

Frank Brophy tells

# The Truth and Nothing but the Truth

**Regular readers of Irish Country Sports may recall my article “Tilting at Windmills” published in 2005 Summer’s edition relating to a successful High Court action I took during 2004 in order to secure a licence for a target pistol. This ground-breaking litigation opened the door for other applicants to apply for pistol permits and clubs to form in Ireland once again. Back then a second hearing was pending to overturn a decision refusing to grant a licence to me for a .375 rifle. On February 5<sup>th</sup> last in Dublin’s Four Courts the State’s Legal Representatives agreed to the issue of the rifle certificate and to pay my entire legal costs. Much has occurred between that day in 2004 when I received the first pistol licence issued to a citizen of Ireland for 32 years and this latest court victory. Facts and fiction concerning the licensing situation have been bandied about like confetti. With the legal actions over, now is a good time to finally put the record straight.**

The entire problem stemmed from the introduction of the Firearms Temporary Custody Order in July 1972, which, on expiry after one month was used by civil servants and government ministers to circumvent the statutory function of Garda Superintendents in the issue of firearms certificates. Superimposing a policy on the law of the land in any circumstance should have set warning lights flashing throughout the establishment but no one noticed or wanted to notice so the Government of the day and its successors literally got away with it. It’s all history now and we can’t put the clock back – but, in my opinion, the fact that it was allowed to happen strengthens the argument for a Commission to oversee the Garda force rather than Politicians and/or the Department of Justice as is presently the case. The fact that a Minister can convey instructions that may at some future time be proven to be unlawful to the head of a police force is, in my opinion, the precise reason why the establishment of a Commission is so necessary. That’s the political speech out of the way.

It’s reasonably well- known that for very many years I had been pursuing every avenue available in order to overturn the Government’s dubious firearms policy and had built up an extraordinary correspondence file with both the State and a number of Garda Superintendents. My High Court actions and others presently in train precipitated the current on-going solution to the problem and it’s worth relating some of the events that took place. Notwithstanding that I did want a pistol licence the final reckoning in 2004 came about because of a .375 rifle that I had bought and stored in the UK. I was hunting regularly in Africa, needed the .375 rifle more than a pistol at that particular time and was of the opinion that there could be no logical obstacle to securing a licence. The fact that I

had held a licensed 7.62mm NATO calibre target rifle from 1980 into the early 1990's strengthened that belief. Letters flew back and forth – demanding that my applications should be considered in accordance with current legislation and not Garda or Government policy. All replies ignored the references to legislation and finally a letter arrived stating that the Superintendent did not intend to communicate with me any further on the matter. That was the straw that broke the camel's back and I decided to throw the book at him thereby challenging the entire establishment and it's now proven unlawful policy. The NARGC had come on board at this point and I presented myself to its legal team along with documents relating to the pistol applications I had been making for dozens of years, plus the more recent .375 rifle paperwork. These documents were a lawyer's dream come true as they were ready-made for a judicial review application. It was decided to run with the pistol case first followed by the rifle appeal. I protested at this decision because my priority was the rifle not a pistol and I incorrectly believed that a pistol case was about to be taken elsewhere, although subsequent events proved that I was always the only game in town. The lawyers' decision stood and the pistol issue took precedence. The resulting High Court victory opened the door to the re-licensing of pistols after 32 years and I'm very pleased to have been in a position to be the cause of this happening. However if the Superintendent had issued a licence for my .375 rifle in the first instance I probably would have walked away and not pursued the pistol situation at that time. Is that Poetic Justice?

Leave was again granted in the High Court for a Judicial Review into the rifle licence refusal and things were looking good. In mid 2004 I happened to meet the then Minister for Justice - he told me that he was pleased I had won the pistol case and that he had issued instructions that the rifle case was not to be opposed in the High Court. He also confirmed my belief that the promised firearms legislation review was a non event. A third party witnessed the meeting and heard the entire conversation. Things were looking even better. Apparently no-one had informed the Superintendent because shortly afterwards an affidavit was lodged in Court defending his refusal to issue the rifle certificate. In the meantime other individuals applied for and received licences for .375 rifles and I found myself in the anomalous position of being a victim of my own success. Further affidavits were lodged by both sides and we successfully sought Discovery of Garda and Department of Justice firearms licence-related documents. We were obliged to make three applications for court orders due to the paucity of documents initially handed over. The State papers that were finally produced are astonishing –the Garda report on me and my “very dangerous weapon” is interesting as is a letter from a top Garda suggesting ways of refusing my application - despite the Supreme Court's 2003 confirmation that no one can influence a Superintendent's decision in the issue of a firearm's cert! There's much more. Finally winning the rifle appeal brought the entire legal saga to an end although getting to that point was not without its difficulties. Hearings had been scheduled for both July and October 2007 only to be cancelled in the court at the last minute on both occasions because a Judge was not available to hear the case. The current amendments to the firearms acts were brought about by these court challenges and others presently in the legal system. Approximately seventy (70) NARGC-backed Judicial Reviews are before the High Court at the time of writing. Other individuals had seen that it could be done, took their courage in hands and stood up to be

