

Civil and Administrative Tribunal  
New South Wales

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Case Name: Stiles v Commissioner for Fair Trading & Commissioner of Police, NSW Police Force

Medium Neutral Citation: [2016] NSWCATAD 30

Hearing Date(s): 23 September 2015

Date of Orders: 16 February 2016

Decision Date: 16 February 2016

Jurisdiction: Administrative and Equal Opportunity Division

Before: S Montgomery, Senior Member

Decision: The decision is affirmed

Catchwords: tattooist licence - fit and proper person - close associate  
- public interest

Legislation Cited: Tattoo Parlours Act 2012  
Civil And Administrative Tribunal Act 2013  
Security Industry Act 1997

Cases Cited: Austin v Commissioner for Fair Trading +  
Commissioner of Police, NSW Police Force [2015]  
NSWCATAD 244  
AVS Group Australia Pty Limited v Commissioner of  
Police, NSW Police Force [2012] NSWADT 1  
Constantin v Commissioner of Police, NSW Police  
Force (GD) [2013] NSWADTAP 16  
Dyas v Director-General Fair Trading & Commissioner  
of Police [2014] NSWCATAD 223  
Hughes and Vale Pty Ltd v New South Wales (No. 2)  
[1955] HCA 28; (1955) 93 CLR 127  
Smith v Commissioner of Police NSW Police Force &  
NSW Fair Trading [2014] NSWCATAD 184  
Zahra v Commissioner of Police, NSW Police Force &  
NSW Fair Trading [2014] NSWCATAD 211

Category: Principal judgment

Parties: Gleness Stiles (Applicant)  
Commissioner for Fair Trading (First Respondent)  
Commissioner of Police, NSW Police Force (Second Respondent)

Representation: Counsel:  
L Robison (Applicant)  
C Mantziaris (First and Second Respondents)

Solicitors:  
John Stonham & Co Lawyers (Applicant)  
Crown Solicitors Office (First and Second Respondents)

File Number(s): 1510354

Publication Restriction: Section 64 of the Civil And Administrative Tribunal Act 2013 applies to those paragraphs of these reasons identified as [not for publication]. Those paragraphs are not to be released to either the Applicant or to the public.

## REASONS FOR DECISION

- 1 This is an application for review of a determination to refuse the Applicant's application for a tattoo operator's licence. The decision to refuse the licence application was taken by the Commissioner for Fair Trading ("Fair Trading") under section 16 (1) of the *Tattoo Parlours Act* 2012 ("the Act"). The Commissioner of Police ("the Commissioner") made an adverse security determination ("the ASD") under section 19(2) of the Act, to the effect that
  - (a) the Applicant is not a fit and proper person to be granted the licence, due to her failure to disclose her aliases; and
  - (b) it would be contrary to the public interest for the Applicant to be granted a licence sought, for the reason that she is associated with the Rebels OMCG ("the Rebels").
- 2 Pursuant to section 27(3) of the Act, the Commissioner is a party to these proceedings.

- 3 I will provide both open and confidential reasons for my decision. In the open reasons I will identify confidential paragraphs as [not for publication]. Those paragraphs are not to be released to either the Applicant or to the public.

### **The licensing regime**

- 4 I have considered the licensing regime established by the Act in my decisions in *Smith v Commissioner of Police NSW Police Force & NSW Fair Trading* [2014] NSWCATAD 184, *Zahra v Commissioner of Police, NSW Police Force & NSW Fair Trading* [2014] NSWCATAD 211, *Dyas v Director-General Fair Trading & Commissioner of Police* [2014] NSWCATAD 223 and most recently in *Austin v Commissioner for Fair Trading + Commissioner of Police, NSW Police Force* [2015] NSWCATAD 244.
- 5 The Applicant applied to Fair Trading for the licence, Fair Trading referred the application to the Commissioner who made the ASD. In the circumstances where the Commissioner makes an ASD Fair Trading has no discretion and must refuse to grant a licence.
- 6 Pursuant to section 27(i)(a) of the Act, review may be sought of the refusal to grant a licence. In my view, section 27(3) of the Act is to be construed as giving the Tribunal the jurisdiction to make a fresh determination on the basis of the material placed before it. The Tribunal has discretion to grant a licence notwithstanding the adverse security determination.

### **The Adverse Security Determination**

- 7 The Commissioner's ASD found that the Applicant's failure to disclose alias details shows her to be of poor character.
- 8 The Applicant provided a copy of her birth certificate as one of the three proofs of identity required when lodging her application form with Fair Trading. The certificate indicates that her birth name was Gleness Christine O'Neill. However, she did not disclose this surname on the licence application form.
- 9 Further, Roads and Maritime Services records indicate that the Applicant was known as Gleness Christine Morgan between 16 January 1979 and 22 January 2014. She did not disclose the surname Morgan on the licence application form.

