

CITATION: *Luke David Bruce Bambach v NT Racing Commission (2018)*
NTLC 031

PARTIES: Luke David Bruce BAMBACH
v
NORTHERN TERRITORY RACING
COMMISSION

TITLE OF COURT: Local Court

JURISDICTION: Civil

FILE NO(s): 21756096

DELIVERED ON: 30 April 2018

DELIVERED AT: Darwin

HEARING DATE(s): 27 February 2018

JUDGMENT OF: Chief Judge Lowndes

CATCHWORDS:

REFUSAL TO GRANT LICENCE IN ACCORDANCE WITH RACING AND
BETTING ACT – FIT AND PROPER PERSON TEST – APPLICATION OF FIT
AND PROPER PERSON TEST

Racing and Betting Act ss 3A, 71(3), 103(1), 119C(3)

Hughes and Vale Pty Ltd and Anor v NSW and Ors (no 2) (1955) 93 CLR 127
followed

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

Comino and Tax Agents' Board of NSW (2009) AATA 766 followed

REPRESENTATION:

Counsel:

Appellant: Mrs A Koulianos
Respondent: Mr P Timney

Solicitors:

Appellant: Maleys
Respondent: Director Legal NT Licensing Department of
Attorney General and Justice

Judgment category classification: B
Judgment ID number: [2018] NTLC 031
Number of paragraphs: 60

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

No. 21756096

BETWEEN:

Police
Appellant

AND:

KW
Respondent

REASONS FOR JUDGMENT

(Delivered 30 April 2018)

CHIEF JUDGE LOWNDES

THE NATURE OF THE PROCEEDINGS

1. The appellant has appealed a decision of the respondent refusing to grant him a Bookmaker's Key Employee Licence on the basis that he was not a fit and proper person to be granted such a licence in accordance with the *Racing and Betting Act*.¹
2. The appeal is in the nature of a rehearing.²

THE APPELLANT'S CASE

3. The appellant says that he is a fit and proper person to be granted such a Bookmaker's Key Employee Licence and relies upon the matters set out in his affidavit sworn on 15th February 2018, which can be summarised as follows:

¹ See 71(3) of the Act.

² See s 119 C (3) of the Act. See also [5] – [11] of the respondent's submissions dated 14 February 2018 and [6] – [8] of the appellant's submissions also dated 14 February 2018

- (a) In September 2016 he was charged with the offences of possessing a thing for use in the administration of a dangerous drug, possessing a trafficable quantity of cannabis and supplying cannabis of less than a commercial quantity;
- (b) The appellant pleaded guilty to all three charges and was convicted and was fined;
- (c) The appellant disclosed these convictions at the time he made his application for the licence;
- (d) The appellant says that at the time of the offending he was suffering from chronic back pain that led him to start smoking cannabis to alleviate the pain;
- (e) The appellant says that due to a combination of the poor influence of friends that he was sharing residential premises with and the severe pain that he was suffering from he became a chronic user of cannabis;
- (f) The appellant says that at times he supplied cannabis to his friends either free of charge or for what he paid for the cannabis, and never made a profit;
- (g) The appellant says that when he was charged with the offences that was “big wake- up call” and he was extremely ashamed and disappointed with himself;
- (h) The appellant says that in order to avoid getting into the same or similar situation again he dissociated himself from the friends that he was residing with at the time of the offending;
- (i) The appellant says that since the offending he has been reading and viewing motivational material so as to get his life back in order and to ensure that he learns alternative ways to deal with his back pain and stressors;
- (j) The appellant says that after being sentenced in relation to the drug offences he has changed his life around - eating healthier and exercising regularly to reduce his weight with a view to alleviating his back pain;
- (k) The appellant says that he no longer needs to rely on cannabis or other prescribed medication to manage his back pain;

- (l) The appellant says that he has made it a priority to surround himself with positive things and to advance his career – putting his offending behind him;
- (m) The appellant is aged 23 years, and was born and raised in the Northern Territory;
- (n) The appellant completed year 12 in 2012 at Taminmin College, as well as completing his Certificate 11 commercial cookery as part of his studies in his former occupation as an apprentice chef;
- (o) Between April 2016 and April 2017 the appellant was employed by SportsBet as an Acting Senior Floor Member on the betting line – in which role he worked closely with the 2nd and 3rd in charge in training other staff as well as administrative and clerical work, which included answering calls, bet placement and customer service;³
- (p) The appellant says that within 6 months of working at SportsBet he began working closely with management; however, upon his application for a licence being refused his employment was terminated;
- (q) Since July 2017 the appellant says that he gained employment with Darwin Kart Hire and within 3 months of his employment was promoted to Assistant Manager. He continues to hold that role. In that role he has run the business half the time, held the keys to the business, been responsible for balancing the tills and float and worked in a supervisory role during the weekends;⁴
- (r) The appellant says that he has not been nor subject to any disciplinary proceedings that have resulted in the cancellation or suspension of his licence or registration within a regulated industry;
- (s) The appellant says that he has never been declared bankrupt or been subject to any proceedings of that nature;

