

**IN THE HIGH COURT OF NEW ZEALAND,  
CHRISTCHURCH REGISTRY**

No \_\_\_\_\_

<b>UNDER THE</b>	Bill of Rights Act 1990
<b>IN THE MATTER OF</b>	A claim in tort and breach of s27 of the New Zealand Bill of Rights Act
<b>BETWEEN</b>	<u>Richard Lincoln</u> , of Christchurch, Law Student / Paralegal. <b><u>PLAINTIFF</u></b>
<b>AND</b>	<u>The Commissioner of New Zealand police</u> , 180 Molesworth Street Wellington. Commissioner of police <b><u>FIRST DEFENDANT</u></b>
<b>AND</b>	<u>Barry Ross Taylor</u> , 180 Molesworth Street, Wellington. Commissioned officer of police. <b><u>SECOND DEFENDANT</u></b>

**STATEMENT OF CLAIM**

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## **THE PARTIES**

1. The plaintiff, **RICHARD LINCOLN** was at the material time a law student and a civilian gun owner aged in his mid fifties.
2. The second defendant, **BARRY ROSS TAYLOR** was at the material time a public official employed by the first defendant.
3. **KARA TITHERIDGE** was at the material time a police arms officer carrying out a public function of her office
4. The second defendant **BARRY ROSS TAYLOR** was at the material time carrying out a public function of his office.
5. The first defendant, **COMMISSIONER OF POLICE** was at the material time the employer of the second defendant and is vicariously liable for acts and omissions done in the course of the second defendant's public function.
6. The first defendant, **COMMISSIONER OF POLICE** was at the material time, the employer of **KARA TITHERIDGE** and is vicariously liable for acts and omissions done in the course of her public function.

## **BACKGROUND**

### **First declaratory judgment**

7. In 2009 New Zealand police published an advisory to all civilian gun owners to the effect that anyone possessing a semi-automatic firearm equipped with a thumbhole stock was in possession of a military style semi-automatic (MSSA) firearm and therefore, to have lawful possession, required an endorsement issued under s 30B of the Arms Act 1983.

8. The plaintiff was in possession of a Heckler and Koch (H&K) semi automatic rifle with a thumbhole stock which he considered to be in sporting configuration and not a MSSA firearm.
9. The plaintiff applied to the High Court in Palmerston North for a declaration that his Heckler and Koch rifle was not a MSSA.
10. Subsequently, Justice Mallon's decision, delivered in 2010, made a declaration that the plaintiff's rifle was not a MSSA firearm.
11. Justice Mallon's decision also clarified that civilian pattern freestanding pistol grips were not a feature of a military style semi-automatic firearm.

#### Intervention of Parliament

12. The Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act 2012 subsequently amended the Arms Act 1983 and introduced a regime whereby the definition of a pistol grip as applied to a MSSA, was to be regulated by order of the executive council.
13. A new definition of a pistol grip as applied to a MSSA was regulated in the Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013.
14. The Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013 came into force on 11 December 2013.

#### Plaintiff's application for an endorsement

15. In September 2011, in anticipation of the possible law change, the plaintiff commenced communications with the New Zealand police for the purpose of obtaining an endorsement for his H&K.
16. On 15 September 2011, the plaintiff wrote to the Christchurch police arms officer, Jason Bruce and said "I thought if I regularise my SL8 as

an MSSA now, I won't get caught up in any arguments about the magpul kit which Terry Russell is obtaining for me (if police succeed in getting their way with the arms amendment bill and regulations.)"

17. Police would not issue the plaintiff with an endorsement because they claimed that a permit to procure was required and that because the H&K was not a MSSA, no permit could be issued.
18. Police also maintained a blanket policy that they would not make an endorsement on a firearms licence until the holder thereof had security in place and congruent with regulation 28 of the Arms Regulations 1992 and that had been inspected by a police arms officer.

Second declaratory judgment

19. On 4 May 2012 the plaintiff applied to the High Court in Christchurch for orders that, among other things:
  - (a) a permit to procure was not required when a firearms licence holder wanted an endorsement for a MSSA firearm that they intended to manufacture themselves;
  - (b) police could not refuse to make an endorsement unless and until the licence holder had security in place congruent with regulation 28 of the Arms Regulations 1992.
20. In pre-trial submissions to the High Court dated 14 March 2012, Crown Law submitted to the High Court on behalf of the first defendant that:
  - (a) "No conditions are proposed to be imposed under s 33A(2) on the endorsement the applicant has sought;"
  - (b) "The pre-approval of security precautions is not a s 33A(2) condition..."

