

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NOS. B115/2012 & Z1060/2014


CATCHWORDS

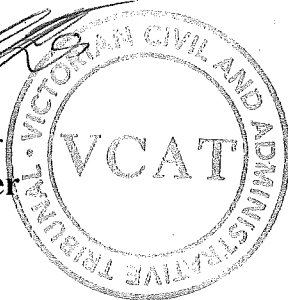
Wildlife Act 1975, private wildlife licence, wildlife demonstration licence, whether applicant fit and proper

APPLICANT	Mr Raymond Hoser
RESPONDENT	Department of Environment, Land, Water and Planning
WHERE HELD	Melbourne
BEFORE	Gerard Butcher, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	2, 3, 4, 10, 11, 12 and 13 March 2015
DATE OF ORDER	30 July 2015
CITATION	

ORDER

The decisions of the respondent are set aside.


Gerard Butcher
Senior Member



APPEARANCES:

For Applicant	In person
For Respondent	Ms R. Ellyard of Counsel

REASONS

INTRODUCTION

- 1 The applicant seeks review of two decisions made by an authorised delegate of the respondent under the *Wildlife Act* 1975 (the Act). Those decisions are:
 1. The decision to refuse his application for a private wildlife licence (B125/2012); and
 2. The decision to refuse his application for a wildlife demonstrator licence (Z1060/2014).
- 2 Both decisions were made under section 23(1)(a) of the Act which provides that the Secretary may refuse an application if satisfied that the applicant is not a fit and proper person to hold the licence applied for.
- 3 The applications for review were heard together, essentially as one, with the same evidence being presented. The respondent contended that the applicant is not a fit and proper person to hold either licence and that both decisions should be affirmed.

GENERAL BACKGROUND

- 4 The applicant makes his living in several ways: he catches and relocates snakes; he presents demonstrations of snakes and other wildlife at schools, shopping centres and private functions etc; and he is a published author. His writings include books on snakes and other wildlife, books concerning what he says to be corruption in the regulation of wildlife and a periodic publication of which he is the publisher.
- 5 It is fair to say that the relationship between the applicant and the respondent has not been a happy one for a long time. Each is vehemently critical of the other. The respondent regards the applicant as an unregulatable loose cannon. The applicant regards the respondent as an organisation, the officers of which lack knowledge on the subject of snakes and who have pursued a vendetta against him. Much of the animosity between the applicant and the respondent can be attributed to the applicant's personality. The applicant is critical, argumentative and bombastic. No doubt, these attributes have not won him any friends within the ranks of the respondent's officers. However, they are not necessarily attributes which disqualify him from holding licences under the Act. The respondent contends that the applicant's behaviour towards the respondent goes further and that his expressed attitude towards the respondent and the regulatory functions it performs is a factor relevant to whether he is a fit and proper person to hold a licence under the Act.

THE HEARING

- 6 The hearing of these matters took place over the course of seven days. The respondent called seven witnesses and the applicant gave evidence on his own behalf. A large volume of printed material was put before the Tribunal, video recordings were viewed, and after hearing, written submissions were received. The applicant presented his case on his own behalf and the respondent was represented by Ms R. Ellyard of Counsel.

VENOMOID SNAKES

- 7 Apart from the long standing environment of mutual criticism of each other by the applicant and the respondent there has been an on-going issue between them concerning the use by the applicant of venomoid snakes in his demonstrations. The practice of de-venomising venomous snakes by removal of their venom glands has been made illegal. However, prior to this occurring the applicant carried out de-venomising procedures on various snakes in his possession and has retained these snakes for the purpose of use in his demonstrations. Part of the on-going argument between the parties is that there is a requirement that a demonstrator whilst engaging in a demonstration of venomous snakes must do so in a pit. The respondent contends that the applicant's venomoid snakes are, nevertheless, 'venomous' and that he should conduct his demonstrations in a pit. The applicant, on the other hand, maintains that he does not demonstrate venomous snakes and that the venomoid snakes are perfectly safe without the use of a pit. He erects barriers to keep the public back and maintains that these are for the safety and welfare of the snakes rather than the public. He further makes the point that, despite requiring the employment of a pit, the respondent has never defined what constitutes a pit.
- 8 Some time ago, the applicant emphasised his argument that the venomoid snakes are safe by causing his daughter to be bitten by a venomoid snake as part of a demonstration. She suffered no ill effects. The applicant argues that this vindicates his contention that venomoid snakes are safe. The respondent's reaction to this demonstration was to say that it illustrates the applicant's irresponsible attitude towards the management of venomous snakes.
- 9 I accept that the applicant was confident that the venomoid snake proved no danger to his daughter. As well as the applicant's daughter, no member of the public has sustained envenomation during the course of any of the applicant's many demonstrations. Indeed, no evidence of any problems arising from the applicant's use of barriers rather than a 'pit' during his demonstrations has led to a member of the public being bitten by one of his venomoid snakes, much less having suffered envenomation, was put before the Tribunal.
- 10 I am satisfied that the applicant is able to identify which of his snakes are venomoid as all are microchipped and I am further satisfied that he is able to identify them visually.

