QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	*Williams v Queensland Building and Construction Commission* [2015] QCATA 138
PARTIES:	Neil Joseph Williams (Appellant) v Queensland Building and Construction Commission (Respondent)
APPLICATION NUMBER:	APL096-15
MATTER TYPE:	Appeals
HEARING DATE:	14 September 2015
HEARD AT:	Brisbane
DECISION OF:	**Senior Member O'Callaghan** **Member Hughes**
DELIVERED ON:	21 September 2015
DELIVERED AT:	Brisbane
ORDERS MADE:	**1. Leave to appeal is refused.**
CATCHWORDS:	APPEAL – EXCLUDED INDIVIDUAL - whether grounds for leave to appeal established – whether Member applied correct legal test – whether findings open on evidence – whether reasons adequate – where no grounds to grant leave to appeal as no error by Member causing substantial injustice or question of public importance *Corporations Act 2001* (Cth), s 1274B *Queensland Building and Construction Commission Act 1991,* s 56AC, Schedule 2 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 143 *Australian Broadcasting Tribunal v. Bond* (1990) 170 CLR 321 *Bradlyn Nominees Pty Ltd v. Saikovski* [2012] QCATA 39 *Cachia v. Grech* [2009] NSWCA 232 *Chambers v. Jobling* (1986) 7 NSWLR 1

Dearman v. Dearman (1908) 7 CLR 549 at 561
Drew v. Bundaberg Regional Council [2011] QCA 359
Edwards (Inspector of Taxes) v. Bairstow & Anor [1955] 3 All ER 48
Fox v. Percy (2003) 214 CLR 118
Glenwood Properties Pty Ltd v. Delmoss Pty Ltd [1986] 2 QdR 388
International Cat Manufacturing Pty Ltd (in liquidation) & Anor v. Rodrick & Ors [2013] QSC 91
Jimenez v. Sternlight Investments t/a LJ Hooker Ale4xandra Hills [2010] QCATA 29
Lida Build Pty Ltd v. Miller & Anor [2011] QCATA 219
McClintock v. Queensland Building Services Authority [2011] QCATA 310
McIver Bulk Liquid Haulage Pty Ltd v. Fruehauf Australia Pty Ltd [1989] 2 QdR 577
Minister for Immigration and Citizenship v. SZMDS & Anor (2010) 240 CLR 611
QUYD Pty Ltd v. Marvass Pty Ltd [2009] 1 QdR 41
Selvanayagam v. University of the West Indies [1983] 1 All ER 824
Slater v. Wilkes [2012] QCATA 12
Soulemezis v. Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247
Waterford v. The Commonwealth (1987) 163 CLR 54

APPEARANCES:

APPELLANT: Mr S B Whitten of Counsel instructed by Walker Pender Group appeared for Mr Neil Williams

RESPONDENT: Mr R J Anderson of Counsel instructed by Robinson Locke Litigation Lawyers appeared for the Queensland Building and Construction Commission

REASONS FOR DECISION

Senior Member O'Callaghan

[1] In this appeal, the appeal Tribunal comprised Member Hughes and me. I have had the benefit of reading Member Hughes' reasons in draft and I agree with his reasons, conclusions and the orders he proposes.

Member Hughes

What is this appeal about?

[2] Mr Neil Williams has worked hard as a concreter for almost 30 years. In that time, he has built up his business to a considerable enterprise. Despite this, the Queensland Building and Construction Commission classified him as an 'Excluded Individual' because he was a Director, secretary or 'influential person' of a company with a liquidator appointed.

[3] Because this means Mr Williams can no longer work as a licensed builder, he understandably applied to the Tribunal to review the Commission's decision. Unfortunately for Mr Williams, the Tribunal confirmed the Commission's decision. Mr Williams has therefore appealed the Tribunal's decision, so that he can continue to work as a licensed builder.

What are the grounds of appeal?

[4] Mr Williams' appeal involves questions of mixed law and fact.

[5] Mr Williams submitted that the learned Member made "errors of law" by not specifying the affairs to which the test of 'influential person' is directed, drawing inferences not open on the evidence, overlooking material evidence and doing so without any or adequate reasons, drawing adverse inferences impermissibly where the evidence permits more than one inference, failing to make material findings of fact and having regard to irrelevant evidence.

[6] Failing to consider evidence or making findings of fact not open on the evidence raises questions of fact or questions of mixed law and fact[1] and therefore requires leave to appeal.[2] Similarly, a failure to give full reasons does not necessarily amount to an error of law – the nature and extent of the obligation varies according to the nature of the case.[3] The question is not whether some reasons must be given relevant to the findings of fact that are made, but what reasons are required.[4]

[7] The issues for the Tribunal to determine are therefore what the relevant findings were, whether the learned Member correctly applied the legal test in making his findings, whether the findings were open on the evidence and whether his reasons were adequate.

