

SHD Number 15-021199

**IN THE MATTER**

of the Secondhand Dealers and  
Pawnbrokers Act 2004

**AND**

**IN THE MATTER**

an application by **Ms E** of Auckland  
pursuant to s.21 of the Act for a  
Certificate of Approval

**IN THE MATTER**

of an Objection by the **New Zealand  
Police** pursuant to s.25 of the Act

**BEFORE THE LICENSING AUTHORITY OF  
SECONDHAND DEALERS AND PAWNBROKERS**

**HEARING** at Papakura 29 June 2015

**APPEARANCES**

Police Constable Harley North- NZ Police  
Ms E (applicant) and Mrs H (her mother).

**DECISION**

***The Application***

[1] This is an application by Ms E (“the applicant”) of Takanini for the issue of a Certificate of Approval (“certificate”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”). The applicant is 18 years of age.

[2] Section 19 of the Act requires that every person who, with the authority of a licensed secondhand dealer, enters into a transaction on behalf of the dealer, or, with the authority of a licenced pawnbroker, issues a pledge ticket on behalf of the pawnbroker, and every person who manages, controls or supervises such a person, must hold a certificate. A certificate is defined in s.4 as a certificate of approval issued under s.28.

***Eligibility to Hold a Certificate***

[3] Under s.28 of the Act, a person is eligible to hold a certificate if the person is not disqualified under s.22 from holding a certificate, or, if disqualified, the disqualification has been waived by the Licensing Authority if Secondhand Dealers and Pawnbrokers (“the Authority”) under s.23 and, if there has been a Police Objection to the person, the Authority has dismissed the Objection. If a Police Objection is upheld by the Authority, the person is ineligible to hold a certificate.

[4] Section 22 of the Act sets out the events and circumstances which could result in a person being disqualified from holding a certificate.

[5] Under s.22(a) of the Act a conviction for a “*specified offence*” within the past five years automatically disqualifies a person from holding a certificate. “*Specified offence*” is defined in s.4 of the Act as an offence under sections 217 to 265 of the Crimes Act 1961 (which relate to crimes against rights of property) and any offence under the Fair Trading Act 1986.

[6] Section 22 of the Act also refers to other matters which could result in a person’s disqualification from holding a certificate. Although these do not apply to this application, it is useful to set them out here as they indicate the type of circumstance which the legislature considered would render a person unfit to hold a certificate. A person is disqualified if that person:

- has been convicted within the past five years of an offence under the Act (other than an offence punishable by no more than a fine not exceeding \$2,000); or
- is under the age of 18 years; or
- has been convicted of any offence under the Pawnbrokers Act 1908 or the Secondhand Dealers Act 1963, within the past five years; or
- has been subject at any time within the past five years, to a sentence of imprisonment; or
- has had a certificate or licence cancelled, or had renewal of a certificate or licence refused, within the past five years; or
- holds a certificate that is suspended; or
- is, or was at the relevant time, a person concerned in the management of a company that had a licence cancelled within the past five years.

[7] Section 23 of the Act gives the Authority power to waive a disqualification resulting from any of these events (except a disqualification resulting from a conviction for a *specified offence* within the past five years) if the Authority is satisfied that there are special reasons why the applicant should not be disqualified from holding a certificate.

[8] The scheme of the Act is thus, that only a conviction for a *specified offence* is an absolute bar to holding a certificate. So long as the applicant has not been convicted of a *specified offence* within the past five years and special reasons exist in cases where the applicant would otherwise be disqualified under the provisions of the s.22(b) to s.22(h) of the Act, the Authority may issue a certificate to that person.

### ***Procedure on an Application***

[9] When an application for a certificate is made which complies with s.21(1) of the Act, it is first referred for a report on the checks described in s.24, which are principally checks as to whether the applicant has had any disqualifying convictions within the past five years. Whether or not the report indicates that the applicant is disqualified both the report and the application are referred to the Commissioner of Police. If the report indicates that the applicant is disqualified, it is also referred to the applicant.

