

# “Tilting at Windmills”

*By*

**Frank Brophy**

Its common knowledge by now that I succeeded in my High Court action against the long-term refusal of the Authorities in the Republic to issue a firearm’s license to me for a .22 target pistol. I took this action out of sheer frustration with a system that has consistently refused to even consider applications for other than nominated calibre of sporting firearm. The standard reason for all such refusals during the last thirty-two years was “Garda Policy”. This “Policy” was a consequence of the now infamous Temporary Custody Order implemented by then Minister for Justice Desmond O’Malley in 1972. The order signed into effect on August 2<sup>nd</sup> of that year was designated “Firearms (Temporary Custody) Order, 1972”, and was listed as Statutory Instrument No.187 of 1972. A section of the 1964 Firearms Act does indeed permit a Minister for Justice to implement a temporary custody order for firearms if he considers it to be necessary, but the same act also requires that the firearms must be returned at the end of a one-month period. Mr. O’Malley and his successors have been responsible the longest one-month period in the history of mankind.

To trace the full course of events throughout those thirty-two years in a single article would be impossible, so I’m confining it to a summary of the events that led to my High Court challenge. Back in 1972, I was as disappointed as everyone else at having to hand up my pistol, and despite meetings during 1972 and 1973 between Dept. of Justice officials and our representatives, it was obvious to me at least, that these guns were never going to be returned. Firearms of any description were demonised in the Ireland of the 1970’s and it became very politically incorrect to be a shooting enthusiast. In 1976 I arranged to have my firearm transported to the Isle of Man and resold. Throughout the rest of the 1970’s and into the 1980’s numerous efforts were made by the NRPDI to try to have pistols released, to no avail. I kept up a steady stream of correspondence asking when I could expect to see a change in attitude, and was frequently irked to receive replies signed by someone in the “Crime” section of the Department of Justice. I could not see then, and cannot see today, any connection between law-abiding citizens, licensed sporting firearms, and Crime. Around that time I purchased copies of the 1925 Firearms Act and its various amendments, and began to study them. It didn’t require a law degree to figure out that we were being duped, the problem was – what to do about it?

I spent years writing to various Ministers, T.D’s, and anyone I could think of in an attempt to get our sporting firearms returned. Replies were less than helpful, many scarcely concealing the contempt in which we appeared to be held in official circles.

Throughout those thirty-two years shooters from the Republic were precluded from any form of International target pistol representation, including eight Olympic Games, although I was a member of the NRPAI Committee that sent Northern Ireland pistol shooter RUC Inspector Ken Stanford to the 1980 Moscow Olympics. This event was totally ignored by the media. All through those years I participated in many pistol-shooting competitions abroad, including quasi internationals and lesser events. I shot in club competitions in England, Wales, France, Spain, Isle of Man, Channel Islands, USA and South Africa. It's probable that I could claim to be the most travelled pistol shooter in the Republic during those 32 years. I had a target pistol stored in Wales for years, and moved it to France following the decision of the UK Government to confiscate pistols after the Dunblane tragedy. I continued to write regularly to the Dublin authorities applying for a pistol licence. They refused just as regularly on grounds that I was convinced were unsustainable in law, and this correspondence began to accumulate into an interesting file. I thought it might be useful one day.

In the 1990's many disenfranchised shooters like myself were still looking for ways to break the deadlock, and a direct result of their activity was the formation of a Firearms Legislation Action Group. FLAG commenced meetings with the Department of Justice, however I was not too impressed because in my opinion logic and that department are not compatible. Long years of experience of being treated as an apparently second class citizen by staff in the Justice Department convinced me that it was always going to be necessary to go the legal route, alone if necessary. I took the first steps in late 2000 when an application I had made to licence a 6.5x55 calibre rifle for target shooting was refused. The application was refused on the grounds of "Garda Policy". I engaged Solicitors and challenged "Garda Policy". The authorities held out until we had gone as far as briefing Counsel in preparation for a High Court Action, then they conceded and issued the licence. I was aware that I had probably found the State's Achilles Heel, although I was left with a considerable legal bill to pay out of my own funds. One year later an action by the NARGC against the Garda Commissioner went all the way to the Supreme Court, where "Garda Policy" was declared to have no legal standing. This again confirmed my belief that the State was probably acting unlawfully in refusing to licence pistols and rifles above .270 calibre. I kept up a continuous stream of correspondence demanding that my applications for a licence for a .22 target pistol should be considered in accordance with existing legislation. My file was starting to bulge at this point and in late 2002 I took the decision to engage Solicitors once again.

An appeal for financial support from shooting interests brought revealing results. A very small number of individual shooters supported me, as well as two shooting clubs, the Leinster branch of the Irish Deer Society and two firearm's dealers. I contacted the Firearm's Dealers Association – no solace there. Reports began to trickle in that I was being described in some shooting circles as a maverick, a loner on a solo run, a cowboy, and other pleasantries. One well attended shooters meeting, of which I was not even aware, voted against supporting me. Someone else told me bluntly "don't rock the boat". Rock the boat? I intended to sink the boat! As it happened, my legal proceedings faltered because we received advice that I had no chance of winning in the High Court and I would probably have to mortgage my home if I intended to continue. By this time

the small amount of funds that had been accumulated had frittered away. I had hit the wall, although I was still convinced that I was right. I started to bombard the authorities with letters once more and contacted MEP Avril Doyle in Brussels who put down a question on my behalf in the European Parliament, and while this didn't solve the problem it proved to be enormously useful at a later stage. In January 2004 the NARGC and two other shooting organisations combined to form a front to tackle the firearms licensing problem. Inexplicably, I was unaware of this development, although I was a member of all three - NARGC, the Irish Deer Society and the NRPAL. In February one of the FLAG chaps who knew of my activities put me in touch with NARGC director Des Crofton. Within twenty-four hours I found myself with my bulky file meeting Des in legal offices in Dublin. The NARGC's legal advisor, solicitor William Egan was of the opinion that I had two Prima Facie cases and within a matter of days I was swearing affidavits in preparation for High Court actions. My correspondence file had come of age. The lawyers decided to run with the pistol application first. There was also the matter of an application for a licence for my .375 calibre rifle and that is still before the court as this is being written.

Once proceedings had commenced and the inevitable waiting set in, I realised that I no longer had control of this personal crusade that I had driven for thirty-two years. It had become the property of the Legal Team and I was not in charge any more. It took awhile to become accustomed to this. Following a number of preliminary High Court Hearings the State eventually conceded without entering a defence, and the rest as they say, is history. The inevitable spin followed with the DOJ trotting out statements to the effect that firearm's licensing was solely a matter for the Gardai. Those of us who have been around for the last thirty-two years know better. The documents that I had submitted in evidence comprised only a fraction of the total, the balance I held in reserve in the event that they might be required in the future. On July 30th 2004, I received the first pistol licence issued in the Republic for thirty-two years, my previous licence having expired on July 31<sup>st</sup> 1972. Pistol licences are currently being issued as a matter of routine to applicants who comply with the requirements in the Firearms Acts. There wasn't any great sense of victory or euphoria at having finally got the better of the mandarins that had abused the democratic system for all those years. No parties – no champagne and there were no apologies. I'll leave it to those who are qualified to write the last chapter, as in if anyone should be brought before the courts to answer for their actions over the past three decades.

I admit to a wry smile at the title of this article. Following the High Court Judge's Order quashing the Garda Refusal to issue a pistol certificate to me, the Editor sent an e-mail that read in part –

***“you like me often “tilt at windmills” and sometimes they fall over!”***

Now how could I resist that?