

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT ROTORUA**

**I TE KŌTI-Ā-ROHE
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV-2019-063-000153
[2019] NZDC 15077**

IN THE MATTER

OF THE PRIVATE SECURITY
PERSONNEL AND PRIVATE
INVESTIGATORS ACT 2010

AND

IN THE MATTER

of and appeal by JED COLLIER against the
refusal of a certificate of approval

BETWEEN

JED COLLIER
Appellant

AND

PRIVATE SECURITY PERSONNEL
LICENSING AUTHORITY
Respondent

Hearing: 25 July 2019

Appearances: W Te Are for the Appellant
C Harvey for the Authority

Judgment: 6 August 2019

RESERVED JUDGMENT OF JUDGE P G MABEY QC

[1] The appellant Jed Collier applied for a certificate of approval, together with a temporary certificate of approval as a crowd controller. His application was made under the provisions of The Private Security Personnel and Private Investigators Act 2010 (the Act) and was refused by the Private Security Personnel Licensing Authority. He appeals that refusal.

[2] The purpose of the Act is set out in s 3 which provides:

3 Purpose

The purpose of this Act is to ensure that persons offering specified private security and investigation services for hire, and personnel providing those services,—

- (a) are suitably qualified to carry out that work; and
- (b) do not behave in ways that are contrary to the public interest.

[3] Mr Collier sought a certificate of approval as a crowd controller employee as defined in s 19 of the Act. By s 44 a crowd controller employee must hold a certificate of approval. Applications for certificates of approval are governed by s 46 which provides:

46 Application for certificate of approval

- (1) An application for a certificate of approval must be made to [a Licensing Authority] in the manner prescribed by regulations made under this Act and must—
 - (a) be in [a form approved by the chief executive of the Ministry of Justice after consultation with all Licensing Authorities]; and
 - (b) be accompanied by a photograph of the applicant, authenticated in accordance with any prescribed requirements; and
 - (c) be accompanied by the prescribed fee [(if any)].
- (2) The application must specify—
 - (a) the applicant's full name, residential address, occupation, and date of birth; and
 - (b) the particular class or classes of responsible employee in relation to which a certificate of approval is sought by the applicant; and

- (c) if the applicant is employed, the name of the applicant's current employer, or employers if more than 1; and
- (d) whether or not any of the grounds of disqualification in section 62 apply to the applicant; and
- (e) whether the applicant has ever—
 - (i) been convicted outside New Zealand of an offence; or
 - (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment; and
- (f) any other prescribed information.

[4] Applications are determined by the Private Security Personnel Licensing Authority appointed under the Act.

[5] The Licensing Authority must serve all applications for certificates of approval on the police (s 48) who may object, stating the grounds of their objection (s 49).

[6] The matters for consideration by the Authority in determining the application are set out in s 53 which provides:

53 Decision on application for certificate of approval

- (1) [A Licensing Authority] may grant an application only if—
 - (a) in the case of an applicant applying for a certificate as a responsible employee of a class in section 13, 14, [16A], 17, 18, or 19, the applicant is of or over the age of 18 years; and
 - (b) the requirements of section 46 are satisfied.
- (2) Subsection (3) applies if [a Licensing Authority] is satisfied that no grounds of disqualification under section 62 apply to the applicant.
- (3) [A Licensing Authority] must grant the application in respect of a particular class of responsible employee to which it relates unless the Licensing Authority is satisfied, based on any other evidence provided to the Authority relating to the character, circumstances, or background of the applicant, that the person is not suitable to be a responsible employee of that class.
- (4) Subsection (5) applies if [a Licensing Authority] is satisfied that 1 or more grounds of disqualification under section 62 apply to the applicant.

- (5) [A Licensing Authority] may grant the application in respect of a class of responsible employee to which it relates if, and only if, the Licensing Authority is satisfied that the person is suitable to be a responsible employee of that class taking into account—
 - (a) the grounds on which the applicant is disqualified under section 62 and the way in which that influences the suitability of the applicant; and
 - (b) any other evidence provided to the Authority relating to the character, circumstances, or background of the applicant.
- (6) Subsections (3) and (5) are subject to subsection (1).
- (7) [A Licensing Authority] may impose conditions on the performance by the certificate holder of duties as a responsible employee of any particular class in respect of which the certificate is issued.
- (8) [A Licensing Authority] must give written notice to the applicant and the Police (if an objection was filed) when it grants or refuses to grant an application, and give reasons for the grant or refusal of the application.