³ In that regard the appellant relied upon a character reference from Kevin Parker, which was annexure “G” to the appellant’s affidavit.

⁴ The appellant relies upon two references – one from Wayne Bell (owner of Darwin Kart Hire) and the other from Scott Gill (an employee of Darwin Hire Gill) – regarding his employment with Darwin Kart Hire. These references are annexures “H” and “I” to the appellant’s affidavit.

- (t) holding a position as director of a corporation or entity;
- (u) The appellant says that he has never provided false or misleading information or made false or misleading statements to a regulatory body;
- (v) The appellant says that apart from the respondent's refusal to grant him a licence due to not being a fit and proper person he has not previously been found to be not a fit and proper person for the purposes of the Act and/or for the purposes of any other regulatory legislation;
- (w) The appellant says that he has never been found guilty of an offence against the Act or the *Gaming Control Act*, *Gaming Machine Act* or the *Unlawful Gaming Act*;
- (x) Finally, the appellant relies on a character reference from Sandra Ball his former de-facto partner.⁵

THE FIT AND PROPER PERSON TEST

4. Section 71(3) requires that an applicant for a Bookmaker's Key Employee Licence must be a fit and proper person to hold such a licence.
5. The issue in the present appeal is whether the appellant is a fit and proper person to be granted a Key Employee Licence under the *Racing and Betting Act*. In order to determine whether the appellant is a fit and proper person to hold a Bookmaker's Key Employee Licence it is necessary to identify what it takes to be a fit and proper person in the context of the Act, and in particular the qualities and characteristics that such a person needs to possess.
6. The expression "fit and proper person" is not defined in the Act. Apart from the matters set out in s 71(4)⁶, the Act is silent as to the matters and considerations that

⁵ See annexure "F" to the affidavit of the appellant.

⁶ These matters and considerations are discussed later.

are required to be taken into account when assessing a person's fitness and propriety to hold a Bookmaker's Key Employee Licence.

7. Therefore, the meaning to be given to "fit and proper person" is a matter of statutory interpretation, assisted by relevant case law relating to the application of the "fit and proper person" test as a common licencing standard.
8. The "fit and proper person test" is well established in the law as a standard test, involving a high degree of flexibility. As the relevant case law shows, there is no general universally applicable formula for determining whether a person is a fit and proper person. A determination as to whether a person is fit and proper is not made by applying a single standard test or rule, but rather by balancing a range of considerations that may be seen to be relevant to fitness and propriety generally.⁷
9. In *Hughes and Vale Pty Ltd and Anor v NSW and Ors* [No 2] (1955) 93 CLR 127 at 156 the High Court made the following general observations regarding the expression "fit and proper person" in relation to its consideration of the fitness and propriety of a person to hold a licence under the *State Transport (Co-ordination) Act*:

The expression "fit and proper person" is of course familiar enough as traditional words when used with reference to offices and perhaps vocation. But their very purpose is to give the widest scope for judgment and indeed for rejection. "Fit" (or "idoneous") with respect to an office is said to involve three things, honesty, knowledge and ability: "honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate is in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it".

⁷ Explanatory Paper TPB(EP) 02/2010 Fit and Proper Person TPB: <https://www.tpb.gov.au/explanatory-paper/tpbep-022010-fit-and-proper-person> at [56].

10. In a similar vein, in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 348 Mason CJ, while considering whether the appellant was a fit and proper person to hold a commercial broadcasting licence, pointed out that the concept of a “fit and proper person should not be construed narrowly or confined, but “must extend to any aspect of fitness and propriety that is relevant to the public interest”. In particular, the Chief Justice stated that a “fit and proper person” must have an appreciation of the responsibilities associated with the rights and powers that come with the grant of a licence and must be able to discharge those responsibilities in a responsible manner: *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 349. A determination as to whether a person is a fit and proper person requires the Court to make a value judgment in the context of the activities in which the person is or will be engaged considering all the circumstances of a given case: *Re Comino and Tax Agents’ Board of NSW* [2009] AATA 766.
11. Toohey and Gaudron JJ also discussed the breadth of the content of the concept of a “fit and proper person” in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380 and 382) – stressing that the meaning of the concept is very much context dependent.:

The expression “fit and proper person, standing alone, carries no precise meaning. It takes its meaning from its contexts, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the person who is or will be engaged in those activities...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...in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not a fit and proper person to undertake the activities in question.

