
**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2019-485-676

UNDER THE **Judicial Review Procedure Act 2016 and Part
30 of the High Court Rules 2016**

IN THE MATTER OF **An application for Judicial Review**

BETWEEN **NEW ZEALAND COUNCIL OF LICENSED
FIREARMS OWNERS INCORPORATED**

Applicant

AND **MINISTER OF POLICE**

First Respondent

AND **GOVERNOR-GENERAL**

Second Respondent

STATEMENT OF DEFENCE

13 December 2019

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The respondents by their solicitor say in response to the statement of claim dated 8 November 2019:

Parties

1. They admit paragraph 1.
2. They admit paragraph 2.
3. They are not required to answer paragraph 3.
4. They are not required to answer paragraph 4.

Background: Christchurch shooting and proposed law reform

5. They admit paragraph 5.
6. They admit paragraph 6, and say further that Cabinet considered the proposals in Paper 1 on 25 March 2019.
7. In response to paragraph 7:
 - 7.1 They admit paragraph 7.1;
 - 7.2 They admit paragraph 7.2;
 - 7.3 They admit paragraph 7.3;
 - 7.4 They admit paragraph 7.4;
 - 7.5 They admit paragraph 7.5 but say further that Paper 1 proposed that ammunition would be included in the amnesty from prosecution to enable people to hand it over to Police.
8. In response to paragraph 8:
 - 8.1 They admit paragraph 8.1;
 - 8.2 They admit paragraph 8.2.
9. They admit paragraph 9.
10. In response to paragraph 10:

10.1 They admits paragraph 10.1;

10.2 They admit paragraph 10.2

11. They admit paragraph 11.

Legislative change

12. They admit paragraph 12.

13. They deny paragraph 13 and say further that the Bill was then enacted into law in the next 11 days.

13.1 They admit paragraph 13.1.

13.2 They admit paragraph 13.2.

13.3 They admit paragraph 13.3.

13.4 They admit paragraph 13.4.

13.5 They admit paragraph 13.5.

13.6 They admit paragraph 13.6.

A new offence regarding prohibited ammunition

14. They admit paragraph 14, and say further that on 21 June 2019, the Arms Regulations 1992 were amended by the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 by inserting regulation 28Z to provide an temporary amnesty from prosecution for anyone possessing prohibited ammunition if certain conditions were complied with.

15. They admit paragraph 15.

16. They admit paragraph 16.

17. They admit paragraph 17.

18. They admit paragraph 18.

The Minister's Recommendation

19. They admit paragraph 19, 19.1 and 19.2

20. In response to paragraph 20:
- 20.1 They admit paragraph 20.1
- 20.2 They admit paragraph 20.2, and say further that the Regulations could not lawfully have provided for prohibited ammunition to be eligible for compensation as it was not a “prohibited item” in clauses 5-7 of Schedule 1 of the Arms Act 1983.
21. They admit paragraph 21, and paragraphs 21.1-21.7.
22. They admit paragraph 22, and says further:
- 22.1 The Cabinet Legislation Committee considered the June 2019 paper on 11 June 2019 and referred it to Cabinet for further consideration;
- 22.2 Cabinet considered the June 2019 paper on 17 June 2019 authorised the submission of the Regulations and the Order to the Executive Council.

The order

23. They admit paragraph 23.
24. They admit paragraph 24.
25. They admit paragraph 25.
26. They admit paragraph 26.

Legitimate use of the Challenged Ammunition

27. In response to paragraph 27, they admit that tracer ammunition has historically been used by some firearm owners including some who may have been members of the Applicant’s member organisations but otherwise deny the paragraph. In particular, and for the purpose of informing the Court and the applicant of their case they do not accept that this constituted legitimate civilian use of the ammunition.
28. They admit that tracer ammunition may have been obtained lawfully previously by the applicant’s members and their members and other civilians, but otherwise deny the paragraph.

29. In response to paragraph 29:
- 29.1 They deny paragraph 29;
- 29.2 They say further that the function of tracer ammunition is materially different from the function of ammunition that is not prohibited ammunition as it enables the shooter to trace the trajectory of the projectile and to adjust the shooter's aim to a moving target;
- 29.3 They say further that tracer ammunition also presents a risk of fire which is not present to the same degree in ammunition that is not prohibited ammunition.
30. They admit that the Order classifies armour-piercing ammunition and enhanced penetration ammunition separately, and prohibits both;
- 30.1 In response to paragraph 30.1, they say that enhanced penetration ammunition is defined as having a steel or tungsten carbide penetrator which is intended to achieve better penetration and deny that this definition is imprecise;
- 30.2 In response to paragraph 30.2:
- 30.2.1 they admit that many forms of ammunition that are not prohibited ammunition contain steel elements;
- 30.2.2 say further that enhanced penetration ammunition is defined as having a steel or tungsten carbide penetrator which is intended to achieve better penetration, the latter part of which is not a feature of lawful ammunition with steel elements.
31. They admit paragraph 31.
32. They admit paragraph 32 and say further that the Regulations could not lawfully have provided for prohibited ammunition to be eligible for compensation as it was not a "prohibited item" in clauses 5-7 of Schedule 1 of the Arms Act 1983.

