

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *REB v Director-General, Department of Justice and Attorney-General* [2020] QCAT 312

PARTIES: **REB**  
(applicant)

v

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

APPLICATION NO/S: CML448-19

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 5 August 2020

HEARING DATE: 24 July 2020

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS: **1. The decision of the Director-General, Department of Justice and Attorney-General on 2 December 2019 to issue REB a negative notice is confirmed.**

**2. These reasons are to be published in a de-identified format only.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of decision by respondent to issue a negative notice

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – whether exceptional case – whether not in best interests of children to issue positive notice

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – where protective factors - where no incidents of domestic violence since 2014 – where applicant has re-partnered – where applicant attended information sessions to address alcohol and aggression concerns – where applicant is a capable employee with family support

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – where risk factors – where conviction for contravention of Protection Order – where no acceptance of responsibility for own actions and their seriousness – where incident of domestic violence not isolated - where period without evidence of further offending not of itself sufficient to show applicant does not present as a risk, without evidence of triggers for the behaviour at the time and how they have been addressed since - where evidence of past and current professional treatment, coping strategies and support networks to address anger is deficient – where applicant focused on minimising his involvement by seeking to transfer responsibility to former partner – where no evidence of ongoing participation in alcohol and anger management programs or other counselling, psychometric testing or formal assessment of his current suitability to work with children – where applicant expressed no remorse and limited insight into impact of his behaviour on others

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – exceptional case – where interests of children must take priority over applicant’s interests – where it was applicant’s responsibility to provide safe environment for his former partner’s children – where those who work with children must act responsibly and protect them - where community must be confident applicant can exercise restraint and self-control – where risk factors outweigh protective factors

*Human Rights Act 2019 (Qld)*, s 13, s 26

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

*Working with Children (Risk Management and Screening) Act 2000 (Qld)* s 6, s 156, s 167, s 221, s 226, s 360, Schedule 1

*Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492

*CW v Chief Executive, Public Safety Business Agency* [2015] QCAT 219

*Drinkwater v Commission for Children and Young People and Child Guardian* [2010] QCAT 293

*Grealy v Director-General, Department of Justice and Attorney-General* [2018] QCAT 2

*HIC v Commissioner for Children and Young People and*

*Child Guardian* [2013] QCAT 403  
*Launiuvao v Director-General, Department of Justice and Attorney-General* [2018] QCAT 322  
*Peri v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 56  
*Pritchard v Chief Executive Officer, Public Service Business Agency* [2015] QCAT 25  
*Quinn v Director-General, Department of Justice and Attorney-General* [2019] QCAT 275  
*Re TAA* [2006] QCST 11  
*Stitt v Chief Executive Officer Public Safety Business Agency* [2015] QCAT 257

**APPEARANCES &  
REPRESENTATION:**

Applicant: Self-represented  
 Respondents: A Medrana, Legal Officer

**REASONS FOR DECISION**

**What is this Application about?**

- [1] REB, a former Juvenile Aid Bureau police detective, has been involved with no fewer than two incidents of domestic violence against his former partner and her children up until 2014, when he was convicted of contravening a Protection Order. Since then, he says he has been trying to get on with his life as the sole income earner for his family working in the social housing sector.
- [2] However, on 2 December 2019, the Director-General, Department of Justice and Attorney-General issued REB with a ‘negative notice’ to work with children. This means that REB cannot obtain a ‘Blue Card’ to work in certain types of employment and volunteer work.<sup>1</sup>
- [3] REB wants the Tribunal to review the Chief Executive’s decision. Because REB is not convicted of any ‘serious offence’, he is entitled to be issued with a positive notice for a Blue Card unless his case is ‘exceptional’.<sup>2</sup>
- [4] In reviewing the Chief Executive’s decision that REB’s case is ‘exceptional’, the issue for me to decide is whether it would not be in the best interests of children to issue a positive notice for him to obtain a Blue Card.<sup>3</sup> To determine this, I must identify and balance protective factors with risk factors.<sup>4</sup>

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<sup>1</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 156, Schedule 1.

<sup>2</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 226.

<sup>3</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 221.

<sup>4</sup> *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

## Background

- [5] REB cited two Tribunal decisions<sup>5</sup> where applicants convicted of serious offences were successful in their review applications. These decisions have no application to REB's case, whose circumstances are different.

