

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CIV-2009-454-473

BETWEEN RICHARD LINCOLN
 Applicant

AND NEW ZEALAND POLICE
 Respondent

Hearing: 22 October 2009

Appearances: Mr Lincoln appears in person
 Mr Powell for the respondent

Judgment: 1 March 2010 at 3.00 pm

JUDGMENT OF MALLON J

Contents

Introduction.....	[1]
The legislation.....	[4]
History of legislative provisions.....	[4]
The legislative provisions.....	[17]
The review by the police.....	[20]
Nature of proceeding.....	[32]
Meaning of “military pattern free-standing pistol grip”.....	[36]
Overview of the parties’ respective positions.....	[36]
Pistol grip.....	[43]
Free-standing.....	[49]
Military pattern.....	[71]
Overall assessment of meaning of “military pattern free-standing pistol grip”.....	[90]
Result.....	[99]

Introduction

[1] The issue before me is the meaning of “military pattern free-standing pistol grip” as used in the Arms Act 1983. The issue arises because there are particular restrictions under that Act that apply to importing or possessing military style semi-automatics (MSSAs). Excluded from the definition of MSSAs, and therefore not subject to these particular restrictions, are semi-automatic firearms that are maintained at all times in a “sporting configuration”. A semi-automatic firearm is in a sporting configuration if it is without any of certain specified features, one of which is a “military pattern free-standing pistol grip”.

[2] Mr Lincoln, the applicant in this proceeding, is the owner of a Heckler and Koch (or H&K) SL8 rifle. As a result of a review conducted in late 2008 and the first half of 2009 on the meaning of “military pattern free-standing pistol grip”, the police are of the view that this firearm is a MSSA. Mr Lincoln disagrees. Mr Lincoln has brought this proceeding for judicial review as a result. The respondent, the New Zealand Police, says that the proceeding has been incorrectly brought but that it would nevertheless be appropriate for this Court to adjudicate on the issue of whether the police interpretation of “military pattern free-standing pistol grip” is correct.

[3] I will consider the matter in this order:

- a) the legislation;
- b) the review by the police;
- c) the correct nature of the proceeding;
- d) the meaning of “military pattern free-standing pistol grip”.

The legislation

History of legislative provisions

[4] The purpose of the Arms Act is “to promote both the safe use and the control of firearms and other weapons”. It seeks to do that by licensing people rather than firearms (it replaced legislation which required the registration of individual firearms). So, to lawfully possess a firearm, a person must be the holder of a firearms licence.¹

[5] Prior to amendments made in 1992 there were no particular provisions relating to MSSAs. The Act did have particular provisions that applied to “pistols” and “restricted weapons”. Restricted weapons were those weapons declared by the Governor-General to be restricted weapons (and the Governor-General duly declared such things as molotov cocktails, machine guns, sub-machine guns and explosive mines as restricted weapons). A firearms licence did not permit a person to have a pistol or restricted weapon in their possession unless they had an endorsement for this.

[6] On 13 November 1990, within the period of an hour from about 7.30 pm, a young man named David Gray murdered 13 people and wounded three others. In the ensuing efforts by police to apprehend Mr Gray, he was also killed. This tragedy took place in Aramoana, a small seaside settlement near Dunedin. At least four of Mr Gray’s victims were killed with a Norinco 84S 5.56mm semi-automatic rifle which Mr Gray owned.² Mr Gray owned three other semi-automatic firearms and, in the morning of the day he carried out his killing spree, he had ordered another. As well as these firearms, Mr Gray’s home had a good deal of ammunition and literature about war and destruction. According to one expert, as recorded in the Minister’s speech introducing the Bill to amend the Arms Act, Mr Gray went on a commando fantasy when he killed his victims.

¹ s 20(1) of the Arms Act.

² There was difficulty identifying which firearm Mr Gray had used for all the victims because Mr Gray also fired a .22 calibre rifle which has an almost identical projectile diameter as the Norinco semi-automatic that Mr Gray owned.

[7] Mr Gray was known to the police as reclusive and eccentric but was not thought to be a major concern. He had a firearms licence but did not have an endorsement for a pistol or a restricted weapon. The police were not aware that Mr Gray had four semi-automatics and had ordered another. There was nothing in the legislation which required them to have this information. Nor was there anything in the legislation to restrict Mr Gray owning a semi-automatic once he had a firearms licence, nor the number that he could own.

[8] Mr Gray's Norinco 84S 5.56 mm semi-automatic was a Chinese manufactured gun that looked like an AK47. The AK47 is an assault rifle that was developed by the Soviet Union towards the end of the Second World War. It seems that, from about 1985, Chinese manufacturers began exporting AK47 look-alikes to Western countries in large numbers.³ By the early 1990s the police estimate of the number of military style semi-automatics in New Zealand was 12,000 to 14,000 although others believed the number to be much higher than that.⁴ In July 1989 the Commissioner of Police had recommended to the Minister of Police that a legislative ban on importing certain firearms be considered.⁵

[9] The Aramoana tragedy was the trigger for the review of the Arms Act that led to the 1992 amendments.⁶ In the immediate aftermath the Minister of Police pledged to ban semi-automatic firearms,⁷ or at least to ban any further importations of them and work began on amendments.

[10] In June 1991, at which time no legislation had emerged, the Commissioner of Police imposed a ban on all further imports of military style semi-automatics. The press release referred to a ban on "semi-automatics". A list of firearms identified by manufacturer and model that the ban was to apply to was announced. This ban was overturned by the High Court in *Practical Shooting Institute (NZ) Inc v Commissioner of Police*.⁸ The High Court considered that the effect of the absolute

³ (28 November 1991) 521 NZPD 5718.

⁴ (14 October 1992) 530 NZPD 1176.

⁵ This recommendation is referred to in *Practical Shooting Institute (NZ) Inc v Commissioner of Police* [1992] 1 NZLR 709 at 711.

⁶ (28 November 1991) 521 NZPD 5717.

⁷ *Hansard* does not indicate whether the Minister was more specific than this: (28 November 1991) 521 NZPD 5717.

⁸ *Practical Shooting Institute (NZ) Inc v Commissioner of Police* [1992] 1 NZLR 709.

ban of certain kinds of firearms imposed by the Commissioner was to legislate and that power had not been given to the Commissioner. That power was vested in Parliament, with the Commissioner having a discretionary power to grant or refuse permits on individual applications made to import firearms.

[11] The Government then put in place a ban via a customs prohibition to apply until the legislation was amended.

[12] The 1992 amendments made particular provision for MSSAs. They did not ban MSSAs outright. Instead, like the provisions already in place for pistols and restricted weapons, the amendments were directed to restricting their availability and vetting the persons who owned them and so contained provisions controlling importing, supplying and possession of MSSAs. The new provisions were seen as a balancing of interests: the safety of the public and that responsible users of firearms should be able to pursue their work or sport without unnecessary restriction.⁹ The Opposition considered that the balance had not been struck appropriately, with some speeches in the House stating that there was no legitimate sporting use for any military style semi-automatic and that they should be completely banned.¹⁰

[13] The speeches in the House contain no real detail about the type of firearm intended to be subject to the new provisions. Various reference is made to “Rambo style weapons”,¹¹ “‘Rambo’ weapons”,¹² “military-style Rambo-type guns”,¹³ “Rambo-type AK47, and the large-calibre 30-round weapons with banana-shaped magazines”,¹⁴ “AK47” and “AK47 look-alikes”,¹⁵ “AK47- type”,¹⁶ “AK47 semi-automatic military machine-guns”,¹⁷ “military semi-automatic types”¹⁸ and

⁹ (28 November 1991) 521 NZPD 5719; (22 September 1992) 529 NZPD 11089, 11097; (14 October 1992) 530 NZPD 11767, 11772.