[10] The Commissioner of Police may object to an applicant, regardless of the content of the report obtained by the Authority on whether the applicant is disqualified. If the Commissioner objects, it is known as a “*Police Objection*”. When there is a Police Objection the Licensing Authority must decide whether the applicant is a fit and proper person to hold a certificate.

### ***The Present Application***

[11] The application was received on 16 March 2015. In form, the application complied with the requirements of s.21(1) of the Act. The report on the applicant obtained by the Authority under s.24 of the Act revealed no disqualifying convictions.

[12] The application and the report were sent to the Commissioner of Police. In a letter dated 5 April 2015 the Police objected to the application under s.25 of the Act on the basis they considered that the applicant was not a fit and proper person to hold a certificate.

[13] When notified of the Police Objection the applicant requests a hearing in person of the Police Objection pursuant to s.26(1) of the Act.

[14] A hearing date was then set down at the Papakura District Court and the parties were supplied with a copy of the Authority's Guidelines.

[15] Written submissions in the form of a statement from Constable North were subsequently received by the Authority in 17 June 2015 and a copy promptly forwarded to the applicant. At the same time the police requested a 'closed hearing' on the basis of certain privacy issues and because of the sensitive material which would be referred to during the hearing.

[16] On 25 June 2015 an amended statement was received by the Authority from Constable North and copied to the applicant. In this amended statement one of the original allegations against the applicant contained in the first statement has been removed, and there was an explanation from Constable North for the amendment.

[17] The applicant filed her own statement on the day of the hearing, together with a statement from her mother, Mrs H.

### ***The Hearing on 29 June 2015***

[18] Constable North conducted the Police case and also testified on oath as the only Police witness. He read and adopted his prepared and signed statement and produced it as Exhibit 1. He was cross-examined by the applicant and Mrs H.

[19] The applicant and Mrs H testified on oath and read and adopted their signed statements. These were produced as Exhibits A and B respectively. They were then cross-examined by Constable North.

[20] The hearing was closed to the public for privacy and security reasons following the application by the Police. There was no objection from the applicant. It is noted here that the Authority has wide powers in respect of its processes and procedures by virtue of s.27 of the Act which incorporates sections 4 to 12 of the Commissions of Inquiry Act 1908.

[21] The proceedings were recorded.

### ***The Police Evidence***

[22] In support of the Police Objection the Authority takes into account the following allegations from the Police in the form of Constable North's statements and the testimony of the parties and Mrs H. It is noted that much of Constable North's evidence is not first-hand but has been obtained from Police computer records.

[23] The Police say that the applicant has failed to record her application for a certificate that she was previously known by another surname.

[24] Police computer records show that the applicant and her boyfriend Mr F were involved in a Wilful Damage/Assault incident in April 2003. In this case there was a complaint to the Police against the pair but the victim did not wish to pursue the matter and there was a lack of independent witnesses and evidence. The Police took no further action.

[25] Police computer records show that the applicant was also involved in a traffic crash in April 2013 and was issued with a formal warning for careless use of a motor vehicle.

[26] Police computer records show that the applicant previously applied for a certificate under the Act when she was ages 16. Her application was refused because she was only 16 at the time.

[27] Police computer records show that the applicant was also involved in a traffic crash in July 2014 and was issued with an infringement notice.

[28] Police computer records show that in January 2015 the applicant was the subject of a complaint from a person who had sold a car to the applicant. The complaint alleged the applicant was unhappy with the car and used threats by way of text messages to the complainant. The complainant further alleged that the applicants mother became involved. Constable North's written statement says that both the applicant and her mother received formal warnings from Constable Z in relation to this incident. At the hearing Constable North testified that he had telephoned Constable Z in recent weeks because Police records about the warning to the applicant were ambiguous. He was advised by Constable Z that a warning had been issued to the applicant.

[29] Police computer records show that the applicant's driver licence was suspended for 3 months for excess demerit points in May 2015. In June 2015 Hamilton Police later approved the issuing of a limited driver licence.

[30] Police computer records show that the applicant's father is well known to Police and has amassed a long list of criminal convictions including serious violence. It is alleged that in the past the applicant has resided with him.

