

NOT PUBLISHED

File No.: 11166305

IN THE PROVINCIAL COURT OF NEW BRUNSWICK

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

SPRINGFIELD SPORTS CLUB INC.

APPLICANT

- AND -

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF NEW BRUNSWICK AS
REPRESENTED BY THE MINISTER OF
PUBLIC SAFETY (CHIEF FIREARMS
OFFICER)

RESPONDENT

Dates of Hearing:

August 18, 2020, November 19, 2020 and January 6, 2021

Date of Decision:

April 27, 2021

Before:

Mary Jane Richards

At:

Fredericton, New Brunswick

Appearances:

For the Applicant: Glen Abbott, Q.C.

For the Respondent: Justin Wies

DECISION**Richards, J.**I. INTRODUCTION

- [1] The Applicant, Springfield Sports Club Inc. filed a section 74 Reference pursuant to the FA on December 19, 2019. The Respondent is the Provincial Minister of Public Safety represented by the Chief Firearms Officer (CFO). The subject of the Application is the refusal by the Respondent to approve a shooting range under section 29 (5) of the *Firearms Act* (S.C. 1995, c. 39) (“FA”).
- [2] More specifically Springfield states that because the operating approval under section 29 of the FA contained 26 numbered conditions as “Requirements” that these conditions are de facto a form of refusal (Exhibit A-2 page 4 attached to the Shooting Range Approval dated November 22, 2019).
- [3] Springfield challenges seven of these conditions: numbers 1, 2, 3, 15, 16, 25 and 26. The CFO removed conditions numbers 20 and 21 from the Range Approval in her correspondence of July 14, 2020. (Exhibit A-8)
- [4] The Respondent Chief Firearms Officer has argued that because there was neither a revocation nor a refusal but an approval with conditions the Applicant has no remedy under s 74 and the Provincial Court Judge does not have the jurisdiction to hear the reference. Furthermore, the Respondent submits that the Requirements with Conditions listed in the section 29 Approval, are the reasons Springfield received the Approval. In other words,

Springfield was approved to operate a range because these conditions were being met at the time of the Approval.

[5] In the alternative, the CFO states that if the court determines it has jurisdiction then the CFO's decision should be upheld.

II. QUESTION AND ISSUE

[6] The question is: Does the CFO have the authority to grant an Approval of a license with conditions or is the CFO creating and imposing extra operating conditions as mandatory conditions upon the Applicant (Exhibit A-2, paragraph 9)?

[7] At issue is the authority of the CFO and to what extent she may prevail over the division of authority and responsibility between the CFO, the operator of a firing range and the user of the range as delineated in the FA and the Regulations, both federal and provincial.

III. PRELIMINARY ISSUE ON JURISDICTION

[8] The preliminary issue is whether a Provincial Court Judge has the authority to determine the matter as a Reference under section 74 of the FA since Springfield did not receive a revocation or refusal of their renewal but rather an Approval with 26 conditions?

[9] Springfield contends that the legislation only allows for the approval or rejection of approval for a shooting range not an Approval with conditions and therefore argues that the Approval with conditions is in effect a refusal.

[10] The CFO argues that Springfield's license was approved with all conditions having been met and because there was no refusal or revocation of approval the Court has no jurisdiction. Furthermore, counsel contends that the Applicant's only means of seeking a remedy would be before the Federal Court of Canada.

[11] The applicable section in the FA is as follows:

"Reference to Judge of refusal to issue or revocation, etc.

74(1) Subject to subsection (2), where

- (a) a chief firearms officer or the Registrar refuses to issue or revokes a licence, registration certificate, authorization to transport, authorization to export or authorization to import,*
- (b) a chief firearms officer decides under section 67 that a firearm possessed by an individual who holds a licence is not being used for a purpose described in section 28, or*
- (c) a provincial minister refuses to approve or revokes the approval of a shooting club or shooting range for the purposes of this Act,*

the applicant for or holder of the licence, registration certificate, authorization or approval may refer the matter to a Provincial Court judge in the territorial division in which the applicant or holder resides."

"Decision by Provincial Court judge

76 On the hearing of a reference, the Provincial Court judge may, by order,

- (a) confirm the decision of the chief firearms officer, Registrar or provincial minister;*
- (b) direct the chief firearms officer or Registrar to issue a licence, registration certificate or authorization or direct the provincial minister to approve a shooting club or shooting range;*

or

- (c) cancel the revocation of the licence, registration certificate, authorization or approval or the decision of the chief firearms officer under section 67."*

[12] This issue of jurisdiction was considered in *Runkle v Alberta (Chief Firearms Officer)*, 2015 ABQB 216 (CanLII). Although the subject in *Runkle* was the issuance of a change in conditions to a license to transport, Mr. Justice Marceau did consider whether the Provincial Court had the jurisdiction to consider whether this was a refusal by the CFO under s 74 FA. The Honourable Justice held that the approach of the CFO that there was no remedy available before the Provincial Court once an authorization was granted, would not comport with the intention that Parliament had expressed in s 74. (paragraph 24).

[13] He stated at paragraph 25: “*Obviously, Parliament wished to create a procedure for review of the CFO’s decisions for reasonableness only by a tribunal which was more accessible and affordable than the procedures in superior courts of the provinces, or the Federal Court of Canada...*” Further to that in paragraph 36: “*I agree with Kaufman J [in R v Isaac Frank Dyck, MQB, June 25th, 2004] that the refusal to grant an unconditional licence is a refusal to grant a licence...*” And at paragraph 37: “*As I said earlier, it is cold comfort that the holder of an authorization can seek remedy in the Federal Court of Canada because a Provincial Court has ruled that it has no jurisdiction in the matter.*”

[14] In New Brunswick being an opt-in Province with a Provincially appointed CFO the Applicant would most likely have to pursue a remedy through the *Judicature Act of New Brunswick*.

IV. DECISION

[15] The preliminary issue on jurisdiction is answered in the affirmative for the Applicant.

[16] The court accepts the reasoning of the Applicant that by granting an approval with Requirements containing 26 conditions and asserting that this falls outside the purview of a section 74 Review, the minister would effectively remove the right of the Applicant to apply for a review. The conditions cannot be properly described by the Respondent as reasons. They are in effect what is stated in the Approval document - that is, they are conditions on the Approval. By maintaining that it is within the authority of the CFO to add requirements/conditions without a right of review, this would allow the CFO to continuously add more conditions expanding their authority without any recourse by Springfield.

[17] In effect this is what has happened. Mr. Cairns, the President of Springfield, testified that earlier Approvals had approximately 6 conditions attached and now the most recent approval has 26 conditions attached. Springfield claims that some of these conditions have changed or expanded the CFO's authority or transferred responsibility to Springfield. The Applicant's only recourse is a section 74 reference if they wish to have the decision of the CFO reviewed.

[18] The CFO made a determination to grant an approval of the shooting club with conditions without providing reasons. The Applicant has no knowledge of the reasoning of the CFO. It was therefore determined that the CFO as Respondent should proceed first to provide the Applicant with her reasons.

