

**CITATION:** *GHI Pty Ltd v Queensland Building and Construction Commission; JKL v Queensland Building and Construction Commission* [2017] QCAT 003

**PARTIES:** GHI Pty Ltd  
(Applicant)  
v  
Queensland Building and Construction Commission  
(Respondent)

JKL  
(Applicant)  
v  
Queensland Building and Construction Commission  
(Respondent)

**APPLICATION NUMBERS:** OCR120-15; OCR178-15

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 24 November 2016

**HEARD AT:** Brisbane

**DECISION OF:** **Member Olding**

**DELIVERED ON:** 5 January 2017

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. OCR120-15:** The Respondent's decision to cancel GHI Pty Ltd's contractor's licence is set aside and substituted with a decision that JKL is a fit and proper person to exercise control or influence over a company that holds a contractor's licence.
- 2. OCR178-15:** The Respondent's decision to cancel JKL's contractor's licence is set aside and substituted with a decision that JKL is a fit and proper person to hold a contractor's licence.

**CATCHWORDS:** OCCUPATIONAL LICENCE REGULATION – BUILDERS' LICENCE – whether a fit and proper person – where contractor forged

customers' initials on contract clause – where misleading evidence given on oath – impact of countervailing factors

*Queensland Building and Construction Commission Act 1991 (Qld), ss 31, 48*

*Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321*

**APPEARANCES:**

**APPLICANTS:** GHI Pty Ltd; JKL

**RESPONDENT:** Queensland Building and Construction Commission

**REPRESENTATIVES:**

**APPLICANTS:** JKL appeared in person and on behalf of GHI Pty Ltd

**RESPONDENT:** Represented by Malcolm Robinson of Robinson Locke Litigation Lawyers

**REASONS FOR DECISION**

- [1] In these matters, the Applicants seek the Tribunal's review of the decisions of the Queensland Building and Construction Commission ("the Commission") to cancel the contractor's licences of GHI Pty Ltd ("the Company") and JKL ("Mr JKL") respectively.
- [2] The two matters were heard together as they arise out of the same circumstances.
- [3] The issue for determination in the first matter is whether Mr JKL is a fit and proper person to exercise control or influence over the Company as the holder of a contractor's licence.
- [4] The issue for determination in the second matter is whether Mr JKL is a fit and proper person to hold a contractor's licence.
- [5] The cases were conducted on the basis that whether Mr JKL is a fit and proper person to hold a contractor's licence would determine the outcome of both matters.

**The statutory framework**

- [6] The Tribunal must decide the applications for review by way of a fresh hearing on the merits to produce the “correct and preferable decision” in each case<sup>1</sup> by reference to the requirements of the *Queensland Building and Construction Commission Act 1991* (Qld).<sup>2</sup>
- [7] The power of the Commission to cancel a contractor’s licence is found in s 48 of that Act. Under s 48(j), the Commission may cancel a licence if it “becomes aware of the existence of facts that, having regard to section 31(1)(a) or section 31(2)(a) . . . would allow the commission to refuse to issue the licence if it were now being applied for by the licensee”.
- [8] Section 31(1)(a) provides, as a condition of entitlement of a person (not being a company) to a licence, that the Commission is satisfied that the applicant for the licence “is a fit and proper person to hold the licence”.
- [9] Section 31(2)(a) provides, as a condition of entitlement of a company to a licence, that the Commission is satisfied that “the directors, secretary and influential persons for the company are fit and proper persons to exercise control or influence over a company that holds a contractor’s licence”.
- [10] In determining whether a person is a fit and proper person for the purposes of either of these sections, the Commission (and the Tribunal in its place in these proceedings) may have regard to a number of factors set out in section 31(3). I deal with consideration of these factors later in these reasons.
- [11] The objects of the Act include to regulate the building industry to ensure the maintenance of proper standards in the industry and to achieve a reasonable balance between the interests of building contractors and consumers.<sup>3</sup>

### **Facts not in contention**

- [12] I understand that the following facts are not in contention.
- [13] The Company and Mr JKL each hold a contractor’s licence under the *Queensland Building and Construction Commission Act 1991* (Qld).<sup>4</sup>
- [14] Mr JKL is a director of the Company.
- [15] On 23 June 2013, the Company entered into a residential building contract to construct a house for the landowners (“the Customers”). Mr JKL signed the contract on behalf of the Company.