21. On 18 July 2013, Justice Pankhurst delivered the High Court judgment.
22. The judgment of Justice Pankhurst confirmed that a permit to procure was not required when a firearms licence holder wanted an endorsement for a MSSA firearm that they intended to manufacture themselves.
23. The judgment of Justice Pankhurst said in obiter that security precautions appeared to be prospective.

#### District Court Appeal

24. On 14 August 2012 the plaintiff also applied to the District Court at Christchurch for orders under appeal pursuant to s 62 of the Arms Act 1983 against a constructive refusal to make the endorsement applied for.
25. The appeal to the District Court overlapped with the High Court application for declaratory orders.
26. Following delivery of the High Court judgment, the District Court appeal remained at large and negotiations for settlement then commenced between Crown Law for the first defendant and the plaintiff.

#### Settlement agreement

27. The plaintiff wrote to Crown Law counsel on 18 July 2013 and proposed,
  - (a) a "good faith" approach where he agreed to not remanufacture his H&K until the police were satisfied that he had installed appropriate security;

- (b) refusal of the good faith approach would result in the continuation of the District Court appeal.
  
- 28. On 25 July 2013, Crown Law for the police submitted to the District Court a memorandum reaffirming the police position that provision of security was a relevant consideration in the fit and proper test.
  
- 29. Crown Law counsel responded on 26 July 2013 and said,
  - (a) "The Area Commander will be advised that the absence of pre-approved security precautions is a relevant factor in his assessment whether you constitute a fit and proper person to possess your intended military style semiautomatic firearm (MSSA) for the purpose of s 30B of the Arms Act 1983, but that the pre-approval cannot be insisted upon prior to the grant of the endorsement and therefore it's absence is not fatal to your application. If you remain willing to undertake to allow inspection and approval prior to taking possession of your intended MSSA, that will be a relevant factor in the Area Commander's decision that will be considered favourably."
  
  - (b) "On that basis we consider that your appeal is moot an invite discontinuance. If the appeal proceeds, we will place this letter before the Court. If the appeal is discontinued, the respondent will pay any reasonable disbursements incurred by you."
  
- 30. On 26 July 2013, the plaintiff responded to the police proposal submitted by Crown Law and proposed a chronology that,
  - (a) "Notification of application to be advised no later than 9 August 2013;"
  
  - (b) Firearm details to be restated if needed; "notice detailing applicable firearm and any conditions attached to the endorsement in reasonable time;"
  
  - (c) "District Court appeal abandoned, or continued if required;"

- (d) "Security precautions to be installed;"
  - (e) "Arrangements for security inspection by police;"
  - (f) "Security inspected and approved by police in writing;"
  - (g) "Remanufacture / conversion of firearm;"
  - (h) "Notification of completion of conversion provided to police without delay."
31. On 26 July 2013, Crown Law for the police responded and said that the plaintiff's settlement proposal was accepted subject only to an extension of time from two to five weeks.
32. In September 2013, Crown Law for the police emailed the plaintiff a memorandum to discontinue his District Court appeal and the plaintiff duly and promptly signed that memorandum.

Breach of settlement agreement and ultra vires conditions

33. On 15 August 2013 the Christchurch police arms officer Jason Bruce notified the plaintiff that the second defendant had made the sought endorsement on the plaintiff's firearms licence.
34. On 15 August 2013 the second defendant while purporting to exercise his power of office purported to impose conditions precedent on the endorsement he made on the plaintiff's firearms licence purportedly pursuant to s33A(2) of the Arms Act 1983.
35. As the decision maker, the second defendant owed a duty of care to the plaintiff to deal with the plaintiff's application for an endorsement in accordance with the law and the aforementioned settlement agreement.