V. LEGISLATION AND REGULATIONS

[19] The approval and revocation of shooting clubs or ranges is governed by the Federal legislation under the FA of Canada; the Shooting Clubs and Shooting Ranges Regulations SOR (Statutory Orders and Regulations)/98-212; and Standards for Design and Construction of Shooting Ranges in New Brunswick July 2003(“Standards for Design”) (Exhibit A-12).

[20] In New Brunswick, the FA is governed under the authority of the Minister of Public Safety of New Brunswick who is designated by the Lieutenant-Governor in Council. The Minister designates a Chief Firearms Officer and may delegate such duties and functions to the Chief Firearms Officer as specified under the authorization in s 29(4) FA.

[21] Under section 29(1) FA, Shooting Clubs or Shooting Ranges may only operate under the approval of the Minister and the Minister may approve the club if it complies with the regulations under paragraph 117(e) FA.

[22] Section 117 is the provision which allows for the Lieutenant-Governor in Council to make regulations and paragraph 117 (e) is the authority for the establishment of regulations for shooting clubs. The *Shooting Clubs and Shooting Ranges Regulations SOR (Statutory Orders and Regulations)/98-212* is the specific regulation created for the purposes of establishing and operating a shooting club. under paragraph 117(e) FA.

“117 The Governor in Council may make regulations

(e) regulating

- (i) *the establishment and operation of shooting clubs and shooting ranges,*
- (ii) *the activities that may be carried on at shooting clubs and shooting ranges,*
- (iii) *the possession and use of firearms at shooting clubs and shooting ranges, and*
- (iv) *the keeping and destruction of records in relation to shooting clubs and shooting ranges and members of those clubs and ranges;”*

[23] Under section 29(3) FA, the Provincial Minister “...*may revoke the approval for any good and sufficient reason including, without limiting the generality of the foregoing, where the shooting club or shooting range contravenes a regulation made under paragraph 117(e).*”

[24] The notice to refuse to approve or revoke an approval of a shooting club must include reasons under subsection 29(6) FA. “*A notice given under subsection (5) must include reasons for the decision disclosing the nature of the information relied on for the decision and must be accompanied by a copy of sections 74 to 81.*”

[25] The roles and responsibilities or authority of the various parties are delineated under the *Shooting Clubs and Shooting Ranges Regulations in SOR (Statutory Orders and Regulations)/98-212*. They are the Chief Firearms Officer, the operator of the shooting range and the users of the shooting range.

[26] Persons who wish to establish and operate a shooting range or a shooting club must provide all of the information and documentation as set out in sections 3 and 4 of the Regulation.

[27] The operator, the person approved under subsection 29 (1) of the FA to operate the shooting range or shooting club, has the authority and responsibility under sections 5, 7, 8, 9, 11, 12, 13, 14 and 15 of the Regulations.

“5 *The operator of an approved shooting range shall ensure that the discharge of firearms on the shooting range does not endanger the safety of persons at the shooting range or in the portion of the surrounding area described in paragraph 3(2)(a), by taking appropriate measures, including ensuring that*

(a) *the design and operation of the shooting range*

(i) *is such that projectiles discharged from firearms will not leave the shooting range if they are discharged there in accordance with the safety rules, and*

(ii) *promotes the safety of all persons on the shooting range, including by accommodating any adaptation that may be appropriate given the nature of the shooting activities that may take place and the type and calibre of firearms that may be used there;*

(b) *the shooting range has an adequate warning system to warn persons that they are entering a shooting range and to inform them, when such is the case, that shooting activities are taking place at that time;*

(c) *appropriate safety rules for the shooting range are applied that are consistent with the nature of the shooting activities that may take place and the type and calibre of firearms that may be used there;*

(d) *the safety rules are posted in a conspicuous place on the shooting range; and*

(e) *if more than one person is simultaneously engaged in shooting activities on the shooting range, a person acts as the range officer.*

7(1) *The operator of a shooting range shall ensure that every person who indicates an intention to use the shooting range for the first time is informed of the safety rules used at that shooting range.*

(2) *No person may use a shooting range for the first time without having received the information referred to in subsection (1).”*

VI. COMPLIANCE WITH SAFETY STANDARDS BY THE OPERATOR

- [28] Section 5 of the Regulations specifically relates to compliance with Safety Standards and sets out the operator's responsibility to ensure the discharge of firearms does not endanger the safety of persons on the range or in the surrounding area.
- [29] This is achieved first by the design of the shooting range. The design is regulated under s. 5(a) and the document the Standards of Design was developed under the regulation in accordance with the FA.
- [30] The day-to-day responsibilities under s 5 of the Regulation included in the operation of the facility include briefly, establishing a warning system and appropriate safety rules that are conspicuously posted; establishment of a range officer system; and ensuring all person using the range are informed of the safety rules. The operator is also responsible for maintaining insurance, submitting appropriate documentation, keeping records of members and guests, reporting changes affecting documentation and reporting personal injuries.
- [31] Users of the shooting ranges have responsibilities under Section 6 and 7 of the Regulation. They are prohibited from using a restricted firearm or a prohibited handgun at a shooting range unless they are a member or an officer of an approved shooting club or a guest of a person who is a member or an officer. They must receive the information on the safety rules of the shooting range.

VII. AUTHORITY OF MINISTER TO REVOKE APPROVAL

[32] The Minister has an over arching authority to revoke the approval of a shooting club under section 29(3) FA. *“A Provincial Minister may revoke the approval [of a shooting club or shooting range] for any good and sufficient reason including, without limiting the generality of the foregoing, where the shooting club or shooting range contravenes a regulation made under paragraph 117(e).”*

VIII. AUTHORITY OF CFO TO OVER SEE CONTINUING COMPLIANCE

[33] The operator has responsibilities for continuing compliance under sections 8, 9, 11, 12, 13 and 14 of the Shooting Clubs Regulations including, among other things, maintaining insurance, updating and submitting documents, reporting personal injury reports and so forth. The specific and limited authority of the CFO to oversee the operations of a shooting club is also found in the Shooting Clubs Regulations. In addition to the operator being required to provide evidence of compliance every five years under section 9 of the Regulation, the CFO may request evidence of compliance under sub section 10(1) *“but no more than once in a calendar year”* and under subsection 10 (2) the CFO may make a request more frequently if he or she:

10(2)

- (a) *has received, in the preceding 12 months*
 - (i) *a personal injury report in accordance with section 11, or*
 - (ii) *a change report in accordance with section 12, or*
- (b) *has reasonable grounds to believe that the continued operation of the shooting range may endanger the safety of any person”*

IX. STANDARD OF REVIEW

[34] The standard of review for a reference to the Provincial Court is uncertain. The FA provides for a reference and states that the Provincial Court judge shall hear all relevant evidence. The Provincial Court judge therefore conducts a hearing and it is the first time that the matter is heard.

S 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 firearm's officer, Registrar or provincial minister and the applicant or holder.*

(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."*

[35] Various courts have considered whether the standard is one of a trial de novo, deference with amplification, or some other type of hearing.

X. REFERENCE PROCESS AS DE NOVO OR SUI GENERIS

[36] In *Pogson V Alberta (Chief Firearms Officer)*, 2005 ABQB 179 at para 40, Slatter J came to the conclusion that the standard of review should vary depending on the exact circumstances of the reference and cited *Bohn v British Columbia (Chef Firearms Officer)*, 2002 BCPC 378 at para 30. In summary, if the Applicant simply attacks the decision as unreasonable on its face the approach would be closer to that of a classic judicial review. If instead the Applicant calls extensive new evidence materially affecting the persuasiveness and reliability of the information on which the CFO acted, then the approach will appear like a de novo hearing.

