

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *LLK v Director-General, Department of Justice and Attorney-General* [2024] QCAT 156

PARTIES: **LLK**
(applicant)

v

DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL (RESPONDENT)
(respondent)

APPLICATION NO/S: CML128-22

MATTER TYPE: Children's Matters

DELIVERED ON: 25 March 2024

HEARING DATE: 13 October 2023

HEARD AT: Caloundra

DECISION OF: Member Bayne

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General that the applicant's case is "exceptional" within the meaning of s 221 of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is confirmed.**

CATCHWORDS: CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – applicant seeks a review of decision to issue a negative notice – blue card – the applicant's criminal offences – other relevant information exists – whether an exceptional case exists

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 5, s 6, s 221, s 226, s 228, s 354

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20, s 21, s 24, s 66 2

Human Rights Act 2019 (Qld), s 13, s 15, s 21, s 23, s25, s 26

APPEARANCES &
REPRESENTATION

Applicant: LLK with representation from LM, parent

Respondent: DC

REASONS FOR DECISION

Background

- [1] On 19 April 2022, after assessing the Applicant's eligibility, the Respondent issued a negative notice under the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* (the WWC Act). The Applicant was provided with written notice of the decision, the reasons for the decision and the relevant review information.
- [2] On 26 April 2022, the Applicant filed an application with the Queensland Civil and Administrative Tribunal to review the Respondent's decision that her case was an exceptional case.
- [3] The Applicant contended that not having a blue card limits her study opportunities and employment prospects. The Applicant hopes to develop a career to help young people with troubled backgrounds.
- [4] The Tribunal review was held on 13 October 2023, with final submissions due within a few months.

Legislative Requirements

- [5] The Tribunal can review a decision to issue a negative notice under the provisions of the WWC Act. Under the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, this hearing is a fresh hearing with the purpose of producing the correct and preferable decision on the evidence before the Tribunal.
- [6] The term *exceptional case* is not defined in the WWC Act. Whether a case is exceptional is to be determined by considering the circumstances of each individual case, having regard to the legislative intention of the Act. In the course of this review, the Tribunal must consider the totality of the applicant's circumstances to determine if an exceptional case exists. The Tribunal's decision must be consistent with the WWC Act's objectives that include promoting and protecting the rights, interests, and wellbeing of children in Queensland and be in accord with the principle that the welfare and best interests of a child are paramount.
- [7] In summary, in determining the correct and preferable decision, the Tribunal needs to be satisfied on the balance of probabilities that an exceptional case exists, or that it does not exist. Neither any prejudice or hardship that the Applicant might have experienced, or would experience by not holding a blue card, is relevant when considering the case, nor is any benefit that children might derive by interacting with, or having access to, her.
- [8] Where a person has been charged with, or convicted of, an offence, the Tribunal must have regard to considerations prescribed by section 226 of the WWC Act in determining whether an exceptional case exists.
- [9] Where "*other relevant information*" exists, the Tribunal must have also regard to considerations prescribed by section 228 of the WWC Act. Pursuant to section 597(2) of the WWC Act, section 228 of the WWC Act (as in force on or after 20 May 2022) applies to these proceedings.
- [10] In this case, both sections apply.

Section 226(2) of the WWC Act

- [11] As the Applicant has been convicted of an offence within the definition of conviction under the WWC Act, the Tribunal must have regard to considerations prescribed by section 226(2) of the WWC Act in determining whether an exceptional case exists.
- [12] The Applicant had had numerous convictions and finalised charges as reflected in her criminal history; the offending and alleged offending was committed between 2015 and 2019. The Respondent's reasons dated 19 April 2022 summaries.
- [13] The Court transcript of the proceeding on 8 November 2019 records that the Magistrate had, after some consideration, recognised that Applicant had been given opportunities previously yet had continued to offend. However, for a number of reasons, he had agreed with the submissions of both legal representatives that probate (two years and loss of the driving licence for the same period) was appropriate, and determined not to record the convictions. Various fines, compensations and a recognisance were ordered.
- [14] The Applicant has acknowledged that she was estranged from her family at this time. She eventually recognised how fortunate she was not to have incurred a considerably more severe outcome.
- [15] The Applicant also has had a Queensland traffic and non-TORUM record relating to the period May 1998 to September 2022.