36. As a member of the police with civil administrative responsibility of the Arms Act 1983, the defendants owe a general duty of care to all civilian gun owners.
37. The conditions precedent that the second defendant purported to impose on the endorsement he made on the plaintiff's firearms licence were:
- (a) "The endorsement holder may not take possession of the MSSA or any other MSSA for which he obtains a specific endorsement until he has first installed the required security and had that security inspected and approved by Police;"
  - (b) "The endorsement holder must advise his local arms office by email within 24 hours of taking possession of the above specified MSSA;"
  - (c) "The endorsement holder must bring the MSSA into his local arms office for inspection within 21 days of taking possession of the MSSA. If, on inspection, the arms officer deems it necessary, the endorsement holder will be required to submit the MSSA to the Police armourer for testing and/or examination in order to determine its safety."
  - (d) "It is a condition of this endorsement that the endorsement holder have 24 hour access seven days per week to his MSSA security installed there."
38. The second defendant knew that his statutory authority under s33A(2) of the Arms Act 1983 only authorised him to impose as conditions on an endorsement, such conditions with regard to the use or custody of a military style semi-automatic firearm as he saw fit.
39. The second defendant knew and / or was recklessly indifferent to the unlawfulness of the conditions precedent that he imposed on the endorsement on the plaintiff's firearms licence set out in paragraph 37 of this statement of claim.

40. The second defendant knew and / or was recklessly indifferent to the risk that imposing conditions precedent, unrelated to the custody or use of a military style semi-automatic firearm, on the endorsement on the plaintiff's firearms licence would likely injure the plaintiff.
41. On 15 August 2013 the second defendant, without observance of the principles of natural justice, and therefore in breach of s 27 of the New Zealand Bill of Rights Act 1990, purported to impose conditions on an endorsement made on the plaintiff's firearm's licence without having first given a notice of consideration to the plaintiff.

#### New firearms licence

42. In February 2013 the plaintiff made an application to the police for a new firearms licence in consideration of his then current firearms licence expiring 11 months later on 1 December 2013.
43. On 6 November 2013, a police arms officer Kara Titheridge emailed the plaintiff and said that she was dealing with the plaintiff's application for a "firearms licence and endorsement."
44. On 29 November 2013 Kara Titheridge emailed the plaintiff and made it clear that she was the decision maker who was making the official decisions concerning the plaintiff's new firearms licence and endorsement. She said "I will make any enquiries I see fit, so as to ascertain clarification of any details in regard to your application, wether<sup>(sic)</sup> that be as to your 'fit and proper status' and/or any necessary security requirements. I need to make an informed decision as to wether<sup>(sic)</sup> or not I will 'approve' or 'refuse' the application."
45. On 01 December 2013, the plaintiff's firearms licence (and therefore the endorsement made on it) expired.
46. On 2 December 2013, Kara Titheridge telephoned the plaintiff and discussed his application for a new firearms licence and in that call

*inter alia* advised the plaintiff that her consideration of his application for a new licence included possession of any firearms that were endorsed on his expired licence.

47. On 12 December 2013 Kara Titheridge emailed the plaintiff and told him that she had issued him a new firearms licence and that it would be sent to the plaintiff's address in Christchurch.
48. Kara Titheridge did not at any time serve a notice of consideration on the plaintiff advising him that she was contemplating imposing conditions on the endorsement she made on the plaintiff's new firearms licence.
49. Kara Titheridge did not at any other time, notify the plaintiff of any conditions she had imposed on the endorsement she made on his new firearms licence.

Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013

50. Following the declaratory judgment of Justice Mallon in 2010, the plaintiff had installed a civilian pattern free standing pistol grip on his H&K rifle.
51. On 10 December 2013 the Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013 came into force and the plaintiff's Heckler and Koch SL8 s/n 48-016827 would have been reclassified on that date by that enactment as a military style semi automatic firearm because it had a pistol grip in terms of the aforementioned Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013.
52. Before 10 December 2013, and because the plaintiff did not have police approved security precautions for a military style semi automatic firearm, he deactivated his Heckler and Koch SL8 firearm s/n 48-016827 by removing the trigger group. Without it's trigger group the rifle would not be able to function and a replacement trigger group parts would not be able to be covertly obtained in New Zealand.

53. Before 10 December 2013, and because the plaintiff did not have police approved security precautions, he removed the pistol grip feature from his Heckler and Koch SL8 firearm s/n 48-016827 and dispossessed himself of it by placing it in the custody of a licensed and endorsed firearms collector.