- 11 It was suggested on behalf of the respondent that there was a possibility of the applicant's venemoid snakes could regenerate their venom glands. No scientific evidence to substantiate this was produced and against the proposition is the applicant's evidence that this has not occurred. I cannot be satisfied that the possibility exists.
- 12 I conclude that the applicant's venemoid snakes are not 'venomous'.
- 13 Clearly, if one looks at the requirement to use a 'pit', it is for the purpose of protecting members of the public from the danger of envenomation. I am satisfied that the danger does not exist where any venemoid and non-venomous snakes are used in a demonstration by the applicant.

CONTINUING TO OPERATE WITHOUT A LICENCE

- 14 Robyn Frew is the Business Manager for the Surfside Primary School at Ocean Grove. Her evidence was that on 2 November 2014, the applicant conducted a demonstration of reptiles at the school. She did not know if venomous snakes were included. Children were allowed to hold reptiles and have their photos taken.
- 15 Mark Hughlin is the Principal of the Surfside Primary School. He noted that the applicant had conducted demonstrations at the school's annual fair in 2013 and on 2 November 2014. The applicant had been engaged on the recommendation of a parent. Mr Hughlin conceded that the demonstrations were popular with the children and that they had educational value. However, he opined that the applicant's overall behaviour was 'a bit over the top' and that he did not consider his actions age appropriate for the school.
- 16 The applicant had represented to Ms Frew and Mr Hughlin that he was licensed. This must be seen in the context of a previous finding of this Tribunal having been appealed to the Court of Appeal. There was an informal arrangement between the applicant and the respondent that the applicant could continue to conduct demonstrations pending the outcome of the appeal. Without the need to go into detail, the Court of Appeal found an error of law and remitted back to the Tribunal.¹ In the meantime, the applicant's demonstration licence had expired in September 2014. He applied for renewal, the application was rejected and now forms part of these proceedings.
- 17 By his own admission, the applicant has conducted demonstrations since November 2014. The applicant argues that he is able to continue to conduct demonstrations by virtue of a stay granted by the Court of Appeal and by his having applied for a renewal of the now expired licence which was the subject of the stay, even though the Court of Appeal in giving its decision noted that the licence had expired and that the applicant needed to apply for a renewal. There had been a de-facto arrangement between the applicant

¹ *Hoser v Department of Sustainability and Environment* [2014] VSCA 206
Hoser v Department of Sustainability and Environment (No. 2) VSCA 346

and the respondent pending the decision of the Court of Appeal which allowed him to continue to conduct demonstrations.

- 18 The applicant is clearly wrong. I am satisfied that he has been conducting demonstrations without a licence. However, in considering this in the light of whether he is fit and proper it is necessary to consider whether he is deliberately breaching the law in this regard.² I am satisfied that his interpretation of the Court of Appeal decision, whilst wrong, is a genuinely held belief on his part and that he believes that he is able to continue to conduct demonstrations despite having been told to the contrary by the respondent. Had I been satisfied that the applicant deliberately conducted demonstrations in the knowledge that he did not hold a licence this would weigh against him being fit and proper. However, in the light of the standard of satisfaction set out in *Briginshaw*³ I am unable to be so satisfied.