Whether the fitness and propriety of a licensee to hold a commercial licence are sufficiently ascertained by reference to its character or reputation, or must be ascertained by reference to the conduct of its affairs or activities, is a question the answer to which must be found by implication from the provisions of the Broadcasting Act dealing with the grant, renewal and revocation or suspension of a commercial licence and from the activities to be undertaken pursuant to the licence.

12. Their Honours went on to discuss the important relationship between the “fit and proper person” test and the expectation of the community that a licensee will properly discharge the functions and responsibilities associated with the grant of a licence coupled with the need for the community to have complete confidence that the licensee will do so:

A commercial broadcasting licence thus carries with it an obligation to the community. It also carries with it the potential for powerful influence. The community is entitled to confidently expect that a licensee will discharge its obligation and, in particular, that the potential for influence will not be abused. Within this context it is necessarily sufficient to ground a finding that a licensee is not a fit and proper person to hold a commercial licence that the community could not or would not have confidence that the licensee would discharge that obligation. Equally it is sufficient to ground a finding that the licensee is no longer fit and proper that the community could or would no longer have the confidence. Those questions are apt to be answered by reference to the character and reputation of the licensee.

13. The “fit and proper person test” is a common licencing standard, the purpose of which is to protect the public and to maintain public confidence in those who granted a particular licence by ensuring that those individuals possess the requisite knowledge, ability, good fame, integrity and character to hold that licence and to properly undertake the activities and discharge the responsibilities associated with

the licence: *Koyla and Tax Practitioners*; *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Qld* [2001] AATA 107; *Re Jones and Tax Agents' Board of NSW* [2002] AATA 1246; *Re Budai and Tax Agents' Board of NSW* [2002] AATA 1154; *Re Sargent and Tax Agents' Board of Victoria* [2009] AATA 219; *Re Sargent and Tax Agents' Board of Victoria* [2009] AATA 219.

14. Whether or not the considerations present in a given case result in a finding that a person is not fit and proper to hold a particular licence will depend on a range of considerations, including (but not limited) the nature and degree of any misconduct or improper conduct, any prior conduct or experience of the person and any relevant surrounding circumstances. Ultimately, a finding that a person is a fit and proper person to hold a particular licence depends upon the making of a value judgment that the community would have confidence that the applicant for the licence would discharge the obligations and responsibilities attaching to the licence in a proper manner and in the public interest.
15. Having made these general observations as to the breadth and flexible nature of the “fit and proper person” test and the public interest that it serves, it remains to consider whether the applicant in the present case is a “fit and proper” person to hold a Key Employee Licence under the *Racing and Betting Act*.
16. At the outset, the expression “fit and proper” person, as the licensing standard under the Act, must be construed in light of the objects of the Act – which purport to promote the public interest and maintain public confidence in the licensing scheme established under the Act.
17. The objects of the Act, which are set out in s 3A, are:
 - (a) to promote probity and integrity in racing and betting in the Territory;

- (b) to maintain the probity and integrity of persons engaged in racing and betting in the Territory; and
- (c) to promote fairness, integrity and efficiency in the operations of persons engaged in racing and betting in the Territory; and
- (d) to reduce any adverse social impact of gambling.

18. The first two objects underscore the public interest in ensuring the probity and integrity of persons engaged in racing and betting activities in the Northern Territory and the importance of maintaining public confidence in both the licensing scheme under the Act and persons granted licences under the Act. These two objects immediately inform the substantive content of the fit and proper person test: a fit and proper person is an individual who possesses the qualities of probity and integrity.
19. Probity and integrity are much the same thing, connoting honesty and moral uprightness. The “fit and proper person” test under the *Gaming and Betting Act* looks at the moral character of the person concerned, with the result that good moral character becomes an important part of the licensing standard set by the Act.⁸
20. As stated above, the “fit and proper person” test in part derives its substantive content from the activities in which the person concerned is or will be engaged, and the ends to be served by those activities. The nature of a “Key Employee Licence” and the activities engaged in by the holder of such a licence will to a large degree impart meaning to the expression “fit and proper person”, and help to identify who is a fit and proper person to hold a Key Employee Licence, and who is not a fit and proper person to hold such a licence.

