

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *TEC v Queensland Police Service* [2020] QCAT 294

PARTIES: **TEC**
(applicant)

v

**QUEENSLAND POLICE SERVICE – WEAPONS
LICENSING**
(respondent)

APPLICATION NO/S: GAR434-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 28 July 2020

HEARING DATE: 15 July 2020

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS:

- 1. The decision of the Queensland Police Service – Weapons Licensing to reject the application for the issue or renewal of a firearm licence dated 4 October 2019 is confirmed.**
- 2. These reasons are to be published only in a de-identified format.**

CATCHWORDS: FIRE, EXPLOSIVES AND FIREARMS – FIREARMS – LICENSING AND REGISTRATION – whether correct and preferable decision – whether ‘fit and proper’ person to hold firearm licence - where evidence of good fame and character - where past behaviour attributable to drug-induced psychosis – where future possibility of mental unwellness in situation of relationship breakdown or other unstable work or life circumstance – where applicant did not present same risk as he did when previous incidents of domestic violence occurred – where level of risk must be determined by more than how applicant behaves when their situation is stable, but how they respond to situations of conflict or stress – where past behaviour involved threats of self-harm and violence and actual violence – where weight of evidence is that applicant had at times not responded well when confronting situations of family conflict or relationship breakdown – where significant risk to personal safety if similar behaviour occurred in future – where applicant incorrectly certified application form – where evidence of

lack of insight – where real risk to public and individual safety outweighs protective factors

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 66

Weapons Act 1990 (Qld), s 3, s 10B, s 24, s 29

Australian Broadcasting Tribunal v Bond & Ors (1990) 94 ALR 11

CAT v Queensland Police Service [2017] QCATA 43

Harley v Department of Justice and Attorney-General [2012] QCAT 620

Kehl v Board of Professional Engineers of Queensland [2010] QCATA 58

Liseo v Queensland Police Service [2006] QDC 496

Magarry v Queensland Police Service, Weapons

Licensing Branch [2012] QCAT 378

Peri v Chief Executive Officer, Public Safety Business Agency [2015] QCAT 56

Re TAA [2006] QCST 11

Stower v Smart [2007] QDC 004

Ward v NSW Commissioner of Police [2000] NSWADT 28

Zanders v Queensland Police Service – Weapons

Licensing Branch [2020] QCAT 8

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Sergeant D Ayscough appeared for the Queensland Police Service

REASONS FOR DECISION

What is this Application about?

- [1] On 30 January 2019, TEC applied to the Queensland Police Service – Weapons Licensing Unit (QPS) for a firearms licence for hunting and recreational shooting. On 4 October 2019, the QPS rejected his application due to concerns mainly relating to domestic violence and mental health.¹
- [2] TEC has applied to the Tribunal to review the decision.

What is the purpose of this review?

- [3] The purpose of this review is to produce the ‘correct and preferable’ decision.² The Tribunal does this by a fresh hearing on the merits.³ This means that TEC does not

¹ Decision dated 4 October 2019.

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(1).

³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(2).

need to prove any error by the QPS in its original decision – the original decision is not presumed to be correct.⁴

What is the correct approach to determine the review?

- [4] The Tribunal must determine whether TEC is a ‘fit and proper’ person to hold a firearm licence.⁵ The term ‘fit and proper’:⁶

...takes its meaning from the context and 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 those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed it will not occur or whether the general community will have confidence that it will not occur.

- [5] The term ‘fit and proper’ is not defined in the *Weapons Act* 1990 (Qld) (‘Weapons Act’) but it does prescribe matters to consider.⁷ This means that the Tribunal must not consider the offending behaviour in isolation but must specifically consider:⁸

- (a) The object of the Weapons Act to prevent the misuse of weapons;⁹
- (b) The applicant’s character;
- (c) Whether the applicant has a real prospect of misusing weapons; and
- (d) Whether the applicant’s right to possess firearms is a real risk to public and individual safety.

