

23 November 2018

Legal Opinion on Classification of Firearm Length

I have been instructed by the New Zealand Licenced Firearms Dealers Trust (NZLFD Trust), to give a legal opinion on recent cases concerning the measurement of firearms.

The New Zealand Police published a new classification policy in regards to how firearms should be measured. The main thrust was that firearms should be measured in their shortest, most reduced form; all folding stocks were to be folded or collapsed and any muzzle devices, barrel extensions, silencers and flash eliminators removed, regardless of whether or not they were permanently attached.

In the last few months there have been some District Court decisions relating to how a firearm is to be measured. Unfortunately we have two decisions that are conflicting with each other in some regards.

The first recent case to consider is **Police v Dodd 2018, NZDC 22213**, heard at Whakatane District Court on 13 September 2018. Mr Dodd was found guilty of the unlawful possession of a pistol, because he was in possession of two .22 rifles that had considerably shortened barrels with suppressors. These are defined as accessories by the court and can be removed for determining the length of the firearm. The Judge at paragraph 12 said “... *it is not disputed a firearm is made up of a stock, receiver and barrel ... silencers, suppressors, telescopes are all in my view, accessories which can be added or removed ...*”. This point aligns with the police policy for measurement, that muzzle devices that can be removed will not be included in the length measurement of a firearm.

However, the Judge continued by saying that “*If such an item was welded to the firearm then I would be satisfied that it became part of the firearm ...*”. This in all

effect disagrees with the police policy that if muzzle devices are “permanently attached” (welded, pinned etc) then they cant be measured and included in the overall firearm length. There are a number of methods used to permanently attach a muzzle device, including various forms of chemical, heat and brazing welding which would be in line with the Dodd decision. Even blind pinning would be reasonably considered to be “permanent” under this decision. In this instance please seek advice from a gunsmith who will be able to assist you.

The second recent case to consider is **NZ Hunter Group v The Commissioner of Police 2018, CIV 2017-004-002273 AKDC**, heard at the Auckland District Court on 21 November 2018. This involved an appeal against the police re-classifying an MSSA firearm that was being imported, declaring it to be a pistol and seizing it. The decision in this case was that the police policy was correct, in that an MSSA firearm should be measured with its stock folded and not in the open position. The decision of this court did not address the muzzle device issue at all, leaving the comments from *Police v Dodd* above to stand.

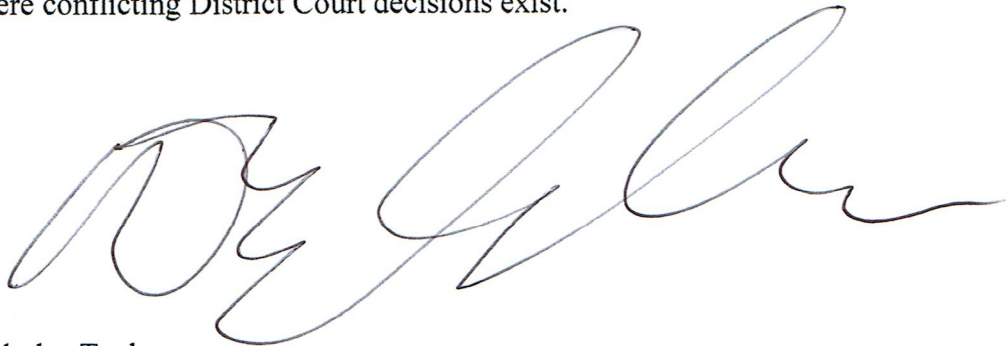
This decision seems to be in direct conflict with the decision in *Police v Dodd* above, and in fact Judge Sharp expressed that she did not agree with Judge Bidois in the *Police v Dodd* decision, where he said at paragraph 12 “*In my view the length of the firearm is to be measured from stock to the end of the barrel ...*”. If applied to MSSA rifles, this can be read as from the “end of the stock”, and with a folding stock there is no stock unless it is extended.

A reasonable extension, in my opinion, is therefore that if a folding stock was also welded (ie. permanently) in the open position, preventing it from closing, then it would comply with the ruling in *Police v Dodd*, ie. from the end of the stock. In some ways it would also comply with the ruling in *NZ Hunter Group v Commissioner of Police*, as the Judge ruled that the MSSA stock should be measured folded, but made no direct comment regarding whether or not the stock could be closed, even though this was an issue raised at the hearing.

The Judge in NZ Hunter Group went so far as refusing to consider this possibility and only dealt with the firearm solely as it was imported, with a fully functional, collapsible/folding stock. This, in my opinion, leaves the door open to apply the principles expressed in the Dodd decision to both the stock issue as well as any muzzle device fitted, as the Judge in Police v Dodd refers to these as “... *accessories which can be added or removed. If such an item was welded to the firearm then ... it became part of the firearm ...*” (paragraph 12, lines 2 - 4).

In regards to the folding stock issue, ie. whether it is measured folded or not, this remains unclear, with these two decisions saying different things concerning the overall measurement of firearms, particularly given the fact that one of Mr Dodd’s firearms had a folding stock.

It would be prudent at this stage to make an enquiry as to a definitive answer in the High Court via Judicial Review (Declaratory Judgments Act) as is often required where conflicting District Court decisions exist.

A handwritten signature in black ink, appearing to read 'N. Taylor', written in a cursive style.

Nicholas Taylor
Barrister at law