OTHER DEMONSTRATIONS

- 19 Rowena Ashley is the Site Co-ordinator of the Coal Creek Community Park and Museum. Her evidence was that the applicant had carried out snake displays at Coal Creek for nine years. The last display was carried out in June 2014. One negative post had been placed on the Tripadvisor website by an unknown person. I was not assisted by Ms Ashley's evidence.
- 20 Rodney Turner gave evidence that his child was bitten by a small python during a demonstration at a child's birthday party. The incident occurred while the python was being held by Mr Turner. The child suffered a minor injury. There was a real question as to whether the demonstration was conducted by the applicant or one of his employees. I am satisfied that the applicant did not conduct the demonstration. In the light of *Briginshaw*, I am unable to be satisfied that the demonstration was conducted by one of the applicant's employees.

RAID ON APPLICANT'S PREMISES

- 21 Much of the acrimony between the applicant and the respondent can be viewed in the light of a raid by officers of the respondent in company with members of the Victorian Police Force on the applicant's premises. An examination of the premises took place over several hours. No major issues adverse to the applicant were discovered.

OTHER CONCERNS RAISED BY THE RESPONDENT

- 22 Evidence was given by Gregory Chant, an authorised officer of the respondent, that on 13 December 2014, he followed the applicant when he drove from his home to West Heidelberg Shopping Centre early in the day.

² It is noted that the applicant asserted that he was licensed to conduct wildlife demonstrations on 9 October 2014 during a telephone conversation with Mr Don Hough, the respondent's Director Regulation and Approvals. This was four days after the Court of Appeal decision.

³ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 (30 June 1938)

At the shopping centre the applicant unloaded various items and then drove his car to a parking spot, leaving the items unattended for several minutes. He returned and set up the display. Later, two women wearing shirts with name of the applicant's business printed on them arrived and the applicant left. The women later conducted a demonstration showing lizards, pythons and a freshwater crocodile which had a rubber band around its mouth.

- 23 Leaving the wildlife unattended in their containers for a few minutes may not have been best practice but may also be seen as a matter of necessity having regard to the location and the need to park a vehicle elsewhere.

THE APPLICANT'S HANDLING OF SNAKES

- 24 Ron Waters, Compliance Manager of Parks Victoria and previously an employee of the Department of Sustainability as Manager, Wildlife Management Biodiversity and Ecosystems Services Division gave evidence about his contacts with the applicant. Mr Waters holds a Masters Degree in Science with a Major in Zoology and a Diploma of Education. He has over 40 years involvement with reptiles.

- 25 Mr Waters gave evidence of the applicant's unwillingness to comply with licence conditions and the consequent laying of charges against him. These relate to the style of the applicant's demonstrations such as handling more than one snake at a time and having multiple snakes in close proximity to members of the public. Mr Waters referred to the risks of such practices.

- 26 This brings us back to the fundamental conflict between the applicant and the respondent. The respondent's conditions are based upon snakes being venomous and the non-recognition of venemoid snakes. The applicant contends that the conditions are inappropriate where venemoid snakes are concerned. In a sense, both parties are correct.

- 27 Even so, Mr Waters' statement, whilst expressing some reservations about what he describes as rough handling of snakes by the applicant, contains the following:-

Broadly, I think Mr Hoser's snake husbandry skills are good. I am of the understanding that his snakes are largely healthy and have bred.

- 28 Overall, the evidence, not only of Mr Waters, but of the applicant himself, satisfies me that the applicant's snakes in particular and wildlife in general are well looked after by the applicant.

- 29 The applicant displayed an extensive knowledge of reptiles. He is the author of several books on reptiles and other wildlife. He commenced but did not complete a course in science at university. He has conducted extensive work on the taxonomy of snakes. He has come in for criticism from academics in relation to his methods of taxonomy. This is part and parcel of work in such an area. Even one of his critics acknowledged his overall knowledge of reptiles.

- 30 I am satisfied that the applicant possesses significant ability in the husbandry and handling of snakes.
- 31 I am satisfied that he is genuinely concerned for the welfare of his snakes and that he cares for them in a proper manner.
- 32 I am satisfied that he does not mistreat his snakes.
- 33 The whole dynamic of the conflict between the applicant and officers of the respondent arises from a clash of personalities. The applicant is critical of the respondent to the point of offence. Up to a point he has cause to be critical. It is all a matter of degree.
- 34 Placing everything in the balance, I am unable to be satisfied that the applicant is not a fit and proper person to hold licences under the *Wildlife Act*.
- 35 The decisions of the respondent are set aside.

Gerard Butcher
Senior Member

