

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *LHL v Director-General, Department of Justice and Attorney-General* [2024] QCAT 158

PARTIES: **LHL**
(applicant)

v

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

APPLICATION NO/S: CML 230-22

MATTER TYPE: Childrens matters

DELIVERED ON: 19 April 2024

HEARING DATE: 10 August 2023

HEARD AT: Brisbane

DECISION OF: Member Paratz AM

- ORDERS:
- 1. The decision of the Director-General, Department of Justice and Attorney-General, made on 29 June 2022, that the Applicant's case is an 'exceptional case' within the meaning of section 221 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) is confirmed.**
 - 2. The publication of the name of the applicant, his family, and witnesses, other than to the parties to the proceeding; or material filed in these proceedings, other than as referred to in these Reasons; is prohibited pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – BLUE CARD – application to review a negative notice – whether this is an exceptional case in which it would not be in the best interests of children for the applicant to be given a working with children clearance – where the applicant had life-long issues as to the use of alcohol

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 221

Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 66

Director-General, Department of Justice and Attorney-General v CMH [2021] QCATA 6

DVL v Director-General, Department of Justice and Attorney-General [2023] QCATA 52

Director-General, Department of Justice and Attorney-General v DVL [2023] QCA 201

**APPEARANCES &
REPRESENTATION:**

Applicant: Self-represented
Respondent: P. Mc Neill (Legal Officer)

REASONS FOR DECISION

- [1] LHL is a man aged about 50 years old. The Director-General, Department of Justice and Attorney-General, ('the Department') issued LHL with a negative notice under the *Working with Children (Risk Management and Screening) Act 2000* ('the Act') on 29 June 2022.
- [2] LHL filed an application to review the decision of the Department that his case was an 'exceptional case' in which it would not be in the best interests of children for him to hold a blue card.
- [3] The application was heard at an oral hearing on 10 August 2023, and the parties filed closing submissions thereafter. These are the reasons for the decision in the matter.

The Department's Reasons

- [4] The Department noted in its Reasons for the decision to issue a negative notice that LHL was previously issued with a working with children clearance ('blue card') in 2018, and that on 17 July 2020 it was notified by the Queensland Police Service that LHL's police information had changed.¹
- [5] The following criminal history was provided to the Department by the Queensland Police Service:

Court	Date	Offence	Order
Cleveland Magistrates Court	08/07/1991	Resist police (on 28/06/1991)	Fine: \$50
Townsville magistrates Court	13/09/1999	Obstruct police officer (on 12/09/1999)	Bail forfeited: \$80

¹ Reasons of the Department, 29 June 2022, [1].

Cairns Magistrates Court	15/10/2002	Behave in a disorderly manner (on 27/09/2002)	On all charges: bail forfeited: \$150
Mareeba Magistrates Court	05/03/2021	Assaults occasioning bodily harm (on 27/06/2020)	Dismissed

- [6] The complaint considered in the Reasons related to the proceedings in the Mareeba Magistrates Court on 5 March 2021. A submission was made on the hearing of that matter that there was no case to answer, and the charge was dismissed.²
- [7] The complaint arose from an incident that occurred on 27 June 2020 at a private party. An altercation was observed between LHL and an acquaintance at about 10pm, and the complainant sustained broken front teeth and a split lip which required multiple stitches.
- [8] The Department expressed that the allegation was that LHL had assaulted the complainant until witnesses intervened, and that the information before it suggested that the applicant's alleged behaviour was extreme and disproportionate given the wider circumstance of the dispute and raised concerns that LHL may lack the ability to manage aggression and may have a propensity to react aggressively to situations of conflict.³
- [9] The Department expressed that the applicant was involved in a violent altercation, and while this may not have reached a criminal standard for the offence he was charged with, it nevertheless is an incident of concern in relation to his eligibility to work with children.⁴
- [10] The Department noted that LHL had provided three references in support of his application for a blue card and that one of the referees submitted that on the night in question LHL and the complainant were drinking heavily, and LHL was encouraged to 'take some form of drug' and made the following comments:⁵
- This information raises concern that the applicant may be at an increased risk of recidivism in the future, particularly if influenced and pressured by others. Further, it appears that alcohol may have played a significant role in the applicant's alleged offending which suggests that he may have a tendency to become physically or verbally aggressive when intoxicated. It is particularly aggravating that the applicant was a blue card holder at the time.
- [11] The Department concluded that it was satisfied that issuing a blue card to the applicant was not in the best interests of children and young people 'at this time'.⁶