Receipt of new firearms licence

54. On or about 01 January 2014 the plaintiff received by surface mail from the New Zealand police, at his address in Christchurch, a new firearms licence card and new endorsement card;

- (a) The enclosed covering letter made no mention of any conditions imposed on the endorsement made on the new licence;
- (b) The new endorsement card had no conditions printed on it.

Plaintiff's provision of security precautions

55. The plaintiff subsequently set about communications with the police arms officer in Timaru, John Wainwright; seeking and receiving in writing:—

- (a) endorsement conditions and specifications for police approved security precautions (16 September 2014;)
- (b) specifications for police approved fixing of security precautions (13 December 2014;)
- (c) advice on additional key / combination number security for police approved security precautions (13 January 2015.)

56. In October 2014 the plaintiff was gifted a gun-safe by a licensed arms dealer, Paul McNeil; who advised the plaintiff that said safe had been imported from China and had been inspected and approved by John

Wainwright for the purpose of storing a military style semi automatic firearm.

57. The plaintiff checked the specifications of the safe against the written police approved specifications provided by John Wainwright as per paragraph 55(a) above, and found that the specifications were either met or exceeded.
58. During the period between December 2014 and February 2015, the plaintiff fulfilled his statutory obligations under s 33A(1) of the Arms Act 1983 and r 28(1)(c) of the Arms Regulations 1992.
59. By February 2015 the plaintiff had a safe installed that was approved in writing by a member of the police for the purpose of storing a military style semi-automatic firearm; and bolted in a manner approved in writing by a member of the police to the building within which the military style semi-automatic firearm is kept.

#### Police misconduct

60. In the weeks prior to 17 September 2015, the plaintiff was in communication with a licensed arms dealer in Christchurch who operated the business Canterbury Gun Works.
61. The plaintiff had arranged to have Canterbury Gun Works modify his H&K rifle to improve it's utility in competition sport shooting.
62. On the morning of 17 September 2015, the plaintiff assembled his H&K rifle by reattaching the pistol grip and reinstalling the trigger group.
63. The plaintiff secured his H&K rifle in his immediate physical possession in accordance with r 28 of the Arms Regulations 1992 by either placing it next to him in the foot-well of the passenger side of his vehicle or, while leaving said vehicle unattended, he secured it in his immediate physical possession by carrying it on his person.

64. A member of the public saw the plaintiff while he was in the process of transporting his firearm to the licensed gun dealer and called the police.
65. Police stopped the plaintiff's vehicle at Dunsandel; and despite the plaintiff openly displaying empty hands and complying with all the police instructions, an officer named James Andrew Manning threatened the plaintiff with a firearm by hovering his hand, 'cowboy style' above his Glock sidearm while screaming at the plaintiff to place his hands above his head.
66. Manning searched and then questioned the plaintiff about what he was doing.
67. The plaintiff gave such information as Manning required to complete his enquires and be on his way. In particular, the plaintiff advised that:—
  - (a) he was a licensed civilian gun owner;
  - (b) that he had a MSSA firearm in his vehicle;
  - (c) that he held the appropriate endorsement for said firearm;
  - (d) that he was taking the firearm to a licensed gun dealer for modification.
68. Manning then tried to argue with the plaintiff and told him that he could not use a toilet with a firearm secured in his immediate physical possession and had to leave the firearm in his vehicle.
69. The plaintiff advised Manning that he would be in breach of regulation 19(2)(c ) and regulation 28 if he left his firearm in his unattended vehicle instead of secured in his immediate physical possession.
70. Manning was confrontational but the plaintiff kept speaking normally and trying to calm Manning, who was armed with both a Taser and a

sidearm. Manning was becoming increasingly aggressive and belligerent.

71. Manning kept trying to argue about the law with the plaintiff and moved very close to the plaintiff who was standing exactly where Manning had previously directed him to. At that point the plaintiff realised that Manning was ignorant of the law and would not be reasoned with and said "well you're entitled to your opinion but you're wrong." At that point Manning completely lost his temper and suddenly lashed out and struck the plaintiff forcefully on the left shoulder and purported to arrest him.
72. The plaintiff asked Manning what charge he was arrested on. Manning said "obstruction". The plaintiff then asked Manning what the factual grounds were for him being arrested for obstruction. Manning did not answer.
73. Manning had no reasonable grounds to suspect that the plaintiff was obstructing the police.
74. The police then unlawfully searched the plaintiff's vehicle and seized his rifle.
75. On 17 September 2015 the police claimed that the endorsement made on the plaintiff's new firearms licence was "invalid" on the grounds that the conditions imposed on the endorsement on the plaintiff's expired firearms licence were not complied with and they charged the plaintiff with unlawful possession of the military style semiautomatic firearm to which the endorsement on his new and current firearms licence applied.
76. On 17 September 2015 the police claimed that the endorsement made on the plaintiff's new firearms licence was "invalid" on the grounds that the conditions imposed on the endorsement on the plaintiff's expired firearm licence were not complied with and they charged the plaintiff with possession without a lawful proper and sufficient purpose