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20.

<sup>2</sup> All subsequent legislative references are to the *Queensland Building and Construction Commission Act 1991* (Qld).

<sup>3</sup> Section 3.

<sup>4</sup> The decisions of the Commission cancelling the licences were stayed by the Tribunal pending consideration of the applications for review of those decisions.

[16] Item 17 of the contract is as follows:

**“Item 17 – Cost escalation**

(Refer to Clause **25-26**)

Cost escalation does apply to this Contract.

The **Owner** must read either Clause **25** or **26** in the General Conditions and initial the applicable Clause.

**Has the Owner initialled Clause 25 or 26?** [The ‘Yes’ box is ticked. The ‘No’ box is not.]

**WARNING:** Cost Escalation does apply to this contract and the **Contractor** must ensure that either Clause 25 or Clause 26 in the General Conditions is initialled by the **Owner** otherwise the Clause is void.”

(Emphases in original.)

[17] Clauses 25 and 26, when they apply, broadly speaking provide for increases in the contract price on the occurrence of certain delays for which the contractor (here, the Company) is not responsible.

[18] As it was entitled to do under the contract, the Company issued a base stage invoice on 6 August 2013 calling for payment on 13 August 2013.

[19] The Customers failed to make the base stage invoice payment due on 13 August 2013. On that day, the Company received a letter from a law firm then retained by the Customers, raising issues about the progress payment schedule under the contract, apparently arising from their financier wanting to change the progress payment schedule.

[20] That letter included the following paragraph:

**“COST ESCALATION CLAUSE**

We note that in the Item 17 it indicates that the Cost Escalation is applicable yet neither Clause 25 nor Clause 26 was initialled by my clients. Can you confirm that the Cost Escalation provisions of the Contract do not apply and if you assert that they do apply, provide copies of the Clauses 25 and 26 initialled by my clients.”

[21] The Company engaged solicitors to respond to the letter from the Customers’ lawyers.

[22] Without receipt of the base stage invoice payment, Mr JKL and the Company were under financial stress, as the payment was needed to enable payments to be made to subcontractors.

[23] There were also allegations that an earthmoving contractor operated machinery on the building site, with the authority of the Customers and contrary to the terms of the contract, in a way that may have put at risk the foundation works carried out by the Company.

- [24] That, and related issues, later became the subject of other proceedings in this Tribunal between the Company and the Customers (“the QCAT building dispute proceedings”), after the Customers purported to terminate the building contract.
- [25] Relations between Mr JKL and the Customers broke down and became, and have remained, toxic.
- [26] In the course of his interactions with the Company’s solicitors, on or around 20 August 2013, Mr JKL was asked to provide them with various documents.
- [27] Although he maintains that he recalls that the Customers initialled the clauses, Mr JKL was unable to produce a copy of the General Conditions with the Customers’ initials against Clause 25 and Clause 26. At the time of the hearing of these matters, Mr JKL was still not able to produce the General Conditions with the original initials of the Customers against Clauses 25 and 26.
- [28] In an amateurish act of forgery, Mr JKL photocopied the Customers’ initials onto a copy of the General Conditions and emailed that copy to the Company’s solicitors.
- [29] Mr JKL caused the Company’s solicitors to send to the Customers’ lawyers a letter enclosing a copy of the contract purportedly showing the initialled Clauses 25 and 26, but in fact enclosing a copy of the forged document.
- [30] That letter included the following response:

**“5. Cost Escalation Issue**

In relation to your allegation that neither clause 25 nor clause 26 of the Contract were initialled by your clients, our client again denies such allegations. Please find enclosed a copy of the Contract General Terms and Conditions showing clearly that clauses 25 and 26 of the Contract have been initialled by your clients.

Accordingly, the cost escalation clause under the Contract does apply.”

- [31] Mr JKL approved a draft of the letter. He did not tell the Company’s solicitors about the forgery at that time.
- [32] Mr JKL was 27 years of age at the time of the forgery and had not previously been embroiled in a legal dispute with a customer involving the engagement of lawyers on both sides. Coupled with the financial stress of the delayed base stage payment, this meant that Mr JKL was in a high state of anxiety at the time of the forgery.
- [33] The Company has never sought to invoke a price escalation entitlement in reliance upon Clause 25 or Clause 26.