Evidence of LHL and his witness

NMB

² Transcript of proceedings in Mareeba Magistrates Court, 5 March 2021, p.1-1.

³ Reasons op cit [6].

⁴ Ibid [6].

⁵ Ibid [7].

⁶ Ibid [7].

- [12] NMB gave evidence that she had been LHL's partner for five years until five months before the hearing, and that they remained good friends. She said that he enjoyed social drinking, but that she did not have concerns about his drinking. She said that she understood that he has used illicit drugs.
- [13] She said that LHL was an exceptionally gentle person and she absolutely did not see any reason that he could be a risk to children.
- [14] In cross examination she said that there had been a reduction of consumption of alcohol by LHL in the previous 12 months, and that he had recently told her that 'he wants to give up' alcohol, and had made great inroads into reducing alcohol in his life, which has made a marked difference on him, and that 'he is doing really well'.
- [15] She described LHL as a 'very fun, energetic and exuberant person', who sometimes, when he had a few drinks, could come across as annoying. She said she knew that he had been working on himself in many ways.

LHL

- [16] LHL said that he worked as a tradesperson in the building industry. He said that he had to have a blue card for his work, which had involved working at schools and around children.
- [17] He said that the offence in 1991 occurred when he was a young man, and he was fairly intoxicated and was uncooperative with police who wrongly thought he was the driver of a stationary car in which he was a passenger, and that he had resisted arrest. He said that he feels terrible looking back on the incident.
- [18] He said that every one of the criminal matters had involved alcohol, and that he was a 'big kid at heart'.
- [19] He said that the offence of resisting police in 1999 had occurred when he and some relatives were having a night out, and that he objected to a police officer's interaction with his relatives. He said he had been drinking on that occasion, but 'wasn't that intoxicated', and was just standing up for his relative. He said he didn't think he did anything wrong, but was in the wrong place at the time.
- [20] He said that the offence in 2002 of disorderly conduct occurred when police were attracted by the behaviour of himself and a friend who had consumed 'quite a few tequilas', and that he made a disparaging remark to a police officer which she disapproved of, and agreed that he was 'being a bit mouthy'.
- [21] He said that he did not have any issue with police, and if sober, would have acted differently. He said he would not act that way today, and wouldn't get intoxicated, and would handle the situation totally differently. He said that he regretted the incident, and was 'older and smarter now'.
- [22] In relation to the bodily harm charge in 2021 he said that the incident occurred at an adult party. He said that the complainant was an acquaintance of his.
- [23] He said that he did not use drugs, and had only used marijuana when he was 15 or 16.
- [24] LHL commented on a statement the complainant had made to police in which the complainant referred to LHL coming up to him at the party and offering him 'something to cheer me up', and the complainant said he immediately knew that

LHL was referring to drugs and declined. LHL said that the complainant had made that allegation as he was upset about the altercation and ‘had it in for me’.

- [25] LHL was asked if there were drugs at the party, and said that there was a cake with marijuana in it.
- [26] LHL said that it was likely he had 4 to 5 drinks of gin at the party, and had one beer at the local pub before that.
- [27] He agreed that he was ‘being annoying’, and that an altercation occurred, but that he did not strike, punch, or hit the complainant. He said that ‘maybe I have energy when I drink’ and probably become annoying, but did not become confrontational when drinking alcohol.
- [28] He said that he was upset that his friend was injured, and was upset that the complainant thought that he had done it. He said that of course he had contributed to the incident, that he had too much to drink and was annoying, and that he felt terrible, tried to apologise to the complainant, and regretted what happened that night.
- [29] He said that he had now given up alcohol entirely, that his last drink was on 5 August 2023, and that over the last 12 months he had started to reduce his consumption of alcohol. He said that he did not think his alcohol consumption was causing issues, and that he had discussed Alcoholics Anonymous strategies with a friend.
- [30] He said that he enjoyed camping and playing sport, and has an adult son who lives with him.