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1 *Waterford v. The Commonwealth* (1987) 163 CLR 54 at 77; *Australian Broadcasting Tribunal v. Bond* (1990) 170 CLR 321 at 341.

2 *Queensland Civil and Administrative Tribunal Act 2009,* s 143(2)(b).

3 *Jimenez v. Sternlight Investments t/a LJ Hooker Ale4xandra Hills* [2010] QCATA 29 at [26].

4 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 268.

What were the relevant findings?

[8] Mr Williams submitted that the reasons for the learned Member's decision show that it was made on the basis that he found Mr Williams to be an 'influential person'.[5]

[9] However, in confirming the Commission's decision to categorise Mr Williams as an 'Excluded Individual', the learned Member concluded:

> I am not satisfied that Mr Williams was not a Director of the company; and am satisfied that he was in a position to control or substantially influence the conduct of the company's affairs.[6]

[10] Although the learned Member used a double negative when making his finding about whether Mr Williams was a Director, this is in the context of ASIC evidence of Mr Williams' status as a Director.[7] ASIC information is proof of a matter in the absence of evidence to the contrary.[8] This means that once ASIC evidence showed that Mr Williams was a Director, Mr Williams had the evidential onus to rebut that evidence – that is, it was incumbent upon Mr Williams to prove that he was not a Director.

[11] The learned Member's reasons reveal that he was not satisfied that Mr Williams had discharged the onus to prove that he was not a Director[9] and he found accordingly: hence the double negative. I therefore do not accept Mr Williams' submission that he was found to be an 'excluded individual' solely because he was an 'influential person'. Rather, the learned Member found him to be an 'excluded individual' on either limb: that he was a Director; and that he was an 'influential person'.

[12] This means that to succeed on appeal, it is not sufficient for Mr Williams to simply prove that the learned Member erred in finding that he was an 'influential person'. He would also need to prove that the learned Member erred in finding that he was a Director.

[13] For the below reasons, I am not satisfied that Mr Williams has shown appellable error by the learned Member in finding either that he was a Director, or in finding that he was an 'influential person'.

Did the Member err by not specifying the affairs to which the test of 'influential person' is directed?

[14] Mr Williams contended that the learned Member failed to refer to case law on the definition of 'influential person' and the affairs to which the test is directed. He submits that the proper construction of the provision is that

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5 *Queensland Building and Construction Commission Act* 1991 (Qld) s 56AC(2)(c).

6 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [110].

7 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [56].

8 *Corporations Act 2001* (Cth) s 1274B.

9 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [67], [69], [70], [73], [75], [81] and [87].

the affairs must be directed to the 'day-to-day' running of the business – the securing of contracts to build sheds, the running of finances or the conduct of employment relationships.

[15] However, I am not satisfied that not specifying the affairs to which the test is directed led the Member into an appellable error resulting in substantial injustice.[10] To make a finding of influence to satisfy the provision, the Tribunal need only be satisfied on the facts of the particular case, that Mr Williams was in a position to 'substantially influence'[11] the company's affairs, if he so chose.[12]

[16] By referring to evidence of Mr Williams' day-to-day involvement and his financing for the business[13] as a precursor to finding that Mr Williams had an active role in the conduct of the business and was a financier to the business,[14] the learned Member correctly applied the test.

[17] Having made findings about Mr Williams' financing of and involvement in the business, the learned Member then causally links them to Mr Williams' "active role in the business".[15] In so doing, it was open for the learned Member to then conclude that Mr Williams was in a position to control or substantially influence the company's affairs.[16]

[18] This is not an appellable error.

Were the Member's findings open on the evidence?

[19] The conclusions that Mr Williams was a Director of the company or an 'influential person' are findings that are no more than inferences from the facts previously found.[17] Though mere inferences of fact, they can be challenged on the grounds that the true and only reasonable conclusion contradicts the determination:

> If the case contains anything *ex facie* which is bad law and which bears on the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law, and that this

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10 *Slater v. Wilkes* [2012] QCATA 12 at [6], citing *QUYD Pty Ltd v. Marvass Pty Ltd* [2009] 1 QdR 41; *Drew v. Bundaberg Regional Council* [2011] QCA 359 at [19].

11 *Queensland Building and Construction Commission Act* 1991 (Qld), Schedule 2.

12 *McClintock v. Queensland Building Services Authority* [2011] QCATA 310 at [42].

13 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [19], [28] to [29], [31] to [35], [42], [45], [47], [97], [99] and [101] to [102].

14 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [109].

15 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [102] – [103].

16 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [110].

17 *Edwards (Inspector of Taxes) v. Bairstow & Anor* [1955] 3 All ER 48 at 54, per Viscount Simonds.

