

**IN THE DISTRICT COURT  
AT ROTORUA**

**I TE KŌTI-Ā-ROHE  
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV 2022-069-000192  
[2023] NZDC 19899**

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| UNDER         | the Arms Act 1983  |
| IN THE MATTER | of an Appeal against a Decision to Revoke a Firearms Licence |
| BETWEEN       | JOSHUA GREEN<br>Appellant                                    |
| AND           | THE COMMISSIONER OF POLICE<br>Respondent                     |

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| Hearing:     | 11 September 2023   |
| Appearances: | N Taylor for the Appellant<br>P Patanasiri for the Respondent |
| Judgment:    | 21 September 2023   |

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**RESERVED DECISION OF JUDGE K D KELLY**

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**Introduction**

[1] This is an appeal under s 62B(1)(b)(iii) of the Arms Act 1983 (the Act) against a decision of the Police to revoke the appellant’s firearms licence.

**Background**

[2] The appellant is a director of a transport company. In August 2022, one of the appellant’s logging trucks was involved in an accident with a utility vehicle on the Napier/Taupō road.

[3] Senior Constable Peter Stringfellow was the first police officer to attend the crash scene.

[4] Ignoring the instructions of another constable at a roadblock that had been set-up, the appellant drove into the crash scene and parked his vehicle behind a fire truck, inserting himself into the scene. At the scene, the appellant:

- (a) asked Senior Constable Stringfellow where the driver of the utility vehicle was so that the appellant could find out “what the fuck had happened”;
- (b) got into the back of an ambulance; and
- (c) started taking photographs of the scene.

[5] The circumstances around this incident are more fully set out in Judge Hollister-Jones’ oral judgment of 13 June 2023<sup>1</sup> and subsequent sentencing ruling.<sup>2</sup> I do not repeat that in full here. Briefly, his Honour found that a charge against the appellant of obstructing a constable acting in the execution of his duty<sup>3</sup> was proved and the appellant was fined \$500.00.

[6] It was the taking of photographs that led to Judge Hollister-Jones finding that the appellant’s actions amounted to wilful obstruction of Snr Constable Stringfellow. His Honour found that it was completely unsatisfactory for the appellant to be wandering around a crash scene, in the vicinity of debris, and going up to a crashed vehicle and taking photographs of it, especially as one of the occupants was on a stretcher nearby being attended to by paramedics. Taking photographs was contrary to Snr Constable Stringfellow’s directions to the appellant and made the constable’s job at the scene more difficult.

[7] As accepted by the appellant, the appellant also used disrespectful language towards the Police.

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<sup>1</sup> *NZ Police v Joshua Luke Green* [2023] NZDC 12041

<sup>2</sup> *NZ Police v Joshua Luke Green* [2023] NZDC 18982

<sup>3</sup> Section 23(a) of the Summary Offences Act 1981

[8] The appellant also disobeyed another constable's later instructions not to leave his vehicle, wandering back into the crash scene.

[9] As summarised by Judge Hollister-Jones:<sup>4</sup>

... It is clear to me that the [appellant] was so single-minded about his own purposes that he was not concerned about disobeying instructions from the police. He did so on three occasions that morning. The defendant was not concerned about whether his actions hindered the police in doing their job, as long as he could do what he felt he needed to do.

[10] Subsequently, on 2 November 2022 Inspector Glenn Nalder revoked the appellant's firearms licence based on this incident and because Insp Nalder said that on 29 November 2021 the appellant was a party to unlawful hunting for which he was warned.

[11] On 7 November 2022, the appellant sought a review of Insp Nalder's decision pursuant to s 62 of the Act. A review was undertaken by Insp Steven Crawford of the Arms Safety and Control Unit of the Police.

[12] The following day on 8 November 2022, Insp Crawford advised the appellant that he had decided to confirm the revocation. The reasons stated by Insp Crawford included the reasons stated by Insp Nalder plus:

- (a) the appellant had also been charged with obstructing a member of the police under the Act in relation to the collection of his firearms; and
- (b) the appellant has previously been charged with, or convicted of, driving while disqualified, driving in a dangerous manner, failing to stop for Police (although this charge was withdrawn), and because the appellant had three previous licence demerit suspensions.