¹⁰ (28 November 1991) 521 NZPD 5725, 5729.

¹¹ (28 November 1991) 521 NZPD 5718; (22 September 1992) 529 NZPD 1107, 11097, 11100, 11106.

¹² (22 September 1992) 529 NZPD 11089.

¹³ (28 November 1991) 521 NZPD 5718.

¹⁴ (22 September 1992) 529 NZPD 11096.

¹⁵ (28 November 1991) 521 NZPD 5717, 5718 and 5722.

¹⁶ (28 November 1991) 521 NZPD 5720.

¹⁷ (28 November 1991) 521 NZPD 5723.

¹⁸ (28 November 1991) 521 NZPD 5725.

“military-style weapons”,¹⁹ a “Norinco AK47”,²⁰ “military-style semi-automatic”.²¹

[14] The reference to “Rambo” in these speeches is to a fictional character from the book “Red Blood” and a series of films in which Sylvester Stallone plays Rambo. The character is a Vietnam war veteran who is macho, self-sufficient and bent on violent retribution.²² Rambo uses all sorts of weapons but one of his weapons of choice is the AK47.²³

[15] From the introduction of the Bill until it was enacted there was no material change to the drafting of the relevant definitions of “military style semi-automatic firearm” to which the new controls would apply, and semi-automatics in a “sporting configuration” to which the new controls would not apply. There is no real discussion of these definitions in the speeches. At the Bill’s introduction the Member for Invercargill referred to the definition of sporting configuration as “closely defined”.²⁴ At the third reading the Member for St. Albans said it had not been adequately explained why the definition for military style semi-automatics was in the double negative.²⁵

[16] The Report of the Justice Law Reform Committee said this:

In particular, a number of good points were made about the definitions in the Bill, including the definition of “part”, according to which something could have been imported for one purpose and used for quite a different one. There was some controversy over the definition of “military-style semi-automatic firearm” and “sporting configuration”, and the problem of a weapon that, clearly, no sensible person would want a bar of but that might be OK for genuine sporting uses. I believe that we have struck a balance. We have given the police the power to make some of those decisions in the light of the circumstances that they find them.

¹⁹ (28 November 1991) 521 NZDP 5725.

²⁰ (28 November 1991) 521 NZDP 5729.

²¹ (22 September 1992) 529 NZDP 11089; (14 October 1992) 530 NZDP 11766.

²² Source is <http://www.encyclopedia.com>, citing *The Oxford Dictionary of Phrase and Fable* (2006).

²³ Lewis Jones “Weapon of choice for children, rebels and soldiers”: (28 June 2007) Telegraph www.telegraph.co.uk; World of Rambo (<http://rambo.org.com>).

²⁴ (28 November 1991) 521 NZPD 5727.

²⁵ (14 October 1992) 530 NZDP 11769.

The legislative provisions

[17] Under the 1992 amendments, amongst other things:

- a) a permit is required to bring any MSSA into New Zealand;²⁶
- b) a person who is of or over 18 years and who holds a firearms licence may apply for an endorsement (an E endorsement);²⁷
- c) the endorsement may be granted by the police if satisfied that the person is a fit and proper person to be in possession “of the military style semi-automatic firearm to which the application relates;”²⁸
- d) the endorsement may be subject to conditions;²⁹ and
- e) new offence provisions were created.

[18] Section 2 defined “military style semi-automatic firearm as follows:

Military style semi-automatic firearm means—

- (a) A firearm which, after being loaded, fires, ejects, and chambers a cartridge with each pull of the trigger; but
- (b) Does not include—
 - (i) A pistol; or
 - (ii) A semi-automatic firearm that, with its magazine (if any), is maintained at all times in a sporting configuration:

[19] Section 2 defined “sporting configuration as follows:

Sporting configuration, in relation to a semi-automatic firearm, means being without any of the following features:

- (a) A folding or telescopic butt:

²⁶ s 16(1).

²⁷ s 30A.

²⁸ s 30 B.

²⁹ s 30B.

- (b) A magazine that is capable of holding, or that, by its appearance, indicates that it is capable of holding,—
 - (i) In the case of a magazine designed to hold .22 inch rimfire cartridges, more than 15 cartridges; or
 - (ii) In any other case, more than 7 cartridges:
- (c) Bayonet lugs:
- (d) A military pattern free-standing pistol grip:
- (e) A flash suppressor:

The review by the police

[20] Following the 1992 amendments the police published an information booklet about the new provisions. In the booklet the police said this about their view of “military pattern free-standing pistol grip”:

Any free-standing pistol grip must be removed entirely. It’s not sufficient to add more material between the bottom or back of the grip and the stock, and then argue that it’s no longer “free standing”. The only practical option is to completely remove both the free-standing pistol grip and the stock, and replace them with an integral, one-piece thumbhole stock. Note that all types of free-standing pistol grips are considered “military pattern” because only firearms designed to be or resemble military weapons have them. You can’t legally convert an MSSA by replacing one free-standing pistol grip with another, and claim it is now “civilian pattern”.

[21] It can be seen that the police interpretation emphasised the free-standing nature of the pistol grip, and were of the view that if the grip was an integral, one-piece thumbhole, stock then it was not free-standing. But if it was free-standing (ie not integral) then it was viewed as military pattern. Mr Lincoln said that this interpretation of “military pattern” was viewed (I infer by at least some firearm holders) as more restrictive than the legislation provided for, but was tolerated in good faith by firearms users.

[22] Mr Woods, an expert who prepared an affidavit for Mr Lincoln for this proceeding, said that as a result of the amendments licensed firearm owners who possessed firearms that were affected by the MSSA definitions sought lawful ways to keep their firearms without having to incur the expense, inconvenience and restrictions of obtaining an E endorsement. Mr Woods designed and manufactured a

grip that could be fitted to affected firearms which, in conjunction with other requirements of the Act, would make the firearm into a “sporting configuration”. The police response was that this was contrary to the spirit and intent of the amendments but nevertheless confirmed that it viewed the grip as not being within the “military pattern free standing pistol grip”.

[23] For around 16 years the police did not take issue with “hundreds” of grips that Mr Woods used to convert MSSAs into “sporting configuration”. Other firearm owners were able to purchase semi-automatics on the basis that the police viewed them as within the “sporting configuration” definition. An affidavit from Superintendent A McLeod (National Manager: Operations) confirms that, from 1992, the police took the view that if a semi-automatic either had or was converted to have a thumbhole stock, then it was not regarded as free-standing. Modifications to meet this definition were regarded as not being within the “spirit” of the Act, but as meeting “the letter of the law”.

[24] However, the police view changed when it reviewed its interpretation as a result of its concerns about the sporting configuration exception. This was against the background of what the police considered to have been the considerable evolution in the manufacture of military style firearms for civilian sporting purposes, and manufacturers of military pattern firearms producing models in a civilian configuration aimed at circumventing firearm restrictions. (The applicant does not agree with this, pointing to two examples of stocks designed many years before 1992 and which the police now consider require an E endorsement.)