> has been responsible for the determination. So there, too, there has been error in point of law.[18]

[20] Therefore, a finding of fact will usually not be disturbed on appeal if the facts inferred by the Tribunal, upon which the finding is based, are capable of supporting its conclusions, and there is evidence capable of supporting the underlying inferences.[19] No error of law arises in making a wrong finding of fact unless no evidence supports that finding.[20]

[21] Mr Williams devoted many of his submissions to individually isolating each of the learned Member's findings to try to demonstrate that the evidence leading to that individual finding, can lead to other alternative inferences.

[22] However, an appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case,[21] but will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.[22]

[23] When considering whether Mr Williams was in a position of control or influence, the learned Member was entitled to adopt a global approach by considering the totality of the evidence:

> Through this *combination* of paying (sic) an active role in the conduct of the business, and being a financier to the business, Mr Williams was clearly in a position to control or substantially influence the conduct of the company's affairs.[23] (My emphasis)

[24] Attempting to explain away each finding with a possible alternative does not demonstrate error by the learned Member. Where reasonable minds may differ, a decision cannot properly be called erroneous, simply because the learned Member prefers one conclusion to another possible conclusion.[24]

[25] Mr Williams also contended that he did not meet indicia for a Director as found by the Supreme Court of Queensland in *International Cat Manufacturing Pty Ltd (in liquidation) & Anor v. Rodrick & Ors.*[25] In that case, in determining whether a person acted in the position of a Director, the Court considered circumstances including that the person considered himself to be an investor, worked full time in the business, was not under the direction of other persons, operated its bank account and was an

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18 *Edwards (Inspector of Taxes) v. Bairstow & Anor* [1955] 3 All ER 48 at 57, per Lord Radcliffe.

19 *Fox v. Percy* (2003) 214 CLR 118 at 125-6.

20 *Waterford v. The Commonwealth* (1987) 163 CLR 54 at 77; *Australian Broadcasting Tribunal v. Bond* (1990) 170 CLR 321 at 341.

21 *Chambers v. Jobling* (1986) 7 NSWLR 1 at 10.

22 *Dearman v. Dearman* (1908) 7 CLR 549 at 561; *Fox v. Percy* (2003) 214 CLR 118 at 125-6.

23 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [109].

24 *Slater v. Wilkes* [2012] QCATA 12 at [6], citing *Minister for Immigration and Citizenship v. SZMDS & Anor* (2010) 240 CLR 611.

25 [2013] QSC 91.

experienced businessman who believed he could contribute not only finance, but also business acumen to the company.[26]

[26] Unlike *International Cat*, however, ASIC records show Mr Williams was appointed as a Director. The issue here therefore is not whether Mr Williams was a de facto Director, but whether he discharged the evidential onus that he was *not validly appointed* as a Director.

[27] Upon reading the transcript and the learned Member's reasons, it is clear that the learned Member did have evidence *capable of supporting his findings*[27] that Mr Williams had not discharged the evidential onus of not being validly appointed as a Director and that he was an 'influential person', including:

- ASIC records of Mr Williams being appointed as a Director on 15 March 2010;
- The Bluescope Credit Facility Application and Guarantee signed by Mr Williams;
- The Report as to Affairs and Lessee Disclosure Statement signed by Mr Williams;
- Independent expert evidence attesting to the genuineness of Mr Williams' signature on the Credit Application, Report as to Affairs and Lessee Disclosure Statement;[28]
- Mr Williams' own testimony of his conduct and surrounding circumstances;[29]
- Witness testimony of Mr Williams' conduct and surrounding circumstances;[30] and
- Evidence of Mr Williams' financing of the business.[31]

[28] I do not consider the learned Member made any appellable error in accepting this evidence and concluding from that evidence as he did.

[29] I will nevertheless address Mr Williams' individual contentions.

Did the Member make contradictory findings?

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26 *International Cat Manufacturing Pty Ltd (in liquidation) & Anor v. Rodrick & Ors* [2013] QSC 91 at [189].

27 *Fox v. Percy* (2003) 214 CLR 118 at 125-6.

28 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [48] to [53].

29 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [23] and [24].

30 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [28], [29], [31] - [34], [36], [42], [43], [45], and [47].

31 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [19], [35], [45]-[46].

[30] Mr Williams submitted that the learned Member erred in asserting that it was not possible or necessary to ascertain the truth of what documents Mr Williams signed,[32] but then made findings to that effect,[33] thereby infecting the conclusion that Mr Williams was a Director.

[31] The relevant passage of the learned Member's reasons reads:

> The truth as to what documents Mr Williams signed, and which were signed by someone else as his signature, is very confused and hard to discern. In many respects it is a puzzle. At the end of the day, I do not think that it is possible to solve it, or necessary to do so.[34]

[32] Although the learned Member's wording may be unfortunate, I am not satisfied that it sufficiently infected the conclusion that Mr Williams is a Director. This is because it would appear from the context and a reading of the Decision as a whole that the learned Member was recording his thought processes up to that point in his decision, rather than a final conclusion that it was not possible or necessary to solve the "puzzle" of what documents Mr Williams signed.