### Is it not in the best interests of children to issue a positive notice to REB?

- [6] Because a Blue Card authorises a person to work with children in any environment, the welfare and best interests of a child are paramount in deciding whether to issue a Blue Card to REB.<sup>6</sup>
- [7] Every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing.<sup>7</sup>

### What protective factors favour issuing a positive notice to REB?

- [8] REB is 49 years old and says he has been trying to get on with his life after the end of his relationship with his former partner in 2015. He has re-partnered and was employed as Operations Manager in the not-for-profit social housing sector, until he received the negative notice. He has a loving family whom he supports as the sole income-earner.<sup>8</sup>
- [9] REB says he spent most of his life with the Juvenile Aid Bureau and Child Abuse Unit as a detective dedicated to the protection of children. He is also committed to his more recent work helping those in need.
- [10] The incident of domestic violence leading to his conviction occurred over seven years ago and as part of his probation and parole, REB attended information sessions to address his alcohol and aggression concerns. By showing consistency and commitment, he progressed from weekly reporting to monthly reporting within six weeks of his probation. Unfortunately, none of this information was sufficiently detailed to reveal the extent to which he was able to identify and address the triggers for his behaviour and appropriate coping strategies.
- [11] Nevertheless, I am satisfied based on REB's evidence that he has been taking steps to move forward with his life since the incident of 2013, showing himself to be a capable employee who has family support.

### What key risk factors prevent issuing a positive notice to REB?

- [12] On [omitted] 2013, REB's former partner obtained a Protection Order for her and her three children. Some two months later, REB was convicted of contravening the Order and sentenced to nine months' probation with no conviction recorded.<sup>9</sup> The Police Brief<sup>10</sup> alleges that while her children were in another room, REB:
- Threw clothes around the bedroom, calling his former partner a "lazy bitch";

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<sup>5</sup> *Quinn v Director-General, Department of Justice and Attorney-General* [2019] QCAT 275; *Launiuvao v Director-General, Department of Justice and Attorney-General* [2018] QCAT 322.

<sup>6</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 6(a), s 360.

<sup>7</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 6(b).

<sup>8</sup> Life Story dated [omitted].

<sup>9</sup> National Police Check Results Report dated [omitted].

<sup>10</sup> QPS Court Brief printout dated [omitted].

- Threw a wine glass at his former partner, hitting her on the right upper arm;
  - Pushed his former partner against the wall, placing his hands around her neck, choking her and causing her to pass out for a short time;
  - Punched his former partner on the left side of her face above the cheekbone, knocking her glasses off her face; and
  - Continued to push and shove his former partner.
- [13] REB said his former partner’s allegations were fabricated and not true. He said he only pleaded guilty because his lawyer advised him that he would not get bail and did not notify him of the allegations. He said that he would have otherwise pleaded not guilty and taken the matter to trial. He said that it was his former partner who smashed the wine glass on his arm. He said his injuries were consistent with his version of events. He wanted the Tribunal to note that he was charged with “breach of an order and not charged with any criminal offences as it is (in) some other cases”.<sup>11</sup>
- [14] The Tribunal cannot go beyond the conviction and must accept it as it is.<sup>12</sup> Moreover, even if his former relationship was volatile, REB’s attempts to minimise his involvement and the gravity of the offence show no acceptance of responsibility for his own actions and their seriousness. The contravention is of considerable concern and includes allegations of choking. Although it was REB’s first time before the Court, he was still sentenced to nine months’ probation. The sentence reflects the seriousness of the offence.
- [15] Even if police had taken a cross-order against his former partner, this does not obviate the seriousness of REB’s own actions and the need for him to accept responsibility for those actions. Despite his denials, the police material records injuries of swelling and bruising to his former partner’s left cheek, consistent with her version of events.
- [16] REB is no longer in a relationship with his former partner. The Tribunal also notes that the legislation does not deem the offence as ‘serious’,<sup>13</sup> nor did it involve children.<sup>14</sup> Although REB did not comment on or said he could not recall many of the alleged instances of domestic violence, the weight of the evidence is that the incident was not isolated. His Offender File records the following entries before the incident:

Since 2010 there has been four child concern reports recorded in relation to the children’s father exposing the children to domestic violence. Other concerns of neglect when the children were in their father’s care following the separation of their parents.

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<sup>11</sup> Life Story dated [omitted].

<sup>12</sup> *Pritchard v Chief Executive Officer, Public Service Business Agency* [2015] QCAT 25, [36], citing with approval *Drinkwater v Commission for Children and Young People and Child Guardian* [2010] QCAT 293, [19]; *Stitt v Chief Executive Officer Public Safety Business Agency* [2015] QCAT 257, [37].

