

Stephen Larsson

From: Stephen Larsson
Sent: Thursday, 23 June 2022 10:21 AM
To: Paul Bousfield
Cc: Robert Borsak
Subject: FW: Error in FAR's Decision Making Guidelines!!!

Categories: Yellow Category, Red Category, Purple Category, Orange Category, Green Category, Blue Category

Inspector Bousfield

As discussed...

Yours sincerely

Stephen Larsson
Senior Analyst
Office of the Hon. Robert Borsak MLC
Shooters Fishers and Farmers Party

Document tendered by	Mr Borsak
Received by	M. Dand
Date:	31/8/22
Resolved to publish	<input checked="" type="radio"/> Yes / No

Borsak.

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From: Stephen Larsson
Sent: Thursday, 23 June 2022 7:41 AM
To: Robert Borsak
Subject: Error in FAR's Decision Making Guidelines!!!

"FIT AND PROPER PERSON"

Overview

Whether an individual is considered a "fit and proper" person to possess and use firearms primarily involves an assessment of the individual's character. It also extends to whether or not the person has demonstrated their ability to be trusted to have unfettered access to firearms and to uphold the associated legislative obligations.

In *Australian Broadcasting Tribunal v Bond* (1990) 94 ALR 11, the High Court said at 65:

"The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive, but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question".

A person's fitness is to be gauged in light of the nature and purpose of the activities that the person will undertake: *Hughes and Vale Pty Ltd v New South Wales* (No. 2) (1955) 93 CLR 127. Knowledge, ability, moral integrity and the rectitude of character necessary to fulfil the role for which a licence is sought are proper considerations: *Sobey v Commercial and Private Agents Board* 20 SASR 70.

Leading case: *Ward v Commissioner of Police, New South Wales Police Service* [2000] NSWADT 28

- Mr Ward's firearms licence was revoked after he was issued with an AVO in relation to charges of assault against his wife, for which he was subsequently convicted
- Despite the violent nature of his offence, Mr Ward's remorse, determination not to reoffend, extensive experience with firearms and otherwise unblemished criminal record, prompted the Tribunal to label him a "fit and proper person" to hold a firearms licence: [30]-[31]
- It was noted that consideration had to be given to the circumstances surrounding his conviction for assault: [27].

Note: the Tribunal nonetheless found that it was not in the public interest for Mr Ward to use and possess a firearm.

Leading case: *Barlow v Commissioner of Police, New South Wales Police Service* [2003] NSWADT 254

- "The fitness and propriety of a person under the [Firearms] Act must be considered in the context of at all times ensuring the public safety": [22].

- Mr Ward's counsellor is of the view that it is unlikely that he will be violent in the future and;
- Mr Ward has experience in the possession and use of firearms and in teaching others to use firearms.

31 Despite the violent nature of the offence, I am satisfied taking into account these factors, that Mr Ward is a fit and proper person to have a firearms licence.

The third ground - contrary to the public interest

32 The third ground on which the Commissioner relied was that a licence may be revoked if the Commissioner considers that it is not in the public interest for the person to whom it is issued to continue to hold it. The Appeal Panel of this Tribunal considered the meaning of "public interest" in *Commissioner of Police v Toleafoa* ([1999] NSWADTAP 9 at 25) which was a security licence matter. In that case the Appeal Panel stated that the public interest is:

... an inherently broad concept giving the appellant the ability to have regard to a wide variety of factors in choosing whether to exercise a discretion adversely to an individual. As the possibility of refusing an application on the ground of character is dealt with elsewhere in the same section, it is reasonable to infer that the parliament intended that the public interest discretion operate in areas to which the character ground was not relevant or, possibly, in circumstances where an objection on character grounds would not be sufficient in its own right to warrant refusal.

33 These comments apply equally to the Firearms legislation. In this case the respondent relied exclusively on the applicant's conviction as the basis for refusing the application. I have found that the applicant is a fit and proper person to hold a licence. No additional material was put in relation to the Commissioner's argument that granting the licence would not be in the public interest.

34 The Commissioner's decision to revoke Mr Ward's Category A, B and C licences is set aside.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure

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