XI. REFERENCE PROCESS AS STANDARD OF REASONABLENESS.

[37] Paragraph 29(3) of the *FA* provide powers to the minister to revoke approval if there is good and sufficient reason under the act including a contravention of the Regulation made under paragraph 117(e) and for the Chief Firearms Officer to order evidence of compliance by the Shooting Club based on reasonable grounds of belief for the safety of any person.

[38] This is a review of the decision of the chief firearms officer whose decision must be made for good and sufficient reason and on reasonable grounds of belief for the safety of any person. Although it has similarities to a trial de novo, it is not simply a fresh hearing where the Judge can replace her decision with the decision of the CFO. It is clear that the decision of the chief firearms officer must be proven to be not justified.

[39] In addition, the CFO is not limited to the reasons provided at the time of the decision nor is the Applicant limited only to evidence that was available before the application was filed.

[40] The decision of the chief firearms officer must be shown to be in error by a balance of probabilities. *“A reference is not a criminal proceeding, and the burden on the applicant does not require proof beyond a reasonable doubt but, rather, is based on the preponderance of evidence. If the applicant fails to meet this burden the chief firearms officers’ decision stands” (R v Dumont (D.) NBCQB (2002) 254, NBR (2nd) 238, at para. 24).*

XII. DECISION

[41] With the decision of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC65, the Supreme Court determined that the framework of standard of review for administrative bodies needed clarification. The former standard of review framework under *Dunsmuir v New Brunswick*, 2008 SCC 9 was found to be unwieldly and unduly complex and the Supreme Court replaced the various standards with a general rule of reasonableness.

[42] In consideration of that decision and the unique hearing contemplated by the legislation under the FA, this court is satisfied that the standard on which one determines the decision of the Chief Firearms Officer is one of reasonableness. This standard is built into the legislation with authority given to the CFO to revoke an approval for any good and sufficient reason. The judge may receive all relevant evidence including new evidence that comes to fore after the Application was filed.

XIII. STANDARD OF CORRECTNESS

[43] The Court notes that although this hearing is a reference and not an appeal, for questions of law the Standard of Review would be correctness as stated in *Vavilov* (supra) at paragraph 37: “*This means that the applicable standard is to be determined with reference to the nature of the question and to this Court’s jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker’s authority, apply the standard of*

correctness in accordance with Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.”

XIV. BACKGROUND

[44] Lysa Rossignol, Chief Firearms Officer

Lysa Rossignol, Chief Firearms Officer for the Province of New Brunswick had been CFO for approximately seven months prior to this hearing. The CFO who had granted the conditional operating approval was Mr. Christopher Michael Hand.

[45] Ms. Rossignol has been with the provincial firearms office since 2007 and has worked in every position at the provincial firearms office, from administrative assistant to her present position as CFO. Prior to her position as CFO she was the operations manager and would have been considered the second-in-command for Mr. Hand.

[46] The Canadian Firearms Program is operated either by the individual province which appoints a provincial CFO or by the RCMP which would have a federal CFO. In New Brunswick the decision was made to operate under the provincial format with the CFO. The Chief Firearms Officer is designated by the minister of public safety for the Province of New Brunswick.

[47] CFOs are responsible to approve or refuse licensing, both individual and in business licensing. They inspect, grant shooting range approval, review the transfer of firearms between individuals and businesses, grant authorization to transport and authorization to

carry. CFOs also deliver the Canadian Firearms Safety Course and the Canadian Restricted Firearm Safety Course on behalf of the Canadian Firearms Program with instructors that are designated by the Chief Firearms Officer.

[48] The Provincial Firearms Office through the Provincial Firearms Advisory Committee in New Brunswick created a document entitled Standards for Design and Construction of Shooting Ranges in New Brunswick, Chief Provincial Firearms Office, Department of Public Safety Province of New Brunswick (Exhibit A-12). This document was created in the late 1990s and last revised in 2003. It was created so that all shooting ranges in New Brunswick would design and construct shooting ranges based on the standards established by the document. Most other provinces use federal guidelines which are quite different.

[49] Any range that wishes to apply for approval as a shooting range and any range up for renewal is subject to the template in this document. The overarching consideration is public safety, assuring that the discharge of a projectile is done in a safe manner. The firearms office will inspect to determine if the range meets the requirements under the FA, under the regulation and under the document Standards for Design and construction of shooting ranges in New Brunswick. If they meet the requirements, they will receive approval.

[50] However, the Approval may be partial approval because some parts of the range may not meet the standards. The CFO will work with the Operator to help them meet the standards. The Approval can be for a period of one year or up to five years depending on how the range is set up and what work has been done. The Approval determines what types of

activities they can have on their range, whether it's handgun, rifle or shotguns. The Approval will have the requirements and obligations and the limitations for each range. For instance, the Approval may state that if one range is being used the other must be closed or it could mean that only one activity at a time is permitted per range.

[51] With respect to renewals for approval of a shooting range, where no changes have been made to the range the documents that are already on file do not have to be resubmitted. However, with renewals there is still a need for an inspection.

[52] Springfield's first approval was granted in 2002. On different occasions they were given partial approval and, following that, full approvals. Their status flipped back and forth between partial approvals and full approvals on different occasions. In the most recent approval, they provided their renewal documents and an inspection was performed. Exhibit R-4 is a shooting range approval for Springfield, dated January 7, 2019 expiring November 30, 2019. At that time, they were given an approval and a refusal. They were given an approval for part of their range and also a refusal for the ranges that did not meet the requirements.

[53] The CFO explained to the court why there was such a narrow timeframe for approval. Originally, Springfield was inspected in August 2018 and they were given an approval for part of their range and a refusal for the parts of that range that did not meet the requirements. Following that, on December 2018, the CFO received a letter from Springfield asking for clarification on their range approval from August 18, 2018. The CFO Chris Hand, Ms.

Rossignol as second-in-command, and John Welsher firearms officer, met with Springfield and their representatives Mr. Cairns, Mr. Allaby, and Mr. Abbott. On January 7, 2019 a letter was sent to Springfield stating that the approval was granted on the condition that the CFO would inspect in the following year to ensure that all the deficiencies had been rectified. The Approval was effective January 7 to November 30, 2019.

[54] The CFO further explained that 75% of ranges in the Province were failing the inspections. So ranges were given partial approvals and refusals because so many of them were not meeting the minimum standards. By giving another approval up until the following year this allowed ranges to get the deficiencies fixed or corrected. In 2019 their office re-inspected 19 Shooting Clubs or ranges and Springfield was included among them.

[55] Springfield was approved with 26 conditions and this approval was effective January 7, 2019 expiring November 30, 2019. One of the items for the approval was “approved operational hours of the range are from dawn to dusk.” The CFO was not aware that there was any nighttime shooting at Springfield.

[56] Ms. Rossignol explained the practise of attaching conditions to the Approval. Their office had consulted with other jurisdictions to see how they were issuing approvals. They aligned themselves with Nova Scotia by issuing approvals with conditions. The purpose of putting conditions on the approval of the ranges was to make things as clear as possible with respect to what ranges could and could not do.