Submissions of the Department

- [31] The Department discussed⁷ the applicability of the decisions of *Director-General, Department of Justice and Attorney-General v CMH* (‘*CMH*’)⁸ and *DVL v Director-General, Department of Justice and Attorney-General* (‘*DVL*’).⁹
- [32] It submitted that in *CMH* the Appeal Tribunal found that where a charge for a non-disqualifying offence has been discontinued it should not be taken into account, and that decision was applied in *DVL*, but noted that the decision in *DVL* was subject to an appeal in the Court of Appeal.¹⁰
- [33] It submitted that notwithstanding the decisions in *CMH* and *DVL*, it maintains its position that finalised charges, that are disqualifying offences, are charges pursuant to the Act.¹¹
- [34] It alternatively submitted that if the tribunal did not accept that position, that the tribunal is entitled to consider the Applicant’s finalised, non-disqualifying charge

⁷ Respondent’s post hearing submissions 24 August 2023.

⁸ [2021] QCATA 6.

⁹ [2023] QCATA 52.

¹⁰ Respondent’s submissions Op Cit [10]; I note that the Appeal was allowed by Consent without discussion of the merits [2023] QCA 201.

¹¹ Ibid [14].

under s 221(3)(f) of the Act as other information about the person that is reasonably believed to be relevant.¹²

- [35] It referred to its pre-hearing written submissions, which referred to its concerns as follows:¹³
- a) the applicant's anti-social and violent behaviour as demonstrated by his offending and alleged offending;
 - b) the applicant's ability to respond to situations of conflict in a calm, rational and law-abiding manner that safeguards the safety and well-being of children in all instances;
 - c) the applicant's ability to judge appropriate behaviour and present as a positive role model to children/young people in his care;
 - d) the applicant's ability to have respect for the law and unlawful behaviour;
 - e) the applicant's insight into his offending and alleged offending, and influence of alcohol and drug consumption upon his offending and alleged offending; and
 - f) whether it is in the best interests of children and young people for the applicant to be issued a blue card.
- [36] It submitted that the evidence of LHL during the hearing reinforced those concerns.¹⁴
- [37] It submitted that a common theme running through the offending of LHL has been the consumption of alcohol, and that LHL agreed stating that it was present 'every time', including the assault occasioning bodily harm offence.¹⁵
- [38] The department referred to the evidence of LHL that he had given alcohol up entirely, but said his last drink was five days prior to the hearing when he had consumed six bourbon and cokes.¹⁶
- [39] It noted that he gave evidence that he had commenced reducing his alcohol consumption months ago, and that he tried to give up alcohol, but he had been drinking for a long time, and when asked whether he had been addicted to alcohol had responded that he thought so.¹⁷
- [40] It noted that whilst LHL gave evidence that he had not sought advice from any medical practitioners regarding his alcohol consumption, he said that he had an Irish friend who attended Alcoholics Anonymous, and they had discussed strategies, including being aware of the people who surrounded him, remembering bad things that happened when consuming alcohol, and understanding that other people can have a different perception of him.¹⁸

¹² Ibid [15].

¹³ Ibid [19].

¹⁴ Ibid [20].

¹⁵ Ibid [21].

¹⁶ Ibid [22].

¹⁷ Ibid [24].

¹⁸ Ibid [25].

