

CITATION: *Robinson v Office of Fair Trading – Industry Licensing Unit* [2016] QCAT 306

PARTIES: Jon Robinson
(Applicant)
v
Office of Fair Trading – Industry Licensing Unit
(Respondent)

APPLICATION NUMBER: GAR026-16

MATTER TYPE: General administrative review matters

HEARING DATE: 16 August 2016

HEARD AT: Brisbane

DECISION OF: **Member Gordon**

DELIVERED ON: 2 September 2016

DELIVERED AT: Brisbane

ORDERS MADE: **The decision of the Chief Executive of 14 January 2016 to refuse to renew Jon Robinson’s licence is confirmed.**

CATCHWORDS: REVIEW – private investigator – where refusal to renew licence – where one important reason to refuse licence is need for deterrence – whether decision can be based on deterrence

REVIEW – evidence – whether tribunal can take judicial notice that police officers often join the security industry when they leave the police service

REVIEW – private investigator – statutory tests to apply for renewal of licence – where several mitigating factors – whether the statute limits the mitigating factors which can be taken into account

Security Providers Act 1993 (Qld) ss 11, 21, 26(2), Schedule 2
Security Providers Regulation 2008 (Qld) s 12
Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 20

Acts Interpretation Act 1954 (Qld) s 14A

Featherstone v Department of Justice and Attorney-General, Industry Licencing Unit [2015] QCAT 329

Sobey v Commercial and Private Agents Board (1979) 22 SASR 70

Chief Executive, Department of Justice and Attorney General v Halmarn Pty Ltd [2014] QCAT 099

Board of Professional Engineers of Queensland v Wu [2011] QCAT 330

Legal Services Commissioner v Laurie [2011] QCAT 335

Holland v Jones (1917) 23 CLR 149

Australian Communist Party v Commonwealth (1951) 83 CLR 1

APPEARANCES:

APPLICANT: Keith Wylie, counsel for Jon Robinson instructed by Synkronos Legal.

RESPONDENT: Robert Vize for the Office of Fair Trading.

REASONS FOR DECISION

- [1] This matter concerns a private investigator, Jon Robinson, who sought and received information from two police officers which they unlawfully obtained from the police computer. The police officers concerned were relatives of Mr Robinson by marriage.
- [2] The police officers were dismissed from the police service. They, also with Mr Robinson, were convicted of, and sentenced for, an offence with a number of counts.
- [3] Because of these events, the licensing authority refused to renew his licence as a private investigator.
- [4] Mr Robinson has shown considerable remorse and understanding of this wrong and is otherwise a man of integrity. He is highly unlikely to do the same or anything similar again.
- [5] Public confidence in this arm of the security industry however, requires that Mr Robinson's licence should not be continued seamlessly, but that there should be a significant break in it. The public perception should be that Mr Robinson has been properly disciplined for what happened. A significant break in the licence is also needed as a deterrent to others in the profession or who aspire to join it.

- [6] Legal submissions were made on Mr Robinson's behalf however, that it is wrong to consider deterrence. In this decision, I have to decide whether the Chief Executive, and the tribunal on this review, can do this.
- [7] The factual basis showing the need for, and importance of, a deterrent is also under examination in this decision. Legal submissions were made on Mr Robinson's behalf that the tribunal could not take judicial notice that police officers often join the security industry when they leave the police service.¹
- [8] The proper construction of the statutory provisions is also under examination in this decision. The statutory provisions appear on first reading, to exclude consideration of certain circumstances including mitigating factors, which would otherwise be relevant.
- [9] I heard evidence and submissions on 16 August 2016, and received further written submissions in the following 14 days.