- [57] She confirmed that nineteen New Brunswick ranges were approved in 2019 and all of them received approvals with the 26 conditions attached. Some may have had slight variations to this set of conditions, but generally this is a generic set of conditions placed on all approvals of shooting ranges.
- [58] She stated that at the time of giving the approval, the ranges were meeting the requirements stated in the conditions. If they are not, they would not be given an approval or they would be given a partial approval. If there are questions or issues, Springfield would email the generic email account and their concern would be forwarded to the appropriate person. Whoever needed to respond would respond back to Springfield so their questions or concerns would be considered. There may be a telephone call or meeting set up depending on the issue. This is part of the approval process which she described as a continuous approval, continuous communication between the CFO's office and the stakeholders.
- [59] This situation of continuous approval and continuous communication was not as evident as was related at the Hearing of this matter. The office of the CFO required Springfield to apply through the *Right to Information and Protection of Privacy Act* ("RTIPPA") in order to receive disclosure of the Range Inspection Reports. The Reference under Section 74 did not proceed immediately because Springfield did not receive the disclosure they would have expected to receive. The Office of the CFO has since ceased this practice of obligating the request for disclosure to be made under RTIPPA

[60] Timothy Michael Kairns, President of the Springfield Sports Club

Timothy Michael Kairns is President of the Springfield Sports Club. He was a reserve member of the Canadian Armed Forces from 1967 to 1974. He became the small arms instructor for his regiment. He has been shooting since then with different clubs in Ontario and Prince Edward Island. He has been shooting continuously since he came to New Brunswick in 1991. In his professional life he has worked as a CPA and started his own company in 1993. At this time, he is semi-retired but continues to work with some of his clients on their accounting needs.

[61] His experience is varied including handguns and long arms. He is experienced with using rifles at different distances and multiple types of handguns as well as trap shooting. He was a member of the International Practical Shooting Confederation, a worldwide organization primarily using handguns in an active sport, where you move and shoot at different types of targets at different distances.

[62] Springfield has two types of action shooting: cowboy action, using single action revolvers, lever action firearms, and pistol calibre and double-barreled shotguns. There is also practical pistol shooting where there is one range set up permanently for that activity. Both types of action shooting engage targets at different distances and there is movement between barriers and different parts.

[63] Springfield is on land leased from the Department of Natural Resources and is around 30 hectares in size. It currently has nine ranges, some are handgun only, some are handgun

and rifle. There are two long-range ranges, a 600 metre and a 1000 metre range. One is for future development. The facility is 11 km from Mactaquac Provincial Park and 5 or 6 kilometres from the nearest housing. It is surrounded by bush and swamp. He provided the court a Google coloured print out of an aerial photo of the range, marked as Exhibit A-14.

[64] Mr. Cairns discusses Exhibit A-3, the actual application for shooting range approval submitted on August 2, 2018. Exhibit A-2 is the actual approval that came back sometime later from the CFO office. Following the submission of the application for shooting range approval, the CFO identified a number of ranges that were approved and a number of ranges that were not approved. The term range is used interchangeably with bays. On the range facility there are nine ranges or nine bays. With respect to the bays that were not approved, the Springfield Board met with the CFO and the Inspector and discussed the items that were not approved; identifying things like pitting and angles and the concern that this would degrade the angle of the berms. He explained that the angles of the berms were in excess of those required so, based on that, the ranges were then approved. At that point in time, the bays did get approved in a letter, about a month or so after the meeting.

[65] It was indicated that there would be a follow-up on the 1000 metre range because there were rocks on it. The 1000 metre range was originally built in 2001 to accommodate a shooting gallery. The club eventually installed electronic targets which sit on the mantle. The targets are lower than the top of the mantle; these targets are 6 feet high and 6 feet wide. In behind the mantle to protect the electronic components are located sound sensors

on the four corners which transmit back to the firing point on an iPad where the bullet hit the target.

[66] The 1000 metre was supposed to be inspected again. The inspector showed and he intended to do a full range inspection in spite of the fact that only the 1000 metre range was due for an inspection. Mr. Hand thought it would be a good idea to inspect the whole facility again. The full inspection was in the summer of 2019. There were still some concerns by the CFO that they had about the mantle at the 1000 metre range. They never questioned the mantle at the 600.

[67] Springfield received the Approval (Exhibit A-2) in November 2019. The range was approved but they put a caveat that they had a problem with the mantle on the 1000. There were issues with respect to rocks on the floor between where the targets are placed and the backstop itself, an area of 30 to 35 metres. Kairns agreed to do a cleanup, but the range was open.

[68] Mr. Kairns explained the reason for the s 74 Reference review. In 2018 when Springfield received the original approval for a number of the ranges or bays there were approximately a half dozen conditions which were standard conditions that were always on the approvals. The Approval received in 2019 listed 26 conditions. Some of the conditions were a direct quote of the Shooting Club Regulations but others were skewed a bit. The conditions that they have concerns with were the responsibility of the Operator and not the responsibility of the Chief Firearms Officer.

[69] The CFO informed him that decision was made to add these conditions based on inquiries they were getting from other clubs in the province. They thought it would be good idea to put these conditions on as best practices. He was never given any response with respect to the reason behind the specific conditions, although he was provided with a response, in a letter marked Exhibit A-9, explaining the conditions were standard conditions similar to what they use in Nova Scotia.

XV. CONDITIONS CHALLENGED BY SPRINGFIELD

[70] **Condition number 1:** *“The range operators are responsible for enforcing all operating conditions as noted below.”*

[71] The concern raised by Springfield with respect to the primary condition is twofold. Some of the conditions listed under the Requirements are strictly related to the responsibility of the users of the facility and not the operators of the facility. The responsibilities of the users fall under section 6 of the regulations. These conditions are not the responsibility of the operators.

[72] The second concern was that some conditions are strictly the responsibility of the operators of the facility and do not fall under the responsibility CFO. The CFO does not have the authority to repeat rules already in effect and not under her authority.

XVI. DECISION

[73] In condition number 1 the general enforcement clause for all the conditions is too broad and effectively makes the Operator responsible for matters which are the responsibility of the users such as in condition numbers 2 and 5.

[74] **Condition number 2:** *“It is the responsibility of the range operator to ensure compliance with section 6 of the shooting clubs and shooting ranges regulations.”*

[75] The CFO states that no one may use the range or use a restricted firearm or prohibited handgun at a shooting range unless they are a member or a guest. This condition is to make sure that the shooting range is aware of who is participating at their range. The range tracks users of the range through a logbook and participants are obliged to sign in.

[76] The Applicant argues that it's the user's responsibility to abide by the Regulations concerning what firearms they and/or their guests may use on the facility.

[77] Mr. Kairns stated that the biggest concern is that the facility is not staffed. They do not check licenses at the gate. Most of their members have a license. However, a member does not have to have a license because they can come with a friend who has a license. The user supplies the firearms. Springfield does not supply firearms; it is the user who is responsible for their actions with their firearms according to their firearms license.

