

Neutral Citation no. [2005] NIQB 5

Ref: **GIRC5173**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **14/01/05**

2004 No. 45327

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY LIAM SHANNON
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE
FOR NORTHERN IRELAND**

AND

**IN THE MATTER OF A DECISION OF THE CHIEF CONSTABLE OF THE
POLICE SERVICE OF NORTHERN IRELAND**

GIRVAN J

[1] This is an application for leave to apply for judicial review, the applicant challenging a decision of the Secretary of State on 17 September 2004 to uphold on appeal the decision of the Chief Constable on 29 May 2003 revoking the applicant's firearm certificate.

[2] The applicant is a member of the Northern Ireland Minor Breeds, Clay Pigeon and Dog Training Club, one of the activities of which is clay pigeon shooting, having become a full member of their club in February 2001. In July 2001 he applied for a firearm certificate to hold a shotgun. The applicant asserts that his reason for seeking a firearm certificate was connected exclusively with the purpose of clay pigeon shooting. Initially the Police Service of Northern Ireland ("the PSNI") raised an issue as to his fitness to hold a certificate in view of his conviction for dishonesty and in view of pending proceedings in respect of another dishonesty offence. The applicant

was convicted of an offence of refusing to comply with a requirement of a financial investigator in pursuance of powers under Schedule 2 of the Proceeds of Crime (Northern Ireland) Order 1996. This arose out of the financial affairs of an association known as the Irish Republican Felons Association of which the applicant was and is a member and chairman. The conviction was set aside on appeal in July 2002 in the County Court but upheld by the Court of Appeal on a case stated. The applicant is currently pursuing an application to the European Court of Human Rights in respect of the conviction. Arising from the same investigation he was charged with false accounting and conspiracy to defraud in June 1998 but those charges have not been proceeded with.

[3] In the event the applicant was in fact granted a firearm certificate for a Bettensoli shotgun and 250 12G cartridges on 25 June 2002. This was restricted to sporting purposes and vermin control, the certificate being for three years with an expiry date of 19 June 2005. The applicant acquired a shotgun as described in the certificate and 250 cartridges. Subsequently in July 2002 he applied for an extension of the firearm certificate to cover a .22 rifle. On 17 February 2003 an inspector in the Firearms Licensing and Explosives Branch of the PSNI wrote to him stating that it was believed that the applicant was associated with members of a proscribed organisation, namely the Provisional IRA or members of such an organisation. The PSNI was considering refusing the variation application and was also considering revoking the existing firearm certificate.

[4] On 29 May 2003 the PSNI issued a notice of revocation on the grounds that the applicant was unfitted to be in possession of the said firearm and ammunition and that possession by him of the firearm was likely to endanger the public safety or peace. He was required to surrender the firearm and the certificate immediately.

[5] On 12 June 2003 the applicant appealed to the Secretary of State against the revocation. The Secretary of State asked the Chief Constable for a full report. On 20 August the NIO informed the applicant that the Chief Constable had advised the NIO that he believed that the applicant associated with PIRA or PIRA members and that the Chief Constable's revocation decision was based on recent information that the applicant's association with the PIRA or PIRA members was not casual or coincidental. The Chief Constable considered that the applicant should not have been granted a firearm certificate in June 2002. The NIO gave the applicant an opportunity to comment in writing on the Chief Constable's decision. In response the applicant stated that he did not accept that he associated with PIRA or PIRA members but he requested an opportunity to consider and respond to information relied on by the Chief Constable. As an active committee member of the Irish Republican Felons Association he had extensive associations with Republican ex-prisoners including persons in prison for

PIRA membership but he was not aware of his associating with current PIRA members. In a document dated 22 September 2003 the applicant's solicitors set out fully and clearly the applicant's representations against the decision to revoke the certificate. The applicant asked for sight of the Chief Constable's report. In response the NIO stated that they were unable to provide a copy of the Chief Constable's report and suggested the applicant contact the Firearms Licensing Branch of the PSNI.

[6] Notwithstanding reminders set to the PSNI by the NIO the Chief Constable eventually in March 2004 confirmed that he had nothing further to add to his previously assertion. On 12 May 2004 the NIO wrote to indicate that the appeal had been submitted for consideration by the Secretary of State but he was seeking further information from the Chief Constable. Eventually on 17 September 2004 the appeal was refused. A letter stating:

"After careful consideration of Mr Shannon's case and his representations the Secretary of State has refused the appeal on the grounds that he is not a fit person to have firearms and ammunition. In reaching this decision the Secretary of State took into consideration confidential information held by the Chief Constable that Mr Shannon associated with members of the PIRA".

On 22 September 2004 he was required to dispose of the shotgun and cartridges by sale or surrender.

