

CITATION: *Rocco Carnesi v The Commissioner of Police*  
[2022] NTLC 008

PARTIES: ROCCO CARNESI

v

COMMISSIONER OF POLICE

TITLE OF COURT: FIREARMS APPEAL TRIBUNAL

JURISDICTION: Firearms Act (NT)

FILE NO(s): 2022-00456-LC

DELIVERED ON: 25 May 2022

DELIVERED AT: Darwin

HEARING DATE(s): 6 April and 12 May 2022

JUDGMENT OF: Chief Judge Elizabeth Morris (Chairperson)

**CATCHWORDS:**

ADMINISTRATIVE LAW – TRIBUNALS – APPEALS – FIREARMS ACT (NT) 1997 –  
STATUTORY INTERPRETATION

Notice of appeal – refusal to grant firearms employee licence – meaning of “expressly  
provided” – meaning of “any other Act” – Second Reading Speech – non-reviewable decision  
– non-appellable decision

*Firearms Act 1997* (NT) s 10(8A), 51(1), 93F.

*Interpretation Act 1978* (NT), s 62B.

*Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27.

*Parks and Playgrounds Movement Inc v Newcastle City Council* [2010] NSWLEC 231.

Explanatory Statement, Firearms Legislation Bill 2019 (NT) Serial 106, 8.

Northern Territory, *Parliamentary Debates*, Legislative Assembly, 28 May 2003, 4084-  
4087 (Paul Henderson).

**REPRESENTATION:**

*Counsel:*

Appellant: R Murphy

Respondent: J Ingrames

*Solicitors:*

Appellant: Murphy & Associates

Respondent: Solicitor for the Northern  
Territory

Judgment category classification: B

Judgment ID number: [2022] NTLC 008

Number of paragraphs: 31

IN THE FIREARMS APPEAL TRIBUNAL  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

2022-00456-LC

BETWEEN:

**ROCCO CARNESI**

Appellant

AND:

**COMMISSIONER OF POLICE**

Respondent

REASONS FOR JUDGMENT

(25 MAY 2022)

**THE TRIBUNAL**

CHIEF JUDGE ELIZABETH MORRIS (CHAIRPERSON)

**INTRODUCTION**

1. An appeal has been lodged pursuant to s 51(1) of the *Firearms Act 1997* (NT) (the Act) with the Firearms Tribunal against a decision of the Commissioner of Police.

**51 Notice of appeal**

- (1) Except as otherwise expressly provided, a person aggrieved by a decision or action of the Commissioner under this Act may appeal to the Tribunal against the decision or action.
2. The Respondent has submitted that the appeal is not available to the Appellant due to the prohibitive provisions of the Act in relation to certain decisions of the Commissioner.<sup>1</sup>
3. The Appellant submits that any prohibition does not apply to this appeal.
4. The Act allows a question of law or procedure to be determined by the Chairperson alone, without the need to convene the Tribunal.<sup>2</sup>

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<sup>1</sup> *Firearms Act 1997* (NT), s 93F.

<sup>2</sup> *Firearms Act 1997* (NT), s54B(1).

5. This is an appropriate question of law to be heard and determined by the Chairperson alone.

## **APPLICATION AND THE DECISION**

6. The Notice of Appeal indicates that Mr Carnesi received notice of a decision made by the Commissioner of Police on 10 February 2022. This decision was a refusal to grant the Appellant's application for a firearms employee licence for Austop Security and Austop Safari.
7. Whilst a copy of the decision of the Commissioner is not before the Tribunal, it is not disputed that the Commissioner's decision was in purported compliance with s 10(8A) of the Act.

### **10 General restrictions on grant of licence**

...

- (8A) The Commissioner must refuse to grant a licence if the Commissioner is of the opinion, having regard to any criminal intelligence report or other criminal information the Commissioner holds about the applicant or representative, that:
- (a) the applicant or representative is a risk to public safety; and
  - (b) the grant of the licence would be contrary to the public interest.

## **THE PRELIMINARY QUESTION OF LAW**

8. Whilst s 51 of the Act provides an avenue for appeal of a Commissioner's decision, s 93F of the Act states:

### **93F No review of certain decisions by Commissioner**

Despite any other Act or law of the Territory (including the common law):

- (a) no person or body is entitled to investigate, inquire into, review or otherwise call into question a decision of the Commissioner under section 10(8A), 33(3A) or 40A(1); and
- (b) no proceedings for an appeal, an injunction, a declaration or an order for prohibition or mandamus are to be brought in relation to a decision of the Commissioner mentioned in paragraph (a).