- [78] In the membership application that every member signs, the safety rules and range procedures are included. The applicant must sign indicating that they have read and agree to all procedures.
- [79] Only current members in good standing have access to the code for the gate and they can bring in a guest. The number of visits for guest is limited to two times before they are required to become a member. Persons attending the range are required to sign in before they start shooting and range rules are posted.
- [80] Users must indicate if the range is active. If a user is there alone, they operate as their own range officer. If there is more than one person on the range at the same time, one of the members assumes the responsibility of being the range officer. This is all specified in the rules and is also part of the regulations. There is also a Chief Range Officer for the range responsible for the overall safety of the facility. If there is an incident, the chief range officer must investigate it, bring it to the board to determine if there is an issue. The board provides training for members to become range safety officers.
- [81] However, the board members or the range safety officer are not always at the range. That is why there is a locked gate with a combination to allow members to come and go as they want. Safety people are on site when they are running a club event. Nowhere in the FA nor the Firearms Regulations and Shooting Club Regulations is it stated that it is the responsibility of the Range Officer to ensure compliance of Section 6 of the Regulation.

[82] The CFO did not question the present system of tracking range users through a logbook nor did she raise any concerns that the facility was not staffed. She did not indicate there were any concerns with the procedures and controls in place at Springfield to manage compliance. The CFO states that the range operator is responsible to take reasonable measures to ensure its users are members or guests of the club and the CFO is satisfied that this was being done. It was argued by the Respondent that if a CFO revoked approval because a range violated this section, then that decision would be reviewable on reasonableness, but the condition itself is not inherently unreasonable.

XVII. DECISION

[83] Section 6 of the Shooting Clubs Regulations is entitled – Requirements for Users - and states:

Requirements for Users

- 6 *No person may use a restricted firearm or prohibited handgun at a shooting range unless the person is*
- (a) *a member or an officer of an approved shooting club;*
 - (b) *a guest of a person referred to in paragraph (a); or*
 - (c) *an individual who ordinarily resides outside of Canada who is either a member of a recognized shooting organization or a guest described in paragraph (b).*

[84] The Operator's logbook, locked gate with a code and other measures as described are a form of oversight and control of the user but not all encompassing. To fulfill Condition 1 and 2 as stated: "*It is the responsibility of the range operator to ensure compliance with section 6...*" the operator would have to hire full time staff.

[85] Since the operator is not mandated to be responsible for compliance under that section of the Regulation and it was not the intention of the CFO to mandate full time staff at Springfield, and it appears she is satisfied with the procedures in place at Springfield, the condition that the Operator ensure compliance is over broad and therefore incorrect. Some of the responsibility thrust on the Operator is the responsibility of the user under section 6 of the Regulation.

[86] **Condition number 3:** *“The approved operational hours of this range are from dawn to dusk. No nighttime shooting permitted.”*

[87] The CFO states that this is a prohibition on shooting at night. She asserts that the hours of operation of a shooting club must follow the hours of hunting as stipulated by the Department of Natural Resources and Energy Development (“DNR”). There are no section 29 ranges under the FA in New Brunswick that have been given nighttime shooting approval. Except for one DNR authorized activity, there are no civilian nighttime shooting activities permitted in New Brunswick.

[88] The CFO testified that nighttime shooting is not safe. Ranges must have to ensure that projectiles do not leave the range. During daylight hours, people walking around the range would know there is a range. At nighttime they would not know. She stated emphatically that there is no reason for a civilian, a New Brunswicker, to do target shooting at nighttime.

The prohibition is about public safety for the members using the range and also for civilians that are passing by. Hence the reason why there is no nighttime shooting permitted.

[89] Springfield provided information in August 2020 with nighttime shooting procedures (Exhibit A-11). The CFO does not accept this protocol. The CFO states lighting would have to be fixed and cannot be lanterns, flashlights or lighting affixed to one's forehead. She is aware that law enforcement may need to practise nighttime shooting, but that has been provided at the Canadian Forces Base Gagetown.

[90] The CFO was not aware of the protocols with respect to nighttime shooting when Springfield's approval was granted. She is not aware of the policies or protocols for nighttime shooting elsewhere in Canada or if any exist.

[91] Springfield contends that the hours of operation are the responsibility of the operators and that this is a range operation issue. They carry insurance and have people to run events. The restricted operating hours identified as dawn to dusk impedes Springfield's intention to have lowlight shooting or nighttime shooting events. It affects the opportunity to offer these activities to the membership.

[92] The Nighttime Shooting Procedures (Exhibit A-11) were designed specifically for handguns. These rules were not provided to the former CFO, Mr. Hand, for consideration when the range application was made. Normally range rules are not supplied because they are not required as it is the operators' responsibility.

[93] A number of members have requested the ability to use the range in lowlight shooting activities utilizing flashlights and lanterns and so forth. Springfield did not provide the CFO with the document Exhibit A-11, "Night Shooting Rules" until after the Approval. The board of Springfield have been discussing night shooting for quite a while as they are getting more and more requests. They would ensure there was lighting at the entrance to the range that was being used and the berms would have to be marked by lights including the side berms. There would be an illuminated safety table on the range where people could handle their firearms.

[94] The applicant refers to Exhibit A-15 shooting range leasing policy. This policy is with respect to ranges that are leased on Crown land such as Springfield. Referenced at 8.9 entitled "Other Uses of Shooting Ranges" it states that: *"Lessees may make shooting ranges available to DPS, DRD, Royal Canadian Mounted Police and other enforcement agencies for both daytime and nighttime firearm safety training or firearm qualifications."* It also states that *"Lessees shall open shooting range to the general public at times acceptable to the club holding the lease..."*.

[95] Mr. Cairns stated that users want a challenge, many are members of law enforcement and this is another form of challenge, to attract members to the club. Obtaining a firearms license and purchasing firearms is a heavily regulated process. Membership to Springfield is also heavily regulated. These users are enthusiasts and sports people.

XVIII. DECISION

- [96] There was no indication that any activity would be carried out unless appropriate safety measures were taken. There is no logical reason provided why members of law enforcement must be obliged to go to Base Gagetown unless there are special reasons that make Base Gagetown the only range that can provide these services.
- [97] However, there was very little information provided by Springfield except for a set of rules for low-light shooting. Similar to the CFO, the Springfield operator could not provide any information on low-light shooting procedures anywhere in Canada.
- [98] The CFO compared the public safety issue of low light shooting on a range as the equivalent to nighttime hunting. She provided for a reason that no civilian in New Brunswick had any reason to do target shooting at night.
- [99] The public safety issue of nighttime hunting and the ban on nighttime hunting is not comparable to target shooting on a range in low light. There is nothing to substantiate the public safety argument of an individual happening upon this particular shooting range at night. Considering the placement of Springfield on a 30-hectare piece of land in the woods, it is implausible that any member of the public would be trudging around the range among swamp and trees at night. It would be inconceivable that a member of the public would then make their way over the earth works of dirt backstops or berms to stumble onto the range. This does not suggest that public safety would not be a factor on other ranges in other locations with other configurations.