Legal framework

- [10] The Chief Executive, Office of Fair Trading has responsibility under the *Security Providers Act* 1993 (Qld) to license those who work in the security industry, including the arm that is under consideration here: that of private investigators.
- [11] If a person affected wishes to have a licensing decision reviewed, they can apply to the tribunal.² When dealing with such an application, the tribunal effectively stands in the shoes of the Chief Executive and must apply the same criteria as the Chief Executive would do. This is because the tribunal's review is by a way of a fresh hearing on the merits so that it produces the "correct and preferable decision".³ This means that the tribunal can accept evidence which was not before the original decision maker.
- [12] Since the proper construction of the statutory wording is in issue here, it is necessary to set out the relevant legislative provisions fairly fully. The criteria which must be applied in the case of a renewal of a licence is set out in Division 5 of Part 2 of the *Security Providers Act*. Section 21(1) lists various grounds for the refusal to renew a licence and the relevant one here is paragraph (g):-

(g) the licensee, or another person required to be an appropriate person for the grant of the licence, is not, or is no longer, an appropriate person.

- [13] Then section 21(4) says:-

¹ Or a similar finding.

² Section 26(2) of the *Security Providers Act*.

³ Section 20 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (the 'QCAT Act').

- (4) The question whether a person is, or continues to be, an appropriate person is decided in the same way as the question whether the person would be an appropriate person for the grant of the licence.

[14] This refers back to the criteria set out in the Act for the granting of the licence. This is in section 11, which I need to set out in full:-

Entitlement to licences—individuals

- (1) This section applies if an individual applies for a licence.
- (2) A person is entitled to a licence if the chief executive is satisfied that the person—
- (a) is either—
 - (i) 18 years or more; or
 - (ii) for a class 2 licence for carrying out the functions of a security equipment installer—an apprentice or trainee security equipment installer; and
 - (b) for an application for a class 1 licence, other than a security firm licence or restricted licence—has successfully completed an approved training course for carrying out the functions, or the category of functions, of each type of security provider for which the licence is sought; and
 - (c) for an application for a security firm licence—is a current member of an approved security industry association; and
 - (d) is an appropriate person to hold the licence.
- (2A) A person is taken to comply with subsection (2)(b) if the chief executive is satisfied the person, within 1 year before the day the person's application for the licence is received by the chief executive, held a licence for carrying out the functions, or the category of functions, of each type of security provider for which the licence is sought.
- (3) In deciding whether a person is an appropriate person to hold a licence, the chief executive is limited to considering the matters mentioned in subsections (4) to (6).
- (4) In deciding whether a person is an appropriate person to hold a licence, the chief executive must consider the following matters as indicating that the person may not be an appropriate person—
- (a) in dealings in which the person has been involved, the person has—
 - (i) shown dishonesty or lack of integrity; or
 - (ii) used harassing tactics;
 - (b) the person associates with a criminal in a way that indicates involvement in unlawful activity;
 - (c) the person has taken advantage, as a debtor, of the laws of bankruptcy;
 - (d) the person has been convicted of an offence in Queensland or elsewhere for which a conviction has been recorded, including

an offence to which the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 applies;

- (e) an unrecorded finding of guilt has been made against the person in relation to a relevant offence and has not been quashed or set aside by a court;
 - (f) investigative information about the person in relation to a disqualifying offence that indicates either or both of the following—
 - (i) the person is a risk to public safety;
 - (ii) the holding of a licence by the person would be contrary to the public interest;
 - (g) any other information indicating the granting of the licence to the person would be contrary to the public interest.
- (5) A person is not an appropriate person to hold a licence if the person, within 10 years of applying for a licence, has been convicted of a disqualifying offence for which a conviction was recorded.
- (6) Also, a person is not an appropriate person to hold a licence if the person is an identified participant in a criminal organisation.
- (7) In this section—

apprentice or trainee means an apprentice or trainee within the meaning of the *Further Education and Training Act 2014*.

unrecorded finding of guilt, in relation to a relevant offence, means a finding of guilt, or the acceptance of a plea of guilty, by a court, in relation to the offence, without recording a conviction for the offence.

