

IN THE MATTER of the Gambling Act 2023

AND an application by the
**SECRETARY FOR INTERNAL
AFFAIRS** to suspend a casino
licence

BEFORE THE CHIEF GAMBLING COMMISSIONER

Date of Hearing: 4 April 2024

Date of Notification: 5 April 2024

**DIRECTIONS FROM PRE-HEARING CONFERENCE RE
AN APPLICATION BY THE SECRETARY FOR INTERNAL AFFAIRS
TO SUSPEND A CASINO LICENCE**

Background

1. On 31 August 2023, the Secretary for Internal Affairs ("**Secretary**") applied to the Gambling Commission ("**Commission**") under section 144 of the Gambling Act 2003 ("**Act**"), all references to this Act unless otherwise stated) to suspend the casino operator's licence held by SkyCity Casino Management Limited ("**SCML**"). The application seeks suspension of the licence on the ground that SCML breached condition 23 of its casino operator's licence for the Auckland casino relating to compliance with clause 3.1.6 of its Responsible Gambling Programme, which imposes obligations on the operator relating to continuous play by gamblers at the casino.
2. On 16 November 2023, the Chief Gambling Commission conducted a pre-hearing conference with counsel for the parties to make directions for the hearing of the application, which included setting a hearing date (the week of 15 April 2024) and making directions for filing and serving, in advance of the hearing, affidavit evidence by SCML and reply evidence for the Secretary (the Secretary's initial evidence having been filed with the application), and written outlines of opening submissions.
3. Following receipt of the affidavit evidence for SCML, the Secretary initially filed and served three reply affidavits, being a reply affidavit by Ms Pomare, the original deponent for the Secretary, and affidavits from two expert witnesses, Dr Gainsbury, a psychologist and gambling researcher, and Dr Blincoe, a software engineering academic.
4. On 27 February 2024, counsel for the Secretary filed and served a memorandum regarding the witnesses to be called and related procedural matters. It advised that Dr Gainsbury would give evidence remotely, identified the SCML witnesses who were required for cross-examination and sought leave to adduce further evidence-in-chief by way of a supplementary affidavit of Ms Pomare, producing five Standard Operating Procedures ("**SOPs**") referred to in

SCML's 2019 Problem Gambler Identification Policy or her earlier affidavit and a series of media articles. The memorandum explained that the documents were intended to be put in evidence as exhibits to facilitate cross-examination of SCML witnesses.

5. In response, counsel for SCML raised issues regarding the further evidence filed by the Secretary directly with counsel for the Secretary by way of a letter of 12 March 2024 and subsequently with the Commission by way of memorandum of 13 March 2024 which annexed the letter. The letter outlined detailed objections to identified aspects of all three reply affidavits filed and served for the Secretary. The memorandum raised no objection to the proposal for remote evidence or the order of evidence, advised that a witness for SCML would similarly give evidence remotely and opposed leave to receive the supplementary (third) affidavit of Ms Pomare.
6. On 22 March 2024, counsel for the Secretary filed and served a memorandum addressing the objections to evidence in general terms, attaching revised unsworn versions of the reply affidavit of Ms Pomare and the affidavit of Dr Gainsbury, from which a number of the challenged passages had been removed, and proposed a process to deal with the remaining objections by way of an exchange of written submissions and oral argument on the first day of the scheduled hearing, prior to the Secretary's opening submissions.
7. On 26 March 2024, counsel for the SCML filed and served a further memorandum concurring with the proposal made by counsel for the Secretary.
8. On 27 March 2024, the Commission advised the parties that the Chief Gambling Commissioner had directed that the parties not file further written submissions as proposed and instead scheduled a further conference with counsel on 4 April 2024 to address matters for the hearing, including the unresolved evidence objections, the scope of the hearing and scheduling of witnesses.
9. On 2 April 2024, counsel for the Secretary filed a memorandum in advance of the conference addressing the scheduling of witnesses and seeking directions regarding the exclusion from the hearing of three SCML witnesses of fact who are SkyCity employees until they had given their evidence.
10. On 3 April 2024, counsel for SCML filed a further memorandum which concurred with the proposed scheduling of witnesses and the directions sought. It also set out further submissions on the challenged evidence.

