

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**I TE KŌTI-Ā-ROHE  
KI TE PAPAIOEA**

**CIV-2021-054-000440  
[2022] NZDC 7713**

BETWEEN

JACK ANDREW HURLEY  
Appellant

AND

THE NEW ZEALAND POLICE  
Respondent

Hearing: 28 April 2022

Appearances: S Winter for Appellant  
J Harvey for Respondent

Judgment: 23 May 2022

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**RESERVED JUDGMENT OF JUDGE C N TUOHY**

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**Introduction**

[1] This is an appeal by Jack Hurley (Mr Hurley) under s 62B(1)(b)(iii) of the Arms Act against the revocation of his firearms licence.

**Background**

[2] Mr Hurley is aged 27. He recently married and is the manager of a 1,300 acre cattle and sheep farm near Feilding owned by his family. There is one other staff member. His father, who retains responsibility for the overall running of the family's farming operations, lives a short distance away.

[3] Mr Hurley first obtained a firearms licence when he left school at about the age of 17 or 18. His licence was revoked by Police Inspector Peter Thurston on 23 February 2021 on the grounds set out in s 27(2)(a) of the Act, that is, that he was not

a fit and proper person to be in possession of a firearm. The reason given for that conclusion was Mr Hurley's conviction on 24 November 2020 for driving with excess breath alcohol and careless driving together with previous alcohol-related driving offences.

[4] Mr Hurley exercised the right of review under s 62A of the Act by a commissioned officer of Police with the necessary authority. The review was undertaken by Inspector Peter Baird, an inspector in the Arms Safety and Control Division. The outcome of his review, communicated on 28 July 2021, was that the original revocation was upheld. The reasons given by him to Mr Hurley for that decision were:

- That he now had 3 convictions for driving with excess breath alcohol, as well as the careless driving conviction, indicating a pattern of behaviour of poor choices being made;
- That the first EBA conviction was in 2012 when he was a youth and not a firearms licence holder;
- That the inspector had reflected on the recent careless driving and EBA convictions, where his alcohol level was recorded at 863mcg/L more than double the legal limit;
- Despite previous warnings, Mr Hurley had continued with the same behaviour which put at risk not only Mr Hurley but also other road users;
- That the purpose stated by Mr Hurley in his submission for requiring a firearms licence was not sufficient in the face of ongoing non-compliance with the conditions of his driving licence, and when other options are open. (This related to Mr Hurley's claim that he needed a firearms licence so he could euthanise sick or injured farm animals).

[5] Mr Hurley has filed affidavits in support of his appeal by himself, his wife and both his parents which largely reiterate the points which he made in submissions to the Police in respect of the initial revocation and the review of that decision. These can be summarised as follows:

- That he is now married and holds significant responsibility in his position as farm manager;
- That he is not violent in any way and has no history of violence, either family violence or any other sort;
- That he does not have a drinking problem and steps have been taken to ensure he does not drink and drive again;
- That firearms were not involved in the offending;
- That firearms have been part of his farm upbringing since childhood, he knows the importance of firearms safety and has always dealt safely with firearms;
- That he needs to be able to use firearms in the course of his work duties in order to kill pests and euthanise animals. Sometimes euthanization needs to be undertaken urgently so that it cannot await the arrival of his father or someone else with a licence;
- That duck shooting is a major recreational and social pursuit for him which he is unable to carry on without a licence.

[6] Attached to his own affidavit are a number of references which attest to his generally good character and his safe handling of firearms.

[7] The Police filed three affidavits. As well as those from Inspectors Baird and Thurston, there was one from the local Kimbolton police officer, Senior Constable Mark Dickins. He confirmed that when he served the revocation notice, Mr Hurley

had no firearms in his possession at his home. His firearms were safely stored at his father's home a short distance away.

[8] The substantive evidence for the Police was given by Inspector Baird, who was cross-examined at the hearing. In his affidavit, he drew attention to the purpose of the Arms Act 1983 outlined in s 1A(2) which bears reproduction in the context of this appeal:

**Purposes of this Act**

- (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 this Act to achieve those purposes reflects the following principles:
  - (a) that the possession and use of arms is a privilege; and
  - (b) that persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety.

[9] He also referred to s 24(1) which lists various circumstances which, if one or more exists, empower a member of the Police to find a person not fit and proper to be in possession of a firearm. The first circumstance listed is if the person has been convicted of an offence that is punishable by a term of imprisonment (including, but not limited to, an offence involving violence, drugs or alcohol). Another listed circumstance is if the person abuses alcohol, or is dependent on alcohol, to an extent that detrimentally affects their judgment or behaviour.

[10] In essence, Inspector Thurston's view was that, although Mr Hurley's offending did not involve firearms, it indicated a propensity to break rules and engage in behaviour which put himself and others at risk, which because it was repeated, showed he was not a fit and proper person to hold a firearms licence. In his own words he considered that –

being fit and proper is not selective criteria or pick and mix compliance opportunity depending on an individual's needs and wants or to be applied by a firearms licence holder dependent on which statute was being breached.

## **The Law**

[11] An appeal to the District Court under s 62B of the Act is a general appeal by way of rehearing. The Court stands in the place of the officer who made the decision to revoke and must consider the issue afresh on the evidence before it and give its own opinion. The weight to be given to the opinion of the commissioned officers who revoked the licence and reviewed that decision is a matter for the assessment of the Court.<sup>1</sup> The Court has the power under s 62B(3) to confirm, vary or reverse the original decision.

