

**COURT OF APPEAL**

**FLANAGAN JA**

**Appeal No 6832 of 2022  
QCATA No 153 of 2019  
QCATA No 241 of 2019**

**TIMOTHY IAN CHARLES POWELL**

**Applicant**

**v**

**QUEENSLAND POLICE SERVICE -  
WEAPONS LICENSING BRANCH**

**Respondent**

**BRISBANE**

**THURSDAY, 15 DECEMBER 2022**

**JUDGMENT**

**FLANAGAN JA:** On 10 June 2022 the applicant filed a notice of appeal. The appeal was from orders of the Queensland Civil and Administrative Tribunal (the Appeal Tribunal) made on 12 May 2022. The substantive appeal dealt with by the Appeal Tribunal was appeal number APL 241-19, which was an appeal from a decision of the Queensland Civil and Administrative Tribunal (the Tribunal) which confirmed decisions of the respondent, the Queensland Police Service – Weapons Licensing Branch. Those decisions, made in December 2018, involved the respondent suspending the applicant’s three weapons licences and subsequently, in January 2019, revoking those licences on the basis that the applicant was not a fit and proper person to hold the licences because of his visual impairment and his

failure to properly inform the respondent as to his infirmity. The only orders made by the Appeal Tribunal in relation to appeal APL 241-19 were as follows:

- “(a) leave to appeal on ground (r) of the appeal is refused;
- (b) the appeal is otherwise dismissed.”

By application filed 6 December 2022 the applicant seeks a stay either pursuant to s 152 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) and/or r 761 of the *Uniform Civil Procedure Rules 1999* (Qld). The stay is not only sought in relation to the orders made by the Appeal Tribunal, but also a stay of the original decisions to suspend and revoke the applicant’s weapon’s licences made in December 2018 and January 2019. A stay is also sought in relation to the decision of the Tribunal dated 27 July 2019, which confirmed the suspension and revocation. The applicant also seeks in paragraphs 3 and 4 the following relief:

- “3. The Respondent immediately reinstate the Applicant’s Weapons Licences, or, in the event the Applicant’s Weapons Licences cannot be reinstated by law, the Respondent immediately issue the Applicant new authority under the *Weapons Act 1990* (Qld) that gives the same authority the Weapons Licences previously gave the Applicant on the day prior to the Suspension.
- 4. The Queensland Police Service (“QPS”) immediately release all property lawfully owned by the Applicant in their possession to the Applicant that the reinstated Weapons Licences or new Weapons Possession Authority allows the Applicant to lawfully possess.”

The category of weapons previously held by the applicant under the suspended and revoked weapons licences include category A, B, C, D, H, M, and R weapons. According to the applicant there are approximately 25 weapons.

It must be noted that the relief sought by the applicant goes well beyond a stay of the decision of the Appeal Tribunal. The stay application, in effect, seeks final relief that could only be granted if the applicant was wholly successful on appeal. The orders made by the Appeal Tribunal refusing leave to appeal on ground (r) and otherwise dismissing the appeal is not the operative decision whereby the applicant’s weapons licences were either suspended or revoked. The relevant decisions in this respect are those made by the respondent in December

2018 and January 2019. Those decisions were confirmed by the Tribunal, and the applicant's subsequent appeal to the Appeal Tribunal was dismissed. The applicant would only be entitled to be in possession of the weapons the subject of the suspended and revoked weapons licences if he was to be successful on appeal.

The applicant in his oral submissions, having considered the respondent's submissions, identified that his stay application went beyond seeking a stay of the orders made by the Appeal Tribunal, which I have outlined above. The applicant, however, submits that this Court otherwise has the power not simply to stay the orders or decision of the Appeal Tribunal, which is the subject of the applicant's appeal, but also to stay the other operative orders and decisions which he has identified in his application for a stay. The first section identified by the applicant as being relevant in this sense is s 152(2) and (3) of the QCAT Act.

Subsection (2) provides:

“However, the Court of Appeal, or the tribunal as constituted when the decision was made, may make an order staying the operation of the decision until the appeal is finally decided.”

Subsection (3) provides:

“An order made by the Court of Appeal may be subject to the conditions the court considers appropriate.”

By reference to s 152(3) the applicant submits that this Court, with the power to make any stay order subject to the conditions the Court considers appropriate, may extend any stay order to include the original decisions of the respondents made in 2018 and 2019, as well as the initial decision of the Tribunal upholding those suspensions. The difficulty with this submission is that s 152(1) provides:

“The start of an appeal, under this division or an enabling Act, against a decision of the tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.”

The decision referred to in s 152(1) is that of the Appeal Tribunal, as it is that decision which is subject to the present appeal.

Subsection (2) also refers to the order staying the operation of the decision until the appeal is

finally decided. The Court here has, by way of a notice of appeal filed by the applicant, an appeal which requires leave from the decision of the Appeal Tribunal. The decision that is referred to in s 152(2) must be the decision of the Tribunal. It follows that the power to make any stay order subject to conditions cannot extend beyond the source of the power. The scope of any stay order must therefore be confined to the operative decision, that being the decision of the Appeal Tribunal.

The applicant, however, also relies on s 29 and s 44 of the *Supreme Court of Queensland Act 1991* (Qld). Section 29 deals with the jurisdiction and powers of the Court of Appeal. It provides:

- “(1) Subject to this Act, the Court of Appeal has jurisdiction to hear and determine all matters that, immediately before the commencement of this section, the Full Court had jurisdiction to hear and determine.
- (2) The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.
- (3) The Court of Appeal may, in proceedings before it, exercise every jurisdiction of power of the court, whether at law or in equity or under any Act, Commonwealth Act or Imperial Act.”