- 10 The ASD found that the Applicant's failure to disclose these details appeared to be a deliberate attempt to conceal her former identity and demonstrate dishonest behaviour and poor character. This was found to be an indication of a willingness by the Applicant to attempt to mislead the administrators of the licensing scheme and therefore the Applicant was not considered to be a fit and proper person to hold an operator licence.
- 11 The ASD also found that it would be contrary to the public interest for the Applicant to be granted an operator licence due to her association with the Rebels, and the resultant reputation the business has of being affiliated with the Rebels.
- 12 It is common ground that the business that the Applicant proposes to operate ("the business") was previously operated by Mr Steven Institoris. Mr Institoris' licence application was also refused and his request for a stay of that refusal was refused by this Tribunal in October 2014.
- 13 At the time of the application being lodged by Mr Institoris, the lease agreement for the shop where the business was conducted was held by Ms Shannon Timms. That lease was renewed after Mr Institoris' licence application was refused and notwithstanding that Mr Institoris was not authorised to conduct the business.
- 14 It is not in dispute that Ms Timms is the Applicant's daughter. Nor is it in dispute that Ms Timms is Mr Institoris' former de facto partner. Ms Timms is the mother of Mr Institoris' son - the Applicant's grandson.
- 15 The ASD also noted that Mr Institoris has a strong financial and personal interest in continuing to operate his business and found that this interest could continue via the Applicant, being the mother of Mr Institoris' former de facto partner. It found that the Commissioner cannot have confidence that improper conduct would not occur if the Applicant was granted an operator licence.

### **The Issues**

- 16 The issues to be determined are whether the Applicant is a fit and proper person to hold the licence and whether it would be contrary to the public interest for the Applicant to be granted the licence sought.

## **Fit and Proper**

- 17 This expression has been considered in numerous matters in this Tribunal and in other jurisdictions. The concept of 'fit and proper' takes its colour from its statutory context and a person's fitness is to be gauged in the light of the nature and purpose of the activities that the person will undertake.
- 18 I have discussed various authorities in relation to the concept in some detail in the decisions that I have referred to above and will not repeat it here.

## **Public Interest**

- 19 The Tribunal may affirm the decision if it would be contrary to the public interest for the Applicant to be granted the licence. In my earlier decisions under the Act I have referred to a number of authorities that have considered the concept of the public interest. In my view the requirement for consideration of the concept of the public interest is designed to give the broader interests of the community priority over private interests.
- 20 The 'public interest' allows for issues going beyond the character of an applicant to be taken into account. These may include concerns in relation to public protection, public safety and public confidence in the administration of the licensing system: *Constantin v Commissioner of Police, NSW Police Force (GD)* [2013] NSWADTAP 16. An applicant's personal interest in retaining his or her licence cannot outweigh the public interest in having full confidence in the professionalism of people involved in the industry.

## **Close Associate**

- 21 The Commissioner contends that Mr Institoris is a close associate of the Applicant and that as a consequence of that association the Applicant should not be permitted to hold a licence under the Act.
- 22 The expression "close associate" is defined in section 4 of the Act as follows

### 4 Meaning of "close associate"

(1) For the purposes of this Act, a person is a close associate of an applicant for a licence or a licensee if the person:

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or

power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the management or operation of that business, or

(b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence, or

(c) is or will be engaged as a contractor or employed in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

(2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.

(3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.

(4) In this section:

relevant financial interest, in relation to a business, means:

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

(c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

relevant position means:

(a) the position of director, manager or secretary, or

(b) any other position, however designated, if it is an executive position.

relevant power

means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.

- 23 To my knowledge this provision in section 4 of the Act has not yet been considered in any matters before this Tribunal. A comparable provision is found in section 5 of the *Security Industry Act 1997*. I considered that provision in my decision in *AVS Group Australia Pty Limited v Commissioner of Police, NSW Police Force* [2012] NSWADT 1. In that matter, the Commissioner asserted that there was an undisclosed close associate. This requires consideration of a

number of issues but primarily the issue of whether Peter Sleiman was a close associate of Tony Sleiman and AVS Group Australia Pty Limited; and if so, whether Peter Sleiman was a fit and proper person to hold a licence under the Act.

- 24 I discussed the meaning of 'close associate' and of the specific concept of 'relevant position' at paragraphs [97] to [110] and [216]. I stated at paragraphs [107] - 110]

107 In the circumstances of a family business arrangement, directors commonly are formally appointed. However, it is less likely that individuals will be formally appointed to other roles within a family business than in the wider commercial sphere.

