

Update on the Court Cases by Martin Hood

The three court cases relating to lapsed licences were heard this week in the North Gauteng High Court, Pretoria.

I am going to combine certain personal comments in this communication with certain factual comments.

1)The SA Hunters and Game Conservation case was thoroughly argued and this related, amongst other issues to the Constitutionality of the relicensing provisions. SA Hunters have asked for more relief than this, but the main relief is the setting aside the relicensing provisions as unconstitutional. I believe that this application should be successful and congratulate SA Hunters for the decision to bring this legal challenge.

2)When the South African Arms and Ammunition Dealers Association commenced their case, the Judge commented that she had some difficulties, inasmuch as what SAAADA was proposing to do could only happen after she had ruled (if she rules for the SA Hunters) that Sections 24 and 28 of the Firearms Control Act were unconstitutional and she had concerns that she could not decide the SAAADA case until a decision had been made on the Constitutionality of the renewal provisions of the SA Hunters case.

We pointed out to her and to our opposition that the SAAADA case was not only about the directive, but that SAADA wanted an interdict to stop the destruction of firearms, and there were certain administrative issues specific to dealers that needed to be addressed.

Various discussions took place and a Court Order was agreed. The first part of the Court Order was that no firearms surrendered in terms of the directive of 3 February 2016 were to be destroyed. This is particularly important, because the police indicated to us that they were about to start a process of destroying the firearms in May 2017.

The police also were ordered to process certain dealer specific forms in order to update the records of the Central Firearms Registry.

3)With respect to the Fidelity application, the Judge indicated that because Fidelity was also challenging the Constitutionality of Sections 24 and 28 of the Firearms Control Act, there was no need to reargue the case that had been argued by SA Hunters. The second part of the Fidelity case was to ask for the issue of Section 21 Permits to legalise the possession of firearms on an expired licence. The Judge indicated that this argument was premature, because she first had to make a decision on the Constitutionality of Sections 24 and 28 (of the previous two cases) and in the event that they were declared unconstitutional, she would then require arguments about what possible solutions could be put in place.

The Judge has indicated that both the dealers and Fidelity would be expected to go back and present arguments and information possibly even expert evidence as to what could be proposed workable solutions to expired licences in the event that Sections 24 and 28 are declared unconstitutional.

The Judge made a number of comments that deserved to be repeated here and I paraphrase them.

She indicated that it was clear that the Act itself was bad law in some respects and that the administration thereof was clearly chaotic. She even went to the extent of asking the State's Counsel in the Dealers matter whether he wanted to dispute this and he declined to do so.

We had discussions about an interim solution for Fidelity in the form of the issue of Section 21 Permits to legitimate possession and use of firearms and expired licences and, against legal

advice and recommendations from the State's own legal advisors, Jaco Bothma refused to even accept Section 21 applications, let alone process them. This in itself coming from Bothma is unsurprising, but again shows the arrogant, uncompromising attitude of the police, and in particular Bothma. Administrative law does not allow him to prejudge an application and refuse to accept it. His reasoning is quite simply, once a licence has expired that firearm is illegal and the firearm owner has deliberately broken the law and should be given no compromise.

Again, this is an indication of Bothma's true colours. However, in being such an inflexible thinker, the following seems to have escaped Bothma:

On the one hand had he sought practical solutions to the issue of expired licences, such as allowing late applications in one or other manner and/or issuing of Section 21 Permits, then the provisions of Sections 24 and 28 would not have been challenged.

However, Bothma has forced the firearm community into challenging Sections 24 and 28, in doing so he may well have paved the way for the renewal provisions to be declared unconstitutional. If they are declared unconstitutional, the consequences of this can only be imagined, but one thing is clear that there will be no criminal or other consequences for a person who has let their licence lapse and it may well be that the State will be forced to amend the legislation. Thus a key part of Bothma's and Government firearm control strategy will be exposed as terminally flawed all because of an inflexible and intellectually challenged attitude to the legislation and legal firearm owners.