

CITATION: *Johnson v Commissioner of Police* [2006] NTMC 033

PARTIES: Paul Anthony Johnson  
v  
Commissioner of Police

TITLE OF COURT: Magistrates Court

JURISDICTION: Local Court

FILE NO(s): 20528834

DELIVERED ON: 2 May 2006

DELIVERED AT: Darwin

HEARING DATE(s): 28 March 2006

JUDGMENT OF: Mr David Loadman

**CATCHWORDS:**

Appeal in terms of Section 40(1) *Associations Act* – no relevant evidence adduced by Respondent – whether Appellant fit and proper person to be an officer of an incorporated association

**REPRESENTATION:**

*Counsel:*

Appellant: Michael Powell  
1<sup>st</sup> & 2<sup>nd</sup> Respondent: T. Anderson

*Solicitors:*

Appellant: Maleys, Barristers and Solicitors  
1<sup>st</sup> & 2<sup>nd</sup> Respondent: Solicitor for the Northern Territory

Judgment category classification: B  
Judgment ID number: [2006] NTMC 033  
Number of paragraphs: 36

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20528834

BETWEEN:

**PAUL ANTHONY JOHNSON**  
Appellant

AND:

**COMMISSIONER OF POLICE**  
Respondent

REASONS FOR JUDGMENT

(Delivered 2 May 2006)

Mr LOADMAN SM:

1. This is an appeal from a decision of the first Respondent pursuant to section 40 (1) of the *Associations Act No 56* of 2003. That declaration was apparently made by the first Respondent on the 8 November 2005 and was based upon the certificate of the second Respondent dated 21 October 2005. (“The certificate”).
2. The certificate is in turn based on the certificate by the Commissioner of Police so certified pursuant to section 40(2) of the Act. That last mentioned section provides that the second Respondent may only give the certificate “on the basis of a criminal intelligence report or other criminal information held by the Commissioner of Police”. The certificate is in terms of section 40(1)(a) certifying that Paul Anthony Johnson (the Appellant) “Officer of Blonks Motorcycle Club Incorporated, is unfit to be an officer in an incorporated association”.

3. The Court pauses to emphasise the import of the certificate. It is a declaration that the Appellant is unfit to be an officer of any description in any incorporated association. To quote Mr Powell's submissions in that regard that would include the McCrame Guild Incorporated or the Noonamah Chess Club Incorporated. It is clearly a draconian power and follows on the nomination of the Appellant as the Public Officer of Blonks notified under the Act on the 28 July 2005.
4. The right of appeal conferred by section 114 of the Act permits the Appellant to appeal to the Local Court. The appeal itself is governed by the provisions of Part 37 of the Local Court Rules and LCR 37 and thereafter. LCR 9 in relation to the hearing of the appeal provides that the Court may give the directions it considers appropriate in respect of the hearing of an appeal.
5. Neither the Act or the Local Court Rules deal with the issue of who bears the onus, if anyone does, of establishing what must be established.
6. There are several peculiar provisions of the Act in this Court's perception which confuse the orderly determination of the appeal. Amongst others those provisions are as follows (any underlining that follows is the Court's underlining);-
  - i. Section 114(5) provides "On the hearing of the appeal, the Court must decide whether the person is a fit and proper person to be an officer of an incorporated association."
  - ii. Subsection (7) "The Commissioner of Police cannot be compelled to give evidence relating to the issue of the certificate or the basis on which the certificate was given."