[25] As a result of the review, in June 2009 the police decided that a semi-automatic firearm would be considered to have a military pattern free-standing pistol grip, and would therefore be a MSSA, if it had any of the following features:

- a) An obvious pistol grip below the trigger guard that allows a full hand pistol grip irrespective that the pistol grip may be connected to the stock – this includes the HK USC .45, SL8-4 and Dragunov style stock;

- b) Any addition that connects the pistol grip to the stock or butt in an attempt to make it no longer free standing (such as adding a metal or plastic rod);
- c) A second grip forward of the trigger.

[26] This represented a change to the interpretation it had previously applied and meant that licence holders of some firearms previously classified as A category would now need an E endorsement. The police put in place a policy to inform firearms licence holders of its new interpretation and how to comply with it. Firearms licence holders with semi-automatics now viewed by the police as having “military pattern free-standing pistol grips” were given until 31 March 2010 to apply for an E endorsement, sell or dispose of the firearm or surrender the firearm, or to convert their MSSA into a sporting configuration.

[27] The information provided by police included an “advisory” statement from Superintendent McLeod to Arms Officers and Arms Dealers dated 9 June 2009. In this statement the police advised of their interpretation as follows:

If the semi automatic firearm has an obvious pistol grip that allows a full hand pistol grip, enabling the firearm to be used as an assault weapon then the qualifier of ‘military pattern free standing pistol grip’ is met irrespective that the pistol grip may be connected to the stock. The HK USC .45 and SL8-4, and the druganov style stock retain the practical functionality of a pistol grip and much of the appearance and thereby fall within the definition of being MSSAs.

[28] The statement added that a “fore grip also comes within the definition of ‘military pattern free-standing pistol grip’”.

[29] The statement included a photographic montage of 6 firearms which were viewed by the police as not falling within this revised interpretation of “military pattern free-standing pistol grip” and 9 firearms which were viewed as within that interpretation. Broadly speaking the photographs in the latter category have a hand grip that extends vertically below the action to a greater degree than those in the former category and, where attached to the stock, have large thumbholes in the stock. A later photomontage published in NZ Guns and Hunting magazine included one

firearm as now within the revised interpretation, which had been one of the 6 firearms shown in the photomontage of 9 June 2009 as not within the revised interpretation of “military pattern free-standing pistol grip”.

[30] A police communication dated 2 July 2009 from Superintendent McLeod to District Commanders, Area Commanders, Arms Officers, Firearms dealers and Firearms user organisations set out this interpretation:

A semi-automatic rifle that has a grip which has either the appearance *or* function of a military pattern free-standing pistol grip is classified as an MSSA. A semi-automatic rifle with any of the following features is considered to have a ‘military pattern free-standing pistol grip’ and is therefore a MSSA:

- an obvious pistol grip below the trigger guard that allows a full hand pistol grip irrespective that the pistol grip may be connected to the stock – this includes the HK USC .45, SL8-4 and Dragunov style stock
- any addition that connects the pistol grip to the stock or butt in an attempt to make it no longer free standing (such as adding a metal or plastic rod).
- a second grip forward of the trigger.

[31] One of the firearms the police had previously considered was not a MSSA, but now consider to be a MSSA, is Mr Lincoln’s Heckler and Koch SL8 rifle. Mr Lincoln has held a firearms licence for about 16 years and uses his firearms regularly for hunting and pest control. Mr Woods’ evidence is that the Heckler and Koch SL8 rifle has been designed and manufactured as a civilian sporting firearm and it is not used anywhere in the world as a military weapon.

Nature of proceeding

[32] Mr Lincoln’s claim is brought under the Judicature Amendment Act 1972. He alleges that the 2 July 2009 advisory statement (refer [30] above), and the threat of prosecution if he does not comply with the options set out therein in respect of his H&K SL8 rifle, are an “error of law”. He seeks a declaration that the advisory is an error of law because it incorrectly interprets the Arms Act, and a declaration that he is not liable under ss 30, 33, 35 and 50 of the Arms Act 1982 for having the rifle in his possession.

[33] Errors of law made when exercising a “statutory power”³⁰ are reviewable under the Judicature Amendment Act.³¹ When considering Mr Lincoln’s application for interim relief MacKenzie J commented that it was questionable whether the actions of the police in arriving at a new interpretation, and publishing the steps it proposes to take in consequence of that reinterpretation, are the exercise of a statutory power under the Judicature Amendment Act.³² For the police it is submitted that the advisory is the opinion of the police and that is not a statutory power as defined. I agree with that submission. Under the Arms Act the police do not have the ability to make a binding classification as to whether a firearm is a military style semi-automatic as defined in that Act.³³ That is a question of statutory interpretation for the Court in any particular case where that issue is relevant to the matter before it.

[34] Mr Lincoln endeavoured to counter this point by submitting that the police were “purporting” to exercise a statutory power because the effect of the police’s actions was to reclassify firearms. That was said to be because the police required Mr Lincoln to obtain an E endorsement or to surrender or dispose of it by lawful means. Mr Lincoln referred to *Practical Shooting (NZ) Inc v Commissioner of Police* (referred to above) as supporting his submission. I do not agree with Mr Lincoln’s submission. The police have no power to require Mr Lincoln to take any of the steps set out in the advisory. The consequence of not complying with those steps is that the police could prosecute him. If that were to happen the Court, not the police, would decide whether any offence had been committed. *Practical Shooting Inc* is distinguishable because there the Commissioner had a statutory discretionary power to grant or refuse import permits for firearms (which the Court found the Commissioner to have unlawfully fettered).

³⁰ As defined in s 3 of the Judicature Amendment Act.

³¹ Pursuant to s 4 of the Judicature Amendment Act.

³² *Lincoln v New Zealand Police* HC Palmerston North CIV-2009-454-473, 5 August 2009.

³³ The only statutory powers exercised by the police under the Arms Act that relate to these firearms are: a) the power to issue a permit to import one (s 18); and b) the power to make an endorsement on a firearms license to authorise possession of a MSSA (s 30B) and to impose conditions on that endorsement (s 33A).

[35] As suggested by counsel for the police I propose to treat the proceeding as an application under s 3 of the Declaratory Judgments Act 1908.³⁴ That seems the most obvious jurisdiction to provide Mr Lincoln with the certainty he seeks about whether the new police interpretation is correct (and it does not narrow the issue before me any more than if I considered the matter as reviewable in the manner discussed in *Gillick v West Norfolk and Wisbech Area Health Authority*³⁵ which is the alternative proposed by Mr Powell). Section 3 confers jurisdiction for the court to make a declaratory order because Mr Lincoln desires to possess his H&K SL8 without an E endorsement and the legality of that depends upon the construction of the term “military pattern free-standing pistol grip” as used in the Arms Act.