[13] In making his decision, Insp Crawford acknowledged how important hunting was for the appellant and his whanau, and that a loss of licence would mean a loss of mana for the appellant. Inspector Crawford also acknowledged the support that the

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<sup>4</sup> Above n 1 at [42], and above n 2 at [8]

appellant gives to his community. Nevertheless, Insp Crawford said that revocation was a regulatory matter and that he needed to consider the appellant's attitude, behaviour and conduct beyond his use of firearms, as well as the potential or actual harm posed by the appellant in having a licence. Amongst other things, Insp Crawford said:

The regulatory regime administered and enforced by Police sits outside of any criminal investigation, and the outcomes do not require a burden of proof to beyond reasonable doubt as in the criminal system but is judged on the balance of probability. Furthermore, the decision to revoke a firearms licence does not hinge on the outcome of prosecution.

[14] Inspector Crawford was satisfied that the appellant was no longer fit and proper person to hold a firearms licence saying:

You have been charged with two counts of Obstructing Police, one of which relates to firearms surrender. You have demonstrated obstructive behaviour to police on several occasions that is below that expected of a fit and proper person. I note you also have a significant history of failing to comply with the provisions of the Land Transport Act, which causes me concern with your willingness to abide by other legislation including the Arms Act 1983.

In respect of submissions furnished under section 62(2) of the Arms Act 1983, dated 3 November 2022. Insufficient information has been furnished which would cause the reconsideration of the earlier firearms licence revocation decision. (sic)

### **Relevant legislation**

[15] Section 27(2)(a) of the Act provides that a Police officer may revoke a firearms licence if, in the opinion of that officer, the holder of the licence is not a fit and proper person to be in possession of a firearm or an airgun.

[16] Section 24A defines what is meant by 'a fit and proper person'. A person may not be a fit and proper person to be in possession of a firearm if the Police are satisfied that one or more of the circumstances set out in that section exist. Relevantly, the Police rely on the appellant:

- (a) having been charged or convicted of an offence in New Zealand that is punishable by a term of imprisonment (including, but not limited to, an offence involving violence, drugs, or alcohol) (per s 24A(1)(a)); and

- (b) having been charged or convicted of an offence under the Act (per s 24A(1)(b)).

[17] In determining whether a person is a fit and proper person to be in possession of a firearm or an airgun, the Police may take into account any matter they consider relevant (per s 24A(2)(c)).

[18] Section 62B(1)(b)(iii) provides a right of appeal to this court provided that the appellant has first applied under s 62 for a review of the decision and been notified of the reviewer's decision. On hearing an appeal, the court confirm, vary, or reverse the decision appealed against.

### **Appellant's evidence**

[19] In his unchallenged affidavit in support of his appeal, the appellant accepts that there are matters that have occurred in the past but says that he has already met with the police and discussed these matters.

[20] The appellant says that he started hunting at around five years of age and has grown in experience over time to the point where he now provides meat for his whanau and to over 10 marae in his Iwi. The appellant has also taught his tamariki and mokopuna how to hunt.

[21] The appellant says that safety is his first priority when hunting and that it is a point of pride for him to be trusted by his customers, clients, and employees to be a responsible person in all aspect of his life including in relation to the use and ownership of firearms.

[22] The appellant is self-employed in the forestry industry and has nearly 50 staff. He says that his business puts millions of dollars into the local community. The appellant says that he is responsible for the running of his company including all employment matters, paying wages, paying taxes on time, and for compliance with health and safety matters. The appellant is also responsible for his fleet being compliant with such things as the payment of road taxes, and necessary warrants and registration.

[23] The appellant says that he has never been criticised by the Police for any breach of firearms rules or regulations and that he takes the rules about the safe use and storage of firearms very seriously.

[24] The appellant disputes the allegation that in November 2021 he was a party to unlawful hunting along with two associates and that he was warned by the Department of Conservation. In relation to this incident, the Police have since confirmed that the appellant was not warned but rather a work associate was warned.<sup>5</sup>

[25] The appellant says that he feels that if he were to lose his firearms licence, he would lose his mana and self-esteem as he would no longer be able to provide food for his whanau and Iwi.

[26] In support of his good character, the appellant says further that:

- (a) he supports many local sports clubs and pig hunting competitions;
- (b) his daughter has recently graduated from university and that his children are the succession plan for his business; and
- (c) his town and community adore him and he is respected within his Iwi and hapu.