<sup>13</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 167, s 226(2)(a)(ii), Schedule 2.

<sup>14</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 226(2)(iv).

REB has one previous Child Concern Report recorded in 2006. This relates to a domestic violence incident with a previous partner where he has physically assaulted her. The children of the partner were not present.

In [omitted] 2011 there was a child concern report recorded for REB and for exposing the children to domestic violence. It was reported that REB had been physically violent... at the time. REB had been drinking that day.<sup>15</sup>

[17] The Application for a Protection Order following a further incident in [omitted] 2013 relevantly noted the following allegations:

- REB began to verbally abuse [omitted] before punching her numerous times to the collarbone, jaw and facial area;
- REB said words to the effect of “I’m gonna bash you and your coon kids”, “The cops won’t do anything, they’re my mates and I know the law better than they do”, “They’re not gonna do anything, I’m gonna tell them you hit me”;
- REB threw children’s toys around the room;
- REB approached a book case and threw books at one of the children sitting in the lounge room;
- REB was intoxicated at the time;
- REB continually monitored his former partner’s phone calls, would not allow her to work and would not allow her or her three children upstairs to bathe; and
- REB made continuous threats to kill his former partner and his children whenever became intoxicated, which was every night.

[18] The allegations were of sufficient veracity and seriousness to warrant the granting of the Protection Order.

[19] Moreover, a further incident of domestic violence was reported on [omitted] 2014 - since the conviction and while the Protection Order continued - that included allegations of verbal abuse and REB throwing a wine bottle and swinging a punch while intoxicated.<sup>16</sup>

[20] The period without evidence of further offending is not of itself sufficient to show that REB does not present as a risk, without evidence of the triggers for the offending behaviour at the time and how they have been addressed since. Although REB completed the probation program, the evidence of past and current professional treatment, coping strategies and support networks to address his anger is deficient.

[21] The use of violence to resolve conflict is unacceptable. Unfortunately, REB’s evidence and submissions since his actions show a lack of understanding of this and why it is relevant to determining his suitability to work with children. He instead focused on denying and minimising his involvement and seeking to transfer responsibility to his former partner. When asked during the hearing whether he thought any of the incidents may have impacted his former partner’s children, he said he could not comment as he “was not the children”.

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<sup>15</sup> Child Concern Report dated [omitted].

<sup>16</sup> Queensland Corrective Services Notified Concerns dated [omitted].

- [22] The community must be confident that REB is aware of the psychological and emotional impact of his behaviour on others sufficient to work with children, even when he himself is feeling emotional. He must show restraint and exercise self-control, particularly when children are present.
- [23] It is of concern that REB contravened the Protection Order only two months after it being obtained. Moreover, by seeking to justify and minimise his involvement in the offending behaviour - despite the lapse of time - REB still lacks sufficient insight into the impact of his behaviour on others and the importance of abiding by the law, regardless of his own emotions. This is relevant to child-related employment.<sup>17</sup> Adult behaviours can harm children even when not directed towards them:

It can be harmful for children to become aware people they respect don't obey the law because it can create confusion for them as they try to develop a sense of right and wrong.<sup>18</sup>

- [24] REB cannot transfer responsibility for his contraventions of the Protection Order once in place. He had an opportunity to oppose the Order prior to its issue. The Court made the Order based on the evidence before it. REB must abide by the Order once made. Instead of accepting responsibility for this, his evidence and submissions focused on his former partner's actions, denying and minimising his own involvement.
- [25] REB admitted to having had "a few glasses of wine" in the incident that led to his conviction, but made no acknowledgement of the role this may have played. The police material refers to excessive drinking over a period and - despite his claims of rehabilitation while on probation - this appears to have again been a trigger for a more recent incident in 2019, when REB was convicted for improperly using an emergency call service.<sup>19</sup> REB still regularly drinks alcohol.
- [26] Despite professing to "not trying to downplay domestic violence",<sup>20</sup> REB did not identify any non-violent coping strategies to address situations of stress or other evidence of steps he has taken to address factors that might have contributed to his behaviour, such as anger issues and alcohol. REB did not provide evidence of ongoing participation in alcohol and anger management programs or other counselling, psychometric testing or formal assessment of his current suitability to work with children.
- [27] This can perhaps be attributed to his non-acceptance of his own behaviour. His submissions spoke of the impact of "a terrible set of events" on *his* life and livelihood. He made no mention of the impact on his former partner and her children, maintaining he was the victim.
- [28] The first step in personal growth is to admit the need for change. This requires examining one's *own behaviour* and a level of self-reflection that can be painful and confronting – but necessary:

A person aware of the consequences of his actions on others is less likely to re-offend than a person who has no insight into the effect of his actions on others. This is particularly important with children because they are entirely

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<sup>17</sup> *HIC v Commissioner for Children and Young People and Child Guardian* [2013] QCAT 403, [65].