Meaning of “military pattern free-standing pistol grip”

Overview of the parties’ respective positions

[36] The parties agree that some semi-automatic firearms clearly have military pattern free-standing pistol grips and others clearly do not. For example both sides agree that the AK47 has a military pattern free-standing pistol grip. The pistol grip on the AK47 is directly below the action, adjacent to the trigger guard and is independent of the stock, as can be seen in the picture of the AK47 shown here:



³⁴ An example of this as an approach is *R v Sloan* [1990] 1 NZLR 474. In that case Mr Sloan had been informed by Internal Affairs that they considered machines operated at his business were illegal games of chance under the Gaming and Lotteries Act 1977 and that if he did not cease operating them he would be prosecuted. Mr Sloan brought an application for judicial review under the Judicature Amendment Act 1972. The High Court viewed this procedure as unavailable in part because Internal Affairs had no power to decide whether the activity was unlawful, that being a matter for the Court’s determination. The Court instead treated the application as if it had been brought under the Declaratory Judgments Act 1908.

³⁵ *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 at 426.

[37] Both sides also agree that the Remington Woodmaster 742 semi-automatic does not have a military pattern free-standing pistol grip. The pistol grip on this firearm is behind the action and is connected to the stock, as can be seen in the picture of that firearm shown here:



[38] Both sides agree that some semi-automatics are a contrivance intended to get around the definition. Such a semi-automatic looks like this:



[39] There are, however, a range of semi-automatics which have pistol grips in between these two examples about which there is disagreement. One of them is Mr Lincoln's Heckler & Koch SL8 rifle. This is manufactured in different colours. I understand Mr Lincoln's rifle to be black, but the one shown below is in white:



[40] The police submit that Parliament’s intent was to regulate the risk that MSSAs posed, in the wake of the events at Aramoana, by reference to the appearance and function of the firearms and that a purposive approach should be applied to the phrase “military pattern free-standing pistol grip”. The police submit that an “obvious” pistol grip that is below the trigger guard and which allows a full hand grip has the function and appearance of a military style free-standing grip and so should fall within that description.

[41] Mr Lincoln submits that “military pattern free-standing pistol grip” has an ordinary meaning and that, by using these words, Parliament intended to regulate MSSAs in a closely defined manner. He submits that the definition regulates by reference to two specific attributes: first, the design and manufacturing system under which the grips are made (military pattern); and secondly, the connectivity relationship the pistol grip has with the rest of the firearm (free-standing). He submits that the new interpretation the police intend to apply does not give effect to the ordinary meaning of this phrase and introduces a “grey” area as to what attributes will fall within the phrase.

[42] In assessing these submissions I consider first the individual components of the “military pattern free-standing pistol grip” before considering the meaning of the phrase as a whole as used in the Arms Act.

Pistol grip

[43] Mr Lincoln submits that the term “pistol grip” is a common term in hand held tools, appliances, pistols and agriculture. He submits that the term originates from pistols and has been part of the English language since the 15th century.

[44] Mr Lincoln supports his submission by reference to Mr Woods' evidence. Mr Woods is a gunsmith. He has considerable expertise in firearms. Amongst other things he has been an active shooter, collector (he has a collection of firearms specialising in military weapons 62 of which are machine guns), and student of firearms history and technology. I do not need to elaborate further because the police do not contest his expertise.

[45] Mr Woods' evidence was that the term means "a grip as found on a pistol, electric drill, hair dryer, or any other item utilising that type of handle where the index finger is used to operate the device, whether by trigger, switch, button, or similar system".

[46] Mr Lincoln and Mr Woods did not include any reference material. But for completeness I note that what they said is supported by dictionary definitions. The New Shorter Oxford English Dictionary (4th ed) defines "pistol-grip" as "a handle or grip shaped like the butt of a pistol, *spec.* on the underside of a gun-stock". The definition in the New Zealand Oxford Dictionary is "a handle shaped like a pistol-butt", and the Chambers Dictionary (11th ed) defines the term as "a handle (*usu* with a trigger mechanism) for a camera, etc, shaped like the butt of a pistol".

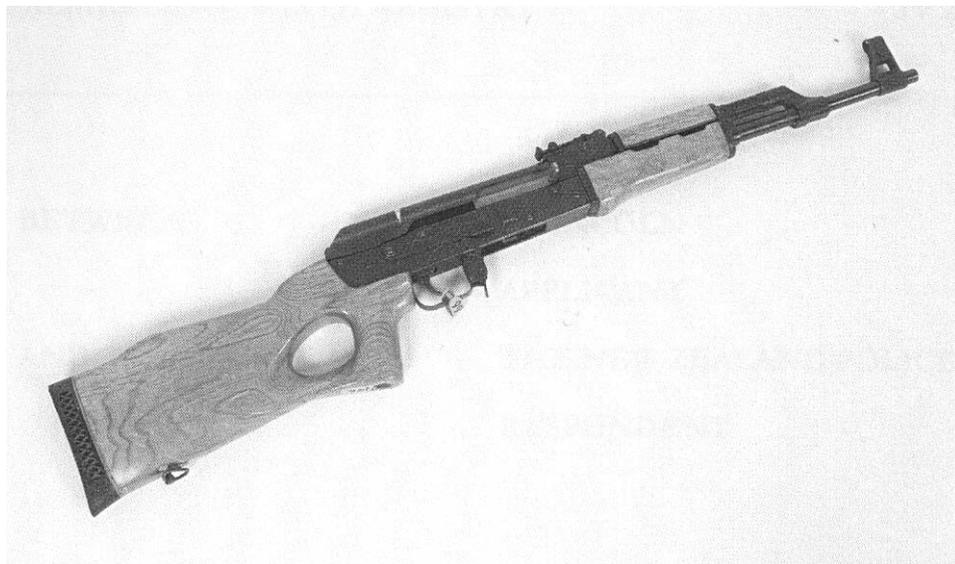
[47] Mr Lincoln's submission on the meaning of pistol grip is not contested by the police. Their revised interpretation refers to "an obvious *pistol grip* below the trigger guard that allows a full hand *pistol grip*..." (my emphasis) and so assumes a known meaning of pistol grip. Both sides agree that all long-arms have pistol grips. Both sides also agree that, regardless of the style of the pistol grip, its function is to facilitate the trigger hand holding the rifle while it is aimed and fired. To illustrate this point, the police accept that the grip for the trigger hand on the Remington Woodmaster 742 (para [37] above) has a pistol grip.

[48] What pistol grip falls outside the "sporting configuration" definition therefore depends on the meaning of "military pattern free-standing" rather than what is meant by a "pistol grip".

Free-standing

[49] Mr Lincoln submits that the ordinary meaning of “free-standing” is something which is “structurally self supported”. He submits that this is the natural meaning of the term and that it is a term commonly used in construction, engineering and architectural design. In the context of a “free-standing pistol grip” he submits that a pistol grip is not free-standing when it is connected with or supported by the stock. Mr Woods had this opinion also.

[50] Taking this approach, the pistol grip on the semi-automatic in the picture at [38] above has a free-standing pistol grip because the rod bolted on is not performing any function: it is a cosmetic rather than integral connection between the stock and the grip and the stock can still be removed leaving the pistol grip intact. In contrast, Mr Lincoln’s Heckler and Koch SL8 rifle does not have a free-standing pistol grip, because the grip is integrated with the stock: removing the stock would also remove the trigger hand grip. On this approach, the Norinco MAK 90, which copies the AK47 mechanism but has a factory fitted thumbhole stock, does not have a free-standing pistol grip. The Norinco MAK 90 looks like this:



[51] The police interpretation is that a pistol grip is free-standing if it is an “obvious” pistol grip, that is below the trigger guard, and that allows a full hand grip. The police take that view even if the pistol grip is attached to the stock. Applying

this interpretation the police view the H&K SL8 and the Norinco MAK 90 as having free-standing pistol grips.

