

CITATION:

RPG v Public Safety Business Agency [2016]
QCAT 331

PARTIES:

RPG
(Applicant)
v
Public Safety Business Agency
(Respondent)

APPLICATION NUMBER:

CML080-16

MATTER TYPE:

Review

HEARING DATE:

On the papers

HEARD AT:

Brisbane

DECISION OF:

Justice Carmody

DELIVERED ON:

13 September 2016

DELIVERED AT:

Brisbane

ORDERS MADE:

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The application is refused.

CATCHWORDS:

COURTS AND JUDGES – CONTEMPT –
PROCEDURE AND EVIDENCE –
JURISDICTION AND GENERALLY – where the
applicant applied for a blue card but was initially
issued with a negative notice by the respondent
– where the tribunal set aside the decision and
ordered the respondent to issue a positive
notice to the applicant – whether the tribunal
had jurisdiction to order a positive notice to
issue – where the tribunal only needed to
determine whether there was an exceptional
case – whether the respondent has acted in
contempt of the order by not yet issuing a
positive notice

Criminal Code 1899 (Qld) s 200

*Queensland Civil and Administrative Tribunal
Act* 2009 (Qld) ss 19, 20, 24, 28, 126, 127, 128,
132, 133, 213, 218, 219

*Working with Children (Risk Management and
Screening) Act* 2000 (Qld) ss ss 219, 220, 221,

222, 223, 225

Australasian Meat Industry Employees Union v Mudginberri Station Pty Ltd (1986) 161 CLR 98

Camm v ASI Development Company Pty Ltd [2007] QCA 317

Consolidated Press Ltd v McRae (1955) 93 CLR 325

RPG v Chief Executive Officer, Public Safety Business Agency [2015] QCAT 485

Shepherd v The Queen (1990) 170 CLR 573

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ("QCAT Act").

REASONS FOR DECISION

- [1] The sole issue for consideration in this proceeding is whether the government agency responsible for issuing so-called blue cards needed for engaging in paid or volunteer child-related employment (regulated employment) is deliberately defying a review tribunal order to issue one to the applicant.¹

The context

- [2] The applicant is a former army officer who has been volunteering with a cadet group unit in Monto since 2006. He and his wife were also foster parents. He needs a blue card for both purposes.
- [3] In 2014 the agency found an 'exceptional case' against him (the reviewable decision) and issued a negative notice.
- [4] A review tribunal set aside the agency's decision and ordered the agency to issue the applicant with a blue card.² However, it is the agency's view that the review tribunal's order is ultra vires. The agency does not dispute that the tribunal had jurisdiction to review whether or not an exceptional case existed, by weighing relevant risks against protective factors for displacing the statutory presumption that a positive notice and blue card should be issued to the applicant based on police information; but argues that it does not have any statutory power to direct the agency to issue a positive notice, even if it sets aside the reviewable decision.
- [5] Rather, the agency says, once the tribunal has decided an exceptional case exists, all it can validly do is substitute its review findings for the

¹ QCAT Act ss 213(1), (2); 218(1)(g).

² *RPG v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 485.

reviewable decision and leave it up to the chief executive to otherwise implement the decision according to law. On this basis, it has told the applicant that, despite the terms of the order, he has to lodge an updated application for its consideration in line with its policy guidelines.

- [6] This is said to be the most appropriate, complete and expeditious method of obtaining all the necessary information to proceed to issue a positive notice in conformity with the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (*Working with Children Act*) which, as the agency correctly points out, does not allow for a person to be issued with a positive notice and a blue card unless he or she is engaged or proposing to be engaged in regulated child-related employment or business activities.
- [7] The applicant's intention to continue volunteering with a cadet group in itself is insufficient. The *Working with Children Act* requires that the proposed employer confirm its intention to engage the person in regulated employment if a blue card is held.
- [8] The applicant steadfastly refuses to reapply for a blue card and asserts that in requiring him to do so the agency is in contempt of the tribunal decision. He says none of the sections in the *Working with Children Act* "give voice to a requirement for a further application to be made" and argues the 'exceptional case' decision is inseparably enmeshed with the issuing of a positive notice; such that there is no basis to conclude the tribunal exceeded its jurisdiction.
- [9] Even though the review decision is enforceable by the Supreme Court in proceedings taken under s 132 QCAT Act, the applicant has opted to have the agency dealt with for contempt.
- [10] The agency invited me to treat the contested application as a request as a renewal application under s 133 QCAT Act which allows for a review order that cannot be complied with, or there are problems in interpreting, implementing or enforcing it, and replace it with another one that could have been made in the first place; but I doubt if that was what the applicant intended.
- [11] In any case, for the reasons given, I think the better course is to consider the contempt application on its merits.

Proof of contempt

- [12] Contravening a decision (including an order) of the tribunal without reasonable excuse is a fineable offence.³ It is also a circumstance in which a person may be in contempt of the tribunal,⁴ even though a specific penalty is also prescribed for it.⁵

³ QCAT Act s 213(1).

⁴ *Ibid* s 218(1)(g).

⁵ *Ibid* s 219(8).