It is not clear to me how the general jurisdiction of the Court of Appeal referred to in s 29 extends beyond the power of the Court to make a stay order in relation to a decision of the Appeal Tribunal under s 152(2) and (3) of the QCAT Act.

The applicant also points to the powers of a Judge of Appeal under s 44. However, none of those powers provide a statutory basis for the exercise of a power to stay the orders that have been otherwise made by the Appeal Tribunal.

A further reference is made by the applicant to s 22 of the QCAT Act. Section 22, however, only deals with the effect of review by the Tribunal on a reviewable decision. It does not inform anything about the power of this Court to extend a stay order to the original decisions made by the respondents.

Even if it was assumed that this Court had the power to make the extensive orders sought by

the applicant, the question arises whether the discretion to grant such orders or grant a stay of such orders should be made. In *Day v Humphrey* [2017] QCA 104 at [5] – [6] Morrison JA stated:

“An applicant for a stay must demonstrate some reason why a judgment should not be given immediate effect. The test applicable on an application to stay a judgment pending an appeal is simply expressed as being whether the case is an appropriate one for a stay.

The test reflects a wide discretion reposed in the Court and authority establishes that there are some traditional factors to be taken into account on the application, namely whether:

- (a) there is a good arguable case;
- (b) the applicant will be disadvantaged if the stay is not granted; and
- (c) there is some compelling disadvantage to the respondent if a stay is granted, which outweighs the disadvantage suffered by the applicant.”

In the present case, if the orders sought in the stay application were to be made, this would result in the applicant having his weapons licences reinstated or new weapons licences being issued, permitting him to be in possession of each of the categories of weapons, which I have already identified, prior to the determination of the appeal by three Judges of this Court. In his written submissions, the applicant identifies a number of reasons why he requires to be in possession of these weapons prior to the hearing of the appeal.

First, he wishes to apply to the Australian Government for an Australian Department of Defence export permit and an Australian Border Force Return Goods Test import permit to export some of the weapons to the United States of America for repairs, and then import the repaired firearms back into Australia so that these firearms can be sold in Australia.

Secondly, he wishes to be in physical possession of some of the weapons for the purpose of examining, photographing, and filming the firearms as he intends to file a statement of claim against the State of Queensland for fair compensation pursuant to s 4(3)(i) of the *Legislative Standards Act 1992* (Qld) for some of the weapons compulsorily acquired by the respondent.

Thirdly, he wishes to be in possession of most of his weapons in Australia for the purpose of

advertising them for sale, demonstrating for sale on any day at any hour of the day and completing the sale to potential genuine customers prior to him moving to the United States of America to reside. The applicant has taken a number of steps to obtain a permanent visa to reside in the United States of America and intends to do so within the next 12 months.

Fourthly, he wishes to take a number of the weapons with him to the United States.

None of these reasons constitute a proper basis for granting the relief sought prior to the hearing of the appeal.

In paragraph 93 of the applicant's written submissions he refers to his visual impairment being caused by cataracts. He asserts that his visual impairment was corrected by surgery in 2021. He further asserts that on 16 November 2022 he was issued a medical certificate confirming he has had successful cataract surgery and is medically fit to now possess the relevant weapons. He refers to the fact, however, that his medical certificate also notes a mild mental illness. The applicant has not filed any material in the present application to support his assertions about the contents of the medical certificate. They do not, in any event, support the grant of the stay of the decision of the Appeal Tribunal.

As the respondent correctly submitted, the applicant by his stay application is, in effect, asking this Court to step into the shoes of an authorised officer and find him fit and proper to hold a weapons licence while the appeal remains unresolved. In oral submissions, the applicant identified a number of matters in support of the submission that this Court on this application should find him to be a fit and proper person to hold a weapons licence. These include the fact that he has successfully undergone the necessary checks for permanent migration to the United States of America. Such checks include clearances, both from the Australian Federal Police and immigration authorities in the United States of America.

This Court, however, on the present application is not in a position to, nor should it, decide any question as to whether the applicant is a fit and proper person to hold a weapons licence. Nor in my view has the applicant demonstrated that he has a good arguable case on appeal. The notice of appeal identifies nine grounds of appeal. It is not clear which of these grounds

relate to the decision of the Appeal Tribunal to dismiss appeal APL 241-19. Ground (a) refers to the Appeal Tribunal erring:

“by placing insufficient weight on the Appellant’s evidence –”

Ground (e) alleges that the Appeal Tribunal erred in concluding:

“the recusal of the Tribunal Member at the Substantive Hearing must be initiated by an application of the Appellant.”

In the reasons of the Appeal Tribunal, *Powell v Queensland Police Service – Weapons Licensing* [2022] QCATA 81, the senior member dealt with appeal APL 241-19 from paragraphs 30 to 81. The applicant raised 27 grounds of appeal below. It is not evident either from the applicant’s written submissions or otherwise that the grounds of appeal, when read in the light of the extensive reasons of the Appeal Tribunal, show that the applicant has a good arguable case on appeal. I also note that an appeal to this Court requires leave pursuant to s 150(3)(b) of the QCAT Act. For these reasons, the application filed 6 December 2022 is dismissed.