108 ... The use of the words "manager, and other executive positions and secretary, however those positions are designated" in section 5 of the [Security Industry] Act suggests to me that the legislature intended that an official title is not conclusive of the issue. The actual role played by an individual must be considered to determine whether or not the duties can reasonably [be] considered as falling within the scope of one or more of those positions.

109 It is not necessary that the Commissioner establish that Peter "held" a "relevant position" in the business of AVS GA in the legally relevant sense. It is sufficient if the Commissioner establishes that Peter exercised the functions of such a position without having been formally appointed.

110 That construction of the provision promotes the purpose of the Act to prevent persons who are not fit and proper to hold a licence from acting on behalf of a security business.

- 25 In my view those comments are equally applicable when considering whether a person is a 'close associate' for the purposes of the Act.

### **The Applicant's position**

- 26 The Applicant is semi-retired. She has part-time positions in a number of organisations and does voluntary work with others. She disputes the findings in the ASD that she is not a fit and proper person to hold the licence or that it is not in the public interest that she do so.

- 27 She denies ever deliberately concealing the fact that she has previously been known under other names – her maiden name and her former married name. The applicant was formerly known as Gleness Christine O'Neill (her maiden name) and Gleness Christine Morgan (her former married name). Old friends still know her by her former names.

- 28 She did not advise that she had previously been known under other names in her online application but stated that she does not recall there being any tab or reference to "Are you known or have you ever been known by any other names (e.g. maiden name)?" on the online licence application. She denied that this was an attempt to mislead.
- 29 She denies that she has ever been a member of the Rebels or any other OMCG or that she is an associate of the Rebels or any other OMCG.
- 30 She stated that her former husband became a Member of the Rebels many years after they were divorced but she understands that he is no longer a member of the Rebels.
- 31 She also stated that her 18 year old grandson, Joshua, is the son of her daughter Shannon and Rebels member Steven Institoris. She said that she has had little contact with Steven Institoris and, at most, she may see him once per year. She also stated that Joshua is a student and is not, and has never been, a member of the Rebels.
- 32 The location at which the Applicant proposes to operate her tattoo parlour business ("the premises") was previously the subject of an application for an operator licence lodged by Mr Institoris in regard to the Ink House Tattoo parlour ("Ink House"). That application was refused.
- 33 The Applicant said that she became aware that Ink House was closed, and no longer operating, initially either through Shannon or Joshua. If her application is successful she will attempt to obtain a lease to the premises. There would be no financial payment to Steven Institoris, or to any third party and Steven Institoris would have no connection whatsoever with her business.
- 34 She conceded that she has little knowledge of the tattoo industry generally or the Ink House business in particular. She does not know details of the lease arrangements for the premises eg rent, outgoings etc, or what income the business could be expected to generate. Nor does she know about the costs associated with conducting the business, the cost of equipment etc or whether it would be possible to obtain anything from the Ink House business. She does not have knowledge of what involvement Ms Timms might have with other



tattoo businesses in the area. She said that she has not spoken with Ms Timms about those issues nor does she intend to do so.

35 Her evidence is that she would rely on the expertise of others to make all the necessary arrangements and to develop the knowledge needed to operate the business once she has obtained a licence. She maintains that it is prudent business practice to not invest time and resources to those issues until she has a final determination in relation to her licence application.

36 The Applicant relies on the character reference provided by Ken Welsh who has known her as a work colleague and socially for approximately thirty years. He speaks highly of her and supports her licence application.

37 She also relies on the character reference provided by Deby Blake who has known her as a close personal friend for a period of nearly thirty years. Ms Blake also speaks highly of the Applicant and supports her licence application.

#### **The Respondents' positions**

38 Fair Trading did not take an active role in the proceedings. The case for the Respondents was presented by the Commissioner.

39 The Commissioner relies on the security determination and material referred to in that document. A redacted copy of the ASD has been served on the Applicant. An unredacted copy of the ASD has been provided to the Tribunal on a confidential basis. The material on which the redacted sections of the ASD are based has also been provided on a confidential basis. The redacted material has not been provided to the Applicant.

40 [not for publication].

41 [not for publication].

42 [not for publication].

43 [not for publication]

44 [not for publication].

45 [not for publication].

46 [not for publication]

47 The Commissioner contends that Mr Institoris is seeking to install 'clean skins' i.e. operators who have no criminal history and no apparent links to any organised crime, as operators to run the businesses. The Commissioner contends that the Applicant appears to fall into that category of applicant.

48 [not for publication]

49 [not for publication].

50 [not for publication].

51 In the circumstances, the Respondents contend that the Applicant has not established that she is a fit and proper person to hold the licence or that it is in the public interest for her to do so.