[27] The appellant acknowledges that firearms ownership is a privilege and says that this was instilled in him by his grandfather and uncles from a young age.

### **Police evidence**

[28] Evidence for the Police was given by Peter Stringfellow, Brett Sims and Steven Crawford.

[29] As noted, Peter Stringfellow is a senior constable stationed at the Taupō Police Station. Senior Constable Stringfellow's uncontested evidence is of the crash in August 2022 involving one of the appellant's trucks, for which the appellant was

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<sup>5</sup> Memorandum of counsel for the respondent dated 15 September 2023

convicted of obstruction. Senior Constable Stringfellow's evidence was largely summarised by Judge Hollister-Jones (as discussed above).

[30] Brett Sims is a constable stationed at the Taupō Police Station. Constable Sims' evidence is that when he served the appellant with a firearms suspension notice, the appellant was co-operative with the Police in handing over his licence. The appellant, however, was not co-operative in handing over his firearms.

[31] Constable Sims' uncontested evidence is that the appellant was attempting to stall the police when he was required to hand over his firearms and acted in a way that amounted to the appellant preventing the police from taking the firearms. Constable Sims says that the whole process of getting the appellant to hand over his firearms took almost two hours and that when the appellant did deliver them to the Police, they were unsecured in the back of his vehicle. Constable Sims says that he arrested the appellant for obstruction under s 56 of the Act.

[32] Inspector Steven Crawford is the Deputy Compliance and Resolution Manager for the Firearms Safety Authority stationed at Paraparaumu. Inspector Crawford was the only witness cross-examined by counsel for the appellant.

[33] Inspector Crawford's evidence is that the file provided to him for his review of Inspector Nalder's revocation decision highlighted: "several matters of serious concern for the safety of the public and gave rise to concerns that [the appellant] is no longer a fit and proper person to be in possession of a firearm." Specifically, these matters are:

- (a) the incident involving the crash and, in particular, that the appellant:
  - (i) took photographs, and hindered police and other emergency services in the execution of their duties;
  - (ii) remonstrated with Snr Constable Stringfellow and yelled "Who do you think you are" and "You can't tell me what to do";

(iii) refused to accept a summons for the charge of obstruction, throwing it at the Police as he drove away from the scene; and

(b) being involved in the unlawful hunting incident in November 2021.

[34] Inspector Crawford's evidence is that the appellant did not submit any material for consideration by him in relation to whether his licence should be revoked. As a result, on 2 November 2022 he made the decision to revoke the appellant's firearms licence pursuant to s 27C of the Act.

[35] Inspector Crawford says that he:

- (a) rejected the appellant's account of events at the crash incident and considered that the appellant had obstructed the Police;
- (b) considered the obstruction charge under the Act in relation to the police attempting to seize the appellant's firearms (including that the firearms were unsecured in his vehicle);
- (c) considered the appellant's criminal history which included convictions under the Land Transport Act as well as three licence demerit suspensions; and
- (d) considered the appellant's background and cultural considerations.

[36] Inspector Crawford says that the appellant has demonstrated 'obstructive behaviour' on a number of occasions and has a "significant history of non-compliance" which demonstrated that he was no longer a fit and proper person to hold a licence. As Insp Crawford put it, he found that the appellant demonstrated a pattern of non-compliance with legislation and resistance to authority when being told what to do.<sup>6</sup> Inspector Crawford says further that the appellant: "showed a disregard for public safety not only in terms of the victims who were seriously injured, but also emergency services who were trying to focus on attending the injured persons. Mr Green's

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<sup>6</sup> Notes of Evidence at page 14



involvement in the event that resulted in his associate receiving a warning for unlawful hunting also demonstrated that his behaviour was not consistent with the fit and proper criteria to possess and use firearms.”

### **Submissions for the appellant**

[37] Mr Taylor for the appellant submits that the primary issue for the court to consider is whether the appellant is presently a threat to public safety or to himself if he were to have his firearms licence back.

[38] It is submitted that the appellant has not come to the attention of the Police in regard to his safe use and control of firearms in the 34 years during which he has held a firearms licence.

[39] While at the crash incident in August 2022 the appellant became tunnel visioned and ignored Police instructions, it is submitted that there is no evidence of an ongoing concern to the safety of the public in the future, or that he would be a risk to himself.