- [34] Mr JKL later entered a copy of the contract, with the forged initials at Clauses 25 and 26 of the General Conditions, into evidence in the QCAT building dispute proceedings.
- [35] It was not until he was interviewed by police, following a complaint by the Customers, that Mr JKL admitted to the forgery. Police attended Mr JKL's house on or about 24 September 2014. The following day Mr JKL was interviewed at the police station and admitted to photocopying the initials of the Customers onto a copy of the General Conditions.
- [36] Mr JKL was initially charged with Forgery and Fraud. The fraud charge was downgraded to attempted fraud, because Mr JKL did not pursue any price escalation benefit from the forged initials.
- [37] As a consequence of the charges, by letter dated 8 October 2014, the Commission imposed conditions to the following effect on Mr JKL's contractor's licence; namely, that Mr JKL must:
- a) "notify [the Commission] of the date of all Court appearances or hearings before they take place";
  - b) "notify [the Commission] of the decision of the Court in relation to all charges within 3 days of the decision being handed down"; and
  - c) "supply a copy of the decision of the Court, and if sentenced a copy of the Judge's sentencing remarks, within 10 days of the decision being handed down".
- [38] When the charges came on for hearing in the Magistrates Court on 20 March 2015, Mr JKL pleaded guilty to both charges and was fined \$2500. No conviction was recorded.
- [39] The transcript of the Magistrate's sentencing remarks notes, amongst other things, Mr JKL's full and frank admissions; his remorse; the financial stress he was under at the time of the forgery; that he had been suffering from anxiety and depression which had since been treated; that he had not gained from the offence; his lack of any criminal history; and that the prospects of re-offending were minimal.
- [40] At the time of the hearing of the current applications, Mr JKL had not apologised to the Customers for the forgery.
- [41] Mr JKL has undergone therapy, including for depression and anxiety, with a clinical psychologist. He attended a total of 9 sessions with the psychologist, the first on 14 January 2015 and the most recent on 10 November 2016, shortly before the hearing of these cases when she provided an updated report bearing that date.
- [42] Subsequent to the criminal charges, Mr JKL has continued his building-related studies, receiving a Certificate IV in Building and Construction on 29 April 2015 and a Certificate III in Civil Construction Plant Operations on 19 February 2016.

- [43] He has also engaged in community service as a volunteer in his local rural fire service and for the surf lifesaving club in which his children participate.
- [44] A number of aspects of the evidence need to be outlined, and necessary factual findings made, before turning to consider the question of whether Mr JKL is a fit and proper person to hold a contractor's licence. Because of the potential impact of such findings on the evidence, it is necessary to deal with these matters before considering the medical and character evidence provided on behalf of Mr JKL.

### **The purpose of the forgery**

- [45] Mr JKL maintained that he did not undertake the forgery in order to obtain the benefit of the escalation clause. This begs the question: If there was no potential for benefit, why did he do it? Mr JKL said his objective was to provide a complete copy of what he understood to be the contract and general conditions: being unable to locate the initialled version of the relevant clauses, in an impulsive act and in a state of anxiety in dealing with a highly stressful situation, he copied the Customers' initials onto a copy.
- [46] It is true that the issue of price escalations was not live in the dispute in the sense that the Company was not then claiming the benefit of the escalation clause. But it is, of course, quite possible that it may have become a live issue, particularly given the delay caused by the delayed payment, the site earthworks issue and the dispute itself. It is also the case that Mr JKL provided the contract conditions with the forged initials as part of his endeavours to secure payment of the base stage invoice.
- [47] I accept that Mr JKL genuinely believed that the cost escalation clauses had been initialled. This is consistent with the uncontested ticking of the 'Yes' box in answer to the question in Item 17 of the contract.
- [48] I do not accept that, in carrying out the forgery, Mr JKL did not have in contemplation any benefit beyond the provision of a complete copy of the contract. The potential benefit of a cost escalation clause is self-evident and was potentially significant, particularly in the circumstances then confronting Mr JKL. I find that in carrying out the forgery Mr JKL primarily sought to provide a complete copy of the contract as part of his endeavours to bring the dispute to a satisfactory resolution, but he was not blind to the potential benefits of the cost escalation clause.

