

**CITATION:** Bates v Queensland Police Service Weapons Licensing Branch [2010] QCAT 92

**PARTIES:** Barry Joseph Bates

v

Queensland Police Service Weapons Licensing Branch

**APPLICATION NUMBER:** GAR063-10

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** 14 April 2010

**HEARD AT:** Brisbane

**DECISION OF:** Richard Oliver, Senior Member

**DELIVERED ON:** 14 April 2010

**DELIVERED AT:** Decision on the Papers

**ORDERS MADE:** Application Dismissed

**CATCHWORDS:** Review application under the Weapons Act 1990; whether fit and proper person to hold a weapons license; section 10B considered; whether in public interest; effect of the creditability of applicant on whether he is a fit and proper person.

**APPEARANCES and REPRESENTATION:**

Decision was made on the papers without the parties being present.

## BACKGROUND

1. On 5 February 2010 Acting Inspector Jones of the Weapons Licensing Branch issued a Revocation Notice to the applicant suspending his Firearms License No. 30005564-04.
2. In an affidavit sworn by Mr Jones, the basis upon which the license was revoked is as a consequence of the applicant being charged with and convicted an offence in contravention of Regulation 59 of the Weapons Regulations which provides:-

Firearms to be kept unloaded other than when being used to shoot

(1) A person who has a firearm under his or her control (whether or not another has custody of it) must ensure the firearm is unloaded, other than when it is being used to shoot.

3. The applicant pleaded guilty to the charge of essentially failing to keep his firearms “unloaded”, even though they were not capable of being discharged when inspected, on 16 October 2009 and was convicted and fined \$250.
4. As a consequence of the revocation, the applicant has filed in the Tribunal an application seeking a review of that decision. The application was filed on 18 February 2010.
5. Pending the hearing of the Review Application the applicant has also filed an application seeking a stay of the Revocation Notice pending the hearing of the substantive application.

6. An application for stay is made pursuant to s. 22(4) of the *Queensland Civil & Administrative Tribunal Act* (“the Act”) which provides that:-

*“The Tribunal may make an order staying the operation of a reviewable decision if it considers it is desirable having regard to the following:-*

- (a) The interests of any person whose interests may be affected by the making of the order or the order not being made;*
- (b) Any submission made to the Tribunal by the decision-maker for the reviewable decision;*
- (c) The public interest.”*

## **RESPONDENT DECISION**

7. Acting Inspector Jones has set out in his affidavit, the matters he took into account when making his decision and in particular, the public interests and the interests of the community at large, having regard to the scope and purpose of the legislation applicable to the possession of firearms.

8. More importantly, he made his decision on the fact of the conviction and the application of section 10B of the Weapons Act which provides that for the revocation of a licence, a person is not a fit and proper person to hold a licence if:

*“the person has been convicted of, .....any of the following offences-*

- (iii) an offence involving the use, carriage, discharge or possession of a weapon:*

9. Therefore by reason of the conviction the Act deems the applicant not to be a fit and proper person which is a requirement to hold a licence pursuant to section 10(2) of the Weapons Act. Despite the fact the applicant swears the weapons were not “loaded” or “unloaded”, in that the weapons were not capable of being discharged unless a round was loaded into the breach of the weapons, he has pleaded guilty and been convicted.

## **CONCLUSION**

10. I have come to the conclusion, having regard to the provisions of s. 22 of the Act the applicant has not satisfied the necessary criteria to warrant an order staying the decision of revocation because of the conviction. Had it not been for the conviction, the Tribunal would have granted a stay because by all accounts the applicant is a fit and proper person to hold a licence and given his antecedents as set out in the affidavit he would not pose any threat to the public and his holding a licence would not undermine the purpose of the Act.
11. Therefore, the application is dismissed.