[12] The phrase "*a fit and proper person*" is not further defined, but it is common to a number of statutes which regulate occupations and activities. The list of circumstances which enable a member of the Police to find a person **not** fit and proper, along with the purpose of the Act in s 1A, provide a good guide to what is envisaged. These sections were introduced into the Act in 2020, in a general tightening of the legislation. It has, however, long been recognised that a person's status as a fit and proper person (or not) can change over time.<sup>2</sup>

## **Discussion**

[13] The concerns about Mr Hurley's fitness to hold a firearms licence arise entirely from his offending against the drink/driving provisions of the Land Transport Act. This type of offending is serious. The last of his offences was a repeat offence carrying a maximum penalty of two years imprisonment. It is necessary to look at the offending in as much detail as the evidence allows.

[14] Mr Hurley's first drink/driving offence occurred on 24 June 2012 when he was aged 17. His breath alcohol count was 231 mg/L which was above the legal limit of 150mg/L for a person under 20, but below the limit of 400mg/L for an adult. He was

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<sup>1</sup> *Austin Nichols & Co Ltd v Stichting Lodestar* [2008] 2 NZLR 141; *Kacem v Bashir* [2011] 2 NZLR 1

<sup>2</sup> *Re Owen* [2005] 2 NZLR 536

fined \$100 and disqualified from driving for the minimum period of three months. Nothing is known of the facts, but the penalty indicates that it is unlikely there were aggravating circumstances.

[15] His second offence was committed on 17 May 2016 when he was aged 21. On this occasion his breath alcohol count was 862 mg/L which is very high, double the legal limit. A person with that level would be colloquially described as “*drunk*”. There was no related conviction, but the summary of facts indicates that he was stopped by the Police on a road in Fielding due to a complaint about his driving. On conviction he was fined \$850 and disqualified for the minimum period of six months.

[16] The conviction which led directly to revocation of his licence arose from his driving on 12 November 2020 with a breath alcohol level of 863 mg/L, almost exactly the same as the previous offence. He was aged 26 at the time. On this occasion, he was also convicted of careless driving. The summary of facts states that he was driving on a road in Fielding and drove off the road for 65 metres before crashing into a tree. His vehicle was extensively damaged. On that occasion he was fined \$1,200 and sentenced to a mandatory alcohol interlock sentence on the breath alcohol offence and a fine of \$300 on the careless driving charge.

[17] During the hearing of the appeal, his demerit points and licence suspension record was produced by consent. That showed that he had also received demerit points for exceeding 50 kmph and 100 km/h speed limits six times between 2013 and 2017, and a failing to stop at a stop sign in 2016.

[18] It is clear from the terms of s 24A that when it amended the Arms Act in 2020, Parliament specifically had in mind the firearms risk which is posed by a person whose offending involved alcohol, or whose judgement or behaviour are affected by abuse or dependence on alcohol. Mr Hurley’s record of drink/driving offending over a period of years shows that he demonstrates that risk.

[19] This cannot be explained away on the basis that these were isolated occasions. The level of alcohol involved and the repeated nature of it is a clear indication of a problem with alcohol. In my mind, that is the factor which impinges on his fitness to

hold a firearms licence more than the more general propensity not to abide by rules or laws which Inspector Baird inferred.

[20] The risk that Mr Hurley's offending history conveys to me is that he has a propensity to abuse alcohol to a level which detrimentally affects his judgement and behaviour. That has been clearly demonstrated by his judgement and behaviour in connection with drink/driving. His reasonably extensive speeding record does not help but that seems to have tailed off as he has become older and I give it no additional weight.

[21] I am not satisfied that the problem with alcohol which his convictions strongly indicate, either does not exist or no longer exists simply because that is what he and his wife believe. In many Courts, Mr Hurley would have been remanded on his last conviction for a full alcohol and drug assessment before sentence in order to address the indicated problem. A sentence which involved mandatory alcohol counselling or treatment may well have followed. I understand from Mr Hurley that no such assessment has been undertaken, either through the Court or otherwise.

[22] Therefore, I reach the same conclusion as the two Police inspectors, although in a slightly different way. Mr Hurley's alcohol-related offending indicates a propensity to undertake high risk behaviour while under the influence of alcohol, which renders Mr Hurley not fit and proper to hold a firearms licence.

[23] Like the Police officers, I place little weight on the fact that the ability to use a firearm is a necessary part of his work duties and no weight on his desire to use it for recreational purposes. Logically, neither factor makes any difference to whether he is a fit and proper person to hold a licence.

[24] I do think that if Mr Hurley can demonstrate that he no longer has that propensity he would qualify as a fit and proper person. That is the sole negative factor. In all other respects he would qualify. Inspector Baird indicated that the Police have a policy that a person should only be considered fit and proper after an offence-free period of five years from revocation. I am of the view that, as with all policies, there should be flexibility because the assessment must always be an individual one.

[25] Already 18 months have passed since the last offence. In order for Mr Hurley to convincingly demonstrate that he has eliminated the concern expressed in this judgment, it would, in my view, be necessary for him to undertake a full professional alcohol assessment and carry out any counselling or treatment recommended. If that objectively showed that the propensity referred to above no longer existed, there would seem no reason why Mr Hurley could not make a further application for a licence. Of course, the outcome of that application would be for those entrusted by the Act to decide.

C N Tuohy  
**District Court Judge**