### **Other commercial or other dealings**

- [49] Apart from the forgery and attempted fraud charges, and related aspects including the provision and reference to the forged document as discussed below, there is no evidence before the Tribunal that Mr JKL has been involved in criminal or other matters relevant to his honesty or integrity, or the subject of complaints to the Commission by other customers.
- [50] I infer that the forgery and related use and reference to the forged document constituted isolated incidents; that they are not part of a pattern of behaviour

for Mr JKL to forge contractual or other documents or otherwise act other than with honesty and integrity; and that aside from that matter Mr JKL has conducted himself with honesty and integrity in his commercial and other dealings. The evidence of the character referees, taken into account in the limited way discussed below, supports this inference.

[51] In drawing this inference, I am mindful that the subsequent use and reference to the forged document also discussed further below are relevant to Mr JKL's honesty. However, as noted below, I have concluded that they should be seen as part of a single continuum of events commencing with and relating to the dispute with the Customers.

### **Whether Mr JKL provided inaccurate materials to the Tribunal in the QCAT building dispute proceedings**

[52] Mr JKL entered into evidence in the QCAT building dispute proceedings a copy of the building contract including the general conditions with the forged initials.

[53] The contract was obviously relevant to those proceedings, which were a dispute about the contract and whether it had been terminated.

[54] Mr JKL also referenced in a written statement received in the Tribunal on 19 March 2014 the letter from his solicitors to the Customers' solicitors denying the allegations in the latter's letter, which included the allegation that clauses 25 and 26 of the general conditions were not initialled, and did not advise the Tribunal that the initials were forged.

[55] There was some attempt by Mr JKL at the hearing of the current applications to distinguish between the building contract, on the one hand, and the attached general conditions, on the other. I do not consider that to be a valid distinction, the general conditions obviously forming part of or being incorporated into the contract. But in any case it is clear that Mr JKL entered the general conditions, with the forged initials, into evidence in the QCAT building dispute proceedings.

[56] There is no evidence that Mr JKL sought to rely on the escalation clauses in those proceedings; they were not directly in issue in or relevant to the proceedings, which were about whether the building contract had been validly terminated. But nor did he ever advise the Customers as parties to the proceedings, or the Tribunal member hearing the matter, that the filed copies of the general conditions included copies of the forged initials.

[57] I find that Mr JKL entered into evidence a copy of the building contract including the general conditions with the forged initials; that he did not seek to rely upon the cost escalation clauses in those proceedings; and that he did not advise the Tribunal or the other parties to the proceedings that the copy filed included forged initials.



[58] Mr JKL also filed in those proceedings a written statement dated 27 June 2014, which included the following statements in response to written allegations made by the Customers in a document filed in the Tribunal:

“5. . . . Despite it not relevant (sic) to the issues in this proceeding, it would appear necessary for me to state that I absolutely and completely reject all allegations made by the Respondents in relation to fraud.

6. I do understand that a complaint has been made by the Respondents to the police and I look forward to disposing of all such matters and false allegations in the near term.

7. I otherwise refute all general allegations made by the Respondents regarding the veracity and accuracy of the evidence I have provided in this proceeding and to third parties . . . .”

[59] When questioned about this, Mr JKL denied that this statement was false. He maintained that he had never committed fraud, as he did not benefit from the escalation clauses.

[60] Nevertheless, he did not take the opportunity to make an accurate statement about the forgery. Against the background that the Customers had previously filed a statement that included a direct allegation about the forgery, this broad denial is at least misleading.

[61] I find that Mr JKL filed in the Tribunal for the purposes of the building dispute proceedings a statement that was misleading by omission, but that the statement was not directly relevant to the issues in those proceedings.

[62] I have indicated that the forgery was not “directly” relevant in the proceeding. As will appear from what follows, although it was not explored thoroughly in the building dispute proceedings, the forgery was potentially relevant to the question of Mr JKL’s credit; it appears that the Customers regarded it as relevant in that way and made some attempt to raise it in that context.

### **Whether Mr JKL made a false statement on oath in the QCAT building dispute proceedings**

[63] In order to explain this aspect of the matter, it is necessary to set out extracts of the transcript of the hearing of the QCAT building dispute proceedings:

“MEMBER: . . . So you’re saying these signatures – these initials are in fact forgeries?

[CUSTOMER]: Correct.

MEMBER: And who do you say did the forgery?

[CUSTOMER]: The applicant. That’s why - - -

. . .