[7] Temporary certificates of approval can be issued in the circumstances provided in s 60.

60 Temporary certificates of approval

- (1) A person who has applied for a certificate of approval under section 46 may also apply in writing for a temporary certificate of approval.
- (2) [A Licensing Authority] may issue a temporary certificate of approval at any time after receiving a correct application for a certificate of approval under section 46 if,—
 - (a) in the case of an applicant applying for a certificate as a responsible employee of a class in section 13, 14, [16A], 17, 18, or 19, the applicant is of or over the age of 18 years; and
 - (b) the prescribed fee (if any) is paid; and
 - (c) except as provided for in subsection (3)(b), the application does not disclose any ground on which the applicant is disqualified under section 62; and
 - (d) there is no reason to believe that the application contains statements that are incorrect; and
 - (e) in the opinion of the Licensing Authority there are no other reasons disclosed by the application why the applicant may be unsuitable to be a responsible employee of the class or classes to which the application relates.

- (3) [A Licensing Authority] may issue a temporary certificate of approval under this section even if—
- (a) the time for the Police to file an objection under section 49 has not expired; or
 - (b) the applicant has not met the requirements prescribed in regulations made under section 114(1)(h).
- (4) A temporary certificate of approval issued under subsection (2) gives the holder all the rights and duties of a certificate of approval issued under section 54 to be a responsible employee of the class or classes to which the application relates.
- (5) A temporary certificate of approval is in force for a period of 3 months after the date of its issue, or until a certificate of approval is issued to the applicant under section 54, whichever comes first.

[8] Appeals against decisions of the Authority are to the District Court pursuant to s 102 which provides:

102 Appeals to District Court

- (1) The following persons have a right of appeal to [the District Court] against a decision of [a Licensing Authority] under this Act:
- (a) if an application is refused (whether in whole or in part), the applicant; and
 - (b) if an applicant is dissatisfied with a condition imposed by [an Authority] under section 33(7) or 53(7), the applicant; and
 - (c) if an application is granted (in whole or in part), a person who objected to the granting of the application; and
 - (d) if a licence is suspended or cancelled, the licensee; and
 - (e) if a certificate of approval is suspended or cancelled, the person whose certificate of approval is suspended or cancelled; and
 - (f) if the employment of an officer of a company that is a licensee is terminated, the officer; and
 - (g) if a licensee or person holding a certificate of approval is fined, the licensee or person; and
 - (h) if there was a complaint made by a constable under Part 4 but the licence or certificate of approval in relation to which the complaint was made was not suspended or cancelled, the Commissioner of Police.
- (2) An appeal under this section must be brought within [20 working days] after the date on which the appellant was notified in writing by

[a Licensing Authority] of the decision appealed against, or within any further period that the court may allow.

- (3) The appeal—
 - (a) must be made by way of originating application in accordance with the [District Court Rules 2014]; and
 - (b) must be filed in the office of the District Court nearest to the registered office of the licensee (if a company) or principal place of business of the licensee (if not a company), or to the place of employment or engagement of the certificate holder, as the case may require.
- (4) On hearing the appeal, the court may—
 - (a) confirm, vary, or reverse the decision appealed against; or
 - (b) in the case of an order suspending a licence or certificate of approval, vary the period of the suspension; or
 - (c) refer the matter back to the Licensing Authority with directions to him or her to reconsider the whole or any specified part of the matter.
- (5) Subject to any order of the court, every decision of [a Licensing Authority] against which an appeal is made continues in force and has effect according to its tenor pending the determination of the appeal.

[9] The appeal is by way of rehearing, District Court Rule 18.19.

[10] Mr Harvey raised procedural objections to the appeal proceeding as the appeal was not brought within the relevant appeal periods set out in s 102 as it was not served consistently with the requirements of the relevant District Court Rules.

[11] I have discretion to allow the appeal to be heard notwithstanding that procedural requirements have not been strictly complied with and I grant leave to extend time. Nothing is to be achieved by preventing the appeal hearing on technical grounds. There is no prejudice to the Authority and none has been raised by Mr Harvey.