## **THE APPELLANT'S CASE**

9. It is the Appellant's case that such an appeal is permitted.

10. The words 'except as otherwise expressly provided' were inserted into s 51(1) in 2019, at the time of amendments related to the introduction of the Northern Territory Civil and Administrative Tribunal (NTCAT) as an avenue of review for some decisions pursuant to the Act. Such decisions became 'reviewable decisions'. The decisions which are reviewable under the Act are firearm prohibition orders under s 49E. Thus in the Act itself there is no other 'expressly provided' avenue for an appeal that should be considered.
11. The Appellant relies on the words "*Despite any other Act or law of the Territory*" in s 93F. These words, it is submitted, mean the section precluding an appeal for decisions under ss 10(8A), 33 (3A) or 40A(1), do not refer to the Firearms Act itself, but to all 'other' Acts and the common law. The purpose of the words are to limit the scope of the subsequent words to 'other Acts' which might have powers of investigation, inquiry, review or otherwise call into question a decision of the Commissioner under those sections. Thus the only proceedings for an appeal are under this Act, and previously provided by in s 51.

## THE RESPONDENT'S CASE

12. It is the Respondent's submission that s 93F does prevent any appeal on the Commissioner's decision on the ground of s 10(8A).
13. The ordinary construction of the words and consideration of the text leads to the conclusion that the Commissioner's decisions under ss 10(8A), 33(3A) or 40A(1) are not able to be appealed. Whilst many decisions made under the Act are subject to appeal to the Tribunal, those particular provisions are not. Reference to 'any other Act' does not change the meaning or limit the prohibition.

## CONSIDERATION

14. It is well recognised that the starting point for statutory interpretation is the consideration of the text itself. In *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 Their Honours Hayne, Heydon, Crennan and Kiefel JJ held:

The Court has stated on many occasions that the task of statutory interpretation must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.<sup>3</sup>

15. Both s 51 and s 93F contain an introductory phrase prior to the purpose of the section. "Except as otherwise expressly provided" for the appeal provision, and "Despite any other Act or law of the Territory (including common law)" for the limitation of decision review.
16. The words "except as otherwise expressly provided" indicates a clear intent that what follows may be expressly limited or prevented or provided for by another provision.
17. Later in the Act, s 49L provides jurisdiction to NTCAT to review a decision by the Commissioner of Police to make a firearm prohibition order. In my view though, the exception provided by the words "except as otherwise expressly provided" cannot only apply to s 49L, but to any other express provision in the Act. Whilst it may have been inserted to allow for such a review,<sup>4</sup> it is not limited to that section.

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<sup>3</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at [47].

<sup>4</sup> Explanatory Statement, Firearms Legislation Bill 2019 (NT) Serial 106, 8.

18. Section 93F commences with “Despite any other Act or law of the Territory (including common law)”. The Appellant submits that because of the word ‘other’ it therefore is not applicable to appeals or reviews under this Act.
19. Both Counsel have referred the Tribunal to *Parks and Playgrounds Movement Inc v Newcastle City Council* [2010] NSWLEC 231 for interpretation of a similar phrase. His Honour, Justice Biscoe adopts a three step process outlined in the earlier case of *In re Bland Brothers and the Council of the Borough of Inglewood* (No 2) [1920] VLR 522 .
20. In *Parks and Playgrounds*, s 88 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) provided that the Roads Authority "may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a public road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard".
21. Biscoe J held:

[98] The purpose of s88 is to empower a roads authority to deal with a situation which, in its opinion, is dangerous or hazardous. By its nature, a dangerous or hazardous situation may need to be addressed quickly, even urgently. The ongoing hazard or danger to the public which results from holding that s88 is subject to the delay involved in obtaining development consent if required under Part 4 of the EPA Act (including taking account of all the mandatory matters in s 79C) or in satisfying the requirements of ss111 and 112 in Part 5, suggests a construction that s88 is not subject to those requirements of Parts 4 and 5.

[99] As for the text, the words in s88 "despite any other Act or law to the contrary" suggest that s88 exhaustively states the planning condition of power which it confers and is not subject to any other statutory planning requirements or restrictions.

...

[102] The process of analysis for legislation containing such a phrase was set out in *In re Bland Brothers and the Council of the Borough of Inglewood* (No 2) [1920] VLR 522 where the Full Court construed a section of an Act commencing "Notwithstanding anything in this Act contained". It was held at 533:

As to the introductory words, the section should first be construed without them, and then, if there is anything in the other provisions of the Act

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**“Clause 7. Section 51 Amended (Notice to Appeal)."**

Amends section 51(1) to replace “a person” with “except as otherwise expressly provided, a person”. This clarifies that a person aggrieved by a decision by the Commissioner to make a firearm prohibition order cannot apply to the Firearms Appeal Tribunal. New section 49L expressly provides that the person aggrieved may apply to NTCAT for review of the order.”

inconsistent with the interpretation so arrived at, these other provisions must yield. This was in effect decided, as we understand, by all of the justices of England in Sir Thomas Cecil's Case [1597] 7 Rep, where it was said that the Act otherwise was to be no impediment to the interpretation of a section containing the words 'notwithstanding' etc.