MEMBER: Sorry. Just listen. Mr JKL, did you write the signatures in on this contract? --- No.

Thank you. Mr [CUSTOMER], do you agree that signatures appear on page – the last page of the formal part of the contract – which is 12 SOE – well, where it says agreement and you’ve signed your names in full. . . Are they your signatures?

[CUSTOMER]: Yes. They are.

. . .

MEMBER: . . . So the original [of the contract] that you hold that has never been produced to the tribunal, but this is a photocopy of it?

MR JKL: That’s a photocopy of the original. Yes.

. . .

MR JKL: . . . They kept a copy on the signing and we kept a copy.

MEMBER: All right. So why would one not be the same as the other?

MR JKL: When – we must – all I can understand is that we may have missed the signing of that page, as it’s in the contract conditions part.”

- [64] At the hearing of the current applications, Mr JKL was questioned about his response in the negative to the Member’s question: “did you write the signatures in on this contract?”
- [65] He maintained that, viewed in its context, the question was directed to whether Mr JKL wrote in the signatures in the formal part of the contract and that his negative answer was therefore truthful. I accept that that is an accurate characterisation of the exchange – as far as it goes.
- [66] Again, though, in its context, the response is misleading by omission. Both the Customer and the Member, as part of the immediate context of this question, directly raised whether the initials were forged. Mr JKL chose to answer only the specific question put to him. It could be said that this he was entitled to do.
- [67] However, the only reasonable interpretation of exchange that follows in the extract above is that Mr JKL is referring to one copy of the general conditions being initialled and the other not. To do so, without reference to the forgery, is misleading on any view. Given the direct allegation of forgery only a short time before this exchange, it is inconceivable that Mr JKL did not have in his consciousness at this time that he had forged the initials.
- [68] I find that Mr JKL deliberately gave misleading evidence to the Tribunal; that the evidence was not directly relevant to the issues in the proceedings; but that, if findings had been made in relation to the forgery, it may have been relevant to submissions that the Customers may have wished to make in relation to Mr JKL’s credit.

### **Whether Mr JKL incorrectly represented that his father was not an employee of the Company**

- [69] In the QCAT building dispute proceedings, Mr JKL denied that his father was an employee at a relevant time.
- [70] This appeared to be contradicted by copies of emails with a signature block displaying the name and title: [father's first name] JKL, Construction Contracts Manager.
- [71] Mr JKL explained this as a standard email signature that was inadvertently displayed.
- [72] Mr JKL was asked in cross-examination about a subsequent email in a chain (that earlier in the chain included an email with the [father's first name] JKL, Construction Contracts Manager' sign off). That subsequent email refers in the body of the email to "our construction contract manager" and concludes with "Kind Regards, [applicant's first name] JKL."
- [73] Mr JKL explained that he used the expression "construction contract manager" to refer to the Company's nominee. He used that title when his father was nominee and he uses it now that his grandfather is the nominee.
- [74] Mr JKL's explanation is consistent with his father's evidence that he was not an employee of the Company at the relevant time.
- [75] I accept Mr JKL's explanation and find that he did not incorrectly represent that his father was not an employee of the Company.

### **Breach of the licence condition – failure to notify court appearance**

- [76] As noted, following the criminal charges, a condition imposed on Mr JKL's licence by the Commission required Mr JKL to notify the Commission of "the date of all Court appearances or hearings before they take place".
- [77] Mr JKL failed to notify an appearance on 4 December 2014. The Commission accepted his subsequent explanation that he wrongly interpreted the requirement to not extend to a mention, which he was not required to attend. I too accept this explanation.
- [78] It is common ground that Mr JKL notified other hearings by leaving a telephone message with the Commission.
- [79] With this clear knowledge of the requirement to notify all hearings, Mr JKL appeared at court on the criminal charges on 20 March 2015. Evidence from the Commission was that all telephone calls to the Commission's general number are recorded and that there is no record of a call from Mr JKL.
- [80] Mr JKL expressed a belief that he had again notified the Commission by leaving a telephone message on the Commission's general number. However, he noted that he was extremely stressed at the time, and

ultimately could not state with certainty that he had in fact made the call on this occasion. While it is, of course, possible that the Commission's telephone recording processes failed on the day, I consider that it is more likely than not that Mr JKL, in the anxiety of the day of his criminal charges being heard, failed to make the call.