[15] The following relevant definitions appear in Schedule 2 of the Act:-

disqualifying offence—

- (a) means an offence—
 - (i) under the *Weapons Act 1990* that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative; or
 - (ii) under the *Drugs Misuse Act 1986* that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative; or
 - (iii) against a provision of the Criminal Code mentioned in schedule 1; or
 - (iv) against the *Police Service Administration Act 1990*, section 10.19(b), (c), (d), (e) or (f); or
 - (v) against a provision of the Criminal Code of the Commonwealth, part 5.3, or a law of a State, or an overseas country, that relates to terrorism; and
- (b) includes an act or omission committed outside Queensland that would be a disqualifying offence if committed in Queensland.

relevant offence means a disqualifying offence committed by a person when the person was an adult and within the previous 5 years.

[16] It is notable, and relevant to this particular case, that in the list of disqualifying offences in Schedule 1 of the Act are offences within Chapter

37 of the *Criminal Code* (offences analogous to stealing) and one of these, in section 408E, is the offence that the two police officers and Mr Robinson were convicted of. Because the offence was not recorded as a conviction however, it did not come with section 11(5). This means that Mr Robinson was not automatically disqualified from having his licence renewed.

- [17] The offence would however, have been a relevant offence as defined in the dictionary in Schedule 2.⁴ This is relevant for section 11(4)(e) of the Act.

Main facts

- [18] Mr Robinson has held a private investigator's licence since 1995 when he was 25 years old. He is now aged 47.
- [19] He developed a good career in the private investigator field working for a number of firms and also State organisations.
- [20] Mr Robinson was more efficient in his work if he had details of vehicles owned by those whom he was observing. The sister of Mr Robinson's wife was a detective senior constable with the Queensland Police Service. Her husband was also a detective senior constable with the Queensland Police Service. In about January 2011 the husband said to Mr Robinson that if he ever needed information about a person's vehicle, or address details, he could provide these through his work.
- [21] On 21 occasions over the following months, between 28 February 2011 and 23 January 2012, Mr Robinson asked for such information, and was provided with it, by one or other of the police officers. They got the information from the police computer QPRIME but they were not permitted to do so for this purpose.
- [22] On one occasion Mr Robinson asked for criminal details of a person and was provided with this from the same source.
- [23] On 27 June 2013 Mr Robinson was charged with 21 counts of procuring the police officers to commit offences under section 408E of the Criminal Code (Computer Hacking and Misuse). This offence is using a restricted computer without the consent of the computer's controller. The police computer QPRIME is a restricted computer because access to it was restricted. The maximum penalty under the section starts at 2 years imprisonment, increasing to 5 years if the accused gained or intended to gain a benefit, and 10 years if the accused gained a benefit of more than \$5,000.⁵
- [24] Mr Robinson pleaded guilty to the charged offences and on 26 May 2014 the learned Magistrate considered sentence. She found that Mr Robinson had benefited from the offence (and so came within the middle category of the gravity of the offence). Having at first thought it was right to impose a suspended prison sentence, she sentenced Mr Robinson to 18 months

⁴ At the time of the tribunal hearing, not all the offences were within the five year period in the definition of "relevant offence", but some still were within the five year period.

⁵ This is only a summary of the provisions relevant to this matter.

probation and 240 hours community service. It is important for my consideration of the matter to note that no conviction was recorded by the Magistrate. The stated reason for this was that it would put Mr Robinson out of work.⁶

Mitigating factors

[25] The mitigating factors put forward on Mr Robinson's behalf either in written submissions or at the hearing, are:-

- a) Mr Robinson was not aware at the time the offences were committed that they were criminal. He was aware however, that it was something that he, and the police officers concerned, were not supposed to do.
- b) Initially, his wife's sister's husband offered to obtain information for Mr Robinson and otherwise downplayed the significance of this.
- c) Mr Robinson was not aware of the importance of the QPRIME database within the QPS nor the fact that the police computer was restricted.
- d) Mr Robinson only procured the offence and did not commit the offences directly. Since the information was offered to him his offending is "at the least significant end of the 'procuring' spectrum".
- e) There is no evidence of any harm or detriment arising to any person as a result of the offending.
- f) Mr Robinson made no financial gain from the offending. There is little information that the information could not have been obtained by other, more time consuming means.
- g) The offences do not relate to personal safety or the administration of justice, nor do they relate to trespass offences and offences against vulnerable persons.
- h) As soon as practically possible after he was charged with the offences, Mr Robinson accepted responsibility for the offending and indicated that he would plead guilty to the offences.
- i) There would be no adverse risk to the public if Mr Robinson were able to continue to work as a private investigator, because such offending is highly unlikely to happen again.
- j) Mr Robinson has learned from these events and is publicly remorseful about them to others within the industry.
- k) Mr Robinson has served the criminal penalty which was imposed on him, and an inference can be drawn that he has been completely rehabilitated as a result of the penalty.
- l) The offences were committed between 4 and 5 years ago.

