

12(6) Handguns: unreported

File No: 78582-1
Registry: Kamloops

In the Provincial Court of British Columbia

REGINA

v.

JAMES DEMCHUK

REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE CLEAVELEY

COPY

Crown Counsel:	A. Varesi
Appearing on his own behalf:	J. Demchuk
Place of Hearing:	Kamloops, B.C.
Date of Judgment:	June 1, 2006

[1] THE COURT: I am satisfied on the evidence that I have heard today that in 1988 Mr. Demchuk purchased the gun, which is the subject of this proceeding. I am also satisfied that after purchasing the gun, Mr. Demchuk applied to register that gun and subsequently was issued a certificate in respect of that gun. A certificate in respect of that gun has not been filed in these proceedings, but because of Document 5, I am satisfied that the gun was registered and given Registration Certificate Number K-364770.

[2] The facts of this case are pretty unique in this sense: Mr. Demchuk then traded the gun to his brother-in-law and was not in possession of that gun for about six years. At the tail end of that period of time the legislation changed. On February the 14th, 1995, it was made illegal to possess this type of gun for a first time.

[3] On April 1st, 1996, Mr. Demchuk went to register this gun, after his brother-in-law traded it back to him. Mr. Demchuk completed the application to register a restricted weapon. This is found in the affidavit of Mr. Myers. Attached to that application is a notice to prospective handgun purchasers.

[4] There are two paragraphs in that notice which I think give Mr. Demchuk some comfort in his application today. First

paragraph reads:

If you intend to acquire for the first time a .25 or .32 calibre handgun or handgun with a barrel length of 105 millimetres or less, after February 14th, 1995, please read this note carefully.

The note goes on to read in the penultimate paragraph, as follows:

Individuals who acquire any such handguns for the first time, after February 14th, 1995, will not qualify to possess them after passage of the legislation, if it is passed in its present form. These firearms will be seized without grandfathering or compensation.

[5] In my view, Mr. Demchuk was entitled to rely on this notice and did rely on this notice. The only conclusion that can be reached when considering this notice, at the time it was signed, on June 29th, 1996, by Mr. Demchuk, is that he was not acquiring a handgun of this sort for the first time. In fact, he had acquired one of these handguns about eight years earlier. Mr. Demchuk was entitled to rely on this notice and entitled to believe that he would be grandfathered, because of his purchase of a handgun of this type eight years earlier.

[6] The crucial time, in my view, is June 29th, 1996, when Mr. Demchuk signed this notice. I understand that the notice was subsequently changed to remove the phrases referring to individuals who acquire for the first time. But when Mr.

Demchuk reacquired this gun, he was entitled to view himself as being grandfathered because of his previous ownership.

[7] The legal test with regard to this is that I must find that the decision of the handgun officer was unreasonable. It is not for me to substitute my opinion with regard to that decision. When I consider the unique facts in this particular case, I am satisfied that the decision of the firearms officer to refuse Mr. Demchuk a licence in regards to this weapon was unreasonable and not justified.

[8] I am therefore ordering that -- well, do I have jurisdiction to make that order, Mr. Varesi, or do I just make the finding that the application -- that Mr. Demchuk has met the burden of proof and the decision was not justified?

[9] MR. VARESI: I believe you -- sorry, just looking at the **Felman** [phonetic] case. It's Tab 4, I think, the --

[10] THE COURT: Well, would it not be -- no, it is s. 76, I think.

[11] MR. VARESI: Right.

[12] THE COURT: Yes?

[13] MR. VARESI: Yeah, I think Your Honour is able to overturn the decision and cancel the revocation, so he would

then be entitled to possess the firearm, I think.

[14] THE COURT: That is the order I am making, then, pursuant to s. 76(c) of the Act that the order cancelling the revocation of the licence is made, and it is up to Mr. Demchuk, at this point, to register the gun.

[15] MR. VARESI: Thank you.

[16] THE ACCUSED: Thank you, Your Honour.

(REASONS CONCLUDED)