- [81] I find that Mr JKL was in a high state of stress and anxiety on the day of the hearing of the criminal charges; that he did not deliberately fail to notify the Commission of the hearing; but in fact he did not notify the Commission as required.

**Breach of the licence condition – failure to provide a copy of the decision of the court and sentencing remarks within 10 days**

- [82] As noted above, following the criminal charges, the Commission imposed a condition on Mr JKL's licence that he "supply a copy of the decision of the Court, and if sentenced a copy of the Judge's sentencing remarks, within 10 days of the decision being handed down".
- [83] Mr JKL did not supply the required documents within 10 days of the decision on 20 March 2015.
- [84] I accept Mr JKL's evidence that he was not given any documents when he left the Court or within 10 days of the decision.
- [85] Mr JKL did email a letter to the Commission on 23 March 2015 advising, without elaboration, that there was no recorded conviction on the forgery and attempted fraud charges, and that he had been advised that obtaining a copy of the court's decision would take more than the 10 days required by the licence condition.

**The evidence of the clinical psychologist**

- [86] Mr JKL's clinical psychologist provided a written statement immediately before the hearing, which she confirmed at the start of her oral evidence.
- [87] The statement advised that Mr JKL demonstrated an open and honest stance during his counselling and a commitment to learning about himself; that he continued to express remorse for his actions; and that he no longer exhibited a depressed, stressed or anxious mood or any behaviours that go with depressed or anxious mood. She concluded that Mr JKL does not pose a risk of re-offending.
- [88] The psychologist's evidence was that the action of Mr JKL in forging the signatures was impulsive and attributable to the high anxiety he was experiencing in the circumstances.
- [89] The psychologist was asked whether her evidence would change if, hypothetically, Mr JKL had filed documents in the Tribunal giving false information or if he gave false oral evidence in the Tribunal. She replied that such information would change her opinion, as it would seem to

indicate premeditation. She also outlined the psychometric testing she had undertaken, confirming its validity and statistical reliability, but agreed that the hypotheticals put to her, if proven, would be evidence contradicting the reliability of the testing.

- [90] This aspect of the hearing was not without its difficulties because of the need to put matters to the psychologist as unproven hypotheticals and, in particular, because of the absence of specificity of the context of those hypotheticals, including as to timing. As I understood her final comments, the psychologist did ultimately conclude that the hypothetical behaviours, if proven, could be attributed to continuing global stress commencing from the circumstances of the forgery.
- [91] I find that Mr JKL was suffering from depression and anxiety when he consulted the clinical psychologist and, noting that the consultations with the psychologist occurred after the actions involving reference to the forged document occurred, has responded favourably to treatment for those conditions.
- [92] To the extent that the psychologist expressed views as to the impulsiveness of Mr JKL's behaviour and likelihood of re-offending, I discount that evidence and give it little weight in view of the psychologist's lack of awareness of Mr JKL's additional subsequent misleading references to the forged documents. However, I accept that the ongoing stress and anxiety of dealing with the issues leading up, and the fall out from, the forgery contributed to those actions.

### **Character references**

- [93] Mr JKL provided several character references, including from a couple that were customers and two subcontractor colleagues speaking to their experiences with Mr JKL as their head contractor.<sup>5</sup>
- [94] At the hearing, Mr Robinson for the Commission foreshadowed that, if these referees were called to give evidence, he would be putting similar questions to them regarding, for example, whether their evidence would change if it were proved that Mr JKL had made false statements to the Tribunal. It was explained to Mr JKL that, if the witnesses were not called, the evidence of these referees would be discounted if these hypothetical events were proven. Mr JKL decided not to call the witnesses.

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<sup>5</sup> There were also character references from Mr JKL's wife and father. In view of the relationship with Mr JKL, I have given no weight to those statements. Similarly, I have given no weight to a statement from a couple Mr JKL lived with as a single man, which spoke generally to his good character, since it was not tested by cross examination about the impact upon the views expressed of the use and reference to the forged document in the QCAT building dispute proceedings.