What is the evidence supporting TEC’s application for a licence?

- [6] TEC has a young family who he loves and works hard to support. He has grown up around, and is comfortable with, handling firearms and seeks a licence “as a sport and target shooter for pest control on a volunteer basis for family and friends on their properties”.¹⁰ It is also important to TEC to have a licence since the passing of his brother, who wanted TEC to have his guns upon obtaining his licence.
- [7] TEC is well regarded by his family and friends, many of whom provided references attesting to his good fame and character.¹¹ In particular, the Tribunal notes the following from the references:

⁴ *Harley v Department of Justice and Attorney-General* [2012] QCAT 620, [8] citing with approval *Kehl v Board of Professional Engineers of Queensland* [2010] QCATA 58, [9].

⁵ *Weapons Act* 1990 (Qld), s 29(1)(d).

⁶ *Australian Broadcasting Tribunal v Bond & Ors* (1990) 94 ALR 11, 56.

⁷ *Weapons Act* 1990 (Qld), s 10B.

⁸ *Magarry v Queensland Police Service, Weapons Licensing Branch* [2012] QCAT 378, [27] applying *Stower v Smart* [2007] QDC 004.

⁹ *Weapons Act* 1990 (Qld), s 3(2).

¹⁰ Statement of BWJ dated [omitted].

¹¹ Reference of PHS dated [deleted]; Reference of SA [omitted]; Reference of RD dated [omitted]; Reference of JN [omitted].

- (a) Although TEC had issues when he was younger, he has grown from the experience into an honest, trustworthy and conscientious adult;
- (b) TEC is a dedicated father and family man;
- (c) TEC has supported friends in need and is willing to help others;
- (d) TEC can keep a “cool head in a stressful situation”;
- (e) TEC seldom drinks, is drug-free and takes no medication to maintain his mental state;
- (f) Since the offending behaviour, TEC has made every effort to improve himself;
- (g) TEC would often take his late brother shooting and due to his brother’s medical condition, TEC was given a high amount of responsibility in handling his weapons including securing them in the safe and with transit; and
- (h) TEC is safety-conscious around guns, helping to ensure that his late brother’s guns were legally removed and transferred into his sister’s name pending the outcome of his licence application.

[8] The Tribunal is satisfied that TEC is a young man held in high regard by his family and friends. More recently, he has shown resilience in his character and a willingness to keep going, despite life’s setbacks.

[9] Dr HD prepared a report¹² that relevantly provided:

- (a) TEC has not had any suicidal attempts or homicidal attempts;
- (b) TEC is not on any anti-depressants, anti-psychotics or anti-anxiety agents; and
- (c) He could see no reason why TEC could not hold a firearms licence.

[10] As at the date of his report, Dr HD had only been TEC’s treating General Practitioner for the past six months. Dr HD’s access to TEC’s medical records was limited to the previous four years. Importantly, this did not extend to the relevant incidents in 2008, 2012 and 2013. Moreover, the report does not provide any analysis or assessment of TEC’s mental health issues. These factors reduce the weight of the report.

[11] Dr SB, Consultant Psychologist, prepared a report¹³ that relevantly provided:

- (a) TEC has not been on any medication since 2010 nor expressed or experienced any mental health symptoms in the last ten years;

¹² Report dated [omitted].

¹³ Report dated [omitted].