[52] Mr Lincoln takes issue with each part of that interpretation. He says that all pistol grips on long-arms can be said to be obvious, below the trigger guard and having a full hand grip. He illustrates this by reference to the Remington Woodmaster 742 (refer [37] above). This he says has a pistol grip that is obvious, with a cross hatching carved on it to highlight its presence. He says that the pistol grip extends below the trigger guard, assuming the test is applied when the firearm is horizontal and its barrel level (ie the grip extends lower down than the trigger guard). He says that the pistol grip allows a full hand grip. He illustrates this point with photographs showing his trigger hand holding his H&K SL8 and also holding a hunting rifle with a traditional stock (ie one like the Remington Woodmaster 742). In both cases the photo shows his index finger on the trigger and his other three fingers on and curled around the grip. He also says that anything less than a full hand grip means that the operator does not have optimum control over the firearm. He also says that some of the grips the police now say are MSSAs are behind, rather than below, the action.

[53] The police have prepared an affidavit from Mr Robert Ngamoki, Senior Police Armourer, which illustrates, by way of photographs showing how the semi-automatics would normally be held when being fired, what the police mean by obvious, below the trigger guard and having a full hand grip.³⁶ These photographs show that with some semi-automatics the hand grip is behind the action (as in the case of the Remington Woodmaster 742 for example) and in others the hand grip is below the action (as in the case of the AK47 for example). I understand the police to be saying that a “pistol grip below the trigger guard” means a grip where the hand is vertically below the action,³⁷ rather than a grip which is behind the action (even

³⁶ Mr Woods was present at the hearing of this matter and also took me through the grips of a number of the firearms. He took issue with the depiction of the grip shown for the Remington Woodmaster 742, but this was about what he viewed as being the unnatural height of the hand position and does not alter the overall point that on the AK47 style pistol grip the whole grip is clearly underneath the action which is not the case with the Remington Woodmaster 742.

³⁷ Mr Lincoln said that the photograph showing how the H&K SL8 would be held is wrong and that it would be almost impossible to steadily aim the firearm held in that position. I understand Mr Lincoln’s point to be that on the H&K SL8 grip the hand would not be in a straight vertical line but would be more angled and therefore it might be said that it is behind rather than below the action.

though it may extend lower than the trigger guard does). This fits with the photomontage released with the 9 June 2009 statement (refer [29] above).

[54] These photographs also show that with some semi-automatics, that is those without a thumbhole stock, the thumb of the grip hand is on top of the stock and behind the action. If the semi-automatic has a thumbhole then the thumb moves from above the stock to somewhere below the top of the stock. Where it moves to depends on the location of the thumbhole stock grip. In some cases the hand will be behind the action (although some of the hand may extend lower than the action) and in other cases all of the hand will be below the action.

[55] The photographs also show the variation in the size of the thumbhole. Where the thumbhole is large then the whole of the hand (other than the trigger finger) is wrapped around the pistol grip, whereas when the thumbhole is smaller the whole of the hand (except the trigger finger) is on the pistol grip but would also be said to be partly on the stock.

[56] Those with large thumbhole stocks located below the trigger guard have a more pronounced grip which looks more like the grip of a pistol (which is what I take the police to mean by “obvious”) and allow for a full hand grip (ie the grip hand cannot be said to be on the stock. Again this largely fits with the photomontage released with the 9 June 2009 statement. I say largely because at least two of the semi-automatics now said to have a free-standing pistol grip, although having a pronounced grip (looking like the grip of a pistol) around which the whole of the hand would be wrapped, have grips that appear to me from what I can see in the photographs (which only show a portion of the firearm) to be behind the action rather than below it (though that might also depend on what is encompassed within the term “action”).

[57] Perhaps the best illustration of the police interpretation is demonstrated by the following two firearms:



[58] The evidence before me is that Trade Me sought clarification from the police as to whether these firearms were now viewed as MSSAs. The response from an inspector was that the second one was viewed as a MSSA but the first one depended on this court case. From what I can see in the photograph of the first one, although the pistol grip is pronounced and looks like the grip of a pistol, the size of the thumbhole would not appear to allow a full hand grip in the way I understand the police to mean. The second one does fit with what I understand the police to mean by an obvious pistol grip, extending below the trigger guard and allowing for a full hand grip.

[59] The police interpretation is similar to wording that has been used in regulating “assault weapons” in the United States. The backdrop of the regulation of “assault weapons” that is relevant for present purposes is like the Aramoana tragedy: a Californian man fired an AK47 across a playground killing five school children and wounding 29 others and one teacher. Following that, a number of states, including California, passed legislation with new provisions regulating “assault weapons”.³⁸ Some of this legislation did so in part by defining “assault weapons” with reference to features of the firearm. One of those features was a “pistol grip

³⁸ T R Thompson, “Form or Substance? Definitional Aspects of Assault Weapon Legislation” [1990] 17 Florida State University Law Review 649 at 649 and 651.

that protrudes conspicuously beneath the action of the weapon”.³⁹ In Californian regulations this was in turn defined as “a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing”.⁴⁰

[60] Further elaboration of this comes from a working group responsible for enforcing federal firearms laws. They said:⁴¹

The straight-line design of many military weapons dictates the use of a well-defined pistol grip beneath the action of the gun. Without a pistol grip, holding and firing the weapon would be difficult. A pistol grip also allows for one-handed firing and greater control during automatic firing. By contrast, traditional sporting rifles use a grip built into the wrist of the stock; in addition, one-handed firing is not usually used in hunting or target competitions. Therefore, the Working Group determined that well-defined pistol grips had no sporting purpose. (footnotes not included)

[61] Case law and commentary has considered the “protrudes conspicuously beneath the action of the weapon” wording. For example, the Firearms Law Deskbook⁴² makes similar points as Mr Lincoln has made here, such as that almost all modern shot guns have what the industry would call a pistol grip, the hand position does not necessarily change and that “protrudes conspicuously” is a purely subjective test.

[62] In *United States v Oliver*⁴³ the submission for Mr Oliver, who had been prosecuted for unlawful possession of an assault weapon, was that the grip of his firearm was behind rather than below the action and therefore it did not protrude conspicuously “beneath the action”. The United States Court of Appeals for the Sixth Circuit rejected this submission. The Court referred to the Oxford English Dictionary and poetry as supporting a meaning for “beneath” of “lower than” or

³⁹ For example, this wording is found in the Roberti-Roos Assault Weapons Control Act of 1989 (California) and in the Violent Crime Control and Law Enforcement Act of 1994 (Federal law). The former requires only one of the specified features to be present to constitute an assault weapon, whereas the latter requires that there be at least two.

⁴⁰ Article 2: Definition of Terms Used to Identify Assault Weapons, 5469(d).

⁴¹ Bureau of Alcohol, Tobacco and Firearms, Report and Recommendations of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (1989) at 7, as cited by Thomas Thompson “Form or Substance? Definitional Aspects of Assault Weapon Legislation” (1989-1990) 17 Fla St U L Rev 649 at 661.

⁴² Stephen Halbrook *Firearms Law Deskbook*, Assault Weapon Prohibitions (online ed) at 10:7.