[33] This is not an appellable error.

Did the Member fail to consider evidence or make findings of fact not open?

Bank statements

[34] Mr Williams submitted that it was not open on the evidence to infer that his receiving bank statements meant that he wanted to be aware "of the overall transactions",[35] when the only evidence was that he wanted to ensure that the co-owners of the business, Mr Dilger and Mr Morgenstern were making loan repayments. He contended that merely receiving bank statements could not reliably or safely lead to the inference that he had any capacity to control or substantially influence the conduct of the company, and is consistent with a pure creditor-debtor relationship only.

[35] However, Mr Dilger gave evidence during the hearing that Mr Williams obtained the business' bank statements "from the word go".[36] Mr Williams was also cross-examined on the point:[37]

> Q: And what is the reason for you getting bank statements at that point?

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32 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [64].

33 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [67], [69], [70], [75], [81] and [87].

34 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [64].

35 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [101].

36 Transcript, Day 2, Page 1-48 Line 6.

37 Transcript, Day 1, Page 1-116 Lines 42 to 54 and 1-117 Lines 1 to 6.

> A: I was just making sure that I was getting my money paid into my account because I only get one statement a year off my other – the loan the money was going into.
>
> Q: Couldn't you have organised with the bank to get your monthly statement?
>
> A: I could have but then it costs [indistinct] costs. Keeps the costs down.
>
> Q: So when you fronted Tim did you say that you wanted to keep an eye on the business or something like that?
>
> A: I just said to him that I wanted to keep an eye on it and make sure that you're paying the money. He was agreeable to that.

[36] It was open to infer from this exchange and Mr Dilger's evidence that Mr Williams wanted to monitor the business' overall transactions. Mr Dilger's evidence suggests a relationship more than simply creditor-debtor.

[37] Even if Mr Dilger's evidence was not accepted, Mr Williams requesting the business bank statements and having that request acceded to, itself shows a degree of influence over the business - even if as a creditor. As the learned Member noted, Mr Williams could have checked his own bank statements for repayments, without needing to check the business bank statements. Regardless of his motivation,[38] that he was in a position to request business bank statements and have the request acted upon, itself suggests influence.

[38] This is not an appellable error.

Mentor role

[39] Mr Williams also submitted that the learned Member erred in finding that he was an 'influential person' because he played a mentor role to the co-owner Mr Dilger,[39] as he says the learned Member failed to make any finding of fact that Mr Dilger felt influenced or subject to influence by him.

[40] However, because a finding of the requisite degree of influence only requires being in a *position* of influence rather than whether Mr Dilger was *in fact* influenced, it was not necessary for the learned Member to have evidence of whether Mr Dilger felt influenced or subject to influence. It was open to infer the mentor role which supported a finding of 'influential person' from merely the evidence of Mr Williams' age and experience, as the learned Member did:

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38 Mr Williams gave evidence that he did not want to pay bank fees for his own bank statements.

39 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [99].

> Mr Williams was the older of the three men, and the most experienced businessperson, and it is apparent that he adopted a role as Mentor.[40]

[41] This is not an appellable error.

Evidence outside 12 months from the liquidator being appointed

[42] Mr Williams also submitted that the learned Member erred by considering the Credit Facility Application and Guarantee and Lessee Disclosure Statement, evidence that pre-dated or post-dated the relevant 12 months period.

[43] An individual is 'excluded' if a Director or 'influential person' at the time of the relevant event,[41] or within one year immediately before the 'relevant event'[42] - the appointment of the liquidator. Deciding whether Mr Williams was an 'influential person' at the time of, or within one year before the liquidator is appointed does not preclude considering evidence beyond then.

[44] This is because excluding this evidence imposes a temporal connection not required by the Act that would lead to absurd results. For example, it would mean that the Tribunal would be limited to considering evidence only of the most recent year of a person serving as a Director for 20 years. An individual may be in a 'position of influence' within one year of a relevant event, because of events over many years. The time limit fetters the period when an individual is influential, not the *evidence* that can be considered in deciding whether the individual was influential within that period.

[45] It was therefore open for the learned Member to consider the Credit Facility Application and Guarantee and Lessee Disclosure Statement in considering whether Mr Williams was an 'influential person' within 12 months of the liquidator being appointed.

[46] This is not an appellable error.

Director's Questionnaire and Report as to Affairs

[47] Mr Williams submitted that the learned Member erred by assuming that the Director's Questionnaire and Report as to Affairs were both signed "to go the liquidator as a Director", whereas the Report was not identified as being signed by a Director and the Questionnaire had a signature that was not that of Mr Williams.

[48] However, given no evidence was adduced to rebut the ASIC information of Mr Williams' appointment to Director, it was open for the learned

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40 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [99].

41 *Queensland Building and Construction Commission Act* 1991 (Qld) s 56AC(2)(c)(i).