- iii. Subsection (8) provides “If the Court is satisfied the Appellant is a fit and proper person to be an officer of an incorporated association, the Court must, by order, revoke the declaration.”
  - iv. Subsection 9 provides “If the Court is satisfied the Appellant is not a fit and proper person to be an officer of an incorporated association, the Court must dismiss the appeal.”
7. One peculiarity in relation to the above quoted subsection (5) is the obligation to decide whether the person is a “fit and proper person”. The declaration by the first Respondent is as set out above namely that the Appellant is “unfit to be an officer”. Clearly there are two discreet propositions which are not coincident one with the other.
8. Extraordinarily the police whose certificate is the very basis for the decision the subject of the appeal cannot as is evident be compelled to even tell the court of the basis on which the certificate was given. Mr Anderson for the Respondents made the alarming submission that this statutory exemption extended to every officer in the Northern Territory Police Force which would seem to make a complete mockery of the process and severely offend the principles of natural justice or procedural fairness as it is also known.
9. Then there is the juxtaposition of subsections 8 and 9. It seems that there are two tasks for the Court seized of the appeal. The Court must first decide whether it is satisfied that the Appellant is “a fit and proper person...”. However by subsection 9 it appears the Court must also satisfy itself with the negative, that is that the Appellant is not “a fit and proper person to be an officer of the incorporated association”.
10. There being no legislative guidelines as to the standard of proof, the burden of proof or any other aspect of the task facing the Appellant it is submitted by Mr Powell that the Appellant is fixed with an obligation to prove that he is a fit and proper person on a balance of probabilities the onus to reach that

standard resting on him. With that proposition Mr Anderson agreed. So does the Court.

11. In respect of the antithetical exercise set out in subsection 9 Mr Powell has submitted that the burden of proof in relation to establishing that criterion rests on the Respondents who bear the converse burden to the Appellant in that regard, but that also in that regard the burden invoked the requirements known generically as the “Briginshaw Test”. Mr Anderson disagreed with that this Court upholds the submission of Mr Powell.
12. The Appellant issued and served two summonses for the production of documents. One on the first Respondent which was complied with. One on the second Respondent which was not complied with, but for reasons never made known to the Court was not pursued by Mr Powell. This is an issue which is lamented by the Court because if there was some public interest immunity privilege claimed or a like privilege it would have been a function of the court to peruse the material and make a determination as to whether or not those objections were valid. So much for the procedural matters.
13. The facts are that Paul Anthony Johnson was born on the 12 May 1955 and about sixteen years ago a motorcycle club styled the Blonks Motorcycle Club (an unincorporated association was formed) of which he became a member. He gave evidence of his continuous and extensive working life and it does not seem to the Court that any good purpose is served by setting out the details save that the Court finds that the defendant has been gainfully employed almost continuously since he was able to work: that he has had several responsible positions which he was discharged with exemplary application: that the work in question entailed security work, confidential work, working with firearms, managerial positions including patrol duties for the Office of the Chief Minister of the Northern Territory and extensive research for the Northern Territory Government.

14. An affidavit was filed by him and marked exhibit A1 in the appeal from which the following pertinent facts deserve recording:-

He has never been convicted of any criminal offence. After working for 10 years in the Northern Territory Department of Primary Industries and Fisheries the then Chief Executive Officer bestowed upon him the inaugural CEO'S Award for Outstanding Achievement. This is an annual award according to his affidavit to an employee nominated by a panel of executives as the outstanding achiever in the department.

15. As a sole parent he raised two sons now aged 29 and 27; described as upstanding and responsible men. He remarried his present wife Simone whose six year old son has been raised as his own for the last five and half years.
16. It emerged when cross-examined that he was not really sure when Blonks first became an incorporated association under the Act or its predecessor and that he was not sure as to the duties which attached to him as the public officer but that he was intending to become acquainted with and discharge those duties. He admitted candidly to being a member of the Hells Angels Motor Cycle Club of Darwin ("HAMC"). He thought he became a full member of Blonks (the unincorporated body) in 1990 and that he became a full member of HAMC in December of 1999.
17. Although the Court had indicated after objection from Mr Powell that evidence on behalf of the Respondent would have to be adduced orally in the conventional way, it did permit for the purposes of cross-examination, reference to the affidavit of Jamie Andrew Chalker ("Chalker's affidavit") Nothing remarkable emerged from the cross-examination of the Appellant by Mr Anderson concerning the establishing of the Appellant as a member of HAMC and since he had made the admission in the first place the reason for the extensive cross-examination and the reference to a series of

photographs depicting him with other Hells Angels is obscure as far as the court is concerned.