- [95] To the extent that the referees' statements indicate a view that the forgery was an isolated event, or speak generally to Mr JKL's good character, I have discounted and not taken into account their evidence.
- [96] Otherwise, the statements of the two contractors, both of whom had worked with Mr JKL for a period of eight years, support a conclusion, and I find, that Mr JKL conducts himself properly in relation to dealings with subcontractors, paying invoices on time and ensuring that sites are appropriately readied and works carried out according to plans.
- [97] This conclusion is supported by the customer couple, who stated that they observed Mr JKL to enjoy good working relationships with his subcontractors and were satisfied with the works carried out by GHI Pty Ltd.

**Is Mr JKL a fit and proper person to hold a contractor's licence?**

- [98] To answer this question, s 31(3) provides, so far as relevant to this case, that the commission, and therefore the Tribunal standing in the Commission's shoes, "may have regard to -
- a) commercial and other dealings in which [Mr JKL] has been involved and the standard of honesty and integrity demonstrated in those dealings; and
  - b) any failure by [Mr JKL] to carry out commercial or statutory obligations and the reasons for the failure; and
- . . . . .
- (d) any other relevant factor."

- [99] In a different context, the High Court has said in relation to the expression "fit and proper person" that, depending on the nature of the activities the subject of the test, "the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur or whether the general community will have confidence that it will not occur."<sup>6</sup> Those questions provide a helpful guide in this case.

- [100] It is also important to bear in mind that the statutory question directs attention to whether Mr JKL is a fit and proper person at the time the issue falls for determination. That is to say, I must decide whether I am satisfied that Mr JKL is at the present time a fit and proper person to hold a contractor's licence and not, for example, at the time of any behaviours which call into question whether he is such a person.

- [101] Additionally, the issue for determination is not whether Mr JKL is a fit and proper person in the abstract. It is whether he is a fit and proper person to hold a contractor's licence or, in respect of the Company's licence, to

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<sup>6</sup> *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380.

exercise control or influence over a company that holds a contractor's licence.

[102] Relevant objects of the Act summarised previously – maintenance of proper standards in the industry and achieving a reasonable balance between the interests of building contractors and consumers - provide some context for those considerations.

***Commercial and other dealings in which [Mr JKL] has been involved and the standard of honesty and integrity demonstrated in those dealings***

[103] The forgery self-evidently demonstrates a lack of honesty and integrity in Mr JKL's dealings with the Customers and points strongly against Mr JKL being a fit and proper person. A contractor forging contractual documents is one of the most egregious forms of conduct that might be engaged in by a contractor in commercial dealings with a consumer.

[104] Without departing from the seriousness of the conduct, it is necessary to consider the conduct in its context. At the time of the incident, Mr JKL was a relatively young and inexperienced contractor and in a state of anxiety arising out of financial pressure and the stress of dealing with a legal dispute for the first time.

[105] It is also important to bear in mind that s 31(3)(a) directs attention to commercial and other dealings generally, and not merely those that raise adverse honesty or integrity issues. Mr JKL has dealt appropriately in his dealings with subcontractors. Aside from the forgery and related issues, there is no suggestion that he has not otherwise conducted himself with honesty and integrity in his commercial and other dealings.

***Any failure by Mr JKL to carry out commercial or statutory obligations and reasons for the failure***

[106] There is no evidence that Mr JKL or the Company have failed to carry out commercial obligations.

[107] The breaches of the licence conditions constitute failures to carry out statutory obligations. The conditions were important and imposed for good reasons by the Commission.

[108] Mr JKL's failure to comply with the obligation to notify the Commission of the hearing on 4 December 2015 is not insignificant. It is clear that Mr JKL understood the requirement to notify the Commission. However, the failure is mitigated to a degree by the circumstances of the stress of Mr JKL dealing with the final hearing of criminal charges against him.

[109] The breach of the requirement to provide a copy of the court's decision and sentencing remarks is, in a sense, more significant. While the copies were not available on the day of the hearing, one would have thought that, with the contractor's licences for himself and the Company at risk, Mr JKL would have taken steps to comply with the condition at the first opportunity. The

failure is mitigated to a degree by the letter Mr JKL sent to the Commission shortly after the hearing, although that could be described as minimalist, with its advice of the absence of a recorded conviction but no other detail, and as such self-serving.

[110] Overall, these breaches weigh to some extent against a conclusion that Mr JKL is a fit and proper person to hold a contractor's licence. They are not determinative, but form part of the overall factual matrix.