- [100] The CFO's role is to ensure that safety of the user and the public is the consideration. Reasons must be based on specific facts and information about low-light shooting at that particular shooting club. If the operators set up proper procedures and protocols to ensure that bullets remain in the cone of fire and do not escape the range to endanger the public or the users, then low-light shooting should be considered as any activity where proper safety protocols are established.
- [101] Since there is already in place a low-light shooting range at Base Gagetown for law enforcement officers, it is unreasonable to make a wide-ranging declaration that this type of activity cannot be delivered at Springfield under any circumstances.
- [102] The court finds the CFO's decision was not reasonable.
- [103] The court holds that the hours of operation for the range is the decision of the operator, however, the CFO has an overriding authority to determine if there are reasonable grounds to believe that the continued operation of the shooting range may endanger the safety of any person.
- [104] The Respondent suggested that the court should apply *Pogson v Alberta*, 2000, ABQB 179, at paragraph 77, that, where new evidence is raised at the hearing, in this case, the safety measures listed in the Nighttime Shooting Procedures (Exhibit A-11) provided by the operator, the court may refer the matter back to the CFO.

[105] Although the CFO did not provide reasonable grounds for her prohibition, the Applicant provided the information on Nighttime Shooting after the Approval and it was not sufficient information for the Court to make a decision. This court agrees that under s 10(2)(b) of the regulation and under subsection 29 (3) of the FA, there is authority to request information about the Nighttime Shooting activity to ensure this activity does not endanger the safety of any person.

[106] I order that the matter be returned to the CFO to be given the opportunity to review the matter more robustly and to allow Springfield to provide any additional information it sees fit, to determine if there are acceptable safety measures in place to allow for nighttime shooting.

[107] **Condition number 15:** *“Targets shall not be placed on top of the backstops and the centre of the target shall not be more than 1.5 m above the range floor.”*

[108] In order to ensure that the discharge of a firearm does not endanger the safety of persons on the shooting range or in the portion of the surrounding areas the CFO states that the backstop is there to stop the projectiles. If the target is placed on top of the backstop then there is nothing to protect anything behind the target. Reference is made to Exhibit A-12 Standards for Design and construction of shooting ranges in New Brunswick. On page 13 at figure 4 is the demonstration of a handgun cone of fire.

- [109] Mr. Cairns stated that there is no issue with the condition that targets shall not be placed on top of the backstops. The backstop is there to stop bullets, so it is obvious you do not put anything on top of it.
- [110] Furthermore, it is the operators' responsibility to see that bullets do not leave the facility. If you shoot over the backstop bullets are leaving the facility. A member putting a target on top of the backstop would have their membership terminated because it is a safety issue. Under the New Brunswick Range Designs, the operator is responsible for the targets. It is also incorporated into the regulations by reference.
- [111] The issue with respect to condition number 15 is the stipulation that the centre of the target cannot be more than 1.5 m above the range floor. For six of their ranges this is not an issue however, in the two gallery ranges, the 600 metre and the 1000 metre, the gallery is at least 1.8 metres high off the range floor.
- [112] The target sits on top of the gallery and that is part of the standards, that is the way it is built. He refers to Exhibit A-12, Standards for Design at Section 5, entitled "Outdoor Gallery Ranges" at Figure 5 and 6. They reference the mantle to be 1.8 metres high. That means it is 1.8 metres off the range floor. The reason for this is to protect people behind it who are identifying where you shot, or to protect the electronic targets. The centre of these targets is 3 metres above the range floor. The targets are usually 6 feet or 2 metres by 2 metres.

[113] He asserts that there is no danger of the bullets flying over the top of the backstop on the 1000 metre range because there is a substantial drop in the bullet after it leaves the muzzle, so at 600 metres the bullet drops over 6 feet. If you wanted to shoot over the backstop you would have to aim 2 to 12 metres above the backstop. The reason for this is because the bullet has an arc on it and when it comes down it goes through the target; it's not going straight. It will strike behind the target 5 or 6 metres before it hits the range floor. The bullet will drop 4 metres on a 1000 metre range.

[114] In this type of shooting one uses a scope with crosshairs and each mark is a 3.6 inch drop for every 100 metres going out at a 1000 metres. When one is shooting, they are going down 4 marks on the graduation to get the bullet to hit the target. So, the scope points above the target but the bullet drop compensates. The backstop at the 1000 metre is 8 metres high. The technical requirement is for it to be at least 7. Any range over 300 metres has to have a 7 metre high backstop. The condition that states the target has to be 1.5 metres above the range floor impacts ranges 8 and 9, the 600 and 1000 metre ranges.

XIX. DECISION

[115] Condition number 15 has two parts; the first part is not a part of the objection as it is agreed that targets are not placed on the top of backstops as that would allow projectiles to escape from the range.

[116] The second part is the issue of contention as Mr. Cairns aptly described how for the two gallery ranges the center of the target is at least 1.8 metres off the range floor, but this is

part of the Standards of Range Design and that is the way the gallery is designed. The bullet drops after it leaves the firearm so at 600 metres the bullet drops over 6 feet. One uses a scope that points above the target, but the bullet drop compensates. The backstop at the 1000 meter range is 8 feet high.

[117] It would appear that the Respondent is not suggesting that this item on the list of conditions was not being respected. So, although condition number 15 gives a center target height of 1.5 metres, from the Court's understanding, the Respondent agrees that the 1000 metre and 600 metre range are in compliance.

[118] Springfield provided compelling reasons why the second part of condition number 15 was not reasonable and I was not provided with any good and sufficient reason or public safety issue or regulation by the CFO that contradicted Springfield. The condition is unreasonable as it contradicts in part a matter that is dealt with in the Standards for Design and the Respondent has not argued that Springfield is in contravention.

[119] **Condition number 16:** *"Targets shall not be placed on the range floor to be shot at and shall not be positioned so that projectiles shot at the targets will strike the range floor."*

[120] Condition number 16 is a highly contentious issue as this affects what Mr. Cairns believes is an important activity at Springfield for teaching youth how to shoot and has been a practise for years.

- [121] The CFO states that range floors are not designed to be a backstop. Striking the range floor will cause the projectile or bullet to ricochet and one does not know the path of that projectile, which increases the safety risk. Ricochets can endanger the safety of the members that are currently shooting and others on other ranges that are close by.
- [122] In paragraph 22 of the affidavit of Mr. Cairns (Exhibit A- 3), reference is made to a youth shooting event involving tennis balls. The shooting activity involves tennis balls tossed down range and are shot at with a 22. If the youth hits the target, he can see the target move. The bullet strikes the range floor. This activity has been done for years at Springfield range without safety concern.
- [123] The CFO indicated surprise at this shooting event. She stated that if you shoot at the range floor directly that may cause damage and ricochet. One does not know the cone of fire or where the projectile will go.
- [124] Springfield's concern with this condition is that when they run youth events, especially Boy Scouts and Girl Scouts, the youth are taught to shoot and receive firearms safety training. They are taught how to point and aim. They shoot their firearms from a sitting position, so they do not lift their rifle. They are paired with a Range Officer one-on-one. Besides targets that are hanging for them to shoot, they also have tin cans, ballistic targets bought at Canadian Tire and tennis balls that one places on the range floor. These sorts of targets provide instant feedback to the shooter. The youth is able to see immediately if the target has been hit when the target moves. Youth do not like paper targets because they

cannot see whether or where the bullet hits on the target from the range hut. They could shoot many rounds and then walk down and check the target and discover they have not hit the target. So, a paper target is not the same enjoyment for them.