⁴³ *United States of America v Oliver* 390 F 3d 482 (6th Cir 2004).

“generally under” (rather than necessarily meaning “directly under”). In context the Court considered that the legislature had given no hint that the precise location of the grip (ie directly beneath the action or behind but lower than the action) mattered. Finally, the Court referred to the history, that is, that Congress was wanting to curb the threat posed by the growing number of “criminals and mentally deranged individuals armed with semi-automatic assault weapons”. The Court said that the history indicated that Congress intended to ban non-sporting rifles and that “[p]istol grips, such as the one in this case, aid the shooter in firing one-handed – a task not often required in hunting”.

[63] Mr Lincoln submitted a DVD in which he demonstrated one handed firing with a semi-automatic with a pistol grip like that of the Remington Woodmaster 742 as compared with one handed firing with his H&K SL8. The one-handed firing was demonstrated in three positions: from the hip; out in front with his arm extended; and from the shoulder. In all three positions, so far as I can tell from viewing the DVD, one-handed firing seems equally possible with each firearm and so the DVD illustrates that the pistol grip on the stock of a traditional hunting rifle may be as functional at one handed firing as the H&K SL8.

[64] The DVD does not, however, demonstrate one-handed firing with the pistol grip of an AK47 or other semi-automatic which both sides would agree would qualify as a military pattern free-standing pistol grip. Further, even if one-handed firing is possible with all long-arms, it appears that a function of a well-defined pistol grip below the action of the gun is to allow for one-handed firing and greater control during automatic firing, which attributes are seen as desirable for military firearms and unnecessary for sporting purposes.

[65] I therefore do not accept Mr Lincoln’s submission that all pistol grips on long-arm semi-automatics will fall within the new the police interpretation. Some pistol grips will be “obvious” (the police might equally have said “well defined” or “conspicuously protruding”) and this will be so where they extend below the action (whether directly underneath or behind but lower than the action) and allow the hand to be fully wrapped around the grip (rather than partly around the stock). I do accept Mr Lincoln’s point that the police interpretation involves an element of subjective

assessment and gives rise to “grey” areas and therefore uncertainty for firearm dealers and users.

[66] All of that aside, our legislation refers to a “free-standing” pistol grip so it is still necessary to consider whether the police interpretation is what is meant by “free-standing”.

[67] The Oxford English Dictionary (2nd ed) defines “free-standing” as meaning:

(a) standing alone; not attached or connected to another structure; not supported by a structural framework; (b) *fig.* Independent or autonomous; not belonging to a larger entity.

[68] In all cases the pistol grip of a semi-automatic is attached to another structure. In the case of the Remington Woodmaster 742 the pistol grip is attached to the stock. In the case of the AK47 it is attached to the action. In the case of the nine semi-automatics shown in the photomontage given with the 9 June 2009 statement the pistol grip is either attached to the action or to the action and the stock (although the third photograph may be – I am not certain about this – attached just to the stock). I consider that free-standing in this context means something other than “not attached ... to another structure”.

[69] Mr Lincoln’s interpretation is that if the pistol grip is integrated with the stock (ie they are part of the same piece of the firearm such that one cannot remove one from the firearm without removing the other) then it is not free-standing. That is an interpretation that is open on the natural meaning of the words. Such a pistol grip could be said to be “standing alone” or “independent or autonomous” and even “not belonging to a larger entity”. Although it is “attached” to the firearm, it could also be said to be not “connected” with any part of the firearm in the sense of being not an integrated part of another part of the firearm.

[70] The police interpretation requires a wider view to be taken of the meaning of “free-standing”. That is to say that if the hand can be wrapped fully around the pistol grip (so that the hand is only on the pistol grip and without any part of the hand being on the stock) then it can be said to be a grip which stands alone or which is independent or autonomous and therefore is “free-standing”. That seems a less

natural meaning of “free-standing” and if that were the intended meaning it might have been expected that different wording would have been used (eg a “well defined” pistol grip whether attached to the stock or not).

Military pattern

[71] Mr Lincoln submits that “military pattern” is a technical term indicating that equipment meets military specifications. Mr Lincoln says that military pattern is used in the United Kingdom and military specification is used in the United States. In each case equipment that is manufactured to a military pattern or military specifications will have manufacturing and proofing marks that prove this, indicating that the equipment is suitable for military use.

[72] This submission was supported by evidence from Mr Woods. Mr Woods’ evidence was that:

“military pattern” is a specific design and manufacturing directive covering all aspects of an item from raw material to the finished product. All items produced under that system receive official military recognition, as in the ‘sealed pattern’ of all UK military items, and the military specification (milspec) identification numbers that identify all military items that are approved for service. All such items carry recognised inspectors marks to ensure they comply fully with the ‘pattern’. It is also a requirement under the International Law of Armed Conflict that all combatants use only those items that are legally approved as ‘military pattern’.

[73] The police contend that a full hand grip below the trigger is the way firearms are configured for military use. In this way they contend that their definition of pistol grips is a “military style” pistol grip and therefore within the definition of “military pattern free-standing pistol grip”.

[74] Mr Woods said that this is an overly generalised statement. He said that, while it was true that many military firearms do position the hand below the action, so do a large number of sporting firearms. With reference to a number of examples, Mr Woods said that it was a known historical fact that the military lag well behind the civilian market. In relation to the pistol grip in particular Mr Woods’ evidence was:

With the exception of the civilian designed and developed Thompson submachine gun which saw very limited military use in 1928, and a couple of WW1 machine guns, no pistol grips were used for general military use until 1938 in Germany. Thus, it is the military who have adopted the pistol grip long after it became popular for sporting use.

The difference lies in the design or 'pattern'. The modern thumbhole stocks (themselves based on stocks from the 1890's) bear no resemblance to the 'military pattern' pistol grips which tend to be fairly basic. The 'military pattern' pistol grips are just reflecting a trend or fashion in military firearms that have been in vogue since the 1960's.

[75] Similarly, Mr Lincoln took issue with the contention that military grips are a full hand grip below the trigger and sporting grips are not. He referred to the M14 military pattern rifle which is currently in service with the department of defence in the United States where the pistol grip is behind rather than below the action (similar to the grip on the Remington Woodmaster). Mr Lincoln also referred to the Anschutz sports, target shooting, bench rifle which has a grip entirely below the action, and also to the Ruger 10/22 rifle which was purpose built for the US Olympic Games team as a sporting rifle. The grip on the Ruger 10/22 is one of the grips included by the police in the photomontage as now said to be within the MSSA definition.

[76] As to that last point, I note that Californian law provides a specific exception from the "pistol grip protrudes conspicuously beneath the trigger" definition for Olympic Games sporting rifles.⁴⁴ Nevertheless I take Mr Woods and Mr Lincoln's overall point that to say that military grips are grips below the action and sporting grips are not is to overly generalise the position.