- (b) TEC is reported to have stopped taking drugs since 2010 and drinks alcohol only occasionally and within limits;
 - (c) TEC has not presented with any information of offending behaviour in the past seven years; and
 - (d) In his opinion, TEC has no current mental health issues and does not have any psychiatric conditions that make him unable to have his weapons licence.
- [12] Dr SB noted that he was unable to review TEC's mental health services records from 2008 to 2010 due to time constraints and his report relied mainly on TEC's self-reporting and information from TEC's sister. During the hearing, Dr SB was able to attribute TEC's past behaviour to a short drug-induced psychosis rather than schizophrenia. Dr SB also considered TEC's stability and maturation to be protective factors, but conceded there to be a future possibility of mental unwellness in a situation of relationship breakdown or other unstable work or life circumstance.
- [13] Dr PT, Clinical and Forensic Psychologist prepared a report¹⁴ that relevantly provided:
- (a) In 2008, TEC made an impulsive suicide attempt by hanging, resulting in him being taken to [omitted] Hospital under an Emergency Examination Order and then discharged;
 - (b) In 2009, TEC was hospitalised for a drug-induced psychosis and was placed on an Involuntary Treatment Order, followed up in the community for 12 months;
 - (c) In 2012, TEC was subject to a Domestic Violence Protection Order due to an incident with his late brother. In her opinion, the most serious aspect was that TEC's brother was in a wheelchair;
 - (d) Although TEC was rated as having a history of problems with violence, in Dr PT's view, TEC's threats of violence to his brother during his late teens and early twenties was reactive, impulsive and a sign of immaturity at that time;
 - (e) TEC's drug-induced psychosis was successfully treated and has been in remission for roughly ten years;
 - (f) TEC did not rate on any of the items that measure recent problems including insight, violent ideation or intent, symptoms of major mental illness, instability, treatment or supervision response;
 - (g) TEC is currently free of mental illness and substance abuse, has a stable homelife and job, has matured and does not present any longer with reactive impulsive abuses. He recognises his earlier behaviour as having been very immature and identified that he never thought of consequences; and

¹⁴ Report dated [omitted].

- (h) In PT's opinion, TEC's personal circumstances, stable home life and work life, coupled with no substance abuse has largely mitigated the risk of violence to himself and others at this time. He presents as a low risk for future violence and a low risk for serious physical harm to self or others. Strong protective factors in TEC's life include maturation of his personality, stable relationship, parental responsibilities and employment. The previous destabilising influence of substance abuse that led to drug-induced mental illness is no longer present.

- [14] Dr PT had only one interview with TEC. Although the report refers to the 'First And Final Notice' from QPS, this refers only briefly to TEC's admission to the [omitted] Hospital in 2009 for mental health reasons and to the 2012 incident of domestic violence. Moreover, the report does not address a key risk factor of how TEC would respond to a situation of family conflict or relationship breakdown.
- [15] Nevertheless, the Tribunal accepts the reports as evidence of progress TEC has made to address his issues. TEC is to be commended on this progress and the Tribunal accepts that he no longer presents the same risk as he did when the previous incidents occurred. Based on the reports, TEC has made progress in addressing many of the triggers for his past behaviour.

Is there a real prospect of misusing weapons and a real risk to public and individual safety?

- [16] The Tribunal must enquire about the applicant's character, his insight into the behaviour leading to the revocation or suspension and his conduct since.¹⁵
- [17] As Dr PT noted in her report, TEC attempted suicide in 2008 following the dissolution of his relationship with his then-partner after only a couple of months.
- [18] Some months later in [omitted] 2009, TEC absconded while under an Involuntary Treatment Order.
- [19] On [omitted] 2012, TEC was subject to a Domestic Violence Protection Order for a period of two years following an incident with his late brother on [omitted] 2012. The Police Report¹⁶ upon which the Order was issued relevantly provides:

Police arrived at the house to find that the Aggrieved was sitting in his wheel chair in the hallway of the house and that the Respondent was standing directly behind him holding a can of aerosol and a cigarette lighter.

...

Police identified themselves and advised the Respondent that they were investigating domestic violence and demanded that the Respondent open the door however the Deft refused to do this repeatedly telling police to go away.

Police could see that the Aggrieved was extremely distressed.

¹⁵ *CAT v Queensland Police Service* [2017] QCATA 43, [36].

¹⁶ QPS Bundle of Documents, pp 21 – 22.