***Other relevant factors***

[111] Honesty is a key factor in determining whether a person is a fit and proper person to hold a contractor's licence. It is inherent in the statutory object of maintaining proper standards in the industry.

[112] In reaching a conclusion in this matter, the aspect that has most troubled me is the filing of the forged document in the QCAT building dispute proceedings and, more particularly, Mr JKL's misleading oral evidence about it. Confronted with a choice between remaining silent and thereby misleading the Tribunal, albeit in a matter not directly relevant to those proceedings, or "coming clean" as it were, Mr JKL chose the former, more comfortable, but less honest, course.

[113] In a sense, although inappropriate, that is an understandable choice made in haste before the Tribunal member moved on to other matters. What is more disturbing is that in oral evidence in the current applications Mr JKL merely maintained that his answer to the specific question put to him by the Tribunal member was accurate. I have accepted that, but as I have found in its context Mr JKL's evidence was unquestionably misleading.

[114] Mr JKL's case before the Tribunal in the current matters was mainly that the forgery was an isolated, impulsive act carried out in a time of high anxiety and stress. The continued dishonesty when the issue arose in the QCAT building dispute proceedings detracts from the force of that proposition.

[115] The misleading nature of the oral evidence must be seen in its context: a decision made in the heat of the moment in the course of a Tribunal hearing which, judging by his demeanour at the hearing of the current applications, Mr JKL would have found difficult and stressful. The filing of the forged conditions was not attended by the same factors, but nor was the forgery brought into direct focus in the way that occurred in the Tribunal hearing.

[116] I have concluded that this aspect of the matter should be viewed as part of a single continuum of events as Mr JKL dealt with events leading up to and the fallout from the forgery, and not as indicating general dishonesty or lack of integrity. Viewed in that light, the matters remain serious errors of judgment but mitigated to a degree by the overall circumstances.

[117] Other factors relevant to whether Mr JKL is a fit and proper person to hold a contractor's licence include the time that has passed since the forgery



and the QCAT building dispute proceedings without any further indication of lack of honesty or integrity by Mr JKL; the treatment provided by a clinical psychologist to Mr JKL in many sessions over an extended period after that time; Mr JKL's community contributions; the steps taken by Mr JKL to improve his building industry skills and education; his history of appropriate dealings with subcontractors; and my own impressions of Mr JKL's honesty in giving evidence before the Tribunal, which were generally favourable, other than as indicated in the preceding comments.

### **Conclusion on fit and proper person**

[118] There are powerful considerations against a conclusion that Mr JKL is a fit and proper person to hold a contractor's licence.

[119] Forging of contractual documents is a grave matter, which the community would ordinarily expect to result in cancellation of a contractor's licence. Similarly, providing misleading evidence to a Tribunal is a serious and troubling matter.

[120] However, assessing the matter globally, including the cumulative impact of various mitigating factors, I am satisfied that Mr JKL is at this time a fit and proper person to hold a contractor's licence.

[121] Those factors include the one-off nature of the forgery and the continuum of related events that followed; Mr JKL's acceptance of his guilt, as demonstrated by the guilty plea, and remorse; his subsequent substantial and apparently successful treatment for depression and anxiety; his otherwise unblemished record; his community service; the time that has passed since the forgery and related incidents, without any indications of behaviour reflecting adversely on Mr JKL's honesty or integrity; Mr JKL's continued commitment to improving his skills; and my own impression formed upon hearing Mr JKL's evidence.

[122] For the same reasons, I am also satisfied that Mr JKL is at this time a fit and proper person to exercise control or influence over a company that holds a contractor's licence.

[123] It follows that I must set aside the decisions of the Commission cancelling the Company's and Mr JKL's contractor's licences and substitute decisions that Mr JKL is a fit and proper person to hold a contractor's licence and is a fit and proper person to exercise control or influence over a company that holds a contractor's licence.

### **Final observations**

[124] As noted, there are troubling aspects to Mr JKL's behaviours. While ultimately my decisions are in favour of the Applicants, I regard these matters as finely balanced. Mr JKL would be well advised to exercise a high level of care in all future matters relating to his fitness to hold a contractor's licence.

[125] I record my appreciation of the thorough and balanced approach displayed by Mr Robinson in discharging the Respondent's duty to assist the Tribunal to make its decisions in these reviews.<sup>7</sup>

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<sup>7</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 21(1).