[31] Police computer records show that the applicants boyfriend Mr F has been arrested on two occasions (for Common Assault and Disorderly Behaviour).

[32] Police computer records show that Mr F's father is a patched gang member, has many criminal convictions, has been to jail in recent years and has previously resided at the address listed in the applicant's application as her residential address as at March 2015.

[33] Police computer records show that the address has been the subject of many Police callouts in relation to incidents there involving the applicant's boyfriend's family.

[34] Constable North has personal knowledge of Mr F's father and brother being convicted at Court in 2013 following a jury trial for serious violence charges.

[35] Police computer records show that Mr F's other brother is a confirmed prospect for the same motorcycle gang to which his father belongs.

[36] The Police say it is common for outlaw motor cycle club members to use a female partner or family member to disguise their illegal property interests to avoid identification and asset seizure.

[37] The Police say that when they attended at the applicant's address to speak with her about her application and to determine her suitability for a certificate she became argumentative and uncooperative and refused to supply full details about her boyfriend Mr F. She was wearing a blanket at the time. Constable North says that when they told her that her lack of co-operation would reflect poorly on her Police report to the Authority she "*opened her blanket exposing herself to Constable Sanderson and myself inappropriately in her underwear and walked away which ended the discussion*".

### ***The Applicant's Evidence***

[38] The applicant says she has never used an alias and in particular has not used her mother's current married name. all her documents are under her current name.

[39] She has never been approached by the Police in respect of an assault incident in April 2013 involving her and Mr F, nor has she ever assaulted anyone. When cross-examined by Constable North she agreed that she knew a girl (Ms B) who was a former friend and has jealousy issues. She said she had not assaulted Ms B and had no idea whether Mr F had been warned by the Police in respect of this incident as they were not living together at that time.

[40] She accepts she was involved in a traffic incident in April 2013. She apologises for her lack of judgement. She now has a restricted licence for work purposes and will be doing a defensive driving test to get her full licence more quickly.

[41] She accepts she previously applied for a certificate under the Act but was too young at the time and was told to reapply when she was 18.

[42] She agrees there was an incident involving her purchasing a car from a girl she knew quite well (Ms C). She says she was told the car had no mechanical issues but subsequently found there were many. Negotiations with Ms C about returning the car and refunding the money broke down. She denies her texts implied violence or aggression. She says her mother tried to assist but the matter is now going to the Small Claims Tribunal. Around this time she says a Police constable came to see her and told her there was a complaint about a threatening text. She says the officer said it was not an official complaint but she was told not to contact the girl again.

[43] In relation to this incident the applicant says categorically that she was not approached by Constable Z and given a warning in relation to misuse of a telephone. The first she knew of any suggestion that she had been warned by the Police was on reading this in Constable North's statement. As a result of reading this she contacted Constable Z and spoke to him twice on the phone. The first time was a couple of weeks ago. She told him that was appearing at a hearing in respect of her certificate application on 29 June 2015. The officer confirmed to her that he had not previously spoken to her about the incident or given her a warning. In fact she says he offered to contact Constable North to set this matter straight. Her first call to Constable Z was 1.5 to 2 weeks ago and the second was Thursday last week (25 June 2015).

[44] She feels it is unfair to dredge up unfortunate parts of her childhood including reference to her absent father who was never in her life from age 2 to 14. She says she tried building a relationship with him at age 14 but it didn't work because of his personal issues. She has had no contact since and does not know where he is.

[45] She says Mr F's family has absolutely nothing to do with her. She was only at the address listed in her application for a couple months from March 2015 to help save bond money for a new home.

[46] She provided Constable north with correct details of her workplace and her manager's names.

[47] She felt that Constable North was rude and intimidating in his manner when talking to her. She only became uncooperative because of Constable North's behaviour towards her.

[48] She says she did not intentionally expose herself to the officers. She has been home from work due to illness. It was 9:30am and she had been in bed. She came to the gate with a blanket wrapped around her. Under the blanket she had a jumper and shorts. She can't understand why the officer would think she was exposing herself. She was horrified when she first read this allegation in Constable North's statement. She thinks maybe she was adjusting the blanket at some stage, but in any event she had a top and pyjama type shorts underneath.