18. A number of propositions was put to him concerning the membership of HAMC. Firstly it was put to him that as a member of HAMC he was a member of the world wide organisation to which he responded "he did not have a clue". He did not know who all of the members of Blonks Motorcycle Club Incorporated were. He denied being excluded from admission into the Czech Republic which assertion by the second Respondent was abandoned in due course it being conceded it was wrong to so assert. He denied the allegations contained in Chalker's affidavit which alleged 10 major crime activities indulged in by HAMC ranging from the manufacture, cultivation, distribution of illicit drugs to money laundering and including all the serious crimes known to the English legal system. He said he had no knowledge that HAMC were so involved. He denied the allegations in Chalker's affidavit to the effect that he had an intimate knowledge as a member of HAMC of all the criminal activities in which HAMC were engaged. He admitted that HAMC to his knowledge had nine full members at the current time, but denied the allegation that all were involved in one or more types of criminal activities and most had criminal records. He of course has none. He acknowledged being associated with Ian Grant Hogan and admitted that a similar declaration the subject of this appeal was made in respect of Hogan, as a consequence of which he nominated himself, resulting in the present appeal. He denied knowledge of Hogan's convictions for property crime, drug offences and firearms offences or his involvement in a wide range of criminal activities as alleged in paragraph 22 of Chalker's affidavit. He acknowledged that James Scott Parnwell Knight was sentenced in the Supreme Court of the Northern Territory to a term of imprisonment the duration of which he was not sure of. Finally he denied the allegation that he personally was involved in

serious criminal offending involving cultivation of cannabis, the possession of stolen property and the possession of illegal firearms namely pistols.

19. At the outset of his cross-examination this Court explained to the Appellant his right to refuse to answer any questions on the grounds that the answer to the question might incriminate him in criminal prosecution. Much was made in cross-examination of the Appellant's failure to understand the quite different rule pertaining to his examination by the Australian Crime Commission on Tuesday 8 February 2005. In short compass the obligation there of course was to claim "privilege", but then go on to answer the question as is the case with interrogation under the *Bankruptcy Act*. This Court does not make any adverse finding in relation to his ability to understand these matters or that his misunderstanding of his rights before the Australian Crime Commission examination was contrived.
20. Alex Julius, 52 years of age, gave evidence in general terms confirming the Appellant as hardworking, competent, a person who did not drink, whose social company he had enjoyed and with whom he had worked for some substantial time in the Department of Primary Industries and Fisheries. Julius acknowledged that he knew the Appellant was a member of HAMC and indeed had himself on several occasions been a guest at the HAMC Clubhouse on one occasion taking with him a member of Her Majesty's Counsel whose name was fortunately not allowed to drop from Mr Julius' lips. John Macartie a firearms extension officer gave evidence that he had known the Appellant for 14 or 15 years both in and out of work. Mr A. Tastula 37 years of age gave similar evidence, he in fact being the last person who employed the defendant on the LMG project at Wickham Point, where he confirmed the defendant worked long hours and discharged his duties conscientiously at all times and indeed was a pivotal member of the team often being the person to take the heat out of situations arising as would no doubt be inevitable within a crew of approximately 10 men.



21. Jamie Andrew Chalker then gave evidence and ultimately his affidavit sworn 27 March 2006 became exhibit R 2/1 in the proceedings.
22. A summary of the relevant portions of that affidavit are as follows:

He is currently a Detective Sergeant in the Northern Territory Police and has been a member of the Police Force for over 12 years:

A special operations section in the Police was formed to target established criminal networks (ECNS) (sic) which is defined as two or more persons involved in illegal activities directly or indirectly for gain.

At some prior time he was involved in the investigation of motorcycle gang members in Alice Springs which the Court points out is not necessarily coincident with HAMC Darwin and was never proven to be so coincident. He is involved with investigating HAMC which he said was “regarded by territory, national and international law enforcement agencies as an ECN etc”. The significant observation by the Court which will be made repeatedly is that there is no evidence provided by him to support that statement and the proposition which was the subject of some comment by the Court after he had finished his evidence that the second Respondent was firstly not compellable or to give evidence, but could come along make that sort of statement not supported by any evidence, is regarded by the Court as extraordinary.