[12] Mr Harvey then objects to the introduction of fresh evidence on the basis that it could have been provided to the Authority with Mr Collier's original application. I agree some of the matters which Mr Collier wishes me to take into account on appeal may well have been available with due diligence at the time of his application.

However I admit the evidence for the purposes of the appeal. It is cogent and relevant and the interests of justice require it be admitted.

The Authority's decision

[13] [The appointed Licensing Authority] delivered a decision on 6 March 2019 declining Mr Collier's application for a certificate of approval and a temporary certificate of approval.

[14] The Authority received notice of police opposition to Mr Collier's application on the basis of his "lengthy list of Australian convictions during the last seven years". The application was heard on the papers pursuant to s 50 which states:

50 Application determined on papers

- (1) [A Licensing Authority] must determine an application on the papers if no notice of objection to the grant of the application has been filed with the Licensing Authority in accordance with section 49.
- (2) If a notice of objection to the grant of an application has been filed with [a Licensing Authority] in accordance with section 49,—
 - (a) the Licensing Authority must determine the application on the papers unless it thinks an oral hearing is required; and
 - (b) if determining the application on the papers, the Licensing Authority may request that the applicant file a written response to the objection within a period of time specified by the Authority.
- (3) [A Licensing Authority] may refuse an application without holding a hearing in accordance with section 51 if the Licensing Authority is unable to verify information provided in the application.

[15] The Authority determined for the purposes of s 50(2)(a) that an oral hearing was not required.

[16] The Authority noted Australian convictions as:

- (a) Seven convictions in 2013 for stealing motor vehicles and two convictions for attempting to steal motor vehicles.

- (b) In 2015 Mr Collier was convicted of possession of methamphetamine for supply, driving recklessly, driving without a licence and failing to stop when requested by the police.
- (c) Mr Collier was sentenced to imprisonment for six months on the 2013 convictions and for 15 months in 2014.

[17] When Mr Collier applied for his certificate of approval he was obliged by s 46(2)(d) to specify whether any of the grounds of disqualification in s 62 of the Act applied to him and by s 46(2)(e) whether he had ever been convicted of an offence outside New Zealand.

[18] Section 62 provides:

62 Grounds of disqualification for individual applicant

The grounds of disqualification for an individual applicant for a licence, or an applicant for a certificate of approval, are that the individual—

- (a) has been ordered by a court to be detained in a hospital owing to his or her mental condition and is currently subject to such an order; or
- (b) has ever had an order made in relation to him or her under section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, section 118 of the Criminal Justice Act 1985, or section 39J of the Criminal Justice Act 1954 (being an order imposed, instead of passing sentence, that the offender be treated or cared for in a manner that the offender's mental impairment requires, either in the offender's interest, or for the safety of the public, or for the safety of a person or class of person); or
- (c) has ever been ordered by a court to be detained in a penal institution following conviction for an offence and that conviction or order has not been quashed on appeal; or
- (d) has ever been convicted of a specified offence as defined in section 4 of the Criminal Records (Clean Slate) Act 2004; or
- (e) has ever been disqualified from driving under section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or
- (f) has, within the preceding 7 years, been convicted of any—
 - (i) offence under the Arms Act 1983; or
 - (ii) offence under any of sections 216H to 216J of the Crimes Act 1961; or

- (iii) offence under section 10, 11, [12A,] 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986; or
- [(iiia) offence under section 103(1) of the Credit Contracts and Consumer Finance Act 2003 that involves a breach of any provision of Part 3A of that Act; or]
- (iv) offence under section 8 or 25 of the Harassment Act 1997; or
- (v) offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, in relation to which the amount, level, or quantity at and over which the drug is presumed to be for supply is specified in Schedule 5 of that Act; or
- (vi) offence of dishonesty; or
- (vii) offence of violence; or
- (viii) offence under this Act of working while not holding a licence or relevant certificate of approval or employing or engaging a person without a relevant certificate of approval, or an offence under section 16, 34, or 52 of the Private Investigators and Security Guards Act 1974; or

[19] Section 62(c) applies directly to Mr Collier as he has been imprisoned by a Court. The fact that the Court is an Australian Court does not matter.