[49] She says she left school at 16 and went straight into employment with her current employer. She has grown up and progressed during the 2 years she has been there. They have helped her complete a Diploma in Business and to get her forklift licence. She has been promoted within the firm, has received a pay rise and has good prospects for the future. She is proud of her achievements.

[50] She considers it unfair to judge her or restrict her chosen career based on the actions of others over whom she has no control. She agrees she was aware that members of Mr F's family have issues with the criminal law, but they are not her family. She had only met Mr F's father once or perhaps twice.

[51] She accepts there have been some driving issues in the past but she is trying to rectify these and she would never condone criminal activity or be a part of it.

[52] She says that she is not currently residing with Mr F.

[53] At the hearing the applicant testified also that she had not advised her employers that the Police had objected to her obtaining a certificate. For this reason she was unable to ask them for a character reference with a view to producing it at the hearing.

### ***The Evidence of Mrs H***

[54] Mrs H says that she is outraged by the false allegations contained in the Police evidence.

[55] As an example of false allegations Mrs H points to some of the paragraphs in Constable North's original statement that allege that her daughter was involved in a robbery incident in Avondale in 2013. Mrs H notes that these paragraphs were subsequently excised from the statements by Constable North after he became aware that the applicants name had been wrongly associated with the robbery incident because of a 'data entry error'.<sup>1</sup>

[56] She says that her daughter's father left the family home when she was 2 years old and although there was a later attempt by her daughter to contact him he was still dealing with personal issues and unfortunately this contact was brought to a prompt conclusions.

[57] She says that although the Police are concerned about Mr F's family, these people had no input in raising her daughter.

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<sup>1</sup> It is noted here that it was only after the applicant had read about the robbery allegation in Constable North's original statement, and after she had contacted the Detective in charge of the robbery investigation, that this Detective contacted Constable North and confirmed that the applicant had not been involved.

[58] She points out also that Mr F's uncle (i.e. his father's brother) is a local Police constable. She says this police officers' family and hers grew up together and socialised through the school years. She points out the incongruity of the Police opposing her daughter's certificate application based upon her (non-blood) association to a family with criminal convictions and motor cycle gang membership, while this serving Police officer has passed through the Police recruitment vetting process despite being closely related by blood to these same persons.

[59] She notes that this officer's dream of joining the NZ Police wasn't cut short because of his direct blood connection with a criminal family. She says she is sure he does a fine job and that everyone should be judged by their own successes and failures. Her daughter however has an even stronger case that the police officer not to be judged and stopped from furthering her chosen career, there being no blood relationship with the family.

[60] She says that she is proud of her daughter who has many goals in life and works hard. She obtained her job straight out of high school and puts her all into her career.

[61] She asks that her daughter be seen as the successful young woman that she is and that she has no control over the way other people choose to lead their lives.

### ***Post-Hearing Issues***

[62] At the conclusion of the hearing the parties were advised that the Authority would issue a reserved decision in due course, but not before 13 July 2015.

[63] In the meantime the applicant was invited (not directed) to obtain a reference or references from her employer.

[64] The Police were similarly given the opportunity to obtain and submit further information from Constable Z as to whether or not he had issued a warning to the applicant.<sup>2</sup>

[65] In due course the Authority received a very positive reference from the Applicant's General Manager and a signed statement from Constable Z.

[66] Constable Z says that although he warned the applicant's mother in respect of the incident alleging threatening texts etc, and although he intended to warn Ms E, for some reason he didn't follow up on it.

### ***Discussion***

[67] The Police object to the issue of a certificate to the applicant essentially on the basis of her past involvement in incidents requiring Police intervention, her father's criminal past, the fact that a number of her boyfriend's family members have serious or other criminal convictions together with motorcycle gang membership, and the applicants odd behaviour (exposing herself inappropriately) during a Police visit to check her application/

[68] The applicant has no criminal convictions but she has come to the attention of the Police on a number of occasions and has been warned for minor offending including traffic incidents. She may be fortunate also that one assault complaint did not go any further because of a reluctant complainant and a lack of independent witnesses.