### **Discussion**

52 A person's fitness is to be gauged in the light of the nature and purpose of the activities that the person will undertake. In *Hughes and Vale Pty Ltd v New South Wales (No. 2)* [1955] HCA 28; (1955) 93 CLR 127 the High Court said (at 156-7):

"The expression 'fit and proper' is of course familiar enough as traditional words when used with reference to offices and perhaps vocation. But their very purpose is to give the widest scope for judgment and indeed for rejection. 'Fit' (or 'idoneus') with respect to an office is said to involve three things, honesty, knowledge and ability ... When the question was whether a man was a fit and proper person to hold a licence for the sale of liquor it was considered that it ought not to be confined to an inquiry into his character and that it would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend upon its own circumstances."

53 In order to assess the question of whether or not the Applicant is a fit and proper person to hold the licence she seeks, I need to consider her honesty, knowledge and ability to undertake the responsibilities that are provided for by such a licence.

54 The Commissioner has pointed to the Applicant's failure to advise of her former names as evidence of lack of honesty. Mr Robert Guthrie, the manager of the Fair Trading branch with responsibility for the online application process gave evidence of his knowledge of that process. He was challenged on his knowledge and experience and he conceded that he does not have expertise in information and technology systems. Nevertheless I am satisfied on his

evidence that he has a sound working knowledge of the system and that it is most likely that the online application form provided for inclusion of aliases, including maiden names.

55 However, I am not satisfied that the Applicant has deliberately withheld information concerning her former names. As was noted, she provided her birth certificate indicating one of her former names. While it may indicate a lack of attention to detail I do not accept that it was done to deceive the Respondents. That being the case, I do not consider that the Applicant's honesty is in doubt in that regard.

56 However, in my view there are issues in regard to her knowledge and ability.

57 The Commissioner has questioned the plausibility of some of the Applicant's evidence. In particular he contends that it is implausible that the Applicant would not have discussed the potential business at least in some detail.

58 It is apparent that the Applicant has no background in the tattoo industry and has very little understanding of how a tattoo parlour operates. Further, she has little knowledge in regard to the premises from which she proposes to operate her business. She intends to take advice from professionals in that regard and to develop the necessary knowledge if the licence is granted.

59 I accept that this is a possibility. The situation would be different if she were intending to perform tattoo work herself. That is not the case here. She intends to run a business and to rely on the expertise of others.

60 While I have concerns in regard to whether or not that would be a realistic approach on a day to day basis, in the circumstances I am not satisfied that there is sufficient basis to conclude that she is not a fit and proper person to hold the licence.

61 I also accept that it is possible, though unlikely, that she did not have any discussion about the details of the premises or the business with Ms Timms.

62 [not for publication].

63 [not for publication].

64 [not for publication].

- 65 As noted above, the Commissioner asserted that Mr Institoris is a close associate of the Applicant. However, there is no evidence to support that contention in regard to the role that Mr Institoris would play in the business. In my view it is merely speculation that he would attempt to assert pressure on the Applicant.
- 66 In the circumstances I am not satisfied that Mr Institoris is a close associate of the Applicant.
- 67 The second ground on which the Commissioner relies is that it is not in the public interest for the Applicant to hold the licence. I agree with the Commissioner in this regard.
- 68 In my view, there is a real risk of association, either directly or indirectly, between the Applicant and Mr Institoris in relation to the conduct of a tattoo business at the premises. There is clearly a link between the Applicant and her daughter, Ms Timms, and there is clearly a link between Ms Timms and Mr Institoris. There is clearly a link between Ms Timms and Mr Institoris and the premises.
- 69 I am satisfied that Ms Timms was closely associated with the Ink House business and the lease for the premises. I am also satisfied that she was closely associated with Mr Institoris in relation to the conduct of that business.
- 70 I am not satisfied that those links would be easily severed.
- 71 It is clear that the Applicant is inexperienced in relation to the tattoo industry. It is equally clear that she has no experience in operating a tattoo business or any other business. She would be totally reliant on advice that she could obtain in relation to any business that she operated. Given the fact that Mr Institoris operated the Ink House business, it is likely that he would want to continue some association with the business. It is also probable that some clients would associate the background of Ink House and the premises with any future business the Applicant might conduct from the premises. It is likely that she would be exposed to pressure in that regard and, given her inexperience, it is unclear how she would cope with that type of pressure.

72 On this basis, I do not have confidence that improper conduct would not occur if the Applicant were granted an operator licence.

73 [not for publication]

74 In my view, these concerns are reasonably founded and are a basis on which the licence should be refused.

75 [not for publication].

76 In the circumstances of this matter it is my view that it is not in the public interest that the licence be granted. That being the case, the decision to refuse the licence application should be affirmed.

**Order**

77 The decision is affirmed

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.  
Registrar