[40] It is submitted that there are no issues about the control of firearms that suggests any risk of the appellant selling or supplying firearms to unlicensed persons or about the unlawful importation of firearms.

[41] It is further submitted that the appellant has a legitimate use for his firearms in that he is a recreational hunter who enjoys hunting with his wife, supplies food to his whanau, and teaches his children about the safe use and control of firearms.

[42] The appellant, it is submitted, has had his firearms licence renewed on previous occasions in the past, which process requires him to be a fit and proper person each time. It is submitted that there has been no suggestion made at these times that the appellant’s driving breaches, or the hunting incident, were such as to affect his standing as a fit and proper person.

[43] The appellant submits that it is unreasonable for the Police to extrapolate the “single dissociated issue” of obstructing the Police into a finding that he is no longer

a fit and proper person to hold a firearms licence or that he is a threat to public safety or to himself.

[44] The appellant submits that the appellant has a positive standing in the community, and that his reputation is that he is overall trustworthy. Given his track record in complying with his lawful obligations in running his business, it is submitted that it is a disproportionate response to the obstruction incident, which had nothing to do with firearms, to say that he has a disregard for authority and to find him not to be a fit and proper person for holding a firearms licence.

[45] It is submitted that the appellant's last driving matter was also five years ago and that his driving record needs to be considered in light of the amount of time he spends on the road for his employment, namely travelling 120,000 km over the course of a year relative to someone travelling shorter distances each year.

[46] It is also submitted that the Arms Act obstruction charge has been withdrawn.

[47] In relation to the illegal hunting incident, it is submitted that no charge was ever laid and that at best this remains a disputed allegation.

[48] In light of these matters, it is submitted that the Police have overreacted to the obstruction matter, that being the only matter really supporting the revocation decision, and that revocation is a disproportionate response to that incident. Overall, it is submitted that:

- (a) there is a reasonable, good, and proper explanation for the appellant to have acted the way he did at the crash scene, namely that his truck and colleague/friend were involved;
- (b) the appellant accepts that he exercised poor judgment but says that he has learned from the incident;
- (c) the appellant is not a threat to the safety of the public or himself;

- (d) the appellant has held a firearms licence for 34 years without incident;  
and
- (e) the appellant believes in the utmost safety of firearms.

[49] For these reasons, it is submitted that the appellant's firearms licence should be reinstated.

### **Police submissions**

[50] Ms Patanasiri for the Police submits that the Police were correct to find that the appellant is not a fit and proper person to hold a firearms licence because of:

- (a) the appellant's actions on two occasions in August 2002 which led to the two charges being laid;
- (b) the appellant's previous involvement in the unlawful hunting incident;  
and
- (c) the appellant's previous convictions dating back to 1995, namely for:
  - (i) driving while disqualified x 2 (2016);
  - (ii) driving a motor vehicle in a dangerous manner (2016);
  - (iii) failing to produce a logbook (2007); and
  - (iv) driving with excess breath alcohol (1995).

[51] It is further submitted that the appellant has committed 27 infringement offences since 1994 and as a result he has had his driver's licence suspended on three occasions in 2001, 2009, and 2018.

[52] It is submitted that the obstruction matters formed the primary grounds for the Police's opinion that the appellant is not a fit and proper person to hold a firearm's licence.

[53] It is also submitted that the legal test is not whether the appellant poses a real or actual threat to public safety if his firearms licence is reinstated but rather, the test involves a broader inquiry into the appellant's character and whether he can be trusted to hold a firearms licence.

[54] It is submitted that the circumstances of the obstruction at the crash site is serious, and that in relation to the Arms Act obstruction charge, the mere fact that a person is charged is in and of itself sufficient for the Police to find a person not to be a fit and proper person.

[55] It is submitted that the appellant has shown a clear disregard for individuals in authority and for the safety of others. It is submitted that the appellant has also demonstrated an inability to regulate his temper when faced with a stressful situation. This, it is submitted, gives real cause for concern as to the appellant's willingness to comply with future Police orders and directions. These matters, it is submitted, go to the appellant's character.

[56] The incident involving the unlawful hunting, it is submitted, further shows the appellant's general disregard and blasé attitude toward compliance with the law.