- [41] It submitted that whilst LHL was able to identify alcohol as a common factor to his offending and alleged offending, that his insight into the role alcohol has upon him appears to be superficial, and that he continually minimises his behaviour.¹⁹
- [42] In relation to the alleged offence of assault in 2020, it noted that he accepted he may have appeared to be ‘carrying on’ to other people, but characterised himself as having had a few drinks and being a happy person, and gave evidence that he had consumed 4 to 5 drinks on that occasion.²⁰
- [43] It made the following submissions in relation to LHL’s use of alcohol, and his insight into the effect of it:²¹

36. The respondent submits that the tribunal would have concerns regarding the genuineness of the applicant’s insight and understanding of the triggers to his offending given, as he stated, he did not reduce his intake of alcohol until about 12 months prior to the hearing, that being some two years after the alleged offence. Further, the respondent submits that even despite the applicant’s evidence at the hearing that he had ceased drinking alcohol, he also submitted he had consumed alcohol just days prior to the hearing, and that the amount he had consumed on that occasion was even more than what was consumed on the night of the alleged assault.

37. Overall, the applicant’s lack of insight into his alcohol misuse and the effect of it upon his offending and alleged offending is demonstrated by the minimisation of his conduct and continued misuse of alcohol despite being aware that it can lead to problematic behaviour.

Submissions of LHL

- [44] LHL made submissions in response on 13 September 2023, and submitted that he had not touched a drop of alcohol since 6 August 2023 to that date, and had no intention to start again. He submitted that he had attended Alcoholics Anonymous meetings for further support as well as seeking it from family and friends, which has given him a much better perspective to give more time for his own children, and to try and be an upstanding role model for his boys.²²
- [45] He described the effect of his turning away from alcohol as follows:²³

4. As hard as the past three years have been, the current situation has been a blessing in turning my life around life without alcohol. I am more motivated, run every day, and the impact on work and finances have all been positive.

Discussion

- [46] There has been discussion in the material as to criminal charges that LHL faced between 1991 and 2002, for which minor penalties were ordered. I do not place weight on those outcomes, and recognise that these are old and minor offences, but do have regard to the circumstances in relation to the recurring influence of alcohol in those offences.

¹⁹ Ibid [29].

²⁰ Ibid [35].

²¹ Ibid [36-37].

²² Applicant's post hearing submissions, 13 September 2023, [2-3].

²³ Ibid [4].

[47] The criminal charge that LHL faced in 2021 similarly has relevance in relation to his use of alcohol.

[48] LHL submitted that as the Magistrate in 2021 ruled that he did not have a case to answer, resulting in the case being dismissed, he thought that decision ‘would have been respected and upheld’ and that ‘As I represented myself, I didn’t expect to be cross-examined and judged again’.²⁴

[49] A reference by DKS was tendered by LHL.²⁵ DKS is a retired commercial executive who had known LHL for over 12 years. DKS expressed the view, that given the stressful position that LHL had been placed in by his blue card not being renewed, which had ‘very dramatic real impact on his livelihood and his income’, and the ruling that LHL did not have a case to answer in relation to the 2021 charges, that ‘I believe it is completely unjust and unfair that Blue Card Services maintains its original declined stance for renewal of (LHL’s) blue card’.²⁶

[50] A submission was made by the lawyer representing LHL in the 2021 hearing, at the close of the Prosecution’s case, that there was no case to answer as follows:²⁷

It is – what is needed is some evidence that a court could act on which demonstrates that the act is, that is, the striking that’s particularised, was a willed act consciously made to do an injury of the kind done. The, perhaps, best way to look at it is to say to your Honour, what evidence is there that the prosecution has led that would satisfy your Honour that the defendant made a conscious choice to strike (the complainant) and cause injury that’s the bodily harm? In my respectful submission, there simply isn’t any.

[51] In his decision, the Magistrate referred to the evidence that had been presented by the Prosecution and found that there was no case to answer as follows:²⁸

All of those facts point to me that the prosecution has not been able to – to my satisfaction – discount or eliminate any possibility consistent with the innocence of the defendant. On that basis, I am of the view that there is no case to answer and that the charge against the defendant should be dismissed.