Section 228(2) of the WWC Act

- [16] Two components of other relevant information were involved:
 - (a) Material produced by the Department of Child Safety, Seniors and Disability Services (formerly the Department of Children, Youth Justice and Multicultural Affairs) (Child Safety), with various notifications from the Queensland Police Service (QPS); and
 - (b) The Applicant's relationship with the father of her son. This is outlined in further sections of these reasons.

Child Safety

- [17] The material from Child Safety relates to the Applicant, her ex-partner (SJ), and their son from June 2017 until August 2019.
- [18] Among other things, it includes allegations¹ that SJ had:
 - (a) taken their son;
 - (b) behaved dangerously;
 - (c) used illicit drugs;
 - (d) struggled with mental health issues;
 - (e) engaged in verbal and physical domestic violence towards the Applicant;

¹ As recorded in the Respondent's submission dated 1 September 2023, and not contended by the Applicant.

- (f) exposed their son to domestic violence; and
- (g) offered another person an opportunity to have sex with [their] son.

[19] Other information from Child Safety made reference to that on or about:

- (a) 4 July 2017, the Applicant would not answer phone calls, or allow police to answer phone calls, that she was receiving from her ex-partner in order to find out where her son was (after her ex-partner had taken him);
- (b) 2 January 2018, that the Applicant continue[d] to associate with persons with a known criminal history and outstanding warrants, potentially exposing her son to “*criminal activity and firearms*”;
- (c) 10 June 2019 the Applicant’s son was exposed to a physical altercation involving punches being thrown and four young people; and
- (d) 29 August 2019, the police advised the Applicant of concerns as to contact between SJ and the son².

[20] The Tribunal acknowledges that the material does not suggest that Child Safety made adverse findings about the Applicant or her ability to act protectively of her son. In some instances, Child Safety noted that there was insufficient information to make firm findings.

The Applicant’s Current Supportive Network and Witnesses

Current Supportive Network

[21] The Applicant had written:

Despite my previous offences both my parents have seen how extremely hard I have worked to better my life, further my education and obtain a full-time job. My parents have been my main support system throughout this time.

I now have a close relationship with both of my parents and spend a lot of time with my mum in particular...

[22] In the hearing, the Applicant stated that her current support network consisted of her immediate family, her best friend from high school (SK), another friend (SB) and her partner of 4 years (BJ). She informed that BJ was her biggest supporter and that he was very present in her son's life. She contended that she was now in a stable relationship with a person who supports her mentally and physically.

The Witnesses

[23] The Applicant had provided but three witness statements, and all three gave evidence on 13 October 2023. The witnesses were LM (father), LK (mother) and PJ (family friend of about 10 years).

[24] All of the witnesses, in written and oral evidence, considered that:

- (a) The Applicant had been subject to abuse from by SJ;

² This will be discussed in further detail later in these reasons.

- (b) Her new partner, BJ, was a stable and positive influence;
 - (c) The Applicant now seeks advice;
 - (d) In recent years, the Applicant had turned her life around and was now in fulltime work and was a good parent to her son; and
 - (e) The Applicant now deserves a Blue Card.
- [25] The Applicant had not provided any other witness statements or called anyone else as witness in the hearing, including her two friends and her partner.
- [26] LM wrote of his shock at hearing of his daughter's offending and his determination to help her. LM also informed that he did not recall the Applicant having stolen anything more substantial than goods/toys from shops. He added that in his view '*stealing a shirt from Myers*' did not affect children.
- [27] LK wrote that she was made aware of SJ's threatening behaviours towards the Applicant by a neighbour on 14 February 2019 and during this time (the Applicant) did get involved in shop lifting. When questioned in the hearing, LK replied that she did not believe that the Applicant had been convicted of any more substantial offences.

The Applicant on Her Offending

- [28] The QPS records indicated that, at the time, the Applicant had had difficulty in being honest with the QPS enquiries and in accepting responsibility for her involvement in a burglary and indictable offence on 21 March 2019.
- [29] In the hearing on 13 October 2023, the Respondent asked the Applicant as to whether she accepted responsibility for her behaviours on 21 March 2019, including whether she accepted that she had stolen from individual people.
- [30] The Applicant responded that she had never stolen from a person's house because:
- (a) She had not entered the house;
 - (b) She had only assisted in loading the stolen items into her car; and
 - (c) Had not stolen the items from the house itself.
- [31] The Applicant later retracted this statement.
- [32] The Applicant has written:

In relation to my statement at the hearing regarding the 2019 conviction for burglary and commit indictable offence. I do now understand the seriousness of my actions and admit that I was not of a clear mind when this offense occurred which by no means excuses my actions. When this incident was brought up in the hearing, I misunderstood the question and can appreciate that although I was outside the property in the car my involvement is still of a serious nature.