[77] The affidavit evidence filed for the police did not discuss the technical meaning of "military pattern" referred to by Mr Lincoln and Mr Woods. Mr Powell (counsel for the police) said that, though he did not know whether Mr Lincoln and Mr Woods were correct about this technical meaning, he did not take issue with it. Mr Powell submits that there was nothing to indicate that Parliament intended this technical meaning, noting that it was not referred to in *Hansard* and that Parliament had instead referred in unscientific terms to "Rambo" style weapons. Mr Powell submits that the intention was to restrict firearms with features that had particular

⁴⁴ Refer footnote 39 (Article 1: General Provisions, 12276.1(b)).

functions or which had the appearance of features that would be found on firearms designed for military rather than sporting application and which tended to make them more attractive to those with an unhealthy fascination with violence or killing. Mr Powell submits that the concern was with the capacity for uninterrupted and high-speed discharge and, in relation to the pistol grip, the ability to shoot one-handed and from the hip. Mr Powell submits that, giving effect to Parliament's purpose, military pattern simply means being of a military style (whether conforming to military specifications or not).

[78] The immediate difficulty I have with Mr Powell's submission is that Parliament has chosen to use the words "military pattern" in the definition of "sporting configuration". The purpose of the "sporting configuration" definition is to prescribe what takes a semi-automatic firearm out of the definition of a "military style semi-automatic firearm". If "military pattern" was intended to mean "military style" then it might be expected that the term "military style" would have been used. It might be inferred that, in not using "military style" which would have been consistent with the "military style semi-automatic firearm" terminology it had used, Parliament intended something different by the phrase "military pattern".

[79] Nor do I accept the submission that a technical meaning was not intended because there is nothing in *Hansard* to indicate that it was. It is not the case that *Hansard* sets out everything that is intended by legislation. Indeed, as the Court of Appeal has said "[t]he law is to be found in the enactment itself, and not in the subjective intentions of the draftsmen or of the department, nor those of the Minister or of other members of the legislature".⁴⁵ While the parliamentary materials may be helpful "as supporting a provisional interpretation of the words of the Act, or as helping to identify the mischief aimed at or to clarify to some ambiguity in the Act"⁴⁶ the absence of something in *Hansard* is not at all determinative.

[80] Against the background that "military pattern" appears to mean something different from "military style" I carried out some preliminary research as to whether the term appears in dictionaries or in international law. The research drew a blank.

⁴⁵ *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 at 675.

⁴⁶ *Marac Life Assurance Ltd v Commissioner of Inland Revenue* [1986] 1 NZLR 694 at 701.

The first meaning given of the term “pattern” in the *Oxford English Dictionary* is “a model, example, or copy”. The examples given in the dictionary of the history of the usage of “pattern” do not refer to “military pattern”.

[81] I sought further submissions from the parties about this. Both sides provided some material in response. Mr Powell advised that he had been unable to find any legal foundation for Mr Woods’ evidence quoted above (refer [72]). The only international instrument he was able to find concerning the weapons that may be used in combat was the First Additional Protocol 1977 to the Geneva Conventions (Part III). That, however, prohibits generally weapons that cause superfluous injury, unnecessary suffering or widespread, long-term, severe damage to the natural environment. It makes no reference to “military pattern” or “military specifications”.

[82] Mr Lincoln was similarly unable to produce any formal legal document or case law defining the term “military pattern” and supporting Mr Woods’ evidence that the International Law of Armed Conflict required that weapons be legally approved as “military pattern”. He did, however, provide a variety of references which confirm the meaning of “military pattern” as described in the first part of the quoted evidence from Mr Woods. One reference said this:⁴⁷

From the 17th to the early years of the 18th century, most nations did not specify standards for military firearms. Firearms were individually procured by officers or regiments as late as the 1740s, and were often custom made to the tastes of the purchaser. As the firearm gained ascendancy on the battlefield, this lack of standardization led to increasing difficulties in the supply of ammunition and repair materials. To address these difficulties, armies began to adopt standardized “patterns”. A military service selected a “pattern musket” to be stored in a “pattern room”. There it served as a reference for arms makers, who could make comparisons and take measurements to ensure that their products matched the standard.

[83] Along similar lines:⁴⁸

The introduction to RSAF, in 1856, of the new machines from America, and the system of producing interchangeable components that were all identical, was a step change in the concept of engineering manufacture in the UK. Since then components have been made by precision machines to very closely controlled dimensions specified on a drawing.

⁴⁷ Wikipedia under “Brain Bess” (www.wikipedia.com).

⁴⁸ www.rsaf-aa.co.uk

Prior to that change, components were made predominantly by hand to replicate an approved pattern. It was the duty of the Board of Ordnance headed by the Master General of Ordnance to approve a master pattern for each type of weapon and to seal it by applying a hot, red wax seal, just like sealing a legal document. The sealed patterns were kept for reference in a Pattern Room at the Tower of London until 1841 when, after a disastrous fire at the Tower, the Pattern Room was transferred to the RSAF at Enfield. The Pattern Room, under Ministry of Defence ownership, then remained at RSAF until closure in 1988, albeit that it was occasionally moved between buildings as the collection grew.

The practice of applying wax seals to weapons has long since passed into history with the advent of engineering drawings but the principle remains. The Ordnance Board and the Master General of Ordnance still exist to evaluate and approve all new military weaponry and any later changes to the designs. Their approval is still signified by sealing the design though the process is now an administrative one of endorsing the master drawings, not involving any hot wax.

[84] Another reference said this:⁴⁹

When Britain would call for arms, a Sealed Pattern was finalized of each weapon or accessory. These “Patterns” were referred to by all manufacturers and craftsmen, as the original to work from.

[85] There were various other references, such as an article on New Zealand Army Equipment referring to military equipment by reference to its Pattern, that being said to be the “official description” of an item.⁵⁰ Another comes from a newspaper article about knighthoods and refers to a “military pattern sword” having been used in earlier times for the bestowing of the knighthood.⁵¹

[86] Mr Lincoln also referred to Canadian cases, concerning issues arising in contexts other than firearm regulation, where expert evidence had referred to “military pattern vehicles”⁵² and where there was evidence of a tender which specified “transfer via standard military pattern field ambulance”.⁵³ Perhaps more relevantly, Mr Lincoln found the term referred to in a case about firearms which was decided by the Supreme Court of the Northern Territory of Australia.⁵⁴ The Court

⁴⁹ Dan Shea “The History of the MOD Pattern Room” (2004) 7 (4) *The Small Arms Review* 50.
⁵⁰ Barry and Matthew Sullivan *New Zealand Army Personal Equipment 1910-1945* (Wilson Scott Publishing, 2005).

⁵¹ Paul Easton “*Dubbing sword set to rise again*” *Dominion Post* (New Zealand, 10 March 2009).

⁵² *Canada (Minister of National Revenue) v Cast Terminals Inc* 2003 FCT 535 and *Gaetz v Canadian Armed Forces* Human Rights Tribunal 14/88 November 8 1988.

⁵³ *Laerdal Medical Canada Ltd v Department of Public Works and Government Services* Canadian International Trade Tribunal, File No PR-2003-078.

⁵⁴ *Lawrence v Hayes* [1989] NTSC 39 (7 November 1989).

was concerned with an appeal against conviction and sentence for possession of a SKS Semi-Auto Rifle without licence to do so. The Court said:

It was common ground that at the relevant time the firearm was a “firearm class D”, being a Chinese military semi-automatic rifle, which fell within the definition in the Firearms Act of a firearm of a military pattern which is self-loading or semi-automatic.