[57] It is also submitted that a single incident can be sufficient to render a person unfit to hold a firearms licence, however, in this case, all four matters described above have been relied on.

[58] The Police note that the appellant has the right to re-apply for a firearms licence in five years following the date of revocation.

## **Decision and reasons**

### *Approach on appeal*

[59] As noted, pursuant to s 62B(3) of the Act, on appeal a decision to revoke a firearms licence can be confirmed, varied or reversed.

[60] An appeal against a revocation of a firearms licence is a hearing de novo.<sup>7</sup> There is no presumption in favour of the decision appealed from and no onus on the appellant to satisfy the court that the decision was wrong.<sup>8</sup>

[61] In determining the appeal, the court is required to reach its own decision as to whether the appellant is a fit and proper person to hold a firearms licence. This decision involves the exercise of a discretion where concepts of the burden and standard of proof do not apply. The assessment to be undertaken is evaluative in nature and the Act eschews a 'tick-box' approach being taken. In this regard, contrary to what Insp Crawford said in his review letter, the outcome does not entail there being a burden of proof on the appellant to prove on the balance of probability that he is a fit and proper person.

[62] Whether or not a person is a fit and proper person to possess a firearm has heightened significance following the mosque shootings in Christchurch in 2019, which attacks led to amendments being made to the Act which are aimed at making more transparent the regulatory regime around the possession and use of firearms.

[63] Whereas previously the Act provided that the Police may, for the purposes of revocation,<sup>9</sup> decide that a person is not a fit and proper person to be in possession of a firearm if there were grounds for applying for a protection order, s 24A now provides considerably more guidance about the circumstances that might lead to a person not being considered to be fit and proper.

[64] Many of the matters in s 24A were, of course, already identified by the courts as being relevant (and continue to be relevant), to the test of whether a person is fit and proper to hold a firearms licence including:

- (a) what support the appellant has;<sup>10</sup>

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<sup>7</sup> *Police v Cottle* [1986] 1 NZLR 268 and *Fewtrell v Police* [1997] 1 NZLR 444

<sup>8</sup> *Fewtrell v Police*, above n 7

<sup>9</sup> under s 27 as it was then

<sup>10</sup> *Flynn v Police*, CIV-2010-009-605 Christchurch DC, 7 October 2012, Neave DCJ, at 21; see also *Hore v Police* [2017] NZDC 5263 at [35] where it was accepted that the evidence of character will be accorded significant weight, particularly if unchallenged

- (b) the number of incidents and their context;<sup>11</sup>
- (c) the appellant's track record of safety;<sup>12</sup>
- (d) previous violence or threatened violence;<sup>13</sup>
- (e) whether the appellant's attitude to those in authority might manifest itself in danger to the public or to the appellant personally;<sup>14</sup>
- (f) whether the appellant holds a responsible position;<sup>15</sup>
- (g) the age of the incidents;<sup>16</sup>
- (h) whether the incidents have been proven in Court;<sup>17</sup>
- (i) whether there are any issues of mental unwellness (including attempts to commit suicide or self-harm);<sup>18</sup>
- (j) whether the appellant appreciates the consequences of his actions;<sup>19</sup>
- (k) whether the appellant's attitude displays an element of immaturity (e.g. through his or her driving history);<sup>20</sup>
- (l) whether alcohol is a factor or whether there are other issues of substance abuse;<sup>21</sup>

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<sup>11</sup> *Flynn v Police*, above n 10, at 21

<sup>12</sup> *Flynn v Police*, above n 10, at 21; see also *Jenner v Police* [2016] NZDC 4102 at [46] and *Hore v Police* above n 10 at [35]

<sup>13</sup> *Kirkland-Potts v Police* [2017] NZDC 21747 at [8]

<sup>14</sup> *Flynn v Police*, above n 10, at 21; *Tito v Police* [2022] NZDC 16431 at [66]

<sup>15</sup> *Flynn v Police*, above n 10, at 21

<sup>16</sup> *Flynn v Police*, above n 10, at 22; *Kirkland-Potts v Police*, above n 13 at [8]

<sup>17</sup> *Flynn v Police*, above n 10, at 22

<sup>18</sup> *Jenner v Police*, above n 12 at [46]; *Watson v Police* [2018] NZDC 5946 at [9]; *Kirkland-Potts v Police*, above n 13 at [8]