The Applicant's Relationship and Contact with Her Ex-Partner, SJ

- [33] The Applicant was living in a relationship with SJ from 2016 to approximately late 2019; their son was born in 2016, just after the Applicant's 18th birthday.
- [34] The Applicant wrote on 12 June 2023:

(SJ) was mentally and physical violent, I was with him for three years, and had a child with him. During this time he was incarcerated due to the DV Order. I felt alone and embarrassed that I had been with such a person . I was scared of how my future looked due to sharing a child with this person I knew I couldn't escape.

[35] On 15 November 2023, the Applicant wrote:

Many times, our neighbours would ring the QPS as they were concerned that he was going to kill me.

SJ was addicted to illicit drugs which made his behaviour very erratic and I was in constant fear for my life.

(I have removed) myself from a relationship where I experienced domestic violence...

... I decided to sever ties with my son's father as the DV was becoming more frequent due to him using illicit drugs.

[36] The Tribunal notes that, following a significant incidence of domestic violence on 16 November 2017, SJ was charged with a range of offences including suffocation, strangulation and choking perpetrated against the Applicant and was incarcerated for this offence.

[37] In the hearing, the Applicant agreed that on 26 August 2019, she had told the QPS that:

- (a) She had limited contact with SJ and believed he was using drugs;
- (b) SJ had had unsupervised contact with the son earlier in 2019, but had not had such in recent months; and
- (c) She did not know where SJ was living and believed he was homeless.

[38] Also on 30 October 2023, the Applicant confirmed that the QPS had spoken with her on 29 August 2019 and that she had been given advice about unsupervised contact by SJ with his son. QPS had informed her that SJ had been discussing a sexual meet-up with a male person and throughout the conversations, SJ had disclosed details of his son³.

[39] There were however further allegations of SJ either visiting or staying with the Applicant in her home in February and March 2020. On 18 March 2020, the Applicant told the QPS that the "criminal mate" in her home (as described by her neighbour) was her friend.

[40] Under cross examination in the hearing, it emerged that the Applicant had had continual contact with SJ over some years. She stated that she was not sure when she last saw him in person but had probably done so some six to eight weeks ago. She had not had much contact with him recently as he was in a bad way, probably homeless and possibly on drugs.

[41] However, the Applicant eventually (and seemingly reluctantly) admitted that as recently as 3 September 2023, she had allowed SJ to drive the son, unsupervised, to purchase dinner.

³ Details of potential sexual abuse of the son had not been revealed to the Applicant at that time.

Discussion

- [42] The Tribunal agrees with the Respondent that the offences with which the Applicant had been convicted/charged from 2015 to 2019 are neither serious nor disqualifying offences under the WWC Act. Nevertheless, it is clear that Parliament intended that all offences on a person's criminal history be considered in determining their eligibility to work with children in regulated employment. The Applicant's recognition of the impact of her offences on other people had however taken some time.
- [43] The Applicant stated that her current support network consists of her partner, her parents and a couple of friends. It remains unclear to the Tribunal as to the extent to which the Applicant has confided in and relied on these people, and the level to which they have been consulted and informed of various aspects of the Applicant's life and wellbeing over the past few years.
- [44] The lack of any evidence at all from the Applicant's '*biggest supporter*', her partner BJ, raised concerns as to his knowledge, and views, of the Applicant's circumstances, past and present. The Applicant explained that BJ was at work, was shy and was not good at talking in public.
- [45] The Applicant's parents stated in the hearing that they had been unaware of the Applicant's criminal offending when it occurred; they only knew when they were told. Both parents were however aware of the abuse to which SJ had subjected their daughter over some years, and considered him to be violent and erratic.
- [46] It remains unclear to the Tribunal as to whether the Applicant's parents⁴, prior to the hearing on 13 October 2023⁵:
- (a) Had been informed of the not insignificant concerns/involvement of Child Safety 2017 - 2019;
 - (b) Had any knowledge of the QPS warning to the Applicant on 29 August 2019;
 - (c) Had any knowledge of the ongoing contact between SJ and their daughter and grandson 2019 to 2023; and
 - (d) Were aware that SJ had driven their grandson on his own and unsupervised on 3 September 2023.
- [47] The Applicant had reiterated her fear of SJ and had removed herself from that relationship. By August 2019, the QPS had had sufficient concerns as to future behaviours of SJ to contact the Applicant and to warn her. The Applicant agreed that she had been advised by the QPS of the risks of any unsupervised contact between her son and SJ, and had considered, that at mid-2023, SJ was probably on drugs. And yet on 3 September 2023, she allowed her son to have unsupervised contact with SJ in a motor vehicle.
- [48] Although the frequency since 2019 of unsupervised contact between SJ and the son was not known to the Tribunal, it considered that the Applicant's decision to allow