He describes an extensive knowledge or alleges an extensive knowledge derived from intelligence reports and other sources, but again doesn’t in fact disclose that knowledge which indeed he consistently refused or declined to do.

He alleges that as an investigator he is possessed of a thorough understanding of HAMC; the roles and responsibilities of its members, but again was not prepared to disclose the basis upon which he was able to make the statements that he did. Relevantly he said that since 1993 Blonks

Motorcycle Club Inc was used solely for the convenience and the advantage of the Darwin Chapter of HAMC. The statement is made without any supporting evidence being called and it seems that the Court, at least in his perception, is supposed to accept whatever he says as having been proven by admissible evidence.

23. Much of his evidence was related to the undisputed fact that the Appellant was a full member of HAMC and nothing significant turns on that. Annexure JAC4 to Chalker's affidavit is a list of members of "Blonks Motorcycle Club Inc" provided by the first Respondent. The Appellant was not sure whether he was a member of that organisation, but the fact that he is in fact a member is neither in dispute or in anyway remarkable. He never denied he was such a member.
24. He then asserts criminal records and activities pertaining to James Scott Parnwell Knight and Ian Grant Hogan both members of HAMC. Quite why that should prove the Appellant is an unfit person for the job or not a fit and proper person for the job of public officer is at least remote in this Court's perception. He gave oral evidence that although the Appellant denied being involved in the cultivation of cannabis, possession of stolen property and possession of illegal firearms (pistols) he maintained his involvement, but gave the same reasons for the absence of any evidence namely he was unable or unwilling to reveal the basis for his contrary view and the Court remarks in a like manner as it has in respect of concomitant assertions by him.
25. Mr Powell in his submissions correctly pointed out that there was no evidence that the Appellant was ever charged with any of the serious crimes he is alleged to have been implicated in. He has no criminal record in relation to any criminal matter of any kind. What it boils down to he said with which the Court agrees, is there is no adverse evidence as to the alleged nefarious activities of Johnson, but there is explicit evidence establishing

his excellent reputation. The whole of the second Respondent's attitude in respect to the declaration of unfitness is inferred since it has never been proved. Chalker was not prepared to state that any person in Hells Angels Motorcycle Club can be innocent of involvement in major crime but the Appellant stated therefore that all members could not be fit to hold office and could not be a fit and proper person as required by the Act.

26. As Mr Powell correctly says absolutely no procedural fairness has been observed. The allegations are made without any supporting evidence and the Court accepts his postulation that in respect of the apparent obligation imposed on the Court by section 114(9) it is incumbent on the second Respondent to establish that the Appellant is not a fit and proper person to be an officer of any incorporated association. That must be on the Briginshaw standard. If that burden of proof is not discharged the Court must allow the appeal. Conversely on a balance of probabilities if the Court is satisfied the Appellant is a fit and proper person the Court must also allow the appeal.
27. Mr Anderson submitted firstly that the Appellant's lack of understanding in relation to the discharge of his duties as a public officer and his lack of knowledge as to when or whether he was a member was sufficient alone to make a finding that he was not a fit and proper person. The Court rejects that. The Appellant said that he had been intending to ascertain what he was supposed to do and obviously had not much of a chance to do that. He then said that paragraph four of Chalker's affidavit established the second basis upon which the Appellant should be declared not a fit and proper person. The Court rejects that. There is no evidence that every member of HAMC is involved in all or any of the illegal activities which may be carried on by an HAMC member or by some number of them.
28. The third submission was that the Court should find the Appellant unfit and not a proper person on the basis on what was contained in paragraph 24 of

Chalker's affidavit. Again that postulates the Court making a finding on no evidence and on the mere say so of Chalker against the reality that this 55 year old man has never been convicted of any offence of any nature let alone the serious offences which are alleged in the said paragraph. The submission is rejected.