[20] When he made his application Mr Collier informed the Authority that he had two convictions in Australia for driving recklessly and had been disqualified for driving for two years. He made no mention of his other Australian convictions or the fact that he had been imprisoned in Australia. Nor did he say that his most recent disqualification for driving recklessly was in fact for ten years in that country.

[21] The Authority recorded that upon receipt of the police opposition to his application Mr Collier responded by saying that he now had mixed martial arts training and had learnt to defuse difficult situations. He was physically fit and had taken a course in first aid. The Authority however noted that there was no attempt to address the issues that resulted in his imprisonment in Australia, particularly methamphetamine offending.

[22] The Authority also noted that as part of his application Mr Collier provided references referring to him as honest and reliable and an appropriate person to be

approved under the Act. However one of the referees had known Mr Collier for a brief period only since October 2018. The other had known him for 10 years and had attested to Mr Collier's honesty notwithstanding the Australian convictions. That referee was either unaware of those convictions or had an entirely distorted view as to what is or is not honesty. The Authority gave little weight to the references.

[23] In Mr Collier's favour the Authority noted that he had not offended since being released from imprisonment and had taken some positive steps to improve himself. However the Authority was influenced by the fact that in making his application Mr Collier saw fit to deliberately deprive the Authority of the full picture concerning his Australian convictions. On that basis he was found to be unfit to hold a certificate of approval. The Authority said:

... until he can be open about his offending history, including showing some insight into the seriousness of what he has done and the steps he has taken to ensure he stays out of trouble, I cannot find he is a fit and proper person to hold a COA.

After considering all the evidence before me as to Mr Collier's background circumstances and character I am not satisfied that he is currently suitable to be a responsible crowd controller in accordance with s 53(5) of the Act.

Mr Collier's application for a Certificate of Approval is therefore declined.

[24] In support of his appeal Mr Collier swore an affidavit annexing fresh information that was unavailable to the Authority. That information was in the form of additional character references and letters of support for his application.

[25] In his affidavit Mr Collier says:

I am aware that the most aggravating factor is my lack of disclosure of my full convictions, especially the Australian convictions.

In hindsight the lack of acknowledgment would be seen as dishonestly, but understanding of the request was for New Zealand matters, given the work was here.

[26] That statement runs entirely contrary to the fact that Mr Collier did disclose some of his Australian convictions and thus his statement that he understood the requirement to disclose New Zealand convictions only is not credible.

[27] His overall position is that he has paid the price for his past and wishes to move on in a useful way.

Decision

[28] Section 53(5) provides a discretion to the Authority to grant an application if the Authority is:

Satisfied that the person is suitable to be a responsible employee of that class taking into account:

- (a) The grounds of which the applicant is disqualified under s 62 and the way in which that influences the suitability of the applicant; and
- (b) Any other evidence provided to the Authority relating to the character, circumstances or background of the applicant.

[29] The section refers to “suitability”. Some other licensing statutes where character is under consideration refer to “fit and proper person”. Whatever the terminology a good character assessment is required in light of the purpose of the particular legislation in question.

[30] The purpose of the Act is to ensure that only suitably qualified people are licensed or authorised.

[31] Given the nature of the work for which a license is required a suitably qualified person must not only have particular skills but must be a person of good character. That entails consideration of honesty and integrity.

[32] In this case the Authority came to the conclusion that Mr Collier’s blatant failure to tell the truth about his Australian convictions and the penalties imposed showed dishonesty.

[33] I consider the Authority was correct in its dishonesty assessment.

[34] In addition, the Authority noted a lack of evidence of Mr Collier’s insight into the seriousness of his past offending and that he had rehabilitated.

[35] A purpose of the Act is to ensure that persons licensed or authorised do not behave in ways contrary to the public interest.

[36] The Authority's need for evidence that Mr Collier appreciates the seriousness of his past and has rehabilitated is directed at that purpose.

[37] Granting a certificate of approval to a dishonest person with a serious criminal past would be quite contrary to not only the need to ensure that only suitably qualified persons are licensed but that they will not behave in a manner contrary to the public interest. The finding of unsuitability is fully justified.

[38] Mr Collier can of course reapply if he wishes and provide evidence of genuine rehabilitation but at this stage I am quite clear that his appeal must be dismissed and that pursuant to s 102(4)(a) I confirm the Authority's decision.

P G Mabey QC
District Court Judge