of the military style semiautomatic firearm to which the endorsement on his new and current firearms licence applied.

77. On 17 September 2015, the plaintiff was unlawfully detained by the police at the Ashburton police station and was forced to surrender his firearms licence to secure his own release and prevent further unlawful entry into and searches of his residential property and vehicles.
78. On 17 September 2015, the plaintiff's residence and vehicles were unlawfully searched five times by the police.
79. During one of the unlawful searches a police officer named Narida Manson told the plaintiff that she was searching his house for firearms on the grounds that the plaintiff was mentally unstable. When asked what her factual grounds were for suspecting that the plaintiff was mentally unstable, she was unable to state any.
80. While being unlawfully detained at the Ashburton police station the plaintiff was without consent, subjected to a psychiatric diagnosis by a mental health nurse called in by police. The nurse subsequently wrote that there was no evidence of the plaintiff being mentally unstable or a danger to any person; including himself.
81. A police officer named Gregory Sutherland trespassed onto the plaintiff's property. He entered an enclosed, gated and bolted yard at the rear of the property and peered through the closed windows. He alleged that there was a dead body on the plaintiff's living room floor because, he said, he had seen some shoes and some clothing. He then smashed a window and broke into the plaintiff's house and conducted an unlawful search where he "located" the plaintiff's gun-safe.
82. Sutherland then attempted to justify his trespass by saying that he wanted to make enquires of the householder as to why the plaintiff was walking around with a firearm in an "agitated" state; when he knew the plaintiff was the householder and was not at home because

he was being detained by the police at Ashburton. Sutherland had no grounds to suspect that the plaintiff was in anyway agitated.

83. More than a year after the plaintiff was charged and in spite of various discovery requests by counsel and statutory obligations, the police concealed an exculpatory statement they obtained from Canterbury Gun Works on 17 September 2015.
84. The plaintiff has suffered humiliation, anxiety and distress because he has been unjustly dragged through the criminal justice system.
85. The plaintiff has had approximately \$25,000 worth of tangible property unlawfully taken from his possession by the police during their illegal entry into his residence and vehicle.
86. The plaintiff has suffered economic loss having to defend himself against the aforementioned criminal charges.
87. The plaintiff has had his academic achievement undermined and had to apply for an aegrotat pass because of the stress and anxiety caused by the police prosecuting him.
88. The police caused humiliation, fear and anxiety by fabricating false allegations that the plaintiff was mentally unstable and that there was a dead body on the floor of the living room in his residence.

### **WHEREFORE THE PLAINTIFF CLAIMS**

- I. General damages in the sum of \$850,000 —
  - (a) as against the first defendant in tort for assault, false imprisonment, negligence and by vicarious liability for misfeasance of public office and negligence by the second defendant;
  - (b) and as against the second defendant for misfeasance of public office and negligence;

- (c) as against the first defendant for breach of the New Zealand Bill of Rights Act 1990 in compensation for breach of the right to natural justice by the second defendant and the first defendant's arms officer Kara Titheridge;
- II. Restitutionary damages at a value to be ascertained against the first and second defendant for negligence and misfeasance of office for loss of firearms and other property and legal expenses for defending the prosecution of the plaintiff by the police;
- III. Aggravated damages in tort of negligence and misfeasance of office in the sum of \$150,000 as against the first and second defendants;
- IV. Exemplary damages in tort of negligence and misfeasance of office in the sum of \$55,000 as against the second defendant;
- V. Such other remedy as the court thinks just and fit;
- VI. Costs and disbursements associated with this proceeding.

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**Signed by Richard Lincoln**  
(Plaintiff)

Dated. Monday, 6 February 2017