Police utilized emergent powers to enter the residence and had to utilize Qld Fire and Rescue Officers to pry open the screen door.

After opening the screen door, the Respondent put down the can of aerosol and lighter and came outside where he was detained to allow police to investigate domestic violence.

Police located the aerosol can which contained cooking oil and the cigarette lighter and a small gas blowtorch. Police also saw that there was a large butcher's knife laying on the hallway floor. A small fire had been started using a roll of kitchen towels in the garage which was quickly extinguished.

...

The Aggrieved stated that the Respondent threatened to "kick his teeth in" if he called the police. The Aggrieved managed to call his mother to come to the house but the Respondent would not let her into the house either.

...

The Aggrieved stated that the Respondent suffers from mood swings and has been verbally abusive towards the Aggrieved in the past.

...

The Aggrieved believes the Respondent suffers severe mood swings and becomes aggressive which is increased due to the Respondent's consumption of alcohol and illicit drugs.

...

Police are of the opinion that due to the extreme and continued violence predicated by the Respondent towards the Aggrieved in this latest incident a Domestic Violence Protection Order should be issued.

- [20] On [omitted] 2013 and during the period he was subject to the Order, TEC was involved in another incident of domestic violence, with his other brother. The Police Report¹⁷ relevantly provides:

The respondent told Police that whilst the aggrieved was cooking dinner they had a verbal argument regarding his cooking method. The respondent stated to Police that the aggrieved then threw him to the ground, causing him to slam his head into the ground... The aggrieved told Police that he was trying to cook some chips on the stove when the respondent then started a verbal argument with him regarding his cooking method. The respondent has then grabbed the pot and ran down the hallway. The aggrieved has then tried to grab the pot and the respondent has tried to hit him with it. After the aggrieved acquired the pot he walked back into the kitchen to continue cooking. At this time the respondent has grabbed two belts and approached the aggrieved and has attempted to hit him with them. When questioned by Police the aggrieved stated that he was not fearful of the respondent's actions but was annoyed and wanted only to continue cooking his dinner. The respondent has then got the aggrieved in a head lock. In an attempt to get out of the headlock the respondent (sic) threw the respondent to the ground. The respondent has subsequently hit his head on the ground causing a small lump on his

¹⁷ QPS Bundle of Documents, p 30.

forehead... Police believe a DV referral to be the most appropriate course of action.

- [21] The Protection Order was then varied to add his other brother as a protected person.
- [22] Since then, no incidents of domestic violence have been recorded against TEC. TEC has no criminal history, apart from some traffic history which has no bearing on his current application.
- [23] Despite this and his progress in addressing the triggers for his previous behaviour, the QPS maintains the following 'Caution / Flag' for TEC:¹⁸

Not a current client of a public mental health service. Diagnosis schizophrenia. Briefly seen by mental health [omitted] and was stable. Otherwise not seen since 2012. History of substance misuse. History of aggression toward his brother pre 2012. No history of suicidal behaviour.

Police should treat call calls with urgency if TEC is causing disturbance. He is diagnosed schizophrenic and may have extreme and violent mood swings.

- [24] Although TEC has made progress in the seven years since the most recent incident of domestic violence, this must be considered within the context of the principles underlying the Weapons Act which subordinate weapon possession to the interests of public safety and strict controls.¹⁹
- [25] The object of the Act is to prevent the misuse of weapons.²⁰ Public safety requires that possession of weapons is properly regulated. In determining the level of risk, the Tribunal must be mindful of more than how an applicant behaves when their situation is stable, but how they respond to situations of conflict or stress:

The Tribunal could never be totally satisfied that a person would not pose any risk to public safety if they were given access to a firearm. However, in the context of the Act, the Tribunal must be satisfied that there is virtually no risk to public safety if (a person) were given access to a firearm.²¹