...

[106] Applying the process of analysis in Bland to s88 of the Roads Act:

- (a) the first step is to construe s88 without the words "despite any other Act or law to the contrary";
  - (b) the second step is to ask whether s 76A in Part 4 and ss 111 and 112 in Part 5 of the EPA Act contradict the operation of s88 so construed;
  - (c) the third step is to obey the directive contained in the word "despite" and ignore what would otherwise be a contradiction from the entitlement provided by s88.
22. When applying the first step of the process in construing s 93F without the words “Despite any other Act...”, it is clear that no proceedings for an appeal are to be brought in relation to a decision of the Commissioner under s 10 (8A). It clearly expressly qualifies the earlier section providing for an appeal by a person aggrieved by a decision in s 51.
23. The appeal under consideration does not involve the question as to whether “any other Act” contraindicates the operation. There is no other Act where competing provisions or limitations or rights need to be considered in these particular circumstances. And with no contraindication from another Act, there is nothing to be ignored in the third step.
24. Thus, to read the Act as internally consistent with itself and operating coherently, the appeal provision to the Tribunal in s 51 is restricted by the prohibition of appeal of certain decisions by the Commissioner in s 93F.

## **REFERRAL TO SECOND READING SPEECH**

25. Section 62B of the *Interpretation Act 1978* (NT) states:

### **62B Use of extrinsic material in interpreting Act**

- (1) In interpreting a provision of an Act, if material not forming part of the Act is capable of assisting in ascertaining the meaning of the provision, the material may be considered:



- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
  - (b) to determine the meaning of the provision when:
    - (i) the provision is ambiguous or obscure; or
    - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.
- (2) Without limiting subsection (1), the material that may be considered in interpreting a provision of an Act includes the following:
- (a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer;
  - (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before the Legislative Assembly before the time when the provision was enacted;
  - (c) any relevant report of a committee of the Legislative Assembly that was made to the Legislative Assembly before the time when the provision was enacted;
  - (d) any treaty or other international agreement that is referred to in the Act;
  - (e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of the Legislative Assembly by a Minister or other Member before the time when the provision was enacted;
  - (f) any explanatory speech or statement given by a Minister or other Member to the Legislative Assembly on introducing the Bill;
  - (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section;
  - (h) any relevant material in any official record of debates in the Legislative Assembly.

26. The Interpretation Act permits consideration of the Second Reading Speech to confirm the meaning is the ordinary meaning. The Second Reading Speech states:

A further limitation of access to firearms is that the Commissioner must refuse to grant a licence, or permit, or to revoke a person's licence, permit, or certificate of registration, if the Commissioner is of the opinion the person is a risk to public safety or that it would be contrary to the public interest. In forming his opinion, the Commissioner must have regard to any criminal intelligence report or other criminal information. Because of the confidential nature of the criminal information, the

commissioner is not required to give any reasons for his decision which is likewise non-reviewable in any court or tribunal. This is based on public policy and preserving this kind of information in the possession of the Commissioner. To ensure proper accountability in forming the necessary opinion, the commissioner is unable to delegate this power.<sup>5</sup>

27. To legislate against the possibility of appeal, and preclude any reasons for decision-making is a serious curtailment of the normal operation of natural justice principles. It departs from the general system of law and excludes a normal fundamental right of the legal system. However, as stated in the Second Reading Speech, there are public policy grounds for such legislative restrictions, including preserving the kind of information in the possession of the Commissioner and its confidential nature.
28. In my view the language of the Act is clear in its intention to so depart.
29. The Second Reading Speech confirms that Parliament intended to make these kind of decisions by a Commissioner non-reviewable and non-appellable by any Court or Tribunal, including the Firearms Tribunal.
30. After consideration I am of the view that an appeal against a decision by the Commissioner pursuant to s 10(8A) is precluded by operation of s 93F.
31. The appeal is dismissed.

Dated this 25<sup>th</sup> day of May 2022.



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**CHIEF JUDGE ELIZABETH MORRIS**  
**CHAIRPERSON**

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<sup>5</sup>Northern Territory, *Parliamentary Debates*, Legislative Assembly, 28 May 2003, 4084-4087 (Paul Henderson).