<sup>19</sup> *Jenner v Police*, above n 12 at [60]

<sup>20</sup> *Mitchell Woelfel Curran v New Zealand Police* [2023] NZDC 8306 at [13]

<sup>21</sup> *Hore v Police*, above n 10 at [31]- [32]; *Watson v Police*, above n 18 at [9]; *Barrett v Police* [2022] NZDC 9189 at [58]; *Kirkland-Potts v Police*, above n 13 at [8]

- (m) the appellant's general character and temperament<sup>22</sup> including whether the appellant can "control his or her violent tendencies when matters reach a boiling point";<sup>23</sup>
- (n) whether there have been any instances of previous disregard for the Arms Act or behaviour demonstrating a risk of non-compliance with firearm security conditions;<sup>24</sup>
- (o) an appellant's candour and honesty in relation to an application;<sup>25</sup> and
- (p) an appellant's appreciation of the seriousness of the appeal process and issues.<sup>26</sup>

[65] Many of these are now explicitly spelled out in s 24A for transparency, along with other matters including whether the person in question has shown patterns of behaviour demonstrating a tendency to exhibit, encourage or promote violence, hatred or extremism, or that the person has been assessed as a risk to national security.

[66] In addition, s 24A(2) of the Act explicitly provides that the Police may take into account whether the appellant:

- (a) has a sound knowledge of the safe possession and use of firearms; and
- (b) understands the legal obligations of a holder of a firearms licence, including the endorsements that may be made on a firearms licence.

[67] As was previously considered by the courts to be the case,<sup>27</sup> s 24A(1) confirms that the Court is entitled to look at the cumulative effect of all of these factors. That is, the test in s 27(2)(a) remains, as was stated by Judge Ryan in *O'Loughlin v Police*,<sup>28</sup>

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<sup>22</sup> *Kirkland-Potts v Police*, above n 13 at [8]

<sup>23</sup> *Reis v Police* [2019] NZDC 11626 [20 May 2019] at [23]

<sup>24</sup> *Kirkland-Potts v Police*, above n 13 at [8]

<sup>25</sup> *Barrett v Police*, above n 21 at [45] – [46], and [52]

<sup>26</sup> *Barrett v Police*, above n 21 at [59] – [61]

<sup>27</sup> *Hore v Police*, above n 1010 at [26]

<sup>28</sup> *O'Loughlin v Police* [2001] DCR 488 at 493

one which requires a broad consideration of the particular events or circumstances. Judge Neave reiterated the same in *McCabe v Police*,<sup>29</sup> and again in *Flynn v Police*.<sup>30</sup>

[68] That said, s 24A(1) is also explicit that a finding that a person is not a fit and proper person to be in possession of a firearm may turn on just one of the listed matters.

[69] As summarised by Judge Cunningham in *Jenner v Police*,<sup>31</sup> the assessment is effectively whether the appellant a risk to himself or to someone else.<sup>32</sup>

[70] Judge Spear said essentially the same thing in *Ries v Police* when he asked:<sup>33</sup>

Is the appellant a person of good character who can be trusted to use the firearms responsibly? Or perhaps more pertinently, is [Inspector A] correct in his opinion that the defendant is not a fit and proper person of good character who can be trusted to use firearms responsibly?

[71] In the present case, the s 24A matters identified by the Police are that the appellant has been charged with an offence punishable by imprisonment, as well as being charged with an offence under the Arms Act plus the hunting incident and the appellant's driving history.

[72] The decisions as to whether a person is fit and proper person, and to revoke a firearms licence, are both discretionary in nature as signified by the word "may" in s 24A(1)(a) and s 27(2). The exercise of this discretion, however, must be exercised in light of the purposes in s 1A, as inserted into the Act in 2020 following the Christchurch mosque shootings. Section 1A reads:

- (1) The purposes of this Act are to:
  - (a) promote the safe possession and use of firearms and other weapons; and
  - (b) impose controls on the possession and use of firearms and other weapons.
- (2) The regulatory regime established by the Act to achieve these purposes reflects the following principles:
  - (a) that the possession and use of arms is a privilege; and

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<sup>29</sup> *McCabe v Police* DC Timaru CIV-2008-076-000345 30 January 2009