33. They admit paragraph 33.
34. In response to paragraph 34 they:
- 34.1 admit the Police responded to the applicant's letter dated 9 October 2019 with a letter dated 24 October 2019;
 - 34.2 admit the Order was amended on 14 October 2019;
 - 34.3 otherwise deny the paragraph.

FIRST CAUSE OF ACTION: DECLARATION AS TO ENTITLEMENT TO COMPENSATION FOR PROHIBITION OF PROHIBITED AMMUNITION

35. They are not required to plead to paragraph 35.
36. In response to paragraph 36, they:
- 36.1 admit the effect of the Order and the Regulations is to prevent the possession, use or sale of "prohibition ammunition" and admits this effectively deprives any person who previously possessed prohibited ammunition of their property rights in relation to it, except in respect of certain persons who were still entitled to possess prohibited ammunition under r 28Y of the Arms Regulations 1992;
 - 36.2 admit the Order and Regulations did not provide for compensation for "prohibited ammunition";
 - 36.3 say further the Order and Regulations could not lawfully have provided for prohibited ammunition to be eligible for compensation as it was not a "prohibited item" in clauses 5-7 of Schedule 1 of the Arms Act 1983.
37. They admit that subject to any relevant statutory provisions then applying, persons who were in possession of ammunition prior to it becoming prohibited had the right at common law to possess, use, and sell that property, but the existence of that right did not preclude Parliament from:
- 37.1 Enacting s 74A of the Arms Act 1983 and authorising the Minister to make a recommendation to the Governor-General in Council that

ammunition be prohibited and the Governor-General by Order in Council declaring it to be prohibited, and

- 37.2 Enacting Clause 7 of Schedule 1 to the Arms Act 1983 to authorise the Governor General by Order in Council to make regulations providing for compensation in respect of prohibited items but not for prohibited ammunition.

They deny there is any principle of law in New Zealand providing a right to any person whose property is forfeited, confiscated or compulsorily acquired by operation of law to compensation for that property.

SECOND CAUSE OF ACTION: JUDICIAL REVIEW OF THE DEFINITION RECOMMENDATION MADE BY THE FIRST RESPONDENT AND THE ORDER MADE BY THE SECOND RESPONDENT

38. They are not required to plead to paragraph 38.
39. They admit paragraph 39.
40. They admit paragraph 40.
41. They deny paragraph 41. The Order was made by the Governor General in Council. The making of the Order in Council was the exercise of the statutory power in s 74A of the Arms Act 1983.

First ground of review: The Minister failed to take relevant matters into account

42. In response to paragraph 42, they say:
- 42.1 In response to paragraph 42.1 they:
- 42.1.1 deny the Minister failed to take the purpose of the Act into account;
- 42.1.2 say further that the purpose of the Act is to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons;
- 42.1.3 Otherwise deny the paragraph.
- 42.2 In response to paragraph 42.2 they:

- 42.2.1 deny the Minister failed to take the purpose of the Amendment Act into account;
 - 42.2.2 say further that the purpose of the Amendment Act was to tighten gun control to increase the safety and security of New Zealanders by reducing the risk of death or injury from firearms;
 - 42.2.3 otherwise deny the paragraph.
- 42.3 In response to paragraph 42.3 they:
- 42.3.1 deny the Minister failed to take into account the capacity of the Challenged Ammunition to do harm relative to the capacity of non-prohibited ammunition.
- 42.4 In response to paragraph 42.4 they:
- 42.4.1 deny the Minister failed to take into account the uses of the Challenged Ammunition;
 - 42.4.2 deny those uses are non-harmful;
 - 42.4.3 say further the Minister considered whether the Challenged Ammunition had a legitimate civilian use and concluded it did not.
- 42.5 In response to paragraph 42.5 they:
- 42.5.1 deny the Minister failed to take into account the criminalising effect of the Order in Council on those who had previously lawfully acquired prohibited ammunition;
 - 42.5.2 say further that on 21 June 2019, the Arms Regulations 1992 were amended by the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 by inserting regulation 28Z to provide an amnesty from prosecution for anyone possessing prohibited ammunition that was handed in to Police.

42.5.3 otherwise denies the paragraph;

42.6 In response to paragraph 42.6 they

42.6.1 deny the Minister failed to take into account the matter pleaded.

42.7 In response to paragraph 42.7 they

42.7.1 deny the Minister failed to take into account the views of key stakeholders including the interests represented by the Applicant.

42.8 For the purpose of informing the Court and the applicant of their case, they say that the Minister was only obliged to take into account mandatory relevant considerations.