29. The next submission is related to what was either his failure to understand the legal position before the Australian Crimes Commission or his unwillingness. Whatever action could have been taken as a consequence of the matters that occurred there has not been taken. Merely to fail to understand or indeed even being unwilling to understand, questions relating to procedural privilege, is not in this Court's submission sufficient basis on which to find the Appellant is not a fit and proper person.
30. Lastly it is asserted that because on occasions the Appellant claimed privilege in respect of certain questions that alone should suffice for a negative finding against him. He then pointed to an additional matter namely a failure to answer questions because the rules of HAMC forbade him from doing so. That was clearly pointed out as being an inappropriate stance to the Appellant by the Court and it was retracted and he thereafter claimed privilege as he was entitled to do. It is extraordinary in this Court's finding to hear a submission from Counsel to the affect that when a witness claims privilege against self incrimination it ought alone to suffice to enable the Court to find he is not a fit and proper person to hold public office. The Court emphatically rejects that proposition and finds it quite alarming.
31. Something similar was before the full Federal Court of Australia in the matter of *Bond & Others v The Australian Broadcasting Tribunal* (1989) 18 ALD 646. The issues there were not as simple as the matters before this Court, but there was as part of the exercise a need to make findings in relation to fit and proper persons in respect of broadcasting licences. At page four of that report a unanimous judgment of JJ Lockhart, Pincus and

Gummow the following relevant pronouncements appear. If the Tribunal the subject of the appeal decided that the licencees were no longer fit and proper persons to hold their licences, but reached that decision without being satisfied about the existence of primary facts which amounted as a matter of law as sufficient to establish that the licensee “is no longer a fit and proper person to hold the licence”, then it fell into an error of law.

32. Authority for the above proposition is then cited and the Court went on to hold “Further, if the Tribunal made a finding of primary fact unsupported by any material or drew an inference unsupported by any of the primary facts found by it, it will be held to have erred in law.” The authority for that proposition is then cited. The Court said further “The necessity for adequate evidence has been said to be a component of natural justice;”. The Court then referred to an indication of Sir William Wade and an authority is cited namely “that this “no evidence” concept also has something in common with the principle that perverse action is unauthorised and ultra vires. In this context, a decision will be “perverse” if it could not have been properly arrived at on the material before the decision-maker:”
33. It is also significant that section 114(6) of the Act specifically cites “the Court may make its decision only on the evidence given by a party to the appeal” what could be more clear. Without evidence the Court cannot make a decision and is certainly not prepared to make the decision on the basis of statements by police officers, this smacking of that hoary old chestnut, “trust me I’m a lawyer” in this case “trust me I’m a policeman”. We do not any longer have courts functioning in the manner of the Star Chamber. That reference is a reference to the Court of Star Chamber which by the time of the reign of Charles I of England had become synonymous with misuse and abuse of power by the King and his circle. Apart from suppression of all news by its agency, Charles I, it may be recalled made extensive use of the Court of Star Chamber to prosecute any dissenters including the Puritans who subsequently fled from England.

34. In the event the court then is bound by section 114 of the Act to address the matter on two separate bases:-
- a. In satisfaction of subsection (8) of section 114 the Court is satisfied the Appellant is a fit and proper person to be a public officer of an incorporated association. On that basis the Court allows the appeal.
  - b. In subservience to subsection 114(9) as filled with negatives as the finding must be, the Court is not satisfied that the Appellant is not a fit and proper person and consequently upholds the appeal on that basis as well.
35. The preceeding paragraphs of this decision constitute the entire decision of the Court in relation to the appeal and these subsequent remarks are completely obiter. The Wikipedia accessible on the internet, is authority for the statement that not only is it the claim of worldwide members of HAMC that only some of its members are involved in criminal activities' but many others profess the organisation to be "just a motorcycle club". It asserted that indeed in Canada HAMC have gained immense notoriety and further that the Canadian organisations are in effect possessors of a "new modern Hells Angel Movement". It also appears that "Route AD 1" a chain of official stores which operates in Canada under the auspices of HAMC operates completely within the law and whilst all of that may be disagreed with by the second Respondent and Mr Chalker, it would be no more valid to base a decision on those assertions of innocence and non- involvement in crime as to adopt the converse course urged on by the Police Commissioner. In each case they are statements made without identity of any facts sufficient to support the proposition.
36. The Court will hear the Parties on questions of costs.

Dated this 21 day of April 2006.

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**Mr David Loadman**  
STIPENDIARY MAGISTRATE