⁸ For a full discussion of “good moral character” as a licensing standard see L Craddock “ Good Moral Character as a Licensing Standard” Vol 28 Issue 2 Journal of the National Association of Administrative Law Judiciary.

21. Similarly, the responsibilities associated with the rights and powers that come with the grant of a Key Employee Licence will bear upon the meaning of “fit and proper person”.
22. More particularly, the type of activities in which the person concerned is or will be engaged and the responsibilities that are to be assumed by the person engaged in those activities will indicate the qualities and characteristics that a fit and proper person needs to possess in order to be eligible to be granted a Key Employee Licence.
23. A “Key Employee” is defined in s 4 of the Act as a person licensed under s 103 or a person who holds a Key Employee Licence.
24. Section 103(1A) provides that a bookmaker must not employ or engage a person at a racing venue or on licensed premises in a position or to perform a function where the person controls or exercises significant influence over the operations conducted under the book maker’s licence unless the person is the holder of a licence granted under the section.
25. Section 103(1) of the Act deals with the licensing of key employees:

The Commission may, in its discretion, on receipt of an application in the approved form and the prescribe fee, grant or renew, or refuse to grant or renew, a licence permitting a person to be employed or engaged by a bookmaker as a key employee at a racing venue or on licensed premises.
26. The appellant proposes to take up a position with Sportsbetting.com.au as the manager of its Darwin based operations. Sportsbetting.com. au holds a licence as a sports bookmaker granted by the Commission pursuant to s 90 of the Act.⁹ Under

⁹ See [36] of the respondent’s submissions dated 14 February 2018.

that licence Sportsbetting.com.au is authorised to conduct bookmaking activity in respect of racing (thoroughbred, harness and greyhound racing) and sports.¹⁰

27. The appellant has acknowledged by his application for a Key Employee Licence that the functions intended to be performed in his proposed employment with Sportsbetting.com.au fall within the scope of the functions of a key employee.¹¹
28. The appellant's proposed employment with Sportsbetting.com.au has been confirmed by its General Manager, Chris Reynolds.¹² Mr Reynolds states that Sportsbetting.com.au intends to employ the appellant as a customer service representative located in its Darwin office and the appellant will also act as a key employee, being the NT resident nominee for the bookmaking business.¹³
29. Mr Reynolds has described the duties and functions that the appellant would be engaged in, in the event that he is granted a Key Employee Licence.¹⁴ Those duties and functions are to:
- (a) provide outstanding customer service and account management across telephone, chat and email;
 - (b) assist in social media marketing campaigns;
 - (c) back office operational tasks across market management, new accounts and banking;
 - (d) monitor client betting behaviour;

¹⁰ See [36] of the respondent's submissions.

¹¹ See [38] of the respondent's submissions and annexure NTRC 1 to the affidavit of Mark Wood sworn on 8 February 2018.

¹² See [38] of the respondent's submissions and annexure NTRC 4 to the affidavit of Mark Wood.

¹³ See [38] of the respondent's submissions and annexure NTRC 4 to the affidavit of Mark Wood.

¹⁴ See [39] of the respondent's submissions and annexure NTRC 4 to the affidavit of Mark Wood.

- (e) work with affiliates and business partners;
- (f) identify product and user experience improvement opportunities;
- (g) work closely with other customer service representatives; and
- (h) work closely with the general manager of the business.

30. Both the appellant and Sportsbetting.com.au acknowledge that the range of activities that the appellant would be engaged in would require him to hold a Key Employee Licence.¹⁵
31. It is clear that the responsibilities, duties and activities involved in the appellant's prospective employment with Sportsbetting.com.au would result in the appellant controlling or exercising significant influence over the operations conducted under the bookmaker's licence held by Sportsbetting.com.au.¹⁶
32. The "fit and proper person" test requires the applicant for a Key Person Licence to be a fit and proper person to exercise the functions and discharge the responsibilities that come with the grant of such a licence.
33. Although there are no specific educational qualifications or experience requirements prescribed by the Act as preconditions for the grant of a key employee licence, s 71 of the Act sets out the types of persons to whom licences or permits under Part IV of the Act (including a fit and proper person) may be granted:
- (1) A licence or permit under this Part shall not be granted to a person who has not attained the age of 18 years.

¹⁵ See [40] of the respondent's submissions.

¹⁶ See [41] of the respondent's submissions.