42 *Queensland Building and Construction Commission Act* 1991 (Qld) s 56AC(2)(c)(ii).

Member to find that Mr Williams signed the Report as to Affairs to go to the liquidator as Director – with or without a notation of 'Director'.

[49] The learned Member found that Mr Williams did not sign the Directors Questionnaire, based on the independent evidence of the handwriting expert, Mr Heath.[43] Nothing therefore turns on the learned Member "assuming" that the documents signed were to go to the liquidator (if in fact he did). The learned Member only makes the "assumption" within the context of contemplating why Mr Williams would sign one document but not the other.[44] The answer to that was not necessary to decide whether Mr Williams was a Director.

[50] This is not an appellable error.

Illiteracy coping strategy

[51] Mr Williams also submitted that the learned Member erred by finding that two documents bearing Mr Williams' signature were not signed by him because of an illiteracy coping strategy based on "common knowledge", "patterns of behaviour" and Mr Williams' own evidence of his de facto, Ms Johnstone reading documents to him - without putting this to Ms Johnstone.

[52] The learned Member found an illiteracy coping strategy as the likely explanation for the differences in signatures.[45] Both Mr Williams and his de facto partner, Ms Johnstone gave evidence about techniques they used to circumvent issues arising from his illiteracy.

[53] For example, Mr Williams gave evidence that he would have Ms Johnstone fill in forms for him and his daughters would also help him.[46] Consistent with Ms Williams' evidence, Ms Johnstone gave evidence that she read and filled in documents for Mr Williams, including the Directors Questionnaire and writing "Director" on it.[47] The learned Member summarises this evidence in his reasons.[48]

[54] Notably, Ms Johnstone gave her evidence before Mr Williams - at the request of counsel for Mr Williams - because of a health concern requiring her to leave early.[49] Procedural fairness is not denied in circumstances where it was not possible to put Mr Williams' evidence to Ms Johnstone. Regardless, no unfairness arises because it was not suggested that Ms Johnstone would have said anything differently had Mr Williams' evidence

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43 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [69].

44 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [69].

45 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [79] to [80]].

46 Transcript, Day 1, Page 1-60.

47 Transcript, Day 1, Page 1-23 Lines 27-28, 1-28.

48 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [7] and [12].

49 Transcript, Day 1, Page 1-18 Lines 24 to 46.

been put to her – their evidence is consistent. Even without Ms Johnstone's evidence, the learned Member's finding was still open on Mr Williams' evidence alone.

[55] Further, the learned Member need not rationalise the basis for his "common knowledge" beyond his own experience:

> The weight which a judge will give to the evidence of a witness will often not be capable of rationalisation beyond the statement: having heard him, I am not satisfied that I should accept what he says. The weight which a judge gives to a particular fact may be affected by, as it has frequently been put, his experience and, in particular, his experience of the significance of that fact in the order of things… His reasons, in the particular case, may partake as much of intuition based on experience as on formal deductive reasoning.
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> … A fact is found in a particular case if the judge is satisfied that it is so. In many matters – and the weight to be given to a fact in the process of assessing facts is one of these – whether a judge is so satisfied in the sense required by *Briginshaw v. Briginshaw* (1938) 60 CLR 336, may depend upon matters subjective to him as well as upon matters common to judges.[50]

[56] The learned Member's finding was therefore open on the evidence.

[57] This is not an appellable error.

Possibility of person other than Mr Williams signing

[58] Mr Williams also submitted that the learned Member erred in "discerning the possibility" that someone else signed documents because Mr Williams was not available and time was pressing, without evidence.

[59] It is clear from the learned Member's reasons that he posits this as "one possibility".[51] In the following paragraph of his reasons, the learned Member posits the "alternate possibility".[52]

[60] The learned Member had a legal obligation to provide reasons. Deductive reasoning including hypothesising, postulating and considering alternative possibilities is part of that process.[53] The learned Member had evidence of different signatures. It was open to the learned Member to posit alternative explanations for the dichotomy. It is not an appellable error.

[61] This is not an appellable error.

Evidence of Wade Moore and Mr Williams

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50 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 274.

51 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [88].

52 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [89].

53 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 274.

[62] Mr Williams submitted that the learned Member erred by ignoring or not ascribing sufficient weight to the evidence of Mr Wade Moore. Mr Williams also submitted that the learned Member's reasons are unclear on whether he rejected his and Mr Moore's evidence and if so, why and what parts were rejected in preference to other inconsistent evidence.