counted. The State recognised that it had a problem and the amendments to the Firearms Act plus the Firearms Consultative Panel now in place are the result. It's gratifying to note that the new guidelines for Superintendents relating to the issue of firearm certificates foresee situations whereby an applicant may require a large calibre firearm for use overseas. When I had aggressively dismissed the .375 rifle refusals based on Garda and Government policy, a feeble excuse was introduced indicating that the certificate could not be granted because the firearm was to be used "outside the jurisdiction". Overseas!

A number of situations both amusing and frustrating arose prior to the pistol hearing in 2004. When it became public knowledge that I was taking a legal challenge I became "persona non grata" for many. Litigation is a very lonely place. A handful of shooters and clubs supported my efforts in the early days and I'll be forever grateful to them for that. They know who they are and I have written to all thanking them for their support. Following the successful pistol hearing, the number of individuals emerging to claim credit for their return may well rival the attendance in Thomond Park the day Munster beat the All Blacks. Some even received awards for their efforts! Apparently they negotiated the deal by "chipping away". They might still be chipping away if the .375 rifle licence had been granted and I hadn't bothered with the pistol issue. A widespread rumour was also circulating to the effect that I received in excess of half a million Euro in compensation. For the record I didn't look for or receive one cent. Judicial reviews are not about compensation. I paid all my own expenses when travelling to/from Dublin including lunches, petrol, parking, photocopying - everything. I did not receive the price of a cup of tea for either case. Indeed we were the victims of an attempted mugging on one occasion having just left the Four Courts. The ungrateful wretch must have thought that I had the half million in my pocket! The piece de resistance occurred even prior to the legal challenges with a phone call received from the Department of Justice on the afternoon of 12th March 2004. I had probably upset someone of immense importance by discovering that the then current firearms legislation review wasn't too current at all. The supposed talks taking place at that time with shooters' representatives appear to have been a stalling tactic. This phone call followed a fairly starchy letter sent to me enclosing a Ministerial Dail statement about further restrictions on the shooting community. The content of the "Ministerial Statement" was entirely incorrect and I pointed this out by sending the Department of Justice exact details of what the Minister had actually stated - I downloaded it from the Government's web-site for them! The call was an attempt to retrieve the erroneous document and there was no way I was parting with it. When it became clear I was not that gullible, a scud was launched. The female caller invoked the previous day's dreadful bombing atrocity in Madrid and stated that due to that particular outrage it would be a long time before concessions were made to the shooting community in Ireland. She had no idea that I was already coming down the legal tracks at full speed or that a sworn affidavit recording the content of that particular telephone conversation would be made and forwarded to Solicitors.

I'm smiling now but I wasn't when it all started. The enormity of taking on the entire apparatus of State - the Cabinet, Department of Justice, Garda authorities and possibly public opinion was a serious business, despite being backed by the NARGC. It was a

step into the unknown at that time and caused a few sleepless nights. What I never foresaw was the number of individuals within the shooting community having no conception of what had been involved or transpired behind the scenes who would later attempt to hijack the result as theirs. This nonsense is not worthy of comment other than to point to Dublin's High Court where it is a matter of public record that I was the successful Plaintiff in the pistol case in June 2004 and in July of that year received the first pistol licence issued in Ireland since 1972. It took a little longer to secure the .375 rifle licence - approaching six years from the first application! However it was worth the wait - the documents we discovered via court orders are priceless. These are going to be sent to the DPP for him to decide if any charges should be brought. I have been reliably informed that there are those in high places who would willingly burn me at the stake – metaphorically speaking of course – for ruining their 32-year cosy arrangement not to licence sporting pistols. That's rather amusing because I wasn't the one who set aside the law of the land. Garda Superintendents nationwide should be thanking me for bringing about a situation that obliged the State to restore their statutory function in the unfettered issue of firearms certificates. Don't hold your breath! To date I have received several approaches from Law Students seeking access to my files for academic purposes and have had no hesitation in acceding to their requests. British Lawyers are also perusing these files for ideas that might be incorporated into a forthcoming challenge to the UK Government's anti-firearms legislation.

Yes, I'm still smiling. If necessary I'd do it again. I'll be much better next time!