(2) A licence under this Part shall not be granted to a person who already holds a licence under this Part or has an interest of any kind in the business of bookmaking conducted by a person who holds such a licence.

(3) A licence or permit under this Part must not be granted to a person who is not a fit and proper person.

(4) Without limiting subsection (3), a person is not a fit and proper person if he or she:

(a) within 10 years before the date of the application for the licence or permit

(i) has been found guilty of an offence against this Act, the *Gaming Control Act*, *Gaming Machine Act* or *Unlawful Betting Act*; or

(ii) has been convicted of an offence prescribed as a disqualifying offence under the Regulations;¹⁷ or

(b) does not satisfy the probity requirements under this Act.

34. As noted earlier, s 71 of the Act does not explicitly provide any guidance in respect of the matters the licensing authority should take into account in determining whether an applicant for a licence is a fit and proper person to hold a key employee licence, apart from the matters set out in s 71(4) of the Act.

35. It follows that apart from what is specified in s 71 of the Act, whether the appellant is a fit and proper person to be granted a key person licence is left to be determined by applying the various principles and considerations discussed in the relevant case law.

¹⁷ It is noted that no offences have been prescribed in the Regulations as disqualifying offences.

THE APPLICATION OF THE FIT AND PROPER PERSON TEST IN THE PRESENT CASE

36. It is noted at the outset that the appellant has attained the age of 18 years and has not been found guilty of an offence of the type referred to in s 71(4) (a) of the Act. Furthermore, on account of his experience in the racing and betting industry, there appears to be no issue as to his ability to perform the activities associated with the grant of a Key Employee Licence.
37. However, the appellant's fitness and propriety to hold a key person licence is called into question by his "moral character" - as reflected in his criminal convictions for possessing and supplying a dangerous drug - and the extent to which those convictions may raise legitimate concerns about the appellant's ability to undertake the activities and discharge the obligations and responsibilities associated with the grant of a Key Employee Licence with the probity and integrity that the Act requires.
38. It is necessary to carefully analyse the nature of the convictions and their bearing on the fitness and propriety of the appellant to hold a Key Employee Licence.
39. On 17 February 2017 the appellant was convicted in the Local Court of the Northern Territory of:
1. possessing a trafficable quantity of a schedule 2 dangerous drug (cannabis);
 2. supplying less than a commercial quantity of a schedule 2 dangerous drug (cannabis); and
 3. possessing a thing for use in the administration of a dangerous drug (a bong).

40. The appellant received an aggregate fine of \$3000 in relation to the first two counts and was discharged without further penalty in relation to the third count.¹⁸ In addition, the Court ordered that the sum of \$50 found in the possession of the appellant be forfeited.
41. Although the Court does not have a transcript of the proceedings before the Local Court, and therefore does not have the benefit of the sentencing remarks of the sentencing judge it is difficult to see how the offending could be characterised as being minor or trivial.
42. The agreed facts in relation to the offending are contained in annexure “E” to the appellant’s affidavit. Those facts do not disclose offending of a minor or trivial nature.
43. It is significant that the Court recorded a conviction in relation to all three charges. A conviction is a “significant act of legal and social censure”.¹⁹ Furthermore, as Freiberg points out:²⁰
- It [a conviction] also represents a broader ethical statement or judgment of moral culpability which, in communal eyes, provides a declaration that the defendant is a person worthy of censure and punishment, or in need of some other form of State intervention in the interests of suppressing crime. For this reason, the very fact of conviction is properly regarded as a major act of condemnation and public stigmatisation and is, without more, treated as a sentence.
44. The fact that convictions were recorded reflects the objective seriousness of the offending.

¹⁸ It is noted that the criminal record was not correctly stated in the parties’ submissions.

¹⁹ A Freiberg “Fox and Freiberg’s Sentencing – State and Federal Law in Victoria” 3rd edition at [1.260].

²⁰ Freiberg n 19 at [1.260].

45. Furthermore, the fact that the defendant was fined rather than sentenced to a term of imprisonment,²¹ should in no way be considered to be an indication that the offending was minor. A term of imprisonment is a measure of last resort and reserved only for cases that are deserving of the imposition of a term of imprisonment. Parliament has seen fit to prescribe an alternate monetary penalty for offending (albeit serious) that is of not sufficient gravity to warrant a sentence of imprisonment. In this case, a significant fine was imposed to reflect the relative objective seriousness of the offending. The supply of a dangerous drug to another person is a matter of serious concern to the community as well as the courts – even if the supply was to friends on a non-profit basis, as the appellant claims in his affidavit.