- [13] The QCAT Act “allows” a judicial member of the tribunal to deal with a contempt matter⁶ and, for that purpose, provides the member with all the protection, powers, jurisdiction and authority of the Supreme Court.
- [14] Where – as here – a type of civil contempt is allegedly constituted by a contravention offence, “... the facts by which it is made out must be proved by admissible evidence to the tribunal’s satisfaction beyond reasonable doubt. Uncertain inferences from inexact proof will not support such a charge”.⁷ An applicant, therefore, holds a heavy burden of proof including, in a circumstantial case, excluding all rational inferences or explanations for the alleged contravention except guilt.⁸
- [15] Moreover a breach of a tribunal order will not constitute contempt unless it is wilful and not casual, accidental or unintentional.⁹
- [16] The tribunal is bound to act fairly according to the substantial merits of the case.¹⁰ The contempt power is exercised for the benefit of both the innocent party and the overall public interest.¹¹
- [17] Regularity is a precondition to a contempt finding for non-compliance with a tribunal decision or order. As mentioned, the agency submits that the review tribunal was limited to reviewing the exceptional case finding and exceeded its statutory power to order the issuing of a blue card. Thus, to the extent it directs the agency to issue a blue card, the order is beyond its function and power. The validity of this claim needs to be considered against the statutory framework of the blue card scheme.

The blue card system

- [18] The blue card system aims to ensure child safety by allowing only eligible adults to work with, or care for, other people’s children.
- [19] The major statutory function of the agency’s chief executive is to decide a prescribed notice application made about a person as part of the screening process by issuing either a positive or negative notice.¹² Save in an ‘exceptional case’, a positive notice must be issued to a person if the chief executive is not aware of any police or disciplinary information about the person or a conviction for any offence.
- [20] Conversely, a negative notice *must* be issued to a person where the chief executive is satisfied that it would not be in the best interests of children to issue a positive notice.¹³

⁶ Ibid Ch 2.

⁷ *Consolidated Press Ltd v McRae* (1955) 93 CLR 325, 333.

⁸ *Shepherd v The Queen* (1990) 170 CLR 573, 578.

⁹ *Australasian Meat Industry Employees Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98.

¹⁰ QCAT Act s 28.

¹¹ *Camm v ASI Development Company Pty Ltd* [2007] QCA 317.

¹² Working with Children Act ss 219, 220.

¹³ Ibid s 221(2).

- [21] In deciding an application to renew a blue card, the chief executive of the agency must issue a notice approving an applicant (a positive notice) if she is not aware of any police, disciplinary or investigative information about the person unless she is satisfied it is an 'exceptional case' in which it would not be in the best interests of children to do so; in which case the application must be refused by issuing a negative notice.¹⁴
- [22] Relevantly, when deciding whether or not there is an exceptional case for an applicant previously convicted of or charged with an offence, the chief executive is bound to have regard to the mandatory factors in s 226(2) including the nature of the offence, its relevance and the penalty it attracted, as well as any other suitability information (such as about the person's mental health).
- [23] If the chief executive decides that a matter is an 'exceptional case' having regard to those matters, she is bound by the mandatory requirements in ss 221(2), 222(2), 223(4) and 225(2) to issue a negative notice.
- [24] In this case, the chief executive was aware of an old conviction of the applicant for a traffic offence and a domestic violence complaint (but not of any police, disciplinary or investigative information) and issued a negative notice.

Tribunal reviews

- [25] In exercising its review jurisdiction under the Working with Children Act, the tribunal has all the functions of the decision maker for the reviewable decision.¹⁵ The purpose of the review is to produce the correct and preferable decision via a fresh hearing on the merits.¹⁶ The tribunal may confirm, amend or set aside the reviewable decision and substitute its own or remit the matter for reconsideration to the decision maker with or without appropriate directions.¹⁷
- [26] The tribunal decision in the proceeding is binding on all parties to the proceeding,¹⁸ taken to be a decision of the agency chief executive and takes effect when it is made unless a later date is stated.¹⁹ It is not invalid just because of some procedural irregularity or defect.²⁰

The validity of the tribunal order

- [27] In my opinion, the review tribunal had power to set aside the 'exceptional case' decision; but that is all. There was no need (or power) to order that a positive notice or blue card be issued.

¹⁴ Ibid ss 220, 221(1), (2).

¹⁵ QCAT Act s 19(c).

¹⁶ Ibid s 20(1).

¹⁷ Ibid s 24.

¹⁸ Ibid s 126(1).

¹⁹ Ibid s 127.

²⁰ Ibid s 128(1).

[28] The proper form of order on successful review of an exceptional case decision is along the lines:

The decision of the chief executive officer of the Public Safety Business Agency that the applicant's case is "exceptional" within the meaning of s 221(2) of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) is set aside and replaced with the tribunal's decision that there is no exceptional case.

[29] It is now up to the chief executive of the agency to follow the letter of the law (rather than the review decision) by issuing a positive notice within a reasonable time, in line with the legislation. Failure to do so may make her liable to prosecution for a criminal breach of statutory duty under s 200 of the *Criminal Code 1899* (Qld), which is punishable on conviction to up to two years imprisonment.

[30] The contempt application, therefore, fails because:

- the review tribunal made an order that was not open to it; or alternatively,
- there is insufficient proof of fault or deliberate disregard by the agency; and
- taking enforcement action would be more appropriate.

ORDER

1. The application is refused.