[52] Section 221(2) of the Act provides as follows:

- (2) The chief executive must issue a negative notice to the person if the chief executive –
 - (a) is aware of relevant information about the person; and
 - (b) is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a working with children clearance to the person.

[53] Section 221(3)(f) of the Act provides as follows:

- (3) For subsections (1) and (2), the following information about the person is *relevant information* –

²⁴ Ibid [5] all.

²⁵ Exhibit 1.

²⁶ Reference of DKS, 24 January 2023.

²⁷ Transcript of proceedings in the Magistrates Court Mareeba, 1-66.

²⁸ Ibid 1-2.

- (f) other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

- [54] Notwithstanding that the charge was dismissed because there was insufficient evidence that LHL had intentionally caused harm, I consider that the circumstances relating to his behaviour is information about the person that the Chief Executive may consider if it believes it is relevant to deciding whether it would be in the best interests of children for the Chief Executive to issue a working with children clearance to the person, having regard to section 221(3)(f) of the Act.
- [55] I therefore do not have regard to the charge in 2021 itself, but do have regard to the circumstances relating to the behaviour of LHL leading to the incident.
- [56] The evidence and submissions in this matter show that LHL has had life-long issues in relation to his use of alcohol.
- [57] Directions were given by the tribunal on 27 October 2022 for LHL to file the material upon which he intended to rely at the hearing. Direction 2(v) referred to witness statements, including any expert reports, which ‘contain any health reports, including any reports by a psychologist or psychiatrist’.
- [58] LHL was given the opportunity to file any health professional reports as to his use of alcohol by that Direction, but he did not do so. The claims by LHL in his evidence and submissions that he has overcome his lifelong use of alcohol, which he admits has been an adverse issue in his life, and that he has put sufficient preventive strategies in place, are not supported by any health professional evidence.
- [59] LHL made reference in his closing submissions, which were filed about a month after he gave evidence, to his attending Alcoholics Anonymous meetings, but did not give such evidence at the hearing. It may be that he began to attend such meetings after the hearing, but that evidence has not been tested.
- [60] The use of alcohol resulting in antisocial or aggressive behaviour is a relevant concern in relation to holding a blue card, as it cannot be known when such behaviour may occur in the presence of children, and is a poor example if children become aware of such behaviour.
- [61] I am not satisfied, on the evidence given by LHL, that he has entirely given up the use of alcohol, and would not revert to the use of it in the future, with adverse consequences on his behaviour; or that he would be able to manage his future use of alcohol, and has put in place preventative strategies as to his use of alcohol; or that he has full insight into the adverse effect that alcohol has on him, and has had upon him in the past.
- [62] Having regard to his life-long use of alcohol, and the resulting effect upon his behaviour, I am satisfied that this is an exceptional case in which it would not be in the best interests of children for the Chief Executive to issue a working with children clearance to LHL at this time, having regard to section 221(2) of the Act.
- [63] If LHL has truly altered his lifelong pattern of use of alcohol, then it is quite conceivable that he may in the future be able to successfully apply for a blue card, particularly if he provides evidence of having sought professional assistance in relation to his use of alcohol, and health professional evidence supporting his claim

that he no longer uses alcohol, or can manage his use of alcohol, and has insight into the effect of it upon him.

[64] I order that:

The decision of the Director-General, Department of Justice and Attorney General, made on 29 June 2022, that the Applicant's case is an 'exceptional case' within the meaning of section 221 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) is confirmed.

Non-publication order

[65] I note that non-publication orders have previously been made in the course of these proceedings.

[66] LHL is attempting to deal with issues in his life, and I consider that publication of his identity, or that of his witnesses, would endanger his physical or mental health, and not be in the public interest, and consider it appropriate that I make a non-publication order, and have de-identified names and information in these Reasons accordingly.

[67] I order that:

The publication of the name of the applicant, his family, and witnesses, other than to the parties to the proceeding; or material filed in these proceedings, other than as referred to in these Reasons; is prohibited pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).