associated regulations are duly enacted by the province of British Columbia, and that firearms officers’ decisions operate, in administrative law terms, like decisions of the provincial *Oil & Gas Appeal Tribunal*. How would this affect your analysis above?

In your answers:

- *although Mr. Bay is a member of the Sahtú Dene First Nation, assume that there are no issues of Aboriginal Administrative Law or Indigenous self-governance at play.*
- *do not discuss Charter s. 7 jurisprudence, except as it directly relates to Administrative Law.*
- *note that the Firearms Act and associated Regulations, attached, are not exactly the same as any real statute or regulations. Do not rely on any experience you may have with any actual similar enactment.*
- *assume that no interpretive issues arise from looking at the French version of the Act or its Regulations.*
- *assume that there are no issues as to the validity of Mr. Bay's firearm license or registration, or the validity of Officer Colombo's appointment as a firearm officer.*
- *be objective in your assessment, even though you are Mr. Bay's counsel.*
- *if you are missing information that you consider necessary, identify the information you are missing and state how it would affect your answer.*

END OF EXAMINATION

RELEVANT STATUTORY PROVISIONS**Firearms Act, S.C. 1995, c. 39** [excerpts]

- 4 The purpose of this Act is
- (a) to provide for the issuance of
 - (i) licences for firearms and authorizations and registration certificates for prohibited firearms or restricted firearms, under which persons may possess firearms in circumstances that would otherwise constitute an offence under the Criminal Code,
 - (ii) licences and authorizations under which persons may possess prohibited weapons, restricted weapons, prohibited devices and prohibited ammunition in circumstances that would otherwise constitute an offence the Criminal Code ...
- 5 (1) A person is not eligible to hold a licence for a restricted firearm if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.
- 17 Subject to sections 19 and 20, a prohibited firearm or restricted firearm, the holder of the registration certificate for which is an individual, may be possessed only at the dwelling-house of the individual, as recorded in the Canadian Firearms Registry, or at a place authorized by a firearms officer.
- 20 An individual who holds a licence authorizing the individual to possess restricted firearms may be authorized to possess a particular restricted firearm at a place other than the place at which it is authorized to be possessed if the individual needs the particular restricted firearm
- (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.
- 54 (1) A licence, registration certificate or authorization may be issued only on application made in the prescribed form — which form may be in writing or electronic — or in the prescribed manner. The application must set out the prescribed information and be accompanied by payment of the prescribed fees.
- (2) An application for a licence, registration certificate or authorization must be made to

- (a) a firearms officer, in the case of a licence, an authorization to carry or an authorization to transport; or
 - (b) the Registrar, in the case of a registration certificate, an authorization to export or an authorization to import.

- 56
 - (1) A firearms officer is responsible for issuing licences.
 - (2) Only one licence may be issued to any one individual.
 - (3) A business other than a carrier requires a separate licence for each place where the business is carried on.

- 57 A firearms officer is responsible for issuing authorizations to carry and authorizations to transport.

- 58 (1) A firearms officer who issues a licence, an authorization to carry or an authorization to transport may attach any reasonable condition to it that the firearms officer considers desirable in the particular circumstances and in the interests of the safety of the holder or any other person.

- 68 A 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.

- 70 (1) A firearms officer may revoke a licence, an authorization to carry or an authorization to transport for any good and sufficient reason including, without limiting the generality of the foregoing,
 - (a) where the holder of the licence or authorization
 - (i) is no longer or never was eligible to hold the licence or authorization,
 - (ii) contravenes any condition attached to the licence or authorization, or
 - (iii) has been convicted or discharged under section 730 of the Criminal Code of an offence referred to in paragraph 5(2)(a); or
 - (b) where, in the case of a business, a person who stands in a prescribed relationship to the business has been convicted or discharged under section 730 of the Criminal Code of any such offence.

- 117 The Governor in Council may make regulations
- (a) regulating the issuance of licences, registration certificates and authorizations, including regulations respecting the purposes for which they may be issued under any provision of this Act and prescribing the circumstances in which persons are or are not eligible to hold licences;
 - (b) regulating the revocation of licences, registration certificates and authorizations;
 - (c) prescribing the circumstances in which an individual does or does not need firearms
 - (i) to protect the life of that individual or of other individuals, or
 - (ii) for use in connection with his or her lawful profession or occupation;

Authorizations to Carry Restricted Firearms and Certain Handguns Regulations, S.O.R./98-207 [excerpts]

- 1 The definitions in this section apply in these Regulations.
- Act means the *Firearms Act*.
- 2 For the purpose of section 20 of the Act, the circumstances in which an individual needs restricted firearms or prohibited handguns to protect the life of that individual or of other individuals are where
- (a) the life of that individual, or other individuals, is in imminent danger from one or more other individuals;
 - (b) police protection is not sufficient in the circumstances; and
 - (c) the possession of a restricted firearm or prohibited handgun can reasonably be justified for protecting the individual or other individuals from death or grievous bodily harm.
- 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 A firearms officer shall not issue to an individual an authorization to carry a particular restricted firearm or prohibited handgun that is needed in the circumstances described in section 2 or paragraph 3(a) unless the firearms officer determines that
 - (a) the individual has successfully completed training in firearms proficiency and the use of force that is appropriate for using the firearm in those circumstances.

- 8 (1) If a firearms officer decides to refuse to issue an authorization to carry or to revoke an authorization to carry, the firearms officer shall give notice of the decision to the applicant for or holder of the authorization to carry.
- (2) The notice must include reasons for the decision.