[63] However, no judicial reasons can ever state all of the pertinent factors, nor can they express every feature of the evidence that causes a decision-maker to prefer one factual conclusion over another.[54] An applicant for leave must show an appellable error, resulting in a substantial injustice.[55] Preferring one version of facts to another, or attributing more weight to the evidence of one witness over another, is not such an error.[56]

[64] Mr Moore gave evidence to the effect that Mr Dilger informed him that he would on occasions sign Mr Williams' signature on documents,[57] while Mr Moore knew Mr Williams' signature because it was "pretty much similar every time".[58]

[65] Although the learned Member does not explicitly articulate whether he rejected the evidence of Mr Williams and Mr Moore and why, he does summarise their evidence in his reasons and accepted at least parts of Mr Williams' evidence.[59] It was not necessary for the learned Member to detail each factor that he found to be relevant or irrelevant in canvassing the alternative possibilities for the dichotomy in signatures and his ultimate findings.[60] The learned Member was not required to decide every matter raised in argument or make an explicit finding on every disputed item of evidence:

> … the law does not require that a judge make an express finding in respect of every fact leading to, or relevant to, his final conclusion of fact; nor is it necessary that he reason, and be seen to reason, from one fact to the next along the chain of reasoning to that conclusion.[61]

[66] An appellable error is not demonstrated by identifying other possibilities not mentioned or not apparently considered: the Member may decide a case in a way that does not require the determination of a particular submission and can therefore be simply put aside.[62] The learned Member may have unexpressed findings of fact.[63]

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54 *Fox v. Percy* (2003) 214 CLR 118 at [41].
55 *Slater v. Wilkes* [2012] QCATA 12 at [6], citing *QUYD Pty Ltd v. Marvass Pty Ltd* [2009] 1 QdR 41; *Drew v. Bundaberg Regional Council* [2011] QCA 359 at [19].
56 *Slater v. Wilkes* [2012] QCATA 12 at [6].
57 Transcript, Day 1, Page 1-39 Lines 46-47 and 1-40 Lines 1-3.
58 Transcript, Day 1, Page 1-48 Lines 40-42.
59 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [10]-[26] and [80].
60 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 270.
61 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 271.
62 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 269, 270.
63 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 272.

[67] Although some evidence may have supported a different finding, the learned Member expressly refers to the evidence to support his ultimate finding[64] and to which he was entitled to weigh accordingly.[65] The proper conclusion to be drawn is that the learned Member did not accept evidence to the contrary.[66] Not expressly rejecting that evidence to make his ultimate findings is not an appellable error. It is not an error to prefer one version of facts to another.[67]

[68] This is not an appellable error.

Credit Facility Application and Guarantee and Licence

[69] Mr Williams submitted that the learned Member erred by failing to place weight on the possibility that the Credit Facility Application and Guarantee was signed by Mr Williams to assist Mr Dilger and Mr Morgenstern obtain credit, with Mr Dilger later adding the word "Director".

[70] However, Mr Williams did not identify any evidence to support this possibility. Regardless, an appellable error is not demonstrated by merely identifying other possibilities not mentioned or not apparently considered.[68]

[71] Mr Williams also submitted that the learned Member erred by failing to place any weight on the possibility that the QBSA Licence was signed by someone without Mr Williams' knowledge or consent and gave no reasons for rejecting Mr Williams' evidence on this point. However, the learned Member is entitled to not place weight on this evidence in the face of competing evidence to support alternative possibilities and his ultimate findings.[69]

[72] The learned Member's finding that Mr Williams was a Director did not turn on rejecting Mr Williams' evidence about his builder licence. Even if the learned Member failed to consider Mr Williams' evidence on this point, it was merely one fibre in the tapestry of evidence. The learned Member's reasons articulate sufficient evidence to support his ultimate finding.[70]

[73] This is not an appellable error.

Incorrect details on ASIC documents

[74] Mr Williams submitted that the learned Member erred by not mentioning the ASIC documents stating an incorrect birth date, the lack of meetings to

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64 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [67], [70], [73], [75], [76], [80], [83], [91] and [94].
65 *Selvanayagam v. University of the West Indies* [1983] 1 All ER 824 at 826.
66 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 280.
67 *Slater v. Wilkes* [2012] QCATA 12 at [6].
68 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 270.
69 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 269-271.
70 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [67], [70], [73], [75], [76], [80], [83], [91] and [94].

appoint and confirm Directors, other credit applications signed by Mr Dilger and Mr Morgenstern but not Mr Williams.

[75] However, the Tribunal may state facts without making findings on all of the issues of fact relevant to the final decision.[71] It was open based on Mr Heath's independent expert evidence of Mr Williams' signature and other witness testimony to find that Mr Williams had not adduced 'evidence to the contrary', sufficient to displace the presumption that the ASIC records were proof of his status as a Director.[72]

[76] If the learned Member's reasons do not specifically refer to an item of evidence, it does not mean it was overlooked. Rather, it is reasonable to infer that the learned Member did not consider it relevant or outweighed the evidence upon which findings were made. It is not an error for the learned Member to not explain away each and every item of evidence not considered relevant or of sufficient weight.[73] It is sufficient that the learned Member's reasons set out the evidence he considered relevant and the basis for his findings.