[125] Springfield has a properly designed range floor built to absorb rounds hitting it. The range floor is 0 to $\frac{3}{4}$ crushed rock and if the bullet hits the range floor it will lose a substantial amount of its velocity. The range floor will either consume the bullet or it will skip off and go towards the backstop normally at an angle less than when it contacted the range floor.

[126] In addition, they have target frames that are placed forward so on the 100 metre range they can place frames at 25 metres, 50 metres and 100 metres. The users may shoot at all the targets from the same position. Otherwise the 25 metre targets would block the shooters shooting at 50 metres and 50 metre shooters would block those shooting at the 100. This also is for the benefit of the shooters to allow them to shoot at different distances without having to walk downrange. This is partly a safety factor and it allows more people to use the facility at one time.

[127] Standards of Design, Exhibit A-12 Section 2, at 2.2.4 (corrected version) provides that targets should be placed as near as possible to the backstop but this does not mean the target cannot be placed forward as long as the shooters line of fire is directed to the backstop and the cone of fire is captured within the backstop.

[128] In addition, the Applicant directed the Court to Standards of Design at 1.3.4 Safety Area which describes the importance of range floors for the purposes of safe discharge of firearms.

[129] *“In order to prevent or minimize ricochets, special attention must be given to range floors (see Range Floor Section 2.4). It should be noted that a bullet loses a high percentage of velocity upon first contact with a “well designed” range floor and if it does ricochet, it is generally lower than the angle of incidence.” And further: “These Standards have been developed to contain all rounds within the firing range boundary range between the firing line and backstop. Should ranges meet this design and use Standards, no rounds will leave the active range area, eliminating the need to use safety templates.”*

[130] In the same Standards of Design at 9.10 page 59 entitled Targets it states: *“The selection of target types for use in outdoor ranges is at the discretion of the Range Operator”* Further in this section it cautions that hard targets should be critically evaluated to ensure users are not put a risk as a result of the use of the inappropriate use of hard targets given the range design. The minimum engagement distance for hard targets is ten meters. He stated that although they do shoot hard targets at a closer distance the targets are built to deflect the rounds down and rubber barriers are used to protect the lower extremities of the person in case of ricochet.

XX. DECISION

- [131] In the Standards of Design at Chapter 9.10 it states that: “[the]selection of target types for use in outdoor ranges is at the discretion of the Range Operator.” It is clear that target selection is the authority of the operator. The CFO objects to placing them on the range floor. The operator argues that the range floor is specifically designed to prevent ricochet.
- [132] The operator is experienced and has carefully considered the safety of the users. The range floor is designed to take the impact of projectiles, just as the entire range including the berms and backstops are built to withstand the impact of bullets.
- [133] In all of the many years this activity has been going on there is no indication of any concern brought forward by any range officer or any person teaching these youth how to handle firearms. The range floor would be hit regularly with stray bullets and this is the purpose for the specific design of the range floor and the reason that upkeep is necessary.
- [134] The youth are described as sitting down so as not to have to carry the weight of the firearm presumably to allow for a steadier hold and a better control of the firearm. The tennis balls are at a distance, down range, the youth are shooting low calibre rifles and the seated position would allow for a safe angle so that any ricochet would be contained. The concern by the CFO for the safety of the user is not based on reasonable grounds and the danger to the user is improbable.

[135] The CFO does not have the burden of proof but the Applicant has provided more than sufficient information to establish that this activity is safe. It is not reasonable nor within the authority of the CFO to overrule the choice of target by the operator as contemplated in the Standards of Design unless there is evidence that this practice is not safe.

[136] **Condition number 25:** *“At the discretion of the chief firearms officer, the shooting range may be inspected to ensure continued compliance with the requirements referred to in the regulations, and to maintain public safety requirements.”*

[137] Ms. Rossignol explained that the CFO will be notified if there has been an injury at the shooting range. If this happens there is a report to complete and an investigation is done. At that point the CFO decides whether an inspection is done. If there is a change report wherein changes are made to their range, they are to notify the CFO so that an inspection can be performed. If there are any reasonable grounds to believe that the continued use of the range may endanger the safety of the public an inspection can be performed. This is the reason that condition number 25 is included. The CFO is not aware that the office has ever inspected Springfield outside of these parameters. The CFO agrees that her discretion to inspect ranges is limited by section 9 and 10 in the Shooting Club and Shooting Ranges Regulations.

[138] The Applicant submits that this condition purports to allow the CFO to exceed her authority. The Regulation does not allow for inspections ‘at the discretion of the CFO’

unless it is part of the approval process or as part of an investigative process if there is a reported incident. The CFO agrees that she is bound by the regulation.

XXI. DECISION

[139] The inspections under the Regulations are for a specific time period and nothing in the Regulations allows for the office of the CFO to walk in and do a random inspection at the discretion of the CFO unless it falls under one of the issues or concerns indicated in the Regulation.

[140] Subsection 10(2) states that the CFO may request evidence of compliance more frequently if he or she:

10(2) (a) has received, in the preceding 12 months

(i) a personal injury report in accordance with section 11, or

(ii) a change report in accordance with section 12, or

(b) has reasonable grounds to believe that the continued operation of the shooting range may endanger the safety of any person

[141] The CFO has no personal discretion to determine when to require evidence of compliance and thereby inspect the shooting range. Her authority is strictly regulated and this condition in the Approval stating: “at the discretion of the Chief Firearms Officer” does not accurately reflect the Regulation. The condition is, therefore, not within her authority and does not meet the standard of correctness.

[142] **Condition number 26:** *“The use of exploding targets is not authorized on this shooting range.”*

[143] The CFO explains that exploding targets are a safety hazard as the direction or flight path of the fragments once exploded cannot be determined. There is nothing in the FA nor the Regulations to prohibit exploding targets. The CFO agrees that the range standards do not address the issue. However, the CFO believes that exploding targets are public safety risk.

[144] She agrees that under shooting range standards Exhibit A-12-page 59 subparagraph 9.10 labelled “Targets” it states: *“The selection of target types for use in outdoor ranges is at the discretion of the Range Operator.”*

[145] She agrees that exploding targets can be purchased legally and shot and exploded legally in New Brunswick. However, she states it is illegal to shoot exploding targets at a range because it is in the conditions that they cannot explode targets on a range.

[146] The Applicant states that Springfield does not allow exploding targets on the facility and not because of safety reasons but because of the damage these targets do to the rubber mats and equipment. Their issue with the condition is that it is the operator’s responsibility to select targets not the CFO.

[147] Mr. Kairns testified that the exploding target is perfectly safe if you use them based on the operation instructions. They are sold to the public at various places such as Canadian Tire.

They come in various configurations such as Firebird which is very small with an adhesive patch on the back and it can be placed on a tree in the woods. It is legal to do this as long as you have a hunting licence.

[148] Another target, Tannerite, is a biochemical and it is a much greater explosive, but they are still legal in Canada and not regulated by the Explosives Act. They have potential to damage Springfield's property as they would blow a hole in a rubber mat, so they are prohibited. A number of ranges in the Province would take the same position and ban them.