46. The question that needs to be answered is whether the appellant is a fit and proper person to hold a key person licence in light of the convictions recorded in February 2017.

47. The possession and use of dangerous drugs – and in particular the supply of drugs – is conduct that violates the sentiment or accepted standards of the community. The community generally views “drug dealing” – regardless of its nature - as a “crime of moral turpitude”. As “probity” is a high standard of correct moral behaviour, “drug dealers” are generally viewed by the community as lacking probity and integrity.

48. As submitted on behalf of the respondent:²²

...the gambling industry and the community at large would be appropriately concerned if a key employee under a sports bookmaker licence was involved

²¹ The first two counts carry a maximum penalty of 500 penalty units or 5 years imprisonment.

²² See [62] of the respondent’s submissions dated 14 February 2018.

with or convicted in respect of the possession and supply of dangerous drugs.

49. As further submitted on behalf of the respondent:²³

The community is entitled to expect that a key employee licensee will act with the degree of honesty and integrity commensurate with the requirements to hold and deal with significant amounts of money on behalf of the bookmaker and clients involved in gambling.

50. In my opinion, the nature and degree of the appellant's prior misconduct raises legitimate concerns about his fitness and propriety to hold a Key Employee's Licence in a number of respects. In particular, those concerns relate to the appellant's ability to fulfil community expectations that he will discharge his functions and responsibilities with the requisite degree of probity and integrity.

51. It is clear from the appellant's affidavit that prior to being convicted of the various drug offences that he was a chronic user of cannabis. Although it is somewhat of a generalisation to label all drug users as being unreliable, untrustworthy and even deceitful, a drug user's level of addiction or dependency may be such that it is appropriate to attribute those characteristics to the individual. A chronic user of cannabis may well be unreliable, untrustworthy and even deceitful. Those characteristics are, of course, the complete antithesis of the qualities that a key employee licensee must possess.

52. Although there is not always a connection between illegal drug use and further criminal activity, in this case, the appellant's drug use escalated to unlawful supply of a dangerous drug. By supplying cannabis to other persons – sometimes for money

²³ See [61] of the respondent's submissions.

(albeit without profit) – the appellant engaged in illicit transactions. Relevantly, the holder of a Key Employee Licence (who is entrusted to hold significant amounts of money on behalf of the bookmaker and clients) must conduct all transactions pursuant to the licence in a lawful manner. The appellant’s misconduct is again the complete antithesis of what would be expected of the holder of a key employee licence.

53. The “fit and proper person” test must, of course, be applied at the time of the hearing of this appeal.
54. In my opinion, the appellant’s prior drug offending is such as to presently render him not a fit and proper person to hold a Key Employee Licence because the offending is of a type that could give neither the Court nor the public any confidence that he would discharge the functions and responsibilities associated with the licence with the probity and integrity that is required under the Act.
55. In reaching that conclusion I have taken into account all of the matters that the appellant seeks to rely upon in his affidavit, including the character evidence annexed to the affidavit and his assertion that he has put his problems with cannabis behind him – no longer relying on cannabis to manage his back pain and having dissociated himself from previous bad influences.
56. In my opinion, the character evidence is not sufficiently cogent to counteract the appellant’s prior misconduct such as to satisfy the “fit and proper person” test.
57. I am not reasonably satisfied on the balance of probabilities that the appellant no longer has a problem with cannabis. But even if that were the case, the Court cannot assume nor be confident that the conduct previously engaged in by the appellant will not occur again.

58. It is significant that the offending which resulted in the convictions was relatively recent – namely September 2016. The passage of time since the offending is of course relevant to determining whether there is an unacceptable risk that there will be a recurrence of misconduct of the type that occurred in September 2016. In my opinion, the time that has elapsed since the offending is not of a sufficient length to eliminate an unacceptable risk that the appellant will again engage in conduct similar to that he engaged in back in September 2016. Accordingly, it is premature to find at this stage that the appellant is a fit and proper person to be granted a Key Employee Licence.

DECISION

59. Having been satisfied on the balance of probabilities that the appellant is not a fit and proper person to hold a Key Employee Licence, pursuant to s 119C (1) (a) of the Racing and Betting Act I confirm the decision made by the Northern Territory Racing Commission refusing to grant the appellant a Key Employee Licence.

60. I will hear the parties in due course in relation to the question of costs. I give both parties leave to approach the Listing Registrar to obtain a date for the purpose of determining that question.

Dated 30 April 2018

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Dr John Lowndes

Chief Judge of the Local Court of the Northern Territory