[69] The most recent Police incident was only six months ago and also involved Mrs H. As a result Mrs H received a Police warning. It was intended also that the applicant be warned but

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<sup>2</sup> See paragraphs 28 and 43 above.

this did not happen. This is a troubling issue because it is relatively recent, and because Mrs H was also somehow involved.

[70] Also troubling in terms of what might have been expected of a 'fit and proper person' is the allegation that the applicant was at time uncooperative during a Police visit to her address and that she exposed herself inappropriately to the officers. This allegation was denied by the applicant and was significantly diminished during the hearing when it became apparent that the applicant was not wearing underwear (e.g. bra and knickers) but a top or jumper and pyjama shorts underneath. This was accepted by Constable North. While the applicant denied any intentional exposure at the time she accepts that the blanket may have revealed her garments when she was adjusting it. Having heard and observed the witnesses however, and considering that it is accepted that the appellant was wearing a top and pyjama shorts under the blanket the Authority is prepared to give the benefit of the doubt to the applicant on this occasion. On the other hand, being uncooperative with the Police when they were talking to her for the very purposes of assessing her suitability for a certificate does raise questions as to her maturity.

[71] It is clear to the Authority that the applicant has exhibited instances of immature behaviour in the past. It is understandable therefore that following their investigation into the applicant the Police were concerned with the applicant's track record and how it might reflect the issue of whether or not she was a fit and proper person to hold a certificate. Certainly the applicant did not help her case when she was unwilling to cooperate fully with the Police during their visit.

[72] As the previous Authority has noted on a number of occasions however, Parliament has not set the threshold very high for a person to be considered a 'fit and proper person' to obtain or hold a licence or certificate.<sup>3</sup>

[73] Certain gang or criminal connections have also failed to prevent an applicant from obtaining a certificate in the past.<sup>4</sup> That is not to say however that any such connection will never be sufficient to substantiate an Objection, or a Complaint under s.29 of the Act. Inevitably there will be cases where sufficient evidence in this respect will satisfy the Authority that a certificate or licence should not be issued, or in the case of a Complaint, that a certificate or licence should be cancelled.

[74] In considering applications for certificates and licences the Authority is also guided by certain signposts provided by the Act. These are the disqualifying factors referred to in paragraphs (3) to (8) above. Although none of the disqualifying factors apply here, it is to be noted that in s.22 of the Act there is an emphasis on convictions for dishonesty within the past five years, or a sentence of imprisonment within the past five years, as being events which lead to disqualification. No comparable consideration applies to the applicant on this occasion.

[75] Considering all matters, including an assessment of the applicant and her mother at the hearing, the support for the applicant from her employer and from her mother, the lack of evidence of actual or active involvement by the applicant with her father or the criminal family of her boyfriend or any suggestion that she will in some way facilitate these family members to criminally profit from her position at the workplace, and the applicant's ability not only to hold down her current job for two years but to progress within the business and achieve qualifications, the Authority is of the view that the Police have not made out a sufficiently compelling case that the applicant should not be regarded as a fit and proper person to hold a certificate.

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<sup>3</sup> E.g. re Liberty Peeni – [2013] NZSHD 9, 6 May 2013

<sup>4</sup> E.g. re Melody Williams- [2013] ZSHD 21, 31 July 2013



[76] Having said this, the applicant will need to show more maturity from this point onwards. In her short life, she has come to the attention of the Police too often over the past couple of years, including earlier this year.

[77] As a certificate holder the applicant will in future have to comply with the Act and remain a fit and proper person. If she does not comply she may face a prosecution in the District Court and will be liable to face the Police Complaint procedure under s.29 of the Act (in which case the Police may well rely in part on the evidence adduced on this occasion). Either way the result could be the cancellation of her certificate and/or other penalty.

***Decision***

The Police Objection is dismissed and the applicant's application is granted.

**DATED** at Auckland this 21<sup>st</sup> day of July 2015

S L Cole  
Licensing Authority of Secondhand Dealers and Pawnbrokers