Second ground of review: the Minister acted for an improper purpose/asked the wrong questions/had regard to irrelevant considerations

43. In response to paragraph 43 they:

43.1 admit that the Minister made the Definition Recommendation by reference to whether in his view the type of ammunition had a valid civilian use;

43.2 otherwise deny the paragraph.

Third ground of review: The Minister's recommendation was irrational and/or arbitrary

44. They deny paragraph 44;

44.1 They deny paragraph 44.1;

44.2 They deny paragraph 44.2;

44.3 In response to paragraph 44.3:

44.3.1 They admit that civilians had previously lawfully acquired the Challenged Ammunition;

44.3.2 They admit that the Definition Recommendation proposed to prohibit the Challenged Ammunition;

44.3.3 They otherwise deny the paragraph.

44.4 They deny paragraph 44.4, and say further that the previous availability of the Challenged Ammunition does not equate to it having a valid civilian use, or presenting no risk to safety relative to ammunition that is not prohibited ammunition.

44.5 They deny paragraph 44.5.

Fourth ground of review: The Order is invalid

45. They deny paragraph 45 and say further the Order is intra vires the Arms Act 1983.

THIRD CAUSE OF ACTION (ALTERNATIVE TO THE FIRST CAUSE OF ACTION): JUDICIAL REVIEW OF THE NO COMPENSATION RECOMMENDATION MADE BY THE FIRST RESPONDENT AND THE ORDER MADE BY THE SECOND RESPONDENT

46. They are not required to plead to paragraph 46.

47. They admit paragraph 47.

48. They admit paragraph 48.

First ground of review: The Minister failed to take relevant matters into account

49. In response to paragraph 49, they say:

49.1 In response to paragraph 49.1 they:

49.1.1 deny the Minister failed to take the purpose of the Amendment Act into account;

49.1.2 say further that the purpose of the Amendment Act is to tighten gun control to increase the safety and security of New Zealanders by reducing the risk of death or injury from firearms.

49.1.3 otherwise deny the paragraph.

- 49.2 In response to paragraph 49.2 they:
- 49.2.1 deny the Minister failed to take into account the matters pleaded;
 - 49.2.2 repeat paragraph 37 above, and say further that the common law principles as pleaded by the applicant were not mandatory relevant considerations for the Minister to take into account.
- 49.3 In response to paragraph 49.3 they:
- 49.3.1 Deny the Minister failed to take into account Part 4 of Chapter 4 of the Legislation Design and Advisory Committee's Legislation Guidelines.
- 49.4 In response to paragraph 49.4 they:
- 49.4.1 admit the Minister did not take into account the matter pleaded;
 - 49.4.2 deny the existence of the risk as pleaded.
- 49.5 In response to paragraph 49.5 they:
- 49.5.1 deny the Minister failed to take into account the matter pleaded;
 - 49.5.2 repeat paragraph 37 above, and say further that the pleaded matters were not mandatory relevant considerations for the Minister to take into account.
- 49.6 In response to paragraph 49.6 they:
- 49.6.1 admit the Minister did not take into account the matter pleaded;
 - 49.6.2 say further the provision of compensation for prohibited ammunition outside of the process envisages in Schedule One to the Arms Act 1983 would have been unlawful, and

contrary to that Act, which only allowed for compensation for “prohibited items”.

- 49.7 For the purpose of informing the Court and the applicant of their case, they say that the Minister was only obliged to take into account mandatory relevant considerations.

Second ground of review: The Minister acted for an improper purpose/asked the wrong questions/had regard to irrelevant considerations

50. In response to paragraph 50 they:

- 50.1 repeat paragraph 49.1 above;
- 50.2 say further that the Minister focussed on identifying ammunition for which there was no valid civilian use, regardless of whether that ammunition was used by the military;
- 50.3 otherwise deny the paragraph.

Third ground of review: The Minister acted irrationally and/or arbitrarily

51. They deny paragraph 51;

- 51.1 They deny paragraph 51.1 and say further that compensation for prohibited ammunition would have been unlawful as it was not a “prohibited item” which was eligible for compensation in accordance with Schedule One to the Arms Act 1983.
- 51.2 In response to paragraph 51.2 they:
- 51.2.1 deny the Minister failed to take into account the pleaded principle;
- 51.2.2 repeat paragraph 37 above, and say further that the principle as pleaded by the applicant was not a mandatory relevant considerations for the Minister to take into account.

Fourth ground of review: The Order is invalid

52. They deny paragraph 52; and says further the Order is intra vires the Arms Act 1983.

This document is filed by Austin Powell, solicitor for the respondents, of Crown Law.

The address for service of the respondents is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the respondents may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (d) emailed to the solicitor at Austin.Powell@crownlaw.govt.nz provided that the documents are also emailed to Genevieve.Taylor@crownlaw.govt.nz and Chrystal.Tocher@crownlaw.govt.nz.