[7] The applicant contends:

- (a) that without sight of the information relied on by the Chief Constable and the Secretary of State he was restricted in challenging the belief that he was associating with members of the PIRA;
- (b) that in any event any such association did not render him unfitted to be entrusted with a firearm. Association with others is not a basis in law for finding that an individual is unfit to be entrusted with a firearm;
- (c) the PIRA had been on ceasefire for seven years and the early release scheme was premise on the basis that the PIRA members were no longer supporters of terrorism or a threat;
- (d) the consequence of the decision was to deprive the applicant of his shotgun and ammunition and this constituted an interference with the applicant's peaceful enjoyment of his possessions under Article 1 of Protocol 1;

- (e) Article 8 of the Convention was breached in that:
- (i) the decision implied a requirement that he should not associate with others in order to be entitled to a firearms certificate;
 - (ii) the revocation precluded his attendance at clay pigeon shooting and restricted the development of his relationship with his son and others in the club.
- (f) The principles of natural justice were not observed. The applicant was not afforded an opportunity to consider the police evidence nor to consider the information sought by the Northern Ireland Office on 12 May 2004;
- (g) Article 6 of the Convention was engaged because of the involvement of Article 1 protocol 1 and Article 8 and was breached in the circumstances.

[8] Under Article 30 of the Firearms (NI) Order 1981 it is provided that a firearm certificate may be revoked by the Chief Constable if he is satisfied that:

- (a) the holder is prohibited by the Order from possessing a firearm, or is a person of intemperate habits or unsound mind, or is otherwise unfitted to be entrusted with firearms; or
- (b) possession of a firearm by the holder is likely to endanger the public safety or the peace.

A person aggrieved by the revocation of a firearm certificate on any of the grounds set out in Article 30 may appeal to the Secretary of State under Article 55.

[9] It is clear from the Court of Appeal decision in Re Conor David Tennison [2001] NICA 38 that the Secretary of State in reaching his decision must make up his own mind on the material submitted to him and not merely review the Chief Constable's exercise of discretion. There is nothing in the present case to suggest that the Secretary of State did not make up his own mind in relation to the question whether the firearm certificate should be revoked. It is also clear from that decision that the criteria set out in Article 28(2) and by extension in Article 30(1)(a) and (b) are not mutually exclusive. There may be overlap between the criteria. It is quite possible for an applicant to be regarded as unfitted for reasons which involve an element of danger to the public safety and the peace.

[10] The suggestion that a person's associations are irrelevant to his fitness to hold a firearm is misconceived. A person's voluntary associations can be indicative of attitudes and viewpoints that are highly relevant to the issue of his suitability for a particular position or to hold, for example, a firearm.

Moreover the associations may enhance the risk of his coming under pressure from his associates.

[11] The court must also reject the suggestion that the decision to revoke the certificate because of his associations was irrational. It was open to a rational decision maker to conclude that the applicant's association with members of the PIRA rendered him unfit to hold a firearm. The PIRA remains a proscribed organisation, members of which continue on occasions to carry out serious criminal activities. This remains the position notwithstanding the ceasefires and notwithstanding the early release scheme. The applicant in his Order 53 Statement asserted that he is an active member of the Irish Republic Felons Association and that he has extensive associations with Republican ex-prisoners including persons imprisoned for membership of the PIRA. He avers that he is not aware of associations with any individuals who are currently PIRA members, membership being a criminal offence and "unlikely to be openly admitted to the applicant". The police evidence satisfied the Secretary of State that the applicant's association was with members of the PIRA. Even if the applicant had been told of the identity of the individuals with whom he is allegedly involved it may well be the case, as the applicant asserts, that those individuals had not admitted openly to him that they were members of the PIRA. That would not detract from the fact that he was associating with such persons or from the fact that he shared the PIRA Republican ethos. The Secretary of State's conclusions that such associations rendered him unfit could not be considered to be irrational or perverse.

[12] It is clear from Re Charmers Brown that the right to hold a firearm certificate is not an incident of an applicant's private life protected by Article 8. Nor is the prevention of the engagement in a sport or hobby a deprivation of a possession the purposes of Article 1 Protocol 1 (see also RC v UK Application No. 37664 - 97). The applicant has failed to persuade me that there are any special or peculiar circumstances in the present case to suggest that either Article is permanently engaged. The revocation of the certificate does result in the firearm and ammunition being no longer capable of use by this applicant but he is not deprived of the asset of which he can dispose by way of sale.

[13] Further in Re Charmers Brown the Court of Appeal upholding Kerr J (as he then was) held that Article 6 is not engaged in relation to decisions on the grant of firearm certificates. Even if Article 6 were engaged the court concluded that the right to judicial review is sufficient to satisfy the requirements of the Article.

[14] On the issue of fairness the applicant was informed of the gist of the case against him in relation to the proposed revocation and had the opportunity to make representations. The police report to the Secretary of

State was not disclosed to the applicant. On 24 September 2003 the NIO stated that the NIO was unable to provide a copy of the report and suggested that the applicant contact the police. Notwithstanding that invitation the applicant did not pursue the disclosure of the report from the police.

[15] In the circumstance the applicant has failed to establish any arguable basis for challenging the decision to revoke the firearm certificate and the application for leave accordingly is dismissed.