- [26] In the past, TEC's behaviour has involved threats of self-harm and violence and actual violence to members of his own family. Although TEC has professed a level of insight from his situation of stability until at least recently, to hold a firearm licence the community must be confident that he is aware of the impact of his behaviour on others even when he himself is feeling emotional. He must show restraint and exercise self-control.
- [27] Although the evidence is that TEC has mainly established a situation of stability for himself and his young family and his life is currently stable, the concern is the level of risk presented by a change in his circumstances. Dr SB noted a possibility of mental unwellness from a change in circumstances. Unfortunately for TEC, the weight of the evidence is that he has at times not responded well when confronting

¹⁸ QPS Bundle of Documents, p 28.

¹⁹ *Weapons Act 1990 (Qld)*, s 3(1).

²⁰ *Weapons Act 1990 (Qld)*, s 3(2).

²¹ *Ward v NSW Commissioner of Police* [2000] NSWADT 28.

situations of family conflict or relationship breakdown. This could prove a significant risk to personal safety if he engaged in similar behaviour in the future.²²

- [28] It is relevant that the second incident of domestic violence occurred while TEC was subject to a Protection Order for the first incident. This is because being aware of the purpose of the Order means a person is less likely to repeat the behaviour, when subjected to similar stressors.²³
- [29] It is also relevant that TEC did not disclose the Protection Order and his mental health history to the police, when applying for his licence.²⁴ In response to questions asking whether he had ever received treatment for psychiatric or emotional problems or been the subject of a Domestic Violence Order TEC answered “No” and certified that it is true and correct.²⁵ TEC said this was because he misunderstood the application form and thought that it only required him to disclose history for five years from when it applied to him.²⁶
- [30] Applicants should not take application forms lightly and incorrectly certifying a document is serious. Even accepting TEC’s explanation, it still shows a lack of insight into his obligations as a weapons licence holder,²⁷ and reduces the ability of police to assess the risk of misuse. Moreover, it is evidence of recent lack of insight into public safety concerns about possession of weapons and is not consistent with responsible weapon ownership. Similar concerns arise from photographs on TEC’s Facebook page depicting him with a small child holding a rifle²⁸ and an unsecured rifle on a pair of antlers.²⁹
- [31] Because of these factors, the Tribunal is satisfied that the evidence shows a real risk to public and individual safety that outweighs the protective factors supporting TEC’s application.
- [32] The principle underlying the Weapons Act is that weapons possession and use are subordinate to the need to ensure public and individual safety,³⁰ and the object of the Act is to prevent the misuse of weapons.³¹
- [33] Unfortunately for TEC, this means that on this occasion his improved behaviour in recent times and otherwise good character are not sufficient to displace the Act’s paramount concerns. Because of this, it is not in the public interest for him to hold a firearm licence.

What is the ‘correct and preferable’ decision?

²² *Zanders v Queensland Police Service – Weapons Licensing Branch* [2020] QCAT 8.
²³ *Peri v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 56, [49], citing with approval *Re TAA* [2006] QCST 11.
²⁴ *CAT v Queensland Police Service* [2017] QCATA 43, [68]; *Liseo v Queensland Police Service* [2006] QDC 496.
²⁵ Application for firearms licence dated [omitted].
²⁶ Statement of TEC dated [omitted].
²⁷ *Weapons Act* 1990 (Qld), s 24(2)(a)(iv).
²⁸ Photograph dated [omitted].
²⁹ Photograph dated [omitted].
³⁰ *Weapons Act* 1990 (Qld), s 3(1)(a).
³¹ *Weapons Act* 1990 (Qld), s 3(2).

- [34] The ‘correct and preferable’ decision is that the decision of the Queensland Police Service, Weapons Licensing to reject the application for the issue or renewal of a firearm licence dated 4 October 2019 is confirmed.
- [35] Because these proceedings involve sensitive allegations of domestic violence, these reasons are published in a de-identified format.³²

³² *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 66.