⁶ Page 54 of the documents attached to Peter Rashford affidavit made on 24 March 2016.

- m) Mr Robinson's continued work as a private investigator is in the public interest because he is an experienced private investigator and is of such good character that it can be said that the public interest is served by his continued practice in the industry.
- n) Mr Robinson provides mentoring and guidance to the more junior private investigators which he could not do if he could not work as a private investigator.
- o) Because of his experience and remorse, Mr Robinson can act as an example to others in the industry.
- p) Mr Robinson is of good character. He provides numerous character references showing that he works competently and professionally and is highly regarded in the industry.
- q) There has been, and there would continue to be significant and onerous impact on Mr Robinson and his family if the licence were not renewed.

[26] These mitigating factors therefore come into these categories:-

- a) Category 1 – concerning the commission of the offence and its seriousness: factors (a) to (l).
- b) Category 2 – concerning whether it is in the public interest for Mr Robinson to stay in the industry: factors (m) to (o).
- c) Category 3 – concerning personal issues only: factors (p) and (q).

[27] My findings about these submissions are that they tend to overstate the position in Mr Robinson's favour. At the hearing Mr Robinson told me that he did not realise that asking a police officer to provide information from the police computer was a criminal offence, and he merely thought it was a breach of a code of conduct. There is nothing to suggest he is being untruthful about this, so it is right for me to accept this as correct. However, he must have been aware it was a serious breach of the rules and not just a minor one. And the fact that he was not aware of its criminality demonstrates carelessness, perhaps even recklessness. It is expected of private investigators that they know what they can and cannot do and the consequences of transgression.

[28] I do not accept that Mr Robinson was unaware of the importance of the restricted access to the data on the police computer. I would expect this to be self-evident and it is, I think, contrary to his evidence at the hearing.

[29] I do not accept that Mr Robinson made no financial gain. As found by the sentencing Magistrate, he used the source of information as a short cut to obtain the information he needed more quickly than he would otherwise be able to get it. It enabled him to be more efficient and therefore able to do more work.

[30] I do not accept that in the circumstances, Mr Robinson was at the least significant end of the offence. I note that this was not the finding of the sentencing Magistrate either.

- [31] I accept that Mr Robinson is of good character, extremely remorseful, and that it is highly unlikely that he will commit this, or a similar type of offence again and that he has been rehabilitated. I accept that because of this, and his close involvement within the industry, he is likely to be a role model for others in the industry and be able effectively to warn others not to transgress.
- [32] As for the time delay, the value of this point as a mitigating factor is greatly diminished by Mr Robinson's failure immediately to report to the Chief Executive that he had been charged with a disqualifying offence as he was obliged to do by the regulations.⁷ I do accept that this requirement is somewhat obscure, and I accept that Mr Robinson was not aware of it, which explains why he did not do so. I am surprised that there is nothing on the licence itself reminding licensees to report a change in circumstances including charges and convictions for relevant offences.
- [33] The fact remains however, that the first time the Chief Executive considered the effect of these matters on Mr Robinson's licence was when his existing three year licence came up for renewal in August 2015. This was over a year after his conviction, and 3½ years after the date of the commission of the last offence. This was because Mr Robinson did not report that he had been charged with a disqualifying offence as he was obliged to do. Hence it is difficult for him to pray in aid the period of delay.
- [34] The Chief Executive responded to Mr Robinson's application for a renewal by giving him a notice to show cause why the licence should be renewed. After Mr Robinson responded to this notice, the Chief Executive made the decision on 14 January 2016 not to renew his licence.