[149] In Exhibit A-7 at page 84, Mr. Cairns provides a photo of the Range Rules where it indicates on a large sign at the entrance to the facility that "*Exploding Targets Prohibited on All Ranges*".

[150] The objection to this condition is not that Springfield wishes to permit exploding targets, on the contrary, they are banned but they contend that it is not in the authority of the CFO to ban them.

[151] The Respondent argues that this condition was another example of the fact that the range received approval because exploding targets were prohibited on the shooting range. This condition was one of the reasons for the approval.

XXII. DECISION

[152] The CFO's reasoning is that these explosive targets are not safe, in spite of the fact that anyone in New Brunswick with a hunting license can purchase them and use them for target shooting. If used according to the directions, they are not considered a public safety issue in New Brunswick otherwise they would be subject to stringent controls or banned.

[153] The real issue is who has the authority to ban this type of target at a shooting range? In the Standards for Design and Construction it is clear that the choice of target is for the operator to decide. The operator has made it clear that these targets are prohibited because they do damage to the mats to which the targets are attached. It is within the operator's authority to ban these explosive targets and he has done so prominently displayed on the rules at the entrance to the range.

[154] It therefore begs the question if these targets are banned at Springfield and under the proper authority of the operator why does the CFO add this to the conditions? The CFO always has an overview with respect to the safety of any person on reasonable grounds to believe, but if the targets are banned there are no reasonable grounds to believe any person's safety is endangered.

[155] The operator has properly used his discretion to prohibit the use of these targets therefore the condition for approval is not reasonable.

XXIII. ARGUMENTS

[156] In general Springfield objects to the conditions on the approval not because they are in disagreement but because many of these conditions are in the Act or Regulations. For example, condition number 4, the obligation on the operator to post a copy of the range safety rules and condition number 6 that the range operators and members shall comply with the Shooting Clubs and Shooting Ranges Regulations are already in the Regulations.

[157] In addition, the operator argues that conditions number 7, 8, 9 and 11 are not challenged but these conditions are found in the Standards for Design. Condition number 12 is in Section 11 of the Regulations. Condition number 14 is a rule imposed by the Board of Springfield.

[158] Condition number 18 is not challenged and concerns the maintenance of the backstops, berms and baffles and is the responsibility of the Operator.

[159] With respect to condition number 19 it is not challenged but Springfield argues it is too broad as changes to the operating conditions may have to be reported to the CFO, but it depends on the changes. In any event this condition is covered under section 12 of the Regulation very specifically and it specifies proposed changes affecting matters submitted in documentation under subsection 3(2) shall be reported in advance to the CFO.

[160] **Condition number 5:** *“The range operator(s) must ensure that all users of the range comply with the range operating instructions.”* Mr. Cairns states that they cannot ensure

compliance with the range operating instructions because they are not always on the range and the regulation does not require this. Every member is aware of the operating instructions; they have read them as they are provided on the back of the applications, posted on the website, and posted on a 4 x 8 sign at the range. Users are expected to conduct themselves accordingly on the range. If they come across a situation where the user is not complying with the rules an incident report is completed and provided to the Chief Range Officer. The board reviews the report and advises the member of the issue. Depending on the nature of the incident, there could be a warning or membership could be terminated.

[161] With respect to all of the conditions in general, the Applicant questions the authority of the CFO to add any conditions on the Approval and this, because they argue where conditions are permitted in the FA, they are specified. For example, under s 58(1) of the FA it specifies that for purposes of issuing a firearms licence, an authorization to carry or an authorization to transport a chief firearms officer... *“may attach any reasonable condition to it that the chief firearms officer considers desirable in the particular circumstances...”*

[162] The Applicant cites *Rizzo & Rizzo Shoes Ltd., 1998 CanLII 837, SCC*, as a guide to the interpretation of statutes. Mr. Justice Iacobucci at paragraph 21 cites Elmer Driedger in *Construction of Statutes* (2nd ed. 1983): *“Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”*

[163] The Respondent argues that all of the conditions listed in the Requirements for Approval at the time of the Approval were being complied with and that is why the Approval was granted. If the Applicant wishes to modify their approval to allow for activities currently precluded, they need to file a change report. The operator must comply with the design and operation of a shooting range according to the requirement of s 5 of the Regulations. Section 5 is the key source of the authority of the CFO. It is not the exclusive responsibility of the operator as the CFO has responsibility to ensure compliance with the regulations.

[164] The Respondent cites Vavilov (supra) at paragraph 15. *“In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker’s place.”*

XXIV. DECISION

[165] Although the CFO exercises broad powers under the FA and Regulations there is a division of responsibility and authority and the CFO must remain within her authority and respect the legal framework and the responsibility of others as stipulated in the Regulation. Conditions in the Approval should have an underlying policy reason that falls within the discretion of the CFO. Although some conditions directly cited the Regulation and

therefore did no harm, they were unnecessary. However, other conditions actually misconstrued the division of responsibility and authority in the Regulation so as to pass responsibility to the operator that was the responsibility of the user and extended the authority of the CFO suggesting more authority than was contemplated by the Regulation.

XXV. CONCLUSION

[166] The policy reason for attaching the Requirements on the Approval was based on the concern that there were too many ranges not passing approval. The CFO discovered that Nova Scotia had implemented a practise of attaching conditions to their approvals. The office of the CFO in New Brunswick felt this would be helpful as guidance to the operators.

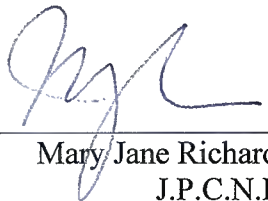
[167] However, these conditions did not respect the governing statutory scheme and were not internally logical. The conditions should be justifiable, transparent and meet the standard of correctness. Had the CFO decided to attach a copy of the Regulations, or in the very least, properly cited the Regulations then Springfield would have no argument because although copying and pasting the Regulations on the Approval is unnecessary it would at least be accurate. But this set of Requirements or conditions is ill conceived; some are copied directly from the Regulations; some improperly paraphrase the regulation and actually enhance the level of responsibility or diminish the authority of the operator. Other conditions are found in the Standards of Design.

[168] It is clear that these conditions have caused confusion. Some issues that Springfield believed the CFO objected to were apparently not the case. This is due to the wording of

the conditions that led Springfield to believe they were burdened with greater responsibility or some responsibility had been taken away. Conditions that use language that improperly summarize the legislation or regulation such as “must ensure” do not meet the standard of correctness.

[169] The CFO should respect the authority and responsibility of the operator as per the regulation unless there is good and sufficient reason to overrule the operator as is prescribed by the Act and Regulations. Conditions are a form of refusal. Conditions attached to a section 29 approval were not envisaged by the Act. Certainly, these conditions did not respect the statutory scheme. The CFO should provide reasons for a refusal not for an approval. Providing reasons would force the CFO to thoughtfully consider the rationale behind the conditions and do so within the legal framework, considering the relevant statutory provisions and regulations.

[170] The conditions attached to the Approval did not meet the standard of reasonableness and were not justified. Those conditions that misinterpreted the regulations or the Standards of Design did not meet the standard of correctness. All conditions in the Approval are hereby removed and the question of low-light shooting must be reviewed by the Chief Firearms Officer to determine if acceptable safety measures are in place.



Mary Jane Richards
J.P.C.N.B.