[77] Even if the learned Member did not consider credit application forms not signed by Mr Williams, I am not satisfied this demonstrates error warranting leave to appeal. This is because findings of fact will not usually be disturbed on appeal if they have rational, albeit debateable support in the evidence.[74] Even if the learned Member did not consider credit application forms not signed by Mr Williams, it was still open for the learned Member to find Mr Williams was an 'influential person' based on the other evidence of Mr Williams' conduct and investment in the business.

[78] This is not an appellable error.

Mr Dilger's prior inconsistent statement

[79] Mr Williams also submitted that the learned Member erred by not placing weight on Mr Dilger's letter that Mr Williams was not involved in the day-to-day running of the business.[75]

[80] However, the learned Member explained that this was because Mr Dilger recanted from it in his sworn evidence and he preferred it to his letter. Mr Williams submitted that the learned Member failed to note Mr Williams' demand for repayment of a loan as motivation for Mr Dilger recanting the letter. However, the learned Member was entitled to assess Mr Dilger's credit based on his own observations of Mr Dilger when he gave his oral testimony. The learned Member is in a better position than the Appeal Tribunal to make this assessment.

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71 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 272.
72 *Corporations Act 2001* (Cth), s1274B.
73 *Soulemezis v. Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 271.
74 *Slater v. Wilkes* [2012] QCATA 12 at [6], citing *Fox v. Percy* (2003) 214 CLR 118 at 125-6.
75 Letter Timothy Luke Dilger 'To whom it may concern' dated 22 July 2013.

[81] Mr Williams also submitted that the learned Member's comment that Mr Dilger "was probably feeling pressure to assist Mr Williams who was facing the loss of his licence"[76] as a reason for Mr Dilger providing the letter, was not supported by any evidence or against the weight of the evidence.

[82] However, Mr Dilger gave evidence about the events and their negative impacts upon him and his family,[77] including Mr Williams behaving hostilely towards him[78] and that Mr Williams asked him to write the letter "as some sort of evidence towards the BSA",[79] and the circumstances for him writing it were that Mr Williams told him that "they're going to take my licence off me."[80]

[83] It was therefore open for the learned Member to prefer Mr Dilger's sworn evidence over his earlier letter.

[84] This is not an appellable error.

Company loan

[85] Mr Williams also submitted that the learned Member erred by finding no evidence of "a loan to the company", contrary to the company's 2011 financial statements and Mr Dilger's evidence under cross-examination that Mr Williams loaned money to the business. The relevant passage from the learned Member's reasons reads:

> There is no evidence of personal loans by Mr Williams to Mr Dilger and Mr Morgenstern, or of a loan to the company, apart from the evidence of Mr Williams himself.[81]

[86] Under cross-examination, Mr Dilger expressly denied personal loans to him and Mr Morgenstern of $86,600 each and $47,000 to the business.[82] Rather, according to Mr Dilger, Mr Williams "purchased the business with the business to repay the amount that he paid, which was due in the bank statements".[83] The 2011 Detailed Balance Sheet for the business also shows an entry "Loan Neil Williams - $191,000.00". This evidence does support a loan to the business and it would therefore appear that the learned Member erred to this extent.

[87] However, this error does not lead to a 'substantial injustice'. Despite referring to "no evidence… of a loan to the company, apart from the evidence of Mr Williams himself", the learned Member goes on to clarify:

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76 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [98].
77 Transcript, Day 2, Page 1-29, Lines 20-42.
78 Transcript, Day 2, Page 1-29, Lines 27-32.
79 Transcript, Day 2, Page 1-57, Lines 14-15.
80 Transcript, Day 2, Page 1-83, Lines 29-30.
81 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [107].
82 Transcript, Day 2, Page 1-51 Lines 25-34.
83 Transcript, Day 2, Page 1-52 Lines 15-16.

> The circumstances of the payment to Mr Morgan support the contention that Mr Williams was making an investment in the business as a financier.[84]

[88] A finding of Mr Williams "making an investment in the business as a financier" is not discernibly distinct from Mr Williams making a loan to the company. A financier can have an "investment in the business" to the extent that they expect repayment - usually with interest.

[89] This means that the learned Member's ultimate finding was not inconsistent with Mr Dilger's evidence under cross-examination or the company's financial records. Put another way, the learned Member's error in not referring to this evidence did not affect his ultimate finding.

[90] This is not an appellable error.

Were the Member's reasons for the conclusion that Mr Williams was a Director adequate?

[91] The learned Member's reasons adequately set out the grounds for the finding that Mr Williams is a Director: having noted the ASIC records of Mr Williams being appointed as a Director on 15 March 2010,[85] accepting the expert evidence that Mr Williams' signatures on the Credit Facility Application and Guarantee, Report as to Affairs and Lessee Disclosure Statement were genuine[86], and accepting Mr Major's witnessing of Mr Williams' signature on the Credit Facility Application and Guarantee,[87] it was open for the learned Member to infer that Mr Williams had not adduced 'evidence to the contrary' sufficient to displace the presumption that the ASIC records were proof of his status as a Director.[88]

[92] As I have previously indicated, these findings were open to the learned Member.