Can all the mitigating factors be taken into account?

- [35] Section 11(3) is as follows:-

(3) In deciding whether a person is an appropriate person to hold a licence, the chief executive is limited to considering the matters mentioned in subsections (4) to (6).

- [36] The matters mentioned in subsections (4) to (6) are all matters which may be adverse to the applicant for a licence. In other words they are all matters which might be serious enough for the Chief Executive to decide that the applicant was not an appropriate person for the grant of a licence. None of the matters in (4) to (6) are matters which could demonstrate that, despite indications to the contrary, the applicant was an appropriate person for the grant of a licence after all.

- [37] This is emphasised in the case of subsection (4) by its wording:-

(4) In deciding whether a person is an appropriate person to hold a licence, the chief executive must consider the following matters as indicating that the person **may not be an appropriate person—**
(my emphasis)

- [38] There then follows a list of things which might show that the applicant was not an appropriate person.

⁷ Section 12 of the *Security Providers Regulation 2008*.

- [39] On the face of it, the Chief Executive, and the tribunal on review, is not permitted to consider matters which could demonstrate that, despite indications to the contrary, the applicant was an appropriate person for the grant of a licence after all.
- [40] Despite this, it is submitted on behalf of Mr Robinson that the Chief Executive, and the tribunal on review, can consider all matters raised by an applicant to show that they are an appropriate person for the grant of a licence.
- [41] Reliance is placed upon the decision of Member Hughes in *Featherstone v Department of Justice and Attorney-General, Industry Licencing Unit* [2015] QCAT 329 when considering an application to stay a decision to suspend a licence. In that case the learned member said at [5] that in considering this, weight can be given to the impact on the private investigator, his family, reputation, employees and clients, the legislature's intent, the circumstances of the alleged offences, and the public interest.
- [42] It is said therefore, that this is authority to say that such mitigating factors can be considered by the decision maker in a case coming within section 11.
- [43] The difficulty with this submission is that in *Featherstone* the private investigator had been charged with a disqualifying offence and because of that, the Chief Executive had suspended his licence. This came under different statutory provisions. By section 21(5) of the Act, being charged with a disqualifying offence is a ground for suspending a licence. The question then to decide, required by section 22(1), was whether reasonable grounds existed for the suspension of the licence. The tribunal in *Featherstone* applied those statutory tests.⁸
- [44] Therefore *Featherstone* was not a case concerning whether the private investigator was an appropriate person for the grant of a licence. Section 11 was not engaged in that case. It is not authority for the proposition that is put forward on behalf of Mr Robinson.
- [45] Submissions made on behalf of Mr Robinson, and indeed on behalf of the Chief Executive, rely on the precise wording of section 11(4)(g) which I set out together with the governing words of subsection (4):-
- (4) In deciding whether a person is an appropriate person to hold a licence, the chief executive must consider the following matters as indicating that the person may not be an appropriate person—
- (g) any other information indicating the granting of the licence to the person would be contrary to the public interest.
- [46] It is said that this should be read as follows:-
- In deciding whether a person is an appropriate person to hold a licence, the chief executive must consider any other information indicating whether or not the granting of the licence to the person would be in the public interest.

⁸ As can be seen from paragraphs [5] and [13] to [15] of the reasons.

- [47] The reason why it is said that section 11(4)(g) should be read in this way is that there are authorities which say that public interest is a broad concept and requires a balance of factors either favourable or adverse.
- [48] It is also submitted on Mr Robinson's behalf, that constructions should be avoided which are 'patently unintended or absurd', and that it is artificial and inappropriate to limit the circumstances which can be considered to those which are adverse to the applicant for a licence, whilst ignoring other circumstances which would be favourable. Section 14A(1) of the *Acts Interpretation Act 1954 (Qld)* is relied on:-