<sup>18</sup> *CW v Chief Executive, Public Safety Business Agency* [2015] QCAT 219, [61], [67].

<sup>19</sup> QPS Court Brief printout dated [omitted].

<sup>20</sup> Life Story dated [omitted].

dependent on the adults around them having insight into their actions and the likely effect on children.<sup>21</sup>

- [29] REB was unable to identify any triggers for his offending behaviour or strategies to prevent it, nor any underlying issues relating to anger management or alcohol use. He expressed no remorse for any of his actions. He instead focused on his former partner's behaviour and his own hardship that he attributed to the relationship and the current process.
- [30] The process of applying for a Blue Card is about assessing REB's suitability to work with children. The process serves the best interests of children. Any inconvenience from that process is a price the community is willing to pay to protect its children.
- [31] Unfortunately for REB, his current limited insight into the seriousness of his past behaviour, contraventions of the Protection Order and the impact of his behaviour on others, together with his failure to undertake sufficient steps such as formal counselling or other programs to address contributing factors and to help him control his emotions are risk factors that presently outweigh the protective factors.

**Is this an 'exceptional case' to not issue a positive notice to REB?**

- [32] Domestic violence is a scourge that takes many forms, extending beyond actual physical violence into the realms of psychological and emotional abuse. Being aware of this and how contravening a Protection Order impacts others and the importance of abiding by the order means a person is less likely to repeat the behaviour, when subjected to similar stressors.<sup>22</sup>
- [33] The law requires that in considering whether to issue a person a positive notice for a 'Blue Card', the interests of children must take priority over an applicant's interests. Any detriment to REB is not relevant to the granting of a positive notice<sup>23</sup> – the paramount consideration is the welfare and best interests of children.<sup>24</sup> This is consistent with human rights considerations.<sup>25</sup>
- [34] It was REB's responsibility to provide a safe environment for his former partner's children. He cannot transfer that responsibility to others. The children's interests are paramount – despite REB's own emotional needs.<sup>26</sup> REB cannot place his own feelings above those of *any* child in his care.
- [35] The community rightly expects those working with children to have the deepest understanding of this, as children depend on adults to have insight into their actions and their likely effect.<sup>27</sup> REB has not shown this. His case is 'exceptional' and prevents issuing him with a positive notice for a 'Blue Card'.

**Conclusion**

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<sup>21</sup> *Re TAA* [2006] QCST 11.

<sup>22</sup> *Peri v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 56, [49], citing with approval *Re TAA* [2006] QCST 11.

<sup>23</sup> *Pritchard v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 25, [47], [48]; *Grealy v Director-General, Department of Justice and Attorney-General* [2018] QCAT 2, [29].

<sup>24</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 6(a), s 360.

<sup>25</sup> *Human Rights Act 2019* (Qld), s 13, s 26.

<sup>26</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 6(a), s 360.

<sup>27</sup> *Peri v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 56, [49], citing with approval *Re TAA* [2006] QCST 11.

- [36] Although REB may have the potential to offer much to the community, issuing him with a positive notice at this time is not in the best interests of children. The Tribunal's concern is not just REB's past offending behaviour. The Tribunal cannot be satisfied that REB has addressed the specific risk factors or triggers for that offending behaviour.
- [37] Those who work with children must act responsibly and protect them. The community cannot be confident that REB is aware of the impact of his behaviour on others and can exercise restraint and self-control in certain situations, sufficient to work with children. The risk factors outweigh the protective factors.
- [38] The correct and preferable decision is therefore to confirm the decision of the Director-General, Department of Justice and Attorney-General on 2 December 2019 to issue REB a negative notice.
- [39] Because the Tribunal has previously ordered that any reasons or orders of the Tribunal are not to identify relevant persons, these reasons are published in a de-identified format.<sup>28</sup>

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<sup>28</sup> Direction 3 dated 1 June 2020; *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 66.