[87] It seems from that description that the legislation at the time used the term “military pattern”.⁵⁵ However the legislation has since been amended and that term is no longer used.⁵⁶

[88] From all of this I accept Mr Woods’ evidence that “military pattern” is a term which has a particular technical meaning. It refers to equipment that meets military specifications. That technical meaning also fits with the natural and ordinary meaning of “pattern”. The use of that term, rather than “style”, suggests that the grip will conform to a pattern. That is, that it will be a model, example or a copy of something that has been specified or pre-determined. It does not suggest that the equipment (here the pistol grip) will be similar in appearance (ie in the style of), but not be the same, as a grip which meets military specifications. Nor does it suggest that it is concerned with any grip where the forehand will be vertically aligned under the trigger as is common with the hand position on the grip on military semi-automatics that (according to Mr Woods’ evidence) have been “in vogue”.

[89] I turn now to consider “military pattern free-standing pistol grip” as a phrase and in light of the purpose of the statutory provisions.

Overall assessment of meaning of “military pattern free-standing pistol grip”

[90] The starting point is the ordinary meaning of the words. Parliament did not refer simply to pistol grips, nor to “obvious”, “well defined” or “conspicuously

⁵⁵ The legislation referred to in that case was probably the Firearms Act No 2 1979 which included in the definition of a “firearm class D” a firearm which “is constructed primarily as an anti-personnel weapon (including a firearm of a military pattern which is self-loading or semi-automatic)”.

⁵⁶ The Firearms Act 1997. The research before me does not discuss the reason for the amendments.

protruding” pistol grips. It therefore appears to have had in mind a particular kind of pistol grip. The pistol grip to be subject to the new restrictions was a “military pattern free-standing” pistol grip. Giving effect to all components of the phrase, the natural and ordinary meaning of that phrase indicates that Parliament intended to require an E endorsement if a semi-automatic firearm has a grip which is independent of the stock and which is in the pattern of a grip that meets military specifications.

[91] The police interpretation requires that “military pattern free-standing” be read together to mean an obvious pistol grip that extends below the trigger and which allows a full-hand grip. This is on the basis that a full-hand grip extending below the trigger (the “free-standing component”) is common in military firearms and so is a grip that is in the military style (“the military pattern” component). This is not the natural and ordinary meaning of “military pattern” nor “free-standing”. It is also a less specific definition because it introduces subjective assessments as to what is an obvious pistol grip which extends below the trigger and which allows for a full-hand grip in a military style. Whether this is what Parliament intended, despite the ordinary and natural meaning of the words, requires an assessment of the context of that phrase in the Act in light of its purpose.

[92] The phrase “military pattern free-standing pistol grip” appears in the sporting configuration definition. It is one of a list of specified features which takes the semi-automatic out of that definition and into the MSSA definition. In some instances the feature listed in the sporting configuration definition specifically regulates by function: a folding or telescopic butt. Other features are defined with reference to their identity: a flash suppressor and bayonet lugs. In other cases the feature is defined with reference to function and appearance: the capability or appearance of a magazine. The only one of these that appears to relate only to a “cosmetic” feature, rather than a functional feature is the appearance of the magazine capability. Otherwise, the features may have military uses (whether or not all military firearms would include all of these features) but are not features ordinarily used or needed for sporting purposes (or in pest control or other lawful civilian activities).

[93] Similarly, a firearm which has a pistol grip independent of the stock and which conforms to military specifications may have military uses but is not a feature ordinarily used for sporting purposes. It becomes less clear to say that a pistol grip (though obvious and extending below the trigger), which is integrated with the stock and which does not conform to military specifications, has military uses but is not ordinarily used or needed for sporting purposes. A pistol grip of this kind may simply give the firearm user better two-handed control of the firearm (a safety feature which may be useful for sporting and other legitimate civilian purposes) and be no more capable of one-handed firing than a stock with an integrated grip in a more traditional rifle. That suggests that if Parliament intended to regulate the type of grip which the police interpretation covers, it can only have been doing so because it was seen as having a cosmetic feature of appeal to someone unsuitable to have such a firearm (ie someone with an unhealthy fascination in war, violence and killing).

[94] Turning to the broader context, the concern at the time arose out of the Aramoana tragedy. Mr Gray had a Norinco 84S 5.56mm semi-automatic. That was a firearm with features like the AK47 and there was a flood of AK47 look-a-likes available. Although the Norinco 84S can be manufactured in other ways, like an AK47 it does come manufactured with a pistol grip that is not integrated with the stock and is made to military specification. Mr Gray also had literature about war. Against that background both parties agree that there was a concern that features of combat weapons could appeal to the wrong sort of people.

[95] A pistol grip like that of an AK47, if to be used by the military, would be made to military specifications. A semi-automatic firearm with such a grip could be described as a “Rambo-style” weapon and an AK47 look-a-like. Regulating a pistol grip that was not integrated with the stock and which met military specifications would regulate an attribute of a firearm of potential appeal to someone with an unhealthy interest in combat weapons. It becomes less clear to say that an obvious pistol grip extending below the trigger and allowing a full hand grip, but integrated with the stock and not meeting military specifications, is a “Rambo-style” weapon or an AK47 look-a-like, or is otherwise a feature that would be of appeal to someone with an unhealthy interest in combat weapons. Further, the evidence does not

suggest that a pistol grip of this kind is any more dangerous in terms of its capacity for uninterrupted and high-speed discharge (as with, for example, the magazine size) or its ability to be concealed (as with, for example, a folding butt) as compared with an integrated pistol grip on a more traditional sporting rifle.

[96] It is therefore not clear that, in context and in light of the purpose of the statutory provisions, Parliament intended a broader and more subjective test which does not fit with the ordinary and natural meaning of the words used. It seems to me that, in using the words it did, Parliament had in mind a particular kind of grip which it described in a confined way rather than the looser definition which the police now propose to apply.

[97] If manufacturers are now producing firearms intended to get around the restrictions, and if that is of concern to the police (and others), then it may be that the legislation needs amending. It must also be remembered that a semi-automatic cannot have any one of the specified features for a “sporting configuration”. So a firearm that does not have a “military pattern free-standing pistol grip” will be a MSSA if, for example, the magazine has the size or appearance of the specified number of cartridges or it has a folding butt.

[98] Mr Lincoln makes the point that if, based on the police interpretation, a person obtains an “E” endorsement because their firearm has an “obvious” pistol grip, they could then “upgrade” the firearm with magazines of any capacity, folding stocks, military pattern free-standing pistol grips, bayonet lugs and flash suppressors and that this would be contrary to Parliament’s intent. I did not hear from the police if this would be possible or whether conditions of the endorsement could prevent this. It is, however, the position that to be within the “sporting configuration” definition the firearm must be maintained “at all times” in that configuration.

Result

[99] The result is that I consider the police interpretation to be an incorrect construction of the term “military pattern free-standing pistol grip”. It follows that Mr Lincoln’s H&K SL8 rifle does not have such a grip. The grip is integrated with

the stock and does not conform with military specifications. I accordingly declare that:

- a) “military pattern free-standing pistol grip” as referred to in the Arms Act 1983 does not mean what is set out in the police communication dated 2 July 2009 (refer [30] above);
- b) Mr Lincoln’s Heckler & Koch SL8 rifle does not have a “military pattern free-standing pistol grip” as referred to in the Arms Act 1983.

Mallon J

Solicitors:

A M Powell, Crown Law Office, PO Box 2858, Wellington (powell@crownlaw.govt.nz)

Copy to:

Mr Lincoln