<sup>30</sup> *Flynn v Police*, above n 10

<sup>31</sup> *Jenner v Police*, above n 12 at [46]

<sup>32</sup> See also *Wilkey v New Zealand Police* DC Palmerston North CIV 2010-0540669 (29 April 2011) at [18] and *Kirkland-Potts v Police*, above n 13 at [8]

<sup>33</sup> *Benjamin James Reis v New Zealand Police*, above n 23 at [9]; see also *Moosman v Police* [2021] NZDC 23700 (Hinton DCJ) at [24] and [35] and *Barrett v Police*, above n 21 at [43]



- (b) persons authorised to import, manufacture, supply, sell, possess or use arms have a responsibility to act in the interests of personal and public safety.

[73] This reinforces to some extent what was previously contained in the long title to the Act (i.e. ‘An Act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons’). By Parliament providing a stand-alone purpose section in the Act, however, the test in s 27 must be interpreted in light of this purpose.<sup>34</sup> This reinforces the necessary assessment as being about whether an appellant is a risk to him- or herself, or to someone else.

### **My assessment**

[74] The matters that weigh in favour of the appellant being a fit and proper person to possess a firearm include that the appellant has not come to the attention of the Police for matters related to the use and possession of firearms in the 34 years that he has held a licence. The appellant has also had his licence renewed on three previous occasions apparently without issue.<sup>35</sup>

[75] I do not consider the hunting incident to be a relevant matter. As Insp Crawford accepted under cross-examination,<sup>36</sup> the appellant was neither charged nor warned in relation to this incident, suggesting to me that it was not considered to be a serious matter. I accept the appellant’s submission that his involvement in this incident remains an unproven allegation.

[76] There is no suggestion that any of the recent incidents, or previous convictions, involved issues of mental unwellness or involved alcohol or other illicit substances (I discount the excess breath alcohol matter from 1995 as it is now 28 years old).

[77] Aside from the driving matters, which I accept must be seen in the context of the amount of driving the appellant does each year, the appellant appears to comply

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<sup>34</sup> Legislation Act 2019, s 10

<sup>35</sup> NOE at page 6

<sup>36</sup> NOE at page 6

with his lawful obligations in running his business. The driving incidents are also now at least five years old.

[78] While the appellant uses his firearms for recreational hunting and to provide meat for his whanau and others, the Act is clear that this use is not a right but a privilege.

[79] I also accept that the appellant is a person of good standing in his community and holds a responsible position in terms of his employment. That said, issues of mana and self-esteem are not matters that I consider relevant to the Act. As Judge Rowe said in *Kirkland-Potts v Police*, this has nothing to do with whether a person ought to be granted, or in this case, hold, a firearms licence.<sup>37</sup>

[80] There is also appears to be no express concern about the appellant having a sound knowledge of the safe possession and use of firearms or about his understanding of the legal obligations of a holder of a firearms licence, although this is betrayed somewhat by the circumstances when his firearms were surrendered to the Police.

[81] The matters that weigh against the appellant are the incidents in August 2022 that led to the obstruction charges.

[82] The Arms Act charge was withdrawn. For whatever reason, the Police chose not to pursue it.

[83] I do not accept the submission that a charge simpliciter is sufficient for finding a person not to be fit and proper to possess a firearms licence. That is too simplistic an interpretation of s 24A.

[84] There can be no doubt that in some situations there is a need to consider charges against a person for the purpose of an initial suspension or revocation decision. In some circumstances it would be inappropriate to wait for a charge to be proved in court before taking action. It is these types of situations that s 24A appears to be designed to cater for.

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<sup>37</sup> *Kirkland-Potts v Police*, above n 13 at [90]

[85] The scheme of the Act then provides checks against any initial prejudicial effect this might have on a firearms licence holder. The first of these is the s 62 review. The second is the appeal process itself. Where a charge is still extant at the time of the review process or appeal, then it will undoubtedly be relevant. But where a charge has been withdrawn, this is something that ought to be considered in the review and appeal processes. In this way, I do not consider that s 24A is intended to be used in such a way that the mere fact of a charge having been laid is capable of being used in a prejudicial way when by the time of the review or appeal that charge has been withdrawn. That would seem to expand on the intended purpose of the reference to ‘charges’ in s 24A and would open the Act up to potential abuse.