14A Interpretation best achieving Act's purpose

- (1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.
- [49] To my mind, section 11 is perfectly clear and provides a formula which can be readily used when assessing whether a person is an appropriate person to hold a licence.
- [50] There are certain times when the Chief Executive must find that the person is not an appropriate person to hold a licence. This will be, as provided in subsection (5) and (6) where the person has been convicted of a disqualifying offence for which a conviction was recorded within 10 years of applying for a licence, or if the person is an identified participant in a criminal organisation.
- [51] There are other times when the Chief Executive has a discretion. When exercising that discretion, the Chief Executive is limited to considering those matters listed in section 11(4) which may show that the person is not an appropriate person to hold a licence.
- [52] When considering the matters listed in section 11(4), the Chief Executive would need to consider the circumstances of those matters, and their seriousness. This means that mitigation points going to those matters would be relevant. For example, if an applicant had presented his own bankruptcy petition this would be a matter which must be considered because it comes within section 11(4)(c). However, if the reason for the bankruptcy was that the applicant's bank account had been fraudulently drained of money by a third party, this would be relevant and admissible. Equally, the circumstances of, and seriousness of, an unrecorded finding of guilt within section 11(4)(e) would also be admissible and relevant for consideration.
- [53] But it also follows, it seems to me, that the Chief Executive, and therefore the tribunal on review, cannot consider those things which go solely to mitigation and which do not impact upon any matter listed in section 11(4). This is because section 11(3) says that the Chief Executive is limited to considering the matters in subsections (4) to (6) and there is no discretion in the case of (5) and (6).
- [54] This is a workable formula and provides a known and certain framework for the Chief Executive when considering applications for a licence. I do not see it as absurd or contrary to the purpose of the Act. It does mean

however, that purely personal matters which do not impact on any adverse matter listed in subsection (4) cannot be taken into account.

- [55] Returning to the categories of mitigation factors made on Mr Robinson's behalf, category 1 factors (concerning the commission of the offence and its seriousness) can be taken into account because they enable me to assess the seriousness of the unrecorded finding of guilt within subsection (4)(e).
- [56] The category 2 factors (concerning the question whether it is in the public interest for Mr Robinson to stay in the industry, are available to weigh against any information indicating that the granting of the licence to the person would be contrary to the public interest under subsection (4)(g).
- [57] The category 3 factors (concerning personal issues only) would not appear, in this case, to weigh against anything in subsection (4) tending to show that Mr Robinson is not an appropriate person to hold a licence. Accordingly I do not think I can properly take them into account. In saying this, of course Mr Robinson's good character, his value to the industry, and the way he has reacted to his conviction are also relevant to the seriousness of the offence in category 1 and to the balance of public interest in category 2 so I do not ignore these things altogether.

Can I consider deterrence?

- [58] As for whether the Chief Executive, and therefore the tribunal, can take into account whether not granting a licence would act as a deterrent to others in the industry or those who aspire to it, in my view this can be taken into account. It is clearly within section 11(4)(g). This is because if there are circumstances where not granting a licence to a particular person could act as a deterrent, it means that granting the licence destroys or reduces that deterrent effect. If so, the granting of the licence could be contrary to the public interest for that reason.
- [59] It is submitted on Mr Robinson's behalf however, that I am not permitted to take deterrence into account because the wording of the relevant parts of the *Security Providers Act* focusses only on whether the applicant for a licence is an appropriate person. It is said that deterrence is for the criminal law and not for the licensing regime. And *Sobey v Commercial and Private Agents Board* (1979) 22 SASR 70 is cited for the proposition that an inquiry whether a person is an appropriate person to hold a licence does not permit a court or tribunal to try to achieve broader objectives, such as improvement of the industry at large. However, I do not think that what was said in *Sobey* was an attempt to limit the information that a court or tribunal can consider when deciding whether the granting of a licence to the person would be contrary to the public interest.
- [60] On a frequent and regular basis, the tribunal considers the deterrent effect both in disciplinary proceedings and when considering reviews concerning licensing.⁹

⁹ For licensing examples: *Chief Executive, Department of Justice and Attorney General v Halmarn Pty Ltd* [2014] QCAT 099 (licensed property agents); *Board of Professional*