[93] This is not an appellable error.

Were the Member's reasons for his finding that Mr Williams was an 'influential person' adequate?

[94] The learned Member's reasons adequately set out the grounds for the finding that Mr Williams was an 'influential person": he accepted the co-

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84 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [107].

85 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [56].

86 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [67], [69], [70], [75], [81] and [87].

87 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [73].

88 *Corporations Act 2001* (Cth) s 1274B.

owners' evidence and Mr Williams' own evidence of his involvement in the business,[89] and evidence of Mr Williams financing the business.[90]

[95] It is apparent from the learned Member's reasons and the transcript that it was open to make a finding that Mr Williams was an 'influential person' based on:

- Mr Williams' own testimony of his conduct and surrounding circumstances;[91]
- Witness testimony of Mr Williams' conduct and surrounding circumstances;[92] and
- Evidence of Mr Williams' investment in the business.[93]

[96] That evidence showed that Mr Williams financed and played an active role in the business, sufficient to find him an 'influential person'.

[97] This is not an appellable error.

Has Mr Williams established grounds to grant leave to appeal?

[98] As the appeal is on grounds of mixed law and fact, leave is needed to appeal.[94] In determining whether to grant leave to appeal, the Tribunal will consider established principles including whether there is a reasonably arguable case of error in the primary decision,[95] whether there is a reasonable prospect that the appellant will obtain substantive relief,[96] whether leave is needed to correct a substantial injustice caused by some error,[97] and whether there is a question of general importance upon which further argument, and a decision of the Appeals Tribunal, would be to the public advantage.[98]

[99] The Appeals Tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.[99] The learned Member's findings were open to him on the evidence. Unfortunately for Mr

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89 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [98], [99], [100], [101], [102], [103]

90 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [99], [105]

91 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [14], [19], [21] to [25].

92 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [27] to [36], [38] to [40], [42], [45] to [47] and [97].

93 *Williams v. Queensland Building and Construction Commission* [2015] QCAT 42 at [19], [24], [28], [35] and [45].

94 *Queensland Civil and Administrative Tribunal Act 2009,* s 142(3)(b).

95 *QUYPD Pty Ltd v. Marvass Pty Ltd* [2009] 1 QdR 41.

96 *Cachia v. Grech* [2009] NSWCA 232 at 2.

97 *QUYPD Pty Ltd v. Marvass Pty Ltd* [2009] 1 QdR 41.

98 *Glenwood Properties Pty Ltd v. Delmoss Pty Ltd* [1986] 2 QdR 388 at 389; *McIver Bulk Liquid Haulage Pty Ltd v. Fruehauf Australia Pty Ltd* [1989] 2 QdR 577 at 577, 580.

99 *Dearman v. Dearman* (1908) 7 CLR 549 at 561; *Fox v. Percy* (2003) 214 CLR 118 at 125-126.

Williams, nothing in the material demonstrates that the learned Member should have adopted a different view of the facts.

[100] The appeal process is not an opportunity for a party to again present their case.[100] It is the means to correct error by the Tribunal that decided the proceeding.[101] Simply, the learned Member had evidence upon which he could properly reach the conclusion that he did.[102]

[101] That evidence was that Mr Williams was a Director and shareholder and had an initial and ongoing role in the business, including providing funding, regularly visiting the business, signing documents relating to the business, obtaining access to the bank statements of the business and procuring work from the business.

[102] Mr Williams has not demonstrated any error by the learned Member that would cause a 'substantial injustice'. No question of general public importance arises: the learned Member's findings were fact specific, consistent with previous 'Excluded Individual' cases.[103] Mr Williams has therefore not established grounds to grant leave to appeal.

What are the appropriate Orders?

[103] Because Mr Williams has not established any appellable error to correct a 'substantial injustice' or question of general public importance, he has not established any grounds to grant leave to appeal.

[104] Leave to appeal is therefore refused.

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100 *Lida Build Pty Ltd v. Miller & Anor* [2011] QCATA 219 at [12]; *Bradlyn Nominees Pty Ltd v. Saikovski* [2012] QCATA 39 at [9]

101 *Lida Build Pty Ltd v. Miller & Anor* [2011] QCATA 219 at [12]; *Bradlyn Nominees Pty Ltd v. Saikovski* [2012] QCATA 39 at [9].

102 *Selvanayagam v. University of the West Indies* [1983] 1 All ER 824 at 826.

103 For example, *Lida Build Pty Ltd v. Miller & Anor* [2011] QCATA 219; *McClintock v. Queensland Building Services Authority* [2011] QCATA 310.