Directions conference

11. As previously directed, the Chief Gambling Commissioner conducted a videoconference with counsel on 4 April 2024. It was observed at the outset that all counsel had concurred that the Commission's powers, both under the Gambling Act 2003 and under the Commissions of Inquiries Act 1908, extended to the receipt of evidence not admissible in a court but that the Commission was bound to act fairly and in accordance with the principles of natural justice. It was also recognised that the weight to be accorded to any evidence received was a matter for

the Commission. Counsel were accordingly asked to address questions of fairness in particular in addressing the Chief Gambling Commissioner on the receipt of evidence prior to hearing.

12. Counsel for SCML emphasised the timetable orders made, the central effect of matters raised in reply (as indicated in the recently received opening submissions for the Secretary), argued that the challenged evidence amounted to an expansion of the case at a late stage, questioned the relevance of criticism of the Focal model, raised an issue about the reply evidence including the results of further inquiries made by the Secretary's staff after SCML's evidence was filed and the unfairness which could arise from receiving hearsay evidence when the original source was not able to be cross-examined.
13. Counsel for the Secretary rejected the suggestion that the Secretary's case had been recast in reply, described the nature of the hearing as a regulatory inquiry (as opposed to criminal charges or resolution of an *inter partes* dispute), observed that culpability was a central issue, and argued (with examples) that the challenged evidence was in reply and that the further inquiries were for a proper purpose. The supplementary affidavit produced documents with which SCML was familiar, and their production by affidavit would assist the hearing by having documents on which cross-examination was intended already before the Commission and the parties as exhibits. Counsel offered to file written submissions, already prepared, on the evidence issued raised by SCML immediately.
14. In reply, counsel for SCML emphasised the requirement for fair notice of the case to be answered (which has resulted in directions to provide particulars in earlier cases), argued that expert evidence in reply after the qualifications of the initial deponent were challenged was shoring up the Secretary's case and the supplementary affidavit as having "a third bite of the cherry", observed the Secretary's role in setting equipment standards and submitted that the prejudice arose from having to deal with new matters after SCML's affidavit evidence had been filed. Concern was expressed that allowing matters to remain before the Commission would lengthen the hearing, although it was conceded that SCML has received notice of the matters raised sufficiently in advance as to be able to deal with them in oral evidence-in-chief and cross-examination.

Directions made

15. The Chief Gambling Commissioner was not persuaded that fairness required the evidential objections to be determined in advance. The preferable course was to receive the evidence and to allow the parties to address questions of relevance, weight and fairness at the conclusion of the hearing. Counsel for SCML would be allowed to address anything unanticipated in SCML's affidavit evidence in its oral evidence at the hearing. Matters of relevance, weight and fairness would become clearer in the course of the hearing and the Commission would be able to address matters of fairness adequately, with the benefit of closing submissions from the parties, by how it eventually evaluated the evidence. As a consequence, no direction was made to file further submissions on the evidence prior to the

hearing. The Commission expects the parties to address all aspects of evidence, including fairness, relevance and weight, in closing.

16. Counsel's confirmation that the scope of the hearing would cover both breach and penalty was recorded.
17. The Chief Gambling Commissioner emphasised the importance of completing the hearing in the allocated time. As a consequence, the Commission intended to sit for longer hours than usual for a court, with hearing days starting at 9.30am, 15 minute breaks at 11.15am and 3.15pm, a lunch break of 45 minutes only at 1.00pm and the hearing concluding at 5.30pm or 6.00pm each day. After discussion with counsel, it was indicated that each day would start at 9.00am, for as long as required, to ensure that hearing days were maximised and remote witnesses accommodated. Counsel were advised that written opening submissions would be read in advance and that oral submissions should take that into account.
18. The directions sought by the Secretary, excluding the SCML witnesses Ms Cai, Ms Xu and Mr Chang until they had completed their evidence and prohibiting other witnesses or counsel conferring with witnesses when under cross-examination, were made without opposition.
19. Directions were also made for the revised draft reply affidavits of Ms Pomare and Dr Gainsbury to be sworn, filed, served and used in the place of the originally received affidavits.
20. If any other matters arose prior to the scheduled hearing, counsel were asked to raise them with the Commission in advance so that hearing time was preserved and maximised.



Susan Hughes KC
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

5 April 2024