Judicial notice

- [61] This issue concerns how far it is permissible for me to go when establishing the factual basis on which I can consider the importance, or otherwise, of the deterrent effect.
- [62] I propose to take judicial notice of the fact that police officers often join the security industry when they leave the police service.
- [63] However it is submitted on Mr Robinson's behalf that I am not permitted to take judicial notice of this fact. The submission is simply that it cannot be said that every ordinary person may be reasonably presumed to be aware of the fact that there are a number of police officers in the private investigator industry.
- [64] At paragraph [3130] the learned editor of *Cross on Evidence* points out that the general rule is that judges may not act on their personal knowledge of facts unless those facts are generally known or are common knowledge. Citing *Holland v Jones* (1917) 23 CLR 149 at 153, Cross points out that a basic essential is that the fact judicially noticed should be of a class that is so generally known as to give rise to the presumption that all persons are aware of it, and citing *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 256, that the general nature of the facts noticed is often such as to render difficult, or even impossible, the normal process of proving or disproving them by legally admissible evidence.
- [65] I note that the doctrine of judicial notice has been codified in Federal statutes and in some States and Territories.¹⁰ The usual provision is that proof is not required about knowledge that is not reasonably open to question and is common knowledge in the locality in which the proceeding is being held or generally; or capable of verification by reference to a document the authority of which cannot reasonably be questioned.
- [66] There is no similar law in Queensland.
- [67] In paragraph [3020] Cross lists many cases where judicial notice has been applied to facts of varying types. It is clear that recourse is made by the courts in an appropriate case where necessary.
- [68] The tribunal is not bound by the rules of evidence and may inform itself in any way it considers appropriate,¹¹ but this cannot mean that when it is hearing a case as a generalised tribunal it is free to fill gaps in the evidence adduced by one side.
- [69] I think it is common knowledge however, and not reasonably open to question, that police officers often join the security industry when they

Engineers of Queensland v Wu [2011] QCAT 330 (registered professional engineer);
Legal Services Commissioner v Laurie [2011] QCAT 335 (barrister).

¹⁰ For example, the *Evidence Acts* 1995 (Cth and NSW), 2001 (Tas), 2008 (Vic), 2011 (ACT) and *Evidence (NUL) Act* 2011 (NT).

¹¹ Section 28(3) of the *QCAT Act*.

leave the police service and therefore that I am entitled to take judicial notice of this fact. One of the arms of the security industry is the private investigators and surveillance sector and therefore I am not surprised that of Mr Robinson's 14 referees who are in that type of work, three of them declare that they are former police officers.

Conclusion

- [70] The fact that police officers often join the security industry when they leave the police service has important consequences for this case, because it means that some in the security industry will have contacts who are currently in the police service. In turn this means that there may be a temptation to try to use those contacts to obtain information which is restricted to the police, a temptation which here Mr Robinson succumbed to.
- [71] It is clearly in the public interest to keep information from the police computer restricted to those who are permitted to access it. This is emphasised by the fact that it is a criminal offence to do otherwise.
- [72] On that basis, it must be contrary to the public interest to convey a message to others in the security industry and to those who aspire to it, that a private investigator can continue to work in the industry without a significant period of interruption if they use their contacts to obtain information held on restricted computers. If Mr Robinson is permitted to retain his licence on this application this would be the message that would be given.
- [73] The message which instead ought to be given, is that if a private investigator uses contacts to obtain access to restricted computers, then they are likely to face a significant period of interruption in their work as a private investigator because of the seriousness of what they have done.
- [74] Equally I believe public confidence in this arm of the security industry requires that Mr Robinson's licence is not be continued seamlessly, but that there is a significant break in the licence and that he has been properly disciplined for what happened.
- [75] So far, Mr Robinson has been unable to work as a private investigator for a period of nearly 8 months. I do not think it is for me to say in this review how long he should be without his licence, but I do not think 8 months is quite long enough. In considering this, I take into account the seriousness of the offence and those mitigating circumstances which I am entitled to consider as described above.