[86] It would be an odd result in situations where the Police freely choose to exercise their discretion to withdraw a charge (such that it no longer exists), for the mere fact of that to be used against a licence holder for all licence purposes thereafter. I do not consider that s 24A was intended to be interpreted in such an all-encompassing way and runs contrary to the protections afforded by a review and appeal.

[87] Accordingly, I put the withdrawn Arms Act charge to one side.

[88] That said, I do not accept that there was a reasonable, good and proper explanation for the appellant’s actions on the day of the crash. In his ruling on the appellant’s s 106 application, Judge Hollister-Jones noted that the appellant’s behaviour is best described as both single-minded and arrogant.<sup>38</sup>

[89] While the offending was found to be of low-level gravity and the appellant regrets his actions and has prepared a letter of apology for the victim of the accident,<sup>39</sup> the issue of concern for present purposes is not so much the fact of conviction but the circumstances of that obstruction. In this regard, Judge Hollister-Jones said:<sup>40</sup>

The defendant said he was not there to obstruct anyone. All of his actions there were part of his manaakitanga for his staff, his duty of care as a company director, and he wanted to ensure photographs were taken for insurance purposes. It is clear to me that the defendant was so single-minded about his own purposes that he was not concerned

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<sup>38</sup> Above n 2 at [4]

<sup>39</sup> Above n 2 at [17] - [18]

<sup>40</sup> Above n 1 at [42] – [43]

about disobeying instructions from the police. He did so on three occasions that morning. The defendant was not concerned about whether his actions hindered the police in doing their job, as long as he could do what he felt he needed to do.

I am satisfied that whilst the defendant's main purpose was not to hinder Senior Constable Stringfellow, he embarked on a course of conduct that involved him hindering police in carrying out their function which was a collateral consequence of him achieving his own purpose. When the defendant went back over to the black ute to take photographs after being told to stay where he was, he believed that what he wanted to do was more important than obeying the instruction from Senior Constable Stringfellow.

Having reflected on that purpose, and the defendant's pattern of behaviour in disobeying police instructions that morning, I infer that the defendant formed an intention to obstruct Senior Constable Stringfellow in performing his duties at the crash scene.

[90] Moreover, the actions of the appellant at the scene of the crash were completely unsatisfactory.<sup>41</sup> The appellant was also disrespectful to the police.<sup>42</sup> His Honour variously noted that the appellant lost his self-control, was irate, belligerent, and used strong words in heated exchanges.

[91] This incident tends to demonstrate a dismissive attitude to those in authority. As Judge Neave said in *Flynn v Police*<sup>43</sup> however, this "should not be determinative". The question is whether he has ever done anything to indicate that that attitude might manifest itself in danger to the public or himself.

[92] In assessing this, a key concern is also how well the appellant responds to stress. In relation to this, I am struck by the question posed by Mr Patanasiri for the Police in relation to the appellant's tunnel vision: "what if he had his rifle in his hand?" While it is not for the court to engage in inappropriate speculation, distilled down, that goes to the essence of the risk that I must assess. Ultimately, the judgment to be made is whether in future the appellant will act in the interest of personal and public safety, or whether he will be a risk to himself or to someone else if allowed to be in possession of a firearm.

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<sup>41</sup> Above n 1 at [39] and [42]; Above n 2 at [5]

<sup>42</sup> Above n 2 at [8]

<sup>43</sup> Above n 10 at [21]

[93] On balance, I am not persuaded that the risk to the public or to the appellant himself has been established. That the appellant has no issues of concern in his 34-year history of using or possessing firearms needs to be balanced against the incident involving the crash, where again the obstruction itself was of a low level and was not the defendant's main purpose but was a collateral consequence of him seeking to achieve his own purpose. That incident too, did not involve a firearm.

[94] On balance, I am satisfied that the appellant is a fit and proper person who can be trusted to use firearms responsibly.

### **Result**

[95] For the reasons stated, the appeal is allowed.

[96] Pursuant to s 62B(3) of the Act the decision to revoke the appellant's firearms licence is reversed.

### **Costs**

[97] The parties are invited to agree costs but should that not be fruitful, costs have previously been categorised on a 2B basis and memoranda are to be filed accordingly.



K D Kelly  
District Court Judge