⁴ And indeed her partner BJ.

⁵ LM, father, had also represented the Applicant on 13 October 2023 and had been present throughout the hearing.

unsupervised contact, at least on 3 September 2023, demonstrates a singular lack of the Applicant's understanding of the gravity of the situation.

- [49] The Tribunal was also considerably concerned as to the efficiency of what should been a robust and reliable support network for the Applicant.
- [50] It seemed that, in this regard, the Applicant had either not informed or sought advice from her partner, family and friends, or that her support network had failed in any effort to influence the Applicant as to the level of risk involved. The other scenario was that the support network did know of the ongoing contact and not been concerned.
- [51] It was only after the Tribunal hearing on 13 October 2023 that the Applicant had stated that she was in the process of arranging a custody order (for her son) and a DVO has been issued to protect her and her son.

Conclusion

- [52] The written and verbal evidence in this case has given rise to ongoing queries and concerns, not the least being the events of 3 September 2023.
- [53] The Tribunal would have expected that the Applicant, despite her considerable challenges and difficulties, would by 2023 have developed a mature understanding of the effects and consequences of her actions and an appreciation of how her actions impacted on others. However, considerable doubts on the Applicant's integrity and her suitability to act as a role model for children remain apparent.
- [54] The Applicant's lack of ability to assess risk and act protectively of her own son as recently as a few months ago has significant relevance to her responsibilities towards any children and young people who might be in her future care.
- [55] In addition, her offending, including her traffic-related offending as recently as 2022, raises questions as to her respect for the law and lawful behaviour.
- [56] The principle under which the WWC Act must be administered is that every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing. A child-related employment decision must be reviewed under the principle that the welfare and best interests of the child are paramount. Children are inherently vulnerable. Their welfare depends upon adult carers being able to recognise risk and act in an appropriate and protective manner.
- [57] The responsibilities of a holder of a positive notice and a blue card are significant. It is expected that at all times Blue Card holders will demonstrate integrity and reliability and will model appropriate, safe and legal behaviour and respect for the legal system and legitimate authorities.
- [58] Blue cards are given without condition so if the applicant were to be issued with a blue card, she could work, under supervision or not in any area of child-related employment. Any consequences, in terms of prejudice or hardship to the Applicant, are not relevant in child-related employment decisions. The potential consequences for children, however, of issuing a Blue Card are significant.
- [59] The Tribunal is of the view that it would not be in the best interests of children for the Applicant to be issued a Blue Card.

- [60] The Tribunal is therefore satisfied, on the balance of probabilities, that the applicant's case is 'exceptional' within the meaning of s 221 of the WWC Act. Accordingly, the decision of the Respondent is confirmed.

Human Rights Act 2019 (Qld)

- [61] The Tribunal has considered the relevant human rights as set out in the *Human Rights Act 2019 (Qld)*. As required by s 48 of that Act, the Tribunal must interpret statutory provisions to the extent possible that is consistent with their purpose in a way that is compatible with human rights.
- [62] The Applicant's rights and the rights of children to recognition as people before the law entitled to equal protection without discrimination, freedom of expression and privacy and reputation are all engaged. Of particular concern are the rights of children, the protection that is needed and is in the child's best interests because they are children.
- [63] Taking into account the findings above as to the criteria set out in s 221 of the WWC Act, the Tribunal is satisfied that the limits imposed by the issuing of a positive notice would not be reasonable and not justified in accordance